

## Overview:

National Pollutant Discharge Elimination System (NPDES) permit fact sheets are an essential element of a permit record and a comprehensive source of information from which the permittee, the public, and other interested parties can ascertain the rationale for permit requirements. They should include sufficient and clear details to document that effluent limitations and other permit conditions are appropriate to protect water quality and are consistent with all other statutory and regulatory requirements. The fact sheet supports public participation by providing permittees, stakeholders, and the public with a clear understanding of the basis for permit decisions. Fact sheet requirements for NPDES permits are located primarily in 40 CFR 124.8 and 124.56. The permitting authority must send the fact sheet to the applicant and, upon request, any other person.

## NPDES Permit Fact Sheets

### Checklist for Enhancing Clarity and Transparency

This checklist of the NPDES fact sheet elements defined in the NPDES regulations can assist NPDES permitting authorities in developing comprehensive and complete fact sheets. The checklist also provides recommended information that is not a regulatory requirement but which might improve the clarity and transparency of the fact sheet.

The tables below identify, under the green headings, fact sheet elements specified by [40 CFR 124.8](#), [124.56](#), and other NPDES regulations. These elements include specific explanations, calculations, and rationales based on these regulatory requirements, which should be included in the fact sheet given the particular facts of the permit or discharge.

The tables also list, under the gray headings, other information that could be included in the fact sheet to enhance transparency and the permittee's and the public's understanding of the basis of the draft permit. Some of these recommendations might be broadly applicable, while others might depend on the specific circumstances of a permit action.

The tables list the regulatory requirements and other recommendations in as much detail as possible, providing cross-references to the *Code of Federal Regulations* where appropriate. It is important to note that certain regulatory requirements are overarching and pertain to many of the elements listed. Where an element is accompanied by a specific regulatory citation, it might also be covered by one of the following three general requirements:

| General Regulatory Requirements for Fact Sheets   |                              |
|---|------------------------------|
| <input type="checkbox"/> A brief description of the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit.   | <a href="#">§124.8(a)</a>    |
| <input type="checkbox"/> A brief summary of the basis of the draft permit conditions including references to applicable statutory or regulatory provisions and (for EPA-issued permits) appropriate supporting references to the administrative record required by <a href="#">40 CFR 124.9</a> .   | <a href="#">§124.8(b)(4)</a> |
| <input type="checkbox"/> Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitations guideline (ELG), <sup>1</sup> performance standard, or standard for sewage sludge use or disposal as required by <a href="#">40 CFR 122.44</a> and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed. | <a href="#">§124.56(a)</a>   |

## 1. General Information on the Facility and Receiving Water

| Regulatory Requirements Regarding the Facility and Receiving Water  |                              |
|---|------------------------------|
| <input type="checkbox"/> A brief description of the type of permitted facility or activity.   | <a href="#">§124.8(b)(1)</a> |
| <input type="checkbox"/> The type and quantity of pollutants which are proposed to be or are being treated or discharged.   | <a href="#">§124.8(b)(2)</a> |
| <input type="checkbox"/> When appropriate, a sketch or detailed description of the location of each discharge or regulated activity described in the application. | <a href="#">§124.56(c)</a>   |
| <input type="checkbox"/> Where applicable, the Regional Administrator's decision to designate a facility as a "treatment works treating domestic sewage."         | <a href="#">§122.1(b)(3)</a> |

### Additional recommended information, where appropriate to the circumstances:

- Whether the facility is a major facility, as defined at [40 CFR 122.2](#).
- For a POTW, a description of existing industrial users, including the number of SIUs and NSCIUs and the number of those SIUs or NSCIUs that haul or truck their industrial waste to the POTW.
- Geographic coordinate(s) of the facility and each outfall.
- The name of the receiving water.<sup>2</sup>
- The receiving water's designated use(s).
- The receiving water's impairment status under CWA sections 303(d) and 305(b).

## 2. Derivation of Effluent Limitations

| General Fact Sheet Requirement for Effluent Limitations  |                            |
|--|----------------------------|
| <input type="checkbox"/> Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable ELG, performance standard, or standard for sewage sludge use or disposal as required by <a href="#">40 CFR 122.44</a> and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.  | <a href="#">§124.56(a)</a> |
| <p>i. This information provided under <a href="#">§124.56(a)</a> would include the following where warranted based on the particular facts of the permit:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> An explanation of why pollutants which were reported as present in the permit application were not specifically limited in the permit.</li> <li><input type="checkbox"/> An explanation of the basis for any effluent limitations that are being carried forward from the previous permit to the reissued permit, including calculations or other documentation of how the limitation in the previous permit was derived.</li> <li><input type="checkbox"/> An explanation of how the final effluent limits meet technology and water quality requirements, and whether any other elements in <a href="#">40 CFR 122.44(d)</a> were addressed, where applicable.<sup>3</sup></li> <li><input type="checkbox"/> A brief rationale for any BMPs imposed pursuant to <a href="#">40 CFR 122.44(k)</a>.</li> <li><input type="checkbox"/> For continuous discharges, an explanation of the basis for any alternate averaging period for permit limits (<i>i.e.</i>, other than both average monthly limits and maximum daily limits for non-POTWs, and average monthly limits and average weekly limits for POTWs).</li> </ul> |                            |

## General Fact Sheet Requirement for Effluent Limitations

ii. For **technology-based effluent limitations**, EPA expects that the information provided under [§124.56\(a\)](#) would include the following where warranted based on the particular facts of the permit:

For POTWs:

- ☐ Calculations or rationale for how equivalent-to-secondary standards ([40 CFR 133.105](#)) or special considerations ([40 CFR 133.103](#)) were derived or applied.
- ☐ The rationale for any BOD<sub>5</sub> (or CBOD<sub>5</sub>), TSS, or pH limits that do not appear to reflect secondary treatment standards ([40 CFR 133.102](#)), equivalent-to-secondary standards, or special considerations.

For non-POTWs:

- ☐ Documentation of the calculations for limits based on production or flow.
- ☐ Where limits based on ELGs were used, a citation to the applicable ELG and whether the limit was based on BPT, BAT, BCT, or NSPS.
- ☐ Where case-by-case limits based on BPJ were derived in accordance with [40 CFR 125.3\(c\)](#), an explanation of how the factors in [40 CFR 125.3\(d\)](#) were considered.

iii. For **water quality-based effluent limitations (WQBELs)**, EPA expects that the information provided under [§124.56\(a\)](#) would include the following where warranted based on the particular facts of the permit:

- ☐ Whether all pollutants known or reasonably believed to be present in the discharge were evaluated for reasonable potential (RP) and if not, how pollutants were selected for RP analysis.
- ☐ How RP was assessed, including documentation of the data used, any data excluded and why, and how the data were analyzed (including how the factors in [40 CFR 122.44\(d\)\(1\)\(ii\)](#) were addressed).
- ☐ How WQBELs were developed consistent with:
  - ☐ The results of the RP analysis;
  - ☐ A mixing zone or dilution allowance, and the basis for such allowable mixing in accordance with [40 CFR 122.44\(d\)\(1\)\(ii\)](#), including the underlying calculations and data;
  - ☐ Assumptions and requirements of any WLAs that an EPA-approved or EPA-established TMDL has assigned to the discharge;
  - ☐ Applicable state narrative water quality criteria consistent with [40 CFR 122.44\(d\)\(1\)\(v\)](#) and [\(d\)\(1\)\(vi\)](#);
  - ☐ A WQS variance, including discussion of the highest attainable condition (HAC) and any alternate criteria used to calculate the WQBEL, as well as the basis for any special conditions required by the variance; and
- ☐ Ambient water quality conditions and the impacts from other dischargers to the receiving waters.

| Additional Fact Sheet Requirements for Technology-Based Limitations  |                                    |
|--|------------------------------------|
| When the draft permit includes any of the following conditions, an explanation of why they are applicable:   |                                    |
| <input type="checkbox"/> Technology-based limits on toxic pollutants under <a href="#">40 CFR 122.44(e)</a> . <sup>4</sup>   | <a href="#">§124.56(b)(1)(i)</a>   |
| <input type="checkbox"/> Limitations on internal waste streams, under <a href="#">40 CFR 122.45(h)</a> . <sup>5</sup>  | <a href="#">§124.56(b)(1)(ii)</a>  |
| <input type="checkbox"/> Technology-based limit on a conventional pollutant (as an indicator), where more stringent than the BCT limit, developed under <a href="#">40 CFR 125.3(h)</a> . <sup>6</sup> | <a href="#">§124.56(b)(1)(iii)</a> |
| <input type="checkbox"/> Case-by-case limits based on BPJ, derived in accordance with <a href="#">40 CFR 125.3(c)</a> .  | <a href="#">§124.56(b)(1)(iv)</a>  |
| <input type="checkbox"/> A waiver from monitoring for any pollutant found in an applicable ELG in accordance with <a href="#">40 CFR 122.44(a)(2)(iv)</a> . <sup>7</sup>                               | <a href="#">§124.56(b)(1)(vi)</a>  |

| Additional Fact Sheet Requirements for Water Quality-Based Limitations  |   |
|---|---|
| <input type="checkbox"/> If a limit for whole effluent toxicity (WET) is not necessary to address a narrative criterion, a demonstration, using the procedures at <a href="#">40 CFR 122.44(d)(1)(ii)</a> , that chemical-specific limits suffice to attain and maintain applicable numeric and narrative WQS. <sup>8</sup>   | <a href="#">§122.44(d)(1)(v)</a>        |
| <input type="checkbox"/> The basis for WQBELs for any indicator parameter for a pollutant of concern, in cases where a state has not established a water quality criterion for a specific chemical pollutant present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State WQS. | <a href="#">§122.44(d)(1)(vi)(C)(2)</a> |
| <input type="checkbox"/> For new sources and new discharges proposing to discharge into a water segment that does not meet applicable WQS or is not expected to meet WQS even after the application of the effluent limitations, an explanation of how the permit issuance criteria under <a href="#">40 CFR 122.4(i)</a> have been met. <sup>9</sup>   | <a href="#">§124.56(b)(1)(v)</a>        |

### 3. Other Considerations for Effluent Limits and Permit Conditions

| Regulatory Requirements for Other Permit Conditions  |                               |
|--|-------------------------------|
| <input type="checkbox"/> The reasons why any requested variances or alternatives to required standards do or do not appear justified.  | <a href="#">§124.8(b)(5)</a>  |
| <input type="checkbox"/> <i>For a permit issued to a privately owned treatment works:</i><br>The permitting authority's decision and explanation of the basis for that decision regarding whether to issue a permit to the treatment works with no conditions applicable to any user, impose conditions on one or more users, issue separate permits, or require separate applications, under <a href="#">40 CFR 122.44(m)</a> . | <a href="#">§124.56(b)(2)</a> |
| <input type="checkbox"/> <i>For a permit that includes a sewage sludge land application plan:</i><br>A brief description of how the permit addresses each required element of the land application plan.   | <a href="#">§124.56(e)</a>    |

## Regulatory Requirements for Other Permit Conditions

Based on the particular facts of the permit, information responsive to the general requirements in [§124.56\(a\)](#) and [§124.8\(b\)\(4\)](#) should include:

- ☐ Where an effluent limit is less stringent than the limit in the previous permit, information showing consideration of anti-backsliding requirements pursuant to [40 CFR 122.44\(l\)](#) and CWA Sections 402(o)(2) and 303(d)(4).
- ☐ Where allowable pollutant loadings have increased into receiving waters that are either attaining or exceeding WQS, information showing consideration of the state's antidegradation policy (required under [40 CFR 131.12](#)).
- ☐ An explanation of the basis for and appropriateness of any compliance schedules granted under [40 CFR 122.47](#).<sup>10</sup>
- ☐ The basis of the permit's monitoring and reporting requirements.

## Additional recommended information, where appropriate to the circumstances:

- The following information for a POTW with a pretreatment program:
  - Which conditions at [40 CFR 403.8](#) necessitated development of a pretreatment program.
  - Identification of the approval date(s) of the currently effective pretreatment program.

## 4. Administrative Requirements

### Regulatory Requirements for Administrative Procedures

|   |                              |
|---|------------------------------|
| <input type="checkbox"/> A justification for the waiver of any application requirements for POTWs or sewage sludge under <a href="#">40 CFR 122.21(j)</a> or <a href="#">(q)</a> . <sup>11</sup>  | <a href="#">§124.8(b)(9)</a> |
| <input type="checkbox"/> A description of the procedures for reaching a final decision on the draft permit, including: <ul style="list-style-type: none"> <li><input type="checkbox"/> The beginning and end dates for the public comment period, under <a href="#">40 CFR 124.10</a>, and the address where comments can be sent;</li> <li><input type="checkbox"/> Procedures for requesting a hearing and the nature of that hearing; and</li> <li><input type="checkbox"/> Any other procedures by which the public may participate in the final decision.</li> </ul> | <a href="#">§124.8(b)(6)</a> |
| <input type="checkbox"/> The name and telephone number of a person to contact for additional information.   | <a href="#">§124.8(b)(7)</a> |
| <input type="checkbox"/> <i>For an EPA-issued permit:</i> Appropriate supporting references to the administrative record required by <a href="#">40 CFR 124.9</a> . <sup>12</sup>   | <a href="#">§124.8(b)(4)</a> |
| <input type="checkbox"/> <i>For an EPA-issued permit:</i> If this information is available at the time the fact sheet is being prepared, the requirements of any state certification under <a href="#">40 CFR 124.53</a> , which details the procedures EPA must follow to be consistent with CWA section 401(a)(1). <sup>13</sup>  | <a href="#">§124.56(d)</a>   |

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<sup>1</sup> Acronyms used in the preceding tables:

|                     |   |        |                                    |
|---------------------|---|--------|------------------------------------|
| BAT:                | Best available technology economically achievable | NSCIU: | Non-significant CIU                |
| BCT:                | Best conventional technology                      | NSPS:  | New source performance standard(s) |
| BMP:                | Best management practice                          | POTW:  | Publicly owned treatment works     |
| BOD <sub>5</sub> :  | 5-day biochemical oxygen demand                   | RP:    | Reasonable potential               |
| BPT:                | Best practicable technology                       | SIU:   | Significant industrial user        |
| CBOD <sub>5</sub> : | 5-day carbonaceous biochemical oxygen demand      | TMDL:  | Total maximum daily load           |
| CFR:                | Code of Federal Regulations                       | TSS:   | Total suspended solids             |
| CWA:                | Clean Water Act                                   | WET:   | Whole effluent toxicity            |
| ELG:                | Effluent limitations guideline                    | WLA:   | Wasteload allocation               |
| HAC:                | Highest attainable condition                      | WQBEL: | Water quality-based effluent limit |
| NPDES:              | National Pollutant Discharge Elimination System   | WQS:   | Water quality standard(s)          |

<sup>2</sup> In accordance with [40 CFR 124.10\(d\)\(1\)\(vii\)](#), all public notices must contain “a general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice(s) and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application.” This information might also be helpful in the fact sheet.

<sup>3</sup> Under [40 CFR 122.44\(d\)](#), permits must include conditions more stringent than those based on ELGs where necessary to:

- (1) and (2): Achieve water quality standards or an otherwise-specified level of water quality;
- (3) and (4): Conform to state 401 certification requirements for an EPA-issued permit;
- (5) Incorporate more stringent effluent limits, treatment standards, or other requirements under state or federal law;
- (6) Ensure consistency with a CWA section 208(b) water quality management plan;
- (7) Incorporate ocean discharge criteria under CWA section 403(c);
- (8) Address a “fundamentally different factors” variance;
- (9) Incorporate any other requirements into a new source permit pursuant to the National Environmental Policy Act and CWA section 511 for an EPA-issued permit.

<sup>4</sup> Under [40 CFR 122.44\(e\)\(1\)](#), limits must control all toxic pollutants which are or may be discharged at a level greater than the level which can be achieved by the technology-based requirements appropriate to the permittee through one of the following three methods described in [40 CFR 125.3\(c\)](#): (1) application of EPA-promulgated effluent limits developed under CWA section 304 to dischargers by category or subcategory; (2) setting case-by-case limits; or (3) through a combination of the methods in [40 CFR 125.3\(d\)\(1\)](#) and [\(2\)](#) for BPT and BCT.

<sup>5</sup> Under [40 CFR 122.45\(h\)](#), pollutant limits may be applied to internal waste streams if impractical or infeasible at the point of discharge.

<sup>6</sup> Under [40 CFR 125.3\(h\)](#), the Director may under certain circumstances set levels for conventional and nonconventional pollutants as “indicator” pollutants for achieving BAT.

<sup>7</sup> Under [40 CFR 122.44\(a\)\(2\)](#), the permitting authority may waive sampling requirements for a pollutant subject to a TBEL if the discharger demonstrates that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

<sup>8</sup> Often decisions to include certain requirements lead to a decision to exclude other requirements. It is just as important to document decisions to not include certain permit requirements as it is to keep a record of included items. This is one example.

<sup>9</sup> Under [40 CFR 122.4\(i\)](#), a permit may not be issued to a new source or new discharger proposing to discharge into a water segment which does not meet applicable WQS or is not expected to meet those WQS even after the application of the effluent limitations, and for which the State or interstate agency has performed a pollutant load allocation for the pollutant to be discharged, unless the fact sheet describes how certain conditions are met.

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<sup>10</sup> See also a May 10, 2007 memorandum entitled, “Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits” from James A. Hanlon, Director of the Office of Wastewater Management ([https://www3.epa.gov/npdes/pubs/memo\\_complianceschedules\\_may07.pdf](https://www3.epa.gov/npdes/pubs/memo_complianceschedules_may07.pdf)). That memo states, in part: “In order to grant a compliance schedule in an NPDES permit, the permitting authority has to make a reasonable finding, adequately supported by the administrative record and described in the fact sheet (40 CFR 124.8), that a compliance schedule is ‘appropriate’ and that compliance with the final WQBEL is required ‘as soon as possible.’ See 40 CFR 122.47(a), 122.47(a)(1).”

<sup>11</sup> Under 40 CFR 122.21(j) and (q), the Director may waive certain application requirements if he or she has access to substantially identical information. The Director may also waive requirements for information that is not of material concern to a specific permit, if approved by the Regional Administrator.

<sup>12</sup> Under 40 CFR 124.9(b), the record for EPA-issued draft permits must consist of:

- (1) The application, if required, and any supporting data furnished by the applicant;
  - (2) The draft permit or notice of intent to deny the application or to terminate the permit;
  - (3) The statement of basis (§124.7) or fact sheet (§124.8);
  - (4) All documents cited in the statement of basis or fact sheet; and
  - (5) Other documents contained in the supporting file for the draft permit.
  - (6) For NPDES new source draft permits only, any environmental assessment, environmental impact statement (EIS), finding of no significant impact, or environmental information document and any supplement to an EIS that may have been prepared.
- Although Part 124 does not provide a corresponding requirement for state-issued permits, the EPA recommends that the record for state-issued permits include the same information.

<sup>13</sup> The actual 401 certification might not be in hand at the time the fact sheet is prepared for a draft permit.