

Fitting the Oregon SSO Approach into the Clean Water Act

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Summary and main points

- SSOs cannot be fully eliminated, but can be controlled to a specified level on site-specific basis.
- A lot of flexibility in NPDES permit program – if EPA is willing to use it
- SSOs are point sources and should be permitted like any other point source
- Blending is not a bypass. Cannot have a bypass if treatment plant is being operated as designed and meeting limits.
- Limits for POTWs apply at the end of the POTW
- PEFTFs are point sources and a good idea

EPA Listening sessions

- Focus on SSOs
- Discussion of blending
- PEFTFs

5. What is the appropriate role of NPDES permits in addressing unauthorized SSOs that are caused by exceptional circumstances?

- Some ideas
 - SSO discharges remain prohibited
 - Enforcement defenses analogous to bypass/upset provisions
 - For wet weather SSOs, enforcement discretion if:
 - Severe natural conditions, and
 - No feasible alternatives
 - Does not contain advanced approval language but specific criteria (e.g. design storm) could possibly be in permit
 - For other SSO's, affirmative defense if notice and:
 - SSO was an exception, beyond reasonable control, and
 - Took all reasonable steps to stop and mitigate

Federal Water Pollution Control Act – a.k.a. - CWA

- Section 301(a)
 - (a) ILLEGALITY OF POLLUTANT DISCHARGES EXCEPT IN COMPLIANCE WITH LAW—Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

CWA Section 301(b)

- (1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title,
- (B) for publicly owned treatment works . . . effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title;

CWA Section 304(d)

- (1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within sixty days after October 18, 1972 (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment.

EPA regulations- 40 CFR 133.102

- The following paragraphs describe the minimum level of effluent quality attainable by secondary treatment in terms of the parameters—BOD5, SS and pH. All requirements for each parameter shall be achieved except as provided for in §§ 133.103 and 133.105.
 - (a) BOD5.
 - (1) The 30-day average shall not exceed 30 mg/l.
 - (2) The 7-day average shall not exceed 45 mg/l.
 - (3) The 30-day average percent removal shall not be less than 85 percent.

EPA regulations- 40 CFR 125.3

- 40 CFR §125.3. (a) *General.* Technology-based treatment requirements under section 301(b) of the Act represent the minimum level of control that must be imposed in a permit issued under section 402 of the Act. (See §§ 122.41, 122.42 and 122.44 for a discussion of additional or more stringent effluent limitations and conditions.) Permits shall contain the following technology-based treatment requirements in accordance with the following statutory deadlines;
 - (1) For POTW's, **effluent limitations based upon:**
 - (i) Secondary treatment—from date of permit issuance;

Permitting Process & Regulatory Requirements

- ▶ Point source discharge
- ▶ Permit application – identifying all point sources
- ▶ Permitting authority must identify limitations necessary for point source discharge to comply with CWA/State Statutes
 - For SSOs, what is appropriate limit?
 - Prohibition – Justified by what regulation?
 - Secondary treatment – what does that mean in context of noncontinuous discharge?

Permit Process

- ▶ Permittee submitted an application; application identified discharge points in addition to the main outfall for the treatment plant.
- ▶ State Permit development must include
 - limits for all outfalls -- 122.45(a)
 - Permit must include technology-based limits -- 122.44(a)
 - This requires determining if the discharge is a POTW or non-POTW. Generally, EPA believes overflows from separate sanitary systems are "POTWs"
 - If discharge is from a POTW (e.g., a sanitary sewer overflow or any other discharge from a separate sanitary system), technology-based limits **must be based upon secondary** treatment standard - 40 CFR 125.3 & 133.102.
 - Based upon does not necessarily mean weekly and monthly limits, especially when the discharge is non-continuous - see 122.45(d) & (e).

Based upon Secondary

- 40 CFR 133.102 – Limits for secondary are 30/45 mg/l (monthly/weekly) for BOD & TSS
- Based upon a continuously discharging plant
- Play with statistics and the curves that developed these limits, you cannot reproduce the 30/45 numbers, but get close.
- Can use the curves to develop a daily average number that is around – 90 mg/l
- Can also use 122.45(e) and 122.44(k) and EPA policy memos to argue for BMPs (CMOM)

BMPs and CMOM

- Note consent decree ends with CMOM
- At the end of a consent decree, what does the next permit look like?
- Using 40 CFR 122.45(e) and 122.44(k) apply CMOM as BMP limit

Another Option

- SSOs and CSOs what is the difference?
- CSOs are not POTWs because they are designed to discharge, not to convey wastewater to a treatment plant (CSO Policy, citing Montgomery Coalition decision)
- SSOs that are from designed overflow points are also “designed to discharge, not convey wastewater the treatment plant.”
- Permit SSOs like CSOs

Other Permit Language Issues

- Basement backups – are not point sources and should not be mentioned in NPDES permits.
- Blending/Peak Flows – these are not bypasses. They do not “divert” flow “from” the treatment facility – Definition of Bypass
- CSO related Bypass – Draft CSO policy in 1992 clearly states, “For a POTW a bypass does not refer to flows or portions of flows that are diverted from portions of the treatment system but that meet all effluent limits for the treatment plant upon recombining with non-diverted flows prior to discharge.”

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