



Rhode Island RIPDES Permitting Alternatives to Compliance Schedules



Heidi Travers

RIDEM Office of Water Resources

2026 ACWA Industrial Permitting Workshop



Permit Limit Development

Water Quality Standards

Designated Uses

Goal Uses of the waterbody

 **Fish consumption** 

 **Swimming**

 **Aquatic life** 

 **Drinking water, etc.**

Water Quality Classifications

Class is defined by a set of Designated Uses

AA, A, B, SA, SB, etc.

Water Quality Criteria

Pollutant thresholds to protect Designated Uses

Numeric or Narrative

Implementation

Permit Limit

Water Quality-Based Permit Limits must be set such that all water quality criteria. A compliance schedule is a tool that allows a permittee time to come into compliance with certain permit limits.



Permit Compliance Schedules

40 CFR 131.15

Authorizing the use of schedules of compliance for water quality-based effluent limits in NPDES permits.

If a State intends to authorize the use of schedules of compliance for water quality-based effluent limits in NPDES permits, the State **must adopt a permit compliance schedule authorizing provision**. Such authorizing provision is a water quality standard subject to EPA review and approval under section 303 of the Act and must be consistent with sections 502(17) and 301(b)(1)(C) of the Act.

RIDEM has not adopted a compliance schedule authorizing provision into its Water Quality Regulations.



Permit Compliance Schedule Alternatives

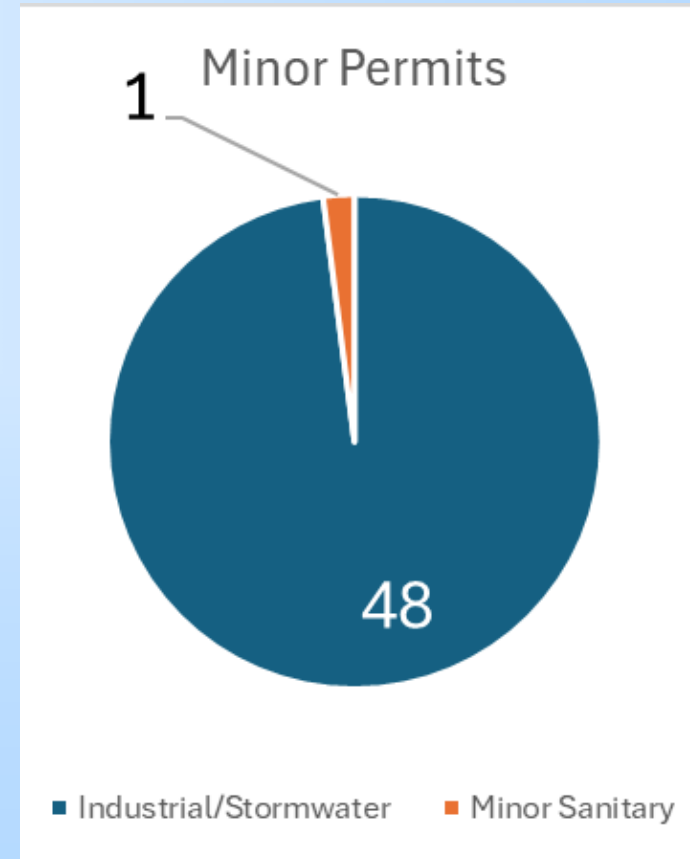
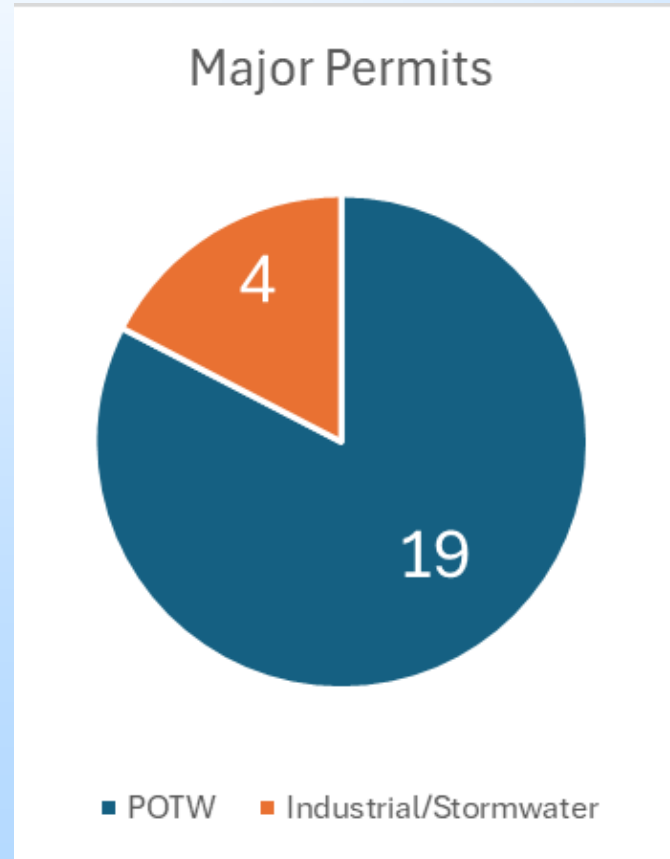
RIDEM cannot use compliance schedules because Rhode Island has not adopted a compliance schedule authorizing provision into its Water Quality Regulations.

As an alternative, RIDEM uses the permit appeals process when a permittee cannot immediately comply with the permit limits.

Permittees and RIDEM negotiate a consent agreement with enforceable schedules as an alternative to compliance schedules in permits.



Rhode Island Individual Permit Universe





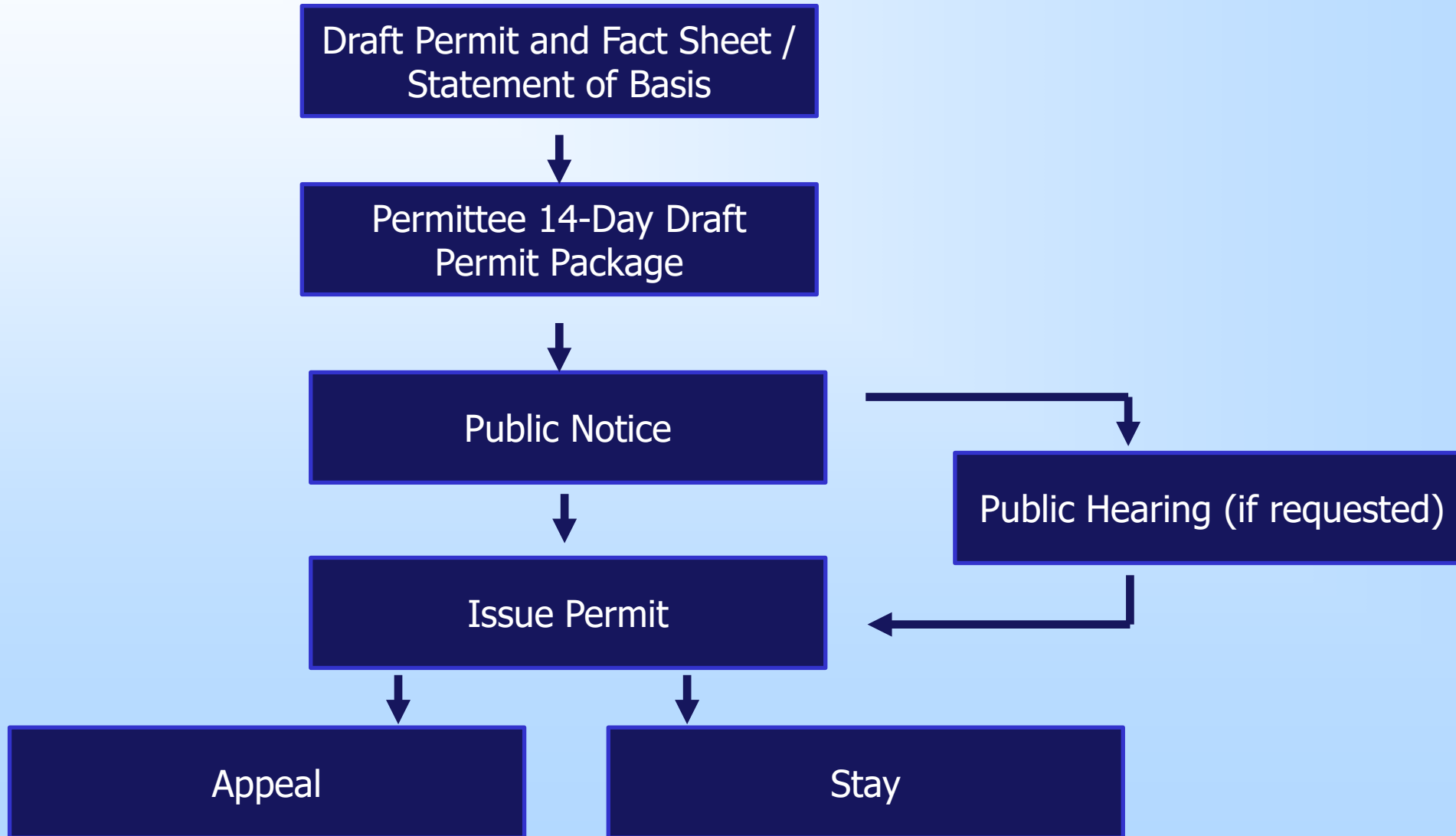
Current RIPDES Consent Agreements

- Combined Sewer Overflows
 - 3 POTWs (1 of 3 is a Consent Decree with EPA).
- Metals
 - 4 POTWs (3 of 4 can meet new water quality criteria adopted in late 2025. Permits to be reissued in 2026).
 - 1 Minor Sanitary (Construction of new MBR/RO facility scheduled to be completed in December 2027).
- Nitrogen
 - 1 POTW (Construction scheduled to be completed in October 2028).





RIPDES Permitting Process





RIDEM Communication

Draft Permit and Fact Sheet /
Statement of Basis

III. Permit and Administrative Compliance Order Limitations and Conditions

The final effluent limitations and monitoring requirements may be found in the permit. The DEM proposes to issue a new Consent Agreement that will establish interim limits and compliance schedules for Total Copper, Whole Effluent Toxicity (WET), and Phenol.

Permittee 14-Day Draft Permit
Package (Cover Letter)

Upon review of available effluent data submitted with the most recent permit application, Priority Pollutant Scans, and historical Discharge Monitoring Report (DMR) data, DEM has determined that the facility may not be able to comply with the permit limits for Total Copper. The DEM is willing to enter into a Consent Agreement that establishes interim limits and a compliance schedule for the facility to comply with these limits. In order for the DEM to enter into a consent agreement, it will be necessary for the City of Woonsocket to identify any limits that it will be unable to comply with and express a willingness to enter into a consent agreement in writing during the public notice period.



RIDEM Communication

Public Notice (Cover Letter to Permittee)

As indicated above, the DEM is willing to enter into a Consent Agreement that establishes interim limits and a compliance schedule for Kenyon to comply with its permit limits for Copper, Whole Effluent Toxicity, and Phenol. In order for the DEM to enter into a consent agreement, it will be necessary for Kenyon to identify any limits that it will be unable to comply with and express a willingness to enter into a consent agreement **in writing during the public notice period.**



DEM
RHODE ISLAND

RIDEM Communication to Permittee: Post-Permit Issuance

Appeal

As noted in the Response to Public Comments, the DEM is aware that the facility may not be able to immediately comply with certain limitations/conditions in the new permit. Therefore, the DEM is willing to enter into a Consent Agreement with the Town of West Warwick that will establish a compliance schedule for the Town of West Warwick to come into compliance with these requirements. Specifically, the DEM is willing to enter into a Consent Agreement that will include a compliance schedule for the Town of West Warwick to comply with its Total Aluminum limits. In order for the DEM to be able to enter into a Consent Agreement with the Town of West Warwick, the Town of West Warwick must file an appeal of the above-mentioned permit requirements.

In order to appeal the permits, the Town of West Warwick must request an adjudicatory hearing pursuant to RIPDES Regulations 250-RICR-150-10-50 within thirty (30) days.

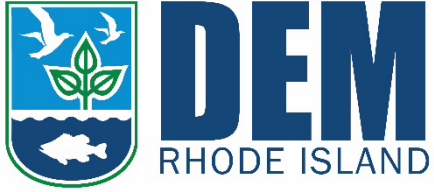
Stay

To obtain a stay of the contested limits for the duration of the appeal, the Town of West Warwick must also request a temporary stay for the duration of the adjudicatory hearing proceedings in accordance with RIPDES Regulations 250-RICR-150-10-51.



Post-Issuance

- Permit Limits (Stay Granted)
 - Revert to Prior Permit's Limits or Become Monitor Only
- RIDEM does not grant stays for Monitor Only Permit Requirements
- RIDEM and Permittee Meet to Negotiate Consent Agreement
 - If both parties agree, negotiations can occur without legal counsel.
- Provisions of Consent Agreements
 - Requirements generally seen in all consent agreements.
 - Requirements specific to the pollutant / facility.



General Consent Agreement Provisions

- Allows permittee to request schedule extensions. If RIDEM denies the extension, permittee may appeal to Superior Court.
- Stipulates schedule violation fines (i.e., not subject to appeal) with ability of RIDEM to take additional action for schedule violations.
- Exceedances of interim limits are subject to fines consistent with RIDEM violation policy.
- States that this is final administrative decision under the Administrative Procedures Act (RIGL Chapter 42-35) and shall be fully enforceable in the Superior Court of the State of Rhode Island.
- Allows amendment upon mutual agreement.



Specific Consent Agreement Provisions Example 1

Submit Pollutant Minimization Plan within 60 days.

Prepare Sampling and Analysis Plan to collect river samples upstream and downstream of facility within 60 days.

Facility to comply with interim limits.

Conduct sampling and report results to DEM within 24 months of DEM approval of SAP.

DEM evaluates alternative water quality criteria and process permit modification as needed.

If facility cannot comply with new final limits, DEM will negotiate a new consent agreement.



Specific Consent Agreement Provisions Example 2

Submit Compliance Evaluation Report within 60 days. Include evaluation of treatment alternatives if facility cannot comply with final limits.

Subject to final limits if the facility can comply.

Order of Approval application required within 6 months for treatment upgrades within certain timeframe if facility cannot comply.

Submit a local limits evaluation if determined to be needed by Compliance Evaluation Report within 6 months.

Order of Approval will contain construction schedule that is adopted as part of the consent agreement.

If needed, adopt local limits and reissue industrial permits.



Advantages to Using a Consent Agreement

- Modifications (schedules and limits) upon consent of both parties.
- Negotiations outside of the public process tend to be resolved quicker leading to faster compliance.
- Permittees can pursue multiple pathways to compliance.
- Can cover items that may not be eligible for compliance schedules (e.g., TBELs, water quality standard update).
- Revisions to interim limits can lead to better water quality even if final limits have not been achieved (i.e., incremental progress).
- Schedules can extend beyond the permit term.



Disadvantages to Using a Consent Agreement

- Outside the public process.
- A consent agreement is an agreement that the two parties will not take enforcement action regarding compliance with final limits. Third party lawsuits are still possible.
 - Environment Rhode Island et al. v. City of Newport. EPA and RIDEM intervened. Settlement reached. Consent Decree issued.
 - Environment Rhode Island v. Kenyon Industries Inc., and Brookwood Companies Incorporated. RIDEM updated water quality regulations. Compliance achieved.



Questions