

Permitting an End to Pollution

how to scrutinize and
strengthen water pollution
permits in your state

A handbook by:
Robert Moore | Prairie Rivers Network
Merritt Frey | Clean Water Network
Gayle Killam | River Network

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Project Staff

Art Direction and Design

Tanyia Johnson

Greer Graphics Inc.

Production Coordinator

Gabriela Stocks

Front Cover Photo

John Marshall

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River Network

520 SW Sixth Avenue, Suite 1130

Portland, OR 97204-1511

tel: (503) 241-3506

fax: (503) 241-9256

E-mail: info@rivernetwork.org

www.rivernetwork.org

Prairie Rivers Network

809 South Fifth Street

Champaign, IL 61820

tel: (217) 344-2371

fax: (217) 344-2381

E-mail: info@prairierivers.org

www.prairierivers.org

Clean Water Network

1200 New York Ave., N.W., #400

Washington D.C. 20005

tel: (202) 289-2395

fax: (202) 289-1060

E-mail: cleanwaternt@igc.org

www.cwn.org

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Introduction



This guide is designed to help citizens influence the issuance of water pollution permits, known as National Pollutant Discharge Elimination System (NPDES) permits. Chapter 1 walks you through the basics of permitting. Chapter 2 teaches you how to dig into the meat of a permit and analyze its strengths and weaknesses. Chapter 3 provides guidance on writing up and submitting your findings to the state agency. Chapter 4 explains how your permit work relates to other protections in the Clean Water Act.

Please note that a glossary of terms is included in Appendix A. Words and phrases included in the glossary are underlined when they first appear in the body of the handbook.

Additional resources and materials that accompany this guide are available at www.cwn.org.

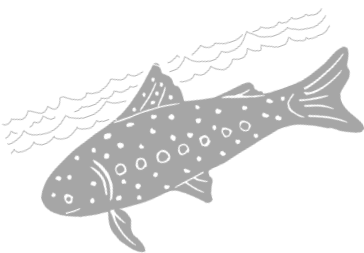
Quick Start Permit Action List

Don't let this overwhelm you. Even if you just take a few steps, you will discover a lot about the proposed permit and your power to influence it. For your first attempt at permit review, start with the basic steps outlined here and you'll be on your way!



Identify a permit that concerns you.

You may have heard about plans for a new sewage treatment plant in your neighborhood. You may be concerned about your favorite fishing stream and wondering about that factory pipe you pass on each fishing trip. Whatever has provoked your interest, take the first step by simply contacting the state agency (*see Appendix B for contact information*) to see which permits relate to your concerns. For a general timeline of the permitting process, see page 50.



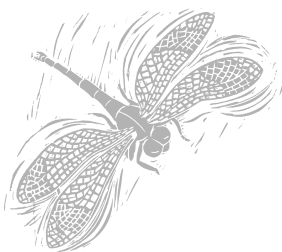
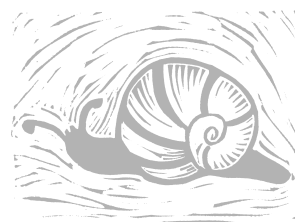
Request information!

Ask the state agency for the pertinent permit(s). And remember: There's more than just the permit and the fact sheet! We suggest requesting the old permit (if applicable), the permit application and the antidegradation analysis at minimum. You may also request stream surveys, other water quality data, the reasonable potential analysis and any engineer's notes. *See Section 3.1 for a list of documents to request.*



Is the waterbody already impaired by water pollution?

Check your state's 303(d) impaired waters list to find out if the waterbody is impaired. If it is, no more of the problem pollutant can be discharged. This requirement applies to both new and existing, but increasing, discharges. *See Section 2.2 for more.*



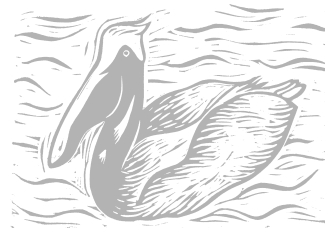
Do the effluent limits protect the waterbody?

Effluent limitations are the heart of the permit. These specify the maximum amount of pollution a discharger can release over a given period of time. Are the limits set for the right pollutants? Are the limits set at levels that will protect water quality? Are there special issues in the river or lake that should be considered in the limits? *See Section 2.2 for more.*

Quick Start Permit Action List, *cont.*

Did the agency consider cumulative impacts?

Federal regulations state that no NPDES permit may be issued “when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States.” Will the permit conditions cause or contribute to a violation of water quality standards? Are there other dischargers in the area that release the same pollutants? Are there increases in load limits for toxic chemicals and metals, which may be bioaccumulative? See *Section 2.2 for more.*



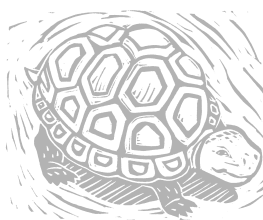
Does the permit allow backsliding?

Increasing the permit’s effluent limits is known as *backsliding*. Backsliding is generally illegal under the Clean Water Act, but there are circumstances where it may be allowed by law. Always investigate backsliding and challenge it wherever possible. See *Section 2.2 for more.*



Is the required monitoring adequate?

Monitoring of the discharge is a crucial accountability measure in any permit. Consider sample frequency, the types of samples required, the critical times for monitoring, reporting requirements and look for monitoring of receiving waters. See *Section 2.2 for more.*

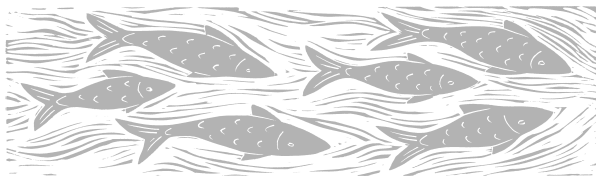


Is the river or lake protected against degradation?

Every state must have an **antidegradation** policy to keep clean waters clean. Not only should this policy keep waters from violating water quality standards, it should also ensure that high-quality streams — those waters with water quality and habitat good enough to fully support healthy aquatic communities and recreation — stay that way. When any new or increased discharges are proposed, a review of (a) alternatives, (b) the need for the discharge and (c) the social and economic justification for the discharge must be conducted. See *Section 2.4 for more.*

What’s the compliance (or non-compliance) history of this discharger?

Always look at a discharger’s track record. Have they violated past permits repeatedly? Have they done an excellent job of reducing pollution? You can look at their monthly **Discharge Monitoring Reports** at your state agency and EPA’s Permit Compliance System (Appendix C) to find out. See *Section 2.4 for more.*



Is there a mixing zone? Is it explicitly described in the permit?

Mixing zones are areas beyond the end of the pipe where the discharger and the regulators decide it is okay to violate water quality standards while the discharge is mixing with the streamflow. Mixing zones are supposed to be as small as possible and should be defined in the permit. Is the zone explicitly described in the permit? Are **existing uses** protected within it? Is it as small as possible given the flow and toxicity of the discharge? Is it adequate at all times of the year — even during critical flows? See *Section 4.4 for more*.

Should you request a public hearing?

Agencies may hold a public hearing on a permit, but only if there are important issues and people request one. While the Clean Water Act guarantees you the right to request a hearing, it does not say when your state must grant a hearing. This means that the occurrence of permit hearings varies from state to state, but it is still a good idea to request one. A public hearing can be a useful way to find out additional information. It can also be a valuable forum for making your concerns known to other interested citizens, decision-makers and members of the press. See *Section 3.2 for more*.



You're on your way to becoming a permit expert. Once you start, you won't be able to stop! Read on for more information on all quick-start action items as well as dozens of other ideas and action suggestions.

Are appropriate special conditions required?

Most NPDES permits also contain **special conditions**. Special conditions describe additional monitoring, testing or other requirements. They can call for additional monitoring of pollutants not regulated by numerical effluent limits, monitoring of toxicity, conducting studies of ambient water quality and biological surveys. Special conditions may also describe compliance schedules or other types of requirements such as operation and maintenance requirements at the facility. See *Section 2.4 for more*.



Write it up!

Write up your concerns and questions and submit them to the agency. Don't forget about deadlines — as a general rule you'll have just 30 days to comment on a permit. Be sure to send copies of your comments to the U.S. EPA, your state agency and your elected officials. See *Section 3.2 for more*.

