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| epalogo | **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** WASHINGTON, D.C. 20460 |
|  | OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE |

**ACTION REQUESTED:** Comments on this draft memorandum should be sent to Carey Johnston (johnston.carey@epa.gov) no later than 5 December 2016.

**MEMORANDUM**

SUBJECT: Implementation Guidance for Select ICIS-NPDES Data Elements

FROM: David Hindin, Director

 Office of Compliance

 U.S. EPA, Washington D.C.

TO: EPA Regional and Authorized State NPDES Permit and Enforcement Coordinators and State Information Technology Staff

**Overview**

The U.S. Environmental Protection Agency (EPA) recently promulgated the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (“final rule”) to modernize Clean Water Act reporting for municipalities, industries, and other facilities by converting to an electronic data reporting system (see October 22, 2015; 80 FR 64064). This final rule requires regulated entities and state and Federal regulators to use existing, available information technology to electronically report data required by the NPDES permit program instead of filing written paper reports.

The use of electronic reporting will save time and resources for permittees, states, tribes, territories, and the U.S. Government while increasing data accuracy, improving compliance, and supporting EPA’s goal of better protecting 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, more complete, more accurate, and nationally-consistent set of data about the NPDES program.

The final rule also provides authorized NPDES programs with flexibility in how to handle unusual circumstances for permittees that may arise from time to time. In particular, the final rule includes four data elements that allow authorized NPDES programs to manually override system-generated compliance evaluations for permittees (see Appendix A to 40 CFR 127). These four data elements are shown in Table 1.

**Table 1:** Appendix A Data Elements Used for DMR Non-Receipt and Permit Compliance Tracking

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| **Data Name** | **Data Description** |
| DMR Non-Receipt | Turns non-receipt tracking for compliance monitoring submissions [e.g., discharge monitoring reports (DMRs)] “on” or “off” for non-major permits (a.k.a. “minors”). This field is always “on” for major permits. This data element is initially system generated (defaults to “on”) and the most recent value is copied when the permit is reissued. . This data element will also be used to track non-receipt tracking of periodic compliance monitoring data [40 CFR 403.12(e) and (h)] for Significant Industrial Users (SIUs) and Categorical Industrial Users (CIUs) that discharge (including non-domestic wastewater delivered by truck, rail, and dedicated pipe or other means of transportation) to one or more POTWs in states where EPA or the State is the Control Authority). |
| DMR Non-Receipt Start Date | This is the date on which the permit’s “on” or “off” period for DMR Non-Receipt tracking status began. Initially system-generated to match effective date. The date must be provided in YYYY-MM-DD format where YYYY is the year, MM is the month, and DD is the day. This data element will also be used to track non-receipt tracking of periodic compliance monitoring data [40 CFR 403.12(e) and (h)] for Significant Industrial Users (SIUs) and Categorical Industrial Users (CIUs) that discharge (including non-domestic wastewater delivered by truck, rail, and dedicated pipe or other means of transportation) to one or more POTWs in states where EPA or the State is the Control Authority). |
| Permit Compliance Tracking Status | This is a unique code/description that indicates whether the permit is currently “on” or “off” for compliance tracking purposes. This data element is initially system generated (defaults to “on”) and the most recent value is copied when the permit is reissued. |
| Permit Compliance Tracking Status Start Date | This is the date on which the permit’s “on” or “off” period for compliance tracking status began. Initially system-generated to match effective date. The date must be provided in YYYY-MM-DD format where YYYY is the year, MM is the month, and DD is the day. |

This memorandum provides guidance on how authorized NPDES programs should use these four data elements. Additionally, this memorandum discusses how authorized NPDES programs should use the “Permit Major/Minor Status Indicator” and “Permit Major/Minor Status Start Date” data elements.

**Guidance**

Tracking Data Elements

The final rule allows authorized NPDES programs to turn “DMR Non-Receipt” and “Permit Compliance Tracking Status” to “Off” as needed; however, this should be for limited circumstances and duration. In particular, these limited circumstances should be of a short duration (e.g., less than 60 days) and may include:

* Widespread natural disaster (e.g., earthquake, hurricane, flood);
* Prolonged outage of electronic reporting tool; or
* Unique circumstance of permittee (e.g., serious illness or death of owner/operator).

For example, Regions and states may elect to set “DMR Non-Receipt” or “Permit Compliance Tracking Status” to “Off” when permittees have an episodic waiver (but not temporary or permanent waivers). In accordance with the NPDES Electronic Reporting Rule, these episodic waivers cannot last more than 60 days [see 40 CFR 127.15(d)(3)]. The final rule empowers authorized NPDES programs to directly manage the tracking data elements for these limited circumstances. The final rule also allows the NPDES program or the initial recipient to decide if NPDES-regulated entities should delay their electronic submissions or to send hardcopy (paper) submissions [see 40 CFR 127.15(d)(4)].

It is important to note that the ICIS RNC program will continue to generate an “Unknown” compliance status when either "Permit Compliance Tracking Status" or "DMR Non-Receipt" is set to “Off." ECHO and ECHO Gov will continue to show compliance status for these permittees (including their “Unknown” compliance status).

Permit Major/Minor Status Indicator Data Element

EPA has defined and used the term “major” permittee in many aspects of the NPDES permitting, compliance monitoring and reporting, data sharing, and enforcement programs. The final rule did not change how EPA’s NPDES regulations define this term. See 40 CFR 122.2 (“Major facility means any NPDES “facility or activity” classified as such by the Regional Administrator, or, in the case of “approved State programs,” the Regional Administrator in conjunction with the State Director”). EPA is now proposing to allow both Regions and states to directly adjust the “Permit Major/Minor Status Indicator” data element as opposed to only allowing EPA Headquarters staff to be able to modify this data element. The ability to modify this data element was raised by authorized NPDES programs during development of the final rule and EPA adopted this recommendation in the final rule.

Please note that authorized NPDES programs will need to first coordinate with their EPA Region before making any changes to the “Permit Major/Minor Status Indicator” data element. This is consistent with EPA regulations and past practice as the “major” designation is determined by the “Regional Administrator in conjunction with the State Director” [emphasis added]. Each EPA Region will decide how to manage this coordination. EPA will use the “Permit Major/Minor Status Start Date” in ICIS-NPDES to track each change in this data element.

Roles and Responsibilities

The use of these tracking data elements and the new ability of authorized NPDES programs to directly adjust the “Permit Major/Minor Status Indicator” data element should not be used to inhibit EPA’s ability to perform its oversight duties, which includes tracking progress on implementing the final rule. EPA will be evaluating changes in these data elements over time to track adherence to EPA’s data management guidance for these data elements. Although it is not expected, EPA may limit the roles of ICIS-NPDES users for one or more authorized NPDES programs that are unable to follow this guidance. This would limit or prevent certain authorized NPDES programs from directly managing these data elements.

The ‘NPDES Electronic Reporting Readiness and Data Completeness Dashboard’ (soon to be published in ECHO and ECHO Gov) will provide an easy method for EPA and authorized NPDES programs to measure adherence to this guidance. Use of this dashboard will enable EPA and states to have productive discussions on EPA’s data sharing regulations and policy.

Please contact my staff, Carey Johnston, (202) 566-1014, johnston.carey@epa.gov, if you have any questions about this memorandum.

Sincerely,

David Hindin, Director

Office of Compliance

Cc: John Dombrowski

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