Anti-backsliding

- Anti-backsliding requirements might prohibit less stringent limitations than those in the previous permit.
- Permit writers must complete an anti-backsliding analysis where revised limitations or other permit conditions would be less stringent than existing limitations or conditions.
What is “Anti-backsliding?”

**Anti-backsliding** refers to provisions prohibiting the relaxation of effluent limitations or conditions in reissued permits

- **CWA sections 402(o) and 303(d)(4)**
  - Established in 1987 WQA

- **NPDES regulations: § 122.44(l)**
  - Established in 1979 (revised in 1989)
CWA Anti-backsliding Provisions

- CWA Section 402(o)(1) provides two specific situations where backsliding is prohibited:
  - relaxing case-by-case, technology-based limitations when less stringent effluent guidelines are promulgated
  - relaxing limitations based on state water quality standards (WQS) unless the change is consistent with section 303(d)(4)
- CWA Section 402(o)(2) provides specific exceptions to each of the prohibitions
Limitations Based on State Standards

CWA section 402(o)(1)
• For limits based on WQS, backsliding generally is not prohibited as long as the change in limits is consistent with section 303(d)(4)

• If the change is not consistent with section 303(d)(4), one of the “exceptions” in section 402(o)(2) could apply
  ▫ However, final limit must still comply with all applicable WQS (including antidegradation policy)

CWA section 303(d)(4)
1. For Waters Attaining Standards: less stringent limitation acceptable only if the revision is subject to and consistent with state antidegradation policy
2. For Waters Not Attaining Standards: less stringent limitation than an existing limitation based on a TMDL or other WLA is acceptable if:
   • the cumulative effect of all limitations assure attainment of water quality standards or
   • the designated use that is not being attained is removed
Exception *Safety Clause*

Regardless of any exceptions that are met, section 402(o)(3) prohibits backsliding if the less stringent limitation:

- violates applicable effluent guidelines
- violates water quality standards (including antidegradation policy)
All Other Effluent Limitations, Standards or Conditions

NPDES regulations prevent backsliding unless [§ 122.44(l)(1)]:

- circumstances upon which the previous permit was based have materially and substantially changed since the time the permit was issued
- changes would constitute a cause for permit modification or revocation and reissuance under § 122.62