



Resolution 16-4
September 28, 2016
Wheeling, West Virginia

Revised September 26, 2019
Seattle, Washington

As certified by
Donald Welsh
Executive Director

TOWARDS A MORE EFFECTIVE AND EFFICIENT CLEAN WATER ACT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PROGRAM

WHEREAS, the Clean Water Act (CWA), a landmark environmental statute, has been central to the important progress we have made as a nation in improving the health of our waters, wetlands, and watersheds; and

WHEREAS, it is the policy of U.S. Congress, as expressed in the CWA, to recognize that states have the authority to manage and implement the National Pollutant Discharge Elimination System (NPDES) permit program with oversight from U.S. EPA; and

WHEREAS, the states are fully committed to protecting the nation's waters, enhancing pollution abatement and control programs, and implementing the NPDES program; and

WHEREAS, the scope of water quality programs has grown tremendously since the CWA was first enacted in 1972 to address hundreds of thousands of pollution sources; and

WHEREAS, the CWA established as national policy “...*that to the maximum extent possible the procedures utilized for implementing this Act shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government*”; and

WHEREAS, states acknowledge the need to work with U.S. EPA as it develops permitting oversight principles and best practices; and

WHEREAS, states support the core concepts of early consultation, collaboration, communication, and cooperation, as well as clear goals to enhance the effectiveness and efficiency of permitting oversight by U.S. EPA; and

WHEREAS, on October 22, 2015, U.S. EPA published the final National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (eReporting Rule) which requires electronic reporting and sharing of CWA NPDES program information, replacing the paper-based reporting system; and

WHEREAS, in June 2017, ECOS published “Cooperative Federalism 2.0: Achieving and Maintaining a Clean Environment and Protecting Public Health,” which includes several principles regarding the ways in which EPA should oversee delegated program implementation in order to improve environmental outcomes and maximize efficiency; and

WHEREAS, states have asked that U.S. EPA develop a more standard approach to oversight of state performance, focusing on outcome metrics that are understandable to the regulated community and the public; and

WHEREAS, U.S. EPA is working to develop a consistent, standard approach to oversight of delegated state permits and permitting programs, including the development of consistent expectations with national criteria and targets for the quality and timeliness of permitting performed, in consultation with states; and

WHEREAS, in partnership with U.S. EPA, states have committed to support and comply with the eReporting Rule, and appreciate the assistance that U.S. EPA has been providing to help support development of data flows from state systems to the Integrated Compliance Information System National Pollutant Discharge Elimination System (ICIS-NPDES); and

WHEREAS, some states must begin submitting certain NPDES reports electronically to meet the December 21, 2020, Phase 2 electronic reporting deadline; however, neither U.S. EPA nor all states will be in a position to fully meet this Phase 2 deadline, as much development work remains for U.S. EPA to meet its NPDES Electronic Reporting Tool (NeT) commitments; and

WHEREAS, the existing waiver provisions do not adequately protect states from instances in which they are unable to meet the Phase 2 electronic reporting deadline due to system readiness delays at U.S. EPA; and

WHEREAS, U.S. EPA in August 2019 committed to extend the Phase 2 electronic reporting deadline to December 21, 2023, and shared plans to propose a new electronic reporting waiver option for states that need even more time to implement Phase 2.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES (ECOS):

Maintains that in order for the states to effectively implement NPDES policies, including the e-reporting rule, consultation with the states and the resulting policies should:

1. Provide due deference to a state's approved continuous planning process and program for the prevention, reduction, and elimination of pollution in accordance with the purposes and provisions of the CWA;
2. Remove any barriers to full state programmatic flexibility and operations that are not expressly established in the Act;
3. Establish a budget neutral approach that would govern NPDES program operations and the federal-state partnership as additional pollution sources are brought into the NPDES program;
4. Work directly with states to more adequately and consistently consider state implementation cost as part of new NPDES rulemaking analyses;
5. Minimize the duplication of effort, redundancy, and burden to the maximum extent practicable for states that effectively leverage the investment of public funds;

6. Make full use of information technologies that provide operational savings, efficiencies, and generally minimize the burden of maintaining approved state NPDES programs and assure broad programmatic accountability but expressly preserve state's ability to utilize state systems as desired;
7. Maintain a state's prerogative to design and implement a management information system that best meets the challenges for the prevention, reduction, and elimination of pollution within its jurisdiction while still providing a core set of information for U.S. EPA oversight;
8. Support state water quality program efforts to issue timely permits and improve compliance rates, while recognizing states needs to leverage resources and prioritize program elements to address the most pressing water pollution problems in the state;
9. Identify and address emerging issues and concerns regarding activities associated with the implementation of the NPDES Program;
10. Recognize, preserve, and protect the primary responsibilities and rights of states to prevent, reduce, and eliminate pollution, including maintaining maximum flexibility to regulate and manage discharges to groundwater in ways that work for best individual states;
11. Implement an NPDES eReporting Rule that provides U.S. EPA with the data needed for program oversight while limiting the data management burden on the states;
12. Ensure that U.S. EPA NPDES oversight activities do not erode the authority of delegated states, while recognizing U.S. EPA's role in multi-state issues;
13. Ensure that the eReporting Rule Phase 2 implementation deadline allows for both states and U.S. EPA to meet their respective obligations and commitments, allows for U.S. EPA and state readiness to accept and share electronic data, and provide waiver provisions to address the possibility that system development delays may prevent the transmission and receipt of electronic data by the implementation deadline;
14. Provide a forum for meaningful state engagement in the modernization of ICIS-NPDES and the development of NeT tools; and
15. Encourage necessary funding and resource investment to allow U.S. EPA to expeditiously modernize its systems and develop tools that support full implementation of the eReporting Rule.