EPA Oversight Activity**:**

Real-time Review of NPDES Permits in the state of [State].

# Introduction

Purpose of the template. This template was prepared by the EPA in collaboration with the [State Agency Name (State Agency Abbreviation)] to strengthen the transparency of the EPA’s National Pollutant Discharge Elimination System (NPDES) real-time review process. The EPA conducts real-time reviews under the authority of the Clean Water Act (CWA) to provide oversight of authorized state NPDES programs. Real-time reviews consist of reviews of selected draft or proposed NPDES permits the state intends to issue. This is a shared-governance approach where states and the EPA work together to fulfill their statutory and regulatory responsibilities.

Intended audience. The template from each state provides the EPA and the state insight into existing real-time review processes and practices. These templates were created in a nationally consistent format intended to help the EPA and states maintain strong performance and accountability.

Organization of the template. The template describes the overall purpose of the real-time review, and standards the EPA considers during the review. It describes the [State Agency Abbreviation]-EPA agreed processes for selecting permits to review; timelines for review; tracking mechanisms for review progress; and process of dispute resolution. A list of acronyms is also provided.

What other considerations apply to this template. The template is consistent with the 2018-2022 EPA Strategic Plan which identifies *cooperative federalism* (Goal 2) as a fundamental priority for the agency with a stated objective (Objective 2.1) of *enhance shared accountability* between the EPA, state, local and tribal co-regulators in the implementation of federal environmental programs.[[1]](#footnote-2) The template is not intended to replace any of the conditions for real time permit reviews as outlined in the Memorandum of Agreement (MOA) the EPA Region [#] has with [State] nor does it supersede federal or state law, regulations and guidance. Rather, the template provides additional clarity on how the EPA conducts real-time reviews and how issues identified in these reviews are elevated to [State Agency Abbreviation]. The EPA will continue to work with states to refine or update the template as necessary.

# Purpose of Review

Regulatory basis of review. Section 402(b) of the Clean Water Act (CWA) and 40 CFR Part 123 define a process for states to receive authorization to administer the NPDES program. Once a state is authorized, it is responsible for implementing the NPDES program and must issue NPDES permits that meet minimum Federal requirements. EPA retains oversight authority and collects information from the state about its NPDES program and about specific NPDES permits to ensure Federal requirements are met.

Programmatic basis of review. Real time reviews provide information to help identify cross-cutting issues needing attention in state permitting policies, procedures and templates; and they support states with a process to identify permits for which the state wants input in the form of written comments. Not all permits are reviewed and the majority of those reviewed are reissued rather than new permits, although reviews can involve any permit action described in 40 CFR 124.5 including modification and termination.

Scope of review. Real-time reviews examine state NPDES draft permits and fact sheets to ensure that they meet federal requirements (see Standard of Review, below). The EPA generally does not comment on permit formatting or grammar unless permit language is unclear or lacks enforceability. Real-time reviews are limited to individual and general permits; they do not include oversight of notices of intent for coverage or similar documents when permittees submit them to the state to obtain coverage under a general permit.

# Standard of Review

The EPA uses CWA 402(c)(2) as the standard for real time reviews to ensure that the NPDES permit is at least as stringent as required by the CWA and implementing federal regulations. The regulations are indexed, and cross-referenced to the CWA, in Appendix B.2 of the [EPA NPDES Permit Writer’s Manual](https://www.epa.gov/npdes/npdes-permit-writers-manual) and cover administrative procedures, special conditions such as case-by-case limitations, monitoring and reporting requirements, compliance schedules, special studies, and standard conditions such as duty to comply and inspection and entry. The [Central Tenets of the NPDES Permitting Program](https://www.epa.gov/sites/production/files/2015-09/documents/tenets.pdf) provide instances where permit conditions may be subject to disapproval when compared to these regulations.

In addition, technical policy and guidance may assist the EPA in interpreting or applying the regulations. Some of the documents EPA Region [#] routinely considers in its reviews include: [Optional: Add bullets with other documents relevant to RTRs]

* Memorandums from the Director of Office of Wastewater Management on subjects such as: Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits (May 10, 2007); and NPDES Permitting of Wastewater Discharges from Flue Gas Desulfurization (FGD) and Coal Combustion Residuals (CCR) Impoundments at Steam Electric Power Plants (June 7, 2010);
* National Whole Effluent Toxicity (WET) Implementation Guidance Under the NPDES Program (EPA 832-B-04-003, July 26, 2005);
* Perciasepe, Robert et al., (April 11, 1995) Memorandum to Regional Administrators and Regional Counsels, *Revised Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES Permits;*
* Promulgated Effluent Guidelines (65 FR 37783); and
* Various [State Agency abbreviation] permit development procedures. [Note: states have the option on whether to call out their different procedures]

[Optional: 200 words or less about what the region uses to document RTRs, e.g. checklist, reviewer memos].

# Selection of Permits for Review

EPA Region [#] selects permits for real-time review based on Regional priorities and [State Agency abbreviation] input. The selection process typically takes place during the [identify what quarter of FY where selection takes place or is completed. [Add 200 words or less on procedures the Region follows to select permits for RTR]

# Process and Timeline for Review

Real-time reviews coincide with permit development, allowing the EPA and states to proactively find and address issues before the permit action is finalized and preferably before the public notice. The review process is informed by the MOA and Performance Partnership Agreement (PPA) between EPA Region [#] and [State Agency abbreviation]. [Add 50 words or less on whether pre-drafts or drafts are reviewed, and how long EPA has to comment, make recommendations or object.] The review process can generally be described as follows: [Add 500 words or less on regional specifics process or steps in RTR process]

# Tracking Mechanisms for Review, Communication of Findings and Follow-up

# [Add 200 words or less on how the region tracks RTRs.]

# Process for Resolution of Concerns

NPDES authorized states can be assured that fair, impartial review of permits support reasonable conclusions based on the available record and discussions with the state. EPA staff are encouraged to work with state permit writers to discuss concerns early. These informal, early discussions at the staff to staff level can eliminate miscommunication, promote understanding and resolve concerns before they develop into objectionable issues. [optional text addition: This is particularly helpful for agencies that submit pre-public notice draft permits for review. Pre-public notices allow the EPA an opportunity to identify and resolve issues that can factor into the public notice draft.]

State and EPA permit staff raise significant unresolved issues as quickly as possible to their management. Most of the permitting issues identified during the reviews are resolved at the EPA-State staff level and when necessary are elevated “up the chain” in management in a step-wise progression beginning with the first line supervisor and Branch Chief and ending with senior management. By addressing and resolving issues at the lowest level, the number of permitting issues elevated to senior management (Director, Commissioner and Regional Administrator) should remain low. The process for dispute resolution can generally be described by the following series of steps: [Add 500 words or less on regional dispute resolution related to RTRs]

# List of Acronyms

CCR - Coal Combustion Residuals

CFR - Code of Federal Regulations

CWA - Clean Water Act

EPA - Environmental Protection Agency

FY - Fiscal Year (October 1 to September 31)

ICIA - Integrated Compliance Information System

MOA - Memorandum of Agreement

NPDES - National Pollutant Discharge Elimination System

PPA - Performance Partnership Agreement

PN - Public Notice

PPN - Pre-public Notice

WET - Whole Effluent Toxicity

State Agency abbreviation - State Agency Name

**ATTACHMENT A**

**EPA CHECKLIST FOR REALTIME REVIEWS (if used)**

1. U.S. Environmental Protection Agency, [FY2018-2022 EPA Strategic Plan](https://www.epa.gov/sites/production/files/2018-02/documents/fy-2018-2022-epa-strategic-plan.pdf). Feb. 12, 2018. [↑](#footnote-ref-2)