

Comment Response Document for the NPDES Electronic Reporting Rule – Phase 2 Extension (Final Rule)



2014



2019

NPDES eRule Implementation: Example of Reducing Paper Submissions
Sewage Sludge/Biosolids Reports
(EPA Biosolids Center of Excellence, Region 7)

23 September 2020
DCN 0021

EPA Docket Number EPA-HQ-OECA-2019-0408

Available at: <http://www.regulations.gov>

1.0 OVERVIEW

EPA published the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (“NPDES eRule”) on 22 October 2015. The 2015 rule required EPA and states to modernize Clean Water Act (CWA) reporting for municipalities, industries and other facilities. The rule divided implementation into two “Phases.” The deadline for Phase 1 implementation passed on December 21, 2016. Most states and permittees have successfully implemented Phase 1 of the NPDES eRule, which includes electronic submission of DMRs and the Federal Biosolids Annual Report where EPA is the Regulatory Authority (see cover for example photos). EPA originally set the Phase 2 deadline as December 21, 2020. Some state authorized NPDES programs provided feedback to EPA on how to improve Phase 2 implementation of the NPDES eRule and, in particular, recommended changes to the schedule for Phase 2 implementation to allow both EPA and states sufficient time to develop and implement the information technology solutions necessary for electronic reporting of the Phase 2 data.

EPA published a proposed rule to solicit comment on changing the compliance deadlines for Phase 2 implementation as well as other changes to the NPDES eRule to allow for a smoother transition from paper to electronic reporting for NPDES programs. The final rule addresses comments received and postpones the Phase 2 implementation period for the NPDES eRule.

Taken together, these data standardizations and the corresponding electronic reporting requirements are designed to save the NPDES authorized programs considerable resources, make reporting easier for NPDES-regulated entities, streamline permit renewals (as permit writers typically review previous noncompliance events during permit renewal), ensure full exchange of NPDES program data between states and EPA to the public, improve environmental decision-making, and protect human health and the environment.


2.0 PUBLIC COMMENT PERIOD

EPA published a proposed rule to solicit comment on changing the compliance deadlines for Phase 2 implementation as well as other changes to the NPDES eRule to allow for a smoother transition from paper to electronic reporting for the NPDES program (see February 28, 2020; 85 FR 11909). The due date for comments was April 28, 2020. EPA did not receive any late comments. As shown below, EPA received comments from seven states, one state association, and one anonymous commenter. EPA considered all of these comment submissions and identified the key issues raised by commenters. EPA’s responses to these comments are provided below.

**Public Comments on the
NPDES Electronic Reporting Rule – Phase 2 Extension Proposed Rule**

No.	Commenter / Docket No.	Commenter Org	Date Submitted	Pages	No. of Excerpts
1	Brian Weigel, Watershed Mgmt. Bureau Director Adrian Stocks, Water Quality Bureau Director EPA-HQ-OECA-2019-0408-0022	Wisconsin Department of Natural Resources	3/20/2020	1	4
2	Kayla Lyon, Director EPA-HQ-OECA-2019-0408-0023	Iowa Department of Natural Resources	4/27/2020	2	5
3	Lynn Barlow, Community and Program Assist. Mgr. EPA-HQ-OECA-2019-0408-0024	Oregon Department of Environmental Quality	4/27/2020	2	4
4	Patrick McDonnell, Secretary EPA-HQ-OECA-2019-0408-0025	Pennsylvania Department of Environmental Protection	4/28/2020	1	3
5	Toby Baker, Executive Director EPA-HQ-OECA-2019-0408-0026	Texas Commission on Environmental Quality	4/28/2020	3	2
6	David E. Ramsey, ICIS Program Coordinator EPA-HQ-OECA-2019-0408-0027	Arkansas Department of Energy & Environment	4/28/2020	1	2
7	Melanie D. Davenport EPA-HQ-OECA-2019-0408-0028	ACWA President	4/28/2020	4	10
8	Jeffery W. Kitchens, Chief, Water Division EPA-HQ-OECA-2019-0408-0029	Alabama Department of Environmental Management	4/28/2020	1	2
9	Anonymous public comment EPA-HQ-OECA-2019-0408-0030	Anonymous or Individual Person	4/28/2020	1	1

These public comments are available through the Regulations.gov website: (<https://www.regulations.gov/>). You can use “Advanced Search” on the Regulations.gov website to find these documents by selecting “Public Submission” (see below) and by inputting the Docket ID (EPA-HQ-OECA-2019-0408).


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3.0 ISSUE CODE OUTLINE

EPA considered all comments and grouped similar comment excerpts into issue codes. The following is the outline of these issue codes. EPA's responses are provided in this order.

Issue Code	Issue Code Description	No. of Excerpts
1	Generally Supportive of NPDES eRule Phase 2 Extension Proposed Rule	5
2	Phase 2 Compliance Deadlines in NPDES eRule (Table 1 to 40 CFR 127.16)	8
3	Alternative Phase 2 Compliance Deadlines	7
4	Need for EPA to be Ready to Receive Phase 2 Data	5
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7	NPDES Noncompliance Report	2
8	Clarifying Edits for More Efficient Implementation and 2019 NPDES Updates Rule Changes	3

4.0 EPA RESPONSES TO PUBLIC COMMENTS

Issue Code 1: Generally Supportive of NPDES eRule Phase 2 Extension Proposed Rule

Commenter Name: Jeffery W. Kitchens, Chief, Water Division

Commenter Affiliation: Alabama Department of Environmental Management

Comment Excerpt Number: 1

ADEM appreciates and supports EPA's proposal to extend the deadline for Phase 2 of the NPDES Electronic Reporting Rule and is submitting this letter in support of the separate comments that will be filed by the Association of Clean Water Administrators ("ACWA").

Commenter Name: Kayla Lyon, Director

Commenter Affiliation: Iowa Department of Natural Resources

Comment Excerpt Number: 1

The Iowa Department of Natural Resources (Iowa DNR) generally supports EPA's proposal to postpone the compliance deadlines for Phase 2 implementation of the electronic reporting rule, to allow states to request an extension of the compliance deadline, to clarify existing requirements in the rule, and to eliminate duplicative and obsolete reporting requirements.

Commenter Name: Kayla Lyon, Director

Commenter Affiliation: Iowa Department of Natural Resources

Comment Excerpt Number: 5

The Iowa DNR appreciates the opportunity to provide input on the proposed revisions to the electronic reporting rules, and we concur with most of the proposed changes.

Commenter Name: Melanie D. Davenport, President

Commenter Affiliation: Association of Clean Water Administrators

Comment Excerpt Number: 1

ACWA supports EPA's proposal to delay compliance deadlines for Phase 2 implementation, changes that would clarify existing requirements, eliminate some duplicative or outdated reporting requirements, and allow individual states to request more time if needed.

Commenter Name: Melanie D. Davenport, President

Commenter Affiliation: Association of Clean Water Administrators

Comment Excerpt Number: 2

ACWA supports an extension of time and updates to data standardizations/requirements designed to save the NPDES authorized programs resources, make reporting easier for NPDES-regulated entities, streamline permit renewals, improve the accuracy and completeness of NPDES program data shared with EPA, and improve decision-making to protect human health and the environment.

EPA Response: EPA thanks the stakeholders for their comments that were supportive of EPA's proposed rule. For the reasons set forth in the preamble to the final rule, EPA is postponing the compliance deadlines for the Phase 2 implementation period of the NPDES eRule and providing states with additional flexibility to request additional time as needed. Further, this final rule promulgates clarifying changes to the NPDES eRule and eliminates some duplicative or outdated reporting requirements.

Issue Code 2: Phase 2 Compliance Deadlines in NPDES eRule (Table 1 to 40 CFR 127.16)

Commenter Name: Brian Weigel, Watershed Mgmt. Bureau Director and Adrian Stocks, Water Quality Bureau Director

Commenter Affiliation: Wisconsin Department of Natural Resources

Comment Excerpt Number: 1

The WDNR supports the extension of the compliance deadline for the implementation of Phase 2 of the eRule from December 21, 2020 to December 21, 2023. Additionally, WDNR supports the extension while waiting on the municipal separate storm sewer system program data elements to be finalized (included in a separate federal rule package).

Commenter Name: Patrick McDonnell, Secretary

Commenter Affiliation: Pennsylvania Department of Environmental Protection

Comment Excerpt Number: 1

The Pennsylvania Department of Environmental Protection (DEP) appreciates the additional time provided by EPA to achieve compliance with Phase 2 of the NPDES Electronic Reporting Rule. In order to fulfill all the requirements of the NPDES Electronic Reporting Rule, DEP anticipates needing substantially longer than three years. While acknowledging that a three-year extension could be applied for, DEP recommends that the initial extension and further extensions be provided in five-year increments, such that the compliance deadline is initially extended to December 2025, with the possibility of an additional five-year extension.

Commenter Name: Jeffery W. Kitchens, Chief, Water Division

Commenter Affiliation: Alabama Department of Environmental Management

Comment Excerpt Number: 2

ADEM especially urges EPA's serious consideration of ACWA's comments recommending that EPA's initial extension of the deadline be for five years instead of the proposed three years and that the prohibition of further extensions beyond December 21, 2026, be deleted or adjusted. The facts supporting these recommendations are provided in ACWA's comments.

Commenter Name: Lynn Barlow, Community and Program Assist. Mgr.

Commenter Affiliation: Oregon Department of Environmental Quality

Comment Excerpt Number: 1

DEQ understands EPA's proposal to delay the compliance deadline for Phase 2 implementation is primarily for EPA to develop NeT Phase 2 reporting tools for many states needing to use the NeT tools. Under Section III of this Notice, Changes to Phase 2 Compliance Deadlines, EPA proposes to change the deadline for Phase 2 reporting from December 21, 2020 to December 21, 2023 as proposed under Part 127.16.

Commenter Name: David E. Ramsey, ICIS Program Coordinator

Commenter Affiliation: Arkansas Department of Energy & Environment

Comment Excerpt Number: 1

All references to the deadline date of December 21, 2023: Most of the changes to the rule have to do with the extension of the deadline for implementing Phase 2 from December 21, 2020 to December 21, 2023. The proposed rule was drafted before the COVID-19 pandemic forced most people effected by rule to change the ways they do business. This may further delay Phase 2 implementation beyond the December 21, 2023 deadline, but later than December 21, 2026. These dates should be extended by one to three years based on the successful treatment/prevention of COVID-19.

Commenter Name: Kayla Lyon, Director

Commenter Affiliation: Iowa Department of Natural Resources

Comment Excerpt Number: 2

The postponement of the compliance deadline will allow states and tribes to explore more cost-effective options for electronic reporting, and the addition of a provision to allow states to request an extension will allow the states to address unforeseen circumstances.

Commenter Name: Toby Baker, Executive Director

Commenter Affiliation: Texas Commission on Environmental Quality

Comment Excerpt Number: 2

The TCEQ requests that EPA clarify that the 2023 deadline [in 40 CFR 503.18] is for states that have been delegated the program.

Commenter Name: Melanie D. Davenport, President

Commenter Affiliation: Association of Clean Water Administrators

Comment Excerpt Number: 3

Postponing Compliance Deadlines for Phase 2

ACWA generally supports EPA's proposal to postpone the compliance deadlines for Phase 2 implementation, currently scheduled to occur by December 21, 2020. As noted in our July 2019 letter, ACWA believes "the new deadline should take into consideration the resources and time EPA will need to invest in updating ICIS-NPDES, the resources and time EPA will need to invest to complete work on the NPDES Electronic Tool known as "NeT", and the resources and time states will then need to complete their implementation of the rule given [all] the new information." ACWA also supports EPA's efforts to leave it open for states to apply for more time if needed. However, ACWA does not believe the initially proposed three years will be adequate time to complete all the necessary work, especially with the current COVID-19 crisis undermining the efficiency of some of this work over the next six to twelve months.

Recommendation: EPA should revise Phase 2 deadlines starting with a baseline extension of five years or until 2025. In the alternative, EPA could set the deadline to "36 months after EPA has the capability to receive all required information from all states."

EPA Response: EPA thanks the stakeholders for their comments that were supportive of extending the Phase 2 compliance deadlines. For the reasons set forth in the preamble to the final rule, EPA is finalizing changes to the 2015 NPDES eRule to postpone the compliance deadlines for Phase 2 implementation of the NPDES eRule from December 21, 2020, to December 21, 2025 (see Table 1 to 40 CFR 127.16). See Section III.A of the preamble to the final rule.

EPA expects to deploy the electronic reporting applications it needs to build and implement the data sharing protocols so that states can share Phase 2 data with EPA prior to December 21, 2025. EPA has already deployed general permit electronic reporting tools for more than 31,000 facilities that are subject to Federal or authorized state general permits (approximately 65% of the estimated number of facilities that will use NeT). The new Phase 2 compliance deadlines will also provide states with more time to develop the necessary Phase 2 electronic reporting tools and implement the new data sharing protocols for Phase 2 data.

With respect to comments from Wisconsin Department of Natural Resources on changes to municipal separate storm sewer systems (MS4s) data elements, EPA has finalized updates to the minimum set of NPDES program data (Appendix A to 40 CFR part 127) for the MS4 sector through a separate rulemaking. See April 15, 2020; 85 FR 20873. These changes to the NPDES eRule correct obsolete citations and previous inconsistencies with the newly modified MS4 Phase II regulations. See December 8, 2016; 81 FR 89320. These updates do not change the burden associated with complying with the NPDES eRule but, rather, these changes assist permitting authorities and MS4 permittees in implementing NPDES electronic reporting.

With respect to comments from Texas Commission on Environmental Quality, EPA notes that Table 1 in 40 CFR 127.16 makes clear that the compliance deadline for the electronic submissions of Biosolids Annual Program Reports [40 CFR part 503] is December 21, 2025 (when the state, tribe or territory is the authorized NPDES program). Part 127 is cross-referenced in the Part 503 regulatory provision identifying in the comments from Texas Commission on Environmental Quality. EPA is providing further clarifying edits to the language in Part 503 as follows:

Class I sludge management facilities, POTWs (as defined in § 501.2 of this chapter) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit a report on February 19 of each year. As of December 21, 2016, all reports submitted in compliance with this section must be submitted electronically by the operator to EPA when the Regional Administrator is the Director in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. Otherwise, as of December 21, 2025, or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to 40 CFR part 3), 40 CFR 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to the compliance deadlines for electronic reporting (see Table 1 in 40 CFR 127.16), the Director may also require operators to electronically submit annual reports under this section if required to do so by state law.

EPA is making similar clarifying edits to the surface disposal and incineration reporting requirements in 503.28 (Surface Disposal) and 503.48 (Incineration), respectively.

Issue Code 3: Alternative Phase 2 Compliance Deadlines

Commenter Name: Brian Weigel, Watershed Mgmt. Bureau Director and Adrian Stocks, Water Quality Bureau Director

Commenter Affiliation: Wisconsin Department of Natural Resources

Comment Excerpt Number: 2

WDNR also supports the waiver option to go beyond the 2023 deadline, if needed, as well.

Commenter Name: Toby Baker, Executive Director

Commenter Affiliation: Texas Commission on Environmental Quality

Comment Excerpt Number: 1

TCEQ recommends that EPA delete the prohibition related to EPA's authority to approve extensions beyond 12/21/2026 so that EPA can approve extensions that are needed beyond that

date. This deadline is unnecessary because the proposed rule already grants EPA the authority to approve or deny extension requests. With that authority, EPA would have the flexibility to evaluate whether a state needs more time after 2026 to fully implement electronic reporting. As was experienced with the current rule deadline of 12/21/2020, unforeseen issues can arise that would justify an extension beyond 2026. Allowing EPA the authority to approve extension requests that extend beyond 2026 in this rulemaking would eliminate the potential need for a future rulemaking to remove or adjust the 2026 date.

Commenter Name: Patrick McDonnell, Secretary

Commenter Affiliation: Pennsylvania Department of Environmental Protection

Comment Excerpt Number: 2

Given the magnitude of development work necessary to implement the provisions of the NPDES Electronic Reporting Rule, many states – including Pennsylvania – would benefit immensely if the initial extension and further extensions to implement the full scope of the rulemaking be provided in five-year increments.

Commenter Name: Jeffery W. Kitchens, Chief, Water Division

Commenter Affiliation: Alabama Department of Environmental Management

Comment Excerpt Number: 2

ADEM especially urges EPA's serious consideration of ACWA's comments recommending that EPA's initial extension of the deadline be for five years instead of the proposed three years and that the prohibition of further extensions beyond December 21, 2026, be deleted or adjusted. The facts supporting these recommendations are provided in ACWA's comments.

Commenter Name: Lynn Barlow, Community and Program Assist. Mgr.

Commenter Affiliation: Oregon Department of Environmental Quality

Comment Excerpt Number: 2

States can also request to extend the Phase 2 compliance deadline further to December 21, 2026 if EPA approves a waiver by states as proposed in Part 127.24 according to IV, Alternative Phase 2 Compliance Deadlines.

Commenter Name: Kayla Lyon, Director

Commenter Affiliation: Iowa Department of Natural Resources

Comment Excerpt Number: 2

The postponement of the compliance deadline will allow states and tribes to explore more cost-effective options for electronic reporting, and the addition of a provision to allow states to request an extension will allow the states to address unforeseen circumstances.

Commenter Name: Melanie D. Davenport, President

Commenter Affiliation: Association of Clean Water Administrators

Comment Excerpt Number: 4

EPA should continue to include the proposed alternative schedule option to allow states to ask for more time and include language in the final rule that would allow EPA to further extend the deadline nationally if necessary.

The proposed rule grants EPA authority approve or disapprove extension requests but prohibits EPA from granting a state an extension beyond December 21, 2026. As was experienced with the current rule deadline of December 21, 2020, unforeseen issues can arise that may justify EPA's consideration of an extension request that goes beyond 2026. Retaining EPA's authority to approve such an extension request would eliminate the need for a future rulemaking to remove or adjust the 2026 date.

Recommendation: ACWA recommends that EPA delete the prohibition related to EPA's authority to approve extensions beyond December 21, 2026.

EPA Response: EPA thanks the stakeholders for their comments on the alternative Phase 2 compliance deadlines. For the reasons set forth in the preamble to the final rule, EPA is adding two regulatory provisions that create additional flexibility for Phase 2 compliance (see Section IV of the preamble to the final rule). These two new provisions respond to the requests from ACWA and from authorized NPDES programs for more time to develop and implement the information technology solutions necessary for electronic reporting of the Phase 2 data.

The final rule retains the proposed option for a fixed date that is three years beyond the revised Phase 2 Compliance Deadlines. This means that EPA can approve extensions up to, but not beyond, December 21, 2028. EPA estimates that no authorized state will need more time than that fixed date, which is thirteen years after the effective date of the 2015 NPDES eRule. This approach will help focus EPA and state efforts on NPDES electronic reporting and help expedite the benefits of electronic reporting to NPDES-regulated entities.

Issue Code 4: Need for EPA to be Ready to Receive Phase 2 Data

Commenter Name: Brian Weigel, Watershed Mgmt. Bureau Director and Adrian Stocks, Water Quality Bureau Director

Commenter Affiliation: Wisconsin Department of Natural Resources

Comment Excerpt Number: 3

Furthermore, getting all of WDNR's data transferred to the EPA is dependent on their systems to be created/updated as well.

Commenter Name: Lynn Barlow, Community and Program Assist. Mgr.

Commenter Affiliation: Oregon Department of Environmental Quality

Comment Excerpt Number: 3

From the July 2019 ACWA letter, EPA cited in this proposed rule, "the new deadline should take into consideration the resources and time EPA will need to invest in updating ICIS-NPDES, the resources and time EPA will need to invest to complete work on the NPDES Electronic Tool, known as "NeT," and the resources and time states will then need to complete their implementation of the rule given the new information." DEQ believes that updating ICIS-NPDES is a significant task that requires extension of the Phase 2 compliance deadline; it was unclear in the proposal if this work was already completed. EPA clarified that, "EPA is not yet ready to receive the Phase 2 data from states that would like to first collect the data and then batch that data to EPA. We are sorting through options on how best to work with states as we start these updates." Unless DEQ's EDMS implementation schedule changes, DEQ will be prepared to share applicable Phase 2 eRule data as soon as July 2021. DEQ will need to delay electronic transfers of Phase 2 data until EPA completes ICIS-NPDES updates to receive the data. DEQ recommends that EPA work closely with states to update ICIS-NPDES. DEQ may incur additional EDMS development expense to add Phase 2 reporting to ICIS-NPDES after initial deployment of EDMS.

Commenter Name: Melanie D. Davenport, President

Commenter Affiliation: Association of Clean Water Administrators

Comment Excerpt Number: 5

In partnership with the U.S. Environmental Protection Agency (EPA), states have committed to support and comply with the NPDES Electronic Reporting Rule (NPDES eRule). States appreciate the assistance that EPA has been providing to support development of data flows from state systems to ICIS-NPDES. Many states have made significant progress in implementing Phase 1 and Phase 2 of the NPDES eRule and are seeing the benefits of such efforts. As noted in our July 2019 letter to Assistant Administrator Susan Bodine, states have expressed concerns that

updates to the ICIS-NPDES system may be detrimental to future implementation progress and that EPA will not be able to fully support all NeT application commitments to states prior to the December 21, 2020 deadline for Phase 2.

Commenter Name: Melanie D. Davenport, President

Commenter Affiliation: Association of Clean Water Administrators

Comment Excerpt Number: 6

EPA notes in this proposed rule more time is needed “...to allow EPA additional time to complete the development of electronic tools that the States may use to comply with the electronic reporting requirements...”. These tools include modernization of NetDMR and a move to an open-source software platform version of NeT. NeT also needs to be built out further to handle the rest of the deployed general permit electronic reporting tools for more than 27,000 facilities that are subject to federal or authorized state general permits (approximately 55% of the estimated number of facilities that will use NeT). Likewise, EPA will be updating modules within ICIS-NPDES, which will require regular communication and planning between states and EPA to minimize the potential detrimental impacts associated with these updates.

Recommendation: EPA should work closely with states as the Agency considers priorities and updates to ICIS-NPDES data system, including the development of a user-friendly tool in ICIS that allows states to generate their own reports. EPA should gather feedback directly from states on how to strategically make updates that benefit the states and EPA.

Commenter Name: Melanie D. Davenport, President

Commenter Affiliation: Association of Clean Water Administrators

Comment Excerpt Number: 7

States are requesting early and regular engagement as it relates to ICIS-NPDES system updates and requirements. This is especially important given the number of states that are in the process of developing their own reporting tools beyond NeT and NetDMR.

Recommendation: ACWA respectfully requests that EPA appropriately invest the necessary resources to complete the ICIS-NPDES updates and to meet all NeT/NetDMR commitment obligations to allow states and EPA to meet the new deadlines. States are also very interested in engaging with EPA to identify and prioritize important areas for updating/enhancing ICIS-NPDES.

EPA Response: EPA thanks the stakeholders for their comments that were supportive of EPA's efforts to update its data sharing protocols. EPA plans to work closely with states in order to develop and implement the Phase 2 data sharing protocols. EPA will provide states with the data sharing protocols for Phase 2 data prior to December 21, 2025. EPA will give states enough guidance and training ahead of this deadline so that states have an orderly means to share these data with EPA. Authorized NPDES programs can request EPA's assistance for electronic reporting by submitting a request to NPDESeReporting@epa.gov.

The new Phase 2 compliance deadlines will also provide states with more time to develop the necessary Phase 2 electronic reporting tools and implement the new data sharing protocols for Phase 2 data.

Issue Code 5: Need for Additional Resources for States

Commenter Name: Brian Weigel, Watershed Mgmt. Bureau Director and Adrian Stocks, Water Quality Bureau Director

Commenter Affiliation: Wisconsin Department of Natural Resources

Comment Excerpt Number: 4

Lastly, WDNR supports EPA making additional dedicated eRule grant funding available to States for eRule implementation.

Commenter Name: Patrick McDonnell, Secretary

Commenter Affiliation: Pennsylvania Department of Environmental Protection

Comment Excerpt Number: 3

Additionally, if EPA expects earlier compliance with the NPDES Electronic Reporting Rule, DEP requests EPA provide increased technical and financial assistance to support states in the development and deployment of the information technologies required for compliance with the rule

Commenter Name: Lynn Barlow, Community and Program Assist. Mgr.

Commenter Affiliation: Oregon Department of Environmental Quality

Comment Excerpt Number: 4

DEQ appreciates assistance by EPA to states for continued eRule implementation as proposed in Section VI, Assistance to States to Implement Phase 2. DEQ will continue to rely on EPA technical assistance and other support to further implement eRule requirements, particularly to support the development of new data transfer protocols. DEQ agrees that EPA should continue to

solicit states for workgroup participation or other means to work closely with approved NPDES programs to share information and provide recommendations.

Commenter Name: Melanie D. Davenport, President

Commenter Affiliation: Association of Clean Water Administrators

Comment Excerpt Number: 8

Assistance to States to Implement Phase 2

ACWA supports EPA's commitment to "provide technical assistance and support to authorized NPDES programs during the transition to electronic reporting." ACWA appreciates EPA's financial support through the Exchange Network Grant Program and would be interested in seeing EPA hold annual webinars that highlight/showcase some of the accomplishments of this program. ACWA also wishes to communicate states' appreciation for the continuing opportunities to participate on workgroups associated with NPDES eRule implementation.

EPA Response: EPA will continue to work with authorized NPDES programs to implement NPDES electronic reporting. EPA offers authorized programs financial assistance through the Exchange Network Grant Program. This program provides funding to states, territories, and federally recognized Indian tribes to support the development of the National Environmental Information Exchange Network. The primary outcome expected from Exchange Network assistance agreements is improved access to, and exchange of, high-quality environmental data from public and private sector sources. More information on this program is available at: <https://www.epa.gov/exchangenetwork/exchange-network-grant-program>.

EPA will also continue to provide technical assistance and support to authorized NPDES programs during the transition to electronic reporting. This includes building electronic reporting tools for authorized NPDES programs that elect to use these tools and to support the development of new data transfer protocols. EPA will also provide states with the data sharing protocols for Phase 2 data prior to December 21, 2025. EPA will give states enough guidance and training ahead of this deadline so that states have an orderly means to share these data with EPA. Authorized NPDES programs can request EPA's assistance for electronic reporting by submitting a request to NPDESeReporting@epa.gov.

Issue Code 6: Discussion of Alternative Phase 2 Compliance Deadlines and Initial Recipient Designation

Commenter Name: Kayla Lyon, Director

Commenter Affiliation: Iowa Department of Natural Resources

Comment Excerpt Number: 4

[T]he addition of language allowing EPA to extend the deadline at its discretion is concerning. The purpose of the proposed new provision that would allow EPA to establish alternative deadlines under 40 CFR Part 127 is unclear. As written, the proposed provision at 40 CFR 127.24(f) would allow EPA to dictate electronic reporting timelines and procedures to states. Why would EPA need to establish an alternative reporting deadline or an implementation plan for an authorized state program, unless EPA is the initial recipient of the data? EPA does not need to establish an alternative reporting deadline for an authorized program where the state is the initial recipient, and EPA should not describe to the states how electronic reporting will be implemented. For instance, the Iowa DNR plans to be the initial recipient for all reports related to general permits issued by the Iowa DNR. It would not be appropriate for EPA to establish an alternative deadline and describe to the Iowa DNR how electronic reporting for our general permits would be implemented by the Iowa DNR or by EPA, as EPA does not directly manage our staffing and budget resources.

If the intent of the provision is to allow EPA to extend the deadline for itself or for programs where EPA is the initial recipient, the proposed language needs to be modified to clearly state that. We suggest the following modifications to the proposed language for 127.24(f):

(f) Where EPA is the initial recipient, EPA may, as it deems appropriate, establish an alternative compliance deadline for electronic reporting and data sharing for one or more facilities, general permit reports, program reports, and related data elements (see Table 2 to appendix A) ~~in one or more states~~. EPA may establish an alternative compliance deadline up to three years beyond the currently applicable date, but in no event beyond December 21, 2026. ~~Separately, EPA will provide notice to the one or more authorized NPDES program covered by each alternative compliance deadline. EPA will update its website to include a notice containing~~ This notice will include a rationale for the delay and enough details (e.g., tasks, milestones, roles and responsibilities, necessary resources) to clearly describe how ~~it~~ EPA will successfully implement electronic reporting for general permit, program report, and related data elements covered by the extension. EPA will also update its website to clearly identify the alternative compliance deadlines for each facility, general permit report, program report, and related data elements ~~by authorized NPDES program~~.

If the intent of the proposed provision at 127.24(f) is to allow EPA discretion to provide blanket deadline extensions to multiple states, where the state is the initial recipient, the language regarding the details for implementing electronic reporting needs to be removed. EPA could provide reporting extensions to states, but EPA cannot dictate to states how electronic reporting would be implemented (either by the state or by EPA). The delay notice provided by EPA should

still include a rationale for the delay, such as a natural disaster or other unforeseen event, but the notice should not include a description of how the states will implement electronic reporting. If the intent of the provision is to allow EPA to provide extensions where EPA is not the initial recipient, we suggest the following changes to the proposed language for 127.24(f):

(f) EPA may, as it deems appropriate, establish an alternative compliance deadline for electronic reporting and data sharing for one or more facilities, general permit reports, program reports, and related data elements (see Table 2 to appendix A) in one or more states where the states have been designated by EPA as the initial recipients. EPA may establish an alternative compliance deadline up to three years beyond the currently applicable date, but in no event beyond December 21, 2026. Separately, EPA will provide notice to the one or more authorized NPDES program covered by each alternative compliance deadline. This notice will include a rationale for the delay. ~~and enough details (e.g., tasks, milestones, roles and responsibilities, necessary resources) to clearly describe how it will successfully implement electronic reporting for general permit, program report, and related data elements covered by the extension.~~ EPA will update its website to clearly identify the alternative compliance deadlines for each facility, general permit report, program report, and related data elements by authorized NPDES program.

Section VI of the Supplementary Information provided with the proposed rule states that EPA is proposing the provision 127.24(f) under 40 CFR Part 127, but it does not describe the intent of the proposed provision.

EPA needs to clearly establish the intent of the proposed language at 127.24(f), and adjust the language accordingly. As written, the proposed language at (f) could allow EPA to delay electronic reporting and establish implementation details for states without the consent of those states.

EPA Response: EPA held a meeting with the Iowa Department of Natural Resources (IA DNR) to discuss these comments (see DCN 0027). IA DNR confirmed that EPA needs to edit the proposed regulatory language [40 CFR 127.24(f)] so that it is clear that EPA cannot dictate to states how electronic reporting would be implemented if the state is meeting the implementation schedule in the rule (see Table 1, 40 CFR 127.16, and 40 CFR 127.23). EPA sets performance requirements for states that wish to build their own electronic reporting tools. To make this clearer, EPA and IA DNR worked together to develop edits to the regulatory provision cited in the comments [40 CFR 127.24(f)]. In particular, EPA added a cross-reference in Section 127.24(f) to the existing procedure in the NPDES Electronic Reporting rule (40 CFR 127.27) for identifying the initial recipient [as defined in 40 CFR 127.2(b)]. The following are the edits suggested by IA DNR. EPA incorporated these changes into the final rule.

40 CFR 127.24(f) - EPA may, as it deems appropriate, establish an alternative compliance deadline for electronic reporting and data sharing for one or more facilities, general permit reports, program reports, and related data elements (see Table 2 to appendix A) in one or more states. EPA may establish an alternative compliance deadline up to three years beyond the currently applicable date, but in no event beyond December 21, 2028. Separately, EPA will provide notice to ~~the each~~ authorized NPDES program covered by each alternative compliance deadline. This notice will detail ~~include a rationale for the delay and enough details (e.g., tasks, milestones, roles and responsibilities, necessary resources)~~ how EPA will implement electronic reporting (when EPA is responsible for deploying one or more electronic reporting tools) or how it will receive data from authorized NPDES programs (when the state is responsible for deploying one or more electronic reporting tools). ~~to clearly describe how it will successfully implement electronic reporting for general permit, program report, and related data elements covered by the extension.~~ EPA will update its website to clearly identify the alternative compliance deadlines for each facility, general permit report, program report, and related data elements by authorized NPDES program. This paragraph does not change the process for designating the initial recipient of electronic NPDES information from NPDES-regulated facilities. See Section 127.27.

Issue Code 7: NPDES Noncompliance Report

Commenter Name: David E. Ramsey, ICIS Program Coordinator

Commenter Affiliation: Arkansas Department of Energy & Environment

Comment Excerpt Number: 2

Page 11921 columns 2 and 3: I only have comments regarding Appendix A to 123.45 Criteria for Category I Permit Effluent Limit Violations of Permit Effluent Limits. Both Criteria for Category I violations mention an exact number of months within a six-month period to trigger a Category I (SNC) classification. For clarity it should be a variable number of months within six. See the updated wording:

- change "two months" to "two or more"; and
- change "four months" to "four or more months."

Commenter Name: Melanie D. Davenport, President

Commenter Affiliation: Association of Clean Water Administrators

Comment Excerpt Number: 9

EPA is proposing to delay the public release date of the NPDES Noncompliance report (NNCR) to December 21, 2022. EPA indicates this new date would allow EPA and states to properly prepare and implement Phase 1 data collection and sharing, and then incorporating Phase 2 data as it comes in. This approach would also allow EPA and states to use the NNCR for other efforts

like the Significant Noncompliance (SNC) Rate Reduction National Compliance Initiative (NCI). States support EPA providing additional time to work on how best to categorize and display non-compliance as part of the NNCR. States believe that formally releasing the NNCR to the public with known data quality issues will not accurately reflect the states' programs and could undermine public trust. Data quality of the NNCR must be an important consideration when the NNCR gets formally released to the public.

Recommendation: EPA should remove the deadline for public release of the NNCR and not plan to publicly release this tool until most of the data quality issues have been resolved. If EPA plans to use the NNCR internally, before final Phase 2 implementation is completed for all states, EPA should also designate the NNCR as “beta” or “draft” and explain why this designation is appropriate.

EPA Response: For the reasons set forth in the preamble to the final rule, EPA is adding regulatory language that explicitly creates separate deadlines for the public release of the NNCR using Phase 1 data (December 2022) and Phase 2 data (one year after the draft report is made available to states but no later than December 2026). See Section III.B of the preamble to the final rule.

EPA will provide states with an informal notice whenever a new draft version of the NNCR using Phase 2 data is ready for their review and comment. This will help EPA and states identify and fix data quality and data sharing issues. The deadline for issuance of the version of the NNCR that incorporates all Phase 2 data will be December 2026, i.e., one year after revised deadline for implementation of Phase 2 (similar to the approach in the 2015 NPDES eRule).

EPA notes that Phase 1 data are already provided to the public through ECHO, so even if data quality issues exist, the public already has access to Phase 1 data, which includes noncompliance data. EPA does not think it is necessary to delay public release of the NNCR for Phase 1 beyond December 2022. As previously noted, EPA and states have made significant progress in implementing Phase 1 and EPA has held frequent meetings with states on how to develop the NNCR and improve data sharing between EPA and authorized NPDES programs. EPA will continue to help states improve their compliance with the data sharing requirements in the NPDES eRule for Phase 1 data. In particular, EPA has provided technical support to authorized states to resolve data sharing problems and has developed a series of online dashboards to identify missing or inaccurate Phase 1 data and track improvements in Phase 1 data sharing. The benefit of this approach will be to give EPA, states, and the public a complete inventory of facilities with violations based on the most currently available set of NPDES program data. This will help EPA and states identify noncompliance issues that might impact human health or the environment.

Arkansas provided suggestions in comments on the proposed rule to clarify the noncompliance reporting language at Appendix A, 40 CFR 123.45 (see EPA-HQ-OECA-2019-0408-0027). These comments noted that the criteria for monthly average permit limit violations for determining Category I noncompliance should be clarified as lower thresholds. These comments

suggested the following clarifying changes to Appendix A, 40 CFR 123.45 (underlined text below are the suggested additions).

- Violations of monthly average permit effluent limits which exceed or equal the product of the Technical Review Criteria (TRC) times the permit effluent limit and occur in any two or more months in a six-month period.
- Violations of monthly average permit effluent limits which are exceeded in any four or more months in a six-month period.

EPA incorporated these changes into Appendix A, 40 CFR 123.45, as they provide greater clarity on how these criteria currently work as lower thresholds for triggering Category I noncompliance and represent the Agency's long-standing interpretation and implementation of these criteria (see Enforcement Management System: National Pollutant Discharge Elimination System (Clean Water Act), Chapter VII, DCN 0028).

Issue Code 8: Clarifying Edits for More Efficient Implementation and 2019 NPDES Updates Rule Changes

Commenter Name: Kayla Lyon, Director

Commenter Affiliation: Iowa Department of Natural Resources

Comment Excerpt Number: 3

The proposed clarifications and deletions will help to better specify the electronic reporting rule requirements.

Commenter Name: Melanie D. Davenport, President

Commenter Affiliation: Association of Clean Water Administrators

Comment Excerpt Number: 10

Edits Associated with More Efficient Implementation

ACWA supports minor refinements to the NPDES eReporting Rule to reflect lessons learned over the last five years, to streamline NPDES eRule implementation, and to clarify several Appendix A data elements/descriptions, which include a number of suggestions provided directly by states. ACWA also supports EPA providing greater clarity on the Notice of Termination Reporting Requirements, including further details on how to terminate abandoned facilities without an NOT or enforcement action. ACWA does not currently have any further specific recommendations for these provisions/sections but expects individual states may provide such. Where appropriate, ACWA can help EPA identify whether such recommendations are supported by a majority of the states.

Commenter Name: Anonymous

Commenter Affiliation: Anonymous or Individual Person

Comment Excerpt Number: 1

The proposed rule asks for both the SIC code and NAICS code to be submitted. Requiring both seems like an undue burden on the regulated community, given the regulatory benefit. Since SIC codes are outdated, only NAICS codes should be required and SIC codes should be optional.

EPA Response: For the reasons set forth in the preamble to the final rule, EPA is finalizing changes that clarify existing requirements and eliminate some duplicative or outdated reporting requirements. See Section V of the preamble to the final rule.

EPA notes that the comment on the collection of SIC code data as an “undue burden on the regulated community” is outside the scope of this rulemaking as the data sharing requirements in this final rule are imposed on the authorized NPDES programs and not on the regulated community. EPA established the data sharing requirements on the regulated community in the 2019 NPDES Applications and Program Updates Final Rule (see 12 February 2019; 84 FR 3324). Authorized NPDES programs must update their NPDES permit applications to collect four-digit Standard Industrial Classification (SIC) codes and the six-digit NAICS codes (see 84 FR 3327).