

SUBCHAPTER 5. PERMIT PROVISIONS

§ 501 Duration of Permits

(a) NNPDES permits shall be effective for a fixed term not to exceed five (5) years.

(b) Except as provided in § 301(d)(4), the term of a permit shall not be extended by modification beyond the maximum duration specified in this section. An expired permit cannot be modified or revoked and reissued.

(c) The Director may issue any permit for a duration that is less than the full allowable term under this section.

(d) A permit that would expire on or after the federal statutory deadline set forth in sections 301(b)(2)(A), (C), and (E) of CWA, may be issued to expire after the deadline if the permit includes effluent limitations to meet the requirements of sections 301(b)(2)(A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved.

(e) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (d) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

§ 502 Schedules of Compliance

(a) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the ~~NNPDES Act~~ NNCWA and regulations promulgated pursuant thereto.

(1) **Time for compliance.** Any schedules of compliance under this section will require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA and the requirements of sections ~~210 303~~ and ~~211 304~~ of the ~~NNPDES Act~~ NNCWA. The Director may establish a reasonable period of time, but no longer than five (5) years, for a discharger subject to a NNPDES permit to comply with a new or more restrictive water quality-based effluent limitation based upon a new water quality standard or a new interpretation of an old water quality standard.

(2) The first NNPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three (3) years before commencement of the relevant discharge. For recommencing discharges, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three (3) years before recommencement of discharge.

(3) **Interim dates.** Except as provided in § 502(b)(1)(B), if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule will set forth interim requirements and the dates for their achievement.

A. The time between interim dates will not exceed one (1) year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates will not exceed six (6) months.

B. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit will specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(4) Reporting. The permit shall be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if an interim date has been established.

(b) Alternative Schedules of Compliance. A NNPDES permit applicant or permittee may cease conducting regulated activities (by termination of direct discharge for NNPDES sources) rather than continue to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

A. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

B. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit will contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

A. Both schedules will contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

B. One schedule shall lead to timely compliance no later than the statutory deadline;

C. The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with the applicable requirements no later than the statutory deadline;

D. Each permit containing two schedules will include a requirement that after the permittee has made a final decision under § 502(b)(3), it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the Board of Directors of a corporation.

§ 503 Requirements for Recording and Reporting of Monitoring Results

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in §§ 401 and 402. Reporting shall be no less frequent than specified in these regulations.

§ 504 Effect of a Permit

(a) Except for any toxic effluent standards and prohibitions included in § 401(a)(2) under section ~~209(A)(3)~~ 302(a)(3) of the ~~NNPDES Act~~ NNCWA and any standards adopted by the Navajo Nation for sewage sludge use or disposal, compliance with a NNPDES permit during its term constitutes compliance, for purposes of enforcement, with the NNPDES program. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 506 and 507.

(b) The issuance of a permit does not convey any property rights or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of Navajo Nation or local law or regulations.

(d) Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage use or disposal under the NNPDES program.

§ 505 Transfer of Permits

(a) **Transfers by Modification.** Except as provided in § 505(b), a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under § 506, or if a minor modification has been made to identify the new permittee and incorporate such other requirements as may be necessary under the NNPDES regulations.

(b) **Automatic Transfers.** As an alternative to transfers under subsection (a) of this section, any NNPDES permit may be automatically transferred to a new permittee if:

(1) The current permittee notifies the Director at least thirty (30) days in advance of the proposed transfer date in § 505(b)(2);

(2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(3) The Director does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under § 506(c). If a notice is not issued by the Director, the transfer is effective on the date specified in the agreement under § 505(b)(2).

§ 506 Modification or Revocation and Reissuance of Permit

When the Director receives any information from any means, the Director may

determine whether or not one or more of the causes, listed in §§ 506(a) and (b) for modification or revocation and reissuance or both, exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section or § 507, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in § 506(c) for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and the procedures in Subchapter 6 and Subpart 2 of the Uniform Regulations must be followed.

(a) Causes for Modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees to revocation and reissuance as well as modification of a permit.

(1) Alterations. If there are material and substantial alterations or additions made to the permitted facility or activity which occurred after permit issuance (including changes in the permittee's sludge use or disposal practices), such alterations may justify the application of revised permit conditions which are different or absent in the existing permit. This specifically includes any changes which would result in a discharge due to runoff, flow, or usage.

(2) Information. Information received by the Director regarding permitted activities may show cause for modification. NNPDES permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (except for revised regulations, guidance or test methods), and would have justified application of different conditions at the time of permit issuance. In addition, the applicant must show that the information would have justified the application of different permit conditions at the time of issuance. For NNPDES general permits this cause shall include any information indicating that cumulative effects on the environment are unacceptable. For new sources and new discharges, this cause shall include any significant information derived from effluent testing required after issuance of the permit.

(3) New Regulations. If the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued permits may be modified during their terms for this case only as follows:

A. For promulgation of amended standards or regulations, when:

i. The permit condition requested to be modified was based on promulgated effluent limitation guidelines; USEPA approved or promulgated water quality standards; or the Secondary Treatment Regulations; and

ii. USEPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based or has approved the Director's action with regard to a water quality standard on which the permit condition was based; and

iii. A permittee requests modification in accordance with § 602 and § 204 of the Uniform Regulations within ninety (90) days after the amendment, revision or withdrawal is promulgated.

B. For judicial decisions, a court of competent jurisdiction has remanded and stayed USEPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or

guidelines on which the permit condition was based and a request is filed by the permittee in accordance with § 602 and § 204 of the Uniform Regulations within ninety (90) days of judicial remand.

(4) Compliance Schedules. A permit may be modified if the Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case will a NNPDES compliance schedule be modified to extend beyond an applicable statutory deadline.

(5) In addition the Director may modify a permit:

A. When the permittee has filed a request for a variance under §§ 315 or 316, including for "fundamentally different factors," within the time specified in Subchapter 3.

B. When required to incorporate an applicable toxic effluent standard or prohibition under § 402(b).

C. When required by the "reopener" conditions in a permit, which are established in the permit for toxic effluent limitations, standards for sewage sludge use or disposal, and pretreatment programs.

D. Upon request of a permittee who qualifies for effluent limitations on a net basis under § 403(g).

E. When a discharger is no longer eligible for net limitations, as provided in § 403(g).

F. As necessary concerning compliance schedule for development of a pretreatment program.

G. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 701(c).

H. To establish a "notification level" as provided in § 402(f).

I. To modify a schedule of compliance to reflect the time lost during the construction of an innovative or alternative facility in the case of the POTW which has received a grant under section 202(a)(3) of the CWA from USEPA of 100% of the cost to modify or replace the facilities. In no case will the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance.

J. Upon failure of the Director to notify an affected state or Tribe whose waters may be affected by a discharge from the Navajo Nation.

K. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

L. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations on a best professional judgment basis and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

M. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land

application plan, or to add a land application plan.

(b) Causes for Modification or Revocation and Reissuance. The following are causes to modify or alternatively revoke or reissue a permit:

(1) Cause exists for termination under § 507 and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(c) Minor modifications of permits. Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Subchapter 6 and Subpart 2 of the Uniform Regulations. Any permit modification not processed as a minor modification under this section must be made for cause and with a Subchapter 6 and Subpart 2 of the Uniform Regulations draft permit and public notice as required under this section. Minor modifications may only:

(1) Correct typographical errors;

(2) Require more frequent monitoring or reporting by the permittee;

(3) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(4) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;

(5) Change the construction schedule for a discharger which is a new source. No such change shall affect a disclosure obligation to have all pollution control equipment installed and in operation prior to discharge;

(6) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

(7) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in § 810 (or a modification thereto that has been approved in accordance with the procedures in § 816) as enforceable conditions of the POTW's permits.

§ 507 Termination of Permit

(a) The following are causes for terminating a permit during its term, or for denying a renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact at any time;

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(4) When there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit; for example, plant closure or termination of discharge by connection to a POTW.

(b) The Director will follow the applicable procedures of § 602 and § 204 of the Uniform Regulations in terminating NNPDES permits under this section.