

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ELECTRONIC REPORTING RULE IMPLEMENTATION GUIDANCE
PHASE I

The Virginia Department of Environmental Quality (DEQ) published the Virginia Pollutant Discharge Elimination System (VPDES) Electronic Reporting Rule (e-RR) in the Virginia Register on June 26, 2017. The e-RR was incorporated as an amendment to the VPDES regulation, 9VAC25-31, and became effective on July 26, 2017. It requires the electronic reporting of VPDES program information (i.e., Discharge Monitoring Reports (DMR), registration statements, notices of termination, annual reports, etc.) by permittees to DEQ. The e-RR, as incorporated in the regulation, allows for some flexibility during the transition from paper-based and voluntary electronic reporting to mandatory electronic reporting, that allows the Agency and our permittees time to adjust and to meet the federal compliance deadline of January 21, 2020 for full implementation of electronic reporting requirements. The e-RR provides for temporary and permanent waivers from requirements of electronic reporting if the permittee petitions DEQ and the request for a waiver is subsequently approved by Department. Permanent waivers require onetime approval and temporary waivers are effective for a five-year period if granted by DEQ. Waivers with the exception of episodic waivers, must be applied for by the permittee and none are transferable.

Template letters were developed to coincide with elements of this guidance in an effort to promote and ensure consistency. The following templates were developed to be sent under the signature of the Regional VPDES POTW & Industrial Waste Water Treatment Compliance Managers:

- Notification Letters for IP, NT, and ISW permittees
- Waiver Request Complete Acknowledgement Letter
- Waiver Incomplete Notification letter
- Permanent Waiver Request Approval Letter
- Permanent Waiver Request Rejection Letter
- Temporary Waiver Request Approval Letter
- Temporary Waiver Request Rejection Letter, and
- Delinquent e-DMR Participation Letters for IP, NT, and ISW permittees.

Implementation Guidance Phase I Topics:

- A. Mandatory Electronic Submission of DMR
 - B. Waiver from e-reporting requirements provision
 - C. Evaluation of request for waiver from requirements of e-reporting
 - D. Post regulatory deadline non-compliance
-

A. Mandatory Electronic Submission of Discharge Monitoring Report:

VPDES regulation 9VAC25-31-950 Part XI requires the electronic reporting of information by VPDES permittees. 9VAC25-31-970. A.1 of the regulation identifies the DMR as a report that is required to be submitted electronically to DEQ. 9VAC25-31-1020 of the regulation contains a table that lists the compliance dates for the electronic submittal of DMRs for the following permit programs:

- Major individual VPDES permit,
- Non-major individual VPDES Permit,
- Nutrient Watershed General VPDES Permit, and
- Industrial Stormwater General VPDES Permit.

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ELECTRONIC REPORTING RULE IMPLEMENTATION GUIDANCE
PHASE I

The effective date of the e-RR was July 26, 2017 and the three compliance deadlines in Table 1 of 9VAC25-31-1020 A are January 26, 2018, March 26, 2018, and July 26, 2018 to account for the permittees that until this point have been able to voluntarily submit their DMRs to DEQ electronically via DEQ's e-DMR program. [*The regulation allows for DEQ to establish compliance deadlines for areas of the regulation where the infrastructure needed to allow for electronic reporting and data transfer do not currently exist within the agency.*]

Where permittees were encouraged to voluntarily participate in DEQ's e-DMR program during the issuance and re-issuance of permits, the e-RR requires mandatory participation by the deadlines already established in the regulation and those to be established in the future by DEQ. With that said, notification letters have been developed and are attached to this correspondence. Their purpose is to notify permit holders of their responsibility to submit an application for participation in DEQ's e-DMR program. The compliance deadlines for the permittees to participate in DEQ's current e-DMR program have been staggered to account for DEQ processing resources and the size of the universe of permittees that will be submitting requests to participate in DEQ's e-DMR program. For those permittees that submit their application to participate in DEQ's e-DMR program within the timeframes outlined in this guidance DEQ's compliance program will use enforcement discretion if the application is not processed before the compliance deadline in the regulation. DEQ will work with permittees to process their applications before their respective participation deadlines as long as their applications for participation or waiver requests are submitted by the permittees according to the following schedule:

- Individual VPDES Permittees must submit an application to participate in DEQ's e-DMR program 60 days before the January 26, 2018 compliance deadline,
- Watershed General Permittees must submit an application to participate in DEQ's e-DMR program 60 days before the March 26, 2018 compliance deadline, and
- Industrial Stormwater General Permittees must submit their application for participation in the e-DMR program 180 days before the July 26, 2018 compliance deadline.

The form notification letters attached to this guidance contain the same schedule to submit applications for E-DMR participation to DEQ. For permittees that are currently participating in the e-DMR program nothing will be required, in terms of their participation, or change with the exception of the option to submit their DMR in hardcopy (as opposed to electronic) unless directed by the DEQ to do so.

B. Waiver provision from e-reporting requirements

1. Long Terms Waivers

The VPDES regulation, at 9VAC25-31-1010, provides for a waiver from electronic reporting. In accordance with the regulation, permittees are now required to electronically submit their VPDES information unless a waiver request is submitted, by the permittee, to the Department and subsequently approved. DEQ cannot consider or approve the petition for a long term waiver without receiving a request from the permittee and if approved long term waivers are not transferrable. The regulation provides for the following types of long term waivers:

1. **Temporary waiver** - must not extend beyond five years and may be reapplied for before the end of the five-year period, and

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ELECTRONIC REPORTING RULE IMPLEMENTATION GUIDANCE
PHASE I

2. **Permanent waiver** - apply to permittees who are members of religious communities that choose not to use certain modern technologies (e.g., computers, electricity) as a part of the culture/way of life.

According to 9VAC25-31-1010 B.2, the following information is required to be submitted by the permittee in the waiver request in order for DEQ to evaluate the request for the approval of a temporary or permanent waiver:

- Facility name,
- Permit number,
- Physical address,
- Contact information and mailing address,
- Written statement to justify the waiver request, and
- Other informant pertinent to the request and required by DEQ.

Permittees that submit an incomplete waiver request will be notified and provided an opportunity to resubmit their information. Once deemed complete, waiver requests will be evaluated and either approved or rejected by the Department within 120 days in accordance with 9VAC25-31-1010 E.1. of the regulation. If approved, temporary waivers would be effective the first day of the following month for 60 consecutive months and, if desired, after 60 months the permittee may reapply for a subsequent waiver before the current waiver period expires. Approved permanent waivers will be effective from the first day of the following month and the permittee is not required to reapply. No approved waivers, temporary or permanent, are transferable. Permittees receiving approval from the Department under the waiver provision to opt out of electronic reporting will be required to continue submitting their information in hard copy format to DEQ in accordance with 9VAC25-31-1010. DEQ will be responsible for electronically transferring the permittees' information to EPA's Integrated Compliance Information System (ICIS).

Permittees receiving a rejection notification from DEQ for their waiver request will be given 30 days to appeal the rejection or submit an application to participate in DEQ's e-DMR program. If either action mentioned is taken by the permittee within the 30 days but beyond the compliance deadline DEQ can use enforcement discretion for the failure to comply with the electronic reporting deadline.

2. Short Term Waiver

The VPDES regulation, at 9VAC25-31-1010.D, provides for an **Episodic waiver** from electronic reporting. This waiver is granted by the Department and the following conditions apply:

- No waiver request from the VPDES permittee, facility, or entity is required to obtain an episodic waiver from electronic reporting,
- Episodic waivers are not transferrable,
- Episodic waivers cannot last more than 60 days, and
- The Department will decide if the Episodic waiver provision facilities and entities to delay their electronic submissions or to send hard-copy (paper) submissions.

Episodic waivers are only available to facilities and entities in the following circumstances:

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ELECTRONIC REPORTING RULE IMPLEMENTATION GUIDANCE
PHASE I

- I. Large scale emergencies involving catastrophic circumstances beyond the control of the facilities, such as forces of nature (e.g., hurricanes, floods, fires, earthquakes) or other national disasters. The department will make the determination if an episodic waiver is warranted in this case and must receive the hard copy (paper) submissions
 - II. Prolonged electronic reporting system outages (i.e., longer than 96 hours), the Department will make the determination if an Episodic waiver necessary and shall receive the hard copy (paper) submissions
-

C. Evaluation of request for waiver from requirements of e-reporting

Waiver requests will be reviewed by the regional Water Compliance Manager (WCM). The regional WCM will inform the permittee if and when all information necessary to conduct the review was received. The WCM will also notify the permittee if their request is incomplete. Waiver approval will require a recommendation from the regional WCM and concurrence by the Regional Director or their appointee and the Water Permit Division Director or their appointee. Rejection of a waiver request will be recommended by the regional WCM and approved by the Regional Director or their appointee. As noted above permittees will be provided the opportunity to appeal a rejected waiver request.

Potential considerations in the evaluation of a waiver request will include, but are not limited to, the following:

- Availability to the permittee of broadband internet or lack thereof,
- Accessibility by the permittee to a public entity providing free broadband internet service,
- The complexity of the permit – some permits are so complex that the e-DMR system will not allow the permittee to submit required information electronically utilizing the agency’s current electronic reporting infrastructure, and
- Religious customs and culture that forbid the use of modern technology (i.e., computers, smart phones, electricity, etc.) apply only to permanent waiver request.

The regional WCM will be responsible for notifying the permittee as to whether their request for a waiver was approved or rejected, within 30 days of the determination using the developed form letters. The notification must be made within 120 days of receipt of a complete waiver request.

D. Post regulatory deadline non-compliance

Within 30 days after the respective compliance deadlines, DEQ staff will compare the list of active permittees, the list of permittees participating in e-DMR, and the list of permittees with an approved waiver. Those listed as active but not showing on one of the other two lists will be promptly notified. Permittees operating under an active permit or registration statement but are not participating in DEQ’s e-DMR program and don’t have an approved waiver will be reminded of the regulatory requirement to submit their DMR electronically. They will be given 30 days from the date of the letter to either submit an application to participate in DEQ’s e-DMR program or to request for a waiver. A template letter has been developed to remind the permittee.

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ELECTRONIC REPORTING RULE IMPLEMENTATION GUIDANCE
PHASE I

If the permittee does not respond to DEQ's request after 30 days, the Department will investigate to determine their operational status. If determined that the permittee is actively operating the regional WCM should assess points for failure to comply with the regulatory deadline in the manner outlined in the Compliance Auditing Manual for schedule violations.

DRAFT