

EPA NPDES WET Program

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Clean Water Act (CWA)



SEC. 101. (a)

The objective of this Act is to restore and maintain the chemical, physical, and *biological integrity* of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act

(2) it is the national goal that wherever attainable, an interim goal of water quality which

provides for the protection and propagation of fish, shellfish, and wildlife

and provides for recreation in and on the water be achieved by July 1, 1983

National Pollutant Discharge Elimination System (NPDES) Whole Effluent Toxicity (WET) Program under the Clean Water Act (CWA)



- NPDES Program Regulations promulgated 1989 (54 FR 23868 June 2, 1989) - includes language that supports whole effluent toxicity (WET) as part of base NPDES Program.
- EPA WET test methods promulgated in 1995 (60 FR 53529, October 16, 1995) - under 40 CFR Part 136 for NPDES and ratified in 2002 (67 FR 69951, December 19, 2002).
- D.C. Circuit Decision, December 10, 2004 - (Edison Electric Inst. v. EPA, 391 F.3d 1267 [D.C. Cir.2004]) - upheld EPA WET test methods– Final Decision

National Pollutant Discharge Elimination System (NPDES) Whole Effluent Toxicity (WET) Program under the Clean Water Act (CWA)



Industrial Dischargers– Application Requirements

- **40 CFR §122.21(g)(11)**- “*Biological toxicity tests.* An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last 3 years on any of the applicant’s discharges or on a receiving water in relation to a discharge.”
- **40 CFR §122.21(g)(13)**- “*Additional Information.* In addition to the information on the application form, applicants shall provide to the Director, at his or her request,...an permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of toxicity.”
- **40 CFR §122.48(b)**- “*All permits shall specify:* Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate continuous monitoring.”

National Pollutant Discharge Elimination System (NPDES) Whole Effluent Toxicity (WET) Program under the Clean Water Act (CWA)



Municipal Dischargers– Application Requirements

40 CFR §122.41(j)(5)(i)-

“Effluent monitoring for whole effluent toxicity.

(i) All applicants must provide an identification of any whole effluent toxicity tests conducted during the four and one-half years prior to the date of the application on any of the applicant’s discharges or on any receiving water near the discharge.”



EPA NPDES Regulations – Reasonable Potential (RP)



40 CFR §122.44(d)(1)(v)-

A discharge that

causes, has the reasonable potential to cause, or contributes to an in-stream excursion

above a narrative criterion within an applicable State water quality standard, the permit must contain effluent limits for whole effluent toxicity.





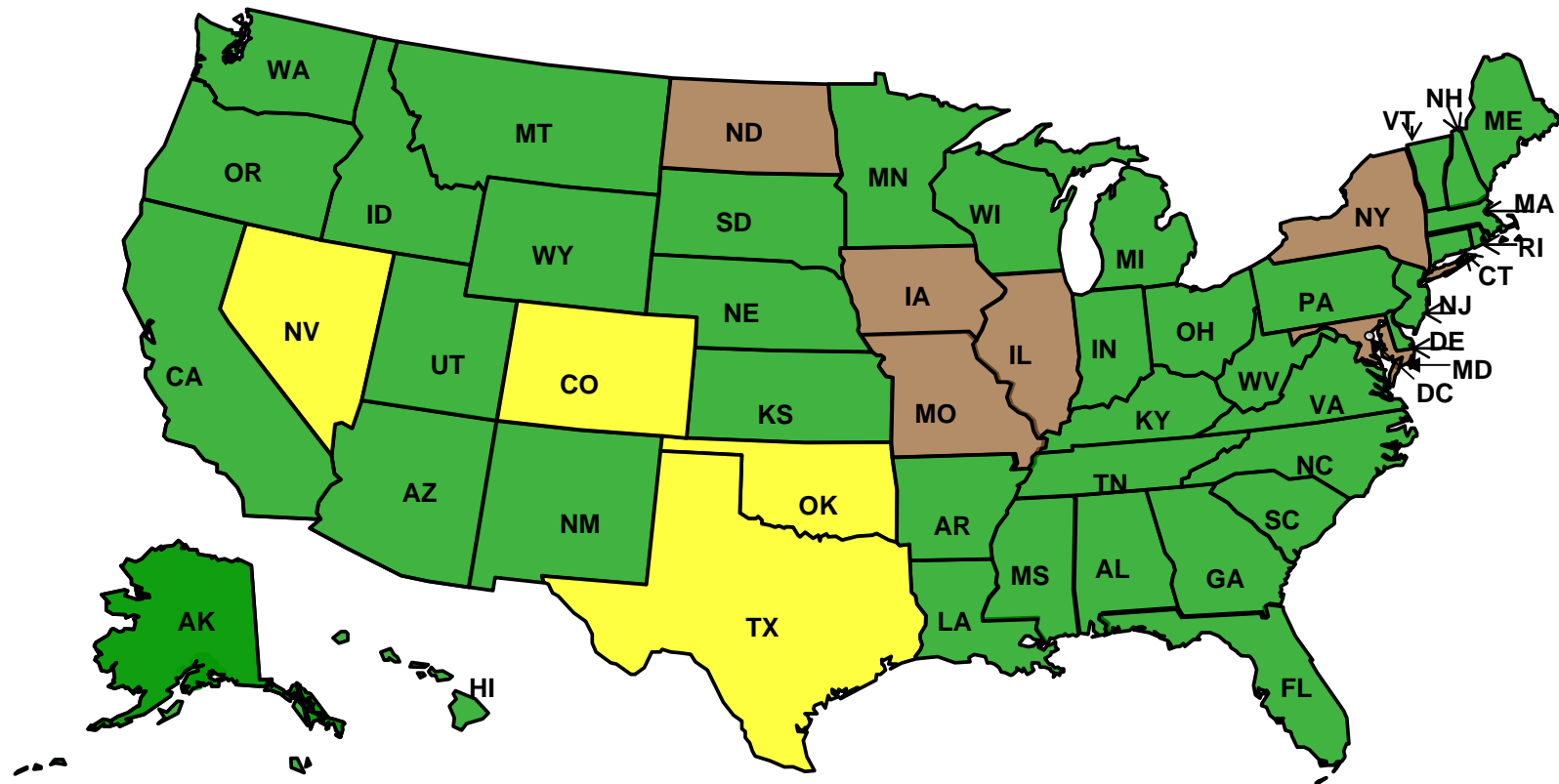
NPDES WET Program Status






Nationally:

- **Four (4) states are currently not fully implementing** their NPDES WET program (reasonable potential (RP) and compliance for acute and chronic sublethal endpoints).
- **Six (6) states have an agreement** with their respective EPA Region and HQ to fully implement WET as part of their base NPDES program by or before December 2009.
- **The rest of the states (majority) are fully implementing** their NPDES WET Program in their state and/or EPA Region.

EPA Regional-State Agreement Status on Addressing NPDES WET Program



-  State Programs Currently Implementing NPDES WET Program
-  States Which Have **Not** Reached an Agreement with EPA Region to Address NPDES WET Program Implementation Issues
-  States Which **Have Reached** an Agreement with EPA Region to Address NPDES WET Program Implementation Issues



NPDES Roles & Responsibilities



EPA OWM:

- Review applications for NPDES authorization (CO-authorized 3/27/75)
- Responsible for NPDES oversight and coordination with EPA Regions on appropriate implementation and compliance of NPDES Program (including WET).
- Provide programmatic and technical support to EPA Regions and states.

Region 8:

- NPDES oversight of NPDES state program and permits.
- Where possible provide programmatic and technical support to the State and/or their permittee through the state.
- Address action items on Colorado's full and appropriate implementation of NPDES WET Program.



NPDES Roles & Responsibilities



Colorado:

- NPDES program implementation and compliance consistent with CO WET water quality standards;
- And State NPDES regulations which are no less stringent than EPA's Federal 1989 NPDES regulations under the CWA.

NPDES Permittee:

- Comply with NPDES permit requirements and conditions in a complete and timely manner.
- Work cooperatively with their NPDES permitting authority and actively report any concerns or new developments at their facility as soon as possible for the best mutual outcomes.



NPDES Permit Quality Review



- ***NPDES Permit Quality Reviews (PQR) have been conducted since 1983*** by EPA's Office of Water to evaluate state NPDES permitting program by reviewing issued NPDES permits and other EPA Regional and state NPDES permit records.
- ***OWM has recently reinvested in the PQR review process*** due to re-emerging concerns about NPDES permit quality and compliance with the Federal NPDES regulations and State water quality standards.
- ***OWM has completed PQRs for about half of its EPA Regions*** and their States and where areas for improvement were identified action items were developed to provide a pathway to resolve the identified concern.



NPDES Permit ~ WET Provisions



NPDES WET Permit Provisions ~

- ***Should* contain discharge representative WET monitoring requirements**
- ***Must* contain a permit condition or cite that requires use of EPA's analytical test methods (2002 WET Test Methods)**
- ***Must* contain WET limit if WET RP has been determined**



NPDES Permit ~ Documentation



- **Basis ~ rationales, provisions, and permit decisions are clear and well documented**
(i.e., monitoring type, frequency, RP, WET limits)
- **Instructions to the permittee ~ are clear and well documented**
(i.e., other permit conditions)



EPA NPDES Resources



EPA OW/OWM web site: www.epa.gov/npdes

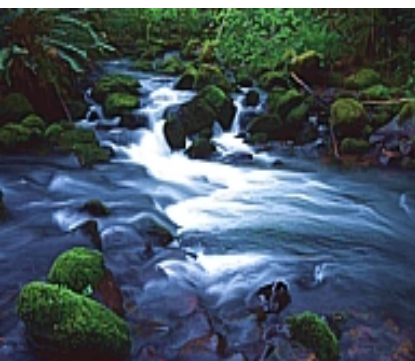
- EPA NPDES guidance, Federal Register notices
- Available EPA NPDES Training Courses
- EPA WET Test Method (2002) Training Videos
- Links to other related EPA web sites
- Contact information for EPA Regions and NPDES States



EPA OW/OST web site:

www.epa.gov/waterscience/WET

- Federal Register notices for EPA WET test methods (2002)
- EPA WET test methods and Fact Sheets
- EPA WET test method guidance
- Links to other related EPA web site

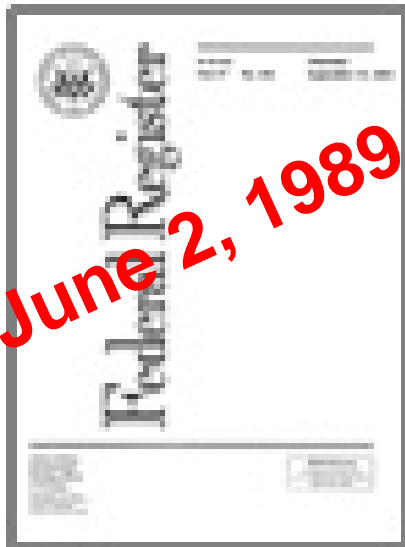


EPA Expectations – Timely Implementation of Regulations



**Colorado NPDES Program Authorized,
March 27, 1975**

EPA NPDES Regulations





Attachment – EPA Resource Lists



Office of Wastewater Management (OWM)– Resources

- 2006 WET Training Video Series – Freshwater Series ([NSCEP - - nscep@bps-lmit.com](mailto:nscep@bps-lmit.com))
- 2004 Draft National NPDES WET Program Implementation Guidance
- 2001 Clarifications Regarding Toxicity Reduction and Identification Evaluations in the NPDES Program
- 2000 Understanding and Accounting for Method Variability in WET Applications Under the NPDES Program
- 1999 Toxicity Reduction Evaluation Guidance For Municipal Wastewater Treatment Plants
- 1994 WET Control Policy
- 1991 Technical Support Document for Water Quality-Based Toxics Control

Office of Science and Technology (OST)- Resources

- 2002 WET Test Methods (40 CFR Part 136)
- 2000 Method Guidance and Recommendations for WET Testing