



EPA Region 1: NPDES Permitting Background and Update

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Goals of Presentation: to provide...

- Some of the bases for commenting on permits;
- An update, or refresher, on types and universe of permits;
- Some Current NPDES trends and challenges;
- Updates on NPDES rule development; and
- Updates on some recent NPDES Environmental Appeals Board (EAB) orders.

National Pollutant Discharge Elimination System (NPDES) and Effluent Limits Authorities in the Clean Water Act (Sections 301, 302, 401, 402)

Facilities that discharge pollutants from a point source into waters of the U.S. are required to obtain a NPDES permit

- Certain exceptions
- Section 316 - intakes for cooling water also regulated
- Section 308 – authority of information requests, monitoring, records
- NPDES Regulations are generally at 40 CFR 123-125; 129; 130-131; 133; 135-136



Types of NPDES Permits

- Individual vs. General
- Stormwater (402(p)) vs. non-stormwater
- Delegated states vs. EPA-issued



NPDES Permits in MA and NH

(approximate number of permittees)

- **Non-Stormwater** – (723 MA/NH non-stormwater permittees)
 - General Permits: regional (6), national (3) (405 regional GP permittees)
 - Individual Permits (318): Municipal, Industrial
- **Stormwater**
 - Industrial – 2015 Multi Sector General Permit (MSGP) – 6/4/15 expires 2020 (857)
 - Construction – 2017 Construction General Permit (CGP) – signed 1/11/17, effective 2/16/17, expires 2/16/22 (1977)
 - Municipal – 2003 Municipal Separate Storm Sewer System (MS4) General Permit, administratively continued. Final MA MS4 GP - effective 7/1/17; Final NH MS4 GP - signed 1/18/17, effective 7/1/18. (348)



Basis for NPDES Permit Limits

- “Technology-Based”
 - Secondary Treatment Standards for POTW’s
 - Nine Minimum Controls for CSO’s
 - Effluent Limitation Guidelines (ELGs) for industrial sectors
 - Best Professional Judgment (BPJ) when there is no applicable ELG
 - Maximum Extent Practicable (MEP) for MS4 permits
- Water Quality-Based
 - Total Maximum Daily Loads (TMDLs)
 - Finding of Reasonable Potential (RP) to exceed Water Quality Standards (WQS)
 - Anti-degradation
- Anti-backsliding,
- Variance



Reasonable Potential

- 40 CRF 122 (d) (1) (i)
- Limitations must control all pollutants... which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

Forms of Limits in a NPDES Permit

- Numerical Effluent Limit
- Best Management Practices (BMPs)



Some Current Topics in NPDES Permitting

- Increasing Number of NPDES Permittees, Permit Backlog
- Public Interest, Transparency, Expanded NPDES web pages
- Electronic Reporting
- Stormwater Permits: MA and NH MS4 Permits
- Collection Systems: Co-permittees, Sanitary Sewer Overflows (SSOs), CSOs, Infiltration/Inflow
- Integrated Municipal Stormwater and Wastewater Planning Approach Framework
- Emerging Contaminants



Final NPDES National Rules

- NPDES MS4 Remand Rule – Final 12/9/16
- Steam Electric Power Generating Category ELG – Final 11/3/15
- NPDES Electronic Reporting Rule – Final 9/24/15
- Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting - Final 8/19/14
- CWA Section 316(b) Existing Facilities with Cooling Water Intake Structures (CWISs) – Final 8/15/14

Proposed NPDES National Rules

- NPDES Application and Program Updates Rule – Proposed – comment period ended 8/2/16
 - Clarifying NPDES definitions and application requirements;
 - Improving permit decision documentation in fact sheets;
 - Updating certain public notice requirements to allow online rather than in a newspaper notices; and
 - Ensuring issuance of environmentally significant permits in a timelier manner.

Some Recent Environmental Appeals Board (EAB) Decisions

- City of Taunton Department of Public Works
5/3/16 – Order Denying Review
- Charles River Charles River Pollution Control
District 8/27/14 - Order Denying Review
- Town of Concord, Department of Public Works
8/28/14 - Order Remanding in Part and Denying
Review in Part

EAB from Taunton Oder, p. 75

- When confronted with a difficult choice between scientific certainty and the obligation to eliminate water quality impairments, it is reasonable for a permitting authority to opt for a greater reduction in pollutant discharge over a more finely tuned numerical limit. *Cf. Natural Res. Def. Council, Inc. v. Costle*, 568 F.2d 1369, 1380 (D.C. Cir. 1977)

EAB From Concord Order, p. 3

- The Region has broad discretion to impose monitoring requirements in NPDES permits under the Clean Water Act and EPA regulations.
- The Region did not clearly err or abuse its discretion in imposing requirements for sewage collection system mapping, operations/ maintenance plans, and annual reports.

Other Environmental Appeals Board (EAB) Decisions

- Town of Newmarket Wastewater Treatment Plant
12/02/2013 – Order Denying Review
- Upper Blackstone Water Pollution Abatement
District 5/28/2010 - Order Remanding in Part and
Denying Review in Part (Denial Upheld in Court of
Appeals 8/3/2012)
- City of Attleboro, MA Department of Wastewater
9/15/2009 - Order Denying Review

EAB From Upper Blackstone

- the regulation requires water quality-based effluent limits even when there is some degree of uncertainty regarding both the precise pollutant discharge levels and the potential causal effects of those discharges, so long as the record is sufficient to establish that there is a “reasonable potential” for that discharge to cause or contribute to a violation of water quality standards.

EAB From Attleboro

- In reviewing NPDES permits, the Board is guided by the concept articulated in the preamble to the part 124 permitting regulations, which states that the Board's power of review "should be only sparingly exercised" and that "most permit conditions should be finally determined at the [r]egional level." 45 Fed. Reg. 33,290, 33,412 (May 19, 1980); *accord In re City of Moscow*, 10 E.A.D. 135, 141 (EAB 2001).

What you will find on the R1 NH NPDES Web Page

<http://www.epa.gov/region1/npdes>

Pick a state (e.g. NH) - <http://www.epa.gov/region1/npdes/newhampshire.html>

This page contains information on EPA issued individual permits and general permits. For NH, NPDES permits are listed in the following categories:

- Draft Individual Permits
- Final Individual Permits
- Draft General Permits
- Final General Permits
- Permits of Significant Interest
- Stormwater Permits



Thank you

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NPDES Performance Matrices

- Percent Current (Backlog)
- Priority Permits
- Program Improvement Items for States