1. NPDES Permit Writing

1.1 Overview

Notes:

Welcome to the National Pollutant Discharge Elimination System, or NPDES, Permit Writers' Specialty Training addressing permit writing tips and best practices. This training is part of an online curriculum for permit writers developed by the United States Environmental Protection Agency's Office of Water, along with EPA's Office of Enforcement and Compliance Assurance.

This training is meant to supplement the basic NPDES Permit Writers' Course by providing additional resources for permit writers in developing permits with requirements that are clear, measurable, and specific.

For permit writers who are interested in becoming acquainted with the NPDES program and the process of permit writing or anyone interested in learning about the legal and technical aspects of developing NPDES permits, we recommend the basic NPDES Permit Writers' Course and the NPDES Permit Writers' Manual. An online version of the course and a link to the manual are available through the link in the Resources tab. In addition, an online version of these tips and best practices for permit writing is available through the link in the Resources tab. Before we get started, I will make some introductions and address one housekeeping item.

1.2 Presenters

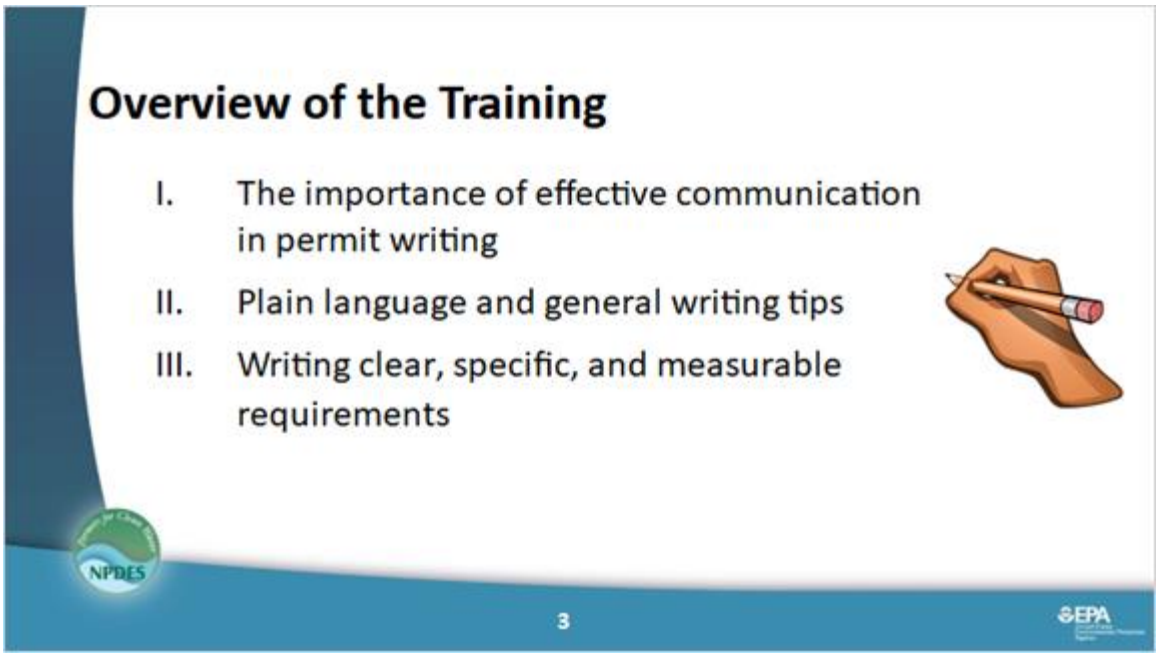
Notes:

Your speakers for this presentation are Sharmin Syed and me, Chrisna Baptista. Sharmin is with the Water Permits Division of the Office of Wastewater Management within the United States Environmental Protection Agency in Washington, DC. I am with the Water Enforcement Division in the Office of Civil Enforcement within USEPA, also based out of Washington, DC.

With regard to that housekeeping item, I need to let you know that the materials used in this presentation have been reviewed by USEPA staff for technical accuracy; however, the views of the speakers are their own and do not necessarily reflect those of USEPA. NPDES permitting is governed by the existing requirements of the Clean Water Act and NPDES implementing regulations. These statutory and regulatory provisions contain legally binding requirements. The information in this presentation is not binding. Furthermore, it supplements, and does not modify, existing USEPA policy, guidance, and training on NPDES permitting. USEPA may change the contents of this presentation in the future.

Now, let's get started with the presentation.

1.3 Overview



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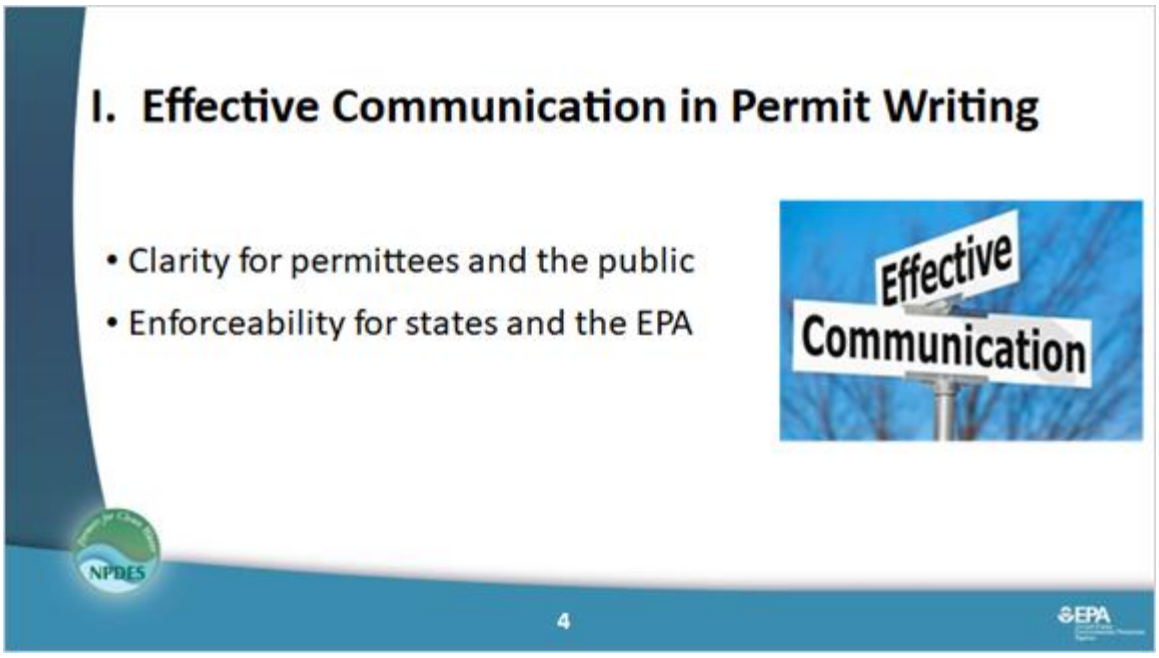
EPA developed this training by consolidating a number of existing resources related to drafting clear government communication that the public can understand and use.

In this presentation, we are aiming to address three topic areas:

- First, why do we care about effective communication in permit writing?
- Second, how can plain writing be used to help ensure that permit requirements are understood?
- And third, how can you write permit requirements that are clear, measurable, and specific?

1.4 Effective Communication



Notes:

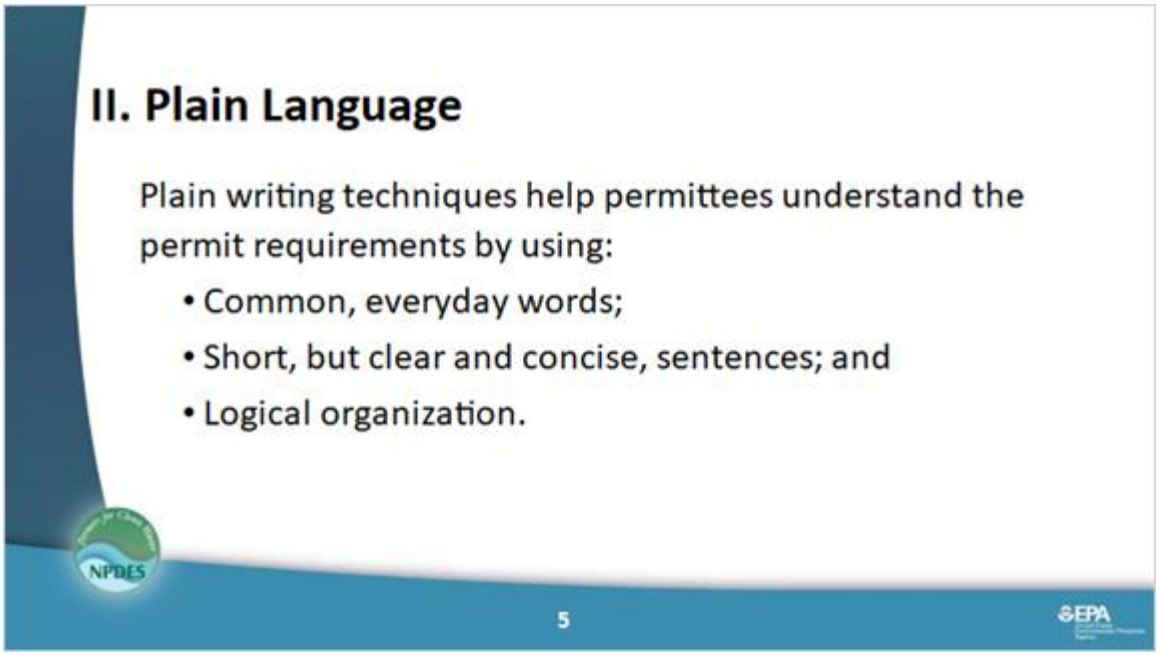
The first question we want to answer is "Why do we care about effective communication in permit writing?"

If the EPA or a state fails to clearly communicate the requirements of the permit, then it can be difficult to ensure that the permit meets the objectives of the NPDES program. Well written permits with clearly identifiable requirements make it easier for permittees to understand what is needed to be in compliance. Because the people carrying out compliance activities may not be lawyers or engineers, violations may occur where people do not understand the law. Convoluted language may also create defenses that the permit drafters did not intend.

Beyond the interests of the permitting authority and the regulated entity in having clear permit requirements, the public also has a strong interest in understanding what is intended by specific permit requirements. Clearly written permits enable the public to provide meaningful feedback on the protectiveness of permits and establish transparency with respect to the compliance expectations of the permittee.

Writing permits in plain language and with clear, measurable, and specific requirements can help clearly communicate permitting requirements, make your permit understandable, reduce the likelihood of misinterpretations, and ensure that the permit meets the requirements of the Clean Water Act. In the following slides, we've developed some general tips to help you, the permit writer, in writing these clear permit requirements.

1.5 Plain Language



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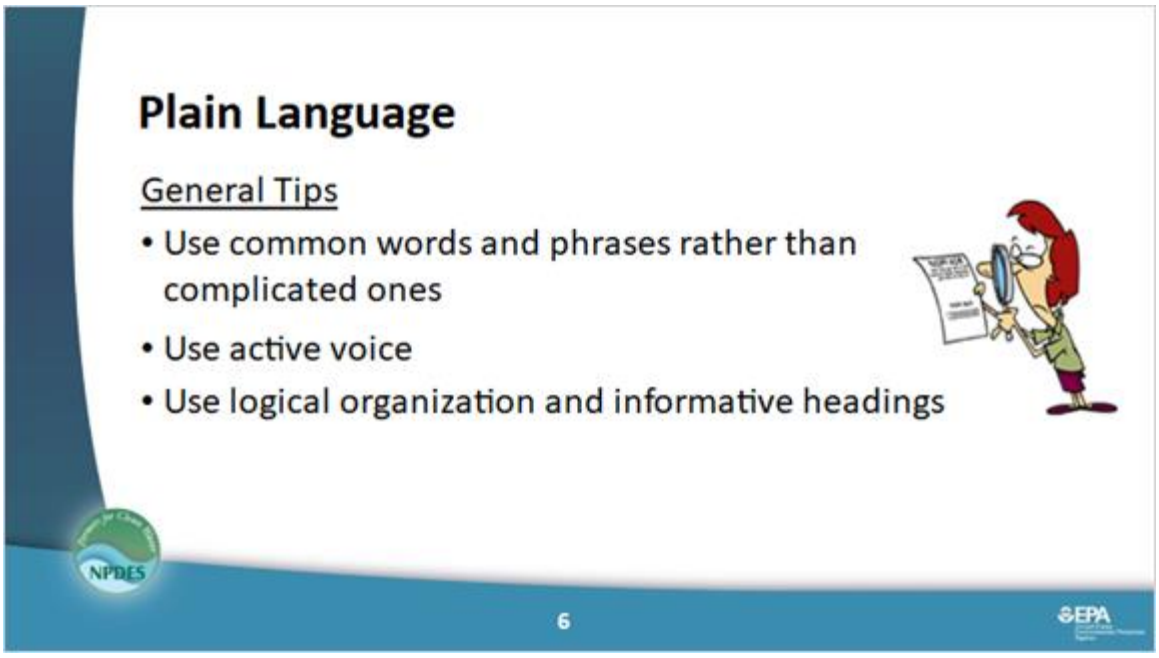
Simple writing does not mean simplistic writing. Rather, plain writing promotes language that is straightforward, clear and precise. Sometimes it is necessary to include complex information in your writing, but plain writing will help ensure it is accessible and will be understood. Through the use of plain writing, the EPA strives to prepare permits that accurately convey the applicable legal requirements in the clearest possible way.

1.6 Plain Language Tips



Notes:

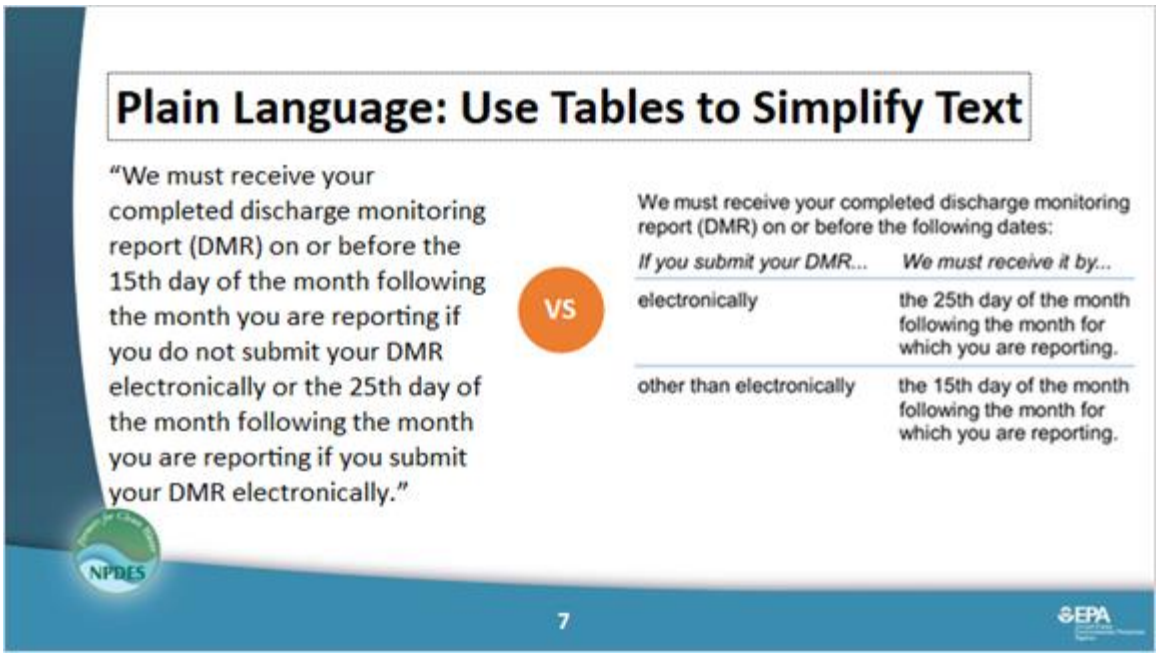
We have compiled several suggestions that can help permit writers write in plain language to convey permit requirements in a clear manner.

The first general tip is to use common words and phrases rather than complicated ones, that is, use "Plain English." It is usually unnecessary to use a long word or phrase when a simple one will do. As an example, rather than saying that a permittee must "effect modifications," it is clearer to require that the permittee "make changes."

Second, writing in active voice is more natural and reduces ambiguity. Active voice makes it clear who is responsible for what action. For instance, rather than saying: "A test must be conducted," it is more clear to say "The permittee must conduct a test."

And thirdly, logical organization also helps to improve readability and understandability. A few ways to do this is to use tables to "diagram" complex text or to include summary tables for permit monitoring, reporting, and recordkeeping requirements. It can be helpful to have effluent limitations and monitoring frequencies appear in the same table. If a parameter is monitoring only, then list N/A under the limit column so that permittees do not overlook monitoring-only parameters.

1.7 Plain Language Example



Notes:

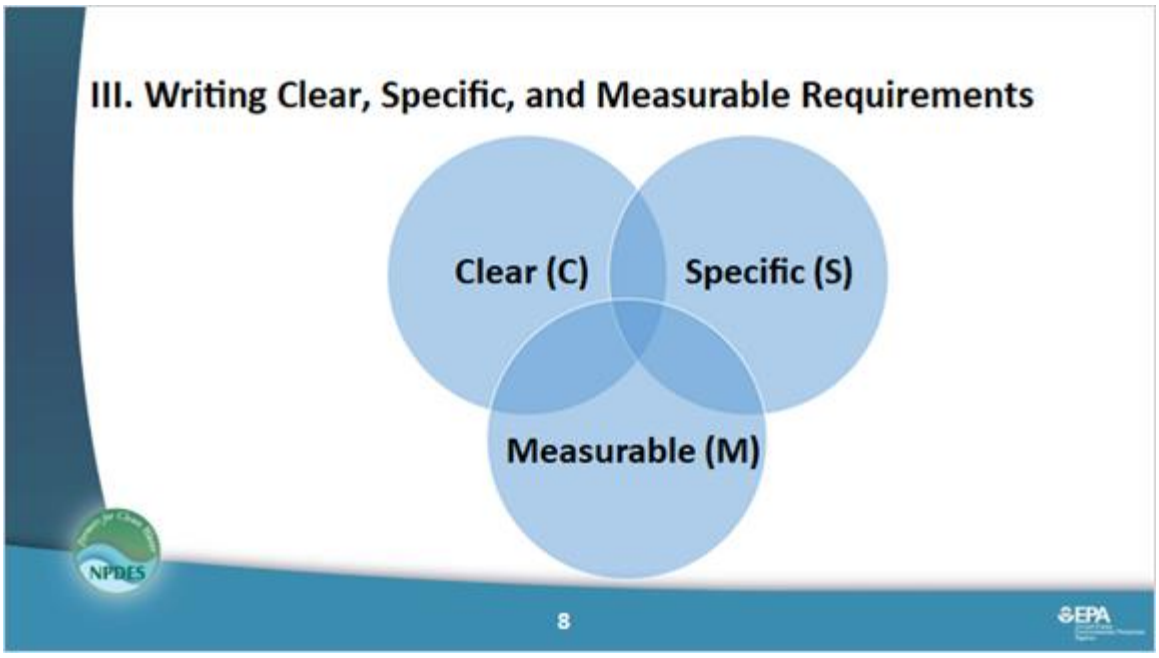
Here is an example of using tables to diagram complex text.

In this example, there are two options for the permittee to submit their discharge monitoring report, or DMR. If the DMR is not submitted electronically, it must be submitted by the 15th day of the month following the reporting month. However, if the DMR is submitted electronically, the due date is later: the 25th day of the month following the reporting month. While this does tell the permittee what is required of them, the sentence as written may be hard to follow.

Another way to convey this text is to create a table which diagrams the two options so that the permittee can easily see which option applies to their situation and therefore which deadline applies. Breaking up text in this way can help the permittee find the information they are looking for without having to struggle through a long or complicated sentence.

A good resource to find more plain language tips is EPA's Correspondence Manual, which is available through the link in the Resources tab.

1.8 Writing Clear, Specific, and Measurable Requirements



Notes:

The next section of this training presents tips on how to write permit requirements in a clear, specific, and measurable way. Why is this important? Writing permits in this way helps the permittee better understand what is required of them and what they need to do to comply with their permit requirements.

A well-written permit provision will be written in a way that has each of the following three elements:

- It is written with clarity,
- It contains specific terms and conditions, and
- It includes a quantifiable component.

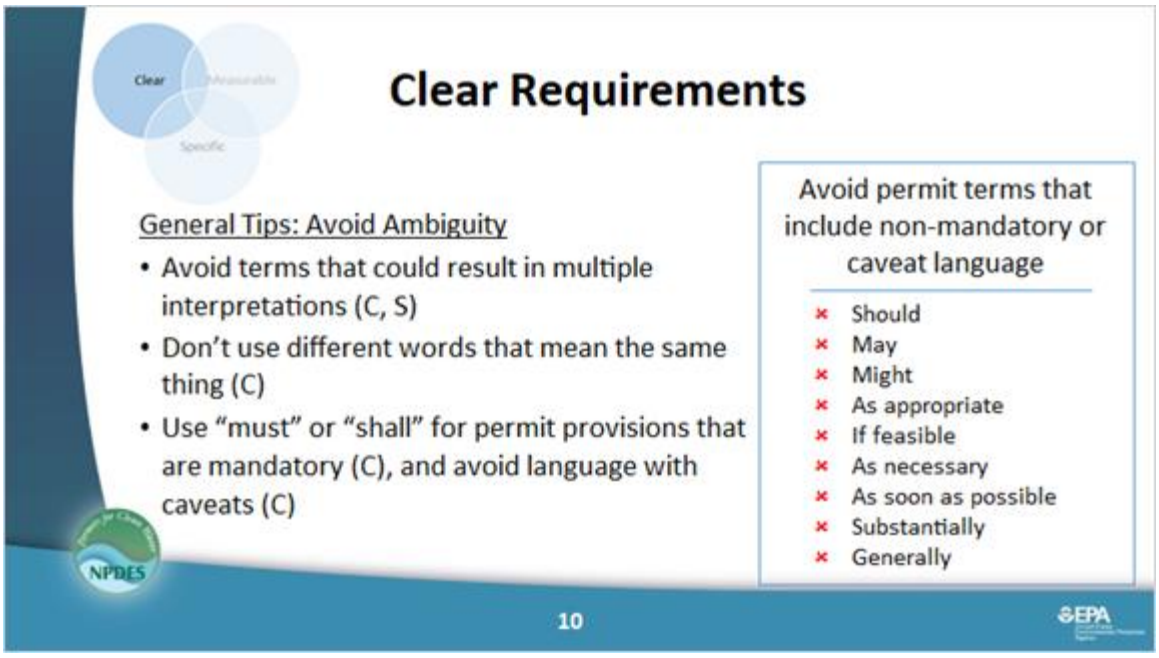
We will be discussing what we mean by each of these concepts as separate elements in the next several slides. However, even though we can think of these separately, it is common for these elements to overlap with one another within any given permit requirement. Therefore, it is less important to think of any specific provision as being either in the “clear” or “specific” category, than to see that it has qualities of both.

1.9 Clear Permit Requirements

Notes:

Let's begin with clear permit requirements. Clear permit requirements use permit language that is easily understood and free from ambiguity or obscurity. A permit writer that uses clear terms allows the permittee, the public, and regulators to know what the permit requirements are.

1.10 Clear Requirement Tips



Notes:

We have compiled a few tips to help permit writers write clear permit requirements. This begins with clearly defining terms and requirements.

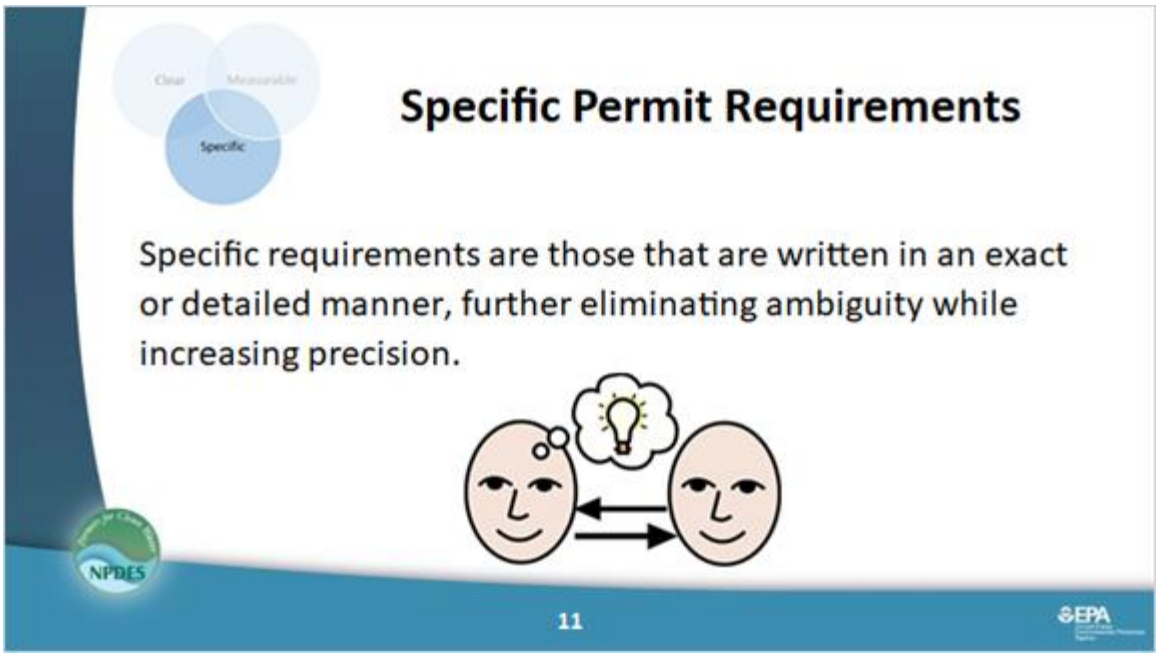
Clear requirements do not use terms that could result in multiple interpretations. For example, if you have a permit that requires sampling to occur four times a month, did the permit writer mean any four days in a month? Would four consecutive days in the beginning of the month be ok? By simply saying four times a month, this allows for different interpretations of the sampling frequency. If the permit writer actually wants the sampling to be spread out over the course of the month, it is important to write the monitoring requirement so that this is clear to the permittee. In this case, a sampling requirement saying that "weekly sampling is required" leaves less room for interpretation.

Another tip is not to use different words to refer to the same thing. For instance, the terms "permit requirements" and "effluent limitations" are often used interchangeably. This can be confusing to a permittee who may not be as familiar with NPDES permitting terms as you, so it is better use either one or the other throughout the permit. If you use one word or phrase to mean one thing in the permit, stick with that word or phrase throughout the entire permit and fact sheet.

Also, if compliance with a permit provision is mandatory, it is better to use the words "must" or "shall," rather than using permit provisions with non-mandatory words such as "should" or "if feasible." Of course, we recognize that there may be unusual or unanticipated circumstances that the permit writer must account for, and using these

terms may be unavoidable at times, but be aware that using these terms may make the conditions open to interpretation. The phrases in the box are examples of words that can be open to different interpretation which would make the permit requirements less clear.

1.11 Specific Permit Requirements

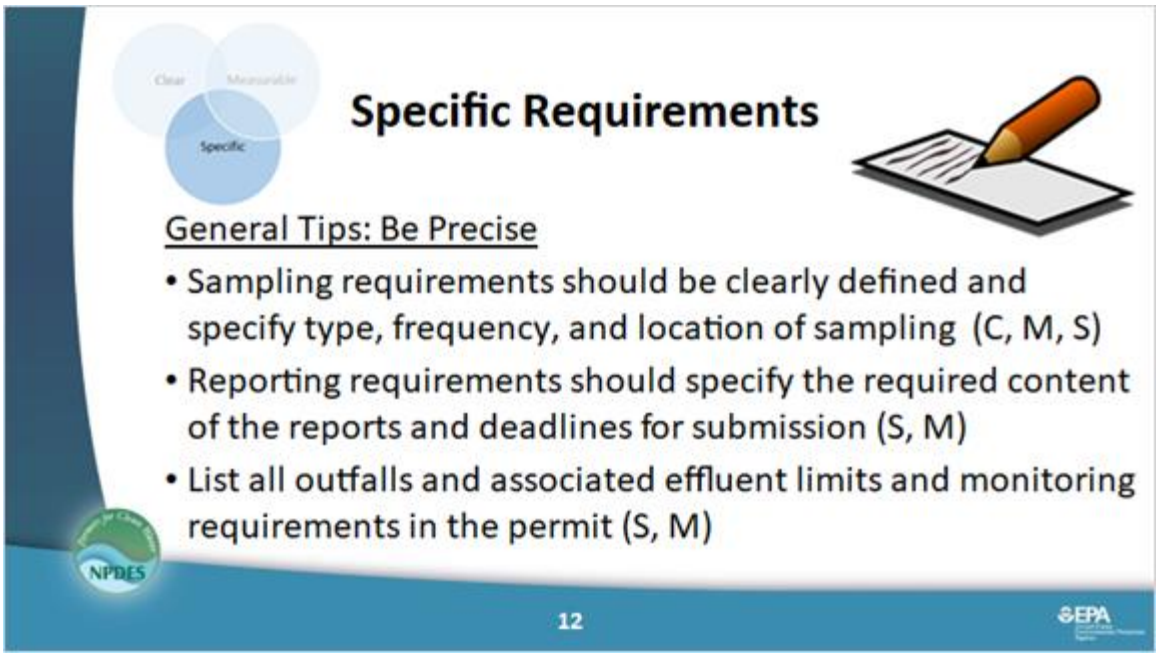


Notes:

Let's move on to specific permit requirements. Specific requirements are those that are clearly defined or identified, further eliminating ambiguity while increasing precision.

Monitoring, reporting, and record-keeping requirements in both individual and general permits should be as specific as possible, including as much detail as needed for the permittee to comply with the conditions and for the permitting authority to be able to determine compliance and enforce these requirements. For example, the permit should be clear in specifying which parameters have effluent limitations and which parameters have monitoring only requirements.

1.12 Specific Requirements Tips



Notes:

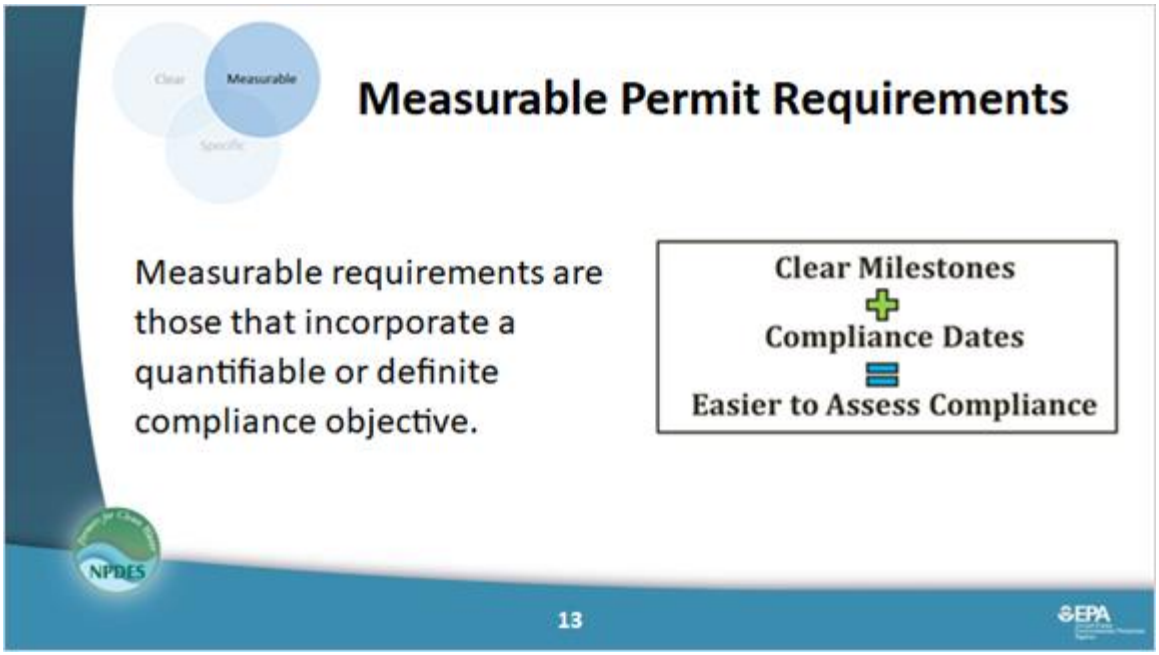
Let's discuss some general tips about how to be more precise. NPDES permits must be very specific in stating monitoring location requirements. Our regulations require that the monitoring location must be representative of the regulated process for which limits have been developed. More specifically written permit requirements allow the permittee to better understand where they need to monitor.

NPDES permits must specify the laboratory methods to be used for the analysis of pollutants. In some cases the permit will need to include specific timing, for example, in the case of stormwater permits, if the required monitoring must take place during dry weather or during a wet-weather event.

Specificity in monitoring and reporting requirements is important for narrative permit conditions as well. Permits should contain specific requirements or criteria for what processes or activities must be observed or monitored. Because these are narrative conditions, it is especially important to lay out the actions required of the permittee. And when writing annual reporting requirements, a permit writer should specify what must be included in the report and the time frame that the reports should cover, and when the annual reports are due to the permitting authority.

An additional tip for providing specificity in permits is to list all outfalls and associated effluent limits and monitoring requirements in the permit. If a permit writer fails to list an outfall in the permit that was mentioned in the application, the permit leaves it open as to what, if any, limitations apply to that outfall.

1.13 Measurable Permit Requirements



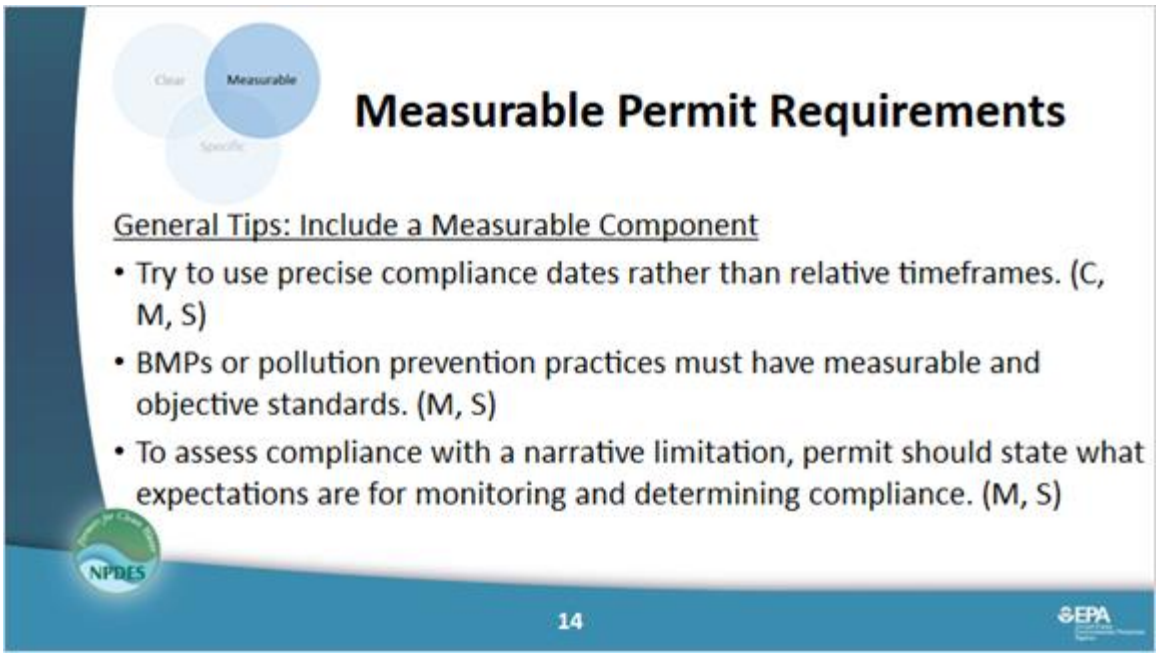
Notes:

This brings us to the third element for well written permit requirements. Measurable requirements incorporate a quantifiable or definite compliance objective. What this means is that the requirement answers a few questions:

- What needs to happen?
- Who needs to do it?
- How much do they need to do?
- When do they need to get it done? And
- Where is it to be done?

By answering these questions, the permitting authority is establishing clear compliance expectations.

1.14 Measurable Requirements Tips



Notes:

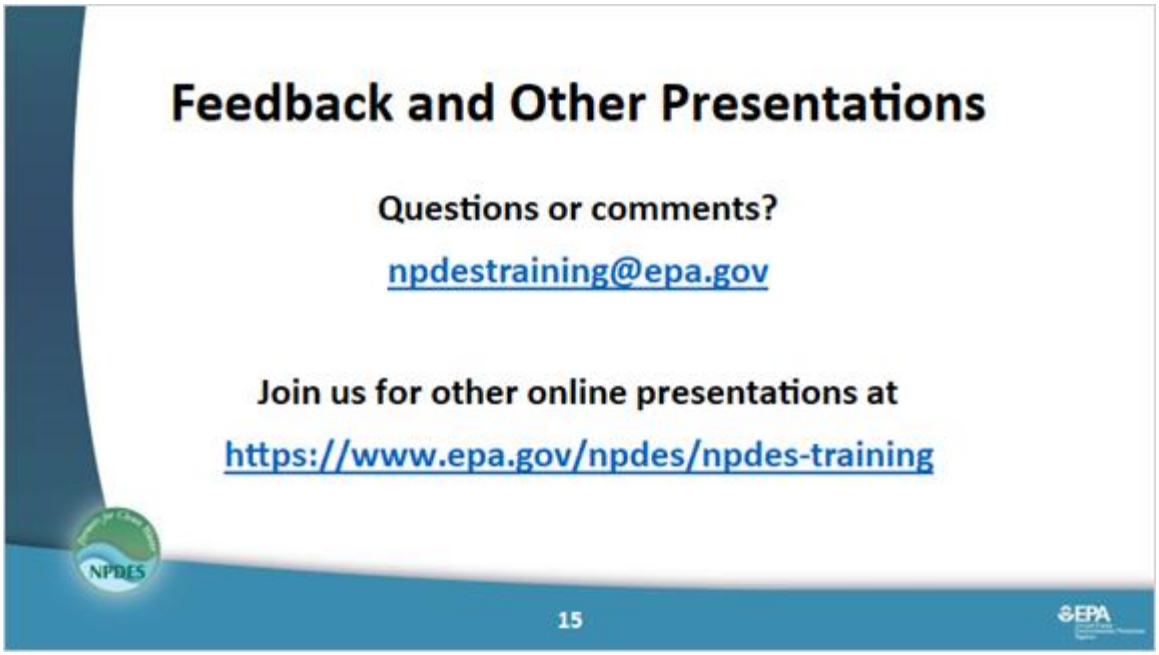
Let's go over some examples of what some of these measurable permit requirements may look like. A measurable way to express compliance dates is to specify a date by which compliance must be achieved, rather than a relative time frame. So rather than setting a deadline as 180 days after permit issuance, state an actual date, such as October 1, 2017. As you can see, this is an example of a permit provision that is clear, measurable, and specific.

Best management practices, or BMPs, pollution prevention practices, and other narrative limitations should also state measurable expectations for monitoring and determining compliance. For example, if a narrative limitation is expressed as "no floating oil, film, or visible sheen," an appropriate expectation for monitoring and recordkeeping may be to "conduct a visual inspection of the discharge once a week to determine the presence or absence of a visible sheen and documentation of the result." This is an example of a provision that is both measurable and specific.

By including this type of measurable condition, we are answering these questions and making the permit requirements that much easier for the permittee to understand and comply with.

Following the tips we have presented on effective communication, plain language writing, and use of clear, specific, and measurable requirements will make it easier for permittees to understand what is needed to be in compliance as well as ensuring the permit and permit requirements are clearly understood by everyone.

1.15 Conclusion



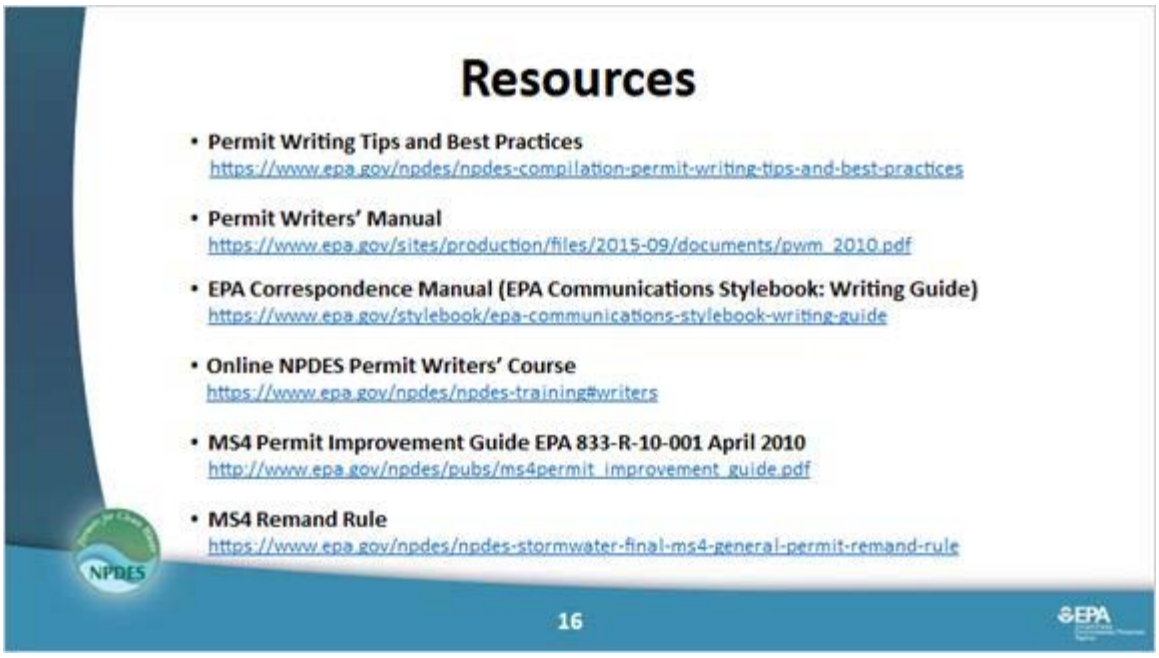
Notes:

This concludes the presentation of NPDES Permit Writing Tips and Best Practices. If you have any questions or feedback on this presentation, you can click on the email address given on this slide (npdestraining@epa.gov).

Remember, you will find all NPDES online training presentations under the "Training" section of USEPA's NPDES website (https://www.epa.gov/npdes/npdes-training). In addition, a tip sheet version of this training is also available online through the Resources tab and contains additional best practices along with examples for illustrative purposes.

Thanks again for joining us!

1.16 Resources



Notes:

This page contains the same links found on the Resources tab of the interactive training:

- Permit Writing Tips and Best Practices: https://www.epa.gov/npdes/npdes-compilation-permit-writing-tips-and-best-practices
- Permit Writers' Manual: https://www.epa.gov/sites/production/files/2015-09/documents/pwm_2010.pdf
- EPA Correspondence Manual (EPA Communications Stylebook: Writing Guide): https://www.epa.gov/stylebook/epa-communications-stylebook-writing-guide
- Online NPDES Permit Writers' Course: https://www.epa.gov/npdes/npdes-training#writers
- MS4 Permit Improvement Guide EPA 833-R-10-001 April 2010: http://www.epa.gov/npdes/pubs/ms4permit_improvement_guide.pdf
- MS4 Remand Rule: https://www.epa.gov/npdes/npdes-stormwater-final-ms4-general-permit-remand-rule