

Permitting an End to Pollution

how to scrutinize and
strengthen water pollution
permits in your state

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Introduction

This guide is designed to help citizens influence the issuance of water pollution control permits, known as National Pollutant Discharge Elimination System (NPDES) permits. Chapter 1 walks you through the basics of permitting. Chapter 2 teaches you how to dig into the meat of a permit and analyze its strengths and weaknesses. Chapter 3 provides guidance on writing up and submitting your findings to the state agency, and Chapter 4 explains how your permit work relates to other protections in the Clean Water Act.

Please note that a glossary of terms is included in Appendix A – words and phrases included in the glossary are underlined when they first appear in the body of the handbook.

Don't let this overwhelm you. Even if you just take a few steps, you will discover a lot about the proposed permit and your power to influence it. For your first attempt at permit review, start with the basic steps outlined here and you'll be on your way!

Identify a permit that concerns you.

You may have heard about plans for a new sewage treatment plant in your neighborhood. You may be concerned about your favorite fishing stream and wondering about that factory pipe you pass on each fishing trip. Whatever has provoked your interest, take the first step by simply contacting the state agency (see Appendix B for contact information) to see which permits relate to your concerns. For a general timeline of the permitting process, see page XXX.

Request information!

Ask the state agency for the pertinent permit(s). And remember: There's more than just the permit and the fact sheet! We suggest requesting the old permit (if applicable), the permit application, and the anti-degradation analysis at minimum. Other information to request includes stream surveys or other water quality data, the reasonable potential analysis, and any engineer's notes. See Section 3.1 for more.

Introduction | Quick Start Permit Action List

Is the river or lake impaired?

Check your state's 303(d) impaired waters list to find out if the waterbody is impaired. If it is, no more of the problem pollutant can be discharged. This requirement applies to both new and existing, but increasing, discharges. See Section 2.2 for more.

Do the effluent limits protect the river, lake, or coastal water?

Effluent limitations are the heart of the permit. These specify the maximum amount of pollution a discharger can release over a given period of time. Are the limits set for the right pollutants? Are the limits set at levels that will protect water quality? Are there special issues in the river or lake that should be considered in the limits? See Section 2.2 for more.

Did the agency consider cumulative impacts?

Federal regulations state that no NPDES permit may be issued "when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States." Will the permit conditions cause or contribute to a violation of water quality standards? Are there other dischargers in the area that release the same pollutants? Are there increases in load limits for toxic chemicals and metals, which may be bioaccumulative? See Section 2.2 for more.

Does the permit allow backsliding?

Increasing the permit's effluent limits is known as backsliding. Backsliding is generally illegal under the Clean Water Act, but there are circumstances where it may be allowed by law. Always investigate backsliding and challenge it wherever possible. See Section 2.2 for more.

Is the required monitoring adequate?

Monitoring of the discharge is a crucial accountability measure in any permit. Consider sample frequency, the types of samples required, the critical times for monitoring, reporting requirements, and look for monitoring of receiving waters. See Section 2.2 for more.

Is the river or lake protected against degradation?

Every state must have an antidegradation policy to keep clean waters clean. Not only should this policy keep waters from violating water quality standards, it should also ensure that high-quality streams – those waters with water quality and habitat good enough to fully support healthy aquatic communities and recreation – stay that way. When any new or increased discharges are proposed, a review of (a) alternatives, (b) the need for the discharge, and (c) the social and economic justification for the discharge must be made. See Section 2.4 for more.

Introduction | Quick Start Permit Action List

What's the compliance *(or non-compliance)* history of this discharger?

Always look at a discharger's track record. Have they violated past permits repeatedly? Have they done an excellent job of reducing pollution? You can look at their monthly Discharge Monitoring Reports at your state agency and EPA's Permit Compliance System to find out. See Section 2.4 for more.

Are appropriate special conditions required?

Virtually all NPDES permits also contain special conditions. Special conditions describe additional monitoring, testing, or other requirements. They can call for additional monitoring of pollutants not regulated by numerical effluent limits, monitoring of toxicity, conducting studies of ambient water quality and biological surveys. Special conditions may also describe compliance schedules or other types of requirements such as operation and maintenance requirements at the facility. See Section 2.4 for more.

Is there a mixing zone? Is it explicitly described in the permit?

Mixing zones are areas beyond the end of the pipe where the discharger and the regulators decide it is okay to violate water quality standards while the discharge is mixing with the streamflow. Mixing zones are supposed to be as small as possible and should be defined in the permit. Is the zone explicitly described in the permit? Are existing uses protected within it? Is it as small as possible given the flow and toxicity of the discharge? Is it adequate at all times of the year – even during critical flows? See Section 4.4 for more.

Should you request a public hearing?

Agencies may hold a public hearing on a permit, but only if there are important issues and people request one. While the Clean Water Act guarantees you the right to request a hearing, it does not say when your state must grant a hearing. This means that the occurrence of permit hearings varies from state to state, but it is still a good idea to request one. A public hearing can be a useful way to find out additional information. It can also be a valuable forum for making your concerns known to other interested citizens, decision-makers and members of the press. See Section 3.2 for more.

Write it up!

Write up your concerns and questions and submit them to the agency. Don't forget about deadlines – as a general rule you'll have just 30 days to comment on a permit. Be sure to send copies of your comments to the U.S. EPA, your state agency, and your elected officials. See Section 3.2 for more.

You're on your way to becoming a permit expert. Once you start, you won't be able to stop! Read on for more information on all quick-start action items as well as dozens of other ideas and action suggestions.

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Chapter 1

Getting Involved with Water Pollution Permitting

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- 1.1 What are Water Pollution Permits?
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Agencies, elected officials and even some citizens say the Clean Water Act has taken care of **point source** discharges [as opposed to **nonpoint source** discharges – diffuse sources of pollution such as runoff from farm fields]. It is true that many big problems were addressed by basic treatment requirements in the Act and attention to instream water quality, but the job is far from finished. If we don't keep a watchful eye on point source discharges, violations will be missed and uses of the water will be threatened.

Under Section 402 of the Clean Water Act, water pollution from point sources is regulated through water pollution permits that restrict the type and amount of pollution that can be released into the nation's waters. These permits are officially known as **National Pollutant Discharge Elimination System** permits, or more commonly, NPDES permits. The purpose of this hand-

permit

per-mit (pər mit'; for n. usually pur'mit') **verb** – mitted, -mitting // < Latin *per*, through + *mittere*, send // **1** to allow; consent to **2** to authorize – vi. To give opportunity [if time *permits*] – **noun** a license.¹

book is to give you the basic tools to read, review, and submit comments on an NPDES permit and participate in decisions related to pollution control in your watershed. This is an important skill to add to your repertoire, as watershed groups need to be aware of the amounts and types of pollution being released into their waters and to have a voice in controlling pollution as well.



The Clean Water Act defines a point source as “any discernible, confined, and discrete conveyance” of pollutants to a waterbody. The definition of discrete conveyance includes, but is not limited to, “any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.”² As you can see, this definition throws a much wider net than the traditional picture of an industrial pipe. Examples of point sources of pollution range from sewage treatment plants to factories, large-scale factory farms, and urban storm drain systems.

Keeping Pollution At Bay | a success story

In 1998, the 3M Corporation decided to expand its operations in Cordova, Illinois. The expansion would increase the amount of pollution 3M discharged to the Mississippi River. Local citizens and groups such as Prairie Rivers Network, Sierra Club, and the Environmental Law & Policy Center, concerned about the proposed pollution increase, requested and reviewed the proposed NDPEs permit. The groups noticed the high levels of ammonia and organic wastes to be discharged would deplete already low dissolved oxygen levels in the river. Citizens and groups wrote letters describing the problem and requesting a public hearing.

At the hearing, citizens learned the company would be employing treatment technology that was over 30 years old. Newer, more effective technology could be installed without an enormous investment by 3M.

A quick search of biological survey records showed the Higgins Eye Mussel, a federally listed endangered species, was known to exist in the area. There were also two state-listed endangered species in the river near the facility.

Illinois EPA had not known this information prior to issuing the draft permit for public review. Therefore the permit did not account for the potential impact of the pollution on the protected species.

In addition, water quality data collected on the other side of the river by the State of Iowa showed the Mississippi was already violating water quality standards for dissolved oxygen. The increased pollution allowed in the draft permit would worsen these water quality problems and possibly push protected species closer to extinction.

Citizens and concerned conservation and environmental groups submitted public comments on the draft permit, testified at a public hearing, and filed a second set of public comments after the hearing. The message from concerned citizens was clear –new pollution should not be allowed into the Mississippi River, particularly since the costs of adequate treatment were not prohibitive. The



overwhelming public sentiment was to protect water quality and protect the **existing uses** of the Mississippi River. More importantly, these sentiments weren't just based on a vague notion that pollution was simply "bad," but were backed up by scientific studies, the latest biological surveys, and documentation that showed improved pollution controls were not only necessary, but relatively inexpensive.

Ultimately, after holding up the plant expansion for more than a year, the Illinois EPA, 3M Corporation and members of the public agreed to a revised permit. The revised permit placed much more restrictive limits on ammonia and organic wastes – to the point where the expanded facility would put out less pollution than the original! Because of action by local citizens and clean water organizations, over 1 million pounds of pollution was kept out of the Mississippi.

This is what can happen when the public gets involved in the permitting process, points out information that was not available to the agency originally, and speaks out for clean water.

1.1 What are Water Pollution Permits?

Water pollution permits are essentially a contract between dischargers and the permitting authority (usually the state). This contract regulates the type and amount of pollution that can be legally released, as well as the monitoring requirements dischargers must meet. These permits are legally binding and the state is charged with issuing and enforcing them.

Required by the Clean Water Act NPDES permits were originally intended to *eliminate* pollution from the nation's waters by the mid-1980s. In theory, the permits were supposed to slowly ratchet down the levels of pollution released to the nation's waters until all water pollution was eliminated. Clearly this did not happen on schedule, but it is still the goal of the Clean Water Act.¹ However, we have a long way to go to achieve this goal. In fact, all too often NPDES permits authorize the release of *increased* amounts of pollution, rather than eliminating pollution.

So what does an NPDES permit actually do?

- ❑ Regulates the types and amounts of pollutants that can be released to our waters.
- ❑ Specifies how often discharges are monitored, what type of samples must be collected and what laboratory techniques must be used, as well as when monitoring results must be reported.
- ❑ Requires other types of environmental monitoring such as surveys of fish, mussels, and other organisms that live in the water, or levels of chemical pollutants in the vicinity where pollution is released.

The NPDES permit system uses two main types of permits – individual and general. An individual permit is just that – each individual facility applies for and receives its own site-specific permit. General permits differ in that one permit is issued to a class of activities, and many facilities can apply to be covered under the conditions of that permit.² Two of the most common general permits apply to municipal and construction site **stormwater** permits.

There are many reasons to prefer individual permits. First and foremost, any proposed individual permit triggers the public notice and comment procedures discussed in this guide, giving you a chance to weigh in. The permits are also site-specific, and therefore can address the details of a particular facility and location.³

General permits pose many problems. They are issued on an area-wide (state, watershed, etc.) basis and they are meant to cover similar operations that discharge the same wastes. What this means in practice is that the public is only allowed to comment on the one state- or watershed-wide permit – not on the details of a specific facility. The public generally receives no notice a facility has applied for coverage under the general permit, unlike the notice required for individual permits.

In a nutshell: Individual permits allow for greater public oversight; general permits streamline the regulatory process but overlook important differences between sites. If you are concerned a general permit does not adequately protect uses and water quality, you can ask that a particular discharger be required to obtain an individual permit, instead.⁴ Be especially aware of general permits that are issued in already impaired waterways. General permits will not offer the protections these rivers and lakes need.

If dischargers do not comply with the conditions of their permits, the state can initiate enforcement action that can result in fines or even criminal penalties. Private citizens also have the right to sue dischargers for damages if they violate permits.⁵

Citizens have an important role in issuing and enforcing these permits by ¹⁾ providing public input into the conditions of the permit, ²⁾ monitoring compliance with the permit, ³⁾ notifying the state agency responsible for enforcement when dischargers are not complying with their permits and pressing them to take action, ⁴⁾ potentially taking legal action against dischargers that violate the conditions of these permits, and ⁵⁾ monitoring the health of their stream or lake. This handbook is intended to help you get started with #1 on this list of possible activities.

Photo caption/credit

1.2 Who Receives Water Pollution Permits?

Permits are required of all point sources of pollution. (See sidebar on page XXX for a broad definition of point sources.) (INSERT GRAPHIC OR PICTURES OF DIFFERENT POINT SOURCES) Examples of point-source polluters include any factory, sewage treatment plant, active or abandoned mine, stormwater drain or large-scale animal feedlot that discharges or has the potential to discharge pollution into our waters.

Permits are good for up to five years.¹ The discharger must apply for renewal before the permit's expiration. In many states this may be required as much as one year prior to expiration. At the time of renewal the

discharger's performance is re-evaluated and the permit conditions may be altered.

In many states there is a fee for an NPDES permit, but not in all. Most permit fees are established to cover costs of the permit program. Some states have established fees associated with the volume and toxicity of the discharge.

Who receives water pollution permits?

Types of Permits		Existing Permit #s
<i>Major Municipal</i>	municipal sewage treatment plants that collect and treat wastewater from both residential and industrial polluters. (note: major municipal facilities are those with design flows of greater than one million gallons per day and those with pretreatment programs. ³)	4,100
<i>Major Industrial</i>	some industries have their own permits and their own treatment works, and do not send their wastes to a municipal sewage treatment plant. (Note: Major industrial facilities are determined through specific ratings criteria developed by EPA or the state.)	2,500
<i>Mines</i>	includes coal mines, gravel and aggregate mines, hard rock mines and other types of mining activities (both above and below ground).	????
<i>Sanitary Sewer Overflows and Combined Sewer Overflows</i>		21,000
<i>Stormwater</i>	runoff from industrial sites, construction sites, city streets and more are regulated by NPDES permits. Even more stormwater permits will be issued for smaller sites and less populated areas in the next two to three years as new federal regulations come into effect.	Estimated 100,000 general permits needed
<i>Confined Animal Feeding Operations</i>	large-scale hog, cow and poultry farms would fit under this category. 14,000 estimated needed	14,000 estimated needed
<i>Minor Permits</i>	municipal and industrial permits. (Note: Minor municipal facilities are those with design flows of less than one million gallons per day (if they do not have pretreatment programs). Minor industrial facilities are defined with specific ratings criteria developed by EPA or the state. ⁴)	89,800

1.3 How Do I Find out about NPDES Permits in my Area?

The permit agency is required to notify the public about their decision to issue an NPDES permit. The permit agency could be U.S. EPA, a state agency or a tribal government. In most states, U.S. EPA has delegated its authority under the Clean Water Act to administer the NPDES permitting program to an appropriate state agency.¹

Public notice of each draft permit summarizing basic information about the permit and the action proposed by the agency is required. An example of a public notice is included as Attachment 1.

The public notice should include:²

- {1} name of the discharger
- {2} permit number
- {3} public notice number
- {4} discharger's address
- {5} statement of whether the permit is new, reissued, or modified
- {6} summary of any modifications if the permit is modified
- {7} a summary of the pollutants being regulated by the permit
- {8} name of the receiving waters – the waterbody receiving the proposed discharge

The public notice is posted in newspapers or elsewhere, and also mailed to anyone who has requested to be notified about NPDES permit decisions . To receive information on NPDES permit decisions in your state, call or write the agency contact listed in Appendix B of this guide.

1.4 Putting Together Your NPDES Permit Toolkit

Several things will prove useful as you delve into the world of NPDES permits and all are powerful additions to any clean water activist's toolkit. These items will help you gain a lot of information without requiring a degree in environmental engineering or fresh water ecology. You do not need to collect all these materials before starting to review permits, but they will all enhance your efforts.

Detailed map(s) of your watershed

Your state's edition of the *DeLorme Gazetteer* map series or U.S. Geological Survey topographic maps will provide extensive information, such as the location of public recreational areas, downstream communities, boat launch points and access areas.

Camera

Sometimes a picture is worth a thousand words. When you are out paddling or fishing or just driving around, snap a few photos of your local discharger's facility and the condition of the river, particularly if something strikes you as being not quite right. Remember: By the time you call the appropriate agency and they send out an inspector, your photographs may be the only remaining evidence of the problem. A digital camera can be especially helpful to post pictures on the web and to send them to the regulatory agencies or the press on the same day.

Water quality data

It's always good to know the past and current water quality of your hometown stream and there are many useful sources of this information. Among the most comprehensive are:

- **Biennial State Water Quality Report to Congress (305(b) Report)** – Published bi-annually in accordance with Sec. 305(b) of the Clean Water Act, this is the state's overall assessment of water quality. It will tell you the general condition of your stream and what water quality problems exist. To access this information for free, either call your state agency directly (see resource list in Appendix B) or visit U.S. EPA's web site at <http://www.epa.gov/305b/98report/> for a summary of the information. (Click on "Appendices from national water quality inventory" for more detailed state information.)
- **Threatened and Impaired Waters List (303(d) List)** – Published every other year by the state in accordance with Sec. 303(d) of the Clean Water Act, this is the list of waters in the state that do not meet clean water requirements. These waters will have clean-up plans called Total Maximum Daily Loads (TMDLs) developed for them. Call your state agency or visit <http://www.epa.gov/owow/tmdl> and click on your state for a copy of the list.
- **USGS water quality monitoring data** – The United States Geological Survey (USGS) studies water quality, among other things. Contact your district USGS office. You can find local USGS contact information by visiting www.cwn.org and clicking on "water quality standards." Scroll down for a link to a contact listing. You can also visit the USGS website to get summaries of water quality for those areas which USGS studies as part of their

National Ambient Water Quality Assessment (NAWQA) at <http://infotrek.er.usgs.gov/wdbctx/nawqa/nawqa.home>. More general information on water quality from your state is also available from USGS at <http://water.usgs.gov>. Detailed data from U.S. EPA's STORET (short for STOrage and RETrieval) system is available at <http://www.epa.gov/storet/>. STORET is a repository for water quality, biological and physical data and is used by state environmental agencies, EPA and other federal agencies, universities, private citizens and many others.

- ▣ **General information on your watershed –** Few people realize how much information is available. A first stop should be U.S. EPA's Surf Your Watershed website located at <http://www.epa.gov/surf>. Your state pollution control agency or natural resources agency may also have information on water quality and aquatic species populations. See Appendix B for some contacts in your state.
- ▣ **Biological Information –** It is always useful to know what types of fish, mussels and other aquatic organisms live in a waterbody where a discharge exists or is proposed. Contact your state's U.S. Geological Survey office, state natural resource agency or local university researchers to find out more.

State Water Quality Standards

Get a copy of your state water quality standards from your state agency or from the Internet. These are the state regulations that set criteria to protect beneficial uses and water quality in the state. State contact and water quality standard information is available from River Network at http://www.rivernetnetwork.org/cleanwater/cwa_search.asp. Water quality standard information that has been approved by U.S. EPA is available at U.S. EPA websites found at <http://www.epa.gov/wqsdatabase/> and <http://www.epa.gov/ost/wqs/>.

Additional information

So much information is available free of charge and just a click away on the Internet. Look at Appendix C for a list of additional Internet resources.

The preceding sources are readily available and offer a great deal of information about your watershed, including existing problems the regulatory agency must consider when regulating pollution. Even if reviewing NPDES permits is not in your immediate future, having these items at your fingertips will be an ongoing asset.

Footnotes

1 Webster's New World Dictionaries, *Webster's New World Compact School and Office Dictionary*, 1989.

2 Discussion paraphrased from *The Clean Water Act: An Owners Manual* by the River Network (March 1999). Clean Water Act quotes from section 502 (14).

3 Clean Water Act (CWA) section 101(a)(1).

3 Clean Water Act (CWA) section 101(a)(1).

4 Clean Water Act, Section 402 and 40 CFR 122.23.

5 Clean Water Act, Section 402 and 40 CFR 122.

6 40 CFR 122.28(b)(3), "The Director may require any discharger authorized by a general permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this paragraph." The cite goes on to list cases where an individual permit may be required.

7 Clean Water Act section 505. See box on standing on page X.

8 40 CFR 122.46(a) for EPA permits and 40 CFR 123.25 for state permits.

9 Brian Maas, Office of Enforcement and Compliance Branch Chief, U.S. EPA, February 12, 2001 presentation to the Clean Water Network.

10 U.S.EPA NPDES Permit Writers Manual, December 1996. (EPA-833-B-96-003)

11 U.S.EPA NPDES Permit Writers Manual, December 1996. (EPA-833-B-96-003)

12 EPA regional offices retain permit authority in Massachusetts, New Hampshire, Idaho, New Mexico, Arizona, Alaska, District of Columbia, tribal reservation land and U.S. territories.

13 40 CFR 124.8(a).

Chapter 2

Analyzing NPDES permits

Chapter 2 | Analyzing NPDES Permits

- 2.1 Analyzing the Basic Info
- 2.2 Analyzing NPDES Permits: What Do I Look For Inside?
- 2.3 Analyzing NPDES Permits: Going Beyond Effluent Limits
- 2.4 Permitting Issues You Won't Find In The Permit

There is no step-by-step, sure-fire method to review an NPDES permit. However, there are some basic rules of thumb and several things you should consistently look for and be aware of. This chapter gives you some pointers on how you can identify permits that may be of concern, simply by looking at the basic information contained in the permit. It also gives you ideas about what you should ask yourself and the agency when reviewing an NPDES permit.

2.1 Analyzing the basic info

It is important to be able to identify problem permits. Most states issue hundreds, if not thousands, of NPDES permits each year. Nobody can take time to review all of them, so it is vital you be able to identify those that may be important to you and your organization.

When reviewing NPDES permits, always have the following information in front of you:

- The permit public notice – gives basic, concise information about the proposed permit and deadlines;
- The permit itself – should have effluent limits and any special conditions of the permit; The permit fact sheet – should explain all the details and analysis that went into drafting the permit; and
- A copy of the old permit – if the permit is reissued or modified, you'll want this for comparison purposes.
- You may also want to request additional information such as the antidegradation analysis, reasonable potential analysis or other items.

As you sort through these items, watch for basic information that gives you a general handle on the situation and helps you decide if and when to dig deeper. We'll walk you through some basic questions by type of permit: information to look for in all permits, new permits, modified permits and reissued permits.

Photo caption/credit

All Permits

An NPDES permit public notice and cover page are required by 40 CFR 124.8(a) to contain the following basic information:

- **Name of the discharger** – who is asking for permission to discharge pollution?
- **Discharger's address** – where to contact the discharger and where the facility is located.
- **Permit number** – every NPDES permit is assigned a unique number to identify it.
- **Receiving waters** – the lake or stream(s) into which pollution will be released.
- **Exact location of the discharge and outfalls** – the latitude and longitude, river mile, or some other description of location of the discharge pipe, also known as the outfalls or outlets,
- Whether the permit is new, modified, or reissued. It will also have an issue date, effective date, modification date (if the permit is modified) and possibly an expiration date (for modified or renewed permits). On new permits, don't be alarmed if there are no expiration, issue or effective dates. Since the permit hasn't been issued yet there is no issue date, and until it *is* issued the agency cannot assign an expiration date. Just remember that NPDES permits are valid for no more than five years from the date they are issued.¹

Following are some questions you should consider when looking at this basic information. Keeping these in mind can help you determine if there are more serious issues to consider as you get into the permit itself.

Questions To Consider

Where is the discharge? Is the location of the permit correct? Sometimes you'll find the latitude and longitude locate the discharge point in far-off places like Australia. This is almost certainly a mistake, so point it out to the agency in your comment letter. Sometimes the agency doesn't tell you exactly where the discharge is, which is a major oversight on their part, and you need to ask exactly where the pollution will be released.

Where is the discharge in relationship to other places in the watershed? Is the discharge upstream from or near a swimming area, boat ramp, state park, recreational area, drinking water source or intake? Is it in a stretch of stream where threatened or endangered species are known to exist? If the discharge is near any resources that may be impacted by pollution, you should carefully examine the permit.

Is the permit new, modified, or reissued?

Different considerations apply for each permit, depending on which category it fits. Just because a permit is reissued, don't assume it's identical to the old one. Following are some questions to keep in mind as you delve further



Anyone can ask for a modification of a permit if (1) there are significant alteration to the permitted facilities, (2) new informatino about the effects of the permitted discharge (including cumulative effects) have become available or (3) if any regulations upon which the permit was based have been changed or superseded.³

New Permits

These are brand new permits for brand new discharges. New permits should always be carefully scrutinized.

Questions To Consider

What impact might the discharge have on existing beneficial uses? You will need to make sure the discharge will not cause degradation of water quality or habitat that supports aquatic life, recreational uses, drinking water quality or any other existing beneficial use. These existing uses are protected by state and federal antidegradation policies. See Chapter 4 for a discussion of states' antidegradation policies. See also Appendix C – Federal Antidegradation Policy.

If the new discharge is into a polluted waterbody, should we allow more pollution to be released, making an existing water quality problem worse? According to federal regulations, no NPDES permit may be issued “to a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards.”² Therefore, if a waterbody is already threatened or impaired by certain pollutants, a new permit should not allow more of the same problem pollutants to be released.

Modified Permits

Dischargers can seek to alter their permits at any time. They may be altered because the discharger has changed or updated pollution control technology, expanded the facility, changed ownership, or a variety of other reasons. When permits are modified, anything may be changed. Your agency should provide a summary of these modifications in the permit public notice. Modified permits should be closely examined and the following questions kept in mind.

Questions To Consider

Is flow from the facility increasing? If the flow is increasing, the amount of pollution discharged may be increasing.

Are effluent limits changing? If the allowed concentration or quantity of pollutants is increasing, you should find out why.

Is frequency of monitoring for pollutants changing? The less the discharger monitors, the less likely they will detect a violation.

Where is the proposed discharge? Just as with new permits, you must keep in mind where the discharge is located. If the discharge is to a waterbody that is already violating water quality standards, the discharger should not be allowed to make the problem worse. If it is to a high-quality stream (see the discussion about antidegradation in Chapter 4), the discharger should not be allowed to unnecessarily degrade water quality.

Did the discharger add or move any outfalls? This might indicate big changes at the facility that need to be scrutinized.

Are there changes to the standards or has a problem been defined in the stream since the permit was issued? These are both reasons to request modification of a permit.

Reissued

Another important thing to know is that the expiration of a permit does not mean discharges must cease. A discharger is allowed to continue operating under an expired permit.

Very often there are significant modifications to the reissued permit, including new discharge limits, new outfall pipes, new monitoring requirements, etc. The difference between a reissued and modified permit is that a reissued permit was requested around the time the old permit expired. A modified permit is requested well in advance of permit expiration. The fact sheet should tell you if there are modifications, but if it doesn't, call the agency and ask.

Questions To Consider

The same questions apply for reissued permits as for modified permits.

This makes it sound like all NPDES permits should be scrutinized. And to a certain degree, that is correct. But with time at a premium, the effective activist learns quickly how to pick the most important battles.. As you gain experience and knowledge, you will be able to identify which permits may need closer scrutiny.

Other things you may want to consider when deciding whether or not to scrutinize a permit:

Will it allow discharge of pollutants that are of particular concern (e.g., bacteria near places people use for recreation or water supply)?

Does the discharger have a bad reputation in the community or nationally?

Are toxic pollutants or bioaccumulative pollutants to be released?

Is the discharge in a watershed of particular importance to you or your organization?

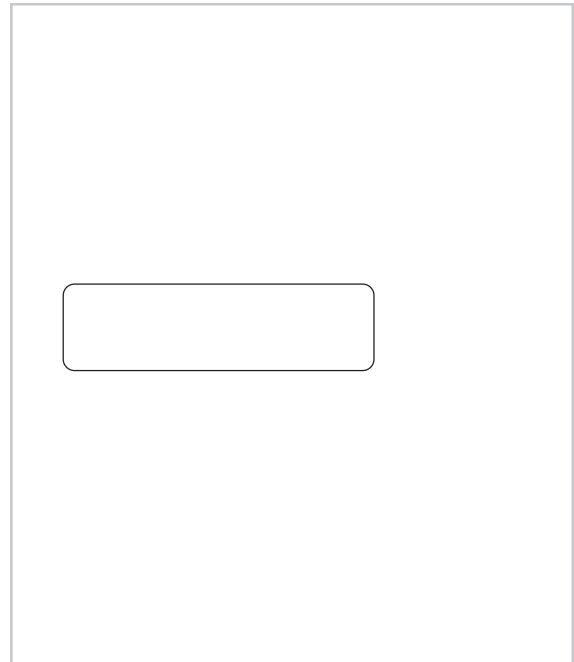
2.2 Analyzing NPDES Permits: What Do I Look For Inside?

Analyzing an NPDES permit can be straightforward or complex, depending on how deeply you want to delve into the permit itself and how much research you wish to do into the decisions which led up to its issuance. In the first few pages of the permit you will find information on the specific pollutants that can be discharged, how much of these pollutants can be discharged (concentration and total pounds of pollution), and the type and frequency of monitoring that is to be performed for these pollutants. This is the meat and potatoes of a permit and, depending on the size and complexity of the facility, may be several pages long.

As you go through a permit, take notes on what you find and what concerns you have. Once you have completed your review, you may wish to write a letter to the agency summarizing these findings, asking them questions you would like answered, expressing your concerns about the permit, and asking the agency to strengthen permit conditions. You may also wish to ask for a public hearing where you and other members of the public can testify or introduce additional information for the agency's consideration. Hearings allow you to share your findings with concerned members of the public as well as have them entered into the public record. (See Chapter 3 for information on writing comments and attending hearings.)

How to Read the Permit

Now we are ready to read and analyze the permit limits. Attachment 2 contains two sample NPDES permits you can use to follow along. If you using a permit of your own, make sure to get the old permit out so you can compare conditions in the documents and see if anything has changed. Each of the following sections describes a specific part of the permit, and also draws attention to some questions you need to consider – and raise in your comments – with the agency.



Discharge Number and Name

This specifies to which pipe or outfall the permit limits apply. NPDES permits regulate pollution released from a discrete discharge point known as an outfall, and each is assigned an outfall number. Each outfall has its own regulated pollutants, permit limits, and monitoring requirements. Most discharges have only one outfall, but some have multiple outfalls.