

United States Environmental Protection Agency

National Pollutant Discharge Elimination System (NPDES) Permit Writers' Manual

This guidance was developed by staff within the U.S. Environmental Protection Agency's (EPA's) Office of Wastewater Management and addresses development of wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES). NPDES permit development is governed by existing requirements of the Clean Water Act (CWA) and the EPA NPDES implementing regulations. CWA provisions and regulations contain legally binding requirements. This document does not substitute for those provisions or regulations. Recommendations in this guidance are not binding; the permitting authority may consider other approaches consistent with the CWA and EPA regulations. When EPA makes a permitting decision, it will make each decision on a case-by-case basis and will be guided by the applicable requirements of the CWA and implementing regulations, taking into account comments and information presented at that time by interested persons regarding the appropriateness of applying these recommendations to the situation. This guidance incorporates, and does not modify, existing EPA policy and guidance on developing NPDES permits. EPA may change this guidance in the future.

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- New information (other than revised regulations, guidance, or test methods) is available that was not available at the time of permit issuance and that would have justified a less stringent effluent limitation. If the effluent limitation was based on water quality standards, any changes must result in a decrease in pollutants discharged.
- Technical mistakes or mistaken interpretations of the law were made in issuing the permit under CWA section 402(a)(1)(b).
- Good cause exists because of events beyond the permittee's control (e.g., natural disasters) and for which there is no reasonably available remedy.
- The permit has been modified under CWA sections 301(c), 301(g), 301(h), 310(i), 301(k), 301(n), or 316(a).
- The permittee has installed and properly operated and maintained required treatment facilities but still has been unable to meet the effluent limitations (relaxation may be allowed only to the treatment levels actually achieved).

7.2.1.3 Exceptions for Limitations Based on State Standards

EPA has consistently interpreted CWA section 402(o)(1) to allow relaxation of WQBELs and effluent limitations based on state standards if the relaxation is consistent with the provisions of CWA section 303(d)(4) or if one of the exceptions in CWA section 402(o)(2) is met. The two provisions constitute independent exceptions to the prohibition against relaxation of effluent limitations. If either is met, relaxation is permissible.

CWA section 303(d)(4) has two parts: paragraph (A), which applies to *nonattainment waters*, and paragraph (B), which applies to *attainment waters*.

- **Nonattainment water:** CWA section 303(d)(4)(A) allows the establishment of a less stringent effluent limitation when the receiving water has been identified as not meeting applicable water quality standards (i.e., a *nonattainment water*) if the permittee meets two conditions. First, the existing effluent limitation must have been based on a total maximum daily load (TMDL) or other wasteload allocation (WLA) established under CWA section 303. Second, relaxation of the effluent limitation is only allowed if attainment of water quality standards will be ensured or the designated use not being attained is removed in accordance with the water quality standards regulations. This subsection does not provide an exception for establishing less stringent limitations where the original limitation was based on state permitting standards (e.g., state treatment standards) and was not based on a TMDL or WLA.
- **Attainment water:** CWA section 303(d)(4)(B) applies to waters where the water quality equals or exceeds levels necessary to protect the designated use, or to otherwise meet applicable water quality standards (i.e., an *attainment water*). Under CWA section 303(d)(4)(B), a limitation based on a TMDL, WLA, other water quality standard, or any other permitting standard may only be relaxed where the action is consistent with state's antidegradation policy.

Although the statute also identifies six exceptions in section 402(o)(2) where effluent limitations otherwise subject to the prohibition in section 402(o)(1) may be relaxed, the exceptions for technical mistakes or mistaken interpretations and permit modification, which are described above, would not apply to WQBELs.