

CHAPTER 10. Standard Conditions of NPDES Permits

This chapter describes standard conditions, sometimes called *boilerplate* conditions, that must be incorporated in National Pollutant Discharge Elimination System (NPDES) permits. Standard conditions, specified in Title 40 of the *Code of Federal Regulations* (CFR) 122.41 and 122.42, play an important supporting role to effluent limitations, monitoring and reporting requirements, and special conditions because they delineate various legal, administrative, and procedural requirements of the permit. Standard conditions cover various topics, including definitions, testing procedures, records retention, notification requirements, penalties for noncompliance, and other permittee responsibilities. The conditions provided in § 122.41 apply to all types and categories of NPDES permits and must be included in all permits (see § 123.25 for applicability to state NPDES permits). The conditions provided in § 122.42 apply only to certain categories of NPDES facilities. Any permit issued to a facility in one of the categories listed in § 122.42 must contain the additional conditions, as applicable.

The use of standard conditions helps ensure uniformity and consistency of all NPDES permits issued by authorized states or the U.S. Environmental Protection Agency (EPA) Regional Offices. Permit writers need to be aware of the contents of the standard conditions because it might be necessary to explain portions of the conditions to a discharger. The permit writer should keep abreast of any changes in EPA's standard conditions set out in §§ 122.41 and 122.42. According to § 122.41, standard conditions may be incorporated into a permit either expressly (verbatim from the regulations) or by reference to the regulations. It generally is preferable for permit writers to attach the standard conditions expressly because permittees might not have easy access to the regulations. Some states have developed an attachment for NPDES permits that includes the federal standard conditions.

10.1 Types of Standard Conditions

A brief summary of the § 122.41 standard conditions that must be included in all types of NPDES permits follows:

- **Duty to Comply** § 122.41(a): The permittee must comply with all conditions of the permit. Noncompliance is a violation of the Clean Water Act (CWA) and is grounds for enforcement action, changes to or termination of the permit, or denial of a permit renewal application.
- **Duty to Reapply** § 122.41(b): A permittee wishing to continue permitted activities after the permit expiration date must reapply for and obtain a new permit.
- **Need to Halt or Reduce Activity not a Defense** § 122.41(c): The permittee may not use as a defense in an enforcement action the reasoning that halting or reducing the permitted activity is the only way to maintain compliance.
- **Duty to Mitigate** § 122.41(d): The permittee is required to take all reasonable steps to prevent any discharge or sludge use or disposal in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment.
- **Proper Operation and Maintenance** § 122.41(e): The permittee must properly operate and maintain all equipment and treatment systems used for compliance with the terms of the permit.

The permittee must provide appropriate laboratory controls and quality assurance procedures. Operation of backup systems is required only when needed to ensure compliance.

- **Permit Actions** § 122.41(f): The permit may be modified, revoked and reissued, or terminated for cause. A request by the permittee for a permit modification, revocation or reissuance, termination, or a notification of planned changes or anticipated noncompliance does not suspend the permittee's obligation to comply with all permit conditions.
- **Property Rights** § 122.41(g): The permit does not convey any property rights of any sort, or any exclusive privilege.
- **Duty to Provide Information** § 122.41(h): The permittee must furnish, within a reasonable time, any information needed to determine compliance with the permit or to determine whether there is cause to modify, revoke and reissue, or terminate the permit. The permittee also must furnish, on request, copies of records that must be kept as required by the permit.
- **Inspection and Entry** § 122.41(i): The permittee must, upon presentation of valid credentials by the Director or his or her representative, allow entry into the premises where the regulated activity or records are present. The Director must have access to and be able to make copies of any required records; inspect facilities, practices, operations, and equipment; and sample or monitor at reasonable times.
- **Monitoring and Records** § 122.41(j): Samples must be representative of the monitored activity. The permittee must retain records for 3 years (5 years for sewage sludge activities) subject to extension by the Director. Monitoring records must identify the sampling dates and personnel, the sample location and time, and the analytical techniques used and corresponding results. Wastewater and sludge measurements must be conducted in accordance with Parts 136 or 503 or other specified procedures. Falsification of results is a violation under the CWA.
- **Signatory Requirement** § 122.41(k): The permittee must sign and certify applications, reports, or information submitted to the Director in accordance with the requirements in § 122.22. Knowingly making false statements, representations, or certifications is punishable by fines or imprisonment.
- **Planned Changes** § 122.41(l)(1): Notice must be given to the Director as soon as possible of planned physical alterations or additions to the facility (or both) that could meet the criteria for determining whether the facility is a new source under § 122.29(b); result in changes in the nature or quantity of pollutants discharged; or significantly change sludge use or disposal practices.
- **Anticipated Noncompliance** § 122.41(l)(2): The permittee must give advance notice of any planned changes that could result in noncompliance.
- **Permit Transfers** § 122.41(l)(3): The permit is not transferable except after written notice to the Director. The Director may require modification or revocation and reissuance, as necessary.
- **Monitoring Reports** § 122.41(l)(4): Monitoring results must be reported at the frequency specified in the permit and be reported on a discharge monitoring report (DMR) or forms provided or specified by the Director for reporting results of monitoring sludge use or disposal practices. Monitoring for any pollutant that occurs more frequently than is required by the permit and uses approved test procedures or test procedures specified in the permit must also be reported. Calculations requiring averaging must use an arithmetic mean unless otherwise specified in the permit.

- **Compliance Schedules** § 122.41(l)(5): Reports of compliance or noncompliance or any progress report must be submitted no later than 14 days following the interim or final compliance date specified in a compliance schedule.
- **Twenty-Four Hour Reporting** § 122.41(l)(6): The permittee must orally report any noncompliance that might endanger human health or the environment within 24 hours after becoming aware of the circumstances. Within 5 days of becoming aware of the circumstances, the permittee must provide a written submission including a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; the anticipated time the noncompliance is expected to continue (if not already corrected); and steps taken to reduce, eliminate, or prevent reoccurrence unless the Director waives the requirement. In addition, 24-hour reporting is required for an unanticipated bypass exceeding effluent limits; an upset exceeding effluent limits; and a violation of a maximum daily effluent limitation for pollutants listed in the permit for 24-hour reporting.
- **Other Noncompliance** § 122.41(l)(7): The permittee must report all instances of noncompliance not reported under other specific reporting requirements at the time monitoring reports are submitted.
- **Other Information** § 122.41(l)(8): If the permittee becomes aware that it failed to submit any relevant facts in its application, or submitted incorrect information in its application or other reports, it must promptly submit such facts or information.
- **Bypass** § 122.41(m): The intentional diversion of wastestreams from any portion of a treatment facility. Bypass is prohibited unless the bypass does not cause the effluent to exceed limits and is for essential maintenance to assure efficient operation (no notice or 24-hour reporting is required in such a case). All other bypasses are prohibited, and the Director of the NPDES program may take enforcement action against a permittee for a bypass, unless the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage, there was no feasible alternative, and the proper notification was submitted.
- **Upset** § 122.41(n): An upset (i.e., an exceptional incident in which there is unintentional and temporary noncompliance with technology-based effluent limits because of factors beyond the permittee's control) can be used as an affirmative defense in actions brought against the permittee for noncompliance. An upset does not include noncompliance to the extent caused by operational error, improperly designed or inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation. The permittee (who has the burden of proof to demonstrate that an upset has occurred) must have operational logs or other evidence that shows
 - When the upset occurred and its causes.
 - The facility was being operated properly.
 - Proper notification was made.
 - Remedial measures were taken.

10.2 Other Standard Conditions

In addition to standard conditions specified in § 122.41 that are applicable to all permittees, § 122.42 includes additional conditions applicable to certain categories of NPDES permits. Below are summaries of these additional standard conditions applicable to various types of NPDES permits.

Non-Municipal (Industrial) Permits: Additional standard conditions applicable to non-municipal permits are found in § 122.42(a) and specify that the permittee must notify the Director as soon as it knows or has reason to believe that the discharge has or will exceed certain notification levels specified in §§ 122.42(a)(1) and (2). In addition, § 122.44(f) allows the Director to establish alternate notification levels upon petition by the permittee or by his or her own initiative.

Publicly Owned Treatment Work (POTW) Permits: Additional standard conditions applicable to POTWs are found in § 122.42(b). The standard conditions specify that the permittee must provide adequate notice to the Director of the new introduction of certain pollutants into the POTW from an indirect discharger and of substantial changes in the volume or character of pollutants introduced into the POTW. That notice must include information on the quality and quantity of effluent introduced to the POTW and information on the impact to the quality and quantity of the POTW's effluent.

Municipal Separate Storm Sewer Systems: Additional standard conditions applicable to large, medium or EPA-designated municipal separate storm sewer systems are in § 122.42(c). Those standard conditions require that the permittee submit an annual report addressing the status, and changes to, the stormwater management program, water quality data and other information specified in §§ 122.42(c)(1)-(6).

Individual Stormwater Permits: Initial permits for discharges composed entirely of stormwater and permitted under § 122.26(e)(7) must require compliance no later than 3 years after permit issuance.

Concentrated Animal Feeding Operations (CAFO) Permits: The regulations at § 122.42(e) specify conditions that must be included in all permits for CAFOs.