

## NPDES Individual Permit

November 30, 2018

### Memo to permit writers RE: Compliance schedule minimum requirements

**To:** NPDES Permit Writers

**From:** Ron Doughten, WQ Permit Program Manager

In 2010, DEQ issued an Internal Management Directive for NPDES compliance schedules, *Compliance Schedules in NPDES Permits* 6/21/10. The IMD discusses regulatory requirements related to compliance schedules, and provides recommendations related to these requirements. In some cases, the IMD introduces additional stringency and requirements that are not required by federal or state regulations. The purpose of this memo is to identify the specific regulatory requirements related to compliance schedules to be addressed during permit development to provide clarity about what is required as opposed to what is a best practice.

At a minimum, permit writers are expected to address each of these regulatory requirements within Schedule C of the NPDES permit, or the permit fact sheet, or both when developing a compliance schedule. Subject-matter experts are available to assist permit writers when developing a compliance schedule. In addition, each new compliance schedule will be evaluated and verified during the QA review process.

#### When are compliance schedules allowed for existing<sup>1</sup> sources?

Federal regulations allow for the use of compliance schedules only under specific circumstances, including:

- When there is a new or more stringent Water Quality Based Effluent Limitation (WQBEL); and
- The discharger cannot comply with the WQBEL on the effective date of the permit.<sup>2</sup>

In addition, DEQ may include a compliance schedule when it has been determined that specific actions can be taken by the permit holder that will achieve compliance with the water quality standard. DEQ may consider no discharge as an alternative action to meeting a more stringent WQBEL.

#### What needs to be included in a compliance schedule?

Under state regulations and federal regulations and guidance, compliance schedules must include the following in Schedule C of an Oregon NPDES permit:

- **Schedule of measurable actions.** The permit must contain an enforceable sequence of actions or operations leading to compliance with a final WQBEL. A compliance schedule may exceed the term of the permit, as long as it is justified that compliance will be achieved as soon as possible.

<sup>1</sup> For new and recommencing dischargers, see IMD.

<sup>2</sup> OAR 340-041-0061(12) Compliance schedules. In a permit issued under OAR 340, division 045 or in a water quality certification under OAR 340, division 48, the department may include compliance schedules for the implementation of effluent limits derived from water quality criteria in this division. A compliance schedule in an NPDES permit is allowed only for water quality based effluent limits that are newly applicable to the permit and must comply with provisions in 40 CFR §122.47 (including the requirement that water quality criteria must be achieved as soon as possible).



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# Water Quality - Permitting



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- **Final effluent limit.** The permit must include the final WQBEL. The final effluent limit is calculated based on other DEQ policies and procedures (e.g. Toxics RPA IMD).
- **Final compliance date.** The permit must identify a specific date by which compliance with the final permit limit(s) will occur.
- **Interim effluent limit, as appropriate.** If an existing, less stringent effluent limit exists for the pollutant, an interim limit equal to the existing limit is required. Otherwise, an interim limit is not required, but one based on current or achievable facility performance may be included.
- **Interim compliance dates, as appropriate.** If a compliance schedule exceeds 1 year from the date of permit issuance, the schedule must include interim requirements and the dates for their achievement (no more than 1 year apart). Interim compliance dates may be developed using best professional judgement in coordination with the DEQ compliance officer and engineer.
- **Notification.** The compliance schedule must require the permittee to notify DEQ within 14 days of each interim date whether not it complied with the interim or final requirement.
- **Reopener.** The permit must include the “Re-opener” language mentioned in section 4.0 of the IMD.
- **Local limit study, as appropriate.** If the compliance schedule is for a pollutant (other than heat) produced by an indirect industrial discharger to a Publically Owned Treatment Works, the requirements to adopt relevant local limits or a pollutant reduction program should be included in the schedule (or otherwise included in the permit) if appropriate.<sup>3</sup>

## What needs to be included in the fact sheet?

The fact sheet needs to include a finding, with supporting information, that the compliance schedule is “appropriate”. This finding should include the following:

- An explanation that the limit addressed by the compliance schedule is a new or more stringent WQBEL.
- An explanation of how it was determined that the effluent limit addressed by the compliance schedule cannot be met upon the effective date of the permit.
- If an interim limit is included in the compliance schedule, an explanation of how the interim limit was derived (e.g., based on existing limit or on what is achievable).
- An explanation of how the compliance schedule will lead to compliance with the WQBEL by the end of the schedule.
- An explanation as to why the date for compliance with the final limit is considered “as soon as possible”.
  - When multiple or alternate pathways of compliance are suggested or recommended, then the longest date for compliance with a final limit should be used until determined as part of the listed interim compliance dates.

## Best practices

Federal regulations do not specify steps or a process for establishing a compliance schedule. However, DEQ needs to consider the unique circumstances of each permit holder when developing a compliance schedule. Section 3.0 of the IMD describes steps for developing a compliance schedule. Overall, establishing a compliance schedule should involve early and regular communication with the permit holder. The permit writer is encourage to follow these best management practices to facilitate quality and relevant information exchange with the permit holder.

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<sup>3</sup> This is not a regulatory requirement, but is from the 6/12/10 settlement agreement (IV.7) and does not apply to compliance schedules for new standards approved on or after July 31, 2010. The settlement agreement “is effective until 2020”.

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- It is recommended that the permit writer receive written acknowledgement that the permit holder understands the need for a compliance schedule. This is not required by rule and may be omitted. Although communication may occur through email or documented phone conversations and will be part of the permit administrative record, it should also be noted in the permit fact sheet.
- Appendix A in the Compliance Schedule IMD contains a checklist to assist the permit writers with establish the need for and terms of a compliance schedule. The permit writer should use the checklist to guide any conversations with the permittee. Permit writers are encouraged, but not required, to use the checklist.

Permit writers should confer with a subject-matter experts with any questions or concerns about developing a compliance schedule.

## Alternative formats

Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).



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