

Draft Revised Uses Document

At the FACDQ's meeting in December 2006, the committee voted in favor of the following Policy Work Group assignments and recommendations.

The FACDQ:

- supports the intent of the following policy recommendations, as revised;
- recommends that the Policy Work Group refine the language in the recommendations per the FACDQ discussion in December and also those items highlighted [in gray scale] below (for gray scale sections, look at December 2006 FACDQ Uses Document); and
- recommends that the Policy Work Group bring back to the FACDQ their refinements for final decision-making.
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Working through conference calls, documents that framed issues and options, and a two-day meeting in Seattle on April 19-20, the Policy Work Group addressed the unresolved issues from the December meeting. In carrying out this assignment, the Policy Work Group clarified the intent of the recommendations which led to modifications shown in ***bold italics*** below.

This document is a revised version of the Uses Document the FACDQ discussed in December. The reader is encouraged to compare this revised document with the version that the FACDQ voted on in December 2006 where unresolved issues are shown in gray-scale.

The order in which items are discussed varies in certain places from the December version; the revised order reflects the Policy Work Group's decisions at its April 19-20 meeting.

This document is formatted to let the reader track how the recommendations have evolved since December, using the following conventions:

- New or revised language the Policy Work Group recommends is presented in ***bold italics***. These changes address unresolved issues identified at the FACDQ meeting in December
- Options for the committee to consider in June where the Policy Work Group was unable to agree on a single approach are presented in **bold** type.
- Comments that explain proposed changes or the rationale for them are presented in footnotes
- Clarifying notes from the facilitation team or Policy Work Group are underlined.

FACDQ Recommendations on Policy Issues

Assignment: *Must clarify lab-specific vs. national/state DL/QL vs. permit QL throughout the document.*¹

In carrying out this assignment, the Policy Work Group recommends to FACDQ the following conventions which are used consistently throughout the document:

- *A subscript “nat” is used to designate the nationally-promulgated DL or QL – DL_{nat} or QL_{nat}*
- *A subscript “lab” is used to designate the laboratory-specific DL or QL – DL_{lab} or QL_{lab}*
- *A subscript “per” is used to designate the permit-specified QL – QL_{per}*
- *A subscript “st” is used to designate the state-optional DL or QL – DL_{st} or QL_{st}*

1. Lab-Determined Detection Limits (DL_{lab} s) and Quantitation Limits (QL_{lab} s)

Recommendation: The FACDQ recommends that EPA promulgate the descriptive single-laboratory procedure recommended by the FACDQ for individual laboratories to *determine* their² detection and quantitation limits. *The procedure should have the following two capabilities:*

- *Demonstrate the lab’s performance at a specified level or at its reporting level for QL_{lab} and DL_{lab} .*
- *Determine the lowest possible value achievable by the lab.*

The FACDQ further recommends that this descriptive procedure replace the one currently in 40 CFR Part 136 Appendix B.

2. Method Promulgation

Recommendation: The FACDQ recommends that when the EPA promulgates future analytical methods in 40 CFR Part 136, detection limits (DL_{nat} s) and quantitation limits (QL_{nat} s) shall be included with the methods using the procedure recommended by the FACDQ. These limits will serve to define the minimum required performance of a laboratory and may assist in comparing performance of one method to another (facilitating selection of a method most suitable for a given use), and may define important thresholds for use in evaluating compliance. (See the section titled “NPDES Permits and Compliance Uses, Recommendation 5.A & B”).

The limits will be published in a Table in a promulgated rule in 40 CFR Part 136.³

¹ The Policy Work Group agreed to use the terms DL for detection limit and QL for quantitation limit. It also agreed to use a common set of designations for distinguishing among the various DLs and QLs the Group was to clarify.

² The Policy Work Group deleted the word “actual.” The original intent of “actual” was to distinguish between DL_{nat} and DL_{lab} .

³ The Policy Work Group has agreed to incorporate a new table of promulgated detection and quantitation limits in a rule, but the Group has not yet agreed to what would be included in the table.

Discussion: The majority of the PWG recommends that the FACDQ remove the above sentence, a minority is in favor of keeping it. The existing concerns about the Table include:

- Reaching agreement on how to populate the Table (i.e., determining one DL_{nat} and one QL_{nat} for each analyte, regardless of the number of methods available to test that analyte [Analyte Approach] or designating a DL_{nat} and QL_{nat} for each method available for any one analyte [Analyte – Method Approach])
- If one DL_{nat} and one QL_{nat} for each analyte is the approach (Analyte Approach), how is it decided what limits should be chosen: by using health based, lowest value, etc. criteria. For example, when a promulgated QL_{nat} is generated using a method that is less sensitive than another approved method?
- How feasible is it to, on a regular, timely basis, update the Table?
- A Table might be a hindrance to states using the most appropriate method.
- Would a Table create a situation where customer expectations limit a lab's method flexibility?

3. Demonstration of Laboratory Proficiency of Detection and Quantitation Limits⁴

Recommendation: The FACDQ recommends developing a process for initial and on-going verification of DL_{nat} s and QL_{nat} s by laboratories. This recommendation includes the following guidance:

- The FACDQ recommended procedure (e.g., what goes into 40 CFR Part 136 Appendix B) should include on-going demonstration of DL_{lab} and QL_{lab} (either explicitly within the procedure or as an “attachment” if the FACDQ chooses to recommend a consensus procedure)
- Separate initial vs. on-going demonstrations
- Strive for feasibility, practicality, representativeness, and cost-effectiveness

4. Future Updates of Promulgated Analytical Method DL_{nat} s and QL_{nat} s

Recommendation: The FACDQ recommends that EPA periodically review current capabilities of promulgated analytical methods. The focus of this review should be on methods where there have been significant improvements in detection or quantitation limits or on methods that do not contain DL_{nat} s or QL_{nat} s. This review would be particularly important for cases where detection and quantitation limits are critical to the permit program (e.g., those required for very low WQBELs). EPA should focus on analytes for which current methods provide poor performance or do not meet program needs. Using best judgment and where resources are available, EPA shall update DL_{nat} and QL_{nat} limits on an on-going basis. EPA should also consider information submitted by states and/or other qualified third parties. EPA shall publish a *Federal Register Notice* announcing the DL_{nat} s and QL_{nat} s it proposes to update. *Provisions later in this document are for the*

⁴ *This is for a situation where a laboratory needs to demonstrate its performance at a specified level or at its reporting level for QL_{lab} and DL_{lab}*

purpose of providing EPA with robust data sets for updating and or creating DL_{nat} s and QL_{nat} s.

Discussion: A definite benefit can be derived from accumulating data (i.e., DL_{lab} and QL_{lab} results entered into ICIS) from the states and qualified third parties. EPA has stated it wants the data and that they are strongly considering using it as a way to update DL_{nat} s and QL_{nat} s; states may also want the data. However, given the resources required to make the process work, if no specific mechanism exists for gathering this data or if the FACDQ does not provide a specific process for using the data, the committee may want to rescind this part of the recommendation on future updates.

5. **The FACDQ recognizes** that the existence of WQBELs *at concentrations less than quantitation limits* presents a number of NPDES-related issues. These include appropriate approaches for:
- Calculating monthly averages
 - Determining compliance with daily maximum limits and monthly average limits
 - Reporting data, and
 - Appropriate compliance response in light of data uncertainty and the need for the protection of public health and the environment.

To deal with these various issues, the FACDQ recommends a balanced response as outlined below.

States that have been delegated the NPDES program from EPA have the authority under the Clean Water Act to adopt regulatory provisions that are different, but no less stringent than, those required under federal regulations. Such provisions, *if authorized or not prohibited by state law*, would operate in lieu of the following recommendations and could include a QL_{st} value lower than the nationally promulgated QL_{nat} . In that case, the QL_{st} applicable under the state program would be used for determining compliance, reporting, and other applicable requirements.

A. Recommendations for NPDES Permits and Compliance Uses where a QL_{nat} exists and for WQBELs at concentrations less than QL_{nat} :

- 1) The FACDQ recommends that a Part 136 DL_{nat} and QL_{nat} determined by the procedure recommended by the FACDQ be promulgated for each method/analyte combination which shall be the upper bound for lab performance. *The regulator shall insert QL_{per} s in permits. The default QL_{per} is the lowest Part 136 promulgated QL_{nat} . The regulator would then consider whether this is the most appropriate method considering sensitivity, selectivity, and/or matrix effects and adjust the QL_{per} accordingly.*⁵
- 2) *The QL_{per} shall be applicable for the term of the permit unless the regulator reopens and modifies the permit. The permit shall also contain a condition that the permittee's QL_{lab}*

⁵ The revised language in this recommendation replaces Recommendation B from the December Uses document.

shall be at or below the QL_{per} . The permit shall require permittees to report DL_{lab} s and QL_{lab} s as determined by the procedure recommended by the FACDQ and maintain such information for a period of at least five years.

- 3) The FACDQ recognizes that permits may be extended beyond their normal five-year term during which time period modifications to DL_{nat} s and QL_{nat} s may occur.⁶ For these situations, the FACDQ recommends that regulatory authorities consider if changes are appropriate.

The Policy Work Group posed two other options for the committee to consider:

- If the QL_{nat} is lowered below the QL_{per} , the QL_{per} is automatically lowered to the QL_{nat} [number to be determined] years later.
- If a permit is more than five years old, then any new DL_{per} and/or QL_{per} take effect.

See Attachment A pg. 9.

- 4) *The permittee shall ensure that the DL_{lab} s and QL_{lab} s are determined using the steps of the procedure to determine the lowest possible value by the lab for setting QL_{lab} s and DL_{lab} s.*
- 5) The FACDQ further recommends, for purposes of updating Part 136 DL_{nat} s and QL_{nat} s, that EPA require the lab-specific information be reported in the Integrated Compliance Information System (ICIS).
- 6) ***Recommendation for NPDES Permits and Compliance Uses for WQBELs when QL_{nat} s do exist:***
- a) Set average and daily maximum permit limits at the WQBEL.
 - b) Assign zero for values less than the permit QL_{per} when determining average and daily maximum discharge levels.

Rationale: While the FACDQ recognizes that values between a given laboratory's DL_{lab} and QL_{lab} have a higher level of uncertainty, the science suggests they are unlikely to be zero. However, assigning a non-zero value where an analyte is detected but not quantified (DNQ) would have significant compliance and enforcement implications. Therefore, the committee recommends assigning a zero in these cases.

- c) To determine NPDES permit compliance, compare average and daily maximum discharge levels, calculated in accordance with item (ii.) above, to the respective WQBEL.
- d) A permittee must report to the permitting authority all information in the following manner:

Issue: In i) a, b, and ii) a, b below, the FACDQ must decide whether DL_{lab} or DL_{nat} is appropriate.

⁶ EPA will check with the General Counsel on the life of the permit and the legality of reopening one without due process.

See Attachment B pg. 11.

A majority of the Policy Work Group recommends that the FACDQ accept the use of DL_{lab} in the pertinent sections below. The Public Utilities caucus is the only caucus not supportive of this, though a split within their caucus exists on this issue. They intend to be prepared at the FACDQ June meeting to address this.

- i) When reporting daily maximum sample results:
 - a. For values less than the DL_{lab} , report “ND” (not detected) on the DMR.
 - b. For values greater or equal to the DL_{lab} and less than the QL_{per} , report “DNQ” (detected not quantified) on the DMR.
 - c. For values greater than or equal to the QL_{per} , report the actual values on the DMR.

- ii) When reporting averages:
 - a. Where all values used to calculate an average are less than DL_{lab} , report “ND” on the DMR.
 - b. Where all values used to calculate an average are greater than or equal to DL_{lab} but less than QL_{per} , report “DNQ” on the DMR.
 - c. When values used to calculate an average are a combination of ND and DNQ values, report “DNQ” on the DMR.
 - d. When any value used to calculate an average is greater than or equal to QL_{per} , report on the DMR the average as calculated in item (5.A.2) above.

- iii) Additional reporting requirements:

Issue: Should a. below use may or shall?

See Attachment C pg. 14.

The PWG decided to recommend to the FACDQ that “shall” is the preferred word because of the desire to conduct updates and ensure access to the data.

- a. *The regulator shall require that the permittee report the DL_{lab} and QL_{lab} (for purposes of updating methods and to determine compliance with the conditions of the permit.) The permitting authority shall report the DL_{lab} , QL_{lab} , and QL_{per} for each analyte to EPA in ICIS.*
 - b. *The regulator may require the individual numeric result for any value that is greater than or equal to the DL_{lab} and less than the QL_{per} be reported in a supplemental report. Potential uses would be to determine reasonable potential and for public knowledge.*
 - c. *The permittees shall maintain individual numeric results for a period of at least five years.*
- 7) Permits shall include language that triggers additional steps when a “significant number of” (to be determined in permitting process) DNQ values are reported. These steps may include additional or accelerated monitoring, analytical studies such as matrix studies, pollutant

minimization programs, or other permit conditions outside of the determination of compliance with effluent limitations. Reports under such provisions will be done outside of the DMR reporting process, except that any additional effluent testing performed using approved analytical methods as part of the special studies must be reported according to the protocol in (5.A.4).

B. Recommendations for NPDES Permits and Compliance Uses for WQBELs when no QL_{nat} exists:

1. In the absence of QL_{nat} , the permitting authority is free to establish its method for determining compliance for analytes that have limits/water quality standards at a level lower than that which can be detected and/or quantified.

2. In addition to the state's process, EPA could request that the permitting authority report the DL_{lab} s and QL_{lab} s for the FACDQ determined procedure for the purpose of method updating.

Or

2. The regulator shall require that the permittee report the DL_{lab} and QL_{lab} for purposes of updating methods. The permitting authority shall report the DL_{lab} , QL_{lab} , and QL_{per} for each analyte to EPA in ICIS.

6. Matrix Effects

Recommendation: The FACDQ recommends the Policy Work Group develop some guidance on the topic for the FACDQ to consider at a future meeting.

7. Other Uses to Consider

Recommendation: The FACDQ tabled the following list of additional uses:

- ambient monitoring 305(b)
- pretreatment
- non-regulatory operational monitoring
- stormwater monitoring
- other studies, such as fish tissues or biosolids characterization
- reasonable potential analysis
- *effluent guidelines development*

8. Alternative Test Procedures

Recommendation: The FACDQ tabled the option of developing recommendations to EPA on updating the Alternative Test Procedures (ATP) program.

9. Implementation of the FACDQ Recommendation

Recommendation: *The FACDQ recommends that EPA should propose new regulations as follows:*

A) Current Part 136 analytical methods would not be changed but DL_{lab} and QL_{lab} for these existing methods will be calculated using the new procedure recommended by the FACDQ.

Issue: The Lab and Industry caucuses expressed concern regarding Recommendation 9 B. They have concerns that MDLs in existing methods are not achievable nor would they be with a new procedure(s). EPA will check on methods 200.7 and 1613 for MDLs/MLs.

- B) Initially, the following existing MDL and MLs in Part 136 methods will be used for DL_{nat} and QL_{nat} , respectively: 200.7, 200.8, 245.7, 300.0, 515.3, 1613?, 1630, 1631, 1631E, 1632, 1632A, 1636, 1637, 1638, 1639, 1640, 1669**
- C) *The FACDQ recommended procedure will apply to all future EPA method development and validation, and DL_{nat} s and QL_{nat} s, will be promulgated using the FACDQ recommended procedure.***

Issue: The Policy Work Group wants to be clear that the intent in recommendation 9 D is to replace the MDL process. They likewise observe that significant challenges exist in redoing the existing MDL/ML values. Further discussion is necessary to resolve this potential conflict as well as to incorporate ideas from 9 B.

- D) Appendix B of Part 136 will be deleted if it is not needed to keep current Part 136 methods valid.**

Or

- D). Appendix B of Part 136 would be replaced with the FACDQ recommended procedure(s).**
- E) *Other “uses” recommendations in this document will be incorporated into 40 CFR Part 122.***⁷

10. *Issue: Does the Policy Workgroup want to recommend to the FACDQ that the recommendations of the FACDQ supersede the current Great Lake Initiative (GLI) provisions?*

The Policy Work Group recommends to the FACDQ that FACDQ recommendations should not supersede the current GLI provisions. There is no real conflict between the anticipated FACDQ recommendations and the GLI.
See Attachment D pg. 15.

⁷ Where Part 122 needs changes.

Attachment A

Issue: Life of the permit –language in Policy Recommendation 5. A. pg. 5 of Uses doc.

Authorship and Discussion by: **Chris Hornback** and **Barry Sulkin**

Concern regarding “life of the permit” language discussed on March 19, PWG Conference Call:

An NPDES permit can only be issued for up to 5 years; however it can actually last longer (even much longer), such as if the new permit is appealed, or if the issuing agency delays issuance of the new permit (for a variety of reasons) and administratively extends the permit. In either of these examples, there is no limit to how long the old permit can stay in effect, and thus the problem.

In the interest of consistency and a level playing field – from all sides and points of view – it could be viewed as unfair to have a system whereby old, outdated (and higher) DLs or QLs continue to apply to one discharger and not others. Locking the DL or QL into the permit could encourage or reward delays in permitting. This could be viewed from the perspective of public interest wanting to know if a pollutant reported as below DL or QL might be identified with a revised DL or QL, or for companies or cities not wanting to be disadvantaged by having to comply with new DLs and QLs and maybe now having to report violations, while a competitor still gets to use the old levels and report non-detect or no violations for the same discharge.

We already have to consider the issue of new (lower) DLs and QLs applying at different times if implementation is going to be triggered by normal (less than 5 years) permit expiration dates, and need to find a way to avoid another problem of inconsistency by delayed or extended permits.

In states where DLs and QLs are not put in permits but referenced to state standards, this is probably not a problem if the permit simply requires using whatever levels are in effect, and the state standards are updated on their own schedule. If DLs and QLs are put in the permit, this could be handled by a required statement that says something like, “... unless new DLs and QLs are approved...”. If it is decided that we agree to leave DLs and QLs in effect through the “life of the permit” as normally intended to mean not more than 5 years, maybe such language could be required in permits.

Three problems arise in the scenario described above. 1) Including a statement such as “unless new DLs and QLs are approved” in a permit could mean that a permit provision would automatically change each time the DLs and QLs change and could change without opportunity for the permittee or other parties to comment on the applicability of the new DLs and QLs for their particular situation (e.g., is it still the most appropriate method). 2) The scenario above could also lead to a situation where numerical values listed in a permit can change...this is why many states cross reference their standards or other regulations in permits rather than including the actual number. If the concern over the permit term issue is significant, than perhaps the PWG should consider a similar approach. 3) The changes to the DLs and QLs under this scenario would only occur when the permit has reached its normal term limit and has not been

renewed. Monitoring when the permit has reached its “normal” term and ensuring that the DLs and QLs are changed as appropriate could be challenging.

This is also related to the matter of a permittee getting a permit right before new DLs or QLs come into effect, and thus locking in for 5 years at an old, less sensitive level – thus potentially disadvantaging public knowledge or competitors. This could be handled by re-opening permits, as currently envisioned in 5. i. a., or requiring implementation of new DLs or QLs within say one year of such becoming final (for existing permits, all permits?), regardless of permit issuance, expiration, or extension dates. This might actually create a more fair system and level playing field. However, the issue of a ‘moving target’ has been raised before during FAC discussions. Permittees rely on their permit to ensure they are in compliance. If DLs and QLs can change during the term of a permit, the compliance level during that permit term also changes. This doesn’t make this option impossible, but it does complicate things.

Attachment B

Issue: In i) a, b, and ii) a, b below, the FACDQ must decide whether DL_{lab} or DL_{nat} is appropriate. pg. 5 of Uses doc.

Discussion by: **David Kimbrough** and **Tom Mugan**

Rationale for using DL_{lab} in parts 5. A. 6. d. i) a, b, and ii) a, and b.

Author: **Tom Mugan**

First, I believe that the original concept of the hybrid approach (remember the hybrid was formed in response to discussions of whether we should use either a prescriptive or a descriptive approach) was that we would use a prescriptive QL and a descriptive DL for regulatory uses. I'm not sure if everyone's concept of the hybrid approach agreed with mine but my recollection was that the concept of a hybrid approach (a compromise?) allowed the Committee to move forward when it looked like we could not agree on this issue. Another aspect of the hybrid was that requiring labs to determine their lowest DL and QL would generate information that could be used to update the prescriptive QL used for the compliance threshold. We obviously have incorporated this second aspect into our latest thinking.

The prescriptive QL is an important aspect of the Committee recommendations for the Industry and Utilities groups because of fairness issues. With the current proposal that we only use measurements above the QL as valid for permit effluent limitation compliance and enforcement uses, these groups perceive a more level playing field for this important use.

Groups whose primary focus is protecting the environment have concerns when we assume compliance (assign 0 to results $<QL$) whenever measurements are below QL since we are 99% certain that the concentration of a pollutant is not zero when the measured result is $>DL$. This concern is exacerbated if a prescriptive QL and DL are used and the lab doing the analyses is able to make measurements below prescriptively set levels. We have proposed that this concern can be mitigated by setting permit requirements to take actions whenever there is evidence that a **WQBEL may** be exceeded (for example, DNQ results). These other actions, which may include analytical studies or pollutant minimization efforts are less onerous for the permittees but may enlighten the situation so the permittee or regulator can take further steps. Since these are not onerous steps, we should optimize this enlightenment (extend enlightenment for measurements all the way down to the lab QL). The level playing field is less important for these less onerous actions.

Both groups have valid concerns and I do see the hybrid approach as a compromise position that may allow us to move forward.

Secondly, my experience is that most permittees are willing to be environmentally responsible. If they know they are causing or will cause a problem, they will spend a reasonable amount of money to fix it. What they hate is:

- Being blamed for something based on questionable information
- Not knowing if they are or will be judged out of compliance
- Throwing a bunch of money down a hole (spending money to fix a problem and the actual result of the fix does nothing to benefit the environment)

With this understanding (assumption), a permittee would want to start taking action (sooner rather than later) if it gets some indication that a discharge they have responsibility for is near to being judged out of compliance (results show DNQ). Therefore (again, assuming that other steps are not excessively onerous), it is advantageous for a permittee to hire a lab with a low DL. Presumably, they would prefer to do it voluntarily instead of having a permit requirement to do it, but that's part of the compromise. On the other hand, a permittee that hires a lab with the minimum-required level of performance may be thought of as putting its head in the sand and leaving its butt exposed.

To me, this is the incentive for labs to promote technology (lower their levels of detection and quantitation) that a number of Committee members have said they are looking for.

Rationale for using DL_{nat} in parts 5. A. 6. d. i) a, b, and ii) a, and b.

Author: **David Kimbrough**

On the top of Page 4 of that document is a note which says "Issue: In i) a, b, and ii) a, and b below, the Policy Workgroup must decide whether DLlab or DLnat is appropriate". What this means is, will the DL be promulgated the same way the QLs will be or will they be determined on a lab by lab basis.

I have assembled some data from the pilot study which I believe will help illuminate this discussion. I picked six analytes (sulfate, cadmium, 4,4'-DDE, a-BHC, 2,6-DNT, and bezno[a]anthracene) and I made a table for each one. Each table has the observed DL (i.e., the 99th Percentile of unspiked blanks) and each of the statistical estimates of the DL that were piloted for each of the participating laboratories. If you choose any given analyte and examine the differences between laboratories using any given statistical procedure, you will see that there is almost always at least an order of magnitude difference between the extreme ends of the estimates of the DL, in some cases more than two. The best case was a-BHC using the ASTM Yc estimate. Here one lab had an estimated DL of 0.000 ppb and the other five labs all estimated 0.010 ppb. The worst case was sulfate using the OGDW estimate of DL where lab 12 estimated a DL of 5 ppb and lab 16 estimated 771. The others are somewhere in between. As the observed DLs indicate, this variability is reflective of real differences in laboratory capability.

The second thing I did was plot the observed mean % bias (true value – measured value / true value *100) and the observed %RSD for the blind inter-laboratory study samples (10 samples, analyzed 10 times). I then was able to plot and determine the actual observed QL for three different MQOs (20% RSD, 20% Bias, 50% Bias). These plots are in the attached document for the same six analytes as above. Please note that in many cases, the observed DL is of a higher concentration than the observed QLs for any given laboratory-method-analyte combination (LMAC). In some cases this is reflected in the statistical estimates and in other cases not.

If we go forward with using a laboratory specific DL for determining compliance (i.e. DNQs, PMPs, enhanced monitoring, and other mandatory management practices), there are three problems that arise.

- 1) The lab's DL is zero, either the observed or the estimated. A large number of the LMACs had one or both of these situations. The FACDQ has already decided that this is unacceptable.
- 2) A lab's DL may be higher than the QL, either observed or estimated, which means that there is no DL at all.
- 3) Two permittees could be discharging water to a receiving body with the same concentration of an analyte, one would have to do a PMP and the other would not simply because of differences in the laboratory capability. In fact, with the range of differences in DLs seen in the pilot study, it would be possible for the dischargers with a higher concentration to have no PMP than a discharger with a lower concentration.

Attachment C

Issue: Should h. below use may or shall? pg. 6 of Uses doc.

Authorship and Discussion by: **Tom Mugan**

Part 5. A. 6. d. iii. a). says that “The permitting authority shall report the lab-specific DL and permit QL for each analyte to EPA in ICIS” (emphasis added). The purpose for this recommendation is to allow EPA to generate information it may use to decide when it should proceed with the Future Updates recommended in #4.

Part 5. A. 6. d. iii. b). says to “Report the lab-specific DL and QL and the individual numeric result for any value that is greater than or equal to the lab-specific DL and less than the permit QL in a supplemental report.” Presumably, this means that the states would require permittees to report this way. The question is if the states “may” or “shall” require this reporting. We already have had discussions that some states do not want any of this information and there has been a general inclination to allow states flexibility when discussing how the FAC recommendations will be incorporated into federal regulations. Therefore, these two recommendations appear to be at odds.

There seems to be consensus that future update of QL_{nat} values is important.

- If we require all states to collect this information:
 - Some will be unhappy.
 - All the states will presumably get this information (but see Part 122 versus Part 123 discussion in #9) and then will be able to pass this along.
- If we say that states may collect this information:
 - Only the states that wish to use this information for other uses (such as reasonable potential) will get this information and the information to EPA will be less complete.
- Either way, putting this information in ICIS will likely require states to do manual data entry. (I’ll do more checking on this.)

An alternative is to set up a mechanism for permittees (or labs) to provide this information directly to EPA (and also perhaps the states for their own use). This would have the advantage of removing one or more links (which may be prone to breakage) in the process.

How this would be done needs more thought.

Attachment D

Issue: Does the Policy Workgroup want to recommend that the recommendations of the FACDQ supersede the current GLI provisions? pg. 8 of Uses doc.

Authorship and Discussion by: **Tom Mugan**

Do we need to over-promulgate GLI?

Comparison of what GLI requires versus our most recent proposal:

GLI	Latest FACDQ Proposal	OK?
Designate limit in permit as WQBEL	Designate limit in permit as WQBEL	√
Permit shall specify MSM	QL _{lab} must at or below QL _{per} . This allows lab to use any method so long as it can achieve the QL _{per} .	No?
Permit shall specify the achievable QL	QL _{per} is specified in the permit	√
QL _{per} shall be the ML	Once EPA promulgates QL _{nat} using FACDQ method, ML will be obsolete	?
Permit may specify a higher QL _{per} if permittee demonstrates effluent-specific matrix interference	No current way to deal with matrix; may be more stringent	√
Permit shall require permittee to monitor down to QL	Monitor to DL with reporting of DNQ for results >DL but < QL _{per} ; may be more stringent	√
Average and account for values below QL _{per} using state procedures	We are specifying in our recommendations	√
Permit shall contain a re-opener	We have said re-opener is redundant	√
PMP requirement at time of permit re-issuance if the limit is below QL _{per}	Our draft proposal allows steps other than PMPs (such as analytical studies). Also, the steps kick in only after a “significant number of” DNQs are reported.	No

OK if current FACDQ is at least as stringent as GLI.