



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 127

[FRL-9951-76-OECA]

### NPDES Electronic Reporting Rule Implementation Guidance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of guidance.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) recently promulgated the 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. This final rule requires regulated entities and state and Federal regulators to use existing, available information technology to electronically report data required by the National Pollutant Discharge Elimination System (NPDES) permit program instead of filing written paper reports.

This action 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 providing better protection of the nation’s waters. This regulation will help 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.

The final rule requires EPA to publish in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES-regulated facilities by state, tribe, and

territory and by NPDES data group. This listing must identify for NPDES-regulated facilities the initial recipient of their NPDES electronic data submissions and the due date for these NPDES electronic data submissions. This **Federal Register** document provides an overview of the “initial recipient” term as well as the listing of the initial recipients by state, tribe, and territory and by NPDES data group and the due date for NPDES electronic data submissions. In accordance with the final rule, EPA will update this listing on its website and in the **Federal Register** if there are any changes.

**DATES:** [insert date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** For additional information, please contact Mr. Carey A. Johnston (202-566-1014), Office of Compliance (mail code 2222A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC, 20460; e-mail address: [johnston.carey@epa.gov](mailto:johnston.carey@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Overview of the Initial Recipient Designation Process**

Under the NPDES Electronic Reporting Rule (“final rule”), NPDES-regulated entities are required to submit NPDES program data to the designated initial recipient, as defined in 40 CFR 127.2(b) (see 22 October 2015; 80 FR 64064). For the final rule, the term “initial recipient” means the governmental entity, either the authorized state, territory, or tribe, or EPA, who first receives the NPDES program data listed in Appendix A to 40 CFR 127. The initial recipient designation is made separately for each state and by each NPDES data group, which is defined in 40 CFR 127.2(c). EPA is using the initial recipient term to help NPDES-regulated entities properly identify the recipient for their electronic NPDES program data submissions. The initial

recipient provision will also help ensure that authorized NPDES programs and EPA are properly sharing these NPDES program data with each other. EPA is required by the rule to maintain the initial recipient list for each state and by each NPDES data group and publish this list on its website and in the **Federal Register** [see 40 CFR 127.27(c)]. Identification of the initial recipient for each NPDES data group is also included as a new NPDES permit standard condition, which authorized NPDES programs must include in NPDES permits [see 40 CFR part 122.41(l)(9)].

As necessary, the initial recipient designation can switch back and forth between the authorized state, tribe, or territory NPDES programs and EPA. EPA's goal is to help all authorized NPDES programs be the initial recipient for any data group (*e.g.*, DMRs) for which they would like to first receive the data. Below is the process for identifying the initial recipient.

- As of the effective date of the final rule (21 December 2015), the initial recipient determination is an 'opt-out' process for authorized state, tribe, or territory NPDES programs. Per section 127.27(a), an authorized NPDES program must notify EPA within 120 days of the effective date of the final rule (19 April 2016) if it wishes EPA to be the initial recipient for a particular NPDES data group. EPA received six such notices from authorized NPDES programs. For all other authorized NPDES programs, EPA is designating the authorized state, tribe, or territorial NPDES program as the initial recipient for all NPDES data groups.
- An authorized NPDES program can initially elect for EPA to be the initial recipient and then, at a later date, seek EPA approval to change the initial recipient status for one or all of the NPDES data groups from EPA to the authorized state, tribe, or territory. To make this switch, the authorized state, tribe, or territory must send a request to EPA. This

request shall identify the specific NPDES data groups for which the state, tribe, or territory would like to be the initial recipient of electronic NPDES information, include a description of how its data system will be compliant with 40 CFR part 3 (including, in all cases, subpart D) and 40 CFR part 127, and the date or dates when the state, tribe, or territory will be ready to start receiving this information. Section 127.27 outlines the process for requesting the designation of initial recipient. After EPA approval of the request, EPA will update the initial recipient list and will publish the revised initial recipient listing on its website and in the **Federal Register**.

- An authorized NPDES program can initially elect to be the initial recipient for one or all of the NPDES data groups and then at a later date request that EPA become the initial recipient for one or all of the NPDES data groups. To make this switch the authorized state, tribe, or territory will send a request to EPA. After coordination with the state, EPA will update the initial recipient list and will publish the revised initial recipient listing on its website and in the **Federal Register** [see 127.27(c)].
- There is also a process in Section 127.27(d) for ensuring that authorized NPDES programs share the minimum set of NPDES program data with EPA (see Appendix A to 40 CFR part 127). This process will switch the initial recipient status from the authorized state, tribe, or territory to EPA if the authorized NPDES program is not sharing the minimum set of NPDES program data with EPA. Section 127.27(d)(4) states that, “EPA will work with the Director of the authorized NPDES program to remediate all issues identified by EPA that prevent the authorized NPDES program from being the initial recipient.” When the issues identified by EPA are satisfactorily resolved, EPA must

update the initial recipient listing and publish the revised initial recipient listing on its website and in the **Federal Register**.

It should be noted that authorized NPDES programs will continue to retain their responsibilities to facilitate electronic reporting even when an authorized NPDES program elects for EPA be the initial recipient for one or more NPDES data groups. Regardless of the initial recipient status, EPA does not take over any permitting, compliance monitoring, or enforcement activities from the authorized NPDES program. In particular, the authorized NPDES program will:

- Maintain the primary roles and responsibility for implementing and enforcing the NPDES program;
- Retain the responsibility for outreach and training NPDES-regulated entities on how to register and use the appropriate electronic reporting tools;
- Retain data steward responsibilities (including review and processing error correction requests); and
- Retain the responsibility for review and processing electronic reporting waiver requests.

EPA will continue to assist authorized NPDES programs with their training and outreach needs as well as provide other support so that authorized NPDES programs can fully understand and use EPA's electronic reporting systems and thereby provide effective support to NPDES-regulated entities.

The interaction between the CROMERR requirements and the initial recipient requirements in the final rule should be noted.<sup>1</sup> For example, if the initial recipient status for a particular state for a particular data group switches from the state to EPA, then the NPDES-regulated entities in that data group in that state would need to ensure they register with the appropriate CROMERR-compliant system. In this example, NPDES-regulated entities will switch from using the state electronic reporting systems to EPA's electronic reporting systems (*e.g.*, NetDMR, NeT). This means that these regulated entities will need to register and obtain the necessary signing credentials for EPA's electronic reporting systems. Similarly, if the initial recipient status for a particular state, territory, or tribe for a particular data group switches from EPA to the state, then those NPDES-regulated entities in that data group in that state, territory, or tribe would switch from using an EPA electronic reporting system to a state electronic reporting system. Under this scenario, regulated entities will need to register and obtain the necessary signing credentials for the authorized NPDES program's electronic reporting systems. However, if a state, territory, or tribe is already using EPA's electronic reporting systems, the regulated entities would not need to register again as the NPDES-regulated entity will be using the same electronic reporting tool (*i.e.*, no change in the subscriber agreement that accompanies the electronic reporting tool).

## **II. Listing of the Initial Recipients for NPDES Electronic Reporting**

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<sup>1</sup> EPA seeks to ensure that electronic reporting has at least the same level of legal defensibility and dependability as information that EPA would obtain through hard-copy paper submission. The Cross-Media Electronic Reporting Regulation (CROMERR), promulgated October 13, 2005, provides the legal framework for electronic reporting requirements established under all EPA environmental regulations (40 CFR part 3). See the proposed rule for more background detail on CROMERR (30 July 2013; 78 FR 46035).

The final rule requires EPA to publish in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES-regulated facilities by state, tribe, and territory and by NPDES data group [see 40 CFR 127.27(c)]. This listing must identify for NPDES-regulated facilities the initial recipient of their NPDES electronic data submissions and the due date for these NPDES electronic data submissions. The final rule requires authorized NPDES programs to send EPA an opt-out notice by 19 April 2016. The following is a list of the six states that sent an opt-out notice to EPA. These notices are posted on EPA’s website that provides implementation information.

<b>State</b>	<b>State Elected for EPA to be Initial Recipient for General Permit Reports (NPDES Data Group No. 2)</b>	<b>State Elected for EPA to be Initial Recipient for DMRs (NPDES Data Group No. 3)</b>	<b>State Elected for EPA to be Initial Recipient for Program Reports (NPDES Data Group Nos. 4 through 10)</b>
Georgia	Yes (All)	Yes	Yes (All)
Nebraska	Yes (All)	Yes	Yes (All)
New Jersey	No	No	Yes (only for CAFO Annual Program Report)
North Carolina	Yes (only for Low Erosivity Waivers and No Exposure Certifications)	No	No
Oregon	Yes (All)	Yes	Yes (All)
Rhode Island	Yes (All)	Yes	Yes (All)

**Note:** Although not required as the initial recipient process is an ‘opt-out’ process, Tennessee sent notice to EPA that they intend to be the Initial Recipient for all NPDES data groups.

State that have elected for EPA to be the Initial Recipient for all of the NPDES data groups will be using EPA’s electronic reporting tools (e.g., NetDMR, NeT) and NPDES data system (ICIS-NPDES). It should be noted that Georgia and Rhode Island elected to use EPA’s NetDMR and NPDES data system (ICIS-NPDES) prior to the effective date of the final rule. Consequently, NPDES-regulated entities in these two states that are already using NetDMR will not need to take any additional actions in response to Georgia and Rhode Island designating EPA

as the Initial Recipient for DMRs (NPDES Data Group No. 3). In accordance with the final rule (see 40 CFR 127.16), NPDES-regulated entities in Nebraska and Oregon will need to register and start using NetDMR prior to the Phase 1 electronic reporting deadline (21 December 2016). New Jersey has elected for EPA to be the Initial Recipient for the Concentrated Animal Feeding Operation (CAFO) Annual Program Report [see 40 CFR 122.42(e)(4)]. In accordance with the final rule, CAFOs in New Jersey will need to register and start using NeT to submit their CAFO Annual Program Report prior to the Phase 2 electronic reporting deadline (21 December 2020). Finally, North Carolina has elected for EPA to be the Initial Recipient for Low Erosivity Waivers (LEWs) [see Exhibit 1 to 40 CFR 122.26(b)(15)] and No Exposure Certifications (NOEs) [see 122.26(g)]. In accordance with the final rule, facilities in North Carolina will need to register and start using NeT to submit their LEWs and NOEs prior to the Phase 2 electronic reporting deadline (21 December 2020).

For all other authorized NPDES programs not in the above table, the authorized state, tribe, or territorial NPDES program is the initial recipient for the NPDES programs and NPDES permits that it administers. For example, Arkansas will be the initial recipient for all NPDES Data Groups except for the Sewage Sludge/Biosolids Annual Program Reports [40 CFR part 503], as Arkansas is not authorized for the Federal Biosolids NPDES program. Likewise, Colorado will be the initial recipient for all NPDES Data Groups except for:

- Sewage Sludge/Biosolids Annual Program Reports [40 CFR part 503],
- Pretreatment Program Reports [40 CFR 403.12(i)],
- Significant Industrial User Compliance Reports in Municipalities Without Approved Pretreatment Programs [40 CFR 403.12(e) and (h)], and

- All NPDES reporting for Federal facilities.

Colorado is not authorized for the Federal Biosolids or Pretreatment NPDES programs and Colorado is not the NPDES permitting authority for Federal facilities in Colorado. It should be noted that EPA will be the initial recipient for all NPDES-regulated entities where EPA is the permitting authority or authorized NPDES program. A full listing of NPDES program authorization for each state is available on EPA's website (<https://www.epa.gov/npdes/npdes-state-program-information>).

Dated: August 24, 2016.

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