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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](mailto:docket.oeca@epa.gov)

**Comments on Proposed NPDES Electronic Reporting Rule**

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 Rule. 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 and stormwater management programs, which will also be impacted by national electronic reporting mandates.

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. Data quality, however, has been and will continue to be the Association's top priority. In line with this, NACWA recommends that EPA consider longer time periods for each of the rule phases and clarify data quality procedures to ensure all of the complications are worked out before the e-reporting program is rolled out nationwide. Increasing the public's access to environmental management information – a major objective of EPA's e-reporting rule – can be empowering and informative, but without the proper context and careful quality assurance, that information could be misinterpreted or incorrectly identify compliance issues where none exist. Electronic reporting in the long-term should help to address concerns with data quality, but default data forms and national-level databases must be properly designed and implemented to provide the proper context and background for many of the required data elements.

While e-reporting may be more easily achievable for a few states and select utilities that are already using electronic reporting systems, the majority, as we understand it,

will need to make sweeping changes to their existing procedures and reporting systems. Allowing roughly two years for complete rule compliance is overly aggressive and will put many permittees at risk for non-compliance. NACWA also understands that the states are concerned that they will not have adequate time to make the necessary statutory/regulatory amendments and permit modifications to allow for e-reporting. State budget cycles will make it difficult to secure the funding needed to meet EPA's aggressive timetable, creating problems at both the state and municipal levels. The inability to meet these deadlines could lead to hundreds, if not thousands, of permittees directly reporting NPDES information to EPA. The Agency must work with the states as it finalizes this rule to maintain the delegated states' lead role in the NPDES program.

The detailed comments that NACWA received from its members in response to the proposed rule, are summarized below.

### Timeframe for Implementation Should be Lengthened

EPA has proposed what it calls a 'phased approach' for implementing the e-reporting rule. However, the proposed rollout allows just over two years for all state NPDES programs and permittees to institute e-reporting, which is overly aggressive. 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 and piloted, could backfire. The e-reporting rule would subject permittees to enforcement if they fail to submit e-reports on schedule, making it essential that technical issues do not delay submittals. Given current budgetary constraints, both at the state and local level, this two year timeframe could divert precious resources from other priority areas or the necessary funding may simply not be available in time to meet EPA's deadlines.

A recent effort at the federal level to replace the aging Permit Compliance System (PCS) database provides valuable perspective on the time and resources needed to make a successful transition between technology platforms. The Agency should be realistic in the amount of time it will take most NPDES programs and utilities to adjust to the rule requirements, and should lengthen both Phases I and II and consider allowing a pilot approach in states new to electronic reporting. Additional time for Phase I implementation would allow the second phase to build upon the experience from Phase I and incorporate lessons learned. NACWA also recommends that EPA limit the first mandatory electronic reporting phase to Discharge Monitoring Report (DMR) information only. Including diverse reports such as Part 503, Notices of Intent, and Sanitary Sewer Overflow (SSO)/Combined Sewer Overflow (CSO) reports in the first phase of electronic reporting will place an undue burden on state agencies and will only increase the likelihood that deadlines will not be met or submitted data is in error. Other electronic reports can be phased into the system once DMR reporting is launched and documented to be progressing well.

EPA sought comment on the acceptance rate required for States to meet the "State Readiness Criteria" in Phase I, and NACWA believes the Agency should work with those states currently implementing e-reporting to establish an appropriate threshold. An acceptance rate based on the actual experience of these states will increase the likelihood of success. Combined with a longer period of time for both Phase I and Phase II, this should allow for more careful and gradual implementation. NACWA is concerned that when a state government has not met the new federal requirements within the two-year time period, permittees will be forced to report directly to EPA – a significant change in procedure that is simply not necessary. This direct-to-EPA electronic reporting, as stated in the preamble, "is in addition to any pre-existing paper-based reporting requirements specified in permits" and would burden regulated entities with redundant reporting obligations. EPA must work with the states and the regulated community to set the program up for success rather than outline the penalties for not meeting the government's arbitrary deadlines. EPA also should consider establishing a process for making the state readiness criteria determination. As two of the three proposed State Readiness Criteria cannot be met until EPA takes an affirmative action, EPA should have a process and make

commitments that it will either approve the state's reporting tool or list them on their web site in a timely manner.

## Data Quality and Context Is Essential To Avoid Confusion and Misinformation

As noted above, NACWA's main concern remains ensuring data quality. The accuracy of data in the national database should improve with direct data entry, but will require a thorough protocol for data checking and correction. Historically, NACWA's members have had negative experiences with the quality of data in national databases (e.g., Enforcement and Compliance History Online (ECHO)) and have found correcting that data to be very difficult, if not impossible. The e-reporting rule must have a robust and reliable method for correcting incorrect data.

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. It is difficult to translate narrative, variable, and in some cases, highly complex, pretreatment, biosolids and Municipal Separate Storm Sewer System (MS4) permit reporting into a database format. The following issues are just a sampling of those that were raised by NACWA's members:

- How would permit parameters, such as averaging periods, be shown?
- How would aggregate permits or co-permittees be addressed? For example if the data is organized by facility rather than by basin, it can appear that a facility is in non-compliance when it is part of an aggregate permit which is in compliance. This results in a false positive indication of non-compliance.
- How will "monitoring only" data points be differentiated from permit limited values?
- How will special permit conditions, such as water quality trading provisions, be addressed in data fields? Another example of a special permit condition would be a facility that has a minimum chlorine contact tank residual limit but is allowed a number of exceptions each month.

If the goal is to provide clear and concise data to the public and regulatory agencies, then, in addition to standardization of reporting, a clear explanation of the regulatory requirements is needed to ensure that a complete and accurate compliance picture is established. It is essential that EPA make all efforts to avoid public misperception of any data given the consequences, including citizen lawsuits, that permittees face.

## Proposed Changes in Reporting Requirements and CFR Modifications

In the preamble of the proposed rule, EPA reiterates 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. For example, Table 2 in Appendix A requires geospatial data, including latitude and longitude, for facilities, overflow event reports, biosolids receiving sites, etc. For many utilities this will be a new reporting requirement. There is significant staff time required to gather coordinates for numerous locations, which many utilities currently record by nearest street address.

Also in Table 2, MS4 Measurable Goals are not currently required to be reported for Phase I MS4's. EPA should clarify data requirements between Phase I and Phase II MS4 permittees. The rule also transfers the reporting burden onto permittees for data more appropriately reported by the NPDES programs themselves, like:

- Permit Application/Notice of Intent (NOI) Received Date,
- Narrative Condition and Permit Schedules Report Received Date,
- Compliance Monitoring Activity, and
- Penalty Information: Civil Penalty Amount Assessed and Amount Collected.

EPA sought comment on whether there should be a *de minimis* volume below which sewer overflows would not have to be reported. A *de minimis* volume would clarify for permittees which overflows need to be reported in the 24-hour window required by the NPDES rules. NACWA believes that a *de minimis* volume should be established, but this is a complicated issue that could result in confusion due to differing requirements currently in place at the state level regarding the size of spills that need to be reported. NACWA encourages the Agency to work with state water regulators to establish an appropriate *de minimis* volume, over which sewer overflows would be reported.

EPA also sought comment on its decision not to require submittal of Long Term Control Plans (LTCPs) electronically. NACWA agrees that due to the legal context, complexity, length and evolving nature of the plans, LTCPs should not be required to be submitted electronically.

The draft rule proposes updates to the Code of Federal Regulations (CFR) and other substantive statutory changes. EPA is proposing to amend 40 C.F.R. §122.63 to allow electronic reporting modifications as part of the minor modification procedure for permits. EPA should clarify how it will coordinate with the states in modifying their programs and issuing permits. Navigating the state permit modification process may not be possible within the proposed implementation timeframe, especially in states where regulatory or statutory action is necessary for implementation. EPA should clarify mechanisms for permit modifications and how the permit modification approach would work.

EPA is considering updating 40 CFR §123.45 to “improve” how serious violations are categorized. Of particular concern is EPA’s use of the e-reporting rulemaking to move certain types of violations into the “serious” category. Additionally, the Agency is considering adding a section which would establish a policy-making process with States to 1) add or delete pollutants that are subject to classification for permit effluent limit violations and 2) change the reporting thresholds (magnitude and frequency) used for violations. These issues are separate and distinct from the electronic reporting that is the focus of this rulemaking. NACWA is opposed to EPA implementing new requirements without proceeding through a separate notice and comment process.

## Flexible Approach to Software Development is Appropriate, but Necessary Technical Support Will Be Essential

NACWA supports the Agency’s flexible approach to software development. An open-platform, third-party software approach that does not specify particular reporting tools should encourage greater competition, leading to better options and cost savings. As NACWA understands the proposal, states and utilities currently using electronic reporting tools are not required to cease using those tools. Instead, they must ensure the data collected meets Cross-Media Electronic Reporting Regulation (CROMERR) requirements, and any additional requirements put forward by this rulemaking. This will allow permittees who have successfully been submitting their DMRs and other data electronically through existing programs to continue to do so.

To ensure a smooth transition to electronic reporting, EPA must ensure that the minimum technical requirements for existing systems, and associated technical support requirements, are explicitly laid out at the onset of rule implementation – for both existing electronic reporting tools and any third-party software. EPA must also provide robust technical support for its own national tools that are adopted by the states. In

addition, any required state or EPA-developed software/hardware program for compliance must have an IT disaster recovery implementation plan (DRIP). If the system goes down and stays down, there will be no quick paper-based work-around if the system has been re-engineered for electronic submission only. Backup systems to e-reporting should be considered.

Though many permittees located in urban and semi-urban areas have easy access to the internet for electronic reporting, it is important to keep in mind there are many small rural utilities that may not have reliable, high-speed internet. NACWA supports EPA's proposed waiver for those without broadband internet access.

### EPA Has Likely Underestimated the Rule's Cost to Permittees

The primary beneficiary of electronic reporting will be the NPDES program administrators, as the task of data entry will largely be transferred from the regulator to permittee. This will no doubt help with data quality in the long-term, but will not be without impact on already cash-strapped utilities. While some utilities are accustomed to electronic reporting in states that have either mandatory or voluntary e-DMR programs, most utilities will have to make investments in order to program their internal data management systems to ensure they will be compatible with the state/EPA electronic reporting systems. While EPA's national cost estimates for the rule indicate an initial cost of only approximately \$50 million dollars for the first three years of implementation, it is unclear how EPA arrived at such an estimate given that the software necessary has not yet been developed and there is no way to know how much work may be required to ensure that existing systems are compliant. Our members note that significant staff time and resources will be required to implement and train personnel on the new systems. We have heard specifically from one of our larger members with experience using their state e-reporting program that e-reporting can have significant cost implications for utilities. The utility has had to expend tens of thousands of dollars to program various laboratory data management systems to be compatible with the state electronic DMR system.

Many NACWA members have been early adopters or voluntarily participated in their states' respective eDMR or EPA's netDMR programs. NACWA acknowledges that e-reporting will become the standard business practice and it has positive potential. However, NACWA foresees significant complications with the proposed rule as it is currently written. EPA is allowing too little time for the implementation phases of this complex and far-reaching e-reporting mandate, and NACWA recommends that the Agency consider longer time periods for each of the phases and a pilot program to ensure that all of the complications are resolved before the program is rolled out nationwide.

Again, NACWA appreciates the opportunity to provide input into this effort by EPA. Please contact me at [bmannon@nacwa.org](mailto:bmannon@nacwa.org) or 202/533-1839 if you have any questions.

Sincerely,



Brenna Mannion  
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