



## OFFICE OF COMPLIANCE

WASHINGTON, D.C. 20460

March 14, 2024

### **MEMORANDUM**

**SUBJECT:** U.S. EPA Partial Approval of the Michigan NPDES Electronic Reporting Phase 2 Extension Request

**FROM:** Jacqueline Robles Werner, Director  
Office of Compliance  
Office of Enforcement and Compliance Assurance

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Date: 2024.03.14  
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**TO:** Phillip D. Roos, Director  
Michigan Department of Environment, Great Lakes, and Energy

### **ISSUE**

This memorandum notifies you of your new deadline for sharing National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Phase 2 data with U.S. EPA ("EPA"). Your new deadline for sharing NPDES Electronic Reporting Phase 2 data with EPA is December 21, 2026. EPA will post this notice and your new date on its website in accordance with the NPDES Electronic Reporting Rule [see 40 CFR § 127.24(e)(3)].

### **BACKGROUND**

The U.S. EPA published the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule ("NPDES eRule") on October 22, 2015. This rule requires EPA and states to modernize Clean Water Act (CWA) reporting. Implementation of this rule is designed to save the NPDES authorized programs considerable 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, and protect human health and the environment.

EPA requires each authorized NPDES program to decide whether they would like to use EPA's electronic reporting tools or to build their own electronic reporting tools. Authorized states can make this decision or defer this decision to EPA. Michigan has elected to build its own electronic reporting

tools and then share the minimum set of NPDES data with EPA.<sup>1</sup> The NPDES eRule data sharing requirements are provided in 40 CFR § 127.23. The minimum set of NPDES data that states must share is listed in Appendix A, 40 CFR Part 127. These electronic data transfers to EPA must be timely, accurate, complete, and consistent with EPA's data sharing protocols, which are provided on the Environmental Information Exchange Network.<sup>2</sup> The NPDES eRule includes two default data sharing deadlines. For authorized states the Phase 1 compliance deadline (December 21, 2016) covers Discharge Monitoring Report (DMR) data. All other NPDES data (a.k.a. "Phase 2 data") are covered by the Phase 2 compliance deadline (December 21, 2025). See 40 CFR § 127.16.

The NPDES eRule allows an authorized NPDES program to submit a request to EPA to establish an alternative compliance Phase 2 deadline for electronic reporting of one or more general permit reports, program reports, and related data elements (see 40 CFR § 127.24). A State may request to establish an alternative compliance deadline of up to three years beyond the currently applicable date but not beyond December 21, 2028. It is the duty of the authorized NPDES program to apply for a new alternative compliance deadline. Michigan submitted such a request to EPA on October 30, 2025. This extension request would delay Michigan's Phase 2 data sharing with EPA to December 21, 2028, which is the maximum extension allowed under the NPDES eRule [40 CFR § 127.24(e)].

My staff and staff from EPA's Regional office (Chicago, Illinois) met with Michigan Department of Environment, Great Lakes, and Energy (EGLE) staff to review their extension request on November 6, 2023, and December 11, 2023. These meetings and the Phase 2 compliance deadline extension request confirmed the following:

- Michigan has elected to build their own NPDES electronic reporting tools and they deployed these tools prior to promulgation of the 2015 NPDES eRule. However, Michigan is not collecting the required minimum set of NPDES data. For example, Michigan is not collecting information on sewer bypass events (as required by the NPDES eRule).
- Michigan is scoping out a modernization of their electronic reporting tools so that they are easier to update and maintain.
- After this modernization effort, Michigan would like additional time to train its staff and NPDES-regulated entities on how to use their updated electronic reporting tools.
- Michigan is also requesting more time so that they can properly extract, transform, package, and then share the Phase 2 data in accordance with EPA's new Phase 2 data sharing protocols.
- Michigan is proposing to wait until EPA completes its updates to the Phase 2 data sharing protocols. My staff are holding bi-weekly workgroup meetings with states to draft, review, and then publish these data sharing protocols in stages. We estimate that we will complete these updates to our Phase 2 data sharing protocols by December 2024. This means that Michigan EGLE staff will have what they need to begin updating their Phase 2 data sharing by December 2024.

It is also important to note that authorized states submitted comments to EPA during the 2020 NPDES eRule Phase 2 extension rulemaking on the Phase 2 compliance deadline (see November 2, 2020; 85 FR

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<sup>1</sup> See: Michigan's "NPDES Electronic Reporting Rule Phase 2 Implementation Plan," January 23, 2017. Available at: <https://www.epa.gov/compliance/npdes-ereporting-phase-2-implementation-plan>

<sup>2</sup> See: <https://exchangenetwork.net/data-exchange/icis-data-submission/>

69189). These comments recommended that EPA collaborate with authorized states and invest the necessary resources to update its Phase 2 data sharing protocols and related data systems.<sup>3</sup>

We are providing Michigan with one additional year to implement data sharing for all your Phase 2 data. This new compliance deadline for Michigan, December 21, 2026, balances Michigan's need for additional time to update their data sharing protocols against the goals of the NPDES eRule (see 40 CFR § 127.1). We estimate that we will finish our collaboration with states on updates to Phase 2 data sharing protocols by December 2024. We recommend that Michigan start planning now to adopt these new Phase 2 data sharing protocols in the two-year period between December 2024 and December 2026. We estimate that you will not need more than two years to update your Phase 2 data sharing protocols.

Please note that this Phase 2 extension request only extends the deadline for Michigan's Phase 2 data sharing with EPA. We recommend that you prioritize any necessary changes to your electronic data collection tools and systems in order to facilitate the collection and management of all Phase 2 data, which is documented in Appendix A. Michigan will need to be prepared to share all Phase 2 data with EPA by December 21, 2026, in a manner that is timely, accurate, complete, and fully compatible with EPA's data sharing protocols. See 40 CFR § 127.23(b). We also note that Michigan can exercise its existing flexibility under the NPDES eRule to utilize temporary electronic reporting waivers as needed where your electronic reporting tools are not collecting all Phase 2 data after December 21, 2025.

Finally, I want to thank your staff for being leaders with NPDES electronic reporting. This complex project involves almost all of the NPDES program and approximately 420,000 permittees across the Nation. EPA could not implement this rulemaking without the dedication and professionalism of states like Michigan.

Thank you for your help in implementing NPDES electronic reporting. If you have questions with this memorandum or with NPDES eRule implementation, please contact the NPDES eRule Team Lead, Carey Johnston, [johnston.carey@epa.gov](mailto:johnston.carey@epa.gov).

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<sup>3</sup> U.S. EPA, 2020. "Comment Response Document for the NPDES Electronic Reporting Rule – Phase 2 Extension (Final Rule) [DCN 0021]." Available at: <https://www.regulations.gov/document/EPA-HQ-OECA-2019-0408-0039>.