
Antibacksliding



What is “Antibacksliding?”

- Provision of the Clean Water Act [Section 402(o)] and NPDES regulations [122.44(l)] prohibiting the relaxation of effluent limitations in reissued permits.
- The Clean Water Act provision addresses two specific situations:
 1. BPJ technology-based limits after less stringent effluent guidelines are promulgated later *[Section 402(o)(2)]*
 2. Limits based on State standards *[Section 402(o)(2) or Section 303(d)(4)]*

There are exceptions provided for both situations.



Antibacksliding Exceptions for *BPJ Limits*

- Section 402(o)(2) specifies six exceptions for BPJ limits:
 - Substantial alterations or additions to permitted facility
 - New information that was not available at the time of permit issuance
 - Technical mistakes or misinterpretations of the law in permit issuance
 - Events beyond the permittee's control and no reasonable available remedy
 - Permit modified under 40 CFR §122.62, or variance granted
 - Permittee unable to meet the permit limitations after properly operating and maintaining required treatment facilities

Antibacksliding Exceptions for Limits Based on *State Standards*

- Section 402(o)(2) exceptions:
 1. Substantial alterations or additions to permitted facility
 2. New information that was not available at the time of permit issuance
 3. Events beyond the permittee's control and no reasonable available remedy
 4. Permittee unable to meet the permit limitations after properly operating and maintaining required treatment facilities

- Or Section 303(d)(4) exceptions:
 - **Waters Attaining Standards**
 - Consistent with effluent guidelines and water quality standards

 - **Waters Not Attaining Standards**
 - Existing limit based on TMDL or WLA
 - Must assure attainment of water quality standards
 - Consistent with technology-based requirements



Antibacksliding for *All Other Effluent Limitations, Standards or Conditions*

- NPDES regulations [122.44(l)(1)] prevent backsliding unless:
 - 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 40 CFR §122.62

“Exception Safety Clause”

- Regardless of any exceptions met, backsliding of effluent limitations is prohibited if the less stringent limitation:
 - Violates applicable effluent limitations guidelines (ELGs)
 - Violates water quality standards, including antidegradation