



NPDES UPDATES

ACWA – AUGUST 2024

Maui Guidance: Discharges Through Groundwater

- ▶ In November 2023, EPA issued a draft *Maui* guidance for public comment.
- ▶ The draft guidance describes the *Maui* decision's "functional equivalent" analysis and explains the types of information that should be used to determine which discharges through groundwater may require coverage under an NPDES permit.
- ▶ Current Status – The Maui guidance is currently at OMB.
- ▶ The guidance largely restates key elements of the *Maui* decision and information in existing EPA manuals describing how to apply for an NPDES permit.
- ▶ EPA has made modest clarifying revisions to the guidance in response to comments received during the public comment period.

CSO Technical Guidance

- The comment period for the *Draft Guidance for Future NPDES Permitting of Combined Sewer Systems* closed on March 21, 2024.
- EPA has written this Guidance to emphasize:
 - options and flexibilities communities and states have in their continuing efforts to meet the goals of the CWA & how these can be incorporated into future CSO permits,
 - how communities interested in using Integrated Planning to holistically address the remaining water quality issues after completing their CSO projects should coordinate with their state permitting agencies, and
 - highlights how state permitting authorities can explore the suite of permitting flexibilities, such as **variances**, **compliance schedules**, and **temporal use changes** to establish robust permits.

Stormwater Centers of Excellence

Grant Program

On July 9, 2024, EPA announced it would award \$5 million in grants to establish four new Centers of Excellence for Stormwater Control Infrastructure Technologies and a national clearinghouse for new and emerging stormwater control technologies.

The selectees to establish new Centers of Excellence for Stormwater are:

**The University of
New Hampshire**

**The University of
Oklahoma,**

**The Board of
Regents Nevada
System of Higher
Education**

**The Center for
Watershed
Protection, Inc.**

The Center for Watershed Protection will establish the clearing house which will be populated with research, best practices, and outreach from each Center of Excellence.

General Permit Update



Construction General
Permit (CGP)

July, 2025 – Public
notice draft permit
October, 2026 –
Finalize permit



Pesticides General
Permit (PGP)

December, 2023 -
Finalize permit
October 31, 2026 -
effective date



Multi-Sector Industrial
Stormwater General
Permit (MSGP)

December, 2024 –
PN draft permit
December, 2025 –
Finalize permit



Wildfire General
Permit (WGP)

Fall 2024 - Public
Notice
Fall 2025 –
Finalize Permit

General Permits

Wildfire General Permit

- ▶ On May 26, 2023, the U.S. District Court for the District of Montana issued a decision finding that the U.S. Forest Service was violating the CWA by discharging fire retardants into waters of the United States without an NPDES permit.
- ▶ The draft Wildfire General Permit would authorize point source discharges of pollutants from the aerial application of long-term retardants and/or water enhancers.
- ▶ The draft permit reflects existing industry practices and protocols to avoid discharges of aurally applied wildland fire chemicals to waters.
- ▶ EPA has worked with USFS and DOI to better understand existing industry practices and protocols associated with the aerial application of firefighting chemicals.
- ▶ EPA aims to issue the final permit in the Fall of 2025.

General Permits

Pesticide General Permit

- EPA's proposed 2026 PGP was signed on November 8, 2023.
- Once finalized, the 2026 PGP will replace the 2021 PGP when it expires on October 31, 2026, as prescribed in the settlement agreement.
- The settlement agreement requires EPA to issue the 2026 PGP by December 17, 2024.
- The 2026 PGP will be the fourth issuance of the permit.

General Permits

Multi Sector General Permit

- ▶ The current, 2021 MSGP became effective on March 1, 2021, and will expire on February 28, 2026.
- ▶ The MSGP applies to stormwater discharges associated with industrial activities where EPA is the permitting authority.
- ▶ As of April 2024, the 2021 MSGP covers discharges from 1,900 operators.
- ▶ EPA needs to publish the draft permit for public comment by the end of the calendar year to ensure the permit is reissued before expiration.
- ▶ The changes EPA would propose for comment are narrow in scope and focus on:
 - ▶ Clarifying requirements in the permit,
 - ▶ Adapting monitoring requirements in accordance with commitments in previous iterations of the permit; and
 - ▶ Updating requirements to align with agency priorities and directives.
- ▶ EPA does not expect the proposed changes to have a significant cost impact on permittees.

Whole Effluent Toxicity NPDES Permit Writers' Manual



Companion document for
WET Permit Writers' Course



Summarizes recommendation
and requirements for
developing NPDES permit
conditions for WET



<https://www.epa.gov/system/files/documents/2024-06/npdes-wet-permit-writers-manual.pdf>

San Francisco vs. EPA

The question presented is:

Whether the CWA allows EPA (or an authorized state) to impose generic prohibitions in NPDES permits that subject permit holders to enforcement for exceedances of water quality standards without identifying specific limits to which their discharges must conform.

Briefing Schedule

- Department of Justice/EPA brief due: August 26, 2024
- Oral Arguments: October 16, 2024

Adding PFAS to NPDES Permit Applications

- ▶ Form 2A – POTW effluent
- ▶ Form 2C – Industrial facilities
- ▶ Form 2D – New Industrial Facilities prior to commencing discharge
- ▶ Form 2E – Industrial facilities with non-process wastewater
- ▶ Form 2F – Stormwater Associated with Industrial Activity

Adding PFAS to NPDES Permit Applications

Basic framework

- ▶ Analytic method
 - ▶ EPA Method 1633 – measures 40 PFAS compounds
 - ▶ Request comments on method 1621 (adsorbable organic fluoride)
- ▶ Number of samples – follow structure in existing permit applications
 - ▶ Minimum of 3 samples for POTWs
 - ▶ 1 sample for non-POTWs
- ▶ Who samples/reports - follow structure in existing permit applications.

Minor Corrections to NPDES Regulations

Direct final rulemaking
addressing:

- Typos
- Citations
- Inadvertent deletions
- Other (e.g., "Trust Territories" still in definition of State)

Goal: Publish by end of
year

Market-Based Flexibilities Policy

- ▶ September 19, 2019, Federal Register requested comments on potential flexibilities
- ▶ Current draft final addresses:
 - ▶ Incremental water quality trading baseline for NPS where TMDL
 - ▶ Accounting for credit generation in compliance schedules
 - ▶ Incorporating credit generation into WQS variances
- ▶ Draft final at OMB for over a year.

Incremental Baseline for NPS

- ▶ Approach is optional – States can use existing/other approaches.
- ▶ 2008 EPA guidance is barrier/ inconsistent with practice.
- ▶ Timing: Nonpoint sources make progress on meeting their load allocation before they can generate credits.
- ▶ Clarifies that control measures eligible for credit generation are in addition to control measures described in TMDL documents for achieving the load allocation.

Market-Based Rulemaking

- ▶ Objective of Rulemaking
 - ▶ Provide simple, clear regulatory language that clarifies that market-based approaches can be used under the NPDES program to comply with effluent limitations.
 - ▶ Secondary objective: rulemaking is opportunity to clarify the legal basis for market-based approaches under CWA
- ▶ Initiate OMB review of proposed rule this Fall

BPJ TBELs for PFAS

- Recognize 2022 memos
 - Need monitoring data for developing limits
- Clarify analytic methods 1633 and 1621 have been finalized.
- Important to identify facilities with PFAS in discharge
- BMP authority exists
- Basics of BPJ TBEL determination
- Attachments –
 - example permits that provide a case-by-case evaluation consistent with 40 C.F.R. § 125.3(c)(2)
 - Link to other useful references including OST documents.

Fact Sheet Memo

- ▶ Summarizes existing regulatory requirements for fact sheets
 - ▶ 40 CFR 124.8,
 - ▶ 40 CFR 124.56
 - ▶ 40 CFR 122.1(b)(3)
 - ▶ 40 CFR 122.44(d)(1)(v)
 - ▶ 40 CFR 122.44(d)(1)(vi)(C)(2)
 - ▶ 40 CFR 124.8(b)(5)
- ▶ Additional recommendations
 - ▶ Summarize EJ considerations/activities
- ▶ Additional recommendation for EPA-issued permits
 - ▶ Section 401(b)(2) considerations
 - ▶ Summarize tribal consultation

NPDES Training: New Modules

- ▶ Mining
- ▶ Secondary Treatment
- ▶ TMDLs
- ▶ Mixing zones
- ▶ Nutrients online-training
 - ▶ Variances and compliance scheduling
 - ▶ Market-based approaches
 - ▶ Watershed-based permitting
- ▶ WET on-line training
 - ▶ WET data in ICIS
 - ▶ Test of Significant Toxicity Statistical method

Suggestions for 2025 work?