



Ohio Administrative Code

Rule 901:10-3-10 Standard permit terms and conditions.

Effective: January 30, 2016

(A) The following terms and conditions are applicable to NPDES permits. The owner or operator shall comply with all terms and conditions of the NPDES permit.

(B) Duty to mitigate. The owner or operator shall take all reasonable steps to minimize or prevent any discharge or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment. This permit may be modified, suspended or revoked for cause.

(C) Permit actions. The NPDES permit may be modified, revoked and reissued, or terminated for cause. The filing by the owner or operator of a request for permit modification, suspension, revocation or a notification of planned changes or anticipated noncompliance does not stay or suspend any permit term or condition.

(D) Duty to comply. Any permit noncompliance constitutes a violation of the act and Chapter 903. of the Revised Code and is grounds for an enforcement action; for permit revocation; suspension; modification; or denial of a permit renewal application.

(E) General effluent limitations. Any effluent shall, at all times, comply with Ohio water quality standards.

(F) Duty to reapply. If the permittee wishes to commence a discharge or to continue any activity regulated by the permit after the expiration date of this permit, an application for a permit or renewal of a permit shall be submitted to the director at least one hundred eighty days prior to discharge or the expiration date of the permit.

(G) The permit does not convey any property rights of any sort or any exclusive privilege.

(H) Inspection and entry. The owner or operator shall allow the director or an authorized



representative upon the presentation of proper identification, at reasonable times and in compliance with biosecurity procedures:

- (1) To enter the facility or operation where any records are kept under the terms and conditions of the permit;
 - (2) To have access for review and copying any records that must be kept under the terms and conditions of the permit;
 - (3) To inspect, at reasonable times:
 - (a) Equipment (including any monitoring and control equipment) or methods;
 - (b) Any manure storage or treatment facility;
 - (c) Practices required or regulated under the permit; and
 - (4) To sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the act, any substances or parameters at any location.
- (I) Duty to provide information. The owner or operator shall furnish to the department within a reasonable time any information that the department may request to determine whether cause exists for modifying, revoking, and reissuing or terminating the permit or to determine compliance with the permit. The owner or operator shall also furnish to the department, upon request, copies of records required by this permit to be kept.
- (J) Monitoring and records.
- (1) Samples and measurements taken including, but not limited to, samples and measurements of manure, soils, process wastewater and process generated water for the purpose of monitoring shall be representative of the monitored activity.
 - (2) The owner or operator shall retain records of all monitoring information, including all calibration



and maintenance records and, if applicable, original strip chart recordings or continuous monitoring instrumentation. Copies of reports required by this permit and records of data used to complete the application for this permit shall be retained for a period of at least five years from the date of this permit, the sample, measurement, report or application. This period may be extended by request of the department at any time.

(3) Records of monitoring information shall include:

(a) The date, exact place and time of sampling or measurements;

(b) The individual(s) who performed the sampling or measurements;

(c) The date(s) analyses were performed;

(d) The analytical techniques or methods used; and

(e) The results of such analyses.

(K) Monitoring must be conducted according to rules 901:10-2-10 and 901:10-2-13 of the Administrative Code and according to test procedures approved under 40 C.F.R. part 136 (2012), unless other test procedures have been specified in the permit and approved by the regional administrator. Monitoring must be conducted in accordance with any water quality analytical procedures approved by the department. The owner or operator shall maintain equipment or lease the equipment or otherwise obtain access to equipment to ensure accurate measurements.

(L) Additional requirements for recording and reporting monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once per year. All permits shall specify:

(1) Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(2) Required monitoring including type, intervals and frequency sufficient to yield data which are



representative of the monitoring activity including, when appropriate, continuous monitoring; and

(3) Applicable reporting requirements based upon the impact of the regulated activity.

(M) Signatures. All permit applications and reports required by the permit and other information submitted to the director shall be signed and certified as follows:

(1) All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(ii) The manager of one or more production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; or

(b) For a partnership or sole proprietorship: by a general partner for a partnership or the proprietor, respectively.

(2) All reports required by permits and other information requested by the director shall be signed by the person described above or a duly authorized representative of that person. A person is a duly authorized representative of the person described above only if:

(a) The authorization is made in writing by the person described above;



(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility such as the position of manager, or a position of equivalent responsibility; (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,

(c) The written authorization is submitted to the director.

(d) Changes to authorization. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying this rule must be submitted prior to or together with any reports, information, or applications to be signed by an authorized representative..

(3) Certification. Any person signing a document under this rule shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

(N) Need to halt or reduce activity is not a defense. It shall not be a defense for an owner or operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(O) Proper operation and maintenance. The owner or operator shall at all times properly operate and maintain all facilities (and related appurtenances) which are installed or used by the owner or operator to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.



(P) Emergency notification. In an emergency, the owner or operator shall follow the facility's emergency response plan, which shall include, at a minimum, the following:

(1) The names and telephone numbers of persons who are identified by the owner or operator as responsible for implementing the plan;

(2) Areas of the facility where potential spills can occur and their accompanying surface and subsurface drainage points; and

(3) Procedures to be followed in the event of a spill, including actual or imminent discharge to waters of the state. These procedures shall include:

(a) The owner or operator shall report a spill or discharge by telephone to the department as soon as possible, but in no case more than twenty-four hours following first knowledge of the occurrence and shall provide the following information:

(i) The time at which the discharge or spillage occurred, if known, was discovered;

(ii) The approximate amount and the characteristics of the discharge or spillage;

(iii) The waters of the state affected by the discharge or spillage;

(iv) The circumstances which created the discharge or spillage;

(v) The names and telephone numbers of persons who have knowledge of these circumstances;

(vi) Those steps being taken to clean up the discharge or spillage;

(vii) The names and telephone numbers of the persons responsible for the cleanup.

(b) For any emergency that requires immediate reporting after normal business hours, the owner or operator shall use the Ohio department of agriculture's emergency telephone number.



(c) If applicable, the owner or operator shall notify appropriate local authorities.

(d) The owner or operator shall also file a written report of the occurrence in letter form within five days following first knowledge of the occurrence, unless waived, in writing, by the department. On a case-by-case basis, the director may waive the written report if an oral report of a spill was received within twenty-four hours of the incident. This report shall outline the actions taken, proposed to be taken to correct the problem and to ensure that the problem does not recur.

(Q) Twenty-four hour reporting. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. A written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance. On a case-by-case basis the director may waive the written report if an oral report of a spill was received within twenty-four hours of the incident.

The following shall be included as information which must be reported within twenty-four hours:

(1) Any unanticipated bypass that exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and

(3) Violations of a maximum daily discharge limitation for any of the pollutants listed by the director in the permit to be reported within twenty-four hours. The director may waive the written report on a case-by-case basis for reports if the oral report has been received within twenty-four hours.

(R) Compliance schedules.

(1) The director shall establish conditions, as required and appropriate on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the act and regulations. These shall include conditions under 40 CFR sections 122.44 (1983), 122.46 (1995), 122.47 (2000), 122.48



(1985) and 40 CFR Part 132 (2011). In particular, when appropriate, the director may include in a permit a schedule of compliance leading to compliance with the CWA and its implementing regulations consistent with the requirements and conditions in 40 C.F.R. 122.47 (2000) which establish compliance schedules and authority to set interim compliance dates.

(2) Reports of compliance or noncompliance with, or any progress reports on, any compliance schedule of the permit shall be submitted fourteen days after each schedule date.

(S) Anticipated noncompliance. The owner or operator shall give advance notice to the director of any planned changes at the facility that may result in noncompliance with permit requirements.

(T) Bypass means the intentional diversion of manure from any portion of the treatment facility.

(1) Bypass not exceeding limitations. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded but only if it also is for essential maintenance to assure efficient operation.

(2) If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass.

(3) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (Q) of this rule.

(4) Bypasses are prohibited and the director may take enforcement action unless:

(a) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to be inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of manure, or maintenance during normal periods of equipment downtime. This condition



will not be satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass; and

(c) The owner or operator submitted notices as required by paragraph (P) of this rule; and

(d) The director may approve an anticipated bypass after considering its adverse effects if the director determines that the bypass will meet the conditions listed in this rule.

(U) Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

(1) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based effluent limitations if the requirement of paragraph (U)(2) of this rule is met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is a final administrative action subject to judicial review.

(2) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating records, or other relevant evidence that:

(a) An upset occurred and the permittee can identify the cause of the upset;

(b) The permitted operation was at the time being properly operated;

(c) The permittee submitted notice of the upset as required in paragraph (Q) of this rule; and

(d) The permittee complied with any compliance measures required under paragraph (B) of this rule.

(3) In any proceeding to enforce the NPDES permit the owner or operator seeking to establish the



occurrence of an upset has the burden of proof.

(V) Planned changes. The owner or operator shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 C.F.R. section 122.29(b)(2000); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit.

(W) Other noncompliance. The owner or operator shall report all instances of noncompliance not reported under paragraphs (Q) and (R) of this rule at the time monitoring reports are submitted. These reports shall contain the information listed in paragraph (Q) of this rule.

(X) Other information. Where the owner or operator becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the director, it shall promptly submit such facts or information.

(Y) Reporting obligations.

(1) Annual reports and information required to be submitted by the permit or by the rules may be submitted in hard copy format in the a report form pre-printed by the Ohio department of agriculture or an approved facsimile. The original report form must be signed and mailed to: "Ohio Department of Agriculture, Livestock Environmental Permitting Program, 8995 East Main Street, Reynoldsburg, Ohio 43068."

(2) Alternatively, annual reports and information may be submitted electronically using the Ohio department of agriculture developed software, based on a memorandum in agreement signed by a responsible corporate officer, general partner, proprietor or a duly authorized representative of the owner or operator (see paragraph (M) of rule 901:10-3-10 of the Administrative Code) and submitted



to the Ohio department of agriculture to receive an authorized personal identification number (pin) prior to sending data electronically. A hard copy of the Ohio department of agriculture form must be generated, signed and maintained on site for records retention purposes.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the director in the permit.

(Z) Other obligations which may apply.

(1) Outfalls and discharge points. All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted operation unless the director determines that effluent limitations are infeasible and the best management practices shall be utilized.

(2) Continuous discharges. For any continuous discharges, all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for any utilized publicly owned treatment works.

(3) Non-continuous discharges. Discharges which are not continuous shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency (for example, a batch discharge shall not occur more than once every three weeks);

(b) Total mass (for example, not to exceed one hundred kilograms of zinc and two hundred kilograms of chromium per batch discharge);

(c) Maximum rate discharge of pollutants during the discharge (for example, not to exceed two



kilograms of zinc per minute); and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than two hundred and fifty grams (1/4 kilogram) of zinc in any discharge).