

SUBCHAPTER 2. SCOPE AND APPLICABILITY

§ 201 Applicability of the NNPDES Requirements

The NNPDES Program requires permits (1) for the discharge of pollutants from any point source into waters of the Navajo Nation and (2) to construct, install, modify, or operate a treatment works, or any extension or addition to any treatment works, the operation of which would likely result in a discharge into waters of the Navajo Nation due to runoff, flow, or usage. The program also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain a NNPDES permit. The pretreatment portion of the NNPDES Program, through national pretreatment standards, controls pollutants which pass through or otherwise interfere with treatment processes in publicly owned treatment works or which may contaminate sewage sludge. The program will be operated consistent with the ~~NNPDES Act~~ NNCWA and these regulations.

(a) Specific inclusions. The following are examples of specific categories of point sources requiring NNPDES permits for discharges. These terms are further defined in §§ 306 - 310.

- (1) Concentrated animal feeding operations;
- (2) Concentrated aquatic animal production facilities;
- (3) Discharges into aquaculture projects;
- (4) Storm water discharges; and
- (5) Silvicultural point sources.

(b) Specific exclusions. The following discharges do not require NNPDES permits:

- (1) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a fish processing facility, or when secured to a storage facility or a fish processing facility, or when secured in waters of the Navajo Nation for the purpose of mineral or oil exploration or development.
- (2) Discharges of dredged or fill material into waters of the Navajo Nation which are regulated under Section 404 of CWA.
- (3) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the Navajo Nation are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by the Navajo Nation or other party not leading to treatment works.
- (4) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR § 153.10(e) (Pollution by Oil and Hazardous Substances).

(5) Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands. This exclusion does not include discharges from concentrated animal feeding operations as defined in § 306, discharges from concentrated aquatic animal production facilities as defined in § 307, discharges to aquaculture projects as defined in § 308, and discharges from silvicultural point sources as defined in § 310.

(6) Return flows from irrigated agriculture.

(7) Discharges into a privately owned treatment works, except as the Director may otherwise require under § 402(1).

(c) Requirements for permits on a case-by-case basis

(1) Various sections of these regulations allow the Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, storm water discharges, certain other facilities covered by general permits that do not generally require an individual permit, certain treatment works treating domestic sewage, and certain privately operated treatment works may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the Director decides that an individual permit is required as specified in § 201(c)(1), the Director shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger shall apply for a permit within 60 days of receipt of notice, unless permission for a later date is granted by the Director. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the Director may require the discharger to submit a permit application or other information regarding the discharge. In requiring such information, the Director shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, or within 180 days of notice if a permit is required under § 309(f)(1)(A), unless permission for a later date is granted by the Director. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent hearing.

(d) Limited exclusions. Section 107 of the ~~NNPDES Act~~ NNCWA contains limited exclusions, in whole or in part, from the applicability of the ~~NNPDES Act~~ NNCWA and these regulations, except as otherwise provided by sections 107 and 108 of the ~~NNPDES Act~~ NNCWA; sections 107 and 108 of the ~~NNPDES Act~~ NNCWA are incorporated into these regulations by reference.

§ 202 Prohibitions

No permit may be issued by the Director:

(a) When the conditions of the permit do not provide for compliance with the applicable requirements of the ~~NNPDES Act~~ NNCWA, or rules promulgated pursuant thereto, and/or the CWA, or regulations promulgated under the CWA;

(b) When the Regional Administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR § 123.44;

(c) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of the Navajo Nation and all affected

states and Tribes;

(d) When, in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(e) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste, or any medical waste;

(f) For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of CWA and for which the submitting government entity had jurisdiction;

(g) 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. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the NNPDES regulations and for which the Director has performed a load allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:

(1) There are sufficient remaining load allocations to allow for the discharge; and

(2) The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with applicable water quality standards;

(h) When the conditions of the permit do not provide for compliance with the applicable requirements of other applicable Navajo Nation laws and regulations, including but not limited to Navajo Nation laws on endangered species (17 N.T.C. §§ 500 and 507) and the Navajo Nation Cultural Resources Protection Act (CMY-19-88).

(i) To the extent required, when appropriate certification under section ~~206(A)~~ 209 of the ~~NNPDES Act~~ NNCWA, section 401 of the CWA, and 40 CFR 124.53 is required and that certification has not been obtained or waived.