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BUSINESS COUNCIL
OF ALABAMA

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and electronically at www.regulations.gov**

U.S. Environmental Protection Agency
EPA Docket Center
Enforcement and Compliance Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OECA-2009-0274

Re: NPDES Electronic Reporting Rule; Proposed Rule, Docket ID No. EPA-HQ-OECA-2009-0274, 78 Fed. Reg. 46,006 (July 30, 2013)

To Whom It May Concern:

The Business Council of Alabama is Alabama's foremost voice for business. The BCA is a non-partisan statewide business association representing the interests and concerns of nearly one million working Alabamians through its member companies and its partnership with the Chamber of Commerce Association of Alabama. BCA is Alabama's exclusive affiliate to the U.S. Chamber of Commerce and the National Association of Manufacturers.

On July 30, 2013, the U.S. Environmental Protection Agency ("EPA") issued the above-referenced Proposed Rule for public notice and comment. BCA appreciates this opportunity to submit comments on the Proposed Rule. BCA represents approximately 4,000 businesses and industries in the State of Alabama on governmental and business issues, and many of BCA's members will be affected by the proposed rulemaking.

The Proposed Rule would require "essential NPDES facility-specific information" to be reported electronically. This information would be submitted to EPA in a nationally consistent manner, using national data standards in a format compatible with the NPDES national data system (currently ICIS-NPDES) and using consistent units of measure. NPDES permittees would be required to submit electronically the self-monitoring information reported in discharge monitoring reports ("DMRs"), and dischargers covered by general permits would be required to submit electronically reports such as Notices of Intent to be covered ("NOIs"), Notices of Termination ("NOTs"), No Exposure Certifications ("NECs"), and Low Erosivity Waivers ("LEWs").

BCA recognizes the benefits of reporting environmental data electronically. If implemented properly, electronic data submittal can increase the quality of the data contained in regulatory agency's databases by eliminating transcription errors that can occur when data submitted on paper is converted into electronic form. Also, properly implemented electronic reporting can reduce the administrative burden on both regulated entities as well as the regulatory agencies.

Implementation Timing

The implementation of the electronic reporting system will be challenging particularly given the timeframe proposed by EPA to implement the Proposed Rule. Prior to implementing the electronic reporting requirement, EPA should verify that the necessary electronic tools have been developed, tested, demonstrated and are readily available to all affected entities. Given the federal government's recent failed rollout of the healthcare.gov website, BCA cautions EPA to ensure that the necessary systems are completely functional prior to making its use a regulatory requirement.

BCA is also concerned about the expectation of EPA regarding the time of the inclusion of electronic reporting requirements in NPDES permits. Any new requirement, such as the proposed electronic reporting requirements, should be implemented during the normal course of NPDES permit renewals or issuance. Expecting state regulatory agencies to implement these types of requirements outside of their normal permitting process would further stress an already underfunded program.

Duplicative Reporting

BCA is concerned that many states – including Alabama – will not be able to meet the “readiness criteria” proposed by EPA. In the states unable to meet the readiness criteria within one year, double-reporting would be required: reporting facilities would have to report to both their respective state regulatory agency and EPA. This duplicative reporting would be at odds with the national policy, cited by EPA in the Proposed Rule, to “prevent needless duplication.” It is BCA's opinion that the 90% data acceptance rate required by the “readiness criteria” is unrealistic. Alabama has been implementing the electronic reporting of DMR data for many years and its permittees have achieved only a roughly 40% participation rate.

EPA should eliminate the threat of double-reporting and reduce the burden this will place on the states, by grandfathering states like Alabama that are currently implementing electronic reporting of NPDES information, and not subject them to the Proposed Rule. This will allow Alabama to continue the implementation of its system, but would require states that do not currently utilize electronic reporting to implement these Proposed Rules.

Scope of the Required Data

The Proposed Rule sets forth the “minimum set of data” that states and permittees must report electronically. The language of the Proposed Rule in this area is problematic for two reasons. First, many of the data are not currently reported, nor are they currently required to be reported. It is questionable whether EPA may properly expand the scope of data required to be reported through this rulemaking, which purportedly would “require electronic reporting for *current* paper-based NPDES reports.” Second, many of the data are difficult to collect, categorize, or report (e.g., data demonstrating compliance with narrative permit conditions). States, in order to meet these new “minimum” requirements, will have to modify their reporting forms, which will entail significantly more time and effort than EPA seems to have contemplated in developing the Proposed Rule.

Of particular concern in this area are the changes that would be needed to capture current narrative data submittals in an electronic system. In some cases, these narrative conditions are complex and not easily reduced to a “field” in an electronic reporting software program. In other cases, the conditions are expressed in the negative (such as, “permittee shall not cause or contribute to a violation of water quality standards”) without any corresponding monitoring or reporting obligation to prove the negative. It is unclear from the Proposed Rule how a state would enter this kind of condition or what type or amount of data would be required to demonstrate compliance with it. Moreover, the burden on states to identify each and every one of these conditions and then code them properly for e-reporting purposes is a significant undertaking that comes with the risk of inadvertent inconsistencies (e.g., either by reporting the same condition differently between permits or attempting to “normalize” a condition that is slightly different between permits). In light of these uncertainties and potential inconsistencies, more time is needed.

Correction of Errors

Although electronic reporting has the potential to reduce errors, there will nonetheless be occasional errors in reported data. EPA must ensure the prompt correction of any erroneous data entered into an electronic system.

The final rule should provide a mandatory time limit by which EPA must respond to requests to correct data. EPA should set a 15-day limit for correcting errors, beginning on the day when an error is first reported to EPA or the state. Erroneous data should be removed from the electronic system immediately upon being reported and should not be reentered into the system until the error is corrected. In addition, EPA should also provide that where there is a discrepancy between data on file with the state and data on file with EPA (i.e., where the state has corrected erroneous data but EPA has not), the data on file with the state is controlling.

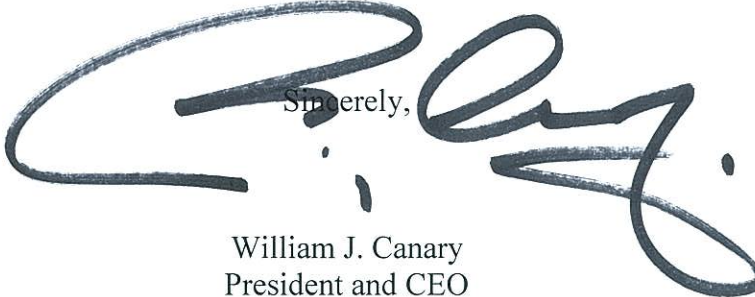
Electronic Reporting System Failures

Electronic systems are bound to fail occasionally. EPA should ensure that any rule implemented by the agency includes adequate allowances for such failures – whether they occur in the regulatory agency's system or the regulated entity's system.

Conclusion

Thank you for the opportunity to provide comments on this Proposed Rule. If you have any questions or would like further information on our comments, please feel free to contact Trey Glenn at (334)201-1818.

Sincerely,



William J. Canary
President and CEO