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# ENVIRONMENTAL Fact Sheet

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## Scope of the NPDES Program

The National Pollutant Discharge Elimination System (NPDES) permitting program is described in Section 402 of the Clean Water Act (CWA). The primary regulations developed by the US Environmental Protection Agency to implement and administer the program are found in Title 40 of the Code of Federal Regulations (40 CFR 122). Under the NPDES Program, all facilities that discharge *pollutants* from any *point source* into *waters of the United States* are required to obtain an NPDES permit. Understanding how each of the key terms, such as “pollutant,” “point source” and “waters of the United States,” have been defined and interpreted by the regulations is the key to defining the scope of the NPDES Program.

### **Pollutant**

The term *pollutant* is defined very broadly by the NPDES regulations and case law, and includes substances found in industrial, municipal, and certain types of agricultural waste discharged into water. For regulatory purposes, pollutants have been grouped into three general categories: *conventional*, *toxic* and *non-conventional*. There are five *conventional pollutants*: biochemical oxygen demand (BOD), total suspended solids (TSS), pH, fecal coliform, and oil and grease (defined in 40 CFR 401.16). *Toxic pollutants*, or *priority pollutants*, are those defined in Section 307(a) (1) of the CWA and include metals and manmade organic compounds. *Non-conventional pollutants* are those which do not fall under either of the above categories, and include such parameters as ammonia, nitrogen, phosphorus, chemical oxygen demand, and whole effluent toxicity.

### **Point Source**

Pollutants can enter waters of the United States from a variety of pathways including agricultural, municipal, and industrial sources. For regulatory purposes these sources are generally categorized as either *point sources* or *non-point sources*. Typical *point source* discharges include discharges from publicly owned treatment works (POTWs), discharges from industrial facilities, and stormwater discharges associated with industrial activity, construction and urban runoff (Federal Storm Water Program). While provisions of the NPDES Program do address certain specific types of agricultural activities, such as concentrated animal feeding operations, the majority of agricultural facilities are defined as *non-point sources* and are excluded from NPDES regulation. (See 40CFR 122.2 for definition of point source).

Pollutant contributions to waters of the United States may come from both *direct* and *indirect* sources. *Direct* sources discharge wastewater directly into the receiving water body, whereas *indirect* sources discharge wastewater to a POTW, which in turn discharges into the receiving

water body. NPDES permits are issued only to direct point source discharges. Industrial and commercial indirect dischargers are addressed by the National Pretreatment Program.

### **Waters of the United States**

EPA defines the term *waters of the United States* to include navigable waters and their tributaries, interstate waters, and intrastate lakes, rivers, and streams (40 CFR 122.2). The intent of the definition is to cover all possible waters within federal jurisdiction under the Commerce Clause of the Constitution. The definition has been interpreted to include virtually all surface waters in the United States, including wetlands and ephemeral streams. In general, groundwater is not considered a water of the United States; therefore, discharges to groundwater are not subject to NPDES requirements. For the latest info on EPA's interpretation of waters of the United States, visit <http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>.

### **Roles and Responsibilities of EPA and DES**

EPA may authorize states, territories, or tribes to implement all or parts of the NPDES program. New Hampshire has chosen to not administer the NPDES program, and therefore, EPA administers the program in the state. Before EPA issues an NPDES permit, Section 401(a) of the CWA requires that EPA obtain certification from the state that the proposed permit is consistent with the applicable provisions of the CWA, state water quality standards and any other appropriate requirement of State law. Section 401(d) requires the state to list in the certification the conditions that must be included in the permit to implement the certification. When EPA issues a final individual permit or grants a discharger coverage under a general permit, the state may consider it as the state surface water discharge permit required pursuant to New Hampshire's RSA 485-A:13,I(a). The N.H. Department of Environmental Services then shares the inspection and enforcement responsibilities with EPA.

### **Types of Permits**

An NPDES permit allows a facility to discharge a specified amount of a pollutant into a receiving water under certain conditions. For facilities treating domestic sewage, the permit may also authorize facilities to process, incinerate, landfill, or beneficially use sewage sludge. The two basic types of NPDES permits are individual permits and general permits.

An *individual permit* is a permit specifically tailored to an individual facility. Once a facility submits the appropriate application(s), the permitting authority develops a permit for that particular facility based on the information contained in the permit application (e.g., type of activity, nature of discharge, receiving water quality). After review, the authority issues the permit to the facility for a specific time period, not to exceed five years, with a requirement that the facility reapply prior to the expiration date.

A *general permit* covers multiple facilities within a specific category. General permits offer a cost-effective option for permitting agencies because of the large number of facilities that can be covered under a single permit. According to the NPDES regulations at 40 CFR §122.28, general permits may be written to cover categories of point sources having common elements, such as the same type of operations and wastewater. General permits, however, may only be issued to dischargers within a specific geographical area or watershed.

### **Overview of the Permitting Process**

While the limits and conditions in an individual NPDES permit are unique to the permittee, the process used to develop the limits and conditions and issue the permit generally follows a

common set of steps. A general description of permitting process for individual and general permits is presented below.

### **Individual Permits**

The major steps for EPA to develop and issue an individual NPDES permit are found in 40 CFR §124. The NPDES permitting process begins when the operator of the facility (permittee) submits an application. EPA reviews the application for completeness and accuracy. When the application is complete, EPA, using the application data, begins to develop the draft permit and the justification for the permit conditions (referred to as the fact sheet or statement of basis). The first major step in the development process is deriving technology-based effluent limits for industries or secondary treatment requirements for POTWs. Technology based effluent limits are as defined by 40CFR §§ 400 through 471. Secondary treatment requirements are defined by 40 CFR § 133. Following this step, the permit writer derives effluent limits that are protective of state water quality standards, also called water quality-based effluent limits. The permit writer then compares the technology-based effluent limits with the water quality-based effluent limits and applies the more stringent limits in the permit. Following the development of effluent limits, EPA develops appropriate monitoring and reporting conditions and facility-specific special conditions. All permits include standard conditions that are the same for all permits. For new permanent discharges, the facility's discharge must also meet Antidegradation requirements (to learn more about antidegradation, see Fact Sheet WD-WMB 23, "What is Antidegradation?"). After the draft permit is complete, EPA provides an opportunity for public participation in the permit process. A public notice announces the permit availability and interested parties may obtain copies and submit comments. If enough interest is expressed, a public hearing may also be held. If no appeals are made on the permit, the EPA then develops and issues the final permit (and response to public comments, if applicable) to the facility.

### **General Permits**

The EPA first identifies the need for a general permit by collecting data demonstrating that a group, or category, of dischargers has similarities that warrant a general permit. The remaining steps of the permit process are similar to those for issuing individual permits. One significant difference is that EPA issues a public notice with the draft permit in the Federal Register instead of a local newspaper. Then, after the public comment period, EPA documents the issues for the administrative record, and issues the final permit in the Federal Register. After the general permit has been issued, facilities that wish to be covered under the general permit submit a Notice of Intent (NOI) application to the EPA and DES. EPA and DES will then review the NOI, and EPA may either request additional information describing the facility, notify the facility that it is covered by the general permit, or require the facility to apply for an individual permit. A facility's coverage under the general permit does not become effective until it has received written notification from EPA authorizing its discharge under the general permit.

### **General Permits<sup>1</sup> Administered by EPA and Certified by DES**

The EPA has issued several general permits that are available to New Hampshire dischargers including the general permits described below. Copies of the general permits, details on applying for coverage, and the names and telephone numbers of EPA contacts are available at the following EPA web site: <http://www.epa.gov/region01/npdes/newhampshire.html#fgp> .

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<sup>1</sup> This section does not discuss the NPDES Stormwater General Permits (see: <http://www.epa.gov/region1/topics/water/stormwater.html>)

## **Dewatering General Permit (DGP) (<http://www.epa.gov/ne/npdes/dewatering.html> )**

The Dewatering General Permit covers dewatering discharges defined as pumped or drained discharges of groundwater and/or storm water from excavations or other points of accumulation associated with a construction activity. Qualified dischargers must submit an NOI Form (DGP Appendix V) to EPA-NE and DES to be covered and will receive a written notification from EPA-NE of permit coverage. The EPA and DES contact information is available at the EPA website.

## **Non-contact Cooling Water General Permit (NCCWGP)** (<http://www.epa.gov/region01/npdes/nccwgp.html> )

Non-contact cooling water discharges do not contain or come in contact with raw materials, intermediate products, finished products, or process wastes. The only pollutants allowed are heat and non-toxic pH neutralization chemicals. Though these discharges should not contain toxic pollutants, toxic effects may still occur as a result of toxic or corrosive source water. If a discharge would violate water quality criteria established for toxic pollutants, it would not qualify for this general permit. The General Permit does cover discharges from geothermal systems. Applicants must submit an NOI to EPA-NE and DES. The NOI instructions (NCCWGP Appendix 4), the NOI form (NCCWGP Appendix 5), and the EPA and DES contact information are available at the EPA website.

## **Activities at Remediation and Miscellaneous Contaminated Sites General Permit (RGP)** (<http://www.epa.gov/region01/npdes/rgp.html> )

The Remediation General Permit was developed to cover discharges from soil or groundwater remediation sites, certain construction sites, and certain pipeline or tank cleaning/flushing activities as follows:

- Remediation activities related to petroleum contamination, or where there may be toxic or hazardous chemicals present.
- Contaminated construction sites where excavation de-watering is required.
- Sump discharges, dredge drain-back (if not covered by Section 401/404 of the Clean Water Act), aquifer pump testing at contaminated sites, well-development or rehabilitation at contaminated or formerly contaminated sites, and hydrostatic testing of pipelines and tanks.

Applicants must submit a NOI (RGP Appendix V) to EPA-NE and DES at least 14 days prior to the commencement of the discharge. The EPA and DES contact information is available at the EPA website.

## **Potable Water Treatment Facility General (PWTFGP)** (<http://www.epa.gov/region01/npdes/pwtfgp.html> )

Under this general permit, owners and operators of potable water treatment facilities (PWFs) may be granted authorization to discharge treated process wastewaters, including discharges from the following potable water treatment processes: clarification, coagulation, media filtration, membrane filtration (not including reverse osmosis), and disinfection. Discharges from other potable water treatment processes may be included if they are reported in the notice of intent (NOI) and attain the effluent limits and other conditions of the general permit.

This general permit applies to discharges from settling lagoons or other devices that provide treatment to remove suspended solids. Applicants must submit an NOI to EPA-NE and DES. The NOI instructions and form (PWTF GP Appendix IV) and the EPA and DES contact information are available at the EPA website.

**Publicly Owned Treatment Works and Other Treatment Works Treating Domestic Sewage General Permit (POTWGP)** (<http://www.epa.gov/ne/npdes/potw-gp.html>)

The POTW General Permit is available to facilities having a dilution factor equal to or greater than 50:1 in the receiving water. Applicants must submit an NOI to EPA and DES in lieu of the standard NPDES Form 2A for individual permits. The NOI form and the EPA and DES contact information are available at the EPA website.

**Hydroelectric Generating Facilities General Permit (Hydro GP)**  
(<http://www.epa.gov/region01/npdes/hydrogp.html>)

This general permit is for specific discharges at hydroelectric generating facilities including equipment cooling water, equipment and floor drain water, equipment backwash water, and specific equipment maintenance waters. Any river flow over a dam or through turbines is not regulated under this permit. The NOI instructions and form (Hydro GP Attachment I) and the EPA and DES contact information are available at the EPA website.