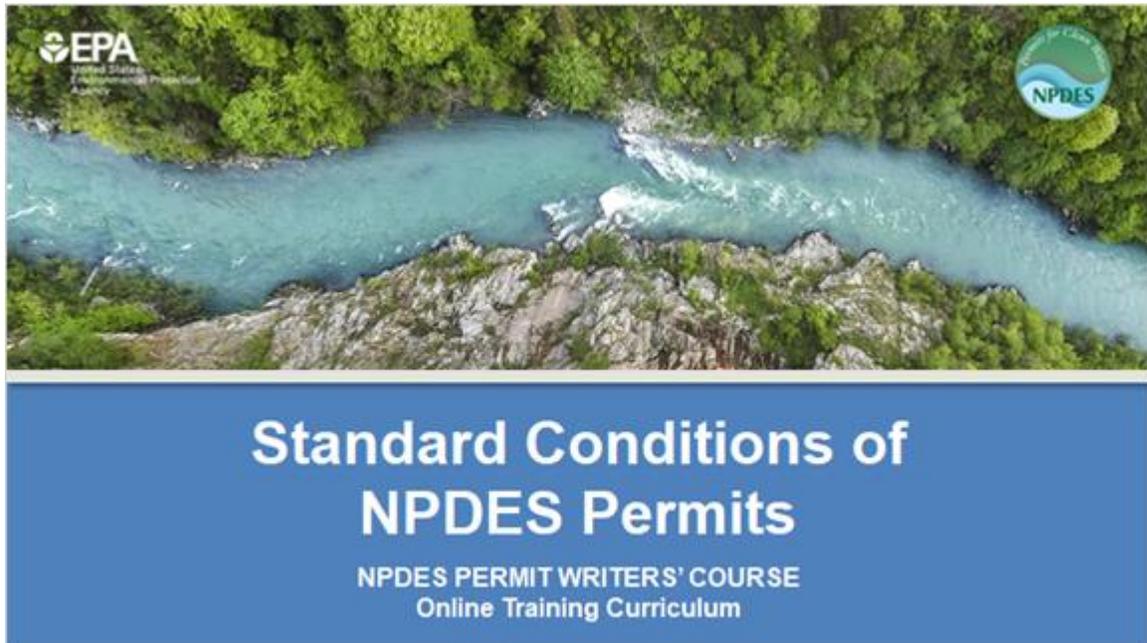


Standard Conditions of NPDES Permits

1. NPDES Permit Writers' Course Online Training Curriculum

1.1 Standard Conditions of

NPDES Permits



Notes:

Hello, and welcome to this presentation on the standard conditions of National Pollutant Discharge Elimination System, or NPDES, permits.

This presentation is part of an online training series on the NPDES program sponsored by the Environmental Protection Agency's Water Permits Division.

We will get started with our presentation in a moment, but first I'll introduce our speakers and cover one important housekeeping item.

1.2 Presenters



Presenters

- **David Hair**
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Washington, DC
- **Greg Currey**
Environmental Engineer
Tetra Tech, Incorporated
Fairfax, Virginia



Notes:

Your speakers for this presentation are David Hair, an environmental engineer with the Water Permits Division of USEPA in Washington, DC, and me, Greg Currey, an environmental engineer with Tetra Tech, Incorporated in Fairfax, Virginia.

As far as that housekeeping item goes, I need to tell you that all the materials used in this presentation have been reviewed by USEPA staff for technical accuracy; however, the views of the speakers are their own and do not necessarily reflect those of USEPA. NPDES permitting is governed by the existing requirements of the Clean Water Act and USEPA's NPDES implementing regulations. These statutory and regulatory provisions contain legally binding requirements. The information in this presentation is not binding. Furthermore, it supplements, and does not modify, existing USEPA policy, guidance, and training on NPDES permitting. USEPA may change the contents of this presentation in the future.

With that behind us, let's turn to the topic of standard conditions in NPDES permits.

1.3 Standard Conditions Regulations



Standard Conditions Regulations

- Sometimes called “boilerplate” permit conditions
- **40 CFR 122.41**
 - Conditions applicable to all NPDES permits
- **40 CFR 122.42**
 - Additional conditions applicable to specified categories of NPDES permits



Notes:

When we get to the standard conditions portion of an NPDES permit, it's time to take out a magnifying glass and look at the fine print. The standard conditions are narrative requirements spelled out in the NPDES regulations and that must appear in all permits.

Sometimes you'll hear the standard conditions referred to as “boilerplate conditions” because they do not change from permit to permit. So, you might ask, why bother with this presentation? Here are two reasons:

- First, if you're a permit writer, you might be asked to review your permitting authority's boilerplate to rearrange or reformat it, or to make sure it is consistent with federal regulations. You might be surprised at what changes to this “standard” text might have occurred over time. So, you'll want to be familiar with the intent and specific requirements of the standard conditions.
- Second, as a permit writer *or* a permittee, you need to know how to interpret these conditions in order to understand what it means to comply with the NPDES permit and regulations. As we'll see, the standard conditions establish much of the legal basis and administrative requirements of the permit.

The standard conditions are found in two sections of the regulations: 40 CFR 122.41, which includes standard conditions that are applicable to all NPDES permits, and 40 CFR 122.42, which includes some additional standard conditions that apply to specific categories of NPDES permits.

Dave, how are these conditions incorporated into permits?

1.4 Standard Conditions in the Permit



Standard Conditions in the Permit

- Standard conditions must appear in every NPDES permit either
 - expressly (verbatim) or
 - by reference
- States, tribes, or territories might have more stringent requirements



Notes:

Well, Greg, a permit writer can incorporate the standard conditions into NPDES permits in one of two ways: either verbatim or by reference. The federal regulations allow for either method.

Most permitting authorities choose to include standard conditions verbatim. The permitting authority might include all of the required standard conditions together as a specific section of the permit, or it might choose to distribute the various requirements throughout the permit based on the subject of the standard condition. For example, the permitting authority might place the standard conditions that deal with monitoring and reporting with the permit-specific monitoring requirements.

Including the standard conditions verbatim from the regulations (rather than by reference) makes sense because not all NPDES permittees are going to keep a copy of the federal or state regulations on site, and some might not even have the ability to access the regulations online at the plant site. Therefore, it is helpful if the permit spells out all of the applicable requirements, including the standard conditions.

Now let's take a brief look at each of the required standard conditions.

1.5 List of Standard Conditions – § 122.41



List of Standard Conditions – § 122.41

- a. Duty to comply
- b. Duty to reapply
- c. Need to halt or reduce activity not a defense
- d. Duty to mitigate
- e. Proper O & M
- f. Permit actions
- g. Property rights
- h. Duty to provide information
- i. Inspection and entry
- j. Monitoring and records
- k. Signatory requirement
- l. Reporting requirements
 - 1) Planned change
 - 2) Anticipated noncompliance
 - 3) Transfers
 - 4) Monitoring reports
 - 5) Compliance schedules
 - 6) 24-hour reporting
 - 7) Other non-compliance
 - 8) Other information
- m. Bypass
- n. Upset

Notes:

For this slide, we've provided a list of the 14 standard conditions that apply to all permits. Let's take a moment and very briefly summarize the first 12, then we'll spend a little more time on the last two standard conditions on this list.

Start us off, Greg!

First up is **"duty to comply."** This is the condition in the permit that specifically tells the permittee that it must comply with all of the conditions of the permit and that noncompliance is grounds for enforcement action, permit termination, revocation and reissuance or modification, or denial of a permit renewal application. This condition also lays out the potential penalties for noncompliance.

The **"duty to reapply"** standard condition simply says that if a permittee wants to continue the activity regulated by the permit after the permit expiration date, it must apply for a new permit. We discuss the permit application requirements in detail in another presentation in this training series.

A permittee might try to contend that it should not be subject to an enforcement action because the only way to meet the permit requirements would be to halt or reduce its permitted activity. The **"need to halt or reduce activity not a defense"** standard condition notifies the permittee that this line of reasoning will not work as a defense in an enforcement action.

We all know that, despite best efforts, noncompliance sometimes happens. The **"duty to mitigate"** standard condition says that a permittee needs to take reasonable steps to minimize or prevent a discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment.

Next we have “**proper operation and maintenance**.” This standard condition indicates that the permittee must, at all times, properly operate and maintain all facilities and systems installed or used to achieve compliance with permit conditions. The regulation notes that proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. It requires operation of backup or auxiliary facilities only when necessary to achieve permit compliance.

The “**permit actions**” standard condition states that the permit can be modified, revoked and reissued, or terminated for cause. It also notes that a request by the permittee for permit modification, revocation and reissuance, or termination, or a notice of planned changes or anticipated noncompliance does not stay any permit condition.

Simply put, the “**property rights**” standard condition states that the permit does not convey property rights of any kind or any exclusive privilege.

If a permitting authority needs information to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit, the “**duty to provide information**” condition requires the permittee to furnish that information to the permitting authority within a reasonable time. This condition also requires that the permittee provide to the permitting authority, upon request, copies of records required to be maintained by the permittee.

The “**inspection and entry**” standard condition indicates that the permittee must allow a duly authorized representative of the permitting authority to enter the premises of the permitted facility or activity or the place where records must be kept; have access to and copy records that the permit says must be kept; and, at reasonable times, inspect facilities, equipment, practices, or operations regulated or required under the permit and sample or monitor any parameters at any location for purposes of assuring compliance or as otherwise authorized by the Clean Water Act.

The “**monitoring and records**” standard condition actually consists of several specific requirements. These conditions require that samples and measurements be representative of the monitored activity, require the use of approved test methods, specify what must be included in monitoring records, and require that those records be kept for three years for wastewater and five years for sludge. This standard condition also spells out the potential penalties, including fines, imprisonment, or both, for falsifying records or tampering and rendering inaccurate any monitoring device or method that must be maintained under the permit.

The “**signatory requirement**” states that all applications, reports, or information submitted to the permitting authority must be signed and certified. Any person making a false statement, representation, or certification in any record or document submitted or required to be maintained is, upon conviction, subject to fines, imprisonment, or both. The appropriate signatories for all reports and applications are identified in 40 CFR 122.22.

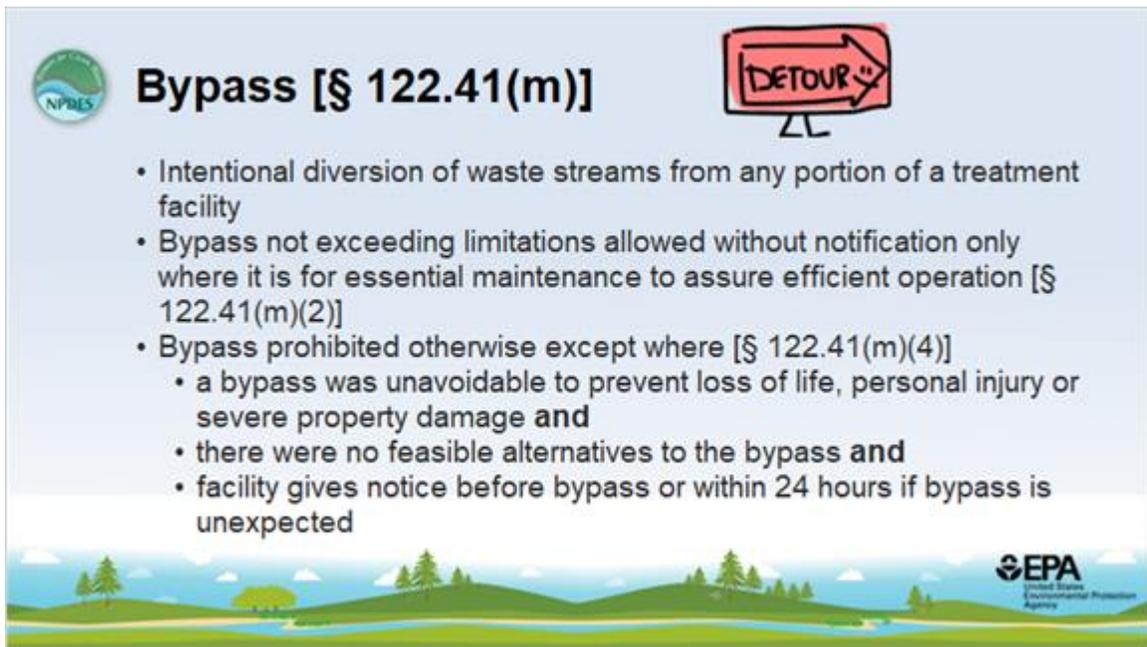
The next standard condition listed on this slide actually consists of eight standard conditions all having to do with various “**reporting requirements**.” These requirements include:

- providing notice of certain planned physical alterations or additions to the permitted facility that might trigger a determination that the facility or a portion of the facility is a new source or could change the nature or increase the quantity of pollutants discharged or significantly change the permittee’s sludge use or disposal practices in a manner that might justify permit conditions different from or in addition to conditions in the existing permit;
- giving notice of planned changes in the permitted facility or activity that could lead to noncompliance;

- submitting notice that the permittee is planning to transfer the permit to another party;
- reporting monitoring results on Discharge Monitoring Reports at intervals specified in the permit, calculating averages as arithmetic means, unless otherwise specified, and including additional data in calculations and reports for any pollutant monitored more frequently than required by the permit using approved test procedures;
- reporting compliance and noncompliance with interim or final requirements of a compliance schedule within 14 days of each schedule date;
- providing an oral report within 24 hours and a written report within 5 days of becoming aware of certain types of noncompliance and certain instances of bypass or upset, which we will define later in this presentation;
- reporting any other instance of noncompliance, not required to be reported by any of the conditions just discussed, at the time monitoring reports are submitted, and finally
- promptly giving notice upon becoming aware of a failure to submit relevant facts in a permit application, or of providing incorrect information in a permit application or any report, to the Director.

Well, that covers standard conditions “a” through “l.” Let’s take a closer look at the next two standard conditions, which address bypass and upset.

1.6 Bypass [§ 122.41(m)]



 **Bypass [§ 122.41(m)]** 

- Intentional diversion of waste streams from any portion of a treatment facility
- Bypass not exceeding limitations allowed without notification only where it is for essential maintenance to assure efficient operation [§ 122.41(m)(2)]
- Bypass prohibited otherwise except where [§ 122.41(m)(4)]
 - a bypass was unavoidable to prevent loss of life, personal injury or severe property damage and
 - there were no feasible alternatives to the bypass and
 - facility gives notice before bypass or within 24 hours if bypass is unexpected



Notes:

The “bypass” standard condition is found in 40 CFR 122.41(m). If you’re a permit writer, it’s likely that you’ll need to address this standard condition at some point.

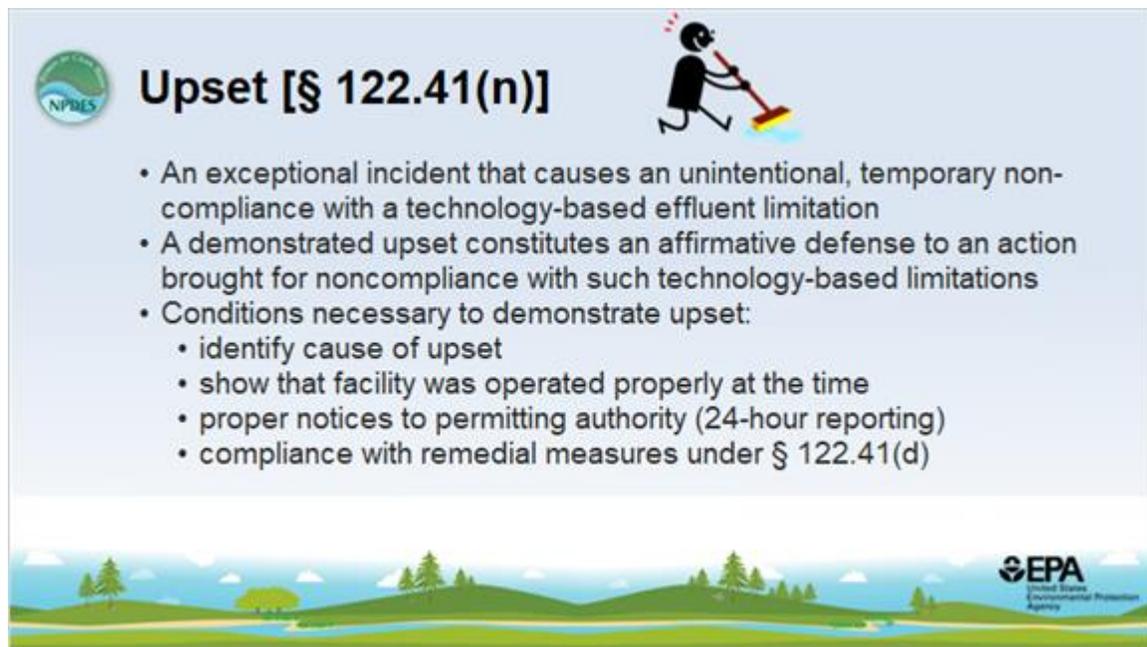
A bypass is defined as an intentional diversion of waste streams from any part of the treatment facility.

The regulations state that the permittee can allow a bypass to occur that does not cause effluent limitations to be exceeded, but only if it is also for essential maintenance to assure efficient operation. Under the federal regulations, no notice is required for this type of bypass.

Other bypasses are prohibited and the permitting authority can take enforcement action against a permittee for a bypass unless the bypass was unavoidable to prevent loss of life or severe property damage (such as physical damage to property, damage to the treatment facilities that renders them inoperable, or substantial and permanent loss of natural resources), and there was no feasible alternative to prevent the bypass (such as retention of untreated wastes), and the facility gives notice of the bypass at least 10 days in advance, if possible, for an anticipated bypass and within 24 hours for an unanticipated bypass.

Now that we know what a bypass is, how does that differ from an “upset,” Dave?

1.7 Upset [§ 122.41(n)]



The infographic features a light blue background with a white border. On the left is the NPDES logo. In the center, the title 'Upset [§ 122.41(n)]' is written in bold black text. To the right is a stick figure icon of a person sweeping with a broom, with red lines above its head indicating frustration or anger. Below the title is a bulleted list of conditions for an upset. At the bottom of the infographic is a landscape illustration with green hills, trees, and a blue sky. The EPA logo is in the bottom right corner of the infographic.

Upset [§ 122.41(n)]

- An exceptional incident that causes an unintentional, temporary non-compliance with a technology-based effluent limitation
- A demonstrated upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based limitations
- Conditions necessary to demonstrate upset:
 - identify cause of upset
 - show that facility was operated properly at the time
 - proper notices to permitting authority (24-hour reporting)
 - compliance with remedial measures under § 122.41(d)

Notes:

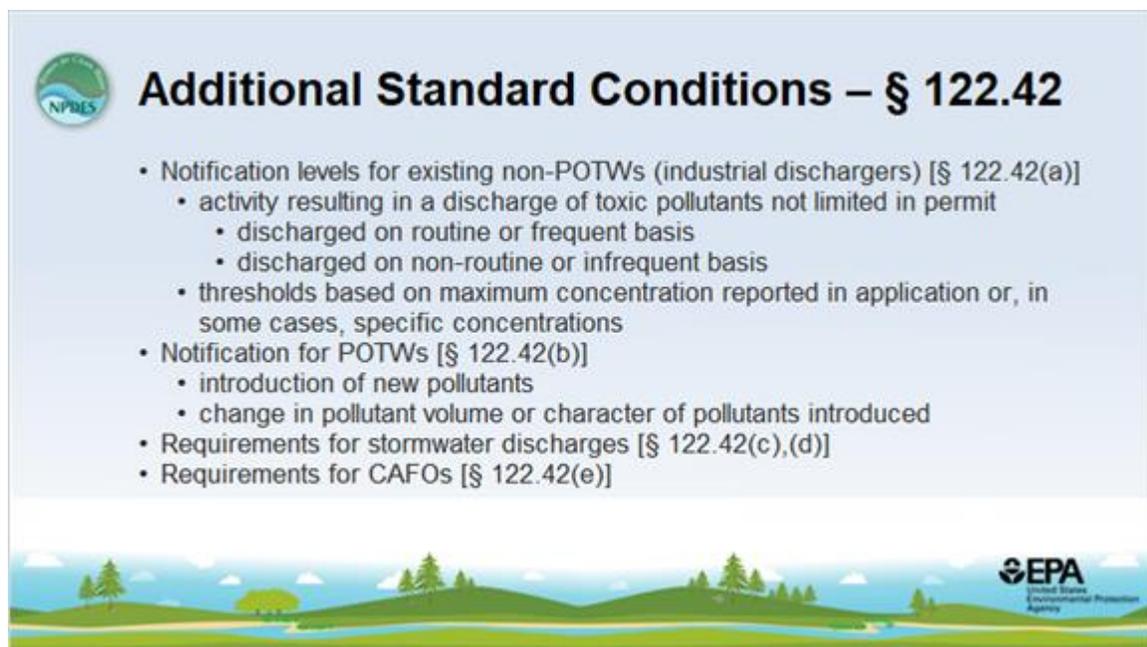
An “**upset**” is defined in 40 CFR 122.41(n) as an exceptional incident in which there is unintentional and temporary noncompliance with technology-based effluent limitations because of factors beyond the reasonable control of the permittee. Think hurricanes, tornados, or someone dumping a chemical into the sewer in the middle of the night. Of course things such as operational error, poor operation and maintenance, lack of preventative care, and improper design of the treatment facilities are not considered causes of an upset.

Why is it important to define upset? Because a demonstrated upset constitutes an affirmative defense to an action brought for noncompliance with technology-based effluent limitations.

To establish the affirmative defense the permittee must demonstrate, through properly signed contemporaneous operating logs or other relevant evidence, that an upset has occurred and that the cause has been identified; the permitted facility was, at the time, being properly operated; that it provided proper notice of the upset; and that and it complied with any remedial measures required under the "duty to mitigate" standard condition.

Well, that's the last of the standard conditions that apply to all facilities. Greg, why don't you review the conditions that apply to specific categories or classes of facilities?

1.8 Additional Standard Conditions – § 122.42



The slide features a light blue background with a white text box. In the top left corner is the NPDES logo, and in the bottom right corner is the EPA logo. The title is in bold black font. Below the title is a bulleted list of standard conditions.

- Notification levels for existing non-POTWs (industrial dischargers) [§ 122.42(a)]
 - activity resulting in a discharge of toxic pollutants not limited in permit
 - discharged on routine or frequent basis
 - discharged on non-routine or infrequent basis
 - thresholds based on maximum concentration reported in application or, in some cases, specific concentrations
- Notification for POTWs [§ 122.42(b)]
 - introduction of new pollutants
 - change in pollutant volume or character of pollutants introduced
- Requirements for stormwater discharges [§ 122.42(c),(d)]
- Requirements for CAFOs [§ 122.42(e)]

Notes:

OK, Dave.

There are four other standard conditions that apply to specific categories of NPDES permits.

The first bullet summarizes a standard condition that establishes notification levels in permits for non-POTW (or industrial) discharges for pollutants that are not limited in the facility's permit.

Why are these notification levels needed? Operations or conditions at the facility can change, and if a pollutant concentration in an effluent increases by a significant amount, the permitting authority might see a need to modify

the permit to address that pollutant. The regulation establishes different notification levels for various pollutants depending on whether the pollutant is discharged on a routine or frequent basis or on a non-routine or infrequent basis.

The second bullet summarizes a standard condition that applies to POTWs. POTWs are required to provide notice when any new pollutant is introduced to the POTW by an indirect discharger which would be subject to effluent guidelines if it were directly discharging those pollutants. Notification is also required if there is any substantial change in the volume or character of pollutants being introduced by a source that was already introducing pollutants into the POTW at the time the permit was issued.

Finally, there are some specific requirements for stormwater and CAFO permits that are included in this section of the regulations.

- 122.42(c) requires annual reports for large and medium municipal separate storm sewer systems,
- 122.42(d) required some stormwater discharges to comply within three years of receiving their initial permit, and
- 122.42(e) contains the requirements for what must be included in a concentrated animal feeding operation, or CAFO, permit.

A detailed discussion of stormwater and CAFO permits is beyond the scope of this presentation, but you might want to check out EPA's NPDES Web site for more information on these programs.