



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

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SUBJECT: Temporary Advisory for National Pollutant Discharge Elimination System (NPDES) Reporting in Response to COVID-19 Pandemic

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TO: Authorized NPDES Programs and U.S. EPA Regions

On March 26, 2020, EPA's Assistant Administrator for Enforcement and Compliance Assurance, issued a Temporary Policy titled "[COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program](#)". This EPA Temporary Policy applies retroactively beginning on March 13, 2020 and until further notice. EPA established this Temporary Policy to describe how EPA will exercise its enforcement discretion for noncompliance with routine monitoring and reporting requirements resulting from the COVID-19 pandemic, if regulated entities take the applicable steps set forth in the policy. The Temporary Policy also states that EPA may exercise enforcement discretion for other noncompliance, but those decisions will be made on a case-by-case basis. The Temporary Policy explains entities subject to EPA requirements should make every effort to comply with their environmental compliance obligations. If compliance is not reasonably practicable, facilities with such obligations should act responsibly, document and maintain records of instances of noncompliance and return to compliance as soon as practicable. The Temporary Policy notes that authorized states or tribes can choose to take a different approach under their own authorities.

Consistent with the Temporary Policy, this temporary Reporting Advisory provides further direction to EPA Regional Offices on how to implement the Temporary Policy as it relates to NPDES reporting requirements that are tracked in EPA's Integrated Compliance Information System for the NPDES program (ICIS-NPDES). In addition, it provides recommendations to authorized NPDES Programs who may be addressing similar questions regarding NPDES reporting. EPA strongly encourages authorized states to follow this Advisory to ensure consistent national data.

EPA has received numerous inquiries from authorized NPDES Programs regarding actual or potential noncompliance with NPDES monitoring, sampling, and reporting requirements that could occur as a result of COVID-19. This Advisory pertains specifically to scenarios impacting a NPDES permittee's ability to perform required monitoring, sampling and reporting, in addition to an authorized NPDES Program's ability to report to EPA in a timely manner as required by 40 CFR part 127 (NPDES eRule). In many cases, the failure to report to ICIS-NPDES using an electronic reporting tool (e.g., NetDMR) or by an authorized NPDES Program will result in the automatic generation of non-receipt violations. Under any circumstance, 40 CFR § 122.41(l)(6) and (7) create standard conditions in all permits that require permittees to report all noncompliance.

Authorized NPDES Programs and EPA Regions should advise permittees, in cases where the permittees can report, that they are expected to report the data they do have for the monitoring period (even if the monitoring data is incomplete in whole or part). If data is missing because of the COVID-19 pandemic as set forth in the Temporary Policy, EPA strongly encourages that permittees and authorized NPDES Programs use a No Data Indicator code that was created specifically for response to the COVID-19 situation. Table 1 lists a subset of available NODI codes relevant to this situation including the COVID-19 code. In addition to use of the COVID-19 code, the regulatory authority should instruct permittees to include the following comment on their DMR form: "COVID-19." Using the COVID-19 code indicates the permittee believes the Temporary Policy applies to their routine monitoring or sampling noncompliance. The ICIS-NPDES data system will not automatically identify a DMR non-receipt violation if the COVID-19 code is used. Instead, EPA and authorized NPDES Programs may use the COVID-19 code if follow-up is needed to determine if the criteria set forth in the Temporary Policy for use of enforcement discretion are met.

For authorized state NPDES Programs that are not able to readily add this new code to their list of available NODI codes, EPA recommends the use of NODI code "K," Natural Disaster, or other infrequently used valid code (i.e., one that does not automatically generate a violation). The objective is to use a code consistently to make the data more easily retrievable for follow-up if needed.

Table 1 – Subset of Available No Data Indicator codes:		
Code	Description	Violation Generated (Yes/No)
2	Operation Shut Down	No
3	Special Report Attached	No
8	Other (See Comments)	Yes
C	No Discharge	No
D	Lost Sample/Data Not Available	Yes
E	Analysis Not Conducted/No Sample	Yes
G	Sampling Equipment Failure	Yes
K	Natural Disaster	No
M	Laboratory Error	Yes
R	Administratively Resolved (not available in NetDMR)	No
Z	COVID-19	No

If an electronic reporting tool is unavailable or a permittee is not able to report electronically, 40 CFR part 127 provides flexibility to EPA and authorized NPDES Programs to grant temporary or emergency waivers from electronic reporting. To obtain a temporary electronic reporting waiver, permittees must submit an electronic reporting waiver request to EPA or their authorized NPDES Program. Authorized NPDES Programs can grant emergency waivers up to 60 days at a time and should notify permittees if they are covered by an emergency waiver from electronic reporting. An example waiver request is available at: <https://www.epa.gov/compliance/npdes-ereporting-information-permittees-and-other-regulated-entities>.

If a permittee is unable to timely report electronically and unable to obtain a waiver to report on paper, authorized NPDES Programs and EPA Regions should advise those permittees, consistent with the Temporary Policy, 1) to continue to make every effort to comply with their environmental compliance obligations; 2) return to compliance as soon as possible; 3) document and report any instances of noncompliance including the nature and dates of the noncompliance as required by any applicable permit or regulations using existing procedures (e.g., verbal notice); 4) act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19; 5) document how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response; and 6) report any missing DMR or other required report as soon as practicable to show that the data was received even if late and to document that noncompliance was caused by

COVID-19. In addition, the authorized NPDES Program or EPA Region as applicable will also need to consider whether the permit contains any specific permit conditions that might address these unusual circumstances.

The general principles established by this Advisory address scenarios where the EPA’s ICIS-NPDES data system will identify violations when a value for discharge monitoring data is expected but not received either from a regulated entity using an electronic reporting tool like NetDMR or from an authorized NPDES Program. In addition to the criteria set forth in the Temporary Policy, Table 2 provides reporting instructions related to specific scenarios already raised to EPA.

Table 2 – Example Scenarios Created by COVID-19 Pandemic	
Scenario	Recommended Response by the Permittee
1) A permittee can report, but not electronically	Request a waiver from electronic reporting and report on paper
2) A permittee is not able to sample or monitor, but can report electronically	Report as required; use applicable NODI code where needed; include comment on DMR form
3) A laboratory is not available to complete analyses of samples	Report as required; use applicable NODI code where needed; include comment on DMR form
4) A permittee is not able to sample, monitor and report	Follow criteria set forth in the Temporary Policy and report when possible, which might include use of NODI codes with necessary comments and attachments.
5) No authorized official is available to sign a required form or report	See above where a permittee is not able to report. If a wet-ink signature is required for processing signatory requests, it should be sent in accordance with existing procedures with a scanned version sent to the appropriate authorized NPDES Program or EPA Region to expedite processing.

When an authorized NPDES Program cannot report collected information to ICIS, reporting should be completed as soon as possible. If an authorized NPDES Program expects to send a high volume of data within a short period, please contact the Office of Compliance by sending an email to ICIS@epa.gov to coordinate.

As noted earlier, 40 CFR § 122.41(l)(6) and (7) are standard permit conditions in all permits that require permittees to report all noncompliance. Authorized NPDES Programs should determine the appropriate response to any noncompliance reported under these provisions or any violations generated to ensure proper and timely resolution.

This temporary Reporting Advisory is effective for the same period as the Temporary Policy (starting March 13, 2020) and it will continue until the Temporary Policy is terminated. This Advisory is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

Additional guidance is available to Authorized NPDES Programs regarding how they should manage data for unusual circumstances at:

<https://www.epa.gov/sites/production/files/2017-01/documents/npdesereporting-dataentryguidance.pdf>

Specific questions about this Advisory should be directed to the ICIS Help Desk using ICIS@epa.gov.

Electronic Link:

Temporary Policy titled [“COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program”](#)