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# ENVIRONMENTAL Fact Sheet

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29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • [www.des.nh.gov](http://www.des.nh.gov)

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## Scope of the National Pollutant Discharge Elimination System Permitting Program

The **National Pollutant Discharge Elimination System (NPDES) permitting program** is a federal program described in Section 402 of the Clean Water Act (CWA). The primary regulations developed by the U.S. Environmental Protection Agency Region 1 (EPA) to implement and administer the program are found in Title 40 of the Code of Federal Regulations (40 CFR 122). It is unlawful for any person to discharge any **pollutant** into the **waters of the United States** from any **point source**, except as authorized by the NPDES Permit Program. The term *pollutant* is defined very broadly by the NPDES regulations and case law, and includes substances found in industrial, municipal and certain types of agricultural waste discharged into water. EPA defines the term *waters of the United States* to include navigable waters and their tributaries, interstate waters and intrastate lakes, rivers and streams (40 CFR 122.2). The definition has been interpreted to include virtually all surface waters in the United States, including wetlands and ephemeral streams. For the latest info on EPA's interpretation of waters of the United States, visit <https://www.epa.gov/cleanwaterrule/documents-related-clean-water-rule>. The term point source is defined in 40CFR 122.2 and includes any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Similar to the federal CWA and the NPDES permitting program, NH RSA 485-A:13 makes it unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface water or groundwater of the state without first obtaining a written permit from the New Hampshire Department of Environmental Services (NHDES).

### Roles and Responsibilities of EPA and NHDES

The EPA and NHDES cooperate in the development and issuance of NPDES permits to assure that the effluent limits and conditions in the NPDES permit comply with both federal and state statutes and regulations. This way, upon final issuance of the NPDES permit by EPA, NHDES may adopt the permit, including all terms and conditions, as a state permit pursuant to RSA 485-A:13. EPA has the right to enforce the terms and conditions of the permit pursuant to federal law and NHDES has the right to enforce the permit pursuant to state law.

### Types of Permits

There are two basic types of permits, an individual permit and a general permit. An *individual permit* is a permit specifically tailored to an individual facility. Once a facility submits the appropriate application(s), the permitting authority develops a permit for that particular facility based on the information contained in the permit application (e.g., type of activity, nature of discharge, receiving water quality). A *general permit* covers multiple facilities within a specific category. According to the NPDES regulations at 40 CFR §122.28, general permits may be written to cover categories of point sources having common elements, such as the same type of operations and wastewater. General permits offer a cost-effective option for permitting agencies because of the large number of facilities that can be covered under a single permit. Permits are issued for a specific time period, not to exceed five years, with a requirement that the facility reapply prior to the expiration date. Permits can be,

administratively extended, contingent upon the receipt of this reapplication, if the permitting authority does not renew the permit before its expiration date.

### **Overview of the Permitting Process**

The NPDES permitting process for an individual permit begins when the operator of a facility (permittee) submits an application using [EPA forms](#). Once the application is complete, EPA and NHDES develop the draft permit and the justification for the permit conditions (referred to as the fact sheet or statement of basis). EPA places the draft permit and fact sheets on public notice for comments in accordance with [CFR-2012-title40-vol23-sec124-10](#). Concurrent with public notice EPA requests certification of the permit by NHDES. Regulations governing state certification are set forth in 40 C.F.R. § 124.53 and § 124.55. After the public comment period has closed, EPA and NHDES respond to each comment in a response to comment document and may make modifications to the draft permit. EPA then issues the NPDES permit with an effective date and expiration date not to exceed five years. NHDES may adopt the NPDES permit as a state permit pursuant to RSA 485-A:13. The permitting process for a general permit is similar to that for an individual permit except that the application for a general permit is done through a Notice of Intent (NOI) after the general permit is issued.

### **Permit Compliance**

As previously stated, EPA has the right to enforce the terms and conditions of the permit pursuant to federal law and NHDES has the right to enforce the permit pursuant to state law. For facilities who have permits adopted by the State, NHDES monitors compliance by conducting routine inspections, reviewing information provided by facilities on a monthly basis, and by investigating complaints. NHDES shares compliance and enforcement efforts with EPA in ensuring that permit requirements are met.