

§ 122.4 Prohibitions (applicable to State NPDES programs, see §123.25).

No permit may be issued:

- (a) When the conditions of the permit do not provide for compliance with the applicable requirements of CWA, or regulations promulgated under CWA;
- (b) When the applicant is required to obtain a State or other appropriate certification under section 401 of CWA and §124.53 and that certification has not been obtained or waived;
- (c) By the State Director where the Regional Administrator has objected to issuance of the permit under §123.44;
- (d) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States;
- (e) When, in the judgment of the Secretary, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;
- (f) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
- (g) For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of CWA;
- (h) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:
 - (1) Before the promulgation of guidelines under section 403(c) of CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the Director determines permit issuance to be in the public interest; or
 - (2) After promulgation of guidelines under section 403(c) of CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.
- (i) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:
 - (1) There are sufficient remaining pollutant load allocations to allow for the discharge; and
 - (2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Director may waive the

submission of information by the new source or new discharger required by paragraph (i) of this section if the Director determines that the Director already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph (i)(2) is to be included in the fact sheet to the permit under §124.56(b)(1) of this chapter.

40 CFR 122.2 Definitions (selected)

“Discharge” when used without qualification means the “discharge of a pollutant.”

“Discharge of a pollutant” means:

(a) Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,” or

(b) Any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any “indirect discharger.”

“Facility or activity” means any NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

“Indirect discharger” means a nondomestic discharger introducing “pollutants” to a “publicly owned treatment works.”

“New discharger” means any building, structure, facility, or installation:

(a) From which there is or may be a “discharge of pollutants;”

(b) That did not commence the “discharge of pollutants” at a particular “site” prior to August 13, 1979;

(c) Which is not a “new source;” and

(d) Which has never received a finally effective NPDES permit for discharges at that “site.”

This definition includes an “indirect discharger” which commences discharging into “waters of the United States” after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a “site” for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a “site” under EPA’s permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122(a) (1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

"New source" means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

"Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.