



April 20, 2021

Subject: Industrial Permit Compliance

What follows will neither be entertaining nor easy – but it is important to understand.

A permittee (you) starts out at what is called, “Baseline”. Baseline means your facility has never had a storm water exceedance. No fines. No penalties. No litigation.

You are required by the Permit to sample for Iron, Lead, Aluminum (and maybe Zinc). If one year your average Iron sample results exceeds the annual limit average your facility is now considered a Level 1 facility. This means that your facility has to be evaluated by a Qualified Industrial Stormwater Practitioner. (QISP – A State Trained Person) and prepare a report explaining what BMPs will be installed so the facility will not exceed the NAL discharge limits.

Four samples in a row below NAL limit for Iron and the facility is back at Baseline. Great! But one annual average over the limit and the facility is now a Level 2 facility. A Level 2 facility is required to prepare a QISP assisted Level 2 Action Plan – explaining what BMPs, will be utilized to lower Iron in the stormwater and identify the potential pollutant sources for Iron at the site. At the end of the next rain season a QISP assisted Level 2 “Technical Report” must be completed. The Technical Report explains what BMPs worked if Iron levels in the discharge water were below limits or, if again there were exceedances, what BMPs failed. If four samples of Iron in a row were below limits then the facility is again at Baseline – No fines, penalties, or litigation.

Now what happens if you cannot get below the limits?

1) The permittee can submit a detailed cost analysis stating the only effective BMP is treatment and it cannot be afforded. The facility is in compliance with the permit but is discharging contaminated water. Litigation and fines are possible.

2) The permittee can state that the pollution is from Non-Industrial Sources, run-on or aerial deposition. This requires a detailed and possibly costly study demonstrating that the contamination is coming from off-site sources. This will be expensive and can still expose the permittee to fines, penalties, and litigation as the stormwater being discharged still exceeds the limits, and the facility can never return to Baseline.

3) A Background Study Demonstration is another option that can be conducted to demonstrate that the pollution is solely coming from the background, like the soil. Same outcome as a Non-Industrial Source demonstration. No return to Baseline and possible fines and litigation.

How to Return to Baseline

The only path back to Baseline is to install new BMPs every year until four consecutive samples are below limits. The four samples can be taken in the same year or in four consecutive storm events.

Second Exceedance

What happens if the year after the Iron exceedance occurs an exceedance of Lead occurs? The entire reporting process occurs again for Lead, in addition to the Iron. And if the following year an Aluminum exceedance occurs.

There will be three tracks of:

- 1) Level 1 Evaluation
- 2) Level 1 Report
- 3) Level 2 Action Plan
- 4) Level 2 Technical Report

for each Pollutant of:

- Iron
- Aluminum
- Lead

If the facility has two discharge locations (drainage areas) the entire reporting process is required for each individual pollutant exceedance occurring at each discharge location!

It is probably best if opinions on this Permit are kept to ourselves.

The recommendation is for the average facility is to try to implement BMPs every year in an effort to return to Baseline.

Eliminate preparing and paying for numerous reports

To eliminate the cost of QISP prepared reports it might be best to prepare one report that lists all pollutants as a Level 2 facility. This would eliminate the cost of preparing each individual ERA Level 1 and Level 2 Report, facilitate a return to Baseline at one time, and there is no cost increase for entering Level 2 with only one pollutant or with multiple pollutants. As no discharge exceedance occurred there is no risk exposure in reporting multiple exceedances at one time.



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