

2016 NPDES Permit Regulation Revisions

General Overview



Summary

- Broad, targeted changes to regulations
- Mostly administrative
- Some that will result in impacts to Missouri municipalities and industries

Proposed Revisions

- Published by US EPA for comment on May 18, 2016, in the Federal Register
- <https://www.federalregister.gov/articles/2016/05/18/2016-11265/national-pollutant-discharge-elimination-system-npdes-applications-and-program-updates>
- Public Comment Period Closed August 2, 2016

Topics for Proposed Revision

- Purpose and Scope (40 CFR 122.1)
- NPDES Program Definitions: Pesticides Applications to WOTUS; Proposed Permit; New Discharger; and WET (40 CFR 122.2)
- Changes to Existing Application Requirements (40 CFR 122.21)
- Antidegradation Reference [40 CFR 122.44(d)]
- Dilution Allowances [40 CFR 122.44(d)]

Topics for Revision

- Reasonable Potential Determinations [40 CFR 122.44(d)]
- Best Management Practices [40 CFR 122.44(k)]
- Antibacksliding [40 CFR 122.44(l)]
- Design Flow for Publicly Owned Treatment Works [40 CFR 122.45(b)]
- Objections to Administratively Continued Permits (40 CFR 123.44)

Topics for Revision

- Public Notice Requirements [40 CFR 124.10(c)]
- Fact Sheet Requirements (40 CFR 124.56)
- Deletion of 40 CFR 125.3(a)(1)(ii)
- Vessels Exclusion [40 CFR 122.3(a)]
- 401 Certification Process [40 CFR 124.55(b)]

Purpose and Scope (40 CFR 122.1)

- Corrections to Contact Information regarding the NPDES program.

NPDES Program Definitions: Pesticides Applications to WOTUS; Proposed Permit; New Discharger; and WET (40 CFR 122.2)

- Pesticide applications to Waters of the US [40 CFR 122.2(a)]
 - Add a definition of “pesticide applications to waters of the US” to mean point source discharges to waters of the US resulting from the application of biological pesticides or chemical pesticides that leave a residue.
 - Clarity and consistency with the 6th Circuit decision.

NPDES Program Definitions: Pesticides Applications to WOTUS; Proposed Permit; New Discharger; and WET (40 CFR 122.2)

- Proposed Permit Definition [40 CFR 122.2(b)]
 - Revise existing definition to include a “state-issued NPDES permit.”
- New Discharger Definition [40 CFR 122.2(c)]
 - Corrects a typographical error regarding NPDES.
- Whole Effluent Toxicity Definition [40 CFR 122.2(d)]
 - Current definition of WET only includes “the aggregate toxic effect of an effluent measured directly by a toxicity test.”
 - Revises the definition of WET to include both acute (lethal) and chronic (lethal and sub-lethal).

Changes to Existing Application Requirements (40 CFR 122.21)

- Minor changes to application requirements
 - Updates contact information to obtain forms
 - Adds North American Industry Classification System (NAICS) codes
- Specific location requirements regarding providing latitude/longitude data to the nearest second including the method of collection
- New dischargers must submit effluent information within 18 months
- 4.5 year data look back on applications

Changes to Existing Application Requirements (40 CFR 122.21)

- POTWs
 - Include information regarding significant industrial users (SIUs) and categorical industrial users (CIUs)
- Cooling water intake structures
- Indicate in the application whether the permittee is seeking a variance

Antidegradation Reference [40 CFR 122.44(d)]

- Include a reference to the state antidegradation requirements contained in 40 CFR 131.12
 - Acknowledges that effluent limits must be protective of the state's water quality standards that include antidegradation

Dilution Allowances [40 CFR 122.44(d)]

- Dilution allowances must comply with WQS (e.g. mixing zones, zones of initial dilution)
- Qualitative assessment only allowed in very specific circumstances
- If background/ambient concentration levels are not available, the WQS must be met at **end of pipe**

Reasonable Potential Determinations [40 CFR 122.44(d)]

- Revision to specify that “reasonable potential determination must consider relevant qualitative or quantitative data, analyses, or other valid data and representative information...”

BMPs, Antibacksliding, and Design Flow

- BMPs (40 CFR 122.44(k)(4))
 - Correction of publication contact information
- Antibacksliding (40 CFR 122.44(l))
 - Incorporate into regulation the Antibacksliding provisions that are currently in the Clean Water Act and not yet included in regulation.
- Design Flow for POTWs (40 CFR 122.45(b))
 - Allows POTWs to use flows other than “design flow” in determining WQBELs (e.g. actual flow).

Objections to Administratively Continued Permits (40 CFR 123.44)

- Revisions to allow USEPA to designate certain administratively continued permit as “proposed permits”
- Proposed permits may be reviewed and objections offered by USEPA
- Proposed permits are considered environmentally significant

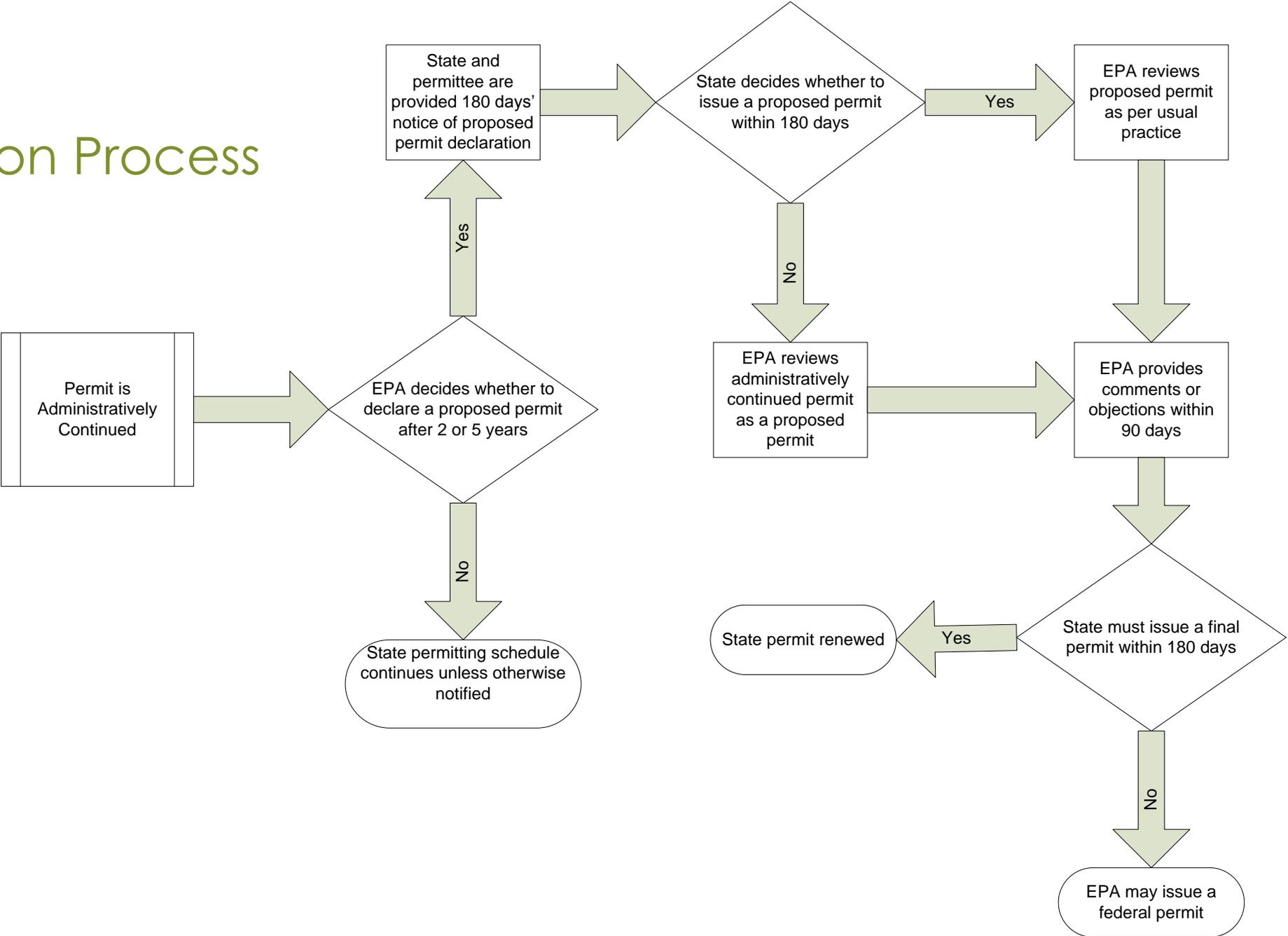
Objection to Administratively Continued Permits

- Creates a mechanism by which EPA can ultimately issue federal permits if they object to administratively continued permits
- EPA expects to use this authority in very limited circumstances
- Consideration given to permits that have been expired for a number of years without state action.
- EPA is open to discussing other ways to reduce permit back log, and requests comments on this provision

Objections to Administratively Continued Permits (40 CFR 123.44)

- New or revised WQS's
- New or revised effluent limit guidelines
- Potentially significant impacts to an impaired or threatened water body
- Potentially significant impacts to a drinking water source
- National program priorities (like CSO's, CAFO's)
- Protection of endangered or threatened species
- Significant changes to a facility's operations, treatment or effluent characteristics
- Public concerns or environmental justice issues

Objection Process



Public Notice Requirements [40 CFR 124.10(c)]

- Allow public notice of permit actions to be accomplished on permitting authority's publicly available web site in lieu of the newspaper publication requirement
- Clarifies the circumstances under which a state may issue a modified 401 certification in connection with an EPA-issued NPDES permit.

Fact Sheet Requirements (40 CFR 124.56)

- Requirements for much more rigorous fact sheets for both individual permits and general permits
- All information should theoretically already be available to the agency as it should already be considered in permit writing
- The detailed fact sheets will increase transparency and require clear documentation of agency decisions
- Proposed requirements:
 - Ambient/background water concentrations, all calculations used to prepare effluent limits or conduct RPA, mixing zones/dilution analysis, rationale for TBELs, BMPs, and antidegradation

Vessels Exclusion [40 CFR 122.3(a)]

- Clarify which vessel discharges are excluded from NPDES permitting requirements
- Clarifies that the statute's NPDES permitting moratorium does not extend to ballast water discharges

Impact

- It is EPA's view that the proposed changes do not impose any significant new burden on permittees or regulators
- Appears most burden will fall to regulators in additional documentation
 - Statutory and Regulatory changes may be needed to state NPDES programs

Comment Period

- Comment period ended August 2, 2016

Thanks & Contact Info

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