



ECOS

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Santa Fe, New Mexico

As certified by
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Executive Director

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

WHEREAS, the Environmental Council of the States (ECOS) works with states, territories, and the District of Columbia, throughout this resolution the term "states" indicates states, territories, and the District of Columbia; and

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, the policy of the U.S. Congress, as expressed in the CWA, is to recognize that states have the authority to manage and implement the NPDES permit program with oversight from U.S. EPA; and

WHEREAS, the Clean Water Act expressly “recognize[s], preserve[s], and protect[s] the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources ...” CWA section 101(b); 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, in 1993, U.S. EPA issued the *Standards for the Use or Disposal of Sewage Sludge*, which regulate sewage sludge or biosolids that are applied to land, fired in a sewage sludge incinerator or placed on a surface disposal site, and nine states are authorized through the NPDES program to implement the biosolids program; 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 with the states, as well as clear goals to enhance the effectiveness and efficiency of permitting oversight by U.S. EPA; and

WHEREAS, states and U.S. EPA have significantly reduced the national average quarterly Significant Noncompliance (SNC) rate for major and minor individually NPDES-permitted facilities from 20.3% to 10.2% over the last four years; and

WHEREAS, on October 22, 2015, U.S. EPA published the final 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, 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, U.S. EPA is undertaking an effort to modernize the ICIS system and will take a fresh look at workflows and business needs to ensure that a modernized system can: respond to future requirements that take advantage of modern technologies; efficiently and effectively collect, manage, and share data that underpin compliance and enforcement programs; lower operation, maintenance, and development costs; deploy shared reusable services to reduce information technology investments; comply with U.S. EPA’s electronic reporting requirements; and will be adaptable, flexible, and able to match the speed of U.S. EPA and state regulatory changes; and

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

WHEREAS, U.S. EPA published on November 2, 2020, the NPDES eReporting Rule Phase 2 Extension final rule which extended the compliance deadline for implementation of Phase 2 of the eReporting Rule by five years, from December 21, 2020 to December 21, 2025.

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

Maintains that in order for states to effectively implement NPDES policies, including the eReporting Rule, consultation with states and the resulting policies should:

- 1) Provide due deference to a state's approved programs 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) Work directly with states to more adequately and consistently consider state implementation cost as part of new NPDES rulemaking analyses;
- 4) Include in any expansion of NPDES requirements a comprehensive assessment of the financial impact on state governments, including costs associated with implementation, monitoring, and enforcement of the new requirements, to ensure that states are adequately supported in fulfilling these expanded responsibilities;
- 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) Modernize EPA's current approach for identifying, assessing, and responding to violations, including an update to the 1989 CWA NPDES Enforcement Management System. Also consider whether the current U.S. EPA SNC definition and associated policies continue to be the most appropriate approach to address the worst violations having the greatest environmental impacts, to provide a strong message of deterrence, and to encourage the fastest return to compliance;
- 10) Identify and address emerging issues and concerns regarding activities associated with the implementation of the NPDES program and provide technical assistance and guidance to NPDES programs regarding permitting strategies for contaminants of emerging concern that do not have numeric water quality standards;
- 11) 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 best for individual states;
- 12) Implement an eReporting Rule that provides U.S. EPA with the data truly needed for effective program oversight that focuses on water quality impacts while limiting the data management burden on the states;
- 13) 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;

- 14) 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;
- 15) Identify major business functions, inputs, and outputs that will be supported by a modernized ICIS; consider the current state of data management approaches to ensure a centralized data system fed by states still makes sense; evaluate environmental policies, guidance, or regulations which have led to challenges or inefficiencies in data management; identify instances in which ICIS implementation has led to significant burden resulting in very little environmental benefit;
- 16) Support state water quality program efforts to issue and implement timely permits and data flow elements by making requested improvements and changes to ICIS-NPDES in a timely manner;
- 17) Streamline the Cross Media Electronic Reporting Rule (CROMERR) to reduce costs and help states meet the goals of the eReporting Rule; ensure required implementation processes do not create unnecessary new obstacles for compliance, e.g. while CROMERR does not specifically require handwritten signatures, U.S. EPA has developed an entire authentication, security, and signature process as though it does;
- 18) Acknowledge that states use a wide range of compliance assurance tools beyond just formal enforcement by collecting additional data and representing these types of actions such as warning letters, field tickets, and technical assistance in ICIS-NPDES, Enforcement and Compliance History Online (ECHO), and the NPDES Noncompliance Report;
- 19) Improve ICIS-NPDES to allow for the automatic linkage and flow between states' systems and ICIS-NPDES for enforcement actions;
- 20) Provide meaningful engagement and opportunities to provide feedback and revise the NPDES Noncompliance Report to reduce the differences in what the states consider for permit noncompliance during its regulatory duties. Take into consideration that state violations are created separately from federal violations. Enforcement actions that resolve violations can behave differently between the U.S. EPA ICIS system and custom water quality permitting systems;
- 21) Provide ongoing training and support for existing and new staff on the eReporting Rule, Technical documents, ICIS–NPDES flow components, ECHO, and the NPDES Noncompliance Report;
- 22) Acknowledge that states with robust general permit programs have a disproportionate impact from the eReporting rule and consider this when approving waivers. Ensure that waivers are approved by U.S. EPA in a timely manner; and
- 23) Encourage U.S. EPA to issue a nationwide extension of Phase 2 of the eReporting Rule since ICIS modernization is not complete. States and U.S. EPA spend significant time and effort to prepare, review, and approve extensions on a state-by-state and program-by-program basis, and an extension would allow this effort to be spent on implementation.