



Resolution 24-2
September 6, 2024
Newport, Rhode Island

As certified by
Ben Grumbles
Executive Director

INCREASING THE LENGTH OF NPDES PERMITS TO A MAXIMUM OF TEN YEARS

WHEREAS, the federal Clean Water Act (CWA) created the National Pollutant Discharge Elimination System (NPDES) in 1972, controlling water pollution by regulating point sources that discharge pollutants to waters of the United States; and

WHEREAS, the CWA 33 U.S.C. 1342(b)(1)(B) indicates NPDES permits “are for fixed terms not exceeding five years”; and

WHEREAS, forty-seven states are now authorized to implement all or most of the CWA NPDES permit program; and

WHEREAS, the scope of the NPDES program, including the number and type of sources needing permits, the complexity of those permits, and the NPDES permit issuance/reissuance process, has significantly increased since 1972; and

WHEREAS, the U.S. Environmental Protection Agency (U.S. EPA) does not have a focus on implementation of core program activities where states have approved CWA programs but instead has an oversight role; and

WHEREAS, states with CWA primacy authority have the ability to reopen, revoke, revise, and reissue CWA permits to ensure appropriate standards and limits are in the permits; and

WHEREAS, 42 U.S.C. §6925 (c)(3) requires Resource Conservation and Recovery Act (RCRA) permits for the treatment, storage, or disposal of hazardous waste to be for a “fixed term, not to exceed 10 years... [and] Nothing in this subsection shall preclude the Administrator from reviewing and modifying a permit at any time during its term,” and some states have created 10-year state water pollution control permit programs for Concentrated Animal Feeding Operations where 5-year NPDES permits are not required; and

WHEREAS, federal funding and regulatory program support for states – the primary implementers and enforcers of the nation’s environmental laws – is critically needed for states to maintain robust, legally defensible, federally authorized programs; and

WHEREAS, although states continue to focus on reducing permit backlogs, states struggle to fully implement a timely and appropriate permitting program as federal funding for the program is not keeping pace with program growth and complexity, increasing federal requirements, and inflationary costs; and

WHEREAS, states remain challenged by a competitive environment for recruiting and retaining staff; and

WHEREAS, NPDES permits contain clauses to reopen, modify, revoke and reissue, or terminate permits following proper administrative procedures to update the appropriate requirements (40 CFR 122.62 and 124.5).

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES (ECOS):

Supports amending the federal Clean Water Act 33 U.S.C. 1342(b)(1)(B) to indicate NPDES permits “are for fixed terms not exceeding 10 years” to allow states greater flexibility, administrative efficiency, and permit authority discretion in setting an appropriate permit length up to 10 years; and

Supports discussions among states and U.S. EPA on the range of criteria and practices NPDES authorities and other environmental permitting program authorities have used or might consider using in setting permit terms beyond 5 years and in negotiating re-opener clauses.