

Appendix B Standard Permit Conditions

Standard permit conditions in Appendix B are consistent with the general permit provisions required under 40 C.F.R. § 122.41.

B.1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act, and is grounds for an enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

- A. The permittee must comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and CWA Section 405(d) to establish standards of sewage sludge use or disposal within the time provided in the regulations that establish these standards or prohibitions, or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
- B. Penalties for Violations of Permit Conditions: the Director will adjust the civil and administrative penalties, listed below, in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (61 Fed. Reg. 69360, December 31, 1996, as corrected in 62 Fed. Reg. 13514, March 20, 1997), and as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every 4 years thereafter, and, adjust them, as necessary, for inflation according to a specified formula. The following criminal, civil, and administrative penalties were adjusted for inflation starting in 1996.
 1. Criminal Penalties.
 - a. Negligent Violations. The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than one year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation or by imprisonment of not more than two years, or both.
 - b. Knowing Violations. The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.

- c. **Knowing Endangerment.** The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury shall upon conviction be subject to a fine of not more than \$250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.
 - d. **False Statement.** The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The CWA further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or both.
2. **Civil Penalties.** The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the CWA, and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701), and codified at 40 C.F.R. § 19.4.
 3. **Administrative Penalties.** The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA is subject to an administrative penalty, as follows:
 - a. **Class I Penalty.** Not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the CWA, and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461), as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701), and codified at 40 C.F.R. § 19.4.
 - b. **Class II Penalty.** Not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the CWA, and the Federal Civil Penalties Inflation

Adjustment Act (28 U.S.C. § 2461), as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701), and codified at 40 C.F.R. § 19.4.

B.2. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

B.3. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

B.4. Duty to Mitigate

The permittee must take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment.

B.5. Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), which are installed or used by the permittee to achieve compliance with the conditions of this permit, including the requirements of your SWPPP. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

B.6. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The permittee's filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

B.7. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privileges.

B.8. Duty to Provide Information

The permittee must furnish to EPA or an authorized representative (including an authorized contractor acting as a representative of EPA), within a reasonable time, any information which EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. You must also furnish to EPA upon request, copies of records required to be kept by this permit.

B.9. Inspection and Entry

The permittee must allow EPA or an authorized representative (including an authorized contractor acting as a representative of EPA), upon presentation of credentials and other documents as may be required by law, to:

- A. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- D. Sample or monitor, at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

B.10. Monitoring and Records

- A. Samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.
- B. The permittee must retain records of all monitoring information, including all calibration and maintenance records, and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of EPA at any time.
- C. Records of monitoring information must include:
 - 1. The date, exact place, and time of sampling or measurements;
 - 2. The individual(s) who performed the sampling or measurements;
 - 3. The date(s) analyses were performed;
 - 4. The individual(s) who performed the analyses;
 - 5. The analytical techniques or methods used; and
 - 6. The results of such analyses.
- D. Monitoring results must be conducted according to test procedures approved under 40 C.F.R. Part 136 or, in the case of sludge use or disposal, approved under 40 C.F.R. Part 136 unless otherwise specified in 40 C.F.R. Part 503, or unless other test procedures have been specified in the permit.
- E. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment

is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

B.11. Signatory Requirements

- A. All applications, including NOIs, must be signed as follows:
1. For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
 2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 3. For a municipality, State, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency; or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).
- B. All reports, including SWPPPs, inspection reports, annual reports, monitoring reports, reports on training and other information required by this permit must be signed by a person described in Appendix B, Subsection B.11 above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
1. The authorization is made in writing by a person described in Appendix B, Subsection B.11;
 2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
 3. The signed and dated written authorization is included in the SWPPP. A copy must be submitted to EPA, if requested.

- C. Changes to Authorization. If an authorization under Appendix B, Subsection B.11 is no longer accurate because a different operator has responsibility for the overall operation of the industrial facility, a new NOI satisfying the requirements of Subsection B.11 must be submitted to EPA prior to or together with any reports, information, or applications to be signed by an authorized representative.
- D. Any person signing documents required under the terms of this permit must include the following certification:
- “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
- E. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

B.12. Reporting Requirements

- A. Planned changes. The permittee must give notice to EPA as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 C.F.R. § 122.29(b); or
 2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are neither subject to effluent limitations in the permit, nor to notification requirements under 40 C.F.R. § 122.42(a)(1).
- B. Anticipated noncompliance. The permittee must give advance notice to EPA of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- C. Transfers. This permit is not transferable to any person except after notice to EPA. EPA may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See 40 C.F.R. § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

- D. Monitoring reports. Monitoring results must be reported at the intervals specified elsewhere in this permit.
1. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms (paper or electronic) provided or specified by EPA for reporting results of monitoring of sludge use or disposal practices.
 2. If you monitor any pollutant more frequently than required by the permit using test procedures approved under 40 C.F.R. Part 136 or, in the case of sludge use or disposal, approved under 40 C.F.R. Part 136, unless otherwise specified in 40 C.F.R. Part 503, or as specified in the permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by EPA.
 3. Calculations for all limitations which require averaging of measurements must use an arithmetic mean and non-detected results must be incorporated in calculations as the limit of quantitation for the analysis.
- E. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.
- F. Twenty-four hour reporting.
1. The permittee must report any noncompliance which may endanger health or the environment. Any information must be provided verbally to EPA within 24 hours from the time you become aware of the circumstances. A written submission must also be provided to EPA within five (5) days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the non-compliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. (See 40 C.F.R. § 122.41(l)(6))
 2. The following shall be included as information which must be reported within 24 hours under this section.
 - a. Any unanticipated bypass which exceeds any effluent limitation in the permit (See 40 C.F.R. § 122.41(g));
 - b. Any upset which exceeds any effluent limitation in the permit; and
 - c. Violation of a maximum daily discharge limitation for any of the pollutants listed by EPA in the permit to be reported within 24 hours (See 40 C.F.R. § 122.44(g)).
 3. EPA may waive the written report on a case-by-case basis for reports under Appendix B, Subsection B.12.F.2 if the oral report has been received within 24 hours.

- G. Other noncompliance. The permittee must report all instances of noncompliance not reported under Appendix B, Subsections B.12.D, B.12.E, and B.12.F, at the time monitoring reports are submitted. The reports must contain the information listed in Appendix B, Subsection B.12.F.
- H. Other information. Where the permittee becomes aware that you failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Permitting Authority, the permittee must promptly submit such facts or information.

B.13. Bypass

- A. Definitions.
1. Bypass means the intentional diversion of waste streams from any portion of a treatment facility
 2. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Appendix B, Subsections B.13.C and B.13.D.
- C. Notice.
1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee must submit prior notice, if possible at least ten (10) days before the date of the bypass.
 2. Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required in Appendix B, Subsection B.12.F (24-hour notice).
- D. Prohibition of bypass.
1. Bypass is prohibited, and EPA may take enforcement action against the permittee for bypass, unless:
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

- c. The permittee submitted notices as required under Appendix B, Subsection B.13.C.
2. EPA may approve an anticipated bypass, after considering its adverse effects, if EPA determines that it will meet the three conditions listed above in Appendix B, Subsection B.13.D.1.

B.14. Upset

- A. Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond your reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Appendix B, Subsection B.14.C are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- C. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 1. An upset occurred and that the permittee can identify the cause(s) of the upset;
 2. The permitted facility was at the time being properly operated;
 3. The permittee submitted notice of the upset as required in Appendix B, Subsection B.12.F.2.b (24 hour notice); and
 4. The permittee complied with any remedial measures required under Appendix B, Subsection B.4.
- D. Burden of proof. In any enforcement proceeding, the permittee, as the one seeking to establish the occurrence of an upset, has the burden of proof.