

NPDES Permits/Clean Water Act: U.S. Environmental Protection Agency Proposes Regulatory Revisions

Arkansas Environmental, Energy, and Water Law Blog



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The United States Environmental Protection Agency ("EPA") in a May 18th Federal Register Notice proposed revisions to its Clean Water Act National Pollution Discharge Elimination System ("NPDES") regulations. See 81 Fed. Reg. 31344.

Section 301 of the Clean Water Act prohibits the discharge of any pollutants to waters of the United States except in compliance with certain sections of the statute which include Section 402.

Section 402 established the NPDES permit program. NPDES permits consist of either individual or general permits and are utilized to authorize point source discharges of pollutants to waters of the United States.

An NPDES permit must be acquired if five jurisdictional elements are present: (1) a person (2) adds a (3) pollutant (4) to navigable waters (5) from a point source. The prohibition of point source discharges in the absence of an NPDES permit is an obligation separate and distinct from the requirement that the facility discharge comply with applicable effluent limitations.

EPA's proposed revisions to the NPDES permit regulation address 15 topics in the following major categories:

- Permit Applications
- Water Quality-Based Permitting Process
- Permit Objection
- Documentation
- Process Efficiencies
- The Vessels Exclusion
- Section 401 Certification Process

The specific topics addressed include:

- Purpose and Scope
- NPDES Program Definition Including: Pesticide Applications to Waters of the United States, Proposed Permit, New Discharger and Whole Effluent Toxicity Definition
- Changes to Existing Application Requirements
- Antidegradation Reference
- Dissolution Allowances
- Reasonable Potential Determinations From New Discharges
- Best Management Practices
- Anti-Backsliding

- Design Flow for Publicly Owned Treatment Works
- Objection to Administratively Continued Permits
- Public Notice Requirements
- Fact Sheet Requirements
- Deletion of 40 C.F.R. 125.3(a)(1)(ii)
- Vessels Exclusion
- Clean Water Act Section 401 Certification Process

EPA states that the proposed revisions will further align NPDES regulations with statutory requirements from the 1987 amendments to the Clean Water Act and recent case law. The agency also states that modernization of the NPDES regulations will provide NPDES permit writers with improved tools to write well-documented permits. It believes that the revisions will provide the public with enhanced opportunities for public participation in permitting actions.

EPA also notes in regards to the selection of these topics for revision that:

This proposed rule addresses application, permitting, monitoring, and reporting requirements that have become obsolete or outdated due to programmatic and technical changes that have occurred over the past 35 years. These topics were selected from previous NPDES regulatory streamlining efforts, recommendations from EPA Headquarters and Regional offices, and recommendations from state NPDES permitting agencies. With these proposed revisions and requests for public comment, EPA aims to allow easier determination of who is regulated, clarify applicable compliance requirements, and improve transparency by providing permitting authorities of the public with timely and quality access to information on regulated entities' activities.

Arkansas has been authorized for many years to operate the Clean Water Act NPDES program. A substantial portion of the substantive and procedural framework for the Arkansas NPDES permit program is found in Arkansas Pollution Control and Ecology Commission Regulation No. 6. The regulation incorporates by reference the majority of the current federal NPDES regulatory provisions. Consequently, the Arkansas NPDES regulatory provisions usually track to a great extent the federal program. Regardless, the state's operation of the CWA program places it in the position of addressing interpretational questions or making policy decisions that inevitably arise on a periodic basis.

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