

# MEMORANDUM OF UNDERSTANDING

ON

DEVELOPMENT AND MAINTENANCE OF THE  
NPDES ELECTRONIC REPORTING TOOL (NeT)

BETWEEN THE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AND THE

KENTUCKY DIVISION OF WATER

## **I. PURPOSE**

This Memorandum of Understanding (MOU) sets forth the terms and understanding between the United States Environmental Protection Agency (U.S. EPA) and the Kentucky Division of Water (KYDOW) to develop and maintain the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Tool (NeT) for the Kentucky Municipal Separate Storm Sewer Systems (MS4) program in support of the NPDES Electronic Reporting Rule (40 CFR Part 127) (NPDES eRule).

## **II. BACKGROUND**

The NPDES eRule requires the electronic reporting and sharing of NPDES program data. Specifically, the rule requires regulated entities to report information electronically, instead of filing written paper notices and reports. These notices and reports include:

- Discharge Monitoring Reports (DMRs);
- Notices of Intent (NOI) to discharge in compliance with a general permit; and
- Other specified program reports.

The rule also requires authorized NPDES programs and other regulatory authorities to share the data from these notices and reports electronically with the U.S. EPA. Authorized NPDES programs must also share permit, compliance monitoring (e.g., inspection), violation determination, and enforcement action data with U.S. EPA. Implementation of the NPDES eRule for authorized NPDES programs is split in two phases. Phase 1 ended December 21, 2016, and included DMRs, and state compliance monitoring and enforcement action data. Phase 2 ends December 21, 2025 and includes general permit forms and program reports. The NPDES eRule also provides states with additional flexibility to request additional time as needed (up to but not extending past December 21, 2028).

As part of U.S. EPA's collaboration with the authorized NPDES programs to move forward with converting the NPDES program from paper to electronic reporting, a few options are being considered, including a national solution hosted by the U.S. EPA. In recognition of KYDOW's decision to use the national solution hosted by the U.S. EPA to implement electronic reporting for NPDES general permits and program reports and U.S. EPA's desire to bolster its partnerships with authorized NPDES programs, U.S. EPA is entering into this agreement with KYDOW to clarify the roles and responsibilities of both

parties. Other options being considered, including authorized NPDES programs consuming services available from U.S. EPA, may require other agreements be put in place.

The primary focus of this agreement covers the data elements found in Appendix A of the NPDES eRule, which identifies the minimum set of NPDES data that authorized NPDES programs must enter or transfer to U.S. EPA's national NPDES data system, as well as what NPDES-regulated entities must report electronically to the KYDOW. Where KYDOW chooses to require NPDES regulated entities to submit more data than what is listed in 40 CFR Part 127, Appendix A, both parties to this agreement will work together to determine the most viable solution (e.g., additional fields on electronic form, PDF attachment, paper form) to collect and record those data.

### **III. AUTHORITIES**

U.S. EPA enters into this MOU pursuant to Sections 104(a) and (b) of the Clean Water Act, 33 U.S.C. 1314(a) and (b), which authorizes U.S. EPA to encourage, cooperate with and render technical services to individuals, including the general public, as well as public and private sector entities to promote the coordination and acceleration of demonstrations, studies and training relating to the causes, effects, prevention, and elimination of water pollution.

### **IV. ROLES AND RESPONSIBILITIES**

- A. KYDOW intends to provide adequate resources and staff to deliver or perform the following for each activity area listed below.
- a. Permit and Program Report Form Review
    - i. Identify data to be included in each electronic submission, dependencies between form questions or sections and the related rules, dependencies between forms and related requirements (e.g., effluent limits), and schedules or dates for each submission.
    - ii. Ensure that each form has clear, well described reporting requirements.
    - iii. Make any minor modifications to already issued permits or guidance necessary to adopt U.S. EPA's electronic reporting solution.
    - iv. Work with U.S. EPA to clearly describe the permit and program report requirements and review process (if any) for permit coverage approval and program report submissions.
    - v. Identify cases where a form requires non-appendix A data elements for a discussion on the best approach on capturing these data elements.
    - vi. Specify any events that may result in a modification of monitoring requirements, particularly, but not limited to, instances where the monitoring requirements should be changed as the result of a new form submission.
    - vii. Avoid referencing a specific technology implementation solution or electronic reporting application in permit language or guidance.
    - viii. Identify where a paper submission should be sent from facilities.
    - ix. Ensure the general permit and other guidance specifies clear authority to collect each data element on the form.
    - x. Consult with U.S. EPA early in the permit and program report modification or development process if any questions or concerns arise regarding electronic reporting.

- b. NPDES Electronic Reporting Requirements Development
  - i. Participate in teleconferences or meetings with U.S. EPA staff to describe, document, and confirm requirements for general permit forms (e.g., NOIs) and compliance monitoring reports (e.g., DMRs, program reports). This includes any requirements necessary for KYDOW's approval or review of these documents (e.g., public notice requirements, fee payments, approval routing).
  - ii. Identify requirements for data entry to use the U.S. EPA's reporting solution to collect and report facility or other information for individually permitted facilities.
  - iii. Assist U.S. EPA, as needed, with the development and review of user stories, which are used by information technology (IT) developers to implement the requirements.
  
- c. Electronic Reporting Solution – Post Deployment
  - i. Contribute to the development and implementation of a testing protocol for the reporting solution.
  - ii. Complete required testing as requested by the U.S. EPA, which might include coordinating testers, gathering results, reconciling results, and providing feedback.
  - iii. Assist with engaging external users (e.g., industry, states, other agencies), as appropriate, to assist with testing the reporting solution.
  - iv. Update the KYDOW's NPDES permitting program and electronic data system to electronically collect the minimum set of NPDES data (Appendix A to 40 CFR Part 127) to facilitate compliance with the NPDES eRule.
  - v. Report all NPDES data that supports electronic reporting (e.g., permitting, compliance monitoring, compliance determinations, and enforcement activities) to U.S. EPA's national NPDES data system three months prior to the electronic reporting start dates in Table 1 in 40 CFR § 127.16(a) and maintain updates thereafter. Reporting will be timely, accurate, complete, and consistent (see 40 CFR § 127.23).
  
- d. Customer Support and Training
  - i. With U.S. EPA training and assistance, develop and maintain expertise on using all aspects of the reporting solution.
  - ii. Jointly develop with U.S. EPA outreach and training materials that inform regulated entities of their obligation to report electronically, provide information on how to report electronically, and identify outlets for the material.
  - iii. Develop documentation, help content, FAQs, and any additional guidance specific to implementation of the permit or program report as it relates to electronic reporting that can be posted on a public website.
  - iv. Provide training using material jointly developed with the U.S. EPA to permittees with the goal of minimizing U.S. EPA support.
  - v. Identify the individuals (primary and a backup) who will be providing customer support to resolve any issues that cannot be resolved by the NPDES eReporting Help Desk or U.S. EPA staff, and provide their contact information to the U.S. EPA.
  - vi. EPA intends to provide Tier I support through the NPDES eReporting Help Desk, unless KYDOW elects to provide Tier I support. KYDOW plans to inform U.S. EPA if it elects to provide Tier I support as defined in section IV.B.d.vi of this document. The Help Desk and/or U.S. EPA staff expects to refer requests that warrant or require a response from the authorized NPDES program to KYDOW.

- vii. Provide timely Tier II customer support, which includes, for example, permit clarification or interpretation, questions about form content, and compliance assistance needed when filling out the form or program report. Requests for Tier II support will be forwarded to KYDOW by the NPDES eReporting Help Desk or U.S. EPA staff using a customer relations management tool.
  - viii. Respond to Tier II NPDES eReporting Help Desk customer support requests by either updating the NPDES eReporting Help Desk ticket generated to capture the customers inquiry or responding via e-mail, as appropriate, in a timely manner.
  - ix. Review and approve, as appropriate, any requests by a regulated entity for the necessary roles and permissions to access structures, features, permits and functions in the reporting application in an expedited manner.
  - x. Communicate to U.S. EPA as expeditiously as possible any issues identified with the electronic reporting tool that KYDOW cannot address by documenting the issue via e-mail to the NPDES eReporting Help Desk using [NPDESReporting@epa.gov](mailto:NPDESReporting@epa.gov).
- e. Change Management.
- i. Provide notice to U.S. EPA of any necessary changes to the electronic reporting tool six months prior to expected implementation (e.g., changing requirements during the general permit renewal, changes to program report submission requirements), or, if six months notification is not practicable, as soon as possible.
  - ii. Provide notice to U.S. EPA of any necessary changes to the list of KYDOW NPDES general permits and program reports that will use NeT. This notice should be provided six months prior to expected implementation. The EPA website (e.g., “NPDES eRule Phase 2 Implementation Dashboard”) provides the most current listing of NPDES general permits and program reports that will use NeT.
- f. General
- i. When requested by U.S. EPA, make available KYDOW staff in the following areas:
    - 1. NPDES permit writing,
    - 2. Clean Water Act enforcement,
    - 3. Information technology/data management, and
    - 4. Customer relations management.
- g. Cross-Media Electronic Reporting Rule (CROMERR)
- i. CROMERR ensures the enforceability of regulatory information collected electronically by U.S. EPA and its state, tribal and local government partners. NeT relies on the U.S. EPA’s Central Data Exchange (CDX) CROMERR Services for all CROMERR functionality, which is CROMERR compliant. However, states, territories, and tribes intending to implement NeT must still complete a CROMERR application cover sheet, which is available at: <https://www.epa.gov/cromerr/epa-npdes-electronic-reporting-tool-net-cromerr-application-cover-sheet>.

- B. U.S. EPA intends to provide adequate resources and competent staff to deliver or perform the following for each activity listed below.
- a. Permit and Program Report Form Review
    - i. Advise on electronic reporting matters related to the permit and program report.
    - ii. Utilize a liaison between the KYDOW subject matter experts and IT developers.
    - iii. Work collaboratively with KYDOW to clarify reporting requirements for the permit and program report.
    - iv. Recommend permit or program report minor modifications needed to utilize the national reporting solution. Provide model language that can be used to incorporate electronic reporting requirements into reporting requirements. See: <https://www.epa.gov/compliance/npdes-ereporting-information-and-resources-authorized-programs>.
  - b. NPDES Electronic Reporting Requirements Development
    - i. Consult with KYDOW to develop permit or program report requirements for electronic reporting to include both data and business requirements.
    - ii. Convert permit or program report requirements to user stories for IT development.
    - iii. Keep KYDOW apprised of the development progress, including the completion of identified and agreed upon milestones.
  - c. Electronic Reporting Solution – Post Deployment
    - i. Work with KYDOW to develop a schedule for deployment in line with KYDOW’s permitting and program report deployment schedule (e.g., to have NeT available prior to the effective date of the general permit) and resource availability.
    - ii. Assign appropriate resources to meet the agreed upon deployment schedule. If U.S. EPA will be unable to meet the scheduled deployment date, KYDOW will be notified at least sixty days prior to the scheduled deployment date, or, if sixty days notice is not practicable an alternative schedule will be proposed as soon as practicable. U.S. EPA will work with KYDOW to finalize any alternative deployment schedules.
    - iii. Work with KYDOW staff to develop a testing protocol, which will clearly identify any user acceptance criteria, the schedule for testing, how to test, and how to provide feedback to the U.S. EPA. At times, testing may occur concurrently with the tool development.
    - iv. Inform KYDOW of any contingency plan in place to ensure regular and continuous operation of the electronic reporting solution. The contingency plan will address scenarios that could result in a disruption of operations. It can be expected that the plan will include notification, recovery, and reconstitution phases.
    - v. Secure the integrity of the electronic reporting tool through the maintenance of a firewall.
    - vi. Ensure access to any Copy of Record (COR). According to 40 CFR § 3.3, a COR is a true and correct copy of an electronic document received by an electronic document receiving system, which can be viewed in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information.
    - vii. Provide a notice on the U.S. EPA’s NPDES eReporting web page acknowledging this partnership between U.S. EPA and KYDOW to provide electronic reporting services.

- viii. Keep KYDOW apprised of the status of issues identified in accordance with paragraph Part IV.A.d.x above and/or completion of work to address severe issues or defects reported that prevent use of NeT.
  - ix. Update the U.S. EPA's national NPDES data system to collect the minimum set of NPDES data (Appendix A to 40 CFR part 127) to facilitate compliance with the NPDES eRule as they apply to NPDES general permits and program reports.
- d. Customer Support and Training
- i. Train staff from KYDOW to use NeT and the U.S. EPA's Central Data Exchange (CDX), to implement the role of the Regulatory Authority in the electronic reporting tool application, and to use the application from the perspective of the regulated entity. U.S. EPA will provide one webinar-based training for the authorized NPDES program on their roles. Additional support and training materials will be posted on the *NPDES eReporting Tool (NeT) Help Center* web portal.
  - ii. Collaborate on the development of outreach material for regulated entities on their electronic reporting obligation and on how to electronically report.
  - iii. Collaborate on the development of training materials for regulated entities, including the format and delivery method. U.S. EPA will support the authorized NPDES program on trainings for regulated entities as resources allow.
  - iv. Develop and make available documentation on IT and other technical/common system aspects.
  - v. Make available a knowledgebase web portal for posting support materials available to the public, which is currently the *NPDES eReporting Tool (NeT) Help Center*.
  - vi. Staff the NPDES eReporting Help Desk Monday through Friday during normal business hours (9:00 a.m. to 8:00 p.m. (ET)) to provide timely Tier I customer support. Tier I support is generally the initial support level responsible for basic or routine customer issues like, for example, accessing and navigating the NeT application, checking on status of forms, and aiding with the signature process.
  - vii. Provide training to KYDOW on updating and managing NPDES eReporting Help Desk tickets.
  - viii. Maintain a customer relationship management tool to assist with managing customer support requests and/or inquiries received.
  - ix. Direct the NPDES eReporting Help Desk to elevate Tier II customer support requests defined in IV.A.d.ii above to the staff identified by KYDOW in accordance with standard operating procedures.
  - x. Make available a user managed subscription service to be used to widely communicate information about the permit, program report, or electronic reporting tool.
- e. Change Management
- i. Consult with KYDOW on any plans to migrate, reconstitute, or otherwise significantly modify the structure of the information content, or access software for the electronic reporting solution, other than routine refreshing or updating of the resource.
  - ii. Maintain a list of desired changes identified by KYDOW and users after the tool is in production.



- iii. Review and prioritize the list of requested changes on an on-going basis, keep the authorized NPDES program informed of any changes' status, and implement changes as resources are available.

f. Data Access

- i. Make all e-reported data received available to KYDOW in a timely manner and in a filtered or filterable format such as a report that can be readily used for analysis/study (e.g – excel, CSV, etc.), agreed to by U. S. EPA and KYDOW.

## **V. LIMITATIONS**

- A. All commitments made in this MOU are subject to the availability of appropriated funds and each party's budget priorities. Nothing in this MOU, in and of itself, obligates KYDOW or U.S. EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or other financial obligation.
- B. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures, and will be subject to separate subsidiary agreements that will be affected in writing by representatives of both parties.
- C. This MOU is a voluntary agreement that expresses the good-faith intentions of the parties, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party.
- D. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against KYDOW or U.S. EPA, their officers or employees, or any other person. This MOU does not apply to any person outside of KYDOW and U.S. EPA.

**VI. POINTS OF CONTACT**

The following individuals are designated points of contact for the MOU:

<p>NPDES PERMITTING AUTHORITY:</p> <p>Jason M. Hurt, PE Environmental Engineering Branch Manager Division of Water Surface Water Permits Branch 300 Sower Boulevard, 3<sup>rd</sup> Floor Frankfort, KY 40601</p>	<p>U.S. EPA, Office of Compliance</p> <p>Robert Cannon Chief, Data Systems and Information Management Branch U.S. EPA, Office of Compliance 1200 Pennsylvania Ave, NW, MC 2222A Washington, DC 20460 <a href="mailto:cannon.rob@epa.gov">cannon.rob@epa.gov</a> Phone: (202) 566-2925</p>
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**VII. MODIFICATION/DURATION/TERMINATION**

This MOU will be effective when signed by all parties. This MOU may be amended at any time by the mutual written consent of the parties. The parties will review this MOU every five (5) years to determine whether it should be revised, renewed, or cancelled. This MOU may be terminated by either party by notifying the other party in writing 90 days in advance of the termination date. In addition, the contents of this agreement and/or the intent of this agreement may be superseded by other agreements, in which case, KYDOW will notify the U.S. EPA that this agreement is nullified and can be terminated.

**VIII. APPROVAL**

**NPDES Permitting Authority**

**U.S. Environmental Protection Agency**

12/14/2023

X 

Carey Johnson  
Director Division of Water  
Signed by: Jill Wilhelm

**JANE WALLACE** Digitally signed by JANE WALLACE  
Date: 2023.12.15 08:55:28 -05'00'