

# NPDES Permit/Clean Water Act: U.S. Environmental Protection Agency Electronic Reporting Rule/Phase 2 Extension



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The United States Environmental Protection Agency (“EPA”) promulgated a final rule in the November 2nd Federal Register addressing the Clean Water Act National Pollution Discharge Elimination System (“NPDES”) Electronic Reporting Rule (“eRule”). See 85 Fed. Reg. 69189.

EPA states the Rule addresses several aspects of the eRule:

- Postpones compliance deadlines for implementation of Phase 2
- Provides states with additional flexibility to request additional time as needed
- Clarifies certain changes
- Eliminates duplicative/outdated reporting requirements

The changes are stated to be designed to:

- Save NPDES authorized programs resources
- Make reporting easier for NPDES regulated entities
- Streamline permit renewals
- Ensure full exchange of NPDES program data between states and EPA
- Enhance public transparency
- Improve environmental decision-making
- Protect human health and the environment

The NPDES eRule requires that regulated entities and state and federal regulators use existing, available information technology to electronically report data required by the NPDES program instead of filing written paper reports. EPA has previously estimated that once the eRule is implemented, the 46 state and Virgin Islands Territory that are authorized to administer the NPDES program will collectively save \$22.6 million each year as a result of switching from paper to electronic reporting.

The eRule makes facility-specific information, such as inspection and enforcement history, pollutant monitoring results, and other data required by NPDES permits accessible to the public through EPA’s website.

EPA had originally promulgated the eRule on October 22, 2015. The eRule divided implementation into two “phases.”

The Phase 1 implementation deadline passed on December 1, 2016. The Phase 2 deadline was originally scheduled for December 21, 2020. EPA notes that some states with authorized NPDES programs requested that the Phase 2 implementation date be moved back to provide:

. . . sufficient time to develop and implement the information technology solutions necessary for electronic reporting of the Phase 2 data.

As a result, EPA decided to postpone the compliance deadline for Phase 2 to December 21, 2025. Also added are two regulatory provisions that the agency states provide additional flexibility for Phase 2 compliance.

The possibility of obtaining additional time beyond December 21, 2025, to implement Phase 2 is provided. To obtain such extension, various information must be provided.

A second alternative authorizes EPA to provide on its own initiative additional time for one or more authorized NPDES programs to implement Phase 2 beyond December 21, 2025. The provision is stated to be potentially necessary if EPA has not yet deployed the required electronic reporting tool or if the agency has not yet deployed the protocols and systems for authorized NPDES programs to share one or more data elements.

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