Model Language for Incorporating Electronic Reporting Requirements into NPDES Permits

1. **INTRODUCTION**

The U.S. Environmental Protection Agency (EPA) promulgated a final rule in 2015 to modernize Clean Water Act reporting for municipalities, industries, and other facilities by converting to an electronic data reporting system. This final rule requires regulated entities to electronically report certain data required by the National Pollutant Discharge Elimination System (NPDES) permit program instead of filing paper reports. The rule also requires that certain data be entered into EPA’s national data system by NPDES Authorized States, Tribes, Territories, and Federal regulators.

This action saves time and resources for permittees, NPDES Authorized States, Tribes, Territories, and the U.S. Government while increasing data accuracy and supporting EPA’s goal of providing better protection of the nation’s waters. This regulation helps provide greater clarity on who is and who is not in compliance and enhances transparency by providing a timelier, complete, more accurate, and nationally consistent set of data about the NPDES program.

This document provides draft language that NPDES permit writers in authorized NPDES programs can use to incorporate electronic reporting requirements into NPDES permits, as well as draft language that can be incorporated into the permit factsheet to provide additional information related to electronic reporting.

Currently, 47 states and the Virgin Islands implement the NPDES program; 37 states implement the pretreatment program; and nine states implement the biosolids programs.[[1]](#footnote-1) There are currently no tribes authorized to implement the NPDES program. The information below provides a guide on how permit writers can incorporate electronic reporting requirements into NPDES permits and factsheets.

1. **ELECTRONIC REPORTING START DATES**

The transition from paper-based to electronic reporting requires close coordination and cooperation between EPA and authorized NPDES programs. EPA regulations at 40 CFR 127.26(f) require that all NPDES permits issued on and after Monday, 21 December 2015 contain permit conditions requiring electronic reporting consistent with EPA electronic reporting regulations. It is important for authorized NPDES programs to note the following start dates for electronic reporting and to specify the appropriate dates for the start of electronic reporting in NPDES permits.

Start Date for Phase 1 Electronic Reporting: NPDES permits must require that after December 21, 2016, NPDES permittees required to submit discharge monitoring reports (DMRs), including majors and nonmajors, individually permitted facilities, and facilities covered by general permits, must do so electronically (unless the regulatory authority directs otherwise, or the permittee received a waiver from electronic reporting). Additionally, all NPDES regulated entities in NPDES Authorized States, Tribes, or Territories where EPA manages the NPDES biosolids program (currently 41 of 50 states and all other tribal lands and territories) must start electronically submitting their Sewage Sludge/Biosolids Annual Program Report to EPA after 21 December 2016.[[2]](#footnote-2) These reports must contain the minimum set of NPDES program data identified in Appendix A, 40 CFR part 127.

Start Date for Phase 2 Electronic Reporting: NPDES permits must require that by 21 December 2025 or an alternative deadline established under 40 CFR 127.24 (e) or (f), the following reports must be submitted electronically (unless the regulatory authority directs otherwise, or the permittee received a waiver from electronic reporting):

* Notices of Intent to discharge (NOIs) under a general permit
* Notices of Termination (NOTs) of coverage under a general permit
* No Exposure Certifications (NOEs) under a stormwater general permit
* Low Erosivity Waivers (LEWs) under a stormwater general permit
* Sewage Sludge/Biosolids Annual Program Report (where state is authorized to administer the Federal biosolids program)
* Concentrated Animal Feeding Operation (CAFO) Annual Program Reports
* Municipal Separate Storm Sewer System (MS4) Program Reports
* Pretreatment Program Annual Reports
* Sewer Overflow/Bypass Event Reports and Anticipated Bypass Notices
* Clean Water Act (CWA) Section 316(b) Annual Reports

These reports must contain the minimum set of NPDES program data identified in Appendix A, 40 CFR part 127.

1. **MODEL PERMIT LANGUAGE FOR NPDES INDIVIDUAL PERMITS**

Permit writers can use the following example language to incorporate electronic reporting requirements into NPDES individual permits and related factsheets.

**Example Language**

1. **Electronic Submissions**

The permittee should use the following Uniform Resource Locator (URL) to submit reports and notices required to be submitted electronically: XXX and/or <https://cdx.epa.gov/> [for authorized NPDES programs that use EPA’s NPDES eReporting Tool (NeT)].

1. **Reports Required to be Submitted Electronically**

The following reports and notices must be submitted electronically using the URL provided above upon the permit effective date.

* Discharge Monitoring Reports (DMRs) using XXX or NetDMR [for authorized NPDES programs that use EPA’s electronic reporting tool]
* Biosolids/Sewage Sludge Reports using XXX or NeT-Biosolids [for authorized NPDES programs that use EPA’s electronic reporting tool]
* Sewer Overflow/Bypass Event Reports and Anticipated Bypass Notices using XXX or NeT-SewerOverflow [for authorized NPDES programs that use EPA’s electronic reporting tool]
* Municipal Separate Storm Sewer System (MS4) Program Reports using XXX or NeT-MS4 [for authorized NPDES programs that use EPA’s electronic reporting tool]

The following reports must also be submitted electronically using the URL provided above after receiving notification from the [AUTHORIZED NPDES PROGRAM].

* Concentrated Animal Feeding Operation (CAFO) Annual Program Reports
* Pretreatment Program Annual Reports
* Clean Water Act (CWA) Section 316(b) Annual Reports

[Note: The authorized NPDES program will adjust these lists based on the reporting obligations in the NPDES permit and availability of state electronic reporting tools. For example, only CAFOs are required to submit the CAFO Annual Program Report.]

1. **How to Request a Waiver from Electronic Reporting**

The permittee may seek a waiver from electronic reporting from [AUTHORIZED NPDES PROGRAM] to continue submitting reports on paper. To obtain an electronic reporting waiver, a permittee must first submit an electronic reporting waiver request to [AUTHORIZED NPDES PROGRAM] at the address below:

[AUTHORIZED NPDES PROGRAM ADDRESS]

The waiver request should contain the following details:

* Facility name;
* NPDES permit number (if applicable);
* Facility address;
* Name, address and contact information for the owner, operator, or duly authorized facility representative;
* Brief written statement regarding the basis for claiming a waiver; and
* [Note: The authorized NPDES program will list any other information that will help them assess whether to grant a waiver from electronic reporting.]

[AUTHORIZED NPDES PROGRAM] will either approve or deny this electronic reporting waiver request within 120 days. Permanent waivers from electronic reporting are only available to facilities owned or operated by members of religious communities that choose not to use certain technologies. The duration of a temporary waiver may not exceed 5 years, which is the normal period for an NPDES permit term. If a permittee wishes to continue coverage under a waiver from electronic reporting, they must re-apply for a new temporary waiver before the expiration of their existing waiver, even if this NPDES permit is administratively continued. Approved electronic reporting waivers are not transferrable, whether permanent or temporary, are not transferrable and the facility will need to re-apply for a waiver upon any change in facility ownership.

Permittees with an approved and effective electronic reporting waiver must use the forms or formats provided by [AUTHORIZED NPDES PROGRAM] and must be postmarked by the XXXth day of the month following the completed reporting period. The permittee must sign and certify all submissions in accordance with the requirements of Part XXX of this permit (“Signatory Requirements”). The permittee must submit the legible originals of these documents to the [AUTHORIZED NPDES PROGRAM] at the address below:

[AUTHORIZED NPDES PROGRAM ADDRESS]

1. **MODEL PERMIT LANGUAGE FOR NPDES GENERAL PERMITS**

Permit writers can use the following example language to incorporate electronic reporting requirements into NPDES general permits and related factsheets.

**Example Language**

1. **Electronic Submissions**

The permittee should use the following Uniform Resource Locator (URL) to submit reports, notices, and waiver requests that are required to be submitted electronically: XXX and/or <https://cdx.epa.gov/> [for authorized NPDES programs that use EPA’s NPDES eReporting Tool (NeT)].

1. **Reports Required to be Submitted Electronically**

The following reports, notices, and waiver requests must be submitted electronically using the URL provided above upon the permit effective date.

* Notices of Intent to discharge (NOIs) using NeT-XXX
* Notices of Termination (NOTs) using NeT-XXX
* No Exposure Certifications (NOEs) using NeT-XXX
* Low Erosivity Waivers (LEWs) using NeT-XXX
* Discharge Monitoring Reports (DMRs) using NetDMR
* Biosolids/Sewage Sludge Reports using NeT-Biosolids
* Sewer Overflow/Bypass Event Reports and Anticipated Bypass Notices using NeT-SewerOverflow
* Municipal Separate Storm Sewer System (MS4) Program Reports using NeT-MS4

The following reports must also be submitted electronically using the URL provided above after receiving notification from the [AUTHORIZED NPDES PROGRAM].

* Concentrated Animal Feeding Operation (CAFO) Annual Program Reports
* Pretreatment Program Annual Reports
* Clean Water Act (CWA) Section 316(b) Annual Reports

[Note: The authorized NPDES program will adjust this list based on the reporting obligations in the NPDES permit. For example, only CAFOs are required to submit the CAFO Annual Program Report. The authorized NPDES program will also insert the name and URL for the general permit application (e.g., NOIs). For example, general permits that cover aquaculture operations and use NeT will insert “NeT-Aquaculture” in the language above. The authorized NPDES program can use the [NPDES eRule Phase 2 Implementation Dashboard](https://edap.epa.gov/public/extensions/eRule_Phase2/eRule_Phase2.html) to identify applications that are available for use.]

1. **How to Request a Waiver from Electronic Reporting**

The permittee may seek a waiver from electronic reporting from [AUTHORIZED NPDES PROGRAM] to continue submitting reports on paper. To obtain an electronic reporting waiver, a permittee must first submit an electronic reporting waiver request to [AUTHORIZED NPDES PROGRAM] at the address below:

[AUTHORIZED NPDES PROGRAM ADDRESS]

The waiver request should contain the following details:

* Facility name;
* NPDES permit number (if applicable);
* Facility address;
* Name, address and contact information for the owner, operator, or duly authorized facility representative;
* Brief written statement regarding the basis for claiming a waiver; and
* [Note: The authorized NPDES program will list any other information that will help them assess whether to grant a waiver from electronic reporting.]

[AUTHORIZED NPDES PROGRAM] will either approve or deny this electronic reporting waiver request within 120 days. Permanent waivers from electronic reporting are only available to facilities owned or operated by members of religious communities that choose not to use certain technologies. The duration of a temporary waiver may not exceed 5 years, which is the normal period for an NPDES permit term. If a permittee wishes to continue coverage under a waiver from electronic reporting, they must re-apply for a new temporary waiver before the expiration of their existing waiver, even if this NPDES permit is administratively continued. Approved electronic reporting waivers are not transferrable, whether permanent or temporary, are not transferrable and the facility will need to re-apply for a waiver upon any change in facility ownership.

Permittees with an approved and effective electronic reporting waiver must use the forms or formats provided by [AUTHORIZED NPDES PROGRAM] and must be postmarked by the XXXth day of the month following the completed reporting period. The permittee must sign and certify all submissions in accordance with the requirements of Part XXX of this permit (“Signatory Requirements”). The permittee must submit the legible originals of these documents to the [AUTHORIZED NPDES PROGRAM] at the address below:

[AUTHORIZED NPDES PROGRAM ADDRESS]

1. See: https://www.epa.gov/npdes/npdes-state-program-authority [↑](#footnote-ref-1)
2. EPA has authorized nine states to run the Federal biosolids program (40 C.F.R part 503). These nine states are Arizona, Idaho, Michigan, Oklahoma, Oregon, South Dakota, Texas, Utah, and Wisconsin. [↑](#footnote-ref-2)