

EXECUTIVE COMMITTEE

PRESIDENT

Karen L. Pallansch

Chief Executive Officer

Alexandria Renew Enterprises

Alexandria, VA

VICE PRESIDENT

Adel H. Hagekhalil

Assistant Director

Bureau of Sanitation

City of Los Angeles

Los Angeles, CA

TREASURER

Raymond J. Marshall

Executive Director

Narragansett Bay Commission

Providence, RI

SECRETARY

Cathy Gerali

District Manager

Metro Wastewater

Reclamation District

Denver, CO

PAST PRESIDENT

Julius Ciaccia, Jr.

Executive Director

Northeast Ohio Regional

Sewer District

Cleveland, OH

EXECUTIVE DIRECTOR

Ken Kirk

January 30, 2015

Attention: Docket ID No. EPA - HQ - OECA - 2009-0274

U.S. Environmental Protection Agency

EPA Docket Center, Enforcement and Compliance Docket

1200 Pennsylvania Avenue, N.W.

Mail Code: 28221T

Washington, DC 20460

Via Electronic Mail: docket.oeca@epa.gov

**Re: Comments on Proposed NPDES Electronic Reporting Rule:
79 Fed. Reg. 71066, Request for Further Comment**

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) proposed National Pollutant Discharge Elimination System (NPDES) Electronic Reporting (e-Reporting) Rule December 1, 2014 Supplemental Notice. NACWA's public wastewater agency members own and operate treatment plants with NPDES permits that would be impacted by any changes to the regulatory reporting requirements. Many of NACWA's members are responsible for a number of other programs, including industrial pretreatment, biosolids, and stormwater management programs, which will also be impacted by national electronic reporting mandates.

As noted in its comments on the original proposed rule, NACWA supports the Agency's efforts to improve the efficiency of permit-related reporting, with the ultimate goal of simplifying the reporting process – a goal that would benefit permittees and regulators alike. NACWA also appreciates the large amount of outreach EPA has done to get input from the regulated community over the past year. The Agency's close coordination with the state water program managers during that time is also encouraging, as they will ultimately bear the responsibility of implementing much of these requirements.

The Supplemental Notice itself acknowledges a number of the concerns raised in the Association's comments including concerns with: initial recipient status, State Readiness Criteria, and implementation plan schedule. NACWA's initial comments covering data quality, aggressive implementation schedules, technical support and cost remain important issues that must be addressed in the Final Rule, but as requested by EPA in Section IV of the Supplemental Notice NACWA is focusing this comment letter on the specific issues below.

Longer, More Flexible Implementation Period Needed (Section IV.A)

EPA acknowledges in the Supplemental Notice that the original two year, 90% participation, phased approach for implementing the e-reporting rule may be overly aggressive. As states vary considerably in terms of how prepared they are to implement the proposed rule's electronic reporting requirements, allowing more time will increase the successful implementation of e-Reporting. Forcing states and municipalities into e-reporting before they have the necessary infrastructure to handle the reporting, and before that infrastructure can be properly tested, could backfire.

It is our understanding from the Association of Clean Water Administrators (ACWA) that there are some states who believe that it may take nearly five or more years to implement the proposed requirements. This suggests it may be prudent for EPA to work with states to develop individual state-specific plans with varying schedules for implementation based on each state's readiness and resources, and/or consider sufficiently extending the lengths of the phases to address the states' varying capacities.

NACWA supports decreasing the 90% threshold for State Readiness Criteria and believes phasing in increased participation rates over time as indicated in the Supplemental Notice (e.g. Year 1 = 30%, Year 2 = 60%, Year 3 = 90%) would be a more workable approach. NACWA believes the Agency should work with those states currently implementing e-reporting to establish an appropriate threshold. Combined with a longer period of time for both Phase I and Phase II, this should allow for more careful and gradual implementation of e-Reporting systems.

Use of 308 Authority Not Appropriate for e-Reporting (Section IV.A.9)

EPA requested comment on using Clean Water Act Section 308 information collection authority to issue Information Collection Requests (ICR) to directly collect electronic reports from NPDES permittees not participating in state electronic reporting according to the proposed rule schedule. Section 308 is intended to allow EPA to gather information to help it develop regulations and to assess compliance. EPA should make every effort to limit use of these authorities and allow states to determine the appropriate path to meet a longer term implementation schedule. Furthermore, EPA also notes this would only happen in the event of "widespread noncompliance". What would constitute widespread noncompliance with the e-Reporting requirements?

The Section 308/ICR question raises another issue of importance to NACWA members – the potential for double reporting. In both the original rule and still in the Supplemental Notice, there seem to be situations where permittees could be reporting on paper forms to the state, while also submitting the same form electronically to EPA. Such double reporting would be duplicative, unnecessary, and present an onerous burden on clean water utilities. EPA should work with the states and strive for an e-Reporting system that maintains the fundamental premise that the state, once delegated, runs the NPDES program.

Stormwater Sector Concerns (Section IV.B)

The database format for the publicly available data raises concern because it would not allow for inclusion of some of the contextual information associated with the various data points. Text fields would more accurately characterize the activities of the Municipal Separate Storm Sewer System (MS4) facilities, but even the data elements across MS4 programs are not in standardized formats, and is difficult to translate narrative, variable, and in some cases, highly complex, permit reporting into a database format.

It is appropriate that, as EPA has stated, that Storm Water Management Plans (SWMPs) are not to be collected under this rule. In addition, EPA should clarify data requirements between Phase I and Phase II

MS4 permittees, and due to the complexities, EPA should delay implementation of electronic reporting for MS4 annual reports, especially for medium and large MS4s, until all associated issues are satisfactorily resolved.

Data Quality and Context Is Essential To Avoid Confusion (Section IV.F.1)

As noted in the Association's comments on the proposed rule, NACWA's main concern remains ensuring data quality. The accuracy of data in the national database should improve with direct data entry, but the Supplemental Notice does not address those concerns sufficiently or describe a thorough protocol for data checking and correction. Data quality and a way to fix incorrect data must be addressed before jumping ahead to maximum public accessibility.

The database format for the publicly available data raises concern because it would not allow for inclusion of some of the contextual information associated with the various data points. Much of the required data is not in standardized formats, and may be in attachment form. Though EPA has taken steps to assure the regulated community that those attachments will remain attached to data points (or text fields), it is unlikely that the public will be able to navigate highly complex, pretreatment, biosolids and MS4 permit reporting in a database format and could misinterpret the information. It is essential that EPA make every effort to avoid public misperception of any data given the consequences, including citizen lawsuits, that permittees face. NACWA asks that EPA postpone the consideration of improving public accessibility to data until the e-Reporting system has matured and is widely adopted.

Rule Appears to Expand Minimum Federal NPDES Data (Section IV.F.2)

EPA has reiterated time and again that the rule "does not increase the amount of information required from NPDES-permitted facilities under existing regulations." However, there are a number of data elements being proposed that appear to go beyond current reporting requirements. NACWA members and other permittees have submitted comments during both the original comment period and on Supplemental Notice regarding the minimum set of federal NPDES data in Appendix A, including those responsible for MS4 programs and the proposed changes to stormwater elements. NACWA urges the Agency to consider those comments carefully.

The e-Reporting effort is an opportunity to reduce federal, state, and facility reporting burden by reducing the number of programmatic reporting requirements that exist throughout the NPDES program. Rather than adding additional required data elements, e-Reporting could instead focus more closely on those elements that are critical to improving water quality.

Biosolids e-Reporting Should Remain in Phase 2 (Section IV.F.4)

EPA solicited comment on accelerating the deadline for submission of Biosolids Annual Reports from Phase 2 to Phase 1. EPA seems to be basing this change on the fact that only eight states are authorized to run the Federal Biosolids Program (40 CFR Part 503), and that EPA implements the biosolids program and collects these annual reports for the remaining states as well as tribes and territories. However, the situation is often more complex than that in states where they are not delegated for the federal biosolids program. NPDES permits may contain Standard Conditions which require annual sludge reports using state forms resulting in the potential for double reporting using two different formats. In addition, including diverse reports such as biosolids reports in the first phase of electronic reporting places an undue burden on state agencies and permittees and will only increase the likelihood that deadlines will not be met or submitted data is in error.

January 30, 2015

Page 4 of 4

Many NACWA members have been early adopters or voluntarily participated in their states' respective eDMR or EPA's netDMR programs. The Supplemental Notice does lay out a number of possible solutions to complications with the original rule proposal. NACWA acknowledges that e-Reporting will become the standard business practice. NACWA urges EPA to thoughtfully consider our original and more recent comments as the Agency works to refine this rulemaking.

Again, NACWA appreciates the opportunity to provide additional input addressing electronic reporting for the NPDES program. Please contact me at bmannon@nacwa.org or 202/533-1839 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brenna Mannion', with a long horizontal line extending to the right.

Brenna Mannion
Director, Regulatory Affairs and Outreach