

Water Quality Standards Rule Making Implementation Tool - Compliance Schedules

November 6, 2013

Definition

A compliance schedule is an enforceable tool used as part of a permit, order, or directive to achieve compliance with applicable effluent standards and limitations, water quality standards, or other legally applicable requirements. Compliance schedules include a sequence of interim requirements such as actions, operations, or milestone events to achieve the stated goals. Compliance schedules are a broadly used tool for achieving state and federal regulations; compliance schedules under the Clean Water Act are defined federally at CWA 502(17) and 40 CFR Section 122.2. At the State level, a general allowance for compliance schedules in the water quality standards is defined at WAC 173-210A-510(4). (See Attachment 1.)

The use and limitations of compliance schedules for NPDES permits in Washington are described at WAC 173-220-140. (See Attachment 2.) For purposes of water quality standards, compliance schedules may be used only where there is a finding that a permittee cannot immediately comply with a new, or newly revised, water-quality based effluent limit (WQBEL). Compliance schedules lasting longer than one year must include interim milestones, along with dates for their achievement, with no more than one year between dates. Interim milestones might relate, for example, to purchase and installation of new equipment, modification of existing facilities, construction of new facilities, and/or development of new programs. Compliance schedules also must include specific numeric or narrative effluent limits that will be met during the compliance schedule period.

Compliance schedules must require a permittee to meet the applicable WQBEL “as soon as possible.” The determination of what constitutes “as soon as possible” is made on a permit-by-permit basis considering the specific steps a permittee must take to achieve compliance. Current Washington State regulations limit compliance schedules to no more than ten years; however, Ecology has been directed by the Legislature to extend the maximum length of compliance schedules to more than 10 years when a compliance schedule is appropriate, the base requirements for compliance schedules are met (i.e., compliance “as soon as possible”), and a permittee is not able to meet its TMDL waste load allocations only by controlling and treating its own effluent. The department is currently considering a 20-year time frame for the changes required by the Legislature. The legislative direction is in Attachment 3.

Experience in Other States

Oregon

Oregon describes the use of compliance schedules in OAR 340-041-0061¹. This language concludes that ODEQ “may include compliance schedules for the implementation of effluent limits derived from water quality criteria . . . 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).”

Idaho

Idaho compliance schedules are authorized in IDAPA 58.01.02.350(02) and 400(03)²: “Discharge permits for point sources may incorporate compliance schedules which allow a discharger to phase in, over time, compliance with water quality-based effluent limitations when new limitations are in the permit for the first time.” NPDES permits in Idaho can include compliance schedules longer than the typical five-year limit to correspond to a NPDES permit. Examples include:

- The town of Smelterville wastewater treatment plant draft permit includes a compliance schedule of “twenty years plus five months” for dissolved metals. Smelterville is located within the Bunker Hill Mining and Metallurgical Complex Superfund Site which has a current clean-up schedule of thirty years. This schedule, along with the need for additional data collection to determine the source of continued elevated metal levels in the new treatment plant effluent were part of the justification for the twenty year compliance schedule³. EPA has approved this schedule as meeting the “as soon as possible” requirement.
- Hayden Area Regional Sewer Board Wastewater Treatment Plant draft permit includes a compliance schedule of ten years for phosphorus and carbonaceous biochemical oxygen demand (CBOD5). The treatment plant is currently undergoing upgrades that will allow them to meet water quality standards in the future. The proposed compliance schedule takes into account the time to implement these upgrades⁴ and has been approved by EPA to meet the “as soon as possible” requirement.

California

Compliance schedules are developed by the individual Regional Water Quality Control Boards and are available only to existing dischargers. They are not allowed for new dischargers. Compliance timeframes must not exceed up to 5 years from the permit issue date, reissue, or modification.

¹ Available online at: http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_041.html

² Available online at: <http://adminrules.idaho.gov/rules/current/58/0102.pdf>

³ Idaho DEQ Final §401 Water Quality Certification for the NPDES Permit No. ID0020117 for the Smelterville Wastewater Treatment Plant. July 15, 2013. Available online at: http://www.epa.gov/region10/pdf/permits/npdes/id/smelterville_id0020117_s401_071513.pdf

⁴ Revised EPA Fact Sheet for NPDES Permit #ID-0026590 for public comment August 2013. Available online at: http://www.epa.gov/region10/pdf/permits/npdes/id/HARSB_FS.pdf

Additional time periods are provided for situations where a TMDL does not exist. If the final compliance date extends beyond the permit term, the final compliance date and supporting explanation must be included in the permit findings.

Florida

Florida adopted a regulation authorizing compliance schedules, FAC 62–620.620(6).⁵ Schedules are required to meet compliance as soon as “sound engineering practices allow, but not later than any applicable statues or rule deadline”.

Great Lakes

The final water quality guidance for the Great Lakes System⁶ includes a procedure that allows Great Lakes States and Tribes to include schedules of compliance in permits for existing Great Lakes dischargers for effluent limitations based on new water quality criteria and certain other requirements. Generally, compliance schedules may provide for up to five years to comply with the effluent limitation in question and, in specified cases, may allow the compliance schedule to go beyond the term of the NPDES permit. The regulations do not allow compliance schedules for new permits issued after March 23, 1997; these permittees must comply with a water quality-based effluent limitation upon commencement of the discharge. For existing permittees that are reissued or modified after March 1997, and therefore contain a more stringent effluent limitation, compliance schedules of up to five years are allowed.

Ecology’s Preliminary Decision for Rule-making

At this time Ecology is considering three options for revising current rule language for compliance schedules at WAC 173-201A-510(4):

- Option 1 – Delete the 10 year time limit on compliance schedules and deal with on a case specific basis.
- Option 2 – Add language to allow 20 year compliance schedule for facilities where there has been a TMDL to address a specific pollutant (directed by 2010 legislation).
- Option 3 - Add language to provide 20 year compliance schedule for areas that do not have a TMDL (goes beyond 2010 legislative language).

Additional Information

- Hanlon, Jim. U.S. EPA Office of Wastewater Management. 2007, May 10. Memorandum to Alexis Stauss, Director of Water Division EPA Region 9, on “Compliance Schedules for Water Quality-Based Effluent Limitations on NPDES Permits.” Available at: <http://water.epa.gov/lawsregs/guidance/wetlands/upload/signed-hanlon-memo.pdf>

⁵ Available online at: <https://www.flrules.org/gateway/RuleNo.asp?ID=62-620.620>

⁶ Federal Register: March 23, 1995 (Volume 60, Number 56), Rules and Regulations. Pages 15365 -15425. Available online at: <http://www.epa.gov/owow/tmdl/glsprohibit.pdf>

- EPA Water Quality Standards Academy - Basic Course Module 5: Compliance Schedules – Discharger Grace Periods:
<http://water.epa.gov/learn/training/standardsacademy/mod5/page12.cfm>
- WA Dept. of Ecology Supplemental Material from Policy Forum #3 (Feb. 8, 2013) - Application of variances and compliance schedules to existing, new, and expanding dischargers/discharges:
<http://www.ecy.wa.gov/programs/wq/swqs/SupMaterialVariancesComplianceSched.pdf>
- WA RCW 90.48.605 - Amending state water quality standards — Compliance schedules in excess of ten years authorized. Available online:
<http://apps.leg.wa.gov/rcw/default.aspx?cite=90.48.605>

Attachment 1

WAC 173-210A-510(4)

(4) General allowance for compliance schedules.

(a) Permits, orders, and directives of the department for existing discharges may include a schedule for achieving compliance with water quality criteria contained in this chapter. Such schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits in the shortest practicable time. Decisions regarding whether to issue schedules of compliance will be made on a case-by-case basis by the department. Schedules of compliance may not be issued for new discharges. Schedules of compliance may be issued to allow for: (i) Construction of necessary treatment capability; (ii) implementation of necessary best management practices; (iii) implementation of additional storm water best management practices for discharges determined not to meet water quality criteria following implementation of an initial set of best management practices; (iv) completion of necessary water quality studies; or (v) resolution of a pending water quality standards' issue through rule-making action.

(b) For the period of time during which compliance with water quality criteria is deferred, interim effluent limitations shall be formally established, based on the best professional judgment of the department. Interim effluent limitations may be numeric or nonnumeric (e.g., construction of necessary facilities by a specified date as contained in an ecology order or permit).

(c) Prior to establishing a schedule of compliance, the department shall require the discharger to evaluate the possibility of achieving water quality criteria via nonconstruction changes (e.g., facility operation, pollution prevention). Schedules of compliance may in no case exceed ten years, and shall generally not exceed the term of any permit.

Attachment 2

WAC 173-220-140

Schedules of compliance.

(1) The department shall establish schedules and permit conditions as follows to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements:

(a) With respect to any discharge which is found not to be in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in WAC 173-220-130, the permittee shall be required to take specific steps to achieve compliance with the following:

Any legally applicable schedule of compliance contained in:

(i) Section 301 of FWPCA;

(ii) Applicable effluent standards and limitations;

(iii) Water quality standards; and

(iv) Applicable requirements listed in WAC 173-220-130, 173-220-150, and 173-220-210;

(b) Schedules of compliance, shall set forth the shortest, reasonable period of time, to achieve the specified requirements, such period to be consistent with the guidelines and requirements of the FWPCA.

(2) In any case where the period of time for compliance specified in subsection (1)(a) of this section exceeds one year, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; however, in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as construction of a treatment facility) is more than one year and is not readily divided into stages of completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement.

(3) Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the department with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(4) On the last day of the months of February, May, August, and November, the department shall transmit to the regional administrator a list of all instances in the previous ninety days of failure or refusal of a major permittee to comply with an interim or final requirement. Such list shall be available to the public for inspection and copying and shall contain at least the following information on each instance of noncompliance:

- (a) Name and address of each noncomplying permittee;
 - (b) A short description of each instance of noncompliance (e.g., failure to submit preliminary plans, delay in commencement of construction of treatment facility, failure to notify department of compliance with an interim requirement, etc.)
 - (c) A short description of any actions or proposed actions by the permittee or the department to comply or enforce compliance with the interim or final requirement; and
 - (d) Any details which explain or mitigate an instance of noncompliance with an interim or final requirement.
- (5) If a permittee fails or refuses to comply with an interim or final requirement in a permit, such noncompliance shall constitute a violation of the permit for which the department may modify or revoke the permit or take direct enforcement action.

[Statutory Authority: RCW 90.54.020 and chapter 90.48 RCW. WSR 88-22-059 (Order 88-9), § 173-220-140, filed 11/1/88. Statutory Authority: RCW 90.48.035 and 90.48.260. WSR 82-24-078 (Order DE 82-39), § 173-220-140, filed 12/1/82; Order DE 74-1, § 173-220-140, filed 2/15/74.]

Attachment 3

RCW 90.48.605: The department shall amend the state water quality standards to authorize compliance schedules in excess of ten years for discharge permits issued under this chapter that implement allocations contained in a total maximum daily load under certain circumstances. Any such amendment must be submitted to the United States environmental protection agency under the clean water act. Compliance schedules for the permits may exceed ten years if the department determines that:

- (1) The permittee is meeting its requirements under the total maximum daily load as soon as possible;
- (2) The actions proposed in the compliance schedule are sufficient to achieve water quality standards as soon as possible;
- (3) A compliance schedule is appropriate; and
- (4) The permittee is not able to meet its waste load allocation solely by controlling and treating its own effluent.

[2009 c 457 § 1.]