



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF COMPLIANCE

MEMORANDUM

SUBJECT: NPDES Electronic Reporting Implementation Guidance for Tracking Compliance and Major Designations

FROM: /s/ David A. Hindin, Director
Office of Compliance

TO: EPA Regional and Authorized State Water Division Directors

In October 2015 the U.S. Environmental Protection Agency (EPA) promulgated the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule 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 and state and Federal regulators to use 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 provides 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.

This memorandum provides guidance to authorized NPDES programs regarding how they should manage data for unusual circumstances with permittees that may necessitate overriding system-generated compliance evaluations. This memorandum also provides guidance on how to identify and track changes to a permittee's designation as a "major." Use of this guidance will help provide greater nationally-consistent transparency to the public on non-compliance as we will be better able to correctly generate and show compliance evaluations for NPDES permittees.

EPA appreciates the helpful input from EPA and authorized NPDES program staff and managers in developing this guidance. Please contact my staff, Carey Johnston, (202) 566-1014, johnston.carey@epa.gov, if you have any questions about this memorandum.

cc: Andrew Sawyers, Director, Office of Wastewater Management
Susan Shinkman, Director, Office of Civil Enforcement
EPA and State NPDES Coordinators and Information Technology Staff

Implementation Guidance for Tracking Compliance and Major Designations December 28, 2016

Overview

The final rule 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 six data elements that allow authorized NPDES programs to manually override system-generated compliance evaluations for permittees (see Appendix A to 40 CFR part 127). These six data elements are shown in Table 1.

Table 1: Data Elements Used for Overriding System-Generated Compliance Evaluations in EPA’s NPDES data system (ICIS-NPDES)

Data Element Name	Data Description
DMR Non-Receipt Tracking	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 manage 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 Tracking Start Date	This is the date on which the permit’s “on” or “off” period for DMR Non-Receipt tracking 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 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.
Limit Set Status	The status of the limit set (e.g., active, inactive). Limit sets will not have violations generated when a limit set is inactive unless an enforcement action limit is present.
Limit Set Status Start Date	The date that the Limit Set Status started. The date must be provided in YYYY-MM-DD format where YYYY is the year, MM is the month, and DD is the day.

The following is guidance to authorized NPDES programs regarding how they should use these six data elements and how they should use the “Permit Major/Minor Status Indicator” and “Permit Major/Minor Status Start Date” data elements.

Tracking Data Elements

The final rule allows authorized NPDES programs to set the “DMR Non-Receipt Tracking” and “Permit Compliance Tracking Status” data elements to “Off.”¹ Additionally, the final rule allows authorized NPDES programs to set the “Limit Set Status” data element to “Inactive.” Setting the “DMR Non-Receipt Tracking” or the “Permit Compliance Tracking Status” data elements to “Off” or setting the “Limit Set Status” data element to “Inactive” for a NPDES permittee means that EPA’s NPDES data system (ICIS-NPDES) will not automatically track compliance for the permittee (e.g., compliance with effluent limits or DMR reporting requirements). Authorized NPDES programs should only set the “DMR Non-Receipt Tracking” and “Permit Compliance Tracking Status” data elements to “Off” in limited circumstances and for limited durations (e.g., less than 60 days). These limited circumstances 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, facility has ceased operations but not yet terminated its NPDES permit).

For example, an authorized NPDES program may elect to set the “Permit Compliance Tracking Status” data element to “Off” for a permittee that has an episodic waiver from electronic reporting. 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)).

Authorized NPDES programs should not set the “Limit Set Status” data element to “Inactive” in order to mask on-going noncompliance or problems with the collection, management, or sharing of data with EPA’s NPDES data system. For example, authorized NPDES programs should not set the “Limit Set Status” data element to “Inactive” to prevent EPA’s NPDES data system from identifying actual effluent limit exceedances or DMR non-receipt violations. It would also not be appropriate to set the “Limit Set Status” data element to “Inactive” when the authorized NPDES program has technical difficulties in collecting or sharing their NPDES program data with EPA’s NPDES data system. However, the “Limit Set Status” data element could be appropriately set to “Inactive” when the corresponding limits are not required by the applicable NPDES permit.

EPA’s NPDES data system should be capable of automatically tracking the compliance status for permittees with temporary or permanent waivers. The final rule requires authorized NPDES programs to share the minimum set of NPDES program data (Appendix A to 40 CFR 127) with EPA’s NPDES data system (see 40 CFR 127.21(a)(2)). Accordingly, authorized NPDES

¹ As noted in Table 1, the final rule restricts the use of the “DMR Non-Receipt Tracking” data element to only non-major permits.

programs should not set these data elements to “Off” or “Inactive” simply because a permittee has a temporary or permanent waiver.

EPA’s NPDES data system will continue to generate an “Unknown” quarterly compliance status when either “Permit Compliance Tracking Status” or “DMR Non-Receipt Tracking” is set to “Off.” EPA will also continue to show these quarterly compliance statuses (including any “Unknown” compliance statuses) on its public access website (Enforcement and Compliance History Online (ECHO) at <https://echo.epa.gov/>).

Finally, in order to promote effective coordination and communication on data limitations, authorized NPDES programs should send a list of NPDES-regulated entities to their EPA Regional water data steward (with a copy to NPDESeReporting@epa.gov) that provides more detail regarding the authorized NPDES program’s rationale for setting these tracking data elements to “Off” or “Inactive” for normal circumstances or for extended periods of time (e.g., equal to or more than 60 days). At a minimum, this list should include the following:

- NPDES permit number (NPDES ID);
- Facility name and address information;
- Permit Major/Minor Status Indicator;
- Permit type and status;
- Permit issue, effective, and expiration dates;
- Most current status of reportable noncompliance (RNC) and the associated quarter and year;
- “DMR Non-Receipt Tracking” data element status (i.e., “On” or “Off”) and duration in “Off” status;
- “Permit Compliance Tracking Status” data element status (i.e., “On” or “Off”) and duration in “Off” status;
- Identification of whether any “Limit Set Status” data element is set to “Inactive” when the limits are required by the applicable NPDES permit (i.e., “Yes” or “No”) and duration in “Inactive” status;
- Authorized NPDES program’s rationale for setting these tracking data elements to “Off” or “Inactive;” and
- Expected date when the authorized NPDES program expects to turn these tracking data elements to “On” or “Active” so that EPA’s NPDES data system (ICIS-NPDES) will be able to automatically track compliance.

Authorized NPDES programs should prepare this list on May 31st of each year and send this list to their EPA Regional data steward (with a copy to NPDESeReporting@epa.gov) by the following June 30th. This list should identify NPDES-regulated entities with tracking data elements set to “Off” or “Inactive” on or before April 1st of the same year (i.e., April 1st is 60 days before the list preparation date of May 31st). EPA will work with authorized NPDES programs to resolve any issues that prevent EPA’s NPDES data system from automatically tracking compliance. This will help improve EPA’s assessment of NPDES compliance and implementation of NPDES electronic reporting and data sharing requirements. EPA’s goal is to work collaboratively with authorized

NPDES programs to ensure that EPA and the public have greater clarity on who is and who is not in compliance. Accordingly, EPA will publish and maintain these lists on ECHO as important data caveats.

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”).

Previously, EPA only allowed EPA Headquarters staff to be able to modify the “Permit Major/Minor Status Indicator” data element. The ability for EPA Regional staff and authorized NPDES programs to modify this data element was requested by authorized NPDES programs during development of the final rule. EPA agreed with this recommendation and adopted this recommendation in the final rule (Appendix A to 40 CFR part 127). EPA is now allowing both Regions and authorized NPDES programs to directly adjust the “Permit Major/Minor Status Indicator” data element. This guidance helps implement this provision of the final rule.

Authorized NPDES programs need to coordinate with their EPA Region before making any changes to the “Permit Major/Minor Status Indicator” data element in ICIS-NPDES. This is required by EPA’s NPDES regulations (see 40 CFR 122.2). In particular, the “major” designation is determined by the “Regional Administrator in conjunction with the State Director” (emphasis added). EPA recommends that this coordination take place during EPA’s review of draft permits from authorized NPDES programs. The authorized NPDES program can provide EPA with the necessary rationale and justifications for any changes to the “Permit Major/Minor Status Indicator” data element in the draft permit fact sheet or other supporting documents. Authorized NPDES programs can also initiate a change in the “Permit Major/Minor Status Indicator” data element during a permit modification.

Each EPA Region will decide how to manage this coordination. EPA will use the “Permit Major/Minor Status Start Date” data element in ICIS-NPDES to track each change in this data element. EPA Regions should document their discussions with their authorized NPDES programs regarding the approved changes to the “Permit Major/Minor Status Indicator” data element in ICIS-NPDES. This documentation will help ensure proper coordination between EPA Regions and their authorized NPDES programs.

Summary

The use of these six 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 implementation of the final rule. In particular, authorized NPDES programs should not use these

data elements to mask problems in switching NPDES-regulated entities from paper reporting to electronic reporting or to mask data sharing problems between the authorized NPDES program's data system and EPA's NPDES data system (ICIS-NPDES). EPA will be evaluating changes in these data elements over time to track adherence to this guidance. If necessary to address misuse of these data elements, EPA may limit the roles of EPA NPDES data system users who do not follow this guidance. In particular, EPA may limit or prevent certain individuals or entire authorized NPDES programs from directly managing these data elements.

EPA plans to update the recently published "NPDES eRule Readiness and Data Completeness Dashboard" to effectively communicate all changes to these data elements in ICIS-NPDES. For example, EPA will update the dashboard to identify NPDES-regulated entities with one or both of the "Permit Compliance Tracking Status" or "DMR Non-Receipt Tracking" data elements set to "Off" for 60 days or more. Use of this dashboard will enable EPA and authorized NPDES programs to have productive discussions on implementation of NPDES electronic reporting and the related data sharing requirements, including adherence to this guidance.

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