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THE ENFORCEMENT MANAGEMENT SYSTEM

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

(CLEAN WATER ACT)

U.S. ENVIRONMENTAL PROTECTION AGENCY

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FOREWORD

This document describes the Enforcement Management System (EMS) for the National Pollutant Discharge Elimination System (NPDES) Program. The Enforcement Management System is a process to collect, evaluate, and translate compliance information into timely and appropriate enforcement actions. The process is supplemented by chapters on various procedures, policies and regulations. While the Enforcement Management System embodies certain fundamental principles, the process for applying those principles must be flexible and dynamic. The Enforcement Management System reflects the collective experience of the administering agencies in managing NPDES compliance and enforcement activities.

CHAPTER I - INTRODUCTION AND BACKGROUND

A. Introduction and Purpose

Achieving and maintaining a high level of compliance with environmental laws and regulations are two of the most important goals of Federal and State environmental agencies. The United States Environmental Protection Agency (USEPA) has stressed consistently the need for a systematic administrative approach to compliance monitoring and enforcement with the objective of achieving a consistent, uniform national posture in the implementation of the National Pollutant Discharge Elimination System (NPDES) program and the Pretreatment program both established by the Clean Water Act (CWA).

As these programs have matured, there has been increased awareness that they will be effective only to the extent that administering agencies (EPA or an NPDES State) are able systematically and efficiently to identify instances of non-compliance and then to take timely and appropriate enforcement action to achieve the final objective of full compliance by the permittee with the CWA. Each administering agency should have management procedures to track the status of permit compliance, to surface violations, and to take timely and appropriate enforcement action to achieve a return to compliance. USEPA is also responsible for assuring that administering agencies carry

out their NPDES and Pretreatment program functions--including timely and appropriate enforcement responses--in a generally consistent manner in order to protect water quality evenly across the country, and to ensure that all dischargers throughout the nation receive fair treatment under the law. With the growth in the number of States approved to administer their own NPDES and Pretreatment programs, EPA and the States face the challenge of ensuring fairness and consistency among NPDES programs while maintaining a strong Federal/State partnership which is based on mutual trust and respect.

Effective use of available resources is also important to achieving a consistent, national enforcement program. In implementing compliance tracking and enforcement systems, administering agencies must balance resources to ensure effective tracking and maintenance of compliance by permittees. Consequently, it is necessary for administering agencies to develop policies and strategies which lead to: (1) the systematic tracking of abatement steps taken by the permitted dischargers; and (2) specific procedures for adjusting resources to achieve compliance results in the most efficient manner possible.

Fully functioning NPDES programs are required to permit all dischargers, both major and minor, and to conduct appropriate compliance assessment and enforcement activities for all permittees. Additionally, under the Pretreatment program, where the approved State or EPA is the control authority, it must conduct compliance assessments and enforce pretreatment requirements for industrial users (IU). EPA and approved States must also ensure that approved local pretreatment programs maintain the compliance of industrial users in those programs. When local programs fail to do so, EPA or approved States must enforce directly against the IU and should normally take action against the approved program also. The EMS places priority on rapid response to instances of significant noncompliance, especially by major dischargers. As resources allow, administering agencies should also address minor dischargers of concern and other instances of noncompliance.

This document establishes a framework upon which to build the management of a national enforcement program: the Enforcement Management System (EMS). The EMS constitutes a system for translating compliance information into timely and appropriate enforcement actions. It also establishes a system for identifying priorities and directing the flow of enforcement actions based on these priorities and available resources.

Finally, the EMS provides the flexibility for each administering agency to develop management procedures which are best suited to its operations and resources with the goal of most efficiently translating compliance information into timely and appropriate enforcement action.

The original EMS was developed in 1977 through the efforts of a Federal/State work group. The fundamental principles of EMS, as established in that first work group, are still applicable to any compliance and enforcement system. However, the development of new and more comprehensive policies and procedures necessitate both the update and expansion of EMS.

The original EMS Guide covered only the material in Chapters I and II (including Attachments) of this document. The new EMS Guide is expanded, attempting to pull together all of the most relevant documents associated with an effective compliance monitoring and enforcement program (see Appendix I). The chapters of this system provide guidance and policy on individual elements of the enforcement system. As new policies are developed and old policies modified, they will be incorporated into the EMS. The EMS, therefore, provides a framework of basic principles, supplemented by policies and procedures which may be modified reflecting the dynamic process of compliance monitoring and enforcement.

B. Use of This Document

The EMS is a national guidance document to be used by administering agencies in the development and improvement of their own compliance tracking and enforcement systems. The EMS, however, provides sufficient flexibility so that administering agencies may develop specific systems that accommodate their organizations, resources, and State laws, yet result in reasonable national consistency of enforcement.

All administering agencies should have an enforcement management system which is consistent with this document and the NPDES regulations (40 CFR 123.26). That system should be in writing and is subject to annual review. Of course, the length and complexity of the EMS will vary among administering agencies, reflecting variability in size of program. Each administering agency should review its existing system as quickly as possible to determine whether it is consistent with the principles stated here. Where it is not, the system should be amended.

There is no one "correct" EMS. What is described here are the minimum basic principles for an effective compliance tracking and enforcement system. The specific details of how these basic principles become operational by an administering agency may

vary widely and should, of course, reflect differences in organizational structure, staffing and State laws. As long as the basic principles are incorporated, the agency-specific system will be acceptable.

The concept of national consistency in the implementation of the NPDES and Pretreatment programs is one of the basic tenets of the CWA. While it would be difficult, and not necessarily effective, to have identical enforcement responses for identical violations in different States, the enforcement response should be directly related to the severity of the violation. Given the decentralization of authority and responsibility in carrying out these programs, implementation of the basic EMS principles in the EPA Regional Offices and the NPDES States should produce national consistency, while still accommodating differences between Regions and States.

C. Overview of Approved State Programs

A strong Federal/State relationship is essential to the effective operation of a program as comprehensive and complex as the NPDES program. One method of fostering a strong relationship is to assure that roles are clearly defined and that the "rules of the game" are understood by everyone. To achieve this end, the USEPA and States have worked together to develop "Guidance for

Oversight of NPDES Programs" (see Appendix I) which is an umbrella document that establishes the general criteria under which both parties will operate. This document also sets forth the basic criteria for oversight of enforcement programs.

The Oversight Guidance requires that Regions and States negotiate individual agreements that clearly define performance expectations for the NPDES and Pretreatment programs, as well as the respective roles and responsibilities of the Region and the State in administering these programs. The Guidance is based on the assumption that where a State has an approved NPDES program, it has the primary responsibility to initiate appropriate enforcement action to ensure compliance by permittees. However, USEPA has oversight responsibility for that program, including the responsibility to ensure that enforcement actions are taken on a timely and appropriate basis, and may initiate direct Federal enforcement action. The Guidance requires the development of protocols for notification and consultation to foster effective communication and the timely resolution of issues between Regions and States, and contains criteria for direct Federal enforcement action.

The EMS further defines the principles necessary to the operation of an effective compliance/enforcement program and provides the

basis for evaluation of the performance of administering agencies. This evaluation occurs at two levels: 1) USEPA Headquarters' mid-year evaluations of Regional implementation of the EMS; and 2) Regional Offices' reviews of NPDES States, including file audits of State programs. All States that receive Federal grants for implementation of water quality control programs can also expect Regions to evaluate their performance in the compliance/enforcement area against commitments made in the grant agreements.

In addition to the Guidance for Oversight of NPDES Programs and the EMS, there are other documents which are necessary for effective implementation of the NPDES program (see the list of guidance documents in Appendix I). Included among these are the "Annual Operating Guidance" which identifies priority program activities for the operating year, and agency policy documents. Administering agencies are expected to be knowledgeable about these documents; however, they are not included as chapters in the EMS since they are frequently effective for a limited period of time or are more inclusive than the NPDES program.

CHAPTER II. The Enforcement Management System Framework

CHAPTER II. THE ENFORCEMENT MANAGEMENT SYSTEM FRAMEWORK

The Basic Principles of EMS

There are seven basic principles that are common to an effective EMS. Described below are these principles and the minimum basic requirements necessary for an effective tracking and enforcement system. As stated in the Introduction, the specific details of how each of these basic principles becomes operational in a specific State or Regional system may vary to reflect differences in organizational structure, position mixes, and State laws. As long as the basic principles are incorporated and are clearly recognizable, the resulting system is acceptable. It should be noted that the principles of EMS were also included in guidance for POTW Control Authorities published in July 1986, "Pretreatment Compliance Monitoring and Enforcement Guidance". The purpose of the EMS is to translate compliance information into enforcement actions. The EMS should:

1. Maintain a source inventory that is complete and accurate.

2. Handle and assess the flow of information available on a systematic and timely basis.

3. Accomplish a pre-enforcement screening by reviewing the flow of information as soon as possible after it is received.

4. Perform a more formal enforcement evaluation where appropriate, using systematic evaluation screening criteria.

5. Institute a formal enforcement action and follow-up wherever necessary.

6. Initiate field investigations based on a systematic plan.

7. Use internal management controls to provide adequate enforcement information to all levels of the organization.

These principles are discussed in greater detail in the following text. Each principle has certain subparts which are integral elements of the entire system.

Principle No. 1: Maintain a Source Inventory

At the foundation of the EMS is a complete and accurate compilation of all pertinent information on all dischargers covered by NPDES permits and on industrial users (IU's) where there is no approved local POTW pretreatment program. An effective program cannot exist without this information base. It is fully recognized that the level of information for major dischargers may be more complete than that for minor ones, and that the inventory of industrial users will be completed by Regions and approved States on varying timeframes. The amount of information on minors will be a function of the administering agency's resources and priorities. Also, the approved State or Region may choose to track all industrial users rather than just industrial users where they are the control authority. The EMS should have a detailed inventory of sources which encompasses the elements listed below:

A. The inventory for majors should include appropriate basic information concerning each source, such as name, location, permit number, discharger limits, compliance dates, other permit requirements and effluent data. For minors, this source inventory might be as simple as a permit compliance file. For categorical and other significant industrial users where EPA or the approved State is the control authority, the inventory should include industrial user name, complete address, user code (permit number or other identifier), type of industrial user (categorical or noncategorical) performance data, inspection dates, and enforcement activity.

B. There should be a routine schedule for updating the inventory to reflect changes in basic information, such as changes in compliance schedules and permit or other effluent limits, and changes in the ownership/address of a source. The more frequently the information is updated, the greater the confidence in its accuracy.

C. The inventory should be a ready reference for historical information (e.g., has a source previously missed or failed to comply with schedule requirements).

This historical inventory for majors and significant minors, as well as categorical and other significant industrial users, will consist of many parts, including a violation summary report (see Attachment C) and a log of previous enforcement actions. The summary and log are discussed in greater detail elsewhere in the text.

D. The inventory data for majors and significant minors should be entered directly into the Permit Compliance System (PCS, the automated NPDES data base), where it exists, in a timely manner consistent with nationally established procedures (see Chapter VII). States which are not regular users of PCS, and do not have an automated system that is compatible, should supply data to the Region in a form that facilitates USEPA's entry of the data into PCS. The inventory data for appropriate industrial users can be maintained using PCS, the Pretreatment Compliance Monitoring and Enforcement software or equivalent software. Summary level data should be entered into the Pretreatment Permits and Enforcement Tracking System at least semi-annually.

E. Maintenance of the source inventory should be assigned to a specific, identified organizational entity so that responsibility for the completeness and accuracy of source information is clear.

F. Data on dischargers should be readily accessible to all parties (USEPA Headquarters, Regions, NPDES States and citizens) to facilitate cooperation in carrying out NPDES compliance and enforcement responsibilities.

G. There should be an identifiable process for determining which dischargers have not applied for permits after being required to do so and for following through in these cases.

Principle No. 2: Flow of Information

In order to ensure that the enforcement system is current, the flow of information into the system is critical. With the growth in the number and complexity of environmental regulatory programs, the need for rapid, efficient flow of information has become more important. Therefore, it should be possible to integrate information about individual dischargers obtained from

various sources into an effective information flow, which is then channeled into decision and control points in the system so that all information on an individual discharger is available at any point in time.

The following items are examples of the types of reports and other data that are potential sources of information for use in an enforcement system:

- -- Data-Related reports (including such items as compliance reports; industrial user reports, e.g. Baseline Monitoring Reports and 90 day reports; construction-completed reports; bypass/overflow reports, etc.)
- -- Construction grant-related information
- -- Discharge Monitoring Reports (DMRs)
- -- Inspection reports from field surveys
- -- Operation and maintenance reports, including annual fiscal data as available
- -- Reports from other State and Federal agencies, e.g., health data, information on fish kills
- -- Reports and complaints from citizens
- -- Evidentiary hearing information
- -- Permit modification requests

-- Information from other programs, such as the Resource Conservation and Recovery Act (RCRA), Comprehensive Emergency Response and Compensation Liability Act (CERCLA), Toxic Substances Control Act (TSCA), and the Safe Drinking Water Act (SDWA)

-- Various pretreatment program reports (e.g. annual reports, inspection and audit reports, etc.)

-- Environmental audit reports provided by the permittee where they are required by the Agency to meet its statutory mission

The elements needed to assure the smooth flow of information are as follows:

A. Procedures should be established to integrate the information from various sources about individual dischargers into an effective data flow. The data flow should be designed so that it is readily accessible at appropriate points in the decision-making process. These procedures will facilitate the flow of information between the States and USEPA and will assure that the terms and commitments contained in the various agreements between the State and USEPA are met.

B. Appropriate time frames for the information flow should be established and incorporated in the above procedures to ensure timely response to the information. For example, it may be appropriate to say that the allowable elapsed time from receipt of a compliance report to its availability for review should be less than a week. Special procedures and/or agreements should be established with other programs (e.g., RCRA, TSCA, and CERCLA) to insure the timely receipt of information that may have a bearing on water enforcement actions.

Principle No. 3: Pre-Enforcement Screening

The pre-enforcement screening process involves a series of steps that should occur in the review of available information to efficiently sort out noncomplying sources for appropriate enforcement action. This process is critical to the integrity of the NPDES enforcement system because it initiates the process of sifting through the entire universe of permittees and others subject to NPDES and pretreatment requirements. This leads to later steps that place noncompliers into various categories for subsequent action. Most steps in the pre-enforcement screening

process can be accomplished by a compliance analyst who is trained to identify signs of continuing or serious noncompliance, although review of POTW pretreatment information may require an analyst with specific knowledge of the pretreatment program. Documented, in-place pre-enforcement screening procedures should include the following elements:

A. A system for initial review of incoming information:

(1) Procedures should clearly specify who is responsible for each screening function in this initial review.

(2) Procedures should require the forecast of reports due within a specified period of time (e.g., forecasting all reports due for the next 30 days).

(3) Specific guidelines for determining obvious compliance from noncompliance should be developed. The guidelines should at least establish criteria to be used to: determine receipt vs. nonreceipt; identify the methodology for determining effective permit limits and limits required by Agency or court orders and whether permit effluent limits or other limits have been exceeded; identify other requirements in the permit and provide criteria for determining who should conduct

the compliance review for these requirements; and assign priority for review of incoming reports of different types.

(4) Procedures describing follow-up action once a determination of compliance status has been made should include:

a. In cases of obvious compliance, no further review may be necessary. In such situations, the appropriate update regarding the compliance status is made in the source inventory.

b. Appropriate responses and time frames for obvious noncompliance should also be established. For example, nonreceipt of a report should be followed up by a call or letter within ten days. Procedures should be specified for executing the initial response, triggering the follow-up, and closing out the case (including feedback to the source inventory, and entering the information into PCS).

(5) Control procedures should be established for the internal transmittal of compliance information (e.g., notation slip, violation log).

(6) Procedures should be set up for the pre-enforcement screening of the Discharge Monitoring Reports (DMRs), from NPDES permittees and of Baseline Monitoring Reports and semi-annual or more frequent reports from industrial users to determine whether the Violation Review Action Criteria (VRAC) have been exceeded. Attachment A to this chapter describes in detail those criteria and their use. DMRs should be screened and data entered into PCS (or transferred to the Region where a State does not use PCS) within 30 days of their receipt.

B. A system for development of a chronological history of noncompliance:

The initial review of the incoming information will determine an instance of possible noncompliance by the regulated facility (see A (3) above). Any instance of permit noncompliance should be entered into PCS or a comparable tracking system. The system that is used

should be capable of producing a convenient historical reference of instances of noncompliance. Procedures should be developed to preserve this historical summary.

C. The means for technical evaluation of apparent noncompliance:

Following the preliminary screening in the two steps above, staff review of the file of a regulated facility that appears to be in noncompliance should be conducted for purposes of a substantive technical evaluation. At this point in the process, it is important to:

(1) Have detailed procedures and time frames for conducting the technical evaluation to determine the level and frequency of the violation, and to determine the appropriate response to the specific violation.

(2) Document any action taken/not taken (including the technical reason when the technical evaluation indicates that a violation falls below the level of "immediate action") in the historical summary and/or PCS. These types of violations remain "actionable" for future use as part of a subsequent file review.

(3) Establish timeframes for action on detected violations.

(4) Have standard procedures for compiling material to be used in the next evaluation step. For example, if the decision is made to proceed with a formal enforcement action, the procedures should set out the type of information to be contained in the documentation sent to the assigned author of the proposed action.

(5) Install a tracking system (e.g., violation summary, pink slip) which should be maintained to locate an enforcement action at any time in this process (see the example in Attachment C).

(6) Have procedures that identify who is responsible for completing each phase of the evaluation and who should make each decision as the instance of apparent noncompliance is processed.

Principle No. 4: Enforcement Evaluation

When an instance of noncompliance is identified by the pre-enforcement screening, the appropriate follow-up action must be determined. This is a determination that should be made by technical personnel with legal consultation, when necessary. The following elements need to be in place:

A. Guidelines and procedures which assist in determining the appropriate levels of action for specific categories of violations. National guidance on the appropriate enforcement response to specific violations has been developed and is contained in the Enforcement Response Guide (Attachment B). Deviations from this Guide may legitimately occur, depending upon the facts of a specific case.

B. Procedures delineating the respective roles of the technical and legal staff and establishing procedures for coordination.

C. Procedures for compiling enforcement action background information to support the enforcement decision.

D. Procedures for interaction and coordination with other affected programs (e.g., RCRA, CERCLA and/or other agencies). Written agreements between programs may be appropriate to promote coordination.

E. Procedures for information flow and decision-making necessary to secure concurrence or nonconcurrence on the enforcement action.

F. Time frames for completing a determination as to whether the violation is "actionable" and initiation of the appropriate response. For example, the provision could state that the overall time from the date report/event is due to initiation of the appropriate action should not exceed 45 days. The administering agency should establish time frames which are subject to review.

G. Procedures for escalating enforcement action if compliance is not achieved expeditiously after taking the initial actions.

H. Procedures for closing out and updating the file and for returning the compliance information to the data base. When it is decided that an enforcement action

will not be taken, it is important to have a written record that clearly documents why the alternative action (i.e., an informal notification or a permit modification), is more appropriate.

I. Procedures for providing feedback to the source inventory that would correct any errors/misinformation found during the screening process.

Principle No. 5: Formal Enforcement Action and Follow-Up

This crucial principle is the cutting edge of the EMS and begins when the decision has been made to issue a "formal"enforcement action under specific sections of Federal and State statutes and/or regulations. In general, that decision is triggered by a failure to achieve compliance within a specified period of time through less formal means. According to the USEPA "Guidance for Oversight of NPDES Programs", May, 1987, a formal enforcement action is one "that requires actions to achieve compliance, specifies a timetable, contains consequences for noncompliance that are independently enforceable without having to prove the original violation, and subjects the person to adverse legal consequences for noncompliance." Specific State

enforcement actions should be addressed by Regions and States on a case-specific basis. Regions can exercise their own judgement in interpreting and adaptation of the State's enforcement process consistent with national objectives.

The following elements for formal enforcement action should be included in the EMS:

A. Specific designation of responsibility for writing the formal enforcement action.

B. Guidance for the form and substance of the formal enforcement action for use by the legal and technical staff. The basic elements of the action should be summarized on this form.

C. A tracking system for following the progress of formal enforcement actions through to final physical compliance. This compliance tracking system should be capable of supporting the flow of required information into PCS.

D. Procedures and guidelines for escalating the action if compliance is not achieved expeditiously, especially in

cases of noncompliance with an earlier enforcement action.

E. Procedures for establishing the basis for closing enforcement actions and routing the appropriate compliance information to the source inventory.

Principle No. 6: Initiation of Field Investigations

Field investigations are an integral part of any enforcement program. The level of enforcement action is often dictated by the ability of field inspection programs to respond to enforcement needs. Enforcement programs are responsible for selecting inspection candidates for both routine and special efforts of the field units in support of the program. Field investigations can be started at any time in the enforcement process. Chapter V of the EMS Guide provides detailed guidance on field inspections. The following elements related to field investigations should be included in an EMS:

A. Criteria and procedures for detecting candidates for field investigations. This should be accomplished through the development of an annual compliance inspection plan. Plans and procedures consistent with

the Compliance Inspection Strategy (Chapter V) and clear criteria for selecting candidates for appropriate mix of routine and special compliance inspections must be in place.

B. Designation of responsibility to the enforcement program manager for requesting field investigations in support of the enforcement program.

C. Timeframes for reporting the findings of a field investigation. For example, the procedure may require a full report to be submitted to the enforcement program within 30 days of the completion of the investigation.

D. A mechanism for informing field investigation personnel of the utilization of field surveys.

E. Procedures for coordinating field investigations between the administering agencies.

Principle No. 7: Internal Management Control

Throughout the enforcement process it is vital for all levels of management to be able to assess the effectiveness of the program and to identify progress or deficiencies. Consequently, the organization's enforcement procedures should provide feedback to give management the information it needs to ensure that the program makes timely decisions and meets commitments. Those procedures should allow for self-evaluation based on reasonable timeframes, and should identify the focus of responsibility for each element of the EMS. For internal management control, an EMS should provide for:

A. The maintenance of a record of specific formal enforcement actions taken by the organization at any given period of time.

B. A method of tracking information in terms of location and action/reaction time.

C. A system of evaluating specific activities in terms of their quality, timeliness, results, and accomplishment of program objectives.

D. A system for assessing how the compliance data, as indicators of environmental results, help meet the goals of the CWA.

E. Procedures that will result in effective communication between the USEPA Regional Offices and the States on all aspects of the enforcement process, including: the current status of noncompliant sources and enforcement actions as reported in the Quarterly Noncompliance Reports; audit of approved State programs; problem resolution; advance notification of enforcement actions initiated by USEPA in approved States; and similar program matters.

Conclusion

The successful Enforcement Management System should contain certain key elements while remaining a flexible and dynamic system which is geared to the organization and resources of the particular administering agency. The system should be strong and resilient enough to continue and to translate compliance information into enforcement results, regardless of pressures that affect the system. The key to the success of the system is

the unimpeded flow of information through the system which facilitates the rapid return of a non-complying permittee to compliance. Good communication among all parties in the system is essential to its success.

This chapter of the Enforcement Management System has described the basic principles of the system. Implementation of the principles provides the framework for an effective enforcement program. A number of essential documents support this framework in order to make the system whole (see Appendix I). The remaining chapters of the EMS contain the most important of the supporting enforcement guidance and policies.

the regulated facility and other relevant facts in the case. The decision to proceed should not be based solely on whether there is a violation. There are many other circumstances which should be considered in deciding whether to proceed with an enforcement action. Included are the following: 1) a permit, statutory, regulatory or enforcement order schedule has been violated; 2) a violation has occurred that presents an actual or imminent threat of significant harm to the environment or to the public health and safety; 3) a violation has occurred which, unless corrected, would erode the integrity of an environmental protection program; 4) pretreatment program requirements are violated; 5) a regulatee has failed to report; 6) a source has conducted an unauthorized bypass; 7) inspection results indicate a severe problem; 8) there are known or suspected operation and maintenance problems; 9) information provided by interested parties indicates a significant violation; and 10) there are aesthetic impacts related to the violation. These general violation screening considerations should be applied in the violation review process.

Violation Review Process

An effective Enforcement Management System (EMS) should include a process for reviewing DMRs and other reports submitted by the regulated facility to determine whether it is violating the terms of its permit, program requirement or enforcement order, where the regulatee is subject to such an order. As a part of that process, the administering agency should establish criteria for reviewing violations to determine which violations require priority review by a professional to determine whether the violation should be subject to a formal or informal enforcement response. The initial screening of DMRs to make this determination is normally conducted by para-professionals. Any violation of a permit or enforcement order or requirements established through regulation in the case of IUs, that exceeds the screening criteria -- called Violation Review Action Criteria (VRAC) -- should be reviewed by professional personnel to determine the appropriate enforcement response. The remainder of this section addresses the VRAC for: a) effluent violations of permits, enforcement orders, and regulations; and b) schedule, reporting and other non-effluent violations of NPDES requirements and enforcement orders.

ATTACHMENT A

VIOLATION REVIEW PROCESS

Many NPDES permittees may experience some violation of their permit conditions during the life of a permit. In addition, industrial users (IUs) may violate pretreatment regulations which are included in permits or in regulations which are directly enforceable. An effective Enforcement Management System (EMS) should describe a process for reviewing and screening those violations and other NPDES program violations to assure that enforcement resources are concentrated on the most serious violations. In cases where EPA or a State does not have primary enforcement responsibility, i.e. where there is an approved local pretreatment program, screening can be performed only to the extent that these documents are received or obtained in the course of oversight activities.

Throughout the violation review process, it should be remembered that any violation of an NPDES permit or of other requirements placed on a NPDES or other regulated facility is a violation of the Clean Water Act (CWA) for which the owner or operator is

strictly liable, and for which USEPA encourages some type of enforcement response. An administering agency's decision regarding the appropriate enforcement action should be based on an analysis of all of the facts and relevant legal provisions involved in a particular case. A decision to take no action in a given situation is within the enforcement discretion of the administering agency, so long as the reason for exercising the no-action alternative is warranted and documented.

The violation review process has two main review elements--screening all relevant data to determine: 1) whether there has been any type of violation and the nature of that violation, and 2) whether the violation requires professional review (defined by violation review action criteria) and listing on the Quarterly Noncompliance Report (QNCR). These are discussed below.

General Screening Considerations

An administering agency's decision on whether to initiate an enforcement action, and the type of action which is appropriate, should include an evaluation of all available data to determine the seriousness of the violation, the compliance history of

A. Effluent Violations

Every NPDES permittee must submit Discharge Monitoring Reports (DMRs) to the administering agency for its review to determine whether there are violations of the effluent limitations in the permit or in an enforcement order that is active against the permittee. EPA major or P.L. 92-500 minor NPDES permittees should submit DMRs either on a monthly or quarterly basis. (Other permittees must also report but they may be required to report on a less frequent basis.) Likewise, IUs are required by regulation to report effluent analysis results to the control authority, which is the administering agency, where there is no approved local pretreatment program.

The EMS encourages the administering agency to take an appropriate enforcement response against all violations. A particular violation may be resolved by a permittee or industrial user so that a formal enforcement response by the regulatory agency is unnecessary. Some violations may require formal enforcement action for resolution. Other effluent violations, although subsequently resolved, may be of such a serious nature that the commencement of an enforcement action for penalties (either an administrative penalty order or judicial action) may be appropriate.

Table I of this Attachment identifies the VRAC to be applied by administering agencies in screening performance against effluent limits. The VRAC established for violation of permit effluent limits are more stringent than the reporting criteria established in the QNCR regulation. Magnitude is not a factor in screening for 30 day average violations--only the number of violations--and criteria are included for 7 day average and daily maximum violations. The VRAC for violation of effluent limits in enforcement orders are equivalent to the criteria for reporting established by the QNCR regulation. The VRAC for violation of pretreatment categorical standards are more stringent than the definition of significant noncompliance which is included in the Pretreatment Compliance Monitoring and Enforcement Guidance, and has been proposed in the Domestic Sewage Study regulations (53 FR 47632, November 23, 1988). Approved NPDES States should consider the VRAC included in Table I to be guidance and may modify the screening criteria to reflect State resources and priorities. However, the VRAC established by approved NPDES States should be no less stringent than the criteria established in Table I and should include criteria for violations of a seven day average or daily maximum as well as for violations of a whole effluent toxicity limits. If the State chooses to establish VRAC different from Table I, the EMS should explain the basis for setting the threshold for VRAC.

B. Schedule, Reporting and Other Violations

The administering agency routinely examines the status of a permittee on a monthly or quarterly basis through review of DMRs and other reports to determine whether the permittee is complying with schedules, reporting, or other requirements set by the permit or by an enforcement order, where such an order exists. The compliance status of an IU must be assessed at least semi-annually but may be assessed more frequently at the time that periodic reports on compliance are required. As discussed in A above, the EMS encourages the administering agency to take an appropriate enforcement action against all violations. A particular violation may be resolved by a permittee so that a formal enforcement response by the regulatory agency is unnecessary. Other violations may require formal enforcement action for resolution, and, as in the case for effluent violations, some resolved violations may be the subject of "penalty only" enforcement actions.

Table I of this Attachment identifies the VRAC to be applied by administering agencies in screening performance against schedule, reporting, and other requirements for all permittees and indirect industrial users. The VRAC (for schedule, reporting, and other violations) set in this Table are, in fact, equivalent to the criteria established for reporting in the regulation, "National Pollutant Discharge Elimination System Regulations; Noncompliance and Program Reporting," commonly referred to as the QNCR regulation. Approved NPDES States may modify the VRAC included in Table I, but in no case should the VRAC be set at a level less stringent than the reporting criteria identified in Table 1.

Significant Noncompliance (SNC): Definition and Use

The QNCR regulation establishes criteria for reporting violations of permit conditions or enforcement orders by major permittees in the Quarterly Noncompliance Report (QNCR); it does not currently require reporting of violations by IUs. From the universe of violations identified in the QNCR, a subset of violations will be identified as significant noncompliance (SNC).

An explanation of which violations identified on the QNCR will be considered SNC is provided in QNCR guidance. It should be noted that as long as the definition of SNC is in guidance, it may change from time to time.

As stated previously, VRAC exceedances do not automatically require a formal enforcement response, but do require a professional review. The concept of SNC is important because it identifies those violations which must receive a formal enforcement response or return to compliance within a fixed period of time unless an acceptable justification is established for not taking action. (See Enforcement Response Guide). Administering agency performance in addressing SNC on a timely and appropriate basis will be tracked in the Agency's Strategic Planning and Management System (SPMS).

Summary

The VRAC are criteria for screening DMR's and other reports submitted by permittees/regulated facilities to determine whether the violation(s) requires a professional review. Identification of a violation as meeting or exceeding the VRAC does not establish the type of enforcement response which should be taken or the timeframe in which it should be accomplished.

For many violations, VRAC is equivalent to the reporting criteria established by the QNCR regulation. Those violations will be reviewed by a professional and listed on the QNCR. In other cases, violations will be reviewed by a professional before they meet the magnitude of frequency criteria of the QNCR.

Finally, a subset of violations identified on the QNCR will meet the definition of SNC. A designation that a violation is SNC requires that the violation be corrected or that a formal enforcement response be initiated within a specific period of time by the administering agency, unless an acceptable justification for no action is provided. This definition is provided in the QNCR Guidance.

APPENDIX I

LIST OF GUIDANCE AND SUPPORTING DOCUMENTS

1. National Guidance for Oversight of NPDES Programs, (May, 1987).

2. FY 1989 Agency Operating Guidance and Strategic Planning and Management System, (March, 1988).

3. NPDES Inspection Strategy and Guidance for Preparing Annual State/EPA Compliance Inspection Plans, (April 16, 1985).

4. National Municipal Policy, (January 23, 1984).

5. Regional and State Guidance on the National Municipal Policy, (April 17, 1984).

6. Municipal Enforcement Guidance, (Issued by Office of Enforcement and Compliance Monitoring; October, 1984).

7. Recommended Format for Clean Water Act Section 309 Administrative Orders, (July 30, 1985)

8. Pretreatment Compliance Monitoring and Enforcement Guidance (July, 1986).

9. NPDES Civil Penalty Policy, (February 11, 1986).

10. Permit Compliance System Policy, (October 31, 1985).

11. Guidance on Administrative Penalty Orders, (October 27, 1987), (Includes supplement to Document 9)

12. Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements, (September 30, 1987).

13. Guidance on Bringing Enforcement Actions Against POTWs for Failure to Implement Pretreatment Programs, (August 4, 1988).

14. Guidance on Penalty Calculations for POTW Failure to Implement an Approved Pretreatment Program, (December 22, 1988).

APPENDIX II

ABBREVIATIONS FREQUENTLY USED

AAW - Assistant Administrator for Water, EPA

ADA - Administering Agency (EPA and NPDES States)

ADP - Automated Data Processing

AO - Administrative (compliance) Order

APO - Administrative Penalty Order

AT/AWT - Advanced Wastewater Treatment

BAT - Best Available Technology Economically Achieveable

BCT - Best Conventional Pollutant Control Technology

BOD5 - 5 Day Biochemical Oxygen Demand

BMR - Baseline Monitoring Report

BPJ - Best Professional Judgment

BPT - Best Practicable Treatment (also called secondary treatment)

CBI - Confidential Business Information or Compliance Biomonitoring Inspection

CEI - Compliance Evaluation Inspection

CFR - Code of Federal Regulations

CG - Construction Grant

CSI - Compliance Sampling Inspection

CWA - Clean Water Act

DI (DIA or DIAG) - Diagnostic Inspection

DMR - Discharge Monitoring Report

DOJ - Department of Justice (US)

EMS - Enforcement Management System

ERG - Enforcement Response Guide

FEL - Final Effluent Limits

FR - Federal Register

IL - (IEL) (INT) - Interim Effluent Limits

LOV - Letter of Violation

MOA - Memorandum of Agreement (See SEA)

NC - Noncompliance

NCR - Noncompliance Report

NOV - Notice of Violation (EPA)

NPDES - National Pollutant Discharge Elimination System

OECM - Office of Enforcement and Compliance Monitoring, EPA

O&M - Operations and Maintenance/Management

OW - Office of Water, EPA

OWEP - Office of Water Enforcement and Permits, EPA

PAI - Performance Audit Inspection

PCS - Permit Compliance System

POTW - Publicly Owned Treatment Works

QA - Quality Assurance

QNCR - Quarterly Noncompliance Report

RE - Resolved instance of noncompliance

RP - Resolved Pending

RI	- Reconnaisance Inspection
SEA	- State-EPA Agreement or State Enforcement Agreement
SNAP	- Significant Noncompliance Action Program
SNC	- Significant Noncompliance
SPCC	- Spill Prevention Control and Countermeasures Plan
SPMS	- Strategic Planning and Management System
TOX	(TOX SAMP) - Toxics Sampling Inspection (see XSI)
USEPA	- United States Environmental Protection Agency
VRAC	- Violation Review Action Criteria
WENDB	- Water Enforcement National Data Base (See PCS)
WQM	- Water Quality Management
WWTP	- Wastewater Treatment Plant
XSI	- Toxics Sampling Inspection (see TOX)
$	- Facility Contructed with P.L. 92-500 Grant Funds

TABLE I
VIOLATION REVIEW ACTION CRITERIA

VIOLATIONS OF EFFLUENT LIMITS

a. Direct Discharger Permit Violations	Criteria
30 Day Average Violations*	Two violations in 6 months
7 Day Average Violations	Two violations in a month
Daily Maximum Violations*	Four violations in a month
. pH	<4.0 or >11.0, or if continuous monitoring criteria are exceeded
. Storm Water	Four times the effective limit
Whole Effluent Toxicity Limit	Any violation or any test result which triggers" further testing, evaluation, planning or corrective action
Any Limit	Causes or has potential to cause a water quality or a health problem or the violation is of concern to the Director.
b. Enforcement Order Violations	
Any Limit Cited in the Enforcement Order**	Any violation during the quarter
c. Violations by Significant Industrial Users	
Violations of 30 day average or daily maximum limit (4 day average is applicable for industries subject to electro-plating standards.)	33% or more of the measurements exceed the same daily maximum or the same average limit in a 6 consecutive month period

- Excludes bacteriological counts (e.g., fecal coliform), color, and thermal parameters for which criteria are discretionary.

** In the absence of interim effluent limits in an enforcement order permit limits should be tracked and evaluated based on the criteria for permit violations.

Violations causing interference or pass through	Any violation
Violations causing imminent and substantial danger or causing the POTW to exercise its emergency authority	Any violation

VIOLATIONS OF COMPLIANCE SCHEDULE, PERMITS AND ENFORCEMENT ORDERS

Submit TRE Plan/Schedule Initiate TRE Complete TRE Submit Corrective Action Plan/ Schedule	60 days past schedule date
Start Construction End Construction Attain Final Compliance	90 days past schedule date
All Additional Milestones	90 days past schedule date

VIOLATIONS OF REPORTING REQUIREMENTS IN PERMITS, PRETREATMENT REGULATIONS, ENFORCEMENT ORDERS AND CWA 308 REQUESTS FOR INFORMATION

Discharge Monitoring Reports (DMRs)	30 days overdue or incomplete or not understandable
Pretreatment Reports (by POTW or Industrial Users)	30 days overdue or incomplete or not understandable
Compliance Schedule Report Final Progress Report	30 days overdue or incomplete or not understandable
Failure to provide "24 hour" report as required.	Any violation
Failure to file required report on a violation	More than one time during 12 month period
Failure to report slug loading (pretreatment report)	Any violation
Failure to file required report on biological testing and/or corrective action relating to whole effluent toxicity requirements	30 days overdue or incomplete or not understandable
All Additional Reports	30 days overdue or incomplete or not understandable

VIOLATIONS OF OTHER REQUIREMENTS

a. POTW Pretreatment Programs	Any uncorrected failure to implement an approved pretreatment program which meets the requirements for being reported on the Quarterly Noncompliance Report
b. General Permit Conditions	
- Record Keeping, O&M	Any violation of narrative requirements (inaccurate recordkeeping, inadequate treatment plant operation and maintenance)
- BMPs	Any failure to follow Best Management Practices (i.e., requirement to developed SPCC plans and implement BMP)
c. Enforcement Order	
Any other requirements cited in the Enforcement Order	Any violations during the review period
d. Discrepancies found in the course of inspections, audits or review of annual reports	Any violation
e. Other Violations	Violations for which a formal enforcement action is recommended by the Enforcement Response Guide.

ANNUAL REVIEW

The file of any major permittee or minor permittee of concern should be reviewed at least once in a twelve month period, regardless of whether or not any of the above criteria have been exceeded.

ENFORCEMENT RESPONSE GUIDE

NONCOMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE[1] (See Definitions)
SAMPLING, MONITORING AND REPORTING		
Failure to sample, monitor or report (routine reports, DMRs)	Isolated or infrequent	Phone call,[2] letter of violation (LOV). Report to be submitted immediately
	Permittee does not respond to letters, does not follow through on verbal or written commitments or commits frequent violations	Consider criminal prosecution. If not, Administrative Order (AO) Administrative penalty order[6] (APO), or judicial action.
Failure to sample, monitor or report (CWA 308 request)	Any instance	AO, APO, judicial action
Failure to sample, monitor, or report (one-time requirement)	Any instance	LOV, 308 request AO, APO
Failure to perform biological testing as required	Isolated or infrequent	LOV or AO
	Frequent or continued	APO, judicial action
Failure to report biological testing results	Submitted within 30 days of due date	LOV
	30 days or more late	LOV, AO, APO, judicial action
Failure to submit final TRE planning or implementation report as required	Submitted within 30 days of due date	LOV
	30 days or more late	LOV, AO, APO, judicial action

ENFORCEMENT RESPONSE GUIDE

NONCOMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
Failure to file 24 hour report for effluent violations required by Section 122.41(1)(6)	No known harm	LOV, AO, APO
	Known harm	Consider criminal prosecution. If not APO, or judicial action, including temporary restraining order (TRO).
Failure to submit report with DMRs which explains other violations	Isolated or infrequent.	Phone call or LOV
	Frequent or continued violations	AO, APO
Minor sampling, monitoring or reporting deficiencies	Isolated or infrequent	Phone call or LOV. Corrections to be made in next submittal
	Frequent or continued violations	AO, APO
Major or gross sampling, monitoring or reporting, deficiencies	Isolated or infrequent	LOV or AO. Corrections to be made in the next submittal
	Frequent or continued violations	APO or judicial action
Reporting false information	Any instance	Consider criminal prosecution. If not judicial action.

ENFORCEMENT RESPONSE GUIDE

NONCOMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
Failure to install monitoring equipment	Continued	AO, APO, judicial action
PERMIT COMPLIANCE SCHEDULES (Construction phases or planning including required TRE activities)[3]		
Missed Interim Date	Will not cause late final date or other interim dates	Phone call, LOV.
	Will result in other missed interim dates; violation for good or valid cause	LOV or AO Contact permittee and require documentation of good and valid cause
	Will result in other missed interim dates. No good or valid cause	AO, APO or judicial action
	Will result in missed final. No good or valid cause	APO or judicial action
Missed Final Date[4]	Violation due to force majeure (Strike, act of God, etc.)	Contact permittee and require documentation of good or valid cause and date/ schedule for compliance
	90 days or more outstanding. No good or valid cause	APO or judicial action. Consider Contractor Listing.[7]
Failure to make timely corrective control/treatment decision as part of TRE	Late with good or valid cause	LOV
	Continued violation, with no good or valid cause	APO, judicial action

ENFORCEMENT RESPONSE GUIDE

NONCOMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
Failure to undertake TRE control/treatment activities as required	Isolated or infrequent	LOV, phone call; AO, APO
	Frequent or Continued	APO, judicial action
AO COMPLIANCE SCHEDULES	(Construction phases, MCP or CCP;TRE activities)	
Missed Deadline	Contained in AO previously issued and good or valid cause	AO. Contact permittee and require documentation of cause, if not provided by permitte
	Contained in AO previously issued and no good or valid cause	APO or Judicial acti Consider contractor listing
Reporting False Information	Any instance	Consider criminal prosecution. If n judicial action
PERMIT EFFLUENT LIMITS		
Exceeding Final Limits	Outside permittee's control, e.g, upset or bypass	Contact permittee and require proof of good and valid cause
	Infrequent or isolated minor violation	LOV
	Infrequent or isolated major violations of a single effluent limit	LOV, AO, APO, or judicial action
	Frequent violations of effluent limits	AO, APO or judicial action. Consider contractor listing

ENFORCEMENT RESPONSE GUIDE

NONCOMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
Failure to meet final whole effluent limits	Isolated or infrequent violation; no known harm	LOV or AO
	Isolated or infrequent, known harm	AO, APO, judicial action
	Continuing violations with or without harm	AO, APO, judicial action. Consider Contractor listing
Exceeding Interim Limits	Outside permittee's control, e.g, upset or bypass	Contact permittee and require proof of good and valid cause
	No known harm	LOV, AO, APO
	Known harm	APO or judicial action
Failure to meet interim whole effluent limits	Isolated or infrequent; no known harm	LOV, AO
	Isolated or infrequent; known harm	AO, APO
	Continued violation; with or without harm	AO, APO, judicial action, including TRO
Discharge without a permit.	Unintentional. One time without harm.	AO, APO
	Intentional, one or more times with or without harm	Consider criminal prosecution. If not, APO or judicial action

ENFORCEMENT RESPONSE GUIDE

NONCONPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
ADMINISTRATIVE ORDER INTERIM LIMITS		
Exceeding Interim Limits contained in AO	Isolated or infrequent violation	AO[5], APO (on basic violation)
	Frequent or continued violations within the control of the permittee or known environmental damage	Consider crminal prosecution. If not, APO or Judicial action.
STATE/EPA COMPLIANCE INSPECTION		
Minor violation of sampling or analytical procedures	Any instance	LOV
Major violation of sampling or analytical procedures	No evidence of intent	LOV, AO, APO
	Evidence of negligence or intent	Consider criminal prosecutive. If not, APO or judicial action
Violation of permit conditions other than (numerical) effluent, schedule, or reporting violations (e.g. BMP, O&M, unauthorized discharges/bypasses, record retention/ availability, etc.)	No evidence of negligence or intent	LOV, AO (Immediate correction required)
	Evidence of negligence or intent	Consider crminal prosecution. If not, APO or judicial action
QUALITY ASSURANCE		
Non-submittal of DMR/QA data	Isolated or infrequent	LOV or AO
	Continued violation	AO, APO, Judicial action

ENFORCEMENT RESPONSE GUIDE

NONCONPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
PRETREATMENT: INDUSTRIAL USERS; EPA OR STATE AS CONTROL AUTHORITY		
Non-submittal of Baseline Monitoring Reports, and other required pretreatment reports	Late	LOV, phone call, AO
	Continuation	AO, APO, or judicial action
Failure to sample or analyze, or to properly sample or analyze as required, including resampling	Isolated or infrequent	LOV, AO
	Frequent or continued	AO, APO, or judicial action
Failure to submit notice of slug loading or 24 hour report required by 40 CFR 403.12	Single incident	LOV, AO
	Multiple incidents	Consider criminal prosecution. If not, APO, judicial action
Failure to maintain and have records available	Isolated or infrequent	LOV
	Frequent or continued	AO, APO, judicial action
Failure to meet schedule requirements	Violation due to force majeure	If not aready provided, contact user and require documentation of good and valid cause and date and schedule for compliance

ENFORCEMENT RESPONSE GUIDE

NON-COMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
	Missed interim date; Will not affect final date	Phone call, LOV, AO
	Missed final date; Less than 90 days	AO, APO
	Missed final date by 90 days or more. no good or valid cause	APO or judicial action. Consider Contractor Listing
Violation of general standards, categorical standards, or local limits	Minor or infrequent; no known harm	LOV, Phone call, AO
	Frequent violations or known harm	AO, APO, judicial action
	Causes interference or pass through	Consider criminal prosecution. If not, APO, judicial action, including injunction.
Discharge of Slug Load	Any discharge	AO, APO, judicial action, including TRO

PRETREATMENT: INDUSTRIAL USERS; POTW AS CONTROL AUTHORITY

Where EPA chooses to take direct enforcement action against an Industrial User (IU) where there is an approved local program, EPA should notify the POTW of its activities, and may issue a Section 309(f) notice of violation. The range of appropriate enforcement response for these IUs would then be the same as for IUs where EPA or the State is the Control Authority, except that EPA may join the POTW as a defendant in a judicial action under the provision of Section 309(f) of the CWA.

PRETREATMENT VIOLATIONS: POTW IMPLEMENTATION

Non-submittal of required pretreatment reports	Late	LOV, AO

ENFORCEMENT RESPONSE GUIDE

NON-COMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
	Continued non-submittal after notification	AO, APO, judicial action
Violation of any requirement of an approved pretreatment program, NPDES permit or pretreatment regulations	Minor; Infrequent	LOV, AO
Major Violations by POTWs		
Failure to establish SIU mechanisms after program approval, as required	Late but corrected	LOV, APO
	Continued violation after notification	AO, APO, judicial action
Failure to reissue SIU mechanisms on a timely basis	Late but corrected	LOV, APO
	Continued violation after notification	AO, APO, judicial action
Failure to perform at least 80% of required inspections	Continued	AO, APO, judicial action
Failure to establish and enforce SIU self-monitoring requirement as required	Isolated or infrequent	LOV, phone call
	Continued	AO, APO, judicial action
Failure to appropriately enforce pretreatment standards (categorical standards and local limits)	Isolated or infrequent	LOV, phone call

ENFORCEMENT RESPONSE GUIDE

NON-COMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
	Continued non-enforcement against one or more SIUs	AO, APO, judicial action, including possible 309(f) action
Failure to enforce against instances of pass through or interference	Any instance	APO, judicial action, including possible 309(f)
Failure to publish list of significant violators as required by 40 CFR 403.8(f)(2)(vii)	Late	LOV
	Continued violation	AO, APO
Failure to comply with compliance schedule	Milestone missed by less than 90 days	LOV, AO
	Milestone missed by 90 days or more	AO, APO, judicial action
Failure to maintain and update User Inventory	Continued	AO, APO
Failure to investigate instances of reported or alleged non-compliance by IUs	Isolated or infrequent; no known harm	LOV, AO
	Continued violation or single violation with harm	AO, APO

Definitions for the Enforcement Management System*

1. Actionable: A violation by the NPDES permittee or other facility subject to regulation under the Clean Water Act (CWA), and/or the permit, which gives rise to a possible enforcement action by the NPDES State, USEPA, and/or any person or entity having standing, whether or not such action is taken.

2. Administrative (Compliance) Order (AO): A document issued by EPA under Section 309(a)(3) of the CWA which contains findings of fact determined through a unilateral, administrative process (without required notice or opportunity for hearing) and which directs that the permittee or other regulatee achieve compliance with the CWA Sections 301, 302, 306, 308, 318, 405 or with conditions of an NPDES permit which implements one of those sections, or an equivalent State action issued under State authority. The document contains an order to cease the violation immediately, or a specific timetable for compliance.

3. Administrative Penalty Order. An order entered pursuant to CWA Section 309(g) by EPA assessing penalties against respondent for violating NPDES program requirements or certain Dredge and Fill program requirements.

4. Dischargers (Municipal, Industrial, Major and Minor):

   (A) Municipal Major: A municipal wastewater treatment facility which discharges a flow of one million gallons or more per day, or which serves a population of ten thousand or more. Any municipal facility not meeting this definition is classified as minor.

   (B) Industrial Major: An industrial discharger's permit is analyzed for specific discharge characteristics which are tied to a weighted point total classification system. Points are assigned on the basis of the following five effluent parameters: toxic pollutant potential; flow/wastewater type; conventional pollutant load; public health impact; and water quality factors. The point total is added. If the total is eighty points or higher the discharger is classified as major. Those dischargers which have less than eighty points are classified as minor.

* Entries are listed in alphabetical order

(C) Discretionary Majors: USEPA Regions are permitted to assess up to five hundred points at their discretion, thereby placing some dischargers in the major classification which would not have otherwisebeen there. This provides theRegions the opportunity to classify certain dischargers with local problems as majors, even though they would not be under a fixed, inflexible national scheme. Each Region's discretion is limited to 20 discretionary additions plus five percent of their total major permits.

5. Formal Enforcement Action: An action that requires actions to achieve compliance, specifies a timetable, contains consequences for noncompliance that are independently enforceable without having to prove the original violation, and subjects the person to adverse legal consequences for noncompliance.

6. Letter of Violation (LOV): A warning letter issued by either an NPDES State or USEPA to a permittee under the NPDES Program informing the permittee that it is in violation of the CWA, implementing regulations, and/or the permit, and which indicates the possibility of escalated enforcement action if the violation is not corrected in a timely manner.

7. Notice of Violation (NOV): A written document issued by USEPA under CWA Section 309(a)(1) to an approved State with a copy to the permittee informing them of the permittee's violation of a State-issued NPDES permit. The NOV specifically describes the violation and notifies the State that EPA may take appropriate enforcement action if the violation continues and the State has not commenced enforcement action within 30 days.

FOOTNOTES

[1]The Notice of Violation (NOV) is not specifically identified as a possible response in the "Range of Response" column. In fact, the use of an NOV by EPA as an initial response is an appropriate option where the violation is in a State with an approved NPDES program. However, it must be recognized that an NOV does not qualify as a formal enforcement action.

[2]Phone calls should be noted in the record and be followed up with warning letters if reports are not received within the specified timeframe.

[3]If the compliance schedule is established by a consent decree or other judicial order, the violation should be brought to the attention of the program manager and legal counsel to determine whether the court should be notified. The permitting authority may not excuse or allow a violation of a consent decree or other court order without court approval.

[4]The enforcement response chosen for Missed Final Dates must be consistent with the provisions of the National Municipal Policy.

[5]The Clean Water Act does not authorize the issuance of an AO for a violation of a previously issued AO nor may an administrative penalty order be issued for violation of an administrative order. Any successive AO issued must be based upon the underlying violations of the Act contained in the previous AO and/or upon subsequent violations of the Act. A penalty order must also be issued based upon the underlying violations of the permit, statute or regulation.

[6]Wherever an administrative penalty order (APO) is indicated as an appropriate response, it should be accompanied by an administrative order requiring compliance, unless compliance has already been achieved.

[7]Discretionary "contractor listing" is a supplemental enforcement tool which authorizes EPA to enter an order denying future Federal contracts, grants, or loans in connection with facilities which have a record of continuing or recurring unresolved noncompliance with clean water standards. This authority may only be exercised when the following has occurred: 1) the violation of a CWA Section 309(a) administrative (compliance) order, or 2) the filing of a CWA Section 309(b) action, or 3) the entry of a final order by a State or Federal court, determining the occurrence of such violations by the owner, operator or manager of the facility. (See 40 CFR 15). This procedure may be used where normal enforcement techniques fail to overcome violator recalcitrance. (The Department of Defense publishes an annual list of firms awarded defense contracts in excess of ten million dollars during the prior year at 32 CFR 40a.)

ENFORCEMENT RESPONSE GUIDE

NONCOMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
Combination of any of above violations or other violations of approved program, NPDES permit or pretreatment regulations	Any instance	LOV, AO, APO, judicial action
	Evidence of negligence or intent	Consider criminal prosecution. If not, APO, judicial action
Obtaining Program Approval:		
Failure to submit an approvable program	First occurrence	AO, APO
	Continued violation	APO, judicial action

LEVELS OF RESPONSE

There are three possible levels of response to all violations. For any violation, the administering agency must review the violation and determine the appropriate response. For some violations, the response may be no action necessary at this time. The informal enforcement response can be an inspection, phone call, a violation letter, or a Federal Notice of Violation to the permittee with a copy to the administering State agency. The violation letter can be limited to a notification of the violation or to requiring certain steps to be taken within specific time frames. The formal enforcement response must be one of the following:

1. An Administrative Compliance Order or State equivalent action; or

2. A judicial referral to the State Attorney General or to the Department of Justice.

ATTACHMENT

NPDES VIOLATION SUMMARY

Major	Municipal
Minor	Non Mun.
	Federal
	State
	Industrial

NPDES No. _____

NAME & LOCATION _____

DATE OF VIOLATION MO/DA/YR	TYPE OF VIOLATION	AGENCY RESPONSES	DATE OF RESPONSES MO/DA/YR	PERSON(S) INITIATING RESPONSE	DUE DATE MO/DA/YR	STATUS	REVIEW NAME AND TI

REMARKS

(Additional information may be entered across the sheet--between citations of permit violations--to meet local ancillary tracking requirements. Any other pertinent information, such as the rationale for unusual responses, may also be documented in this manner.)

SEQUENCE OF ACTIVITIES
FOR
ISSUING PERMITS AND DEVELOPING COMPLIANCE SCHEDULES

A discussion of EPA and State actions that should be taken during the development of the State strategies is presented below. These actions may occur simultaneously or in sequence. This sequence is consistent with the attached Table.

1. Review available data and identify those POTWs that are not in compliance with statutory requirements. This includes those that need construction to meet the 1988 compliance deadline under §301(i).

2. Identify POTWs for which treatment requirements or compliance status may change as a result of revised WQS and WLA, the redefinition of secondary treatment, §301(h) variance decisions, §301(i) eligibility, or EPA's AT review and Federal funding decisions.

3. Identify POTWs that need construction to achieve compliance with statutory requirements.

4. Identify POTWs that have received, or are likely to receive, EPA construction grant funding. States are encouraged to review and revise their Project Priority Lists (PPL) in order to identify the optimum number of POTWs that can be funded.

5. Establish applicable effluent limits and tentative compliance schedules for noncomplying POTWs for which information is already available. For many POTWs, the applicable effluent limits have already been established in existing NPDES permits.

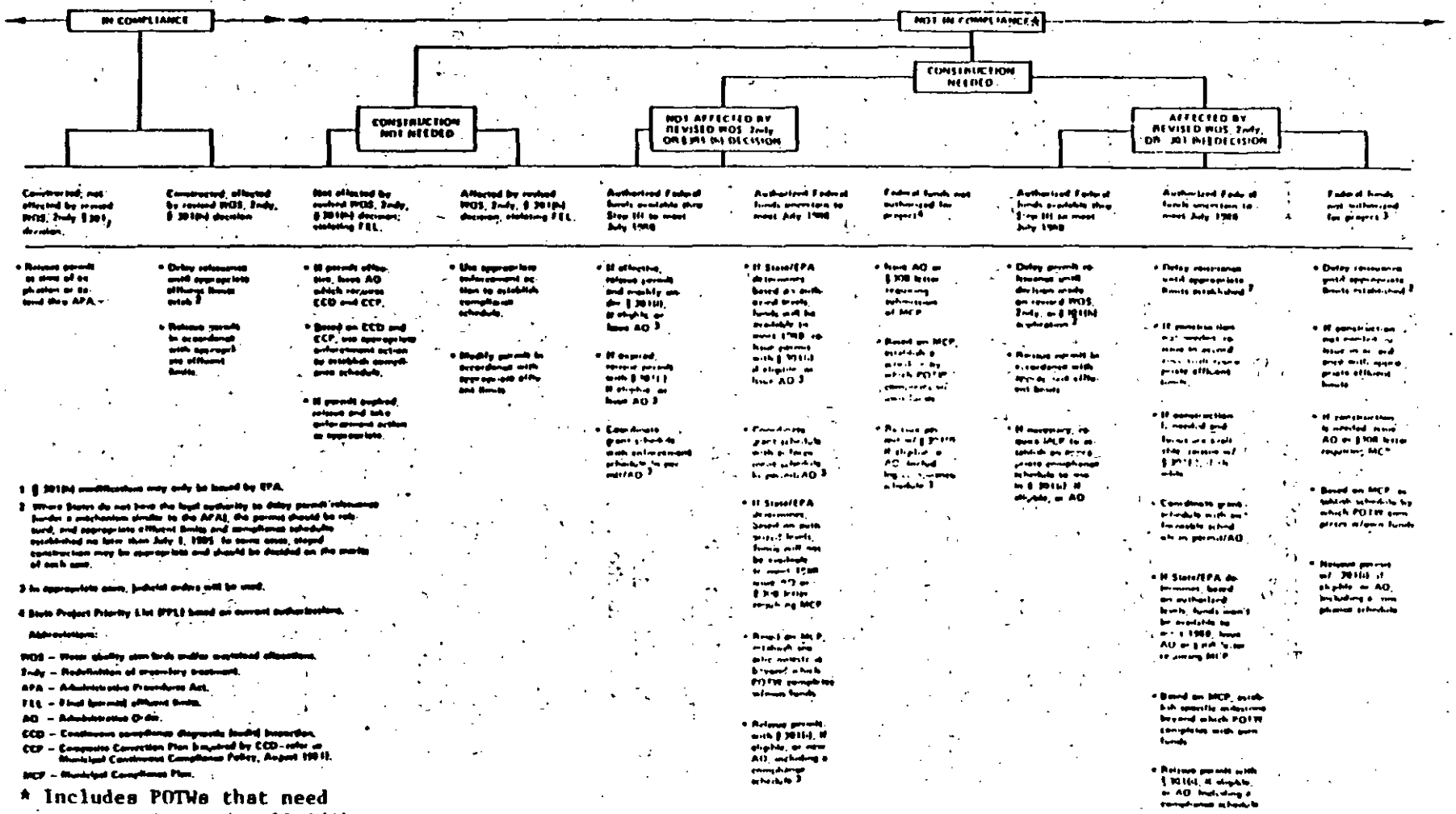
6. Establish deadlines by which POTWs must prepare and submit MCPs or CCPs. To the extent possible, Regions and States should work with affected communities to require such plans in phases through the end of FY 1985, with CCPs for constructed POTWs in noncompliance due in the near term, and MCPs for POTWs facing somewhat uncertain permit effluent limits or funding problems at the far end of the schedule.

7. Establish firm compliance schedules and incorporate them into §301(i) NPDES permits, if eligible, §309(a)(5)(A) AOs, judicial orders, or comparable State actions (see attached Table). If the Region or State agrees with the proposed schedule in the MCP or CCP, it may be incorporated by reference in the POTW's permit, AO, judicial order, or comparable State action. Otherwise, the Region or State should work with the POTW to develop a reasonable schedule for achieving compliance as soon as it is technically and financially possible.

8. Establish firm commitments in §106 workplans for actions on POTWs for which applicable effluent limits are already known or can readily be made, and action plans for POTWs for which decisions on applicable limits will be made (in stages) up to the target date, the end of FY 1985.

9. Carefully monitor compliance with all of the above requirements and take follow-up actions as provided for in State strategies, or as necessary to meet the intent of the Policy.

DRAFT PERMIT ISSUANCE AND COMPLIANCE SCHEDULE DEVELOPMENT TABLE



1 § 301(h) modifications may only be based by EPA.

2 Where States do not have the legal authority to delay permit reissuance under a mechanism similar to the APA, the permits should be reissued, and appropriate effluent limits and compliance schedule established no later than July 1, 1985. In some cases, staged construction may be appropriate and should be decided on the merits of each case.

3 In appropriate cases, judicial orders will be used.

4 State Project Priority List (PPL) based on current authorizations.

Abbreviations:

WQS – Water quality standards under assumed allocations.
2nd/y – Redefinition of secondary treatment.
APA – Administrative Procedure Act.
FEL – Final (permit) effluent limits.
AO – Administrative Order.
CCD – Continuous compliance diagnostic (audit) inspection.
CCP – Composite Correction Plan (required by CCD - refer to Municipal Continuous Compliance Policy, August 1981).
MCP – Municipal Compliance Plan.

* Includes POTWs that need construction under §301(1)

CHAPTER III. Administrative Enforcement Actions - Policies and Guidance

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

OFFICE OF WATER

JUL 30 1985

MEMORANDUM

SUBJECT: Recommended Format for Clean Water Act Section 309 Administrative Orders

FROM: Rebecca Hanmer
Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits (EN-335)

TO: Water Management Division Directors
Regions I - X

One of the most frequently used Environmental Protection Agency mechanisms in the formal enforcement process is the Administrative Order (AO) issued under Section 309 of the Clean Water Act. It is our belief that AO's should be used in a consistent and effective manner since they are a major part of the enforcement scheme. For this reason, the Office of Water Enforcement and Permits has undertaken an effort to assess AO content and format during the past year. The outcome of that assessment was the draft Recommended Format for Administrative Orders forwarded to you on May 9, 1985. We have received comments and suggestions from several Regions which were utilized in preparing the final documents. Attached you will find the final Recommended Format for Clean Water Act Section 309 Administrative Orders (Attachment 1).

The Recommended Format was developed with the cooperation and assistance of the Office of Enforcement and Compliance Monitoring. The purpose of the Recommended Format is to provide a general guide which delineates (1) the specific statutory requirements (such as the requirements of Section 309(a)(4) on opportunity for a recipient to confer with the Administrator on violations based on failure to submit information); and (2) options and suggestions on format for Administrative Orders (such as the option of including violations in a separate section after Findings of Fact). The Recommended Format, as utilized by the Regions, should result in more effective and even-handed national enforcement through Administrative Orders.

In addition to the Recommended Format, we are forwarding the Checklist on Administrative Orders (Attachment 2). The Checklist should be used for reviewing EPA and State-issued AO's. There will obviously be some variation among States with regard to AO's; however, the use of a Checklist should assure that the State-issued AO's are complete and enforceable.

The new guidance replaces a document dated April 18, 1975 that was developed by the Office of Water Enforcement. It should be noted that the statute was revised twice since 1975. In particular, the new guidance: discourages use of successive AO's for the same violation; clarifies which legal authority (e.g., Sections 308 and 309) EPA should cite as the basis for certain requirements imposed through an AO; clarifies the scope of requirements which EPA may impose through AO's; identifies sanctions available for AO violations; and sets out sample provisions which AO's should include to clarify the legal effect of the Order.

In the coming fiscal year, the Office of Water Enforcement and Permits, with extensive coordination with the Office of Enforcement and Compliance Monitoring (OECM), will develop further information on the use of Section 309 Administrative Orders. Some of those documents will cover: use of AOs on consent (bilateral and joint signature); principles for negotiation of bilateral orders especially for National Municipal Policy; use of multiple AO's and alternatives to AO's for the same facility when an AO is violated; and increased use of Section 308 to require information (including use of show cause proceedings).

If you have any specific questions on the above, please call me (FTS-475-8488) or Bill Jordan, Director, Enforcement Division (FTS-475-8304). The staff contact is Virginia Lathrop (FTS-475-8299).

Attachments

ATTACHMENT 1

Recommended Format for Clean Water Act Section 309 Administrative Orders

The following is the recommended format and content for an Administrative Order (AO). Examples and suggested wording are included at various points in the discussion and in the sample AO (Attachment 1-D). Adherence to the Recommended Format should result in more effective and evenhanded national enforcement through Administrative Orders.

Introduction

The following should be followed for the venue, title, docket identification and preamble paragraph.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION ____

IN THE MATTER OF	DOCKET NO. XI-84-06
Wastewater Treatment Works #4 Sludge River Pollution Control District Sludge Falls, Columbia	
PROCEEDING UNDER SECTION 309(a) of the Clean Water Act, 33 U.S.C. Section 1319(a); in re NPDES PERMIT No. _____	FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE

"The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309 of the Clean Water Act, 33 U.S.C. §1319, (hereinafter the Act) and by him delegated to the Regional Administrator of EPA, Region XI (and redelegated by the Regional Administrator of Region XI to the Director, Water Management Division, Region XI)."

Venue and Title

The Region identification is included to establish the specific venue of the issuing authority. The full address of the Region is to be in the letterhead or under the Regional Administrator's (or his designee's) signature to the Order and on the blue back cover (which is optional).

Docket Number

To identify the proceeding, a docket number is required. To avoid confusion, the NPDES number should not be used as the Docket Number. However, the NPDES number, if any, should be referred to under the proceedings identification in the title. The docket number "XI-84-06" identifies the Order as being the 6th Order issued in 1984 in Region XI. An Administrative Order docket should be kept separate from any other docket. However, if a common docket is kept then a prefix should be added to the docket number, e.g., "XI-AO-84-06".

Preamble Paragraph

The preamble paragraph is important not only to establish the Administrator's authority to issue the Order but also to establish the delegation of authority to the Regional Administrator. If the Regional Administrator has redelegated his authority to the Director of the Regional Water Management Division, this redelegation should also be stated here or in the preamble to the Order portion of this document. It should be noted that there is no authority to redelegate this authority to other EPA Regional staff below the Division Director level. If the redelegation is asserted here, the paragraph should be amended by adding:

"... and redelegated by the Regional Administrator of Region XI to the (undersigned) Director, Water Management Division, Region XI".

The Administrative Order can be signed by a duly authorized Acting Regional Administrator or Director. However, the Agency should be prepared to show that the person signing as Acting Regional Administrator or Director has the requisite authority to sign the Order.

FINDINGS OF FACT

The Findings should adequately set forth the specific permit, statutory (and regulatory)* requirements violated and the specific nature and dates of the violations. In order to avoid difficulty in determining from the face of the Findings whether the order was necessary and timely, and the remedy was appropriate, the Findings and Order should be able to stand without reference to extraneous facts. The Findings should speak to all the pertinent facts and law much as a complaint in a civil action does. With these observations in mind, the following recommendations are made as to the specific facts to be alleged in the Findings.

Status of Violator

Findings of Fact should first identify fully the entity to whom the order is to be issued and define its legal status (i.e., corporation, partnership, association, state, municipality, commission or political subdivision of a state). Clearly identifying the orderee limits the possibility of challenges to jurisdiction or venue and establishes a record upon which subsequent enforcement actions may rely. The Findings should next establish the orderee's status under the Clean Water Act, (i.e., permittee, industrial user, control authority, etc.) and, in the case of permittees, the permit number, date issued, and current permit status. The Findings should name the receiving stream into which the violator discharges and should establish the violator discharges to "navigable waters" under Section 502(7) of the Act through a specific point source as defined in Section 502.

Basis of Violations

Section 309(a)(5)(A) requires that all orders ". . . should state with reasonable specificity the nature of the violation . . . ." It is imperative that the Findings contain the specific permit provision or statutory or regulatory requirement which has been violated and the authority by which it was imposed on the orderee. Next, the evidence or basis for the specific violation (such as DMR, inspection report, BMR) and dates of violation should be set forth concisely. In cases of more than one violation, identify what the documentation is for each and give the specific dates of violation. [In instances where only approximate dates are known or where there is a continuing violation say "on or about" or "beginning on or about".] Alternatively the violations may be set off in a separate section entitled "Violations" which can follow the "Findings of Fact."

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* An AO should not set out a regulatory requirement that was violated without setting out the underlying statutory requirement. The Section 309(a)(3) authorizes AO's for violations of permit and statutory provisions.

Where the violation is based on a failure to provide required information, a finding can usually only state that the required information was not received by the agency. In those cases, the lack of receipt of the required information must serve as the basis of the violation. Section 308 violations have additional requirements as described below.

CWA Section 308 Violations

Administrative Orders issued for violations based on a failure to submit information requested under Section 308 of the Act do not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator (or his or her designee) concerning the alleged violation. (See CWA Section 309(a)(4)). It is essential that such person be provided with a reasonable opportunity to confer. Any order issued for a Section 308 violation either exclusively or in conjunction with other violations should provide for a period of time in which the orderee may confer with an authorized person designated in the Order. If an opportunity has been provided prior to the issuance of the order, the order should so state and set forth the documentation of the opportunity to confer and the outcome of the conference, if any.

Prior Enforcement Contacts

Administrative Orders frequently set forth prior contacts with the orderee in an attempt to obtain compliance. Generally, this is a good practice since it helps to build a record and may provide additional support in any subsequent enforcement action. This can be done by cataloguing the meetings, letters, telephone calls, etc., made in an attempt to secure voluntary compliance or by stating that repeated attempts were made. The repeated attempts may be set out in an attached summary or log of meetings, notices, letters, and telephone calls and dates thereof, along with dates of responses from the orderee, if any (see Attachment 1-A).

Other Findings

In certain circumstances it may be necessary or useful to include other findings which are supportive to the specific requirements of the order (e.g., "the company's treatment works are currently capable of meeting the effluent limits contained in its permit" or "the POTW has adequate authority to enforce the categorical pretreatment standards"). Whether or not to include such statements must be determined on a case by case basis but, if included, should be incontrovertible facts.

ORDER FOR COMPLIANCE

The format for the Order should be as follows:

Order

"Based on the foregoing FINDINGS and pursuant to the authority vested in the Administrator, Environmental Protection Agency, under Sections 308 and 309(a) of the Act, and by him delegated to the undersigned (or if the Regional Administrator redelegates his authority to the Division Director, add after "of the Act" - "and by him delegated to the Regional Administrator, and redelegated to the undersigned"), it is hereby ordered:".

If the delegation statement is stated in the Preamble, this statement may simply be: "Based on the foregoing Findings, and pursuant to the authority of Sections 308 and 309(a) of the Act, it is hereby ordered:"

Terms of the Order

Section 309(a)(1) and (a)(3) authorizes the Administrator to issue an order requiring compliance with enumerated sections of the Act or a condition, limitation or permit requirement implementing the enumerated sections of the Act. Any requirement contained in the order must be directly related to achieving that compliance with those legal requirements. The terms of the order must set forth what EPA specifically expects the Orderee to do in order to achieve and maintain compliance.

Section 309(a)(5)(A) sets forth the time periods by which the orderee must comply. In cases of an interim compliance schedule or an operation and maintenance requirement the time for compliance may not exceed thirty days. In cases of compliance with a final deadline, the time for compliance must be "reasonable" as determined by the Administrator, taking into consideration the seriousness of the violation and past efforts of the orderee. Every order must contain a specific final date by which the orderee must achieve compliance (i.e., cease its violation(s)) consistent with the statutory language.

Although some Orders have included a prescribed method by which an orderee is to achieve compliance, specific prescribed steps or methodologies (such as a treatment technology) may be difficult to enforce. Because Section 309 specifies in explicit terms only that AO's require compliance by a date certain the more closely a requirement in the AO is related to actually achieving compliance, the sounder the legal position to include that requirement. Section 308 of the Act can provide substantial support in this area by requiring reporting of the specific steps or methods.

The Orders containing interim milestones leading to final compliance should include reporting requirements under Section 308. The order should specify the manner and timeframe for reporting compliance with the terms of the order to the issuing authority. The order should contain requirements for reporting on the compliance progress and submitting suitable documentation to show the Orderee has taken action to meet the AO requirements. The attached sample AO sets forth sample language on order requirements (Attachment 1-D), as well as a sample blue back (Attachment 1-C) and cover letter (Attachment 1-B).

Additional Provisions

It has been the long term practice of many of the Regions to include standard provisions regarding additional remedies, nonwaiver of permit conditions, etc., in all administrative orders or as part of the cover letter accompanying the AO. This practice should be used by all the Regions for every order issued. In addition to promoting national consistency, it alerts the violator to the array of sanctions which could be used should additional enforcement be necessary and helps encourage compliance with the Order as issued.

The following are sample provisions which should be added to Administrative Orders singly or in combination and may be modified based on the particular facts of the case. They may also be included in the cover letter.

Non Waiver of Permit Conditions:

> "This ORDER does not constitute a waiver or a modification of the terms and conditions of the Orderee's permit which remains in full force and effect. EPA reserves the right to seek any and all remedies available under Section 309(b) (c) or (d) of the Act for any violation cited in this ORDER."

Potential Sanctions for Administrative Order Violations (for Non-Municipals):

> "Failure to comply with this ORDER or the Act may result in civil penalties of up to $10,000 per day of violation, ineligibility for contracts, grants or loans (Clean Water Act, Section 508) and permit suspension."

General Disclaimers:

> "Issuance of an Administrative Order shall not be deemed an election by EPA to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act."

"Compliance with the terms and conditions of this ORDER shall not be construed to relieve the orderee of its obligations to comply with any applicable federal, state or local law."

Administrative Action Resulting in Ineligibility for Federal Contracts, Grants or Loans:

"Violations of this order may result in initiation of Agency action to prohibit the facility from obtaining Federal contracts, grants, or loans pursuant to Clean Water Act, Section 508, E.O. 11738, and 40 CFR Part 15."

Effective Date of the Order

When the Order does not address a violation of a requirement to provide information under Section 308, the ORDER can merely recite that:

"this ORDER shall become effective upon its receipt by (or service upon) said COMPANY."

For Section 308 violations where an opportunity for conference before the ORDER can become effective is required by section 309 and this was not done prior to the issuing of the ORDER, the last paragraph should read:

"The COMPANY shall have the opportunity, for a period of (_____) days from receipt of this ORDER, to confer with the following designated Agency representative: Mr. N. Force, Director, Water Management Division, Environmental Protection Agency, Room 5013, Region XI, Old National Bank Building, 1414 Main Street, Brewsterville, Centralia, 11101, (555) 123-4567; unless the Agency official issuing the Order decides otherwise, this ORDER shall become effective at the expiration of said period for consultation; and, the COMPANY shall have _____ (_) days from and after said effective date to comply with the terms of this ORDER. To constitute compliance, material required to be submitted by the COMPANY to the Agency must be in the hands of the designated Agency representative prior to the expiration of said _____ (_) day period."

Signing of the Order

When the Order is dated and signed, the name of the signing official (Regional Administrator, or Director, Water Management Division) should be typed below the signature, together with the address of the Regional office.

Other Considerations

The use of legal blue-back at least on the primary copy of the Findings and Order served, while not necessary, tends to impress upon the person served of the legal seriousness of the action being taken. Attachment 1-C provides a proposed format and content of the legal blue back. When a Order is issued to a Corporation, a copy of the Order shall be served on appropriate corporate officers.

As in court actions, the order should be retained and placed in a permanent file with the Docket Clerk, along with the affidavit or certification of service attached. If service is made by certified mail restricted delivery, a carbon copy of the letter of transmittal, together with the Post Office mailing receipt and the return receipt, when returned, should be stapled to the front of the original Order, just as a return of personal service would be.

Follow-up and File Closing

As good housekeeping practice, and more importantly, from the standpoint of possible reference for or evidence in future administrative or court actions, it is important that every file contain, at the minimum, a closing memo to the files delineating the final disposition of the matter. (The AO will only be closed out when the facility has returned to compliance or when appropriate EPA action is taken, i.e., escalating the enforcement response.)

When a file is closed out, a brief letter should be sent to the orderee with a carbon copy to Headquarters advising that the action has been completed. Attachment 1-E is an example of what a close out letter might look like.

ATTACHMENT B
ENFORCEMENT RESPONSE GUIDE

This guide is for the use of NPDES and Pretreatment enforcement officials who are responsible for determining the appropriate enforcement response to a specific violation of the NPDES permit and related sections of the Clean Water Act. (A similar Enforcement Response Guide has been incorporated into guidance for POTW Control Authorities published in July 1986, "Pretreatment Compliance Monitoring and Enforcement Guidance.") This guide is intended to serve two main purposes:

1. It recommends enforcement responses that are timely and appropriate in relation to the nature and severity of the violation and the overall degree of noncompliance;

2. It provides a guide to ensure a uniform application of enforcement response to comparable levels and types of violations, and it can be used as a mechanism to review the appropriateness of responses by an enforcement agency.

This guide should be used to select the most appropriate response to instances of noncompliance. When making determinations on the level of the enforcement response, the technical and legal staff should consider the degree of variance from the permit condition or legal requirement, the duration of the violation, previous enforcement actions taken against the violator, and the deterrent effect of the response on the similarly situated regulated community. Equally important are considerations of fairness and equity, national consistency and the integrity of the NPDES and Pretreatment programs.

In any particular case, these factors may lead to a response that differs from that contained in the Guide. It should be emphasized that any violation of an NPDES permit or of implementing regulations is a violation of the Clean Water Act (CWA). The administering agency (Region or approved State), in its exercise of enforcement discretion, may elect any of the enforcement responses available under and consistent with the CWA.

All SNC violations must be responded to in a timely and appropriate manner by administering agencies (see Attachment A). The response should reflect the nature and severity of the violation, and, unless there is supportable justification, the response must be a formal enforcement action (as defined in Chapter II, Principle No. 5, page 23), or a return to compliance by the permittee generally within one quarter from the date that the SNC violation is first reported on the QNCR. Administering agencies are expected to take a formal enforcement action before the violation appears on the second QNCR, generally within 60 days of the first QNCR. If the approved State does not act before the second QNCR, the State should expect US EPA to take a formal enforcement action. In the rare circumstance when formal enforcement action is not taken, the administering agency is expected to have a written record that clearly justifies why the alternative action (informal enforcement action or permit modification) was more appropriate. This record might take the form of the "Violation Summary" included in this document as Attachment C.

A key element in all enforcement responses is the timeliness with which they are initiated and effect compliance. Given many types of violations and the variance in resources available to the administering agencies, no specific time frame is established in which to initiate and complete a given response. Within 30 days of the identification of any violation, the appropriate response should be determined, and any action taken (or not taken) should be documented. If noncompliance continues beyond what is considered to be a reasonable time, the type of formal enforcement action needed should be established. Generally, an appropriate initial response is one that results in the violator returning to compliance as expeditiously as possible, promotes deterrence, and is equitable

This guidance addresses a broad range of NPDES and Pretreatment violations. It is not intended to cover all types of violations. The responses in this guide are suggested responses. They reflect the enforcement actions available to the USEPA. Other administering agencies may have alternative enforcement responses that are equally effective.

The measure of the effectiveness of an enforcement response includes:

-- whether the noncomplying source is returned to compliance as expeditiously as possible;

-- whether the enforcement response establishes the appropriate deterrent effect for the particular violator and for other potential violators; and

-- whether the enforcement response promotes fairness of government treatment as between comparable violators, as well as between complying and noncomplying parties.

In exercising its enforcement oversight responsibilities, the US EPA must evaluate whether an administering agency has used an appropriate enforcement response to a given noncompliance situation. The Enforcement Response Guide will be used as a general guide in making that assessment, keeping in mind the enforcement responses available to the administering agency, the results that are achieved, and the need to achieve an acceptable level of national consistency.

This guide has been developed for the internal use of USEPA and is not intended to create legal rights or obligations, or to limit the enforcement discretion of any of the administering agencies.

ATTACHMENT 1-B

February 21, 1985

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Ms. Alice Smith, Director
Sludge River Pollution Control
District
13 Plain Street
Sludge Falls, Columbia 12345

RE: NPDES Permit No. CL0003456

Dear Ms. Smith:

Enclosed is an Administrative Order issued to the Sludge River Pollution Control District (SRPCD), by the Regional Administrator of the Environmental Protection Agency ("EPA"), Region XI, under Sections 308 and 309 of the Clean Water Act (the "Act"). The Regional Administrator has found that the SRPCD has violated Section 301 of the Act by failing to comply with certain requirements of its National Pollutant Discharge Elimination System permit. Specifically, during 1984 SRPCD consistently violated its effluent limitations on ammonia and phosphorus and intermittently violated effluent limitations for biochemical oxygen demand and total suspended solids.

The Order, which is effective upon receipt, seeks to remedy the violations by requiring SRPCD to submit a plan for meeting its effluent limitations and requiring SRPCD to then implement the plan and comply with its effluent limitations.

This Order does not modify your current NPDES permit; nor will compliance with the Order excuse any violation of the permit. Failure to comply with the enclosed Order may subject the District to further enforcement action. EPA may initiate a civil action in federal district court for violations of an Order seeking injunctive relief and civil penalties.

If you have any questions concerning this matter, please contact Mr. Jones, an engineer in the Permit Compliance Section, at 222-3922.

Sincerely yours,

Prudence Purewater
Regional Administrator

Enclosure

cc: State Division of Water Pollution Control
State Department of the Attorney General

Prior Contacts with Orderee

Despite repeated written and telephone requests, as more fully set out in the log attached as Exhibit __ and made a part hereof by reference, the COMPANY, in violation of Section 308 of the Act, has not supplied the requested information.

LOG SAMPLE

12/04/83	DMR data showed significant noncompliance (memo from X. Amin to file).
12/07/84	308 Letter sent to Company.
12/10/84	Plant Visit: Some data from inspection (by N. Soector).
04/23/84	Telephone - N. Force to Company. Follow-up requests for information on recent DMR from Company. No information sent.
04/24/84	Telephone - N. Force to Company. To request additional data by phone from Company. No information obtained.
05/06/84	Note filed by N. Force - No letter or further information from Company.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION _

IN THE MATTER OF

SLUDGE RIVER POLLUTION CONTROL DISTRICT
SLUDGE FALLS, COLUMBIA
PERMITTEE*

NPDES PERMIT NO. CL0003456*

PROCEEDINGS UNDER THE CLEAN WATER ACT
AS AMENDED (33 U.S.C. 1319(a)(3))**

FINDINGS OF VIOLATION
AND
ORDER OF COMPLIANCE

Issued by:

Prudence Purewater
Regional Administrator
Environmental Protection Agency
Region XI
Federal Building
Hokum, Centralia 12345

* Where Permit has been issued.

** May also have proceeding under 33 USC 1318.

3. The discharge of pollutants by any person into the waters of the United States, except as authorized by an NPDES permit, is unlawful under Section 301(a) of the Clean Water Act.

4. On January 22, 1981, the District was issued National Pollutant Discharge Elimination System (NPDES) Permit Number CL0003456 (the "Permit") by the Regional Administrator of EPA pursuant to the authority given the Administrator of EPA by Section 402 of the Clean Water Act, which authority has been delegated by the Administrator to the Regional Administrator. The Permit became effective on February 22, 1981, and will expire on February 22, 1986.

5. The permit authorizes the discharge of pollutants into the Sludge River, in accordance with effluent limitations and other conditions contained in the Permit. The limitations contained in Special Condition A1 of the Permit require the plant to achieve monthly average limits of 7 mg/l for BOD and TSS, 1 mg/l for total phosphorus (Total P) and 1 mg/l for ammonia nitrogen (NH_3-N).

6. Attached hereto and incorporated herein by reference is a summary of effluent data submitted by the District to EPA for the period from December, 1983 to November, 1984. The data shows that:

   a.) the District violated the monthly average limits for TSS during two of the twelve months and violated the maximum daily limits for BOD nine times and TSS twelve times over periods of three months and five months, respectively;

ATTACHMENT 1-D

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION XI

IN THE MATTER OF	)	DOCKET Number AO-85-13
Sludge River Pollution Control District Wastewater Treatment Works #4	)	FINDINGS OF VIOLATION AND
NPDES Permit No CL003456	)	ORDER FOR COMPLIANCE
Proceedings under Section 309(a) of the Clean Water Act, 33 U.S.C. §1319(a)	)	

STATUTORY AUTHORITY

The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by Section 309 of the Clean Water Act, 33 U.S.C. §1319, (the Act), and by the Administrator delegated to the Regional Administrator of EPA, Region XI.

FINDINGS

1. The Sludge River Pollution Control District (the "District") is a political subdivision of the state organized under the laws of the State of Columbia and as such is a "person" under Section 502 of the Act, 33 U.S.C. §1362.

2. The Sludge River Pollution Control District is the owner and operator of a wastewater treatment facility which provides advanced treatment to wastewater from the Towns of Locus and Sludge Falls. The facility discharges pollutants into the Sludge River, a navigable water of the United States as defined by Section 502 of the Act, 33 U.S.C. §1362.

b.) The District violated the limits on daily maximum concentrations thirty times for NH_3-N and twenty times for Total P over a six month period;

c.) The District violated average monthly concentration limits for NH_3-N and Total P each month over a period of four months and six months, respectively.

7. EPA personnel performed a diagnostic audit inspection at the facility during 1984. The purpose of the inspection was to determine the cause of non-compliance with the effluent limitations for NH_3-N and Total P. The inspection report was completed on December 8, 1984 and is attached hereto and incorporated herein by reference as a part of these Findings.

8. Based on the inspection report, the facility is currently capable of meeting the concentration limits for NH_3-N and Total P if properly operated in accordance with Condition D2 of the permit which requires maximizing the removal of those pollutants.

9. Based on the above, I find that the District is in violation of Section 301 of the Act, 33 U.S.C. §1311, and permit conditions implementing that section contained in a permit issued under Section 402 of the Act, 33 U.S.C. §1342.

ORDER

Based on the foregoing FINDINGS and pursuant to the authority of Sections 308 and 309 of the Act, IT IS HEREBY ORDERED:

1. Within sixty days of receiving this ORDER, the District shall submit to EPA a plan for achieving compliance with the effluent limitations on NH_3-N, Total P, BOD, and TSS. The plan shall address the operational problems cited in EPA's December 8, 1984, diagnostic audit inspection report and identify any changes in plant operation, funding, and staffing necessary to meet the permit conditions.
2. The District shall immediately comply with all effluent limitations contained in Special Condition A1 of the Permit for BOD and TSS.
3. The District shall immediately achieve and comply with the interim effluent limitations specified in Attachment A for NH_3-N and Total P as an intermediate step toward achieving final compliance. These interim effluent limitations shall terminate on May 1, 1985. During the time period that the interim effluent limitations are in effect, all requirements and conditions of the Permit remain fully effective and enforceable.
4. By May 1, 1984, the District shall have implemented any operational changes necessary to meet the permit effluent limitations for NH_3-N and Total P. The District shall comply with all effluent limitations contained in the Permit by May 1, 1985.

5. Where this ORDER requires a specific action to be performed within a certain time frame, the District shall submit a written notice of compliance or non-compliance with each deadline. Notification shall be mailed within seven days after each required action.

6. If non-compliance is reported, notification shall include the following information:

   a) A description of the nature and dates of violations;
   b) A description of any actions taken or proposed by the District to comply with the requirements;
   c) A description of any factors which tend to explain or mitigate the non-compliance;
   d) The date by which the District will perform the required action.

All reports shall be in writing and addressed as follows:

Director
Water Management Division
U.S. Environmental Protection Agency
Federal Building - Room 13
Hokum, Centralia 12345

7. This ORDER does not constitute a waiver or a modification of the terms and conditions of the District's permit, which remains in full force and effect. EPA reserves the right to seek any and all remedies available under Sections 309(b), (c) or (d) of the Act for any violation cited in this ORDER.

8. Issuance of an Administrative Order shall not be deemed an election by EPA to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act.

9. This Order shall become effective upon the date of receipt by the District.

Dated this _____ day of _____

Signed: _____

Prudence Purewater
Regional Administrator
U.S. EPA, Region XI
Federal Building
Hokum, Centralia 12345

Attachment 1-E

Mr. Adams
Peerless Company
RR #3
Burning River, Centralia 12346

RE: Administrative Order #XI-AO-85-06
(NPDES Permit NO. 1111112)

Dear Mr. Adams:

This is to notify you that as of May 15, 1985 the above named permittee appears to have complied with Administrative Order #XI-AO-85-06 issued on February 24, 1985. This Administrative Order has been placed on inactive status, and the Agency intends no further enforcement action at this time based on presently available information.

Sincerely,

Director
Water Management Division

cc: Compliance Information and Support Branch
OWEP (EN-338)

CLEAN WATER ACT

PENALTY POLICY FOR CIVIL SETTLEMENT NEGOTIATIONS

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

EFFECTIVE DATE: 2-11-86

Clean Water Act
Penalty Policy for Civil Settlement Negotiations

I. Introduction

Under Section 309 of the Clean Water Act (CWA), the Administrator is authorized to bring civil actions to enforce certain requirements of the Act and related regulations. In such actions, the Administrator may seek a civil penalty not to exceed $10,000 "per day of such violation." The Agency will vigorously pursue penalty assessments in judicial actions to ensure deterrence and to recover appropriate penalties.

In order to guide settlement negotiations on the penalty issue in actions under Section 309 of the CWA and Section 113 of the Clean Air Act for failure to meet statutory deadlines, the Agency issued a Civil Penalty Policy on July 8, 1980. During the next few years, the Agency identified the following four goals for improving its civil penalty assessment practices: (1) penalties should, at a minimum, recover the economic benefit of noncompliance; (2) penalties should be large enough to deter noncompliance; (3) penalties should be more consistent throughout the country in an effort to provide fair and equitable treatment to the regulated community; and (4) there should be a logical basis for the calculation of civil penalties for all types of violations, industrial and municipal, to promote a more swift resolution of environmental problems and of enforcement actions.

In an effort to address these and related penalty issues, on February 16, 1984, the EPA Office of Enforcement and Compliance Monitoring (OECM) issued the following two civil penalty guidance documents: The Policy on Civil Penalties (# GM-21), and the companion document entitled A Framework for Statute-Specific Approaches to Penalty Assessments, (# GM-22), as general guidance for settlements for violations of all statutes which EPA enforces. Although the 1984 penalty policy documents do provide basic conceptual guidance for penalty calculations, they were designed to be implemented further through medium-specific penalty guidance. The "Policy" document states in part, as follows:

> Each EPA program office, in a joint effort with [OECM], will revise existing policies, or write new policies as needed. These policies will guide the assessment of penalties under each statute in a manner consistent with this document and, to the extent reasonable, the accompanying Framework. [Policy, at 1, 2]

II. Purpose

This penalty policy and attached methodology is the water-specific penalty guidance for certain CWA violations. This policy follows the major principles set out in the general penalty policy documents and also reflects considerations unique to CWA enforcement.

As the Framework directs, this CWA Penalty Policy provides "a system for quantifying the gravity of violations of the laws and regulations . . . ." Moreover, this policy provides a logical structure and a number of different ways (number of violations, duration, etc.) to quantify the severity of a defendant's noncompliance with the CWA. The policy also provides a number of ranges of weighting factors in order to allow the Regions flexibility in exercising their experienced judgment.

The calculated penalty figure should represent a reasonable and defensible penalty which the Agency believes it can and should obtain in a settlement in compromise of its claim for the statutory maximum penalty. This figure, and a discussion of the basis of calculation, must be included in all litigation reports. After referral, as more information becomes available, the penalty calculation should be modified to reflect relevant, new information. In those cases which proceed to trial, the government should seek a penalty higher than that for which the government was willing to settle, reflecting considerations such as continuing noncompliance and the extra burden placed on the government by protracted litigation.

III. Applicability

This penalty policy applies to Federal CWA civil judicial enforcement actions commenced after the effective date of this policy and to pending judicial enforcement cases in which the government has not transmitted to the defendant an approved oral or written proposed penalty. The policy applies to civil penalties sought under CWA Section 309 for violations including the following: violations of NPDES permits by industrial and municipal facilities; discharges without an NPDES permit; violations of general and categorical pretreatment requirements and local limits; monitoring and reporting violations; violations of Section 405 sludge use or disposal requirements; etc. The policy also applies to violations of Section 308 information requests and to violations of Section 309 administrative orders. This policy shall not be applied to CWA civil enforcement actions brought exclusively under §311 ("hazardous substance spills") or for violations related to requirements in §404 (disposal of "dredged or fill" material). The CWA and implementing regulations provide unique enforcement procedures and penalty provisions for §311 and §404 violations which are currently being followed in pursuing these types of cases.

IV. Penalty Calculation Methodology

The initial calculation shall be an estimate of the statutory maximum penalty in order, for comparison purposes, to determine the potential maximum penalty liability of the defendant. The penalty which the government seeks in settlement may not exceed this statutory maximum amount.

The Regional office shall then calculate a civil penalty figure for settlement purposes based upon the following formula: "Civil Penalty = (Economic Benefit Component) + (Gravity Component) +/- (Adjustments)."

The civil penalty settlement calculation involves the following four consecutive steps: (1) calculate the "Economic Benefit" of noncompliance; (2) calculate the monthly and total "Gravity Components"; (3) calculate the "Adjustment Factors"; and (4) calculate the total penalty.

(1) Economic Benefit. Consistent with the Agency-wide "Policy and Framework", every reasonable effort shall be made to calculate and recover the economic benefit of noncompliance. Note that the economic benefit should be calculated from the start of noncompliance up to the point when the facility was or will be in compliance. In a limited number of cases, based upon a defendant's inability to pay or "litigation practicalities" application of the "adjustment factors" may justify recovery of less than the calculated economic benefit. The economic benefit component shall be calculated by using the EPA computer program -- "BEN." This program produces an estimate of the economic benefit of delayed compliance, which is calculated to be the sum of the net present value of: delayed capital investment, one-time, non-depreciable expenditures, and avoided operating and maintenance expenses. (See "BEN Users Manual," OPPE/OECM, January 1985.)

(2) Gravity Component. The gravity calculation methodology is based upon a logical scheme and criteria which relate the gravity of the violations to the Clean Water Act and its regulatory scheme. Every reasonable effort should be made to calculate and recover a "gravity component" in addition to the economic benefit component. As the penalty Policy states:

> The removal of the economic benefit of noncompliance only places the violator in the same position as he would have been if compliance had been achieved on time. Both deterrence and fundamental fairness require that the penalty include an additional amount to ensure that the violator is economically worse off than if [he] had obeyed the law. [Policy, at 3]

The following four gravity weighting factors should be considered for each month during which there was one or more violations and assigned values according to the attached "CWA Penalty Policy Calculation Methodology":

"A" -- "Significance of Violation." This factor is to reflect the degree of the exceedance of the most significant effluent limitation violation each month, and is weighted more heavily for exceedances of toxic effluent limitations. The attached outline contains a table indicating the range of "significance of violation" factor values for exceedances of effluent limitations (% over permit effluent limitation). Note that all exceedances, and all other violations of permit conditions in a given month, should be accounted for under gravity weighting factor "C" - "Number of Violations."

"B" -- "Health and Environmental Harm." A value between 1 and a value that results in the statutory maximum penalty may be applied to each month in which one or more violations present actual or potential harm to human health or to the environment.

"C" -- "Number of Violations." This factor allows consideration of the total number of violations each month, including all violations of permit effluent limitations, monitoring and reporting requirements, and standard and special conditions. It is important to account for each violation in assessing the significance of a defendant's violations, and this factor allows for flexibility in assessing penalties for multiple violations. Violation of a monthly average effluent limitation should be counted as 30 violations, a weekly average effluent limitation violation should be counted as 7 violations, violations of different parameters at the same outfall are to be counted separately, and violations at different outfalls are to be counted separately. The attached outline contains a range of weighting factor values between 0 and 5 to account for the total number of violations. In addition, this "number of violations" factor may be weighted more heavily to account for serious or significant violations other than the most significant effluent limit violation which was accounted for under factor "A."

"D" -- "Duration of Noncompliance." This factor allows consideration of continuing, long-term violations of an effluent limitation or other permit condition, and for extended periods of discharge without a permit. The attached outline contains a range of values between 0 and 5 for the "Duration of Noncompliance" factor which should be applied to each month of continuing violation of the same requirement. Generally, "long-term" violations are those which continue for three or more consecutive months.

The gravity component should be calculated from the date on which the violations at issue began up to the date when the violations ceased or the date of anticipated filing of the enforcement action. The monthly gravity component is the sum of the gravity weighting factors, plus one, multiplied by $1,000. The total gravity component is the sum of all monthly gravity components.

(3) Adjustment factors. After the economic benefit component is added to the sum of all the " monthly gravity components," this total may be modified by the application of "adjustment factors." The consideration of "history of recalcitrance" may only result in an increased penalty. In addition, in some cases and when justified in writing, the following two factors may be applied for a penalty reduction: ability to pay and litigation considerations.

(A) History of recalcitrance (to increase penalty). The "recalcitrance" factor will allow for higher penalties for bad faith, unjustified delay in preventing, correcting or mitigating violations, violations of prior administrative orders or consent decrees, failure to provide timely and full information, etc. This factor should also be used to account for the relationship of the violations to the regulatory scheme, i.e. the significance of the recalcitrance. For example, higher values for this factor may be used to account for municipal violations which continue beyond July 1, 1988. This factor is to be applied one time, by multiplying a percentage (0 to 150%) times the sum of the "total gravity component" plus the economic benefit calculation and then adding this figure to the benefit and gravity total. The resulting figure is the "preliminary total," which shall not exceed the statutory maximum. The application of the recalcitrance factor to the total figure allows for a more logical relationship between recalcitrance and the actual significance of the violations. The recalcitrance factor may also be increased during negotiations if defendant continues to be recalcitrant with the remedy or with settlement efforts.

(B) Ability to pay (to decrease penalty). The Regional office should evaluate the ability of the defendant to pay the proposed civil penalty and to pay for the proposed injunctive relief. The government should carefully analyze this factor where it appears that the defendant can convincingly demonstrate an inability to pay a given penalty. The defendant has the principal burden of establishing a claim of inability to pay. The government typically should seek to settle for as high an amount which the government believes defendant can afford without seriously jeopardizing defendant's ability to continue operations and still achieve compliance, unless the defendant's behavior has been exceptionally culpable, recalci-

trant, or threatening to human health or the environment. The government should carefully assess the accuracy of the actual or anticipated claim. Evaluation by an outside expert consultant may be necessary to rebut the inability to pay claim. If securing an outside expert is impractical or impossible, the Region shall make its best estimate of ability to pay.

Many factors often have a significant impact on ability to pay and may justify a reduction of a penalty. For example, the Region may consider high user fees, high percentage of local funds spent on a POTW, low bond rating, low per capita income, low total of population served by the POTW, bankruptcy, etc., in evaluating an "inability to pay" claim.

(C) Litigation considerations (to decrease penalty). The government should evaluate every penalty with a view toward the potential for protracted litigation and attempt to ascertain the maximum civil penalty the court is likely to award if the case proceeds to trial. The Region should take into account the inherent strength of the case, considering for example, the probability of proving questionable violations, the probability of acceptance of an untested legal construction, the potential effectiveness of the government's witnesses, and the potential strength of the defendant's equitable defenses. (Also see GM-22, pp. 12 - 13; discussion of "compelling public concerns".)

Examples of equitable considerations which may lead to adjustment of the penalty amount include the following: whether the defendant reasonably, conclusively, and detrimentally relied on EPA's or state or local agency's representations or actions; whether the defendant has requested modification of its final effluent limits (related to, for example, pending §301(h) decisions, pending industrial variance decisions, or new wasteload allocations); whether the defendant's violations are clearly attributable to accepting new discharges from nearby, noncomplying jurisdictions; and whether the defendant's compliance has been delayed in an unusual or unreasonable manner by other Federal requirements through no fault of the defendant.

These equitable considerations will justify mitigation only to the extent that they directly caused or contributed to the defendant's violations. The government may reduce the amount of the civil penalty it will accept at settlement to reflect these considerations where the facts demonstrate a substantial likelihood that the government will not achieve a higher penalty at trial.

V. Mitigation Projects

In the past, in a few cases the Agency has accepted consent decree provisions which allow the reduction of a civil penalty assessment in recognition of the defendant's undertaking an environmentally beneficial "mitigation project."

The following criteria are provided to guide the use of mitigation projects in settlements.

(1) The activity must be initiated in addition to all regulatory compliance obligations.

The project may not be an activity which is otherwise required by law. The project may not be a substitute for full compliance -- it must be designed to provide an environmental benefit beyond the benefits of full compliance.

(2) The activity is most likely to be an acceptable basis for mitigating penalties if it closely addresses the environmental effects of the defendant's violation.

Preferably, the project will address the risk or harm caused by the violations at issue. In general, qualifying activities must provide a discernible response to the perceptible risk or harm caused by defendant's violations which are the focus of the government's enforcement action.

(3) The defendant's cost of undertaking the activity, taking into account the tax benefits that accrue, must be commensurate with the degree of mitigation.

In order to attain the deterrent objectives of the civil penalty policy, the amount of the penalty mitigation must reflect the actual cost to the defendant. With consideration of tax benefits, the actual cost of the project may exceed the value of the mitigation.

(4) The activity must demonstrate a good-faith commitment to statutory compliance.

One test of good faith is the degree to which the defendant takes the initiative to identify and commence specific, potential mitigation projects. In addition, the project must be primarily designed to benefit the environment rather than to benefit the defendant.

(5) Mitigation based on the defendant's activity must not detract significantly from the general deterrent effect of the settlement as a whole.

The government should continue to consider mitigation projects as the exception rather than the rule. Efforts should be made to eliminate any potential perception by the regulated community that the government lacks the resolve to impose significant penalties for substantial violations. The government should seek penalties in conjunction with mitigation activities which deter both the specific defendant and also the entire regulated community. Accordingly, every settlement should include a substantial monetary penalty component.

(6) Judicially-enforceable consent decrees must meet the statutory and public interest criteria for consent decrees and cannot contain provisions which would be beyond the power of the court to order.

A proposed consent decree should not include provisions which would be beyond the power of the court to order under the particular statute which had been violated. Additional guidance on the appropriate scope of relief might be found in the statute, the legislative history or the implementing regulations.

The Agency should exercise case-by-case judgment in deciding whether to accept a mitigation project based upon the above criteria and, in addition, based upon consideration of the difficulty of monitoring the implementation of the proposed project in light of the anticipated benefits of the project.

VI. Intent of Policy and Information Requests for Penalty Calculations

The policies and procedures set out in this document are intended solely for the guidance of government personnel. They are not intended, and cannot be relied upon, to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and procedures and to change them at any time without public notice. When the Regions deviate from this policy they shall include in the litigation report a brief description of the nature of and justification for the deviation. In addition, any penalty calculations under this policy made in anticipation of litigation are likely to be exempt from disclosure under the Freedom of Information Act. As a matter of public interest, the Agency may release this information in some cases.

SAMPLE EVALUATION CHECKLIST FOR EPA's CWA SECTION 309 ADMINISTRATIVE ORDERS or STATE EQUIVALENT

The purpose of this checklist is to serve as a guide for review of State AO's or EPA's AO's.

1. Region: _____

2. State: _____

3. Date Issued: _____

4. [ ] Major [ ] Minor

5. [ ] Municipal [ ] Non-Municipal

		Yes	No
6.	Does the administrative order contain a title?	[ ]	[ ]
*7.	Does the order establish the venue of the issuing authority? (i.e., identification of EPA Region).	[ ]	[ ]
8.	Does the order provide the address of the issuing authority?	[ ]	[ ]
9.	Does the order contain a standard docket number? (i.e., X-AO-84-01: X=Region; AO=AO; 84=Year; 01=Serial Number).	[ ]	[ ]
10.	Does the order state the appropriate statutory authority for issuing the order? (i.e., CWA Section 309(a) and where reports or information are required, Section 308).	[ ]	[ ]
*11.	Does the order contain a suitable statement of delegation? (i.e., Delegation should correspond to signatory of order).	[ ]	[ ]
12.	Does the order identify the legal status of the violating party? (i.e., legal status as a corporation, municipality, etc.).	[ ]	[ ]

* These questions are of particular interest for EPA issued Administrative Orders.

	Yes	No
13. Does the order describe the legal authority/ instrument which is the subject of the violation? (e.g., statutory provision, regulatory provision, if applicable, statutory authority for permit issuance, name of permittee, permit number, date permit issued, permit modification or extension, date previous administrative order issued, etc.).	[ ]	[ ]

Examples

[ ] Statute

[ ] NPDES Permit

14. Does the order contain a specific finding that the discharger is in violation of a specific statutory or permit requirement?	[ ]	[ ]
15. Does the order describe or reproduce the specific terms of the legal authority/ instrument which are the subject of the violation? (e.g., effluent limitations, compliance schedules, etc.).	[ ]	[ ]
16. Does the order state, with reasonable specificity, the nature of the violation? (e.g., type of violation, date, evidence, etc.).	[ ]	[ ]

Examples

[ ] Reporting or monitoring violation

[ ] Effluent limitation violation

[ ] Violation of special permit condition

[ ] Pretreatment violation

[ ] Unpermitted or unauthorized discharge

[ ] Failure to meet O&M/construction schedule

[ ] Violation of a Section 308 letter

[ ] Improper O&M

[ ] Other _____

		Yes	No
17.	Does the order specify the duration of violation, if known?	[ ]	[ ]
	Estimated violation _____		
*18.	Does the order document prior requests to the violating party for compliance with the legal authority/instrument? (e.g., telephone calls, letters, meeting, etc.).	[ ]	[ ]
*19.	Where the order is issued for a CWA Section 308 violation does the order provide the violating party with an opportunity for prior consultation?	[ ]	[ ]
20.	Does the order establish interim effluent limitations?	[ ]	[ ]
21.	Does the order set out clearly any specific steps which EPA/State wants the violating party to take to achieve compliance?	[ ]	[ ]

Examples.

[ ] Submission of monitoring reports

[ ] Compliance with existing effluent limitations

[ ] Submission of pretreatment program

[ ] Submission of correction/compliance plan or study evaluating compliance options

[ ] Compliance with existing O&M/construction schedule

[ ] Compliance with interim effluent limitation

[ ] Compliance with categorical or general pretreatment Standard

[ ] Other

22.	Are the number of days reasonable for the type of relief sought?	[ ]	[ ]

Ye

23. Does the order contain a specific requirement and date for final compliance? [ ]

24. Does the order specify a manner and time frame for reporting compliance with the terms of the order to the issuing authority? [ ]

25. Does the order specify the effective date of the order? (e.g., Date of receipt, date of consultation, etc.). [ ]

26. What is the elapsed time between the dates of violation and the date of issuance of the order? Is the elapsed time reasonable?

Number of days _____

*27. Who is the signatory of the order? (Choose two or less).

[ ] Regional Administrator

[ ] Regional Counsel.

[ ] Water Division Director

[ ] State Water Pollution Control Officer

[ ] Other _____

Recommended Format - CWA - Administrative Orders

Summary of Changes from the
April 18, 1975 Guidelines on
Administrative Order Format

General Approach

The April 18, 1975 guidance entitled "Guidelines for issuing Administrative Compliance Orders Pursuant to Section 309(a)(3) and (a)(4) of the Federal Water Pollution Control Act, as Amended," has been clarified and been brought up to date with the new July 1985 "Recommended Format for Clean Water Act Section 309 Administrative Orders."

Some examples of the modifications and additions are:

- The new guidance makes it clear that citations of the regulatory basis of violations must also include the underlying statutory basis of the regulation.

- The new guidance makes it clear that the basis of the violation may be set off in a separate section of the order if the Region so chooses.

- The Section on Terms of the Order has been expanded to explain in greater detail the need for a final date for time periods fo: coming into compliance. This section also deals with prescribe methods which may be imposed on Orderees through AO's (i.e., th closer the requirement to achieving compliance, the sounder the legal position to include the requirement in an AO).

- The discussion on using successive AO's has been eliminated si the current view, successive AO's for the same noncompliance problems should normally be avoided and the case should be escalated to the referral process.

- The discussion on personal service of AO's has been eliminated since this is extremely resource intensive and the accepted method of service is now by Certified Mail-Restricted Delivery with a return receipt.

- New attachments have been included such as the sample AO. Ot attachments were updated.

- We have added a section on Additional Provisions, such as a commonly used statement that further violations of the requir ments of the AO and the permit may result in civil action including a penalty of up to $10,000 per day, ineligibility f Federal contracts, grants and loans and suspension of the pe:

- The Order portion of the Guidance and the Sample AO indicate that Orders which include milestones should include reportin requirements under Section 308 of the Act.

Clean Water Act Penalty Policy: Calculation Methodology

SETTLEMENT PENALTY[1,2] = (ECONOMIC BENEFIT) + (GRAVITY COMPONENT) ± (ADJUSTMENTS)

Step 1: Calculate the Statutory Maximum Penalty

Step 2: Calculate the Economic Benefit Using "BEN"[3,4]

Step 3: Calculate the Total Gravity Component[5]

- Monthly Gravity Component = ($1,000) x (1+A+B+C+D)
- Total = Sum of Monthly Gravity Components

GRAVITY CRITERIA — ADDITIVE FACTORS

A. Significance of Violation[6]

% Exceedence Monthly Avg.	% Exceedence 7-Day Avg.	% Exceedence Daily Max.	Toxic	Conventional Non-Toxic
0 - 20	0 - 30	0 - 50	0 - 3	0 - 2
21 - 40	31 - 60	51 - 100	1 - 4	1 - 3
41 - 100	61 - 150	101 - 200	3 - 7	2 - 5
101 - 300	151 - 450	201 - 600	5 - 15	3 - 6
301 - >	451 - >	601 - >	10 - 20	5 - 15

B. Health and Environmental Harm[7]

(i) Impact on Human Health; or — 10 - Stat.
(ii) Impact on Aquatic Environment — 1 - 10

C. Number of Violations[8] — 0 - 5

D. Duration of Noncompliance[9] — 0 - 5

Step 4: Include Adjustment Factors

A. History of Recalcitrance[10] (Addition)

- Penalty may be increased by up to 150 percent based upon the past and present recalcitrance of the defendant.

B. Ability to Pay (Subtraction)

- Penalty may be adjusted downward to represent the defendant's ability to pay.

C. Litigation Considerations (Subtraction)[11]

- Penalty may be adjusted downward to reflect the maximum amount which the court might assess if the case proceeds to trial.

WATER CIVIL PENALTY POLICY CALCULATION METHODOLOGY: FOOTNOTES

1. In general, the Settlement Penalty amount shall be at least t Economic Benefit of Noncompliance plus a gravity component.

2. The maximum Settlement Penalty shall not exceed the amount provided by Section 309(d), $10,000 per day of such violation.

3. Calculate all economic benefits using BEN. There is no minimum amount triggering the use of BEN.

4. Economic benefit is to be calculated as the estimated savings accrued to the facility; i.e., it is to be based upon the total amount which should have been spent by the facility. (All capital and expense costs, direct and indirect, are to be considered..

5. The Total Gravity Component equals the sum of each Monthly Gravity Component for a month in which a violation has occurred

6. The Significance of Violation is assigned a factor based on the percent by which the pollutant exceeds the monthly or 7-day average or daily maximum permit limitation and wrether the pollutant is classified as toxic, non-toxic or conventional.

7. Where evidence of actual or potential harm to human health exists, a factor from "10" to a value which results in the statutory maximum penalty should be assessed. Where the identified impact relates only to the aquatic environment, a factor from "1" to "10" should be used.

8. The Region has the flexibility to assign a high penalty factor where an excessive number of violations occur in any month (effluent limit, reporting, schedule, unauthorized discharge, bypass, etc.).

9. The Duration of Noncompliance factor allows the Region to increase the monthly gravity component for continuing, long-term violations of the same parameter(s) or requirement(s). Generally, a "long-term" violation is one which continues for three or more consecutive months.

10. A factor ranging from "0" (good compliance record, cooperation in remedying the violation) to 150 percent of the total of the Economic Benefit and Gravity Component may be added based upon the history of recalcitrance exhibited by the violator.

11. In addition, the penalty should be reduced by any amount which defendant paid as a penalty to a State or local agency on the same violations.

CWA Penalty Summary Worksheet

(1) No. of Violations = _____
x $10,000 = stat. max. = $ _____

(2) Economic Benefit ("BEN")
(period covered/
months) = _____ $ _____

(3) Total of Monthly Gravity
Components $ _____

(4) Benefit + Gravity TOTAL $ _____

(5) Recalcitrance Factor ____%
(0-150%) x Total (Line 4) = $ _____

(6) Preliminary TOTAL (Line 4 + Line 5) $ _____

ADJUSTMENTS

(7) Litigation Considerations
(Amount of reduction) $ _____

(8) Ability to Pay
(Amount of reduction) $ _____

(9) SETTLEMENT PENALTY TOTAL $ _____

Name and Location
of Facility _____

_____

Date of Calculation _____

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

FEB 11 1986

OFFICE OF ENFORCEMENT AND COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: New Clean Water Act Civil Penalty Policy

FROM: Lawrence J. Jensen
Assistant Administrator for Water

Courtney M. Price
Assistant Administrator for Enforcement and Compliance Monitoring

TO: General Counsel
Regional Administrators
Regional Counsels
Regional Water Management Division Directors

Attached is the Agency's new Clean Water Act civil penalty policy to be used by EPA in calculating the penalty that the Federal government will seek in settlement of judicial actions brought under Section 309 of the CWA. This policy supersedes the CWA Civil Penalty Policy issued on July 8, 1980 and represents the Office of Water's guidance in response to EPA's Policy on Civil Penalties (GM-21) and A Framework for Statute-Specific Approaches to Penalty Assessments (GM-22) issued on February 16, 1984. This policy is effective as of the date of this memorandum and shall be applied to future enforcement actions and to pending enforcement actions in which the government has not transmitted to the defendant a proposed settlement penalty.

The attached document consists of the following three parts: (1) the CWA Penalty Policy; (2) the policy "methodology", which is a one-page description of each of the steps to be taken in a penalty calculation, along with one page of footnotes; and (3) the "worksheet", a proposed model sheet to be used to record the different numerical components of the final penalty.

This penalty policy is designed to promote a more consistent, Agency-wide approach to the assessment of civil penalties while allowing substantial flexibility for individual cases within certain guidelines. We believe that this penalty policy, when effectively applied, will promote the goals of increasing

recovery of economic benefit of non-compliance, providing substantial deterrence to noncompliance, providing a more fair and equitable treatment of the regulated community, and achieving a more swift resolution of environmental problems and of enforcement actions. In order to support the goals of this policy and EPA's enforcement efforts generally, application of this policy may result in EPA seeking higher civil penalties than it has in the past.

This CWA penalty policy tracks the basic concepts and procedures embodied in the general penalty policy and Framework. For example, the CWA policy directs the Regions to calculate the economic benefit of noncompliance, calculate the "gravity" (or seriousness) component, and then calculate adjustments to consider ability to pay, litigation factors, and other factors.

This policy includes the following minor deviations from the general penalty policy and the Framework which we believe, based upon our past experience with Clean Water Act enforcement, are reasonable:

(1) The first adjustment factor is "History of Recalcitrance." We believe that this factor should only result in an increase in the proposed penalty amount;

(2) The remaining two adjustment factors ("Ability to Pay" and "Litigation Considerations") should only be used to reduce the proposed penalty;

(3) A proposed section on "mitigation projects" has been included, although the Department of Justice and the Agency may make some additional refinements on this issue in the near future; and

(4) The economic benefit component will not be deleted merely because the component involves an "insignificant amount."

Substantial thanks are due to the Clean Water Act Penalty Policy Work Group for an excellent job in developing an initial draft, collecting comments, carefully considering all comments, and reconciling and balancing often disparate viewpoints regarding penalty assessment. Thanks also to staff in the Regional Offices and in a number of Headquarters offices and the Department of Justice for considerable assistance in providing review and comment on drafts.

During the upcoming months, we will carefully analyze and evaluate the application and effectiveness of this penalty policy. After that, we will issue appropriate refinements to the policy.

In the near future, we will publish the policy in the Federal Register. In addition, we will soon distribute some example calculations and hold training workshops to provide further guidance on the application of this policy.

If you have any questions or comments on this policy, please contact Anne Lassiter, at 475-8307, or Jack Winder, at 382-2879.

Attachment

cc: Clean Water Act Penalty Policy Work Group
Associate Enforcement Counsel for Water
OECM Office Directors
OW Office Directors
Department of Justice, Environmental Enforcement

CHAPTER V. Compliance Inspections - Policies and Guidance

A. The Compliance Inspection Strategy

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

APR 16 1985

OFFICE OF WATER

MEMORANDUM

SUBJECT: Transmittal of the Final NPDES Inspection Strategy and Guidance for Preparing Annual State/EPA Compliance Inspection Plans

FROM: Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits (EN-335)

Rebecca W. Hanmer

TO: Regional Water Management Division Directors
Regional Environmental Services Division Directors
State Program Directors

Attached are the final NPDES Inspection Strategy and the Guidance for Preparing Annual State/EPA Compliance Inspection Plans. The Strategy and Guidance were developed during December 1984 with the assistance of a workgroup composed of representatives from six EPA Regions and two States, and the EPA Headquarters Offices of Water Enforcement and Permits, and Enforcement and Compliance Monitoring. In January 1985 the Strategy and Guidance were sent to EPA Regions and to all States through the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA). Comments were received from nine EPA Regions and four States. In addition, the Inspection Strategy and Guidance were discussed briefly at the ASIWPCA meeting in Washington, D.C., February 1985. The resulting documents reflect those discussions as well as EPA Regional and State comments.

The comments were helpful in focusing on specific areas where clarification was needed. We believe we have accomplished our common goal of producing an overall national structure for NPDES inspection programs, which will serve as a model for EPA Regions and States during implementation.

The Inspection Strategy deals with issues such as inspection priorities, inspection mix, inspection report timeliness and reporting forms, and State/EPA relationships. The Guidance for Preparing Annual State/EPA Compliance Inspection Plans, along with the Strategy, are being transmitted to Regions in time for the FY 1986 planning cycle and should be used as a general guide and framework for planning the annual inspection programs in each State.

These documents should be used in conjunction with the Agency Annual Operating Guidance and the Annual Guidance for Oversight of NPDES Programs. The Inspection Strategy and Guidance will eventually be incorporated into the new Enforcement Management System Guide which is presently being revised by an EPA Region/State workgroup.

Some additional language on pretreatment has been added to the Inspection Strategy in response to the final Pretreatment Implementation and Review Task Force Report. However, at present the Inspection Strategy and Guidance do not contain detailed information on pretreatment and sludge inspections. Information on pretreatment will be provided later in specific guidance and in the Strategic Planning and Management System.

If you have any questions on the Inspection Strategy or Guidance, please contact David Lyons, Chief, Enforcement Support Branch, Enforcement Division (FTS or 202/475-8310).

Attachment

United States
Environmental Protection
Agency

Office of Water
Enforcement and Permits (EN-338)
Washington DC 20460

EPA

NPDES INSPECTION STRATEGY

and

GUIDANCE FOR PREPARING ANNUAL STATE/EPA COMPLIANCE INSPECTION PLANS

Office of Water Enforcement and Permits
April 1985

Highlights

NPDES Inspection Strategy
and
Guidance for Preparing State/EPA
Compliance Inspection Plans

NPDES Inspection Strategy

The Inspection Strategy is divided into five main sections: Background, Inspection Coverage, Mix of Inspections, Reporting, and EPA/State Relationships:

Background

- Explains that both EPA and the State share responsibility for developing and carrying out the NPDES Compliance Inspection Programs.

- Sets out the major purposes of these inspections which are to: satisfy the regulations, verify permittee compliance, develop enforcement information, improve permittee performance, improve data quality assurance, provide State overview, respond to citizen complaints and water quality problems, support permit development, and maintain regulatory presence.

Inspection Coverage

- Explains what types of Inspections make up the total NPDES Inspection scheme, including the Reconnaissance Inspection.

- States that all major NPDES permittees should be inspected at least once a year by EPA or the State.

- Expands coverage of major POTW inspections to include a pretreatment component where the POTW has an approved program.

- Establishes inspection priorities of (1) Inspections to respond to emergency circumstances and public health problems; (2) Inspections to support enforcement and potential enforcement actions; (3) Inspections to support development of major permits; and (4) Routine compliance monitoring inspections.

Mix of Inspections by Type

- Makes it clear that the mix of inspections within each State will be tailored to the needs in each State.

- Establishes the idea that a core capability will be maintained for conducting each type of inspection within the geographic boundaries of each State, and that EPA and State should work to eliminate unnecessary redundancies.

Reporting

- Describes how inspection data should be reported to EPA and how the results of the inspections should be reported.
- Makes it clear that the inspection reports are complete when they contain all necessary supporting data and have been signed by the reviewer.
- Establishes the fact that the Form 3560-3 must be filled out in order for the inspection to be entered into PCS (except when a State enters data directly to PCS) and in order to receive credit in SPMS. Timeliness criteria are established for completion of reports and entering data into PCS.

EPA State Relationships

- Makes it clear that the Annual Inspection Plan should be part of the Annual §106 grant agreement or the State/EPA agreement.
- Sets out the concept of joint planning using the Annual State/EPA Inspection Plan.

Guidance for State EPA Compliance Inspection Plans

The following are the major categories of the Guidance:

Background

- Explains that a 1983 evaluation showed the State/EPA planning documents lacked specific details needed to coordinate inspection activities, to manage resources, and avoid duplication.
- States that the Annual Inspection Plans are developed to correct these problems.

Purpose of the Plan

- To provide a basis for achieving National NPDES goals, and to coordinate and improve use of the compliance inspection resources.

Content of Plan

- Includes such specific items as workload projections, number and mix of inspections, criteria for selecting inspection candidates and procedures and timeframes for inspection reports and data entry.

NPDES INSPECTION STRATEGY

Background and Purpose

NPDES Compliance Inspections are a vital tool in implementing the NPDES Program. There is a ten-year history of NPDES inspections being conducted by EPA (and State) inspectors in NPDES as well as non-NPDES states. State Inspection programs have been funded through the Clean Water Act §106 grants to States. This Strategy attempts to restate, amplify and clarify the current approach Regions and States should be using to implement the NPDES inspection program. This Strategy should be used as a framework for Regional and State managers in developing a State-specific inspection program, and applies to both approved NPDES States and unapproved States.

EPA's primary role with respect to each State's inspection program, regardless of approval status, will be to: provide enforcement support; overview State inspection programs to ensure they are consistent with national guidance manuals; provide quality assurance, technical assistance and training; and augment State routine compliance inspection programs.

The EPA and States are responsible for developing and carrying out inspection programs for NPDES Compliance Monitoring in each State. The programs for each State follow a lead agency concept: States have lead responsibility, when their NPDES programs are approved, and EPA has responsibility in non-NPDES States. These programs serve many purposes. Some of the most important of these are to:

- Verify permittee compliance

  verify self-monitoring information submitted

  verify adequacy of pretreatment programs

- Satisfy the regulations which require inspections of all majors once a year

- Develop enforcement information

- Improve permittee performance

  provide technical information and assistance

  improve data quality (follow-up to Discharge Monitoring Report - Quality Assurance (DMR-QA))

- Provide State overview

- Respond to citizen complaints

- Respond to water quality problems

- Support permit development

- Maintain regulatory presence

Introduction

For FY 1985 the Office of Water Enforcement and Permits (OWEP) established as a major goal the completion of an NPDES Inspection Strategy, and the Guidance for State/EPA Inspection Plans. The Inspection Strategy is designed to describe how OWEP and the Regional Offices address questions on who, when and how to inspect. It addresses such issues as mix of inspections, coverage, EPA/State relationships and reporting on inspections.

The Guidance for Preparing Annual State/EPA Compliance Inspection Plans resulted from the FY 1983 OWEP evaluation of EPA inspection programs, which showed that the then current documents such as grant agreements lacked specific detail needed to coordinate inspections, manage resources and avoid duplication. The results of the evaluation included a recommendation to prepare annual EPA/State Compliance Inspection Plans. The Guidance for State/EPA Inspection Plans discusses how to go about preparing those Plans.

The Inspection Strategy and the Guidance for Preparing Annual State/EPA Compliance Inspection Plans are the major documents on managing the Inspection Program. Earlier OWEP documents dealing with program operations, strategies and memoranda are superseded by these two documents. Guidance that should be used in conjunction with the two above cited documents for program management include but are not limited to:

- Annual EPA Operating Guidance,
- Annual Strategic Planning and Management System documents,
- Annual OWEP Guidance for Oversight of NPDES Programs,
- Annual Workload Model for Water Quality Enforcement,
- Enforcement Management System, as revised, and
- NPDES Neutral Inspection Plan (2-17-81).

Manuals describing procedures for conducting inspections are found as Item A in the Appendix.

It should be noted that the NPDES Inspection Strategy and Guidance provide information primarily on the NPDES inspection program, and do not address many special concerns of the pretreatment and sludge programs. These concerns will be addressed in supplements to this document which will be issued within the next year.

Coverage

The NPDES Regulations at 40 CFR 123.26(e)(5) require States which administer the NPDES program to have procedures and abilities for inspecting all major dischargers (permittees) at least annually. As a matter of policy, all major NPDES permittees shall be inspected annually by a combination of Regional and State effort.

The annual inspection requirement may be satisfied by using any of the standard compliance inspection protocols described in the Appendix, Item B. Each State Inspection Program will continue to provide comprehensive inspections, but at the discretion of the Region or State, the Reconnaissance Inspection (RI) will be recognized as an integral part of each State's total inspection mix. The RIs may be used on a selective basis to satisfy the coverage requirement, but may not be used for any major permittees in the following categories:

- a facility that has been in significant non-compliance in any of the previous four quarters,
- a facility in a primary industrial category as defined in 40 CFR 122 Appendix A, or
- a facility to which pretreatment requirements apply.

The purpose of allowing RIs to be used to satisfy the routine compliance inspection coverage requirements for major facilities is to focus more intensive inspections on problem facilities. It would be most appropriate to allow an RI to satisfy the coverage requirement when the facility is subject to frequent visits and its operational characteristics are well known to the permitting authority. It would be generally inappropriate to use an RI to satisfy the annual coverage requirement for a major facility in two successive years. It should also be noted that if the results of an RI indicate significant problems in a facility's operations or discharge, the problems will be addressed as soon as possible by conducting a more comprehensive inspection or other followup action.

In each State, inspection coverage will address the following priorities, which are arranged from the more important to the less important (there will also be amplification in each year's Annual Operating Guidance):

- Inspections to respond to emergency circumstances and public health problems.
- Inspections to support enforcement and potential enforcement actions.
- Inspections to verify data quality, to follow up on Discharge Monitoring Report -- Quality Assurance (DMR QA).

- Inspections to support development of major permits.[1]

- Routine compliance monitoring inspections with all major facilities covered first, minor PL92-500 facilities,[2] then other minor facilities including those covered by general permits.

NPDES Inspection plans for major POTWs which have approved pretreatment programs will need to be expanded to cover implementation of these programs. Generally, it will be most cost-effective to combine the permit effluent limit compliance and pretreatment inspections. This inspection activity should begin as soon as possible; however, both the scope of the inspection and coverage of approved POTW programs will have to be phased in during FY 1985 - 1986 taking into account availability of resources, timing and availability of pretreatment audits and awareness of problems. (More detailed guidance on pretreatment inspection procedures will be forthcoming, as a supplement to this Strategy and the Compliance Inspection Manual.)

The number of joint EPA-State inspections and the number of EPA and State independent inspections will be negotiated between the EPA Region and the State, and included as part of the State/EPA Annual Inspection Plan. Each Region of EPA will maintain an independent inspection program to carry out its enforcement and overview responsibilities. The Region will normally provide prior notice to the State before conducting independent inspections. The only limited exception would be where investigative inspections would be jeopardized by the prior notice.

The coverage to satisfy the total inspection need in a State will be a responsibility that is shared by both the Region and State. However, direction is provided by the lead agency. In NPDES States, the State should take the lead in operating the inspection program (with EPA maintaining an independent inspection effort as noted above). In non-NPDES States, EPA has the lead responsibility for operating the inspection program.

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[1] This should be limited to situations where the applicant's data gathering techniques are a matter of contention and all other options for acquiring the information have been exhausted.

[2] Regional Offices will provide limited inspection coverage for minor permittees. Specific coverage will be negotiated with States as part of the Annual State Inspection Plans.

Routine inspections are also known as neutral inspections as opposed to "for cause" inspections described in the first two priorities. This distinction resulted from the decision in Marshall V. Barlow's, Inc. which required different approaches in selection of facilities for these inspections. (US, 98 S. Ct. 1816 (1978)).

The lead agency concept will in no case exclude either EPA or a State from conducting independent inspections as prescribed in the above paragraph.[3] Where EPA is relying on inspections by an unapproved State to satisfy NPDES inspection needs, it must assure the federal NPDES permit requirements are covered in the State inspection along with the State requirements.

Mix of Inspections by Type

The type of inspection will be tailored to the individual purposes to be achieved by the inspection. The mix of inspections within each State in turn will be tailored to the needs in each State.

A recommended mix of inspections will be developed annually, in connection with allotment of EPA resources to the Regions in the National Water Quality Enforcement Workload Model. In each State, the recommended mix can be used as a guide in planning the annual State inspection coverage, which is established in the annual State EPA compliance inspection plan. The individual State inspection mix will be tailored to the particular needs of the State such as: a disproportionately large number of self-monitoring and laboratory problems among major permittees that need to be addressed with performance audit inspections, or a large number of dischargers with toxics limits problems that require toxics sampling inspections.

In selecting appropriate inspection types for special or routine problems, the definitions of inspections (Item B, Appendix) and the "primary use" criteria (Item C, Appendix) should be used as a general guide. The type of inspection selected depends on the compliance status, type of facility, and the nature of the information needed from an inspection.

Each Region should assure that a core capability for conducting each type of inspection is maintained within the geographic boundaries of the Region. Each State program should be supported where necessary by technical capability at the Regional level. Unnecessary redundancy and duplication should be avoided without sacrificing the ability of States and Regions to carry out their respective roles and responsibilities.

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[3] Under §309 of the Clean Water Act, EPA must take enforcement action when the State does not commence appropriate enforcement action. Consequently, EPA must maintain its own inspection program and must maintain enforcement presence through field activities, as required in §308 of the Clean Water Act.

Reporting

In order to describe accurately the full extent of the inspection program, the Regions and States are encouraged to report on all NPDES inspections. Data on inspections of major permittees should be reported in the Permit Compliance System (PCS), whenever possible. When the State is not a regular user of PCS, it should enter the data into its own automated system and transfer the data into PCS, or it should provide the data to the Region in a form that facilitates entry into PCS by EPA. To the extent possible, EPA encourages reporting on inspections of minor permittees in PCS; otherwise data should be reported to the Region manually in a format that includes at least the name of the facility, permit number, the type of inspection and the date of the inspection.

The organization conducting the inspection is responsible for providing reports that are complete and available in a timely manner.

An inspection report is complete when it contains all the inspector's observations, the analytical results, a completed form 3560-3 (Appendix, Item D), and evidence of peer/management review and signature of the reviewer. The inspection report should meet timeliness goals as follows:

- for sampling inspections, reports will be distributed within 45 days of the date of the inspection;
- for non-sampling inspections, reports will be distributed within 30 days of the inspection; and
- for entering inspection data into PCS, data entry will be completed within 90 days of the date of the inspection.

The inspection report must contain Form 3560-3 and the information must be entered into PCS to receive credit in Strategic Planning and Management System (SPMS). However, where the State enters data into PCS directly, the State may use an equivalent form if it contains at least the same data elements as Form 3560-3. The format and content of an inspection report are described in the EPA NPDES Compliance Inspection Manual, (June 1984).

Copies of the Inspection Reports should be sent to the permittee in a timely manner except when formal enforcement procedures are underway. In this instance, the case attorney will direct any disclosure of data.

Approval of Plan

- Plan is to be signed by the State and Regional program directors.

Implementing the Plan

- Establishes that the Region will normally provide prior notice to the State before conducting independent inspections, and that States will be apprised of major inspection problems as soon as they are discovered.

Evaluation of the Results

- The plan should contain procedures for the ongoing evaluation of a State inspection program through such means as periodic random audits of inspection reports and case files.

- The level and frequency of the State inspection program evaluation should be tailored to the State's overall performance in the inspection program.

EPA/State Relationships

EPA overviews the State inspection program through a combination of independent and joint inspections as well as periodic review of inspection reports and files. In order to carry this out, the Annual Inspection Plans are negotiated between EPA and each State in accordance with the Guidance on Annual State/EPA Inspection Plans. Joint inspections will be negotiated as part of each Annual Inspection Plan. The Plan also includes inspection priorities and mix based on the Annual Operating Guidance priorities and the Workload Model recommended mix. The Annual Inspection Plans should establish that a quarterly list of candidates for inspections will be developed within thirty days prior to each quarter. The quarterly list should contain names of major and PL92-500 minor facilities to be inspected and the estimated number of other inspections to be conducted, grouped by inspection type and/or facility category. Annual Inspection Plans should be part of the annual §106 grant agreement or the State/EPA Agreement. To the degree that inspection plans are a part of the §106 process, inspection commitments and Annual State/EPA Inspection Plans may be jointly reviewed during mid-year and end-of-the-year program reviews.

The review of the inspection program should be part of the NPDES program review, and will be based on the Annual Guidance for Oversight of the NPDES Programs.

The Annual State/EPA Inspection Plan will contain procedures for communications between EPA and the State on conducting NPDES inspections within a given State. The detailed requirement for Annual State/EPA Compliance Inspection Plans follows this Strategy, as a separate document entitled "Guidance for Preparing Annual State/EPA Compliance Inspection Plans."

GUIDANCE FOR PREPARING ANNUAL STATE/EPA COMPLIANCE INSPECTION PLANS

Background

EPA has routinely negotiated agreements with States for conducting NPDES Compliance Inspections. The work plans based on these agreements are used to coordinate State/EPA activities and workflows within each State, to manage resources, and to assure that program needs are met to the fullest extent possible. Detailed planning is necessary because States conduct the majority of the compliance inspections.

An evaluation of EPA Regional Inspection Programs in 1983 showed that the current planning documents lack specific details that are needed to coordinate inspection activities, to manage resources, and to avoid duplications. The evaluation concluded that guidance was needed to help Regions and States prepare an annual State/EPA Compliance Inspection Plan (Plan).

This guidance will help EPA and State Managers implement the planning requirements of the Compliance Inspection Strategy by: 1) describing the components of the Plan; 2) providing guidance for negotiating the Plan; and 3) providing guidance on evaluating the results achieved by the Plan. This guidance does not apply to procedures for carrying out inspections in support of criminal investigations.

Purpose

The purpose of the Plan is to: 1) provide a basis for achieving National NPDES Program goals and objectives; and 2) coordinate and improve the use of compliance inspection resources in accordance with the Guidance for Oversight of NPDES Programs.

The Plan should contain detailed procedures for communications between the Region and the State concerning the conduct of the NPDES inspection program in the given State.

Content

EPA identifies major NPDES program objectives as part of the Agency's annual operating guidance. The Plan should provide detailed procedures and specific workload projections to support these national objectives. In addition to the national objectives, the Plan should allow the State and EPA to address specific local and regional concerns.

Each Plan should establish annually the number and mix of inspections by type for both the State and Region. The type of inspection should be consistent with definitions and procedures outlined in the Agency's June 1984 NPDES Compliance Inspection Manual. The Plan should contain criteria for selecting inspection candidates for the appropriate mix of routine and special inspections. Each Plan will be prepared for an entire year and will account for the State and EPA resources devoted to NPDES compliance inspections. A quarterly list of facilities that are to be inspected should be established at least 30 days prior to the beginning of the quarter. The quarterly list should contain names of major and PL 92-500 minor facilities to be inspected and the estimated number of other inspections to be conducted that are grouped by inspection type and/or facility category. The status of the Plan should be assessed at established intervals throughout the year.

EPA annually establishes a recommended mix of inspection types through the budget workload model. The model generates a mix that reflects the level of EPA resources, the number of permittees to be inspected, and the emphasis of that National program on various groups of permittees during the budget year. This recommended mix should be used as a guide in preparing the Plan to establish coverage and to meet the priorities of each State.

In order to avoid advance notification to the permittee, specific dates of inspections should not be included in the Plan. The Plan should include a procedure for providing notice to the State prior to inspection where such notice will not jeopardize the purpose of the inspection.

The Plan should specify procedures, timeframes, and formats for producing inspection reports and entering data into PCS. Whenever the State and Region participate in a joint inspection, only the lead agency will complete the inspection form to account for the inspection. The agreement to conduct joint inspections is to be included in the Plan.

The Plan should specify procedures and timeframes by which the inspecting agency (either the Region or the State) will provide copies of inspection reports to the agency that has lead responsibility for NPDES program enforcement.

Development

The Plan should cover inspection activity as specified in the Agency's Annual Operating Guidance. The Plan should be prepared as part of the annual Region/State planning process and it should be incorporated into the §106 Plan or State/EPA Agreement. The Plan should be in place for each State no later than October 1, or the beginning of the State fiscal year.

Approval

The Plan will be cosigned for approval by the State and Regional program directors, who have the respective responsibility for authorizing the resources needed to carry out the Plan. In the Region, this is typically the Water Management Division Director.

Implementation

Ongoing coordination between the State and Region is expected during implementation. [The Region and State should have procedures to establish quarterly a list of facilities that are to be inspected, and to assess the status of the annual Plan at established intervals throughout the year.] The Region should also agree to provide prior notice to the State before conducting joint or independent inspections, and to supply the State with at least semi-annual reports of the Region's findings (mid-year and end-of-year); the State should be apprised of major problems as soon as they are discovered. The Plan may be modified as needed to ensure that it reflects changing conditions throughout the year.

Evaluation of Results

The Plan should contain procedures for ongoing evaluation of the State inspection program, including periodic random audits of inspection reports and case files. In addition to ongoing evaluation, the Region will conduct at least an annual audit of the State inspection records and management system. Review of the inspection program should be part of the NPDES program review process, and the level and frequency of overview should be tailored to the State's overall performance in the inspection activity category.

Appendix

REFERENCES

1. Compliance Biomonitoring Inspection Manual (MCD-62, EPA, 1981)
2. Compliance Evaluation Inspection Manual (MCD-75, EPA, 1981)
3. Compliance Evaluation and Troubleshooting at Municipal Wastewater Treatment Facilities (EPA-430/9-78-001)
4. Compliance Flow Measurement Inspection Manual (MCD-77, EPA, 1981)
5. Compliance Sampling Inspection Manual (MCD-51, EPA, 1979)
6. Model State Water Monitoring Program (EPA-440/9-74-002)
7. Multi-Media Compliance Audit Inspection Manual (EPA-297/2-83-002)
8. Performance Audit Inspection Manual (EPA-330/1-79-004)
9. NPDES Compliance Inspection Manual (EPA/OWEP-6/84)

NPDES INSPECTION DEFINITIONS

Compliance Evaluation Inspection (CEI)

A CEI is a nonsampling inspection designed to verify permittee compliance with applicable permit self-monitoring requirements and compliance schedules. This inspection is based on record reviews and visual observations and evaluations of the treatment facilities, effluents, receiving waters, etc. The CEI is used for both chemical and biological self-monitoring programs. The CEI forms the basis for all other inspection types except the Reconnaissance Inspection. As the CEI does not involve sampling, it is frequently used as a "routine" inspection.

The CEI is appropriate for routine inspections of facilities to overview construction schedules, general plant operations and maintenance, record-keeping, and sampling. As the basic element of all NPDES inspection activity the evaluation can also concentrate on program areas such as pretreatment and discharge monitoring report quality assurance. The pricing factor for the CEI is 3 days for a major and 2 days for a minor permittee.

Compliance Sampling Inspection (CSI)

During the CSI, representative samples of a permittee's influent and/or effluent are collected. Samples that are required by the permit are also obtained. Chemical analyses are then performed and the results are used 1) to verify the accuracy of the permittee's self monitoring program and report and 2) to determine the quantity and quality of effluents, 3) to develop permits, and 4) where appropriate, as evidence for enforcement proceedings. The chemical analysis for the CSI is directed to pollutants which do not require expensive and elaborate procedures such as those involved in Gas Chromatograph-Mass Spectrophotometry. Other pollutants are covered by the Toxics Sampling Inspection. In addition to the above tasks, a CSI incorporates the same objectives and tasks as a CEI. The pricing factor for a CSI is 30 days for a non-municipal and 16 days for a municipal permittee with the resource difference due to the higher number of outfalls at a typical non-municipal facility.

The CSI inspection, because it is more resource intensive, must have a more limited use. The CSI is most often conducted when there is "cause" to suspect major violations of permit requirements and effluent limits.

Performance Audit Inspection (PAI)

The PAI is used to evaluate the permittee's self-monitoring program. The PAI incorporates the same objectives and tasks as a CEI, but in a PAI, the laboratory procedures, data quality, and data handling are examined in greater depth. In a PAI, the inspector actually observes the permittee going through all of the steps on the self-monitoring process from sample collection and flow measurement, through lab analyses, data work-up and reporting. Also, the PAI inspector may leave a check sample for the permittee to analyze. The PAI is more resource intensive than a CEI, but less than a CSI because sample collection and analyses by EPA or the State are not included.

The pricing factor for the PAI is 12 days. The PAI is used to follow up known or suspected problems with permittee self-monitoring such as DMR QA failures or inadequate DMR data.

Compliance Biomonitoring Inspection (CBI)

A CBI evaluates the biological effect of a permittee's effluent discharge(s) on test organisms through the utilization of acute toxicity bioassay techniques. In addition, this inspection includes the same objectives and tasks as CEI.

The pricing factor depends on method of exposure. The static test requires 6 work days and an on-site flow through bioassay requires 30 work days. The CBI should also be directed toward toxic problems. It is most likely to be useful for non-municipals and municipals with a large proportion of industrial waste discharging into water quality limited stream segments. For States which have water quality standards for acute toxicity (e.g., Alabama, New Jersey), the results are a direct determination of compliance with the standard. (In addition to these methods, chronic toxicity methods are being developed.)

Toxics Sampling Inspection (XSI)

The XSI has the same objectives as a conventional CSI, however, it places increased emphasis on toxic substances (i.e. the priority pollutants) other than heavy metals, phenols and cyanide, which are typically included in a CSI. Increased resources over a CSI are needed because highly sophisticated techniques are used to sample and analyze for toxic pollutants. The pricing factor for XSI is 35 days. The XSI is usually reserved for toxics problems at non-municipal facilities. These problems may be noncompliance, permit reissuance, or water quality related.

Diagnostic Inspection (DI)

The DI focuses primarily on municipal POTW's that are not in compliance with their permit requirements. The purpose of the DI can be either to assist those POTWs without self-diagnostic capability or to evaluate causes for noncompliance in support of enforcement actions. In either case an objective of the DI is to identify causes for noncompliance which can be corrected in a relatively short period of time and without large capital expenditures. The DI will also have as an objective the identification of major plant deficiencies in operation, design, and/or construction. The pricing factor for a DI is 16 days.

Reconnaissance Inspection (RI)

The RI is used to obtain a preliminary overview of a permittee's compliance program. The inspector performs a brief visual inspection of the permittee's treatment facility, effluents and receiving waters. The RI utilizes the inspector's experience and judgment to quickly summarize a permittee's compliance program. The objective of the RI is to expand inspection coverage without increasing inspection resources. It is the briefest of all NPDES inspections. The pricing factor for an RI is one day.

Legal Support Inspection (LSI)

The LSI is a resource intensive inspection conducted when an enforcement problem is identified as a result of a routine inspection or a complaint. For an LSI, the appropriate resources are assembled to effectively deal with a specific enforcement problem, so there is no established pricing factor.

NPDES INSPECTION USES

Selection Criteria	Inspection Type *
Routine compliance verification and followup on specific problems (i.e. schedules, QA deficiencies, failure to report).	CEI (Compliance Evaluation)
Resolve permittee chronic self-monitoring problems and laboratory deficiencies.	PAI (Performance Audit)
Identify POTW compliance deficiencies that can be resolved quickly at limited cost.	DI (Diagnostic)
Expand regulatory presence with limited inspection resources to verify basic compliance data.	RI (Reconnaissance)
Sample conventional pollutants to verify effluent violations in support of enforcement and/or to support permit development.	CSI (Compliance Sampling)
Sample priority pollutants to verify effluent violations in support of enforcement and/or to support permit development.	XSI (Toxics Sampling)
Screen for effluent acute toxicity in lieu of sampling for priority pollutants and/or verify permit limits or water quality standards for acute toxicity.	CBI (Compliance Biomonitoring)
Provide intensive field investigation, technical analysis, and expert witness capability to support litigation, often as the result of routine inspection or complaint.	LSI (Legal Support)

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* Any of the inspection types with the exception of the Reconnaissance Inspection may be used for pretreatment program verification and for direct determination of industrial user compliance with categorical pretreatment standards.

CHAPTER IV. Civil Penalty Policy and Guidance

Item D

EPA

United States Environmental Protection Agency
Washington, D. C. 20460

NPDES Compliance Inspection Report

Form Approved
OMB No 2040-0003
Approval Expires 7-31-85

Section A: National Data System Coding

Transaction Code	NPDES	yr/mo/day	Inspection Type	Inspector	Fac Type
1 2 5	3 11	12 17	18	19	20

Remarks 66

Reserved	Facility Evaluation Rating	BI	QA	Reserved
67 69	70	71	72	73 74 75 80

Section B: Facility Data

Name and Location of Facility Inspected	Entry Time ☐ AM ☐ PM	Permit Effective Date
	Exit Time/Date	Permit Expiration Date

Name(s) of On-Site Representative(s)	Title(s)	Phone No(s)

Name, Address of Responsible Official	Title	
	Phone No.	Contacted ☐ Yes ☐ No

Section C: Areas Evaluated During Inspection

(S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)

Permit	Flow Measurement	Pretreatment	Operations & Maintenance
Records/Reports	Laboratory	Compliance Schedules	Sludge Disposal
Facility Site Review	Effluent/Receiving Waters	Self-Monitoring Program	Other:

Section D: Summary of Findings/Comments (Attach additional sheets if necessary)

Name(s) and Signature(s) of Inspector(s)	Agency/Office/Telephone	Date
Signature of Reviewer	Agency/Office	Date

Regulatory Office Use Only

Action Taken	Date	Compliance Status
		☐ Noncompliance ☐ Compliance

EPA Form 3560-3 (Rev. 3-85) Previous editions are obsolete.

INSTRUCTIONS

Section A: National Data System Coding *(i.e., PCS)*

Column 1: Transaction Code: Use N, C, or D for New, Change, or Delete. All inspections will be *new* unless there is an error in the data entered.

Columns 3-11: NPDES Permit No. Enter the facility's NPDES permit number. *(Use the Remarks columns to record the State permit number, if necessary.)*

Columns 12-17: Inspection Date: Insert the date entry was made into the facility. Use the year/month/day format (e.g., 82/06/30 = June 30, 1982).

Column 18: Inspection Type. Use one of the codes listed below to describe the type of inspection:

A — Performance Audit
B — Biomonitoring
C — Compliance Evaluation
D — Diagnostic
E — Corps of Engrs Inspection
L — Enforcement Case Support
P — Pretreatment
R — Reconnaissance Inspection
S — Compliance Sampling
X — Toxic Sampling

Column 19: Inspector Code. Use one of the codes listed below to describe the *lead agency* in the inspection.

C — Contractor or Other Inspectors *(Specify in Remarks columns)*
E — Corps of Engineers
J — Joint EPA/State Inspectors—EPA lead
N — NEIC Inspectors
R — EPA Regional Inspector
S — State Inspector
T — Joint State/EPA Inspectors—State lead

Column 20: Facility Type. Use one of the codes below to describe the facility.

1 — Municipal. Publicly Owned Treatment Works (POTWs) with 1972 Standard Industrial Code (SIC) 4952.
2 — Industrial. Other than municipal, agricultural, and Federal facilities.
3 — Agricultural. Facilities classified with 1972 SIC 0111 to 0971.
4 — Federal. Facilities identified as Federal by the EPA Regional Office.

Columns 21-66: Remarks. These columns are reserved for remarks at the discretion of the Region.

Column 70: Facility Evaluation Rating. Use information gathered during the inspection (regardless of inspection type) to evaluate the quality of the facility self-monitoring program. Grade the program using a scale of 1 to 5 with a score of 5 being used for very reliable self-monitoring programs, 3 being satisfactory, and 1 being used for very unreliable programs.

Column 71: Biomonitoring Information. Enter D for static testing. Enter F for flow through testing. Enter N for no biomonitoring.

Column 72: Quality Assurance Data Inspection. Enter Q if the inspection was conducted as followup on quality assurance sample results. Enter N otherwise.

Columns 73-80: These columns are reserved for regionally defined information.

Section B: Facility Data

This section is self-explanatory.

Section C: Areas Evaluated During Inspection

Indicate findings (S, M, U, or N) in the appropriate box. Use Section D and additional sheets as necessary. Support the findings, as necessary, in a brief narrative report. Use the headings given on the report form (e.g., Permit, Records/Reports) when discussing the areas evaluated during the inspection. The heading marked "Other" may include activities such as SPCC, BMP's, and multimedia concerns.

Section D: Summary of Findings/Comments

Briefly summarize the inspection findings. This summary should abstract the pertinent inspection findings, not replace the narrative report. Reference a list of attachments, such as completed checklists taken from the NPDES Compliance Inspection Manuals and pretreatment guidance documents, including effluent data when sampling has been done. Use extra sheets as necessary.

CHAPTER V. Compliance Inspections - Policies and Guidance

B. DMR/QA Policy

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

FEB 6 1986

OFFICE OF WATER

Dear NPDES Permit Holder:

As indicated in my January 15, 1986 letter, the U.S. Environmental Protection Agency (EPA) and State Agencies with approved NPDES programs are continuing a quality assurance program initiated during 1980 for all major permittees under the National Pollutant Discharge Elimination System (NPDES). Each major permittee will receive performance samples containing constituents normally found in industrial and municipal wastewaters. The samples you are receiving should be analyzed using laboratory personnel and methods normally employed for the development of NPDES self-monitoring data. The results of these analyses will be evaluated by EPA in order to measure the analytical ability of permittees.

Thanks again to those permittees and laboratories who participated in our very successful programs in the past years. I trust that you will find participation in this program beneficial.

Requested Action

Participation in this program is mandatory based on the authority of Section 308(a) of the Clean Water Act. The Agency's legal opinion, dated August 11, 1977, reaffirms this authority. The enclosed performance samples are to be analyzed as you routinely analyze samples required by your permit. General instructions on sample preparation and reporting procedures are enclosed. Once data processing is complete, an evaluation of the results of your analyses will be returned to you, along with the "true"/calculated values. A copy of the evaluation will also be sent to the appropriate EPA Regional office and State agency. Since the statistical data base for some of the parameters must be developed after you submit your analyses, it may take several months before you receive the data analysis results.

Initial Instructions

The performance samples you are receiving may contain a number of constituents which you are not required to monitor under the terms and conditions of your NPDES permit. The enclosed package of instructions contains directions for sample preparation and reporting of all the performance sample constituents. However, for the purpose of this program you are required to analyze and report on only those pollutants specified in your NPDES permit. For example, the demand performance sample can be analyzed for: COD, TOC, and BOD. Of these parameters, your NPDES permit may contain a requirement for the monitoring of BOD. In such a case, you are required to analyze and report on only BOD in the demand performance sample. You may report parameters not specified in your NPDES permit. These should be keyed as voluntary parameters on the reporting sheets, but only the analyses required by your permit will be used in assessing the validity of your NPDES self-monitoring data.

If all or part of your NPDES self-monitoring analyses are performed on a contract basis by an outside laboratory, please forward the appropriate samples to the laboratory and inform them that performance samples are to be analyzed in accordance with the instruction packages. If both your in-house laboratory and a contract laboratory are required to perform analyses on the same sample, your in-house laboratory is to prepare the sample according to the directions, and then split the sample between laboratories. (Please note that the suspended solids (residue) sample is not suitable for sample splitting. If more than one laboratory must analyze the residue sample, request another sample from the Bionetics Corporation and explain your need.) Example:

The demand sample is to be analyzed for BOD by the permittees' in-house laboratory, and TOC by a contract laboratory. The in-house laboratory will prepare the sample, and take an aliquot for the BOD determination. The remainder of the sample will be properly preserved and sent to the contract laboratory in the same manner (adhering to holding time requirements, etc.) as all other NPDES samples.

If this type of sample splitting is required, or if more than one laboratory is involved for any other reason, all data are to be submitted to the permittee for posting on the standard reporting form. However, do not submit more than one value for each parameter as only one value can be officially evaluated.

In some instances, your contract laboratory may receive additional performance samples of the same type from other NPDES clients using their services. If multiple sample sets are received by your contract laboratory and they bring it to your attention, you may refer them to the "Multiple Permit Option" for the appropriate procedures. In those cases where a contract laboratory exercises the Multiple Permit Option, each permittee involved may be eligible for a cost reduction based on the total number of permittees submitting samples. The procedures for a central municipal/industrial laboratory are contained in the same paragraph.

Reporting

The analyses are to be performed and the data reported within 30 calendar days after your receipt of the samples, but no later than the date printed at the bottom of "Instructions to the Permittee," page three. All permittees should be familiar with 40 CFR §122.22 relating to accuracy and completeness of information, and should carefully read the Certification Statement prior to signing the form and mailing it and the data to EPA's contractor as specified below. The permittee is to follow the "General Instructions for Reporting Results", sign the certification statement, and return the original and one copy of the report form. Retain a second copy of the form for your records. Please be sure to fill in all the information boxes on the report forms, giving special attention to NDPES PERMIT NUMBER, the METHOD CODE (MC), and the PERMITTEE NAME as desired for the reporting heading. Note that the PERMIT NUMBER is repeated on each page.

Your results, certified on the required form, are to be received no later than the date printed at the bottom of "Instructions to the Permittee," page three by:

Chester D. Scheibel
The Bionetics Corporation
16 Triangle Park Drive
Cincinnati, Ohio 45246

If you have any questions, please contact your State Discharge Monitoring Report Quality Assurance (DMR QA) Coordinator whose name, address, and telephone number are found on the enclosed list. (Please reference your NPDES permit number in all correspondence.) The Region and/or State will play an important role in reviewing your results on the performance evaluation samples and in providing any appropriate follow-up action or guidance.

Thank you for your cooperation and participation in this national program to improve the quality of NPDES self-monitoring data.

Sincerely yours,

Rebecca W. Hanmer

Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits

Enclosure

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

FEB 6 1989

OFFICE OF WATER

Dear NPDES Permit Holder:

As indicated in my January 13, 1989 letter, the U.S. Environmental Protection Agency (EPA) and States are continuing a quality assurance program initiated during 1980 for all major permittees under the National Pollutant Discharge Elimination System (NPDES). The purpose is to evaluate the analytical and reporting ability of your laboratory. I trust that you will find participation in this program beneficial.

Requested Action

Participation in this program is mandatory based on the authority of Section 308(a) of the Clean Water Act. The Agency's legal opinion, dated August 11, 1977, reaffirms this authority.

The enclosed kit includes performance evaluation (PE) samples and an instruction package. The PE samples contain constituents normally found in industrial and municipal wastewaters and must be analyzed using the laboratory personnel and methods normally employed for the development of NPDES self-monitoring data. The instruction package contains directions for sample preparation, and a form for reporting your results.

Once data processing is complete, an evaluation of the results of your analyses will be returned to you, along with the "true" values. A copy of the evaluation will also be sent to the appropriate EPA Regional office and State agency. Since the statistical database for some of the analytes must be developed after you submit your results, it may take several months before you receive the evaluation. Therefore, you should retain a copy of your data report form, the raw data sheet and records of calculation with your other laboratory records.

Initial Instructions

The PE samples may contain a number of constituents which you are not required to monitor under the terms and conditions of your NPDES permit. You are only required to analyze and report on those pollutants specified in your NPDES permit. For example, the demand performance sample can be analyzed for: COD, TOC, and BOD. Of these analytes, your NPDES permit may contain a

requirement for the monitoring of BOD. In such a case, you are only required to analyze and report on BOD in the demand performance sample. You may report analytes not specified in your NPDES permit. These should be indicated as voluntary analytes on the reporting sheets, but only the analyses required by your permit will be used in assessing the validity of your NPDES self-monitoring data.

If all or part of your NPDES self-monitoring analyses are performed on a contract basis by an outside laboratory, please forward the appropriate samples to the laboratory and inform them that performance samples are to be analyzed in accordance with the instruction packages. If both your in-house laboratory and a contract laboratory are required to perform analyses on the same sample, your in-house laboratory is to prepare the sample according to the directions, and then split the sample between laboratories. (Please note that the suspended solids (residue) sample is not suitable for sample splitting. If more than one laboratory must analyze the residue sample, request another sample from the Bionetics Corporation and explain your need.) Example:

> The demand sample is to be analyzed for BOD by the permittee's in-house laboratory, and TOC by a contract laboratory. The in-house laboratory will prepare the sample, and take an aliquot for the BOD determination. The remainder of the sample will be properly preserved and sent to the contract laboratory in the same manner (adhering to holding time requirements, etc.) as all other NPDES samples.

If this type of sample splitting is required, or if more than one laboratory is involved for any other reason, all data are to be submitted to the permittee for posting on the standard reporting form. However, do not submit more than one value for each analyte as only one value can be officially evaluated.

In some instances, your contract laboratory may receive similar sets of PE samples from other NPDES clients using their services. If multiple sample sets are received by your contract laboratory and they bring it to your attention, you may refer them to the "Multiple Permit Option" for the appropriate procedures. In those cases where a contract laboratory exercises the Multiple Permit Option, each permittee involved may be eligible for a cost reduction based on the total number of permittees submitting samples. The procedures for a central municipal/industrial laboratory are contained in the same paragraph.

Reporting

The analyses are to be performed and the data reported within 30 calendar days after your receipt of the samples, but no later than the date printed at the bottom of "Instructions to the

Permittee," page three. All permittees should be familiar with 40 CFR Section 122.22 relating to the accuracy and completeness of information, and should carefully read the certification statement prior to signing the form and mailing it and the data to EPA's contractor as specified below. The permittee is to follow the "General Instructions for Reporting Results", sign the certification statement, and return the original and one copy of the report form. Retain a second copy of the form for your records. Please be sure to fill in all the information boxes on the report form, giving special attention to the NPDES PERMIT NUMBER, the METHOD CODE (MC), and the PERMITTEE NAME as desired for the reporting heading. Note that the PERMIT NUMBER is repeated on each page.

Your results, certified on the required form, are to be received no later than the date printed at the bottom of "Instructions to the Permittee," page three by:

Michele Zuleger
The Bionetics Corporation
16 Triangle Park Drive
Cincinnati, Ohio 45246

If you have any questions, please contact your State Discharge Monitoring Report Quality Assurance (DMR QA) Coordinator whose name, address, and telephone number are found on the enclosed list. (Please reference your NPDES permit number in all correspondence.) The Region and/or State will play an important role in reviewing your results on the performance evaluation samples and in providing any appropriate follow-up action or guidance.

Thank you for your cooperation and participation in this national program to improve the quality of NPDES self-monitoring data.

Sincerely yours,

James R. Elder

James R. Elder, Director
Office of Water Enforcement & Permits

Enclosure

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

JAN 2 1985

OFFICE OF WATER

MEMORANDUM

SUBJECT: Increase to the NPDES Major Industrial Permit List

FROM: Rebecca W. Hanmer, Director
Office of Water Enforcement
and Permits (EN-335)

TO: Regional Water Management Division Directors

Considering the discussions at our national permits and compliance Branch Chiefs meeting in November and the previous written comments received from your offices, we have made the following decision regarding changes to the major industrial permit classification system.

My memorandum of June 1, 1984 requested Regional comment on the existing major permit classification system. Five Regions responded. The general consensus was to maintain the current classification system with one exception. For industrial permits, the Regions requested an increase in the number of "discretionary" additions allowed. As mentioned above, this need was also reflected in the comments we received at the November national permits and compliance Branch Chiefs meeting.

Accordingly, the only change that will be made in the major permit classification system is to increase each Region's allotment of industrial permit "discretionary" additions. I wish to emphasize, however, that these new allotments should be used only in accordance with the criteria described below. These criteria reflect the reasons for making this change in accordance with the concerns expressed by the Regions. The majors list, if it is to be a credible definition of the Agency's priorities, should be expanded only where necessary and the "discretionary" nature of the decisions you make requires that you exercise care in assuring the criteria are correctly applied.

Currently, each Region is allowed 20 plus 5% of the total number of Regional major industrial permits. This allotment will be increased to 30 plus 10% of the total number of majors. The allowable increase for each Region is as follows:

Region I	28
Region II	32
Region III	30
Region IV	52
Region V	40
Region VI	33
Region VII	16
Region VIII	17
Region IX	17
Region X	27
Total	292

The following criteria must be applied in determining which NPDES industrial permits to add to the list:

I. The highest priority should be given to permittees with potential water quality impacts caused by the discharge of toxic pollutants. Minors with known toxicity problems are particularly important.

II. Minor primary industry dischargers causing conventional water quality problems should be given the next highest priority.

III. Secondary industry permittees with large flows or toxics discharge should be considered potential priority candidates.

Please provide a list of any industrial permits you wish to add to the major industrial permits list as discretionary additions to Martha Prothro, Director, Permits Division (EN-336) by January 15, 1985. A major permit rating sheet (Attachment 1) must be filled out for each discretionary addition in order to be added to the list.

This change to the majors list does not affect the semi-annual update procedure. The updates will continue on schedule. The deadlines for updating the major industrial list will remain April 1st and October 1st of each year.

If you have any questions, please call Martha Prothro at 8/755-2545 or have your staff contact Rick Brandes, Permits Division, at 8/426-7010.

Attachment

Attachment 1

NPDES PERMIT RATING WORKSHEET

AND RATING INSTRUCTIONS

Alternate - Wastewater/Stream Flow Ratio

|___|___| Alternate Code Checked on Optional Worksheet (Code 99 if not used)

Alternate Points = ____

3. Wastewater Flow Points (Larger of Flow Points or Alternate) = ___

3. Traditional Pollutants

BOD or _____*

Daily Average Load = |1|_____ < 100 lb/day (00 points)
|2|_____ 100 to 1000 lb/day (10 points)
|3|_____ > 1000 to 3000 lb/day (20 points)
|4|_____ > 3000 lb/day (30 points)

|_| BOD Code

COD

Daily Average Load = |1|_____ < 100 lb/day (00 points)
|2|_____ 100 to 1000 lb/day (10 points)
|3|_____ > 1000 to 5000 lb/day (20 points)
|4|_____ > 5000 lb/day (30 points)

|_| COD Code

Oxygen Demand Points (Larger of BOD or COD Points) = ____

* Insert any alternate oxygen demand parameter used.

TSS

Daily Average Load = |1|_____ < 100 lb/day (00 points)
|2|_____ 100 to 1000 lb/day (10 points)
|3|_____ > 1000 to 5000 lb/day (20 points)
|4|_____ > 5000 lb/day (30 points)

|_| TSS Code

TSS Points = ____

Ammonia or _____**

Daily Average Load (As NH_4-N) = |1|_____ < 300 lb/day (00 points)
|2|_____ 300 to 1000 lb/day (10 points)
|3|_____ > 1000 to 3000 lb/day (20 points)
|4|_____ > 3000 lb/day (30 points)

|_| Ammonia Code

Ammonia Points = ____

** Insert any alternate nitrogen parameter used

Temperature (Heat Load)
(Compute only for flows > 10 mgd and when temperature limits are specified in the permit).

|9|____ Not Computed

Temperature Differential (T) - Permit Limits (Max. Temp.) - 70°
Heat Load = Cooling Water Flow (mgd) x T x 0.00834
= _____ x _____ x 0.00834 = _____ billion

Heat Load = |1|____ < 4 billion BTU (00 points)
|2|____ 4 to 10 billion BTU (10 points)
|3|____ > 10 billion BTU (20 points)

|_| Heat Load Code

Heat Load Points = ____

C. Total Traditional Pollutant Points - ____
(Sum of Oxygen Demand, TSS, Ammonia and Heat Load Points)

4. Potential Public Health Impacts

Is the receiving water to which wastewater is discharged or a water body to which it is tributary used for a municipal water supply within 50 miles downstream?

|1|____ No (0 points)
|2|____ Yes

Toxicity Group

____ I, II or III (00 points)
____ IV (10 points)
____ V (20 points)
____ VI (30 points)

|_| Public Health Code

D. Public Health Points - ____

5. Water Quality Factors

Have (or will) one or more of the effluent limitations assigned to the discharge been based on water quality factors in the receiving stream rather than technology or effluent guidelines or has a wasteload allocation been assigned to the discharge? Alternately, has the receiving water been designated as water quality limiting?

|1|____ Yes (15 points)
|2|____ No (00 points)

|_| Water Quality Limiting Code

Is the receiving water in compliance with applicable water quality standards?

|1| _____ Yes (00 points)
|2| _____ No (10 points)

|_| Water Quality Standards Code

E. Total Water Quality Points = (Sum of Water Quality Limiting and Water Quality Standards Points) ____

6. Total Permit Rating Points

Add Toxic Pollutant Points (A) + Wastewater Flow Points (B) + Traditional Pollutant Points (C) + Public Health Points (D) + Water Quality Points (E)

NOTE: If permit is a discretionary addition, add 500 points to total

TOTAL RATING POINTS ASSIGNED TO THE PERMIT = |___|___|___|

Total Rating Points Previously Assigned to the Permit (if any) = ____

7. Processing Record

PCS information recorded by _____ Date _____
Permit application data recorded by _____ Date _____
Permit data recorded by _____ Date _____
Public water supply determination by _____ Date _____
Water quality determination by _____ Date _____
Coding entered in the computer by _____ Date _____
Errors revised by _____ Date _____
Corrected coding in computer by _____ Date _____

8. Permit Expiration Date _____

CHAPTER VI. The National Municipal Policy and Guidance

REGIONAL AND STATE GUIDANCE
on the

NATIONAL MUNICIPAL POLICY

U.S. Environmental Protection Agency

Office of Water

March 1984

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REGIONAL AND STATE GUIDANCE
on the

NATIONAL MUNICIPAL POLICY

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REGIONAL AND STATE GUIDANCE

ON THE

NATIONAL MUNICIPAL POLICY

BACKGROUND

The Clean Water Act (CWA) originally established July 1, 1977, as the statutory deadline for publicly-owned treatment works (POTWs) to comply with both water quality-based and technology-based permit requirements. Congress later authorized the Agency to extend the compliance deadline for certain municipalities. In order to receive an extension under §301(i) of the CWA, a municipality had to apply by June 1978 and to demonstrate in its application that construction could not be completed by the July 1, 1977 deadline, or that the Federal Government had failed to provide grants in time to allow the POTW to meet the deadline. EPA or the State was authorized to extend the compliance date for such POTWs to the earliest date by which grants would be made available and construction could be completed, but no later than July 1, 1983.

In 1981, Congress recognized the need to provide additional time for some POTWs to achieve compliance and amended §301(i) to allow eligible facilities additional time to comply with their applicable effluent limits. EPA or the State is authorized to extend the compliance date for eligible POTWs to the earliest date by which grants are available and construction can be completed, but no later than July 1, 1988. A POTW is eligible for an extension beyond 1983 only where reductions in the amount of financial assistance under the CWA or changed conditions affecting the rate of construction, beyond the control of the owner or operator, made it impossible to complete construction by July 1, 1983. Any municipality that is not currently in compliance with its permit requirements and has not received a §301(i) extension, is in violation of the July 1, 1977, statutory compliance deadline. There are, however, many §301(i) applications that have never been acted upon.

In 1981, Congress also amended other sections of the CWA to provide significant reform and redirection to the Federal Construction Grants Program. Congress, for example, amended §201 of the CWA to reduce both the number of categories of POTW construction costs that are eligible for Federal funding after September 1984, and the Federal share of the total eligible costs. These changes indicate a Congressional intent to reduce local dependence on Federal funding assistance and to increase local accountability for achieving compliance with the requirements of the CWA.

Also in 1981, §304(d) of the CWA was amended to specify certain less costly treatment technologies that are the equivalent of providing secondary treatment. The Agency has published a proposed regulation that establishes a class of equivalent secondary treatment works. The issuance of the National Municipal Policy has been timed to follow the proposal of the new definition of secondary treatment.

Because of historic and current problems with municipal compliance, the Agency developed the National Municipal Policy, which places renewed emphasis on improving municipal compliance rates in order to protect the Nation's water quality. The policy basically reaffirms that municipalities must comply with the statutory deadlines in the CWA, whether or not they receive Federal funds. While the deadlines in the CWA apply to all POTWs, the policy states that the Agency will focus its compliance efforts on 1) fully constructed POTWs that previously received Federal funding assistance and are not currently meeting their permit limits, 2) on all other major POTWs, and 3) on minor POTWs that are contributing significantly to an impairment of water quality. The policy also recognizes that there may be extraordinary circumstances that make it impossible for some municipalities to comply even by 1988. In such cases, provided that the municipality has acted in good faith, the Agency will work with the States and the affected municipalities to establish enforceable schedules for achieving compliance as soon as possible thereafter. These schedules will also require such municipalities to undertake appropriate, interim abatement measures. Nothing in the Policy is intended to impede or delay any ongoing or future enforcement actions.

This guidance sets forth a logical approach for implementing the National Municipal Policy. The document is divided into four main sections: an introduction, which presents a tiered approach for addressing the problem of municipal noncompliance, as well as guiding principles for implementation; a section that describes Regional/State strategies, which are the basic planning documents that permitting authorities should use to carry out the policy; a section that discusses specific problems that permitting authorities may encounter in implementing the policy, as well as suggested mechanisms for addressing particular kinds of noncompliance; and a final section that describes how Regions and States should use the annual §106 program planning process to reach agreement on the specific activities that States and EPA will undertake to carry out the policy.

INTRODUCTION

The National Municipal Policy identifies certain planning and program management activities that are considered essential in carrying out the Policy. State-specific strategies are the primary planning mechanisms for coordinating Regional and State efforts and resources to accelerate effective regulatory action across the broad front of municipal noncompliance. To develop comprehensive strategies, Regions and States need to coordinate carefully their

permit, grant, and compliance/enforcement programs to provide the mutual assistance necessary to meet the goals of the Policy. The content of State strategies is discussed on page six of this guidance.

The Policy also sets forth clear National priorities for action. In support of these priorities, this guidance presents a three-tiered approach for Regions and States to use in addressing the POTW noncompliance problem. It places primary importance on completed facilities that are not in compliance, especially those that used EPA funds for construction. The goal here is to achieve maximum pollution abatement through effective operation, and to realize the full water quality benefits of construction grant funding.

As this first universe is addressed, Regions and States should next consider affected municipalities that are already in the grants process; this includes those municipalities that have already received a construction grant and those on the fundable portion of the State's priority list. The goal here is simply to move these projects through the grants and construction phases as quickly as possible, and to manage the grants and the schedules so that the completed plants will meet certification requirements one year after initial operation.

Next are those affected municipalities that need construction to meet statutory requirements and will not, or are not likely to, receive EPA grant assistance. This group poses the most difficulty in designing reasonable schedules, and will require the most sensitivity on the part of Regions and States. The goal here will be to work with these affected municipalities to develop schedules that enable them to achieve compliance as soon as it is technically and financially possible. Within this group, the focus should be on major POTWs and on minors that are contributing significantly to an impairment of water quality.

The following principles should be used by the Regions and the States as a guide in developing State-specific strategies and compliance schedules for affected municipalities.

<u>Responsibility for compliance rests with each municipality</u>.

Municipalities should make every effort to comply expeditiously with the requirements of the CWA, whether or not they receive Federal funds. Local governments should select an appropriate treatment technology and explore the full range of alternative financing methods available to them not only to construct these treatment works, but also to provide for adequate operation, maintenance, and replacement (OM&R).

<u>Funding decisions should be based on the potential for water quality improvement</u>.

States should dedicate available EPA funds on a priority basis toward those POTW construction projects with the greatest potential

for environmental benefits as provided by the CWA, EPA regulations, and priority list guidance.[1] This may be accomplished by sound State management of construction grant project priority systems and lists, and State review and revision, as appropriate, of water quality standards (WQS) and waste load allocations (WLA).

Special emphasis should be placed on compliance by POTWs that have completed construction of the necessary treatment facilities.

Municipalities with fully constructed POTWs must achieve and maintain compliance with their permit limits. EPA and the States will exercise all available administrative and judicial options needed to assure that noncomplying POTWs achieve and maintain compliance with their NPDES permits.

Construction grant agreements must be honored, and grant and permit schedules must be coordinated.

Municipalities that receive EPA construction grant assistance are responsible for meeting the terms of their grant agreements. EPA will enforce grant conditions, if necessary, to assure that POTWs constructed with EPA funds achieve compliance with final effluent limits. EPA and the States will ensure that compliance schedules in construction grant agreements are consistent with compliance schedules in NPDES permits (when a §301(i) extension has been granted), and also Administrative Orders (AOs), judicial orders, or comparable State actions. Any changes in grant schedules should be justified and coordinated with the others.

EPA and States should provide municipalities with as much certainty as possible regarding applicable permit limits prior to requiring commitments to major capital investments.

EPA will provide technical information on the redefinition of secondary treatment (consistent with the 1981 CWA Amendments) and will issue tentative §301(h) variance decisions as quickly as possible. EPA and the States are responsible for the review and, where appropriate, modification of permits to accommodate revised WQS, WLAs, and secondary treatment criteria in accordance with EPA regulations. In this context, States should act quickly to notify municipalities of any proposed secondary treatment changes or modifications to WLA for POTWs. However, municipalities are accountable for POTW compliance with statutory requirements at all times.

Compliance schedules should be reasonable.

Regions and States will reissue permits to those municipalities eligible under §301(i) of the CWA, or will issue AOs (or will obtain judicial orders in appropriate cases) with fixed-date compliance schedules. These schedules should provide municipalities with

---

1 §216 of the CWA and EPA's construction grant regulations, 40 CFR 35.2015(b).

sufficient time to design and construct needed treatment facilities, and to achieve compliance with applicable effluent limits and other enforceable requirements; schedules should generally require municipalities to be in compliance with their applicable effluent limits as soon as possible and no later than July 1, 1988.

Where extraordinary circumstances preclude compliance by July 1988, EPA will work with the State and the affected municipal authorities to ensure that these POTWs are on enforceable schedules for achieving compliance as soon as possible thereafter; the presumption is that any extension beyond July 1988, will be through a judicial enforcement action. These municipalities should be asked to explain how they plan to finance interim abatement measures, as well as how they plan to finance any construction necessary to meet statutory requirements by the earliest possible date after July 1, 1988.[2]

Where compliance cannot be achieved promptly, POTWs should take appropriate, interim steps toward compliance with applicable effluent limits.

At any time, EPA and the State may establish compliance schedules that require interim steps toward compliance (phased reduction of pollutant discharges). Such interim steps may be appropriate when final resolution of permit limits or final compliance will be significantly delayed and there are logical abatement measures that can be accomplished promptly, or where EPA or the State determines that final compliance cannot be achieved by 1988. However, resolution of final or applicable permit effluent limits and the setting of appropriate final compliance schedules should remain the highest priority.

Phased reductions may also be warranted where States are revising secondary treatment standards, WQS, or WLA or are conducting studies to determine water quality-based effluent limits and the need for related advanced treatment (AT) facilities. Finally, EPA or the States may establish interim effluent limits and associated compliance schedules, on a case-by-case basis, as noncomplying POTWs move toward compliance with final (applicable) effluent limits. The use of Federal grant assistance may not allow phased or segmented projects in some cases (see 40 CFR 35.2108).

---

2 The Agency will be providing additional guidance showing how the information necessary to demonstrate financial capability might be displayed. In addition, the municipality may use any format it chooses, a capital improvement plan, a financial plan, a separate chapter in the Facility Plan, or procedures prescribed by an approved State, provided that the information required is adequately addressed.

STATE STRATEGIES: THE FRAMEWORK FOR CARRYING OUT THE POLICY

The National Municipal Policy requires Regions and States to develop long-range planning documents or "strategies" that describe how they plan to bring noncomplying facilities into compliance by the target dates. These documents should be the long-term plans for achieving compliance based on the specific circumstances that face affected municipalities and the laws and regulations that govern each State's actions. The process of developing a strategy provides each Region and State with an opportunity to establish the proper protocol and control mechanisms, consistent with the Policy, for carrying out the goals and intent of the Policy.

From a National program management perspective, development of strategies will promote uniform, consistent implementation of the Policy. From the Regional and State manager's point of view, the strategies will provide a hierarchy of work priorities, a phased approach to implementation, a reasonable schedule of target dates, and a convenient way to track accomplishments. Properly prepared, the strategies will provide contingency plans in the event of circumstances beyond the control of the regulatory agency.

Regions and the States should form a partnership to develop State-specific strategies so that the interests of both agencies are served in reaching a common goal. These strategies should:

1. Describe the basis and method for setting priorities consistent with the National Policy.

2. Identify (list) all municipalities that are out of compliance with their statutory requirements.[3]

3. Develop a schedule for working with affected municipalities to provide final decisions on applicable effluent limits and compliance schedules by the end of FY-1985. Wherever possible, such schedules should generally require compliance with statutory requirements as soon as possible, and no later than July 1, 1988, unless extraordinary circumstances make compliance by July 1, 1988, impossible.

4. Describe the procedures and coordinating mechanisms to ensure program consistency, especially between compliance schedules in permits, AOs or judicial orders, and construction grants schedules.

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[3] It is recommended that Regions and States review the attached "Permit Issuance and Compliance Development Table," and the accompanying sequence of activities. This will help organize the universe of noncomplying municipalities into manageable subcategories and to identify the basic steps to take in determining applicable effluent limits and establishing compliance schedules.

Examples of such activities include[4]:

a. Criteria development for setting priorities for permit, grant, and compliance actions to carry out the State strategy.
b. Information gathering for making decisions on applicable effluent limits.
c. Case-by-case technical review and decision making.
d. Management and information systems, including policies and procedures.
e. State/EPA coordinating mechanisms to develop and modify permit and grant schedules, and to track and report compliance improvement activities.
f. Integration with §106 program planning, leading to the establishment of firm commitments for each fiscal year.
g. Periodic adjustment of State strategies, if appropriate, during §106 program reviews.

5. Describe a general schedule, by fiscal year, for achieving compliance with all statutory requirements as soon as possible, and no later than July 1988. Where extraordinary circumstances preclude compliance by July 1, 1988, describe a contingency plan for achieving compliance beyond that date and develop criteria and schedules for achieving compliance by the earliest possible date thereafter, including interim abatement measures as appropriate. The presumption is that all schedules that go beyond 1988 should be established through a judicial enforcement action.

Data to establish applicable effluent limits and compliance schedules for many noncomplying POTWs should be available immediately; the schedules for these and many other POTWs can be developed and included in State strategies by March 31, 1984. The general goal is to establish enforceable compliance schedules for all affected municipalities by the end of FY 1985.

State activities associated with developing and carrying out the strategies are eligible for EPA funding under §106 and §205(j) of the CWA. States with delegated construction grant programs under the CWA may also receive grant funds to carry out this policy under §205(g) of the CWA.

EXECUTING THE STATE STRATEGIES

The State strategies described above will provide Regions and States with a complete inventory of all noncomplying facilities,

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4 The guidance established in the "Enforcement Management System" (EMS), March 1977, is recommended in developing State strategies. Use of the Permit Compliance System (PCS) as the primary data management system will facilitate effective coordination, communication, and data management. States will also benefit from increased participation in PCS.

will identify affected municipalities consistent with the National policy and guidance, and will establish the most appropriate way to achieve compliance given the particular circumstances facing each affected municipality.

As stated earlier in this guidance, noncomplying municipalities should be addressed in three tiers: completed facilities that are not in compliance with their final effluent limits; municipalities that have or will receive Federal grant assistance for needed construction by September 30, 1985; and municipalities that are not expected to be funded. The following sections describe the special problems that the permitting authority may encounter in dealing with each of these categories of noncompliers, as well as the mechanisms that should be used to achieve compliance. The final section presents some special considerations related to routine compliance monitoring and enforcement activities.

Approach to Take with Completed POTWs

Municipalities that have completed POTW construction, but are failing to achieve final effluent limits, may be required to perform an in-depth, diagnostic evaluation (analysis) of the causes of noncompliance and to develop a detailed Composite Correction Plan (CCP) for bringing the POTW into compliance as soon as possible. The permitting authority can require a CCP through an AO or through other appropriate enforcement mechanisms. The affected municipality may choose to complete the CCP with its own in-house expertise or may use an outside consultant.

Based on the results of the diagnostic evaluation, the CCP should:

1. Discuss/explain the cause(s) of noncompliance.
2. Discuss the corrective steps required to achieve compliance, their cost, and the proposed method of financing those steps, including whether there is:

   a. A plan of operation that identifies annual O&M costs.
   b. A financial management system that adequately accounts for revenues and expenditures.
   c. A user charge/revenue system that generates sufficient revenues to operate, maintain, and replace the treatment works.

3. Provide an expeditious schedule for completing the required steps and for achieving compliance.

Once the CCP is completed, it should be submitted to the Region or the State for review. If the CCP appears technically and financially sound, the permitting authority should use an AO or judicial Consent Decree to require the municipality to carry out the plan at its own expense.

While CCPs will be the most common mechanism for returning constructed facilities to compliance, there are two other kinds of situations that Regions and States will encounter. First, section 204(d)(2) of the CWA, as amended in 1981, requires municipalities that construct POTWs with EPA grants made after May 12, 1982, to certify the performance of those POTWs one year after initial operation. Grantees that cannot certify compliance with both performance and design standards are required to submit a Corrective Action Plan (CAP) and to correct the operating deficiencies promptly at other than EPA expense. EPA will place a high priority on tracking the performance certifications, the CAPs, and the resulting corrective actions. Since the CCP and CAP are similar documents, the CAP should be used in lieu of the CCP where appropriate. The required elements of a CAP are described in EPA regulation 40 CFR 35.2218(c)(1).

Once a plant has been certified as operational, it must continue to meet its final limits or it is subject to any of the enforcement mechanisms available to the permitting authority. The requirements under §204(d)(2) are designed to protect the public's investment in the project. If a plant cannot meet certification requirements, the grant program can enforce grant conditions. Appropriate enforcement actions may also be taken under §309.

The second situation involves the special circumstances associated with enforcement actions against completed POTWs that were not originally planned, designed or constructed to meet the current secondary treatment requirements, e.g., P.L. 84-660 facilities. Since POTWs previously funded under P.L. 84-660, or otherwise funded prior to the August 17, 1973, secondary treatment regulation, may be incapable of meeting secondary treatment, State strategies must make a conscious determination of whether such facilities will be treated as completed (tier one) or unfunded (tier three) facilities.

Finally, Regions and States should exercise sound judgment in dealing with any Federally funded facility. Since enforcement actions against these facilities can raise issues affecting the EPA Construction Grants Program, proposed actions against these municipalities should be thoroughly discussed and continuously coordinated between the compliance and Construction Grants Programs before the action is taken.

Approach to Municipalities in the Grants Process

Affected municipalities that are currently in the grants process, and that have approved §201 facility plans, do not need to develop other plans that describe how they plan to come into compliance. This includes municipalities that already have an approved construction grant and those that are on the fundable portion of the State project priority list. The goal is to move these projects through the grant and construction phases as quickly as possible, which has the dual benefit of improving compliance plus reducing unliquidated balances in the Construction Grants Program.

Many of these municipalities are currently operating on expired permits and/or compliance schedules. Consequently, the permitting authority should reissue the permit and/or use AOs or §301(i) extensions, if eligible, to establish final compliance dates in these schedules, and to establish appropriate interim effluent limits for existing facilities that achieve the maximum degree of pollution abatement possible in the meantime. Construction grant schedules should always be coordinated at critical milestones with any related permit compliance schedules in §301(i) permit modifications or other enforceable EPA/State mechanisms. If either document is modified, the change should be reflected in the other so that the POTW receives a unified response from the regulatory agency.

Approach to Unfunded Municipalities

Any municipality that requires construction of a wastewater treatment facility in order to achieve compliance should be required to develop a Municipal Compliance Plan (MCP) to show how it plans to meet the enforceable requirements of the CWA. State strategies should identify the affected municipalities that need to develop MCPs, and the permitting authority should then work with these municipalities to establish reasonable compliance schedules based on the information supplied in the MCP.

MCPs for municipalities that have not constructed the appropriate treatment to meet the statutory requirements should identify:

1. The treatment technology needed to achieve compliance, as well as estimates of capital requirements and OM&R costs.[5]

2. The financial mechanisms (sources of revenue) to be used to fund construction and OM&R.

3. The proposed, fixed-date compliance schedule, including, at a minimum, the milestones by which the municipality plans to start and complete construction, to attain operational levels, and to achieve compliance with applicable effluent limits.

4. Any appropriate interim steps that will ensure progress toward compliance with statutory requirements, such as the completion of the secondary treatment component of an AT facility, improved O&M procedures, the implementation of an approved local pretreatment program, or the upgrade of the existing facility.

The permitting authority should require unfunded municipalities to develop MCPs through a §308 information request, an enforceable §309 AO, a judicial order, or an equivalent State action. EPA Headquarters has issued draft guidance on the form and content of these §309 AOs and §308 requests. These municipalities should be given a reasonable length of time to develop MCPs so they can real-

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[5] See footnote on page five.

istically assess their compliance needs, examine their financing alternatives, and work out reasonable schedules for achieving compliance. In most cases six months from the notification of the requirement to submit an MCP should be adequate.

Within the group of noncomplying municipalities that will not receive Federal grant assistance, Regions and States should concentrate on major POTWs and then on minor POTWs that contribute significantly to an impairment of water quality. Finally, lowest priority for EPA or State action should be assigned to unfunded, minor POTWs that are not causing significant water quality problems.

EPA or the State agency should review each MCP and, if it is acceptable, should incorporate the schedule into a §301(i) permit (if the POTW is eligible), a §309 AO, or a judicial order. If the MCP is not acceptable, EPA or the State may establish an appropriate compliance schedule under its own authority or may initiate other appropriate enforcement actions.

In dealing with unfunded municipalities, Regions and States should exhibit great sensitivity to their special problems and needs. In working with these communities, for example, every effort should be made to provide them with available technical information on financial capability assessment and on alternative, less costly, wastewater treatment technologies. The objective is to help these municipalities develop reasonable and enforceable schedules, even though it may require a judicial enforcement action to extend the schedule beyond 1988 where extraordinary circumstances are shown.

For unfunded municipalities, Regions and States are encouraged to adopt a community-by-community strategy that involves advance discussion with each affected municipality before establishing a final schedule that requires a substantial capital investment. Since actions against these communities are likely to be controversial, the permitting authority should also inform its Regional Administrator or State Director, as appropriate, of the negotiations with the affected municipality and the proposed actions necessary to achieve compliance.

Compliance Monitoring and Enforcement

Regions and States should carefully monitor compliance with the requirements to develop and submit MCPs and CCPs, and should take follow-up actions as needed. They should also monitor enforceable compliance schedules that are established in §301(i) permits, §309 AOs, or judicial actions, and should initiate follow-up action where schedules are not being met. All activities should be consistent with the priorities in the Policy and the approaches outlined in this guidance.

Section 309 AOs (or equivalent State actions) should be used when such actions are necessary to obtain corrective actions, but civil enforcement actions should be initiated when necessary.

State civil enforcement actions. Appropriate civil penalties should be established to deter future violations. Sewer connection bans (§402(h), CWA) should be sought, when they are needed, to achieve and maintain compliance. Nothing in the Policy or the guidance is intended to impede or delay any on-going or future enforcement actions.

Since municipalities are ultimately responsible for meeting the contractual terms of construction grant agreements, grant conditions should be enforced, if necessary. If grantees fail to correct problems in a timely manner, the regulatory agency should take prompt action, which may include annulment or termination of the grant. If required, appropriate legal actions should also be taken, usually under §309 of the CWA or under comparable State authority.

PROGRAM MANAGEMENT ACTIVITIES AND OVERVIEW

Regions should use the annual State program grant negotiation process to reach agreement on the specific activities they will undertake to carry out the State strategies. EPA and State §106 work plans for FY 1985, for example, should include the necessary commitments to update State strategies, and to identify any remaining POTWs for which applicable effluent limits and compliance schedules need to be established. Such commitments should include those contained in the Office of Water Accountability System (OWAS) FY 85 guide and should cover the following areas:

- The identification of noncomplying POTWs (list) and those that need construction to meet statutory requirements.
- The review, approval and/or modification of §201 plans.
- The request, review, and approval of CCPs and MCPs.
- The establishment of compliance schedules.
- The issuance and reissuance of municipal permits.
- The taking of enforcement actions to obtain compliance.
- The return of POTWs to compliance (and the improvement in the level of municipal compliance).
- The termination of Step 1 and 2 grants.
- The physical and administrative completion and close out of active Step 3 or Step 2/3 grants.

By the end of FY 1985, to the extent possible, final decisions should be reached on applicable effluent limits and compliance schedules for all noncomplying POTWs and State strategies should be updated accordingly. Updating State strategies should be a continuous process from FY 1984 through FY 1988. Annual EPA permit, con-

struction grant, compliance monitoring, and enforcement commitments will be included in the appropriate sections of EPA's annual Office of Water Accountability System (OWAS), and the Administrator's Strategic Planning and Management System (SPMS). This will help assure that EPA's actions under the Policy are conducted in coordination with related State actions and are consistent with the State strategies and annual §106 plans.

EPA Headquarters will overview implementation of the Policy and will prepare appropriate reports to the EPA Administrator and to Congress. Headquarters will also analyze the State strategies, PCS data, and other available information to determine the adequacy of EPA and State resource commitments, the need for additional guidance and/or technical assistance, and any need for mid-course corrective actions. During this process, the Agency will be looking for successful State and Regional approaches and management techniques in order to share them with other States and Regions. All Headquarters overview will be carried out within the context of OWAS and SPMS, and the EPA/State oversight protocol agreements, which will be individually negotiated with each State, consistent with the FY 85-86 Agency Operating Guidance.[6]

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[6] See FY 85-86 Agency Operating Guidance, February 1984, pp. 9-10.

federal register

Monday
January 30, 1984

Part V

Environmental Protection Agency

Publicly-Owned Treatment Works; National Municipal Policy; Notice

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL 2515-6]

Notice of National Municipal Policy on Publicly-Owned Treatment Works.

AGENCY: Environmental Protection Agency.

ACTION: Notice of National Municipal Policy.

SUMMARY: This notice sets forth the Environmental Protection Agency's policy on ensuring that all publicly-owned treatment works (POTW) comply with the statutory requirements and compliance dead-lines in the Clean Water Act (CWA). The policy describes the Agency's intention to focus its efforts on POTWs that previously received Federal funding assistance and are not in compliance, on all other major POTWs, and on minor POTWs that are contributing significantly to an impairment of water quality. It also describes how the Agency expects EPA Regions and States to carry out the intent of the policy. The purposes of the policy are to achieve maximum improvement in water quality in accordance with the goals of the CWA, and to protect the public's investment in wastewater treatment facilities.

The Agency has recently proposed a regulation that redefines secondary treatment pursuant to the 1981 amendments to section 304(d) of the CWA, 48 FR 52258, November 18, 1983. This related action will help provide reasonable certainty regarding POTWs applicable effluent limits and will facilitate implementation of this policy.

EFFECTIVE DATE: This policy will be effective January 30, 1984.

FOR FURTHER INFORMATION CONTACT: Robert W. Zeller, Ph. D., U.S. Environmental Protection Agency, EN-338, 401 M Street, SW., Washington, D.C., 20460 (202) 475-8304.

Dated: January 23, 1984.

William D. Ruckelshaus,

Administrator.

Statement of Policy

When the Clean Water Act (CWA) was passed in 1972, Congress gave municipalities until 1977 to comply with its requirements. Congress authorized the Environmental Protection Agency (EPA) to extend the deadline to 1983 and then again to July 1, 1988, for some municipalities. In addition, Congress amended the Act in 1981 to modify the basic treatment requirements. Therfore, Congress has authorized EPA to give some municipalities several additional years to achieve compliance and has also provided more reasonable treatment requirements for certain types of facilities.

The CWA requires all publicly-owned treatment works (POTWs) to meet the statutory compliance deadlines and to achieve the water quality objectives of the Act, whether or not they receive Federal funds. The EPA will focus on POTWs that previously received Federal funding assistance and are not currently in compliance with their applicable effluent limits, on all other major POTWs and on minor POTWs that are contributing significantly to an impairment of water quality. EPA's goal will be to obtain compliance by POTWs as soon as possible, and no later than July 1, 1988. Where there are extraordinary circumstances that preclude compliance of such facilities by July 1, 1988, EPA will work with States and the affected municipal authorities to ensure that these POTWs are on enforceable schedules for achieving compliance as soon as possible thereafter, and are doing all they can in the meantime to abate pollution to the Nation's waters.

Implementation Strategy

The Agency is committed to pursuing a clear course of action that fulfills the intent of Congress and results in the maximum improvement in water quality. The Agency is also committed to protecting the public's financial investment in wastewater treatment facilities. To meet these objectives, the Agency expects EPA Regions and States to adhere to the National policy stated above and to use the following mechanisms to carry out the intent of this policy.

EPA Regions will cooperate with their respective States to develop strategies that describe how they plan to bring noncomplying facilities into compliance. These strategies should include a complete inventory of all noncomplying facilities, should identify the affected municipalities consistent with the National policy, and should describe a plan to bring these POTWs into compliance as soon as possible. Regions and States will then use the annual State program grant negotiation process to reach agreement on the specific activities they will undertake to carry out the plan.

Based on the information in the final strategies, the permitting authority (Region or approved NPDES State) will require affected municipal authorities to develop one of the following as necessary:

Composite Correction Plan: An affected municipality that has a constructed POTW that is not in compliance with its NPDES permit effluent limits will be required to develop a Composite Correction Plan (CCP). The CCP should describe the cause(s) of noncompliance, should outline the corrective actions necessary to achieve compliance, and should provide a schedule for completing the required work and for achieving compliance.

Municipal Compliance Plan: An affected municipality that needs to construct a wastewater treatment facility in order to achieve compliance will be required to develop a Municipal Compliance Plan (MCP). The MCP should describe the necessary treatment technology and estimated cost, should outline the proposed sources and methods of financing the proposed facility (both construction and O&M), and should provide a schedule for achieving compliance as soon as possible.

The permitting authority will use the information in these plans and will work with the affected municipality to develop a reasonable schedule for achieving compliance. In any case where the affected municipal authority is unable to achieve compliance promptly, the permitting authority will, in addition to setting a schedule for achieving full compliance, ensure that the POTW undertakes appropriate interim steps that lead to full compliance as soon as possible. Where there are extraordinary circumstances that make it impossible for an affected municipal authority to meet a July 1, 1988 compliance date, the permitting authority will work with the affected municipality to establish a fixed date schedule to achieve compliance in the shortest, reasonable period of time thereafter, including interim abatement measures as appropriate. The general goal is to establish enforceable compliance schedules for all affected municipalities by the end of FY 1985. Once schedules for affected municipalities are in place, the permitting authority will monitor progress towards compliance and will take follow-up action as appropriate. Nothing in this policy is intended to

impede or delay any ongoing or future enforcement actions.

Overview

EPA Headquarters will overview the implementation of this policy to ensure that actions taken by Regions and States are consistent with National policy and that the Agency as a whole is making progress towards meeting the statutory deadlines and achieving the water quality objectives of the Act.

Dated: January 23, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-2633 Filed 1-27-84; 8:45 am]

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CHAPTER VII. Program Reporting Requirements - Policies and Guidance

B. QNCR Guidance

FOREWORD

Section 123.45 of the Code of Federal Regulations, Title 40, establishes the reporting requirements for quarterly, semi-annual, and annual noncompliance reports on facilities that are permitted under the National Pollutant Discharge Elimination System (NPDES). This regulation, as published in the Federal Register on August 26, 1985, is a revision of previous reporting requirements. This revision was necessary because the old regulations were found to be too vague. This resulted in inconsistent reporting as each NPDES administering agency tried to manage their program in a manner that was consistent with their understanding of the intent of the regulation.

Quarterly Noncompliance Report

The current regulations for the Quarterly Noncompliance Report (QNCR) evolved from initial efforts by the compliance managers in the Regions and in States having NPDES authority to identify a concensus set of reporting criteria. These criteria were then reviewed by the Compliance Task Force of the Association of State and Interstate Water Pollution Control Administrators. The result was a set of specific, quantifiable reporting criteria; violation of these criteria is known as Category I noncompliance.

Since that time, EPA has identified additional violations that are harder to quantify but are of sufficient concern to be considered reportable; these violations are known as Category II noncompliance.

The regulations currently require the reporting of Category I and II noncompliance by major permittees; these regulations differ most significantly from the old ones in the areas of effluent and schedule noncompliance.

The major change in the area of effluent noncompliance is the concept that an isolated, minor excursion may not be of sufficient concern to warrant tracking on the QNCR. Instead, Category I effluent noncompliance is based on specifically defined "patterns of noncompliance" which take into account the magnitude, frequency of occurrence, and duration of the violations. These violations are resolved through issuance of a formal enforcement order or by demonstrated compliance such that the criteria are no longer met for the "pattern of noncompliance" or the permittee has achieved one complete quarter of compliance.

In contrast, the old regulations required that all violations during the quarter be reported. This requirement would have resulted in such voluminous reports that it was not strictly adhered to by the administering agencies (EPA or approved States). These violations were resolved in the past by one month of compliance.

One of the major changes in the area of schedule noncompliance is the concept that municipalities constructing treatment facilities using federal grant funding should be reported using the same criteria as for other municipalities and industries. This is a revision of the old requirements which allowed the subjective criteria of "unacceptable progress" to be used for federally funded municipalities.

The other major change in the area of schedule noncompliance is the length of the schedule delays that must be reported. In the past, the NPDES administering agency was required to report violations of schedules (other than grant schedules) that exceeded the reporting date of the schedule milestone by at least 30 days (generally 60 days from the scheduled milestone date). It was found, however, that it was often possible to make up for delays of less than 90 days within the overall schedule. The new regulation requires only the reporting of schedule violations (including grant schedule violations) that exceed the scheduled date by 90 days or more.

A summary chart of the noncompliance that must be reported in the QNCR can be found in Appendix I of this guidance.

Semi-annual Statistical Summary

In addition to these changes, the new regulation also establishes the requirements for a new report - the Semi-annual Statistical Summary Report. This report was designed as a complement to the QNCR as an indication of the amount of effluent noncompliance that did not meet the criteria for QNCR reporting. The Semi-annual Statistical Summary Report includes numerical counts of major permittees in violation of monthly average effluent limitations for two or more months of the six-month reporting period. This criterion was chosen based on a study of over 2500 major permittees in twelve states. The study found that only one percent of the permittees that would violate

their monthly average effluent limits twice in a year would not meet the chosen criteria of twice in six months. As such, the chosen criteria was believed to be a reasonable indicator of the level of effluent noncompliance - both the noncompliance that warrants tracking on the ONCR and that which does not.

Annual Noncompliance Report

The requirements for the Annual Noncompliance Report remain unchanged in the current regulation.

Significant Noncompliance

Significant Noncompliance (SNC) is a subset of Reportable Noncompliance as defined for the ONCR. SNC is not regulatory, but is defined by EPA in Part 2 of this guidance. SNC is used solely for management purposes and contains those instances of noncompliance (both Category I and II) that EPA feels merit special attention from NPDES administering agencies. These priority violations are tracked through the Strategic Planning and Management System (SPMS) to ensure timely enforcement.

An SNC/ONCR comparison chart can be found in Appendix I.

Agency Enforcement

Any violation or instance of noncompliance by any point source discharger is subject to agency enforcement actions. This principle applies to all dischargers (major, minor, and unpermitted), and to all violations of Clean Water Act/NPDES requirements, regardless of whether or not the violations meet either the Reportable (ONCR) Noncompliance or SNC criteria.

Major Guidance Topics

This guidance is being issued to clarify the revised reporting requirements and SNC. Major topics throughout the guidance include the following:

- QNCR reporting requirements
  - Criteria for reporting noncompliance
    - Separate criteria for reporting instances of noncompliance with permit conditions and with enforcement order requirements
      - These criteria are considered Category I if they are part of the "readily quantifiable" criteria approved by the Compliance Task Force
      - These criteria are considered Category II if they are part of the "less readily quantifiable" criteria later developed by EPA
      - Category I versus Category II does not determine priority for enforcement response
  - Evaluation of effluent noncompliance/compliance based on performance over a period of time (pattern of noncompliance) rather than at a specific point in time (e.g., the last month of the quarter)
  - The capability to generate the QNCR from the national data base (the Permit Compliance System)
- Significant Noncompliance
  - Subset of QNCR Category I and II noncompliance
- Semi-annual Statistical Summary Report requirements.

A copy of the current (revised and carried over) reporting requirements follows.

§ 123.45 Noncompliance and Program Reporting by the Director.

The Director shall prepare quarterly, semi-annual, and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit all reports required under this section to the Regional Administrator, and the EPA Region in turn shall submit the State reports to EPA Headquarters. When EPA is the permit-issuing authority, the Regional Administrator shall submit all reports required under this section to EPA Headquarters.

(a) Quarterly reports. The Director shall submit quarterly narrative reports for major permittees as follows:

(1) Format. The report shall use the following format:

(i) Provide a separate list of major NPDES permittees which shall be subcategorized as non-POTWs, POTWs, and Federal permittees.

(ii) Alphabetize each list by permittee name. When two or more permittees have the same name, the permittee with the lowest permit number shall be entered first.

(iii) For each permittee on the list, include the following information in the following order:

(A) The name, location, and permit number.

(B) A brief description and date of each instance of noncompliance for which paragraph (a)(2) of this section requires reporting. Each listing shall indicate each specific provision of paragraph (a)(2) (e.g., (ii)(A) thru (iii)(G)) which describes the reason for reporting the violation on the quarterly report.

(C) The date(s), and a brief description of the action(s) taken by the Director to ensure compliance.

(D) The status of the instance(s) of noncompliance and the date noncompliance was resolved.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) Instances of noncompliance by major dischargers to be reported.

(i) General. Instances of noncompliance, as defined in paragraphs (a)(2)(ii) and (iii) of this section, by major dischargers shall be reported in successive reports until the noncompliance is reported as resolved (i.e., the permittee is no longer violating the permit conditions reported as noncompliance in the ONCR). Once an instance of noncompliance is reported as resolved in the ONCR, it need not appear in subsequent reports.

(A) All reported violations must be listed on the ONCR for the reporting period when the violation occurred, even if the violation is resolved during that reporting period.

(B) All permittees under current enforcement orders (i.e., administrative and judicial orders and consent decrees) for previous instances of noncompliance must be listed in the ONCR until the orders have been satisfied in full and the permittee is in compliance with permit conditions.

If the permittee is in compliance with the enforcement order, but has not achieved full compliance with permit conditions, the compliance status shall be reported as "resolved pending," but the permittee will continue to be listed on the QNCR.

(ii) Category I noncompliance. The following instances of noncompliance by major dischargers are Category I noncompliance:

(A) Violations of conditions in enforcement orders except compliance schedules and reports.

(B) Violations of compliance schedule milestones for starting construction, completing construction, and attaining final compliance by 90 days or more from the date of the milestone specified in an enforcement order or a permit.

(C) Violations of permit effluent limits that exceed the Appendix A "Criteria for Noncompliance Reporting in the NPDES Program".

(D) Failure to provide a compliance schedule report for final compliance or a monitoring report. This applies when the permittee has failed to submit a final compliance schedule progress report, pretreatment report, or a Discharge Monitoring Report within 30 days from the due date specified in an enforcement order or a permit.

(iii) Category II noncompliance. Category II noncompliance includes violations of permit conditions which the Agency believes to be of substantial concern and may not meet the Category I criteria. The following are instances of noncompliance which must be reported as Category II noncompliance unless the same violation meets the criteria for Category I noncompliance.

(A) (1) Violation of a permit limit;

(2) An unauthorized bypass;

(3) An unpermitted discharge; or

(4) A pass-through of pollutants

which causes or has the potential to cause a water quality problem (e.g., fish kills, oil sheens) or health problems (e.g., beach closings, fishings bans, or other restrictions of beneficial uses).

(B) Failure of an approved POTW to implement its approved pretreatment program adequately including failure to enforce industrial pretreatment requirements on industrial users as required in the approved program.

(C) Violations of any compliance schedule milestones (except those milestones listed in paragraph (a)(2)(ii)(B) of this section) by 90 days or more from the date specified in an enforcement order or a permit.

(D) Failure of the permittee to provide reports (other than those reports listed in paragraph (a)(2)(ii)(D) of this section) within 30 days

from the due date specified in an enforcement order or a permit.

(E) Instances when the required reports provided by the permittee are so deficient or incomplete as to cause misunderstanding by the Director and thus impede the review of the status of compliance.

(F) Violations of narrative requirements (e.g., requirements to develop Spill Prevention Control and Countermeasure Plans and requirements to implement Best Management Practices), which are of substantial concern to the regulatory agency.

(G) Any other violation or group of permit violations which the Director or Regional Administrator considers to be of substantial concern.

(b) Semi-Annual Statistical Summary Report. Summary information shall be provided twice a year on the number of major permittees with two or more violations of the same monthly average permit limitation in a six month period, including those otherwise reported under paragraph (a) of this section. This report shall be submitted at the same time, according to the Federal fiscal year calendar, as the first and third quarter QNCRs.

(c) Annual reports for NPDES.

(1) Annual noncompliance report. Statistical reports shall be submitted by the Director on nonmajor NPDES permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and the number of permit modifications extending compliance deadlines. The statistical information shall

be organized to follow the types of noncompliance listed in paragraph (a) of this section.

(2) A separate list of nonmajor discharges which are one or more years behind in construction phases of the compliance schedule shall also be submitted in alphabetical order by name and permit number.

(d) Schedule.

(1) For all quarterly reports. On the last working day of May, August, November, and February, the State Director shall submit to the Regional Administrator information concerning noncompliance with NPDES permit requirements by major dischargers in the State in accordance with the following schedule. The Regional Administrator shall prepare and submit information for EPA-issued permits to EPA Headquarters in accordance with the same schedule:

QUARTERS COVERED BY REPORTS ON
NONCOMPLIANCE BY MAJOR DISCHARGERS
(Date for completion of reports)

January, February, and March...	[1]May 31
April, May, and June.....	[1]August 31
July, August, and September....	[1]November 30
October, November, and December	[1]February 28

(2) For all annual reports. The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

[1]Reports must be made available to the public for inspection and copying on this date.

Appendix A to § 123.45 - Criteria for Noncompliance Reporting in the NPDES Program

This appendix describes the criteria for reporting violations of NPDES permit effluent limits in the quarterly noncompliance report (QNCR) as specified under § 123.45 (a)(2)(ii)(c). Any violation of an NPDES permit is a violation of the Clean Water Act (CWA) for which the permittee is liable. An agency's decision as to what enforcement action, if any, should be taken in such cases, will be based on an analysis of facts and legal requirements.

Violations of Permit Effluent Limits

Cases in which violations of permit effluent limits must be reported depend upon the magnitude and/or frequency of the violation. Effluent violations should be evaluated on a parameter-by-parameter and outfall-by-outfall basis. The criteria for reporting effluent violations are as follows:

a. Reporting Criteria for Violations of Monthly Average Permit Limits - Magnitude and Frequency.

Violations of monthly average effluent limits which exceed or equal the product of the Technical Review Criteria (TRC) times the effluent limit, and occur two months in a six month period must be reported. TRCs are for two groups of pollutants.

Group I Pollutants - TRC=1.4
Group II Pollutants - TRC=1.2

b. Reporting Criteria for Chronic Violations of Monthly Average Limits.

Chronic violations must be reported in the QNCR if the monthly average permit limits are exceeded any four months in

a six month period. These criteria apply to all Group I and Group II pollutants.

Group I Pollutants - TRC=1.4

Oxygen Demand

Biochemical Oxygen Demand
Chemical Oxygen Demand
Total Oxygen Demands
Total Organic Carbon
Other

Solids

Total Suspended Solids (Residues)
Total Dissolved Solids (Residues)
Other

Nutrients

Inorganic Phosphorus Compounds
Inorganic Nitrogen Compounds
Other

Detergents and Oils

MBAS
NTA
Oil and Grease
Other detergents or algicides

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Metals

Aluminum
Cobalt
Iron
Vanadium

Group II Pollutants - TRC=1.2

Metals (all forms)

Other metals not specifically listed under Group I

Inorganic

Cyanide
Total Residual Chlorine

Organics

All organics are Group II except those specifically listed under Group I

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

MAR 13 1986

OFFICE OF WATER

MEMORANDUM

SUBJECT: Transmittal of the Final Quarterly Noncompliance Report Guidance

FROM: Rebecca Hanmer
Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits (EN-335)

TO: Water Management Division Directors
Regions I - X

The Quarterly Noncompliance Report (QNCR) Guidance is attached (Attachment A) in final form reflecting comments on the draft. As you know, we held three national training sessions to acquaint the QNCR preparers with the new regulatory requirements and elicit additional questions not answered by the draft QNCR Guidance. The major change from the draft is the resolution of permit effluent violations. Permit effluent violations were resolved in the draft QNCR Guidance when a facility no longer met the pattern of noncompliance criteria for reportable effluent violations. These criteria were two monthly Technical Review Criteria (TRC) violations or four chronic violations in the two quarter period covered by the QNCR. Therefore, a permittee would have to experience fewer violations than two TRC or four chronic violations in the two quarters to be reported as resolved on the QNCR. The final guidance also now resolves these violations, for both QNCR and significant noncompliance (SNC) purposes, when a facility achieves one quarter of absolute compliance with the monthly average limitations.

The other issue which was resolved by your comments was the tracking of permit effluent measurements in the absence of interim limits in an enforcement order. The majority of comments were in favor of the draft guidance on this issue - that continuing permit violations not be reported on the QNCR, but tracked outside of the QNCR for escalation of enforcement when necessary. The final guidance remains unaltered on this issue.

In addition to the change mentioned above, several wording changes have been made in the final version based on comments received at the training sessions. The major comments and questions have been compiled into a "question and answer" format to be sent as a follow-up to the training. These questions and answers reflect a wide range of subjects indicating a great deal of careful thought by Regional staff.

One expected important result of the QNCR Guidance and our revised definition of SNC is an increase in the level of SNC (expressed as a percent of major permittees). The Office of Enforcement and Compliance Monitoring (OECM) has been informed of this increase and will be taking this into consideration when evaluating Regional performance. In addition, sample introductions to the QNCR have been drafted (see Attachment B for QNCRs generated automatically through the Permit Compliance System and Attachment C for manually prepared QNCRs) to accompany reports sent out under the Freedom of Information Act; these introductions will inform the public of the changes in the regulation and indicate that even though our definition of SNC is more stringent than it had been in the past, it does not include all instances of noncompliance listed on the QNCR.

Please call J. William Jordan (202-475-8304) or Larry Reed (202-475-8313) for questions, or have your staff call Sheila Frace (202-475-9456).

Attachments

GUIDANCE FOR PREPARATION OF QUARTERLY AND SEMI-ANNUAL NONCOMPLIANCE REPORTS (PER SECTION 123.45, CODE OF FEDERAL REGULATIONS, TITLE 40)

PART 1: QUARTERLY NONCOMPLIANCE REPORTS

I. INTRODUCTION

Section 123.45 of the Code of Federal Regulations (CFR), Title 40, establishes the requirements for the Quarterly Noncompliance Report (QNCR) of major facilities that are not complying with their National Pollutant Discharge Elimination System (NPDES) permits. It is used by EPA Headquarters, EPA Regions, and the States to track the progress and evaluate the effectiveness of NPDES compliance monitoring and enforcement activities. The QNCR provides the background information for the compliance statistics which are compiled for the Administrator, Congress, and the public. Because the QNCR is available to the public, it provides a visible record of the program's progress and establishes EPA and State credibility in meeting joint responsibilities under the Clean Water Act.

II. SUBMITTAL REQUIREMENTS

A. RESPONSIBLE AGENCY

The ONCR is to be prepared by the States that are approved to administer the NPDES program and by EPA Regions for the States not yet approved. In the case of a partially approved State (e.g., NPDES authority but not Federal facility program authority), the State and EPA Region should provide separate reports on their respective facilities. In the case of EPA action against an NPDES State facility, the State should report the action. It is the responsibility of the Region to verify such actions and report any EPA actions that have been omitted.

B. REPORTING SCHEDULE

The ONCR is to be completed according to the following schedule:

Reporting Quarter	ONCR Completed By
January, February, March	May 31
April, May, June	August 31
July, August, September	November 30
October, November, December	February 28.

NPDES States must forward their ONCRs to the Regions; the Regions then submit the ONCRs for all States (approved and unapproved) to the Office of Water Enforcement and Permits (OWEP). All ONCRs must be received by OWEP within 14 days of the completion dates specified above.

C. AUTOMATIC COMPUTER GENERATION

The Permit Compliance System (PCS), which is the national data base for NPDES permit and compliance information, is capable of generating the ONCR (including manually entered noncompliance determinations) provided the necessary data are entered. Use of PCS is encouraged to reduce the reporting burden of manual preparation and provide more consistent reporting.

D. UNIVERSE OF PERMITTEES

The ONCR reports instances of noncompliance by major NPDES permittees. A major permittee is defined as:

1. Any municipal permittee that has a design flow of one million gallons per day (MGD) or greater, a service population of 10,000 or greater, or significant impact on water quality;
2. Any nonmunicipal permittee that has an industrial rating* of 80 or higher;
3. Any permitted federal facility that meets the criteria for a major municipal or non-municipal as appropriate;
4. Any discretionary major permittees allowed within the limits established by OWEP.

* See February 15, 1983, memorandum on Status of Major Industrial and Priority Permit Lists from Bruce R. Barrett to the Regional Water Management Division Directors - Attachment 1, "NPDES Industrial Permit Classification".

TYPES OF REPORTABLE NONCOMPLIANCE

Reportable Noncompliance consists of those instances of noncompliance which must be listed on the ONCR. The violations are first categorized based on the source of the requirement being violated, generally either an NPDES permit or an enforcement order. The types of requirements that are violated may include effluent limitations, compliance schedule milestones, reporting requirements, or other requirements such as narrative requirements for Best Management Practices, Pretreatment, or Staffing.

F. REGULATORY CATEGORIES OF NONCOMPLIANCE

The regulations define two categories of noncompliance that must be reported on the ONCR for major permittees. These categories do not determine enforcement priority, they merely differentiate between objective (Category I) and subjective (Category II) criteria. Category I is generally quantifiable; as such, Category I is consistent nation-wide. Category II, which is less readily quantified, is generally dependent on the professional judgment of the Region/State permit and compliance staff and may vary slightly from Region to Region and State to State. See Appendix I for a list of Category I and Category II violations by subparagraph in the regulations.

Significant Noncompliance, which will be defined in Part 2 of the guidance, is made up of a combination of those Category I and II violations that EPA feels merit special attention from NPDES administering agencies.

G. FORMAT

Although the regulations do not specify a format for the QNCR, they do specify the information that must be included and the order in which information is to appear. The Permit Compliance System (PCS) can automatically generate this report (including manually entered Category II determinations) provided the data are entered, or the Region/State can prepare it manually.

1. Order of Permittees

If the Region/State is manually preparing the QNCR, it must first separate the major permittees with a facility status of Resolved Pending (see page 1-6) from the other permittees that must be listed on the QNCR. In this way, the permittees that are complying with the requirements of an active enforcement order and any effective permit requirements can be reviewed separately from permittees that are not complying with their order/permit.

The Region/State must then separate the major permittees in each group into municipals, non-municipals, and federal facilities. The permittees must then be alphabetized within each of these subsets. In the case of two or more permittees with the same name, the permittees must be listed in ascending order by permit number. See the sample QNCRs in Appendix IV for an illustration of the order in which permittees must be listed.

2. Facility Level Data

a. Permittee Identification

When the order of the permittees has been established, the individual entries can be formatted. First, the facility name, location (city, township, or borough), and NPDES permit number must be specified. It is important that the NPDES permit number is used rather than a State-assigned facility identification number; this consistency nation-wide is necessary to obtain a uniform reference.

b. Optional Facility Data

It is often helpful to indicate facilities that have completed construction to meet the ultimate effluent limits in their permit and those that have completed construction using P.L. 92-500 grant funding. Regions/States may wish to identify these facilities with by an 'F' (for Final Effluent Limits) or 'S' respectively.

c. Facility Status

Each permittee listed on the QNCR should have an overall facility status related to it. This is determined by reviewing the status of the instances of noncompliance (see pages 1-15 and 1-25).

1. If any specific instances of noncompliance listed on the QNCR were reported as noncompliant (NC), the facility status would be "Noncompliant".
2. If none of the instances of noncompliance were reported as noncompliant, but the status of one or more instances of noncompliance were listed as resolved pending (RP),

the facility would be listed as "Resolved Pending," and it would be in the resolved pending section of the ONCR. As previously stated, this facility status indicates that the permittee is complying with an enforcement order requiring action to obtain compliance with permit conditions at a future date.

3. If all of the instances of noncompliance were reported as resolved (RE), the permittee facility status would be "Resolved," and the permittee could be dropped from subsequent ONCRs.

Example 1 below illustrates facility level data:

- Permittee Identification
  - Name
  - Location
  - NPDES permit number
- Optional Facility Data
  - Final Effluent Limits Indicator
  - Indicator for completion of construction using P.L. 92-500 grant funding
- Facility Status

EXAMPLE 1

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	GRANT	FACILITY STATUS
Smalltown STP Smalltown XX0000137	F	S	Noncompliant

2. Instance of Noncompliance Data

This level of information is described in detail in the Permit and Enforcement Order Format Sections. It includes

information on:

a. The instance of noncompliance and its date of occurrence;

b. The subparagraph of the regulation that best describes the instance of noncompliance;

c. Agency action in response to the noncompliance and the date of that action;

d. The status of the instance of noncompliance and the date of that status;

e. Any comments that explain, mitigate, or clarify the instance of noncompliance or the corrective actions taken by the permittee.

H. ABBREVIATIONS

Because the ONCR is a public document, it is important that the public be able to understand it. Therefore, entries should be as concise as possible, but still adequately convey the status of each listed facility. Abbreviations should be limited to those commonly used in the field of water pollution control. Regions/States are encouraged to attach a list of the abbreviations used on the ONCR; some acceptable abbreviations are listed in Appendix II.

III. VIOLATION OF PERMIT REQUIREMENTS

A. DETERMINING INSTANCES OF PERMIT NONCOMPLIANCE TO BE REPORTED

1. Effluent

Violations of permit effluent limitations are generally determined based on permittee performance over a two quarter period of time (the quarter for which the ONCR was prepared and the previous one). If required effluent data is not received prior to ONCR preparation, it is assumed compliant for effluent noncompliance determinations (noncompliant with reporting requirements). Once the data is received, the compliance status should be reevaluated.

a. Violation of Monthly Average Effluent Limits

A violation of any monthly average limitation should be evaluated for magnitude by comparing the measured value cited in the Discharge Monitoring Report (DMR) to the product of the limit specified in the permit times the Technical Review Criteria (TRC) for that pollutant (parameter). The value of the TRC to be used depends upon the parameter. TRC is 1.4 for Group I (conventional) pollutants and 1.2 for Group II (generally toxic) pollutants. The current listing of Group I and Group II pollutants can be found in Appendix III.

1) TRC Violations

A violation of a given Group I or Group II parameter at a given discharge point (pipe) that equals or exceeds the product of TRC times the limit for any two or more months during the two quarter review period is Category I noncompliance.

2) Chronic Violations

Violation of a given Group I or Group II parameter limit at a given pipe by <u>any</u> amount (not necessarily TRC times the limit or greater) for any four or more months during the two quarter review period is Category I non-compliance.

The two TRC or four chronic violations of a given parameter at a given pipe need not be violations of the same monthly average limit (i.e., concentration average or quantity average); they may be a combination of such violations (e.g., a TRC violation of TSS concentration average (mg/l) one month and a TRC violation of TSS quantity average (lb/day) another month). Percent removal, on the other hand, is evaluated separately; you would need two TRC violations of TSS percent removal or four violations (of any level) of TSS percent removal to have a Category I TSS violation. Calculation of TRC violations for percent removal is explained in Appendix V.

b. Violation of Other Limits

<u>Any</u> effluent violation that causes or has the potential to cause a water quality or health problem or that is of concern to the Director (i.e., NPDES State Agency Head or EPA Regional Administrator or designee) would be Category II (less readily quantified) noncompliance. This noncompliance may include single-event and short-term violations, violations of limits for parameters not identified as Group I or Group II (i.e., pH, color, temperature, dissolved oxygen, pathogenic

organisms, and fecal coliform), unauthorized bypass, unpermitted discharge, or pass-through of pollutants.

c. Intermittent Limits

Violation of intermittent limits (where the facility does not operate continually during the year) is evaluated for Category I noncompliance based on available data. If the monthly average measurements are insufficient for Category I noncompliance (e.g., one violation that exceeds the product of TRC times the limit and two violations less than TRC times the limit during a four month operation cycle) but are sufficient to cause concern, the Region/State may use its discretion to place the permittee in Category II noncompliance.

2. Schedule

Permit schedule milestones that are not achieved within 90 days of the scheduled date must be reported on the QNCR. This does not include violation of compliance schedule reporting requirements which are explained in the next section.

a. Failure to Start Construction, End Construction, or Attain Final Compliance within 90 days of the scheduled date is Category I noncompliance. Attain final compliance would include the final milestone in a compliance schedule; for pretreatment it would include the submittal of an approvable pretreatment program by a Publicly Owned Treatment Work (POTW).

b. Failure to achieve any other schedule milestone (other than a report) within 90 days of the scheduled date is

Category II noncompliance (i.e., less readily quantified since these milestones may vary from Region to Region and State to State). This includes all pretreatment milestones and events scheduled for major NPDES permittees except the submittal of an approvable pretreatment program by a POTW. Submittal of an approvable pretreatment program is considered equivalent to "Attain Final Compliance" and is therefore Category I.

3. Reporting

Reports that are required by the permit must be reported on the ONCR if they are 30 days or more overdue, incomplete or deficient (tracked at the facility, pipe, and pipe/parameter levels for Discharge Monitoring Reports - DMRs). Because self reporting is the basis of our compliance data, timely receipt of required reports cannot be overemphasized; this includes compliance schedule reports of progress. Even though failure to achieve required progress is not reportable for 90 days, notification of that progress/lack of progress is vital to EPA.

a. DMRs, Pretreatment Reports, and the Compliance Schedule Final Report of Progress (i.e., the final report indicating final compliance attained) that are submitted 30 or more days late are Category I noncompliance. Pretreatment reports include the POTW annual report and any other pretreatment report required of a major NPDES permittee.

b. Additional reports that are submitted 30 or more days late are Category II noncompliance (i.e., less readily quantified

since these reports may vary from Region to Region and State to State).

c. All reports (including DMRs, Pretreatment Reports, the Compliance Schedule Final Report of Progress, and any other reports) that are incomplete or deficient are Category II noncompliance.

1) Incomplete or deficient reports include reports that are missing required data and may include reports that contain administrative deficiencies such as unacceptable monitoring frequencies or sample types.

2) DMRs that contain all of the limited monthly average measurements and at least one measurement (e.g., daily maximum) for any required parameters that do not have monthly average limitations need not be considered incomplete. It is important that DMRs that are missing a required monthly average measurement are reported as incomplete since their effluent measurement is <u>assumed</u> compliant until proven otherwise.

4. <u>Other</u>

Other permit requirement violations must be reported on the ONCR as follows:

a. Failure of an approved POTW to implement its pretreatment program adequately or enforce industrial pretreatment requirements (e.g., failure to issue industrial user permits);

b. Violations of narrative requirements that are of concern to the Director (such as failure to develop Spill Prevention

Control and Countermeasure Plans or implement Best Management Practices);

c. Any other permit violation or group of violations that are of concern to the Director (such as failure to maintain required staffing or follow proper operation and maintenance procedures);

d. All of the above are Category II noncompliance since the violated requirements may vary drastically from Region to Region and State to State.

RESOLUTION OF REPORTED INSTANCES OF PERMIT NONCOMPLIANCE

Once an instance of permit noncompliance has been reported as noncompliant on the ONCR, it must be carried as noncompliant (NC) until resolution, as defined below, has been accomplished.

1. Resolution of permit effluent violations is accomplished through:
   a. Return to compliance with the effluent limitations in the PERMIT so that Category I or Category II criteria are not met or exceeded for six consecutive months (i.e., less than 2 TRC or 4 any level violations during the two quarter review period) or compliance was exhibited for the entire quarter for which the ONCR was prepared. Report as resolved (RE) and drop from future ONCRs.
   b. ISSUANCE OF an appropriate formal ENFORCEMENT ORDER with a compliance schedule. Report as resolved pending (RP) and continue to report on future ONCRs.
2. Resolution of permit schedule, reporting, or "other" violations is accomplished through:
   a. Return to compliance with the requirement in the PERMIT by achieving the scheduled milestone, submitting the required report or missing data, or fulfilling the narrative requirement for which the permittee was noncompliant. Report as resolved (RE) and drop from future ONCRs.
   b. ISSUANCE OF an appropriate formal ENFORCEMENT ORDER with a revised compliance schedule, or revised reporting or narrative requirements when necessary. Report as resolved pending (RP) and continue to report on future ONCRs.

FORMAT OF INSTANCES OF PERMIT NONCOMPLIANCE

Entries for instances of permit noncompliance should include the following:

- Instance of Noncompliance
  - Specifics of instance of noncompliance as outlined in subsections 1-4 to follow
  - Date of the instance of noncompliance
  - Citation of the subparagraph in the regulation that best describes the instance of noncompliance (cited here or in the Comments Section)
- Agency Action
  - Type of agency action in response to violation (e.g., phone call, warning letter, administrative order, or court order) and docket number, if appropriate
  - Agency that took the action (EPA or State)
  - Date the action was taken
- Status of the Instance of Noncompliance
  - Status
    - Noncompliant (NC)
    - Resolved Pending (RP)
    - Resolved (RE)
  - Status Date
    - Generally the last day of the quarter reported in the ONCR for a status of NC
    - Generally the date of issuance of the order for a status of RP
    - Generally the last day of the quarter in which the permittee no longer meets Category I or II ONCR effluent criteria or the date the schedule, reporting, or "other" requirement is fulfilled for a status of RE
- Comments
  - Cause of violation
  - Corrective actions taken by the facility
  - Projected date of compliance
  - Significant Noncompliance (SNC) indication (see Part 2 of this Guidance)

EXAMPLE 1

INSTANCE OF NONCOMPLIANCE/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Failed to submit DMR 123185	(ii)(D)	Warning Letter (State) 021286	RE 022386	City responded by sending DMR received 02238

1. Effluent

Instances of permit effluent noncompliance should be reported by:

- Violated parameter
- Violated pipe for permittees with multiple outfalls
- Date of the instance of noncompliance
- Subparagraph in regulation that best describes the instance of noncompliance (cited here or in Comment Section)

a. Violation of Monthly Average Effluent Limits

The date of noncompliance for violations of monthly average effluent limits can be given as month/year (e.g., 12/85) or as the last day of the month (e.g., 12/31/85).

Once a parameter meets TRC or chronic criteria at a given pipe, all violations of that parameter's monthly average limit at that pipe during the two quarter review period should be reported (see Examples 2 and 3 below). Violations that exceed the magnitude of TRC times the limit should be identified as TRC.

1) TRC Violations

Example 2

INSTANCE OF NONCOMPLIANCE	(OUTFALL)		/ DATE	SUBPARAGRAPH IN REGULATION
BOD, 5 day	(001)	TRC	123185	(ii)(C)
BOD, 5 day	(001)		113085	(ii)(C)
BOD, 5 day	(001)	TRC	103185	(ii)(C)

2) Chronic Violations

EXAMPLE 3

INSTANCE OF NONCOMPLIANCE	(OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
Oil & Grease	(002)	123185	(ii)(C)
Oil & Grease	(002) TRC	113085	(ii)(C)
Oil & Grease	(002)	103185	(ii)(C)
Oil & Grease	(002)	093085	(ii)(C)
Oil & Grease	(002)	083185	(ii)(C)

b. Violation of Other Limits

EXAMPLE 4

INSTANCE OF NONCOMPLIANCE	(OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
Cl		121785	(iii)(A)(1)
Cl		121585	(iii)(A)(1)

2. Compliance Schedule

Instances of permit compliance schedule noncompliance should be reported by:

- Unachieved milestone
- Date of the instance of noncompliance
  - The scheduled date is generally used - not the date 90 days after the scheduled date
- Subparagraph in regulation that best describes the instance of noncompliance (cited here or in Comment Section)

a. Failure to Start Construction, End Construction, or Attain Final Compliance

EXAMPLE 5

INSTANCE OF NONCOMPLIANCE	(OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
Failure to attain operational level		090185	(ii)(B)
Failure to submit an approvable pretreatment program		080185	(ii)(B)

b. Failure to Achieve Other Schedule Milestones

EXAMPLE 6

INSTANCE OF NONCOMPLIANCE	(OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
Failure to award contract		080185	(iii)(C)

3. Reporting

Instances of permit reporting noncompliance should be reported by:

- Missing/deficient report
- Portion of incomplete report
- Date of the instance of noncompliance
  - The due date is generally used for reports such as progress reports - not the date 30 days after the due date
  - The last day of the period covered is generally used for measurement reports such as DMRs
- Subparagraph in regulation that best describes the instance of noncompliance (cited here or in Comment Section)

a. Late DMRs, Pretreatment Reports, and the Compliance Schedule Final Report of Progress

EXAMPLE 7

INSTANCE OF NONCOMPLIANCE	(OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
Failure to submit final progress report of compliance		110185	(ii)(D)
Failure to submit November DMR	(002)	113085	(ii)(D)

b. Other Late Reports

EXAMPLE 8

INSTANCE OF NONCOMPLIANCE	(OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
Failure to submit third progress report		110185	(iii)(D)

c. Incomplete Reports

EXAMPLE 9

INSTANCE OF NONCOMPLIANCE	(OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
Failure to report Zn	(002)	123185	(iii)(F)

4. Other

Instances of other permit noncompliance should be reported by:

- Instance of noncompliance
- Date of the instance of noncompliance
- Subparagraph in regulation that best describes the instance of noncompliance (cited here or in Comment Section)

EXAMPLE 10

INSTANCE OF NONCOMPLIANCE	(OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
Inadequate BMP		120495	(iii)(F)

IV. VIOLATIONS OF ENFORCEMENT ORDER REQUIREMENTS

A. DETERMINING INSTANCES OF ENFORCEMENT ORDER NONCOMPLIANCE TO BE REPORTED

1. Effluent

Violations of enforcement order effluent limitations are generally determined based on permittee performance during the quarter cited on the ONCR. If required effluent data are not received prior to ONCR preparation, it is assumed compliant for effluent noncompliance determinations (noncompliant with reporting requirements). Once the data are received, the compliance status should be reevaluated.

To assure effective enforcement and environmental protection where orders must be written in cases requiring extended periods of time to meet final effluent limits, Regions/States should set interim effluent limits when schedules exceed six months duration. Regions can expect periodic Headquarters examination of Regional orders issued without interim limits to ascertain the appropriateness of the order. Likewise, States can expect periodic Regional checks of their orders.

In the absence of interim effluent limitations in an enforcement order, the parameters being addressed in the schedule need not be reported for permit effluent violations. They should, however, continue to be tracked for potential escalation of enforcement in case the permittee is not operating at constructed capability. Parameters not being addressed by the schedule should continue to be tracked against their permit limits using the permit effluent reporting criteria (see pages 1-9 through 1-11).

a. Violation of Monthly Average Effluent Limits

Any violation of a monthly average effluent limitation cited in an enforcement order (administrative or judicial) must be reported on the ONCR for the quarter in which the violation occurs and is Category I noncompliance. Category I noncompliance evaluations of enforcement order effluent limitations are based on the presence or absence of a violation during the quarter being reported on the ONCR. There is no need to figure out whether or not the measurement exceeded the product of TRC times the limit since <u>any</u> violation of the effluent limits is Category I noncompliance.

b. Violation of Other Limits

Any violation of an effluent limitation cited in an enforcement order that causes or has the potential to cause a water quality or health problem is Category I noncompliance. This noncompliance may include single-event and short-term violations, violations of limits for parameters not identified as Group I or Group II (i.e., pH, color, temperature, dissolved oxygen, pathogenic organisms, and fecal coliform).

c. There are no Category II violations of enforcement order effluent limitations.

2. <u>Schedule</u>

Category I and Category II violations of schedule milestones in an enforcement order are determined the same way as permit schedule violations.

CHAPTER VII. Program Reporting Requirements - Policies and Guidance

A. The Permit Compliance System (PCS) Policy

BACKGROUND

When the PCS Steering Committee met in March 1985, EPA Regional representatives stressed the essential need for a positive statement from EPA Headquarters management to Regional and State management specifically requiring the support and use of PCS. Lack of such support may result in an incomplete and unreliable data base. With sufficient EPA Headquarters, Regional, and State support, however, PCS will come to serve several major purposes for the NPDES program:

- PCS will provide the overall inventory for the NPDES program.
- PCS will provide data for responding to Congress and the public on the overall status of the NPDES program. As such, it will serve as a valuable tool for evaluating the effectiveness of the program and the need for any major policy changes.
- PCS will encourage a proper EPA/State oversight role by identifying all major permittee violators.
- PCS will offer all levels of government an operational and management tool for tracking permit issuance, compliance, and enforcement actions.

This PCS Policy Statement is a result of the Steering Committee meeting. It is a clear message to Regional and State management that PCS is the primary source of NPDES information, and as such, it is to be supported wholeheartedly by all users of PCS.

The PCS Steering Committee meeting also resulted in a redefinition of WENDB and ratification thereof. WENDB is the minimum standard of data entry which will allow PCS to function as a useful operational and management tool (see Attachments 1 and 2). EPA Regions agreed that all WENDB elements will be entered into PCS by September 30, 1986, and maintained regularly thereafter.

Once the required data are entered into and regularly maintained in PCS, PCS will assist permits and compliance personnel in many of their operational and management responsibilities. PCS will greatly reduce reporting burdens for such activities as the Strategic Planning and Management System (SPMS), and it will reduce efforts needed for effective compliance tracking at both Regional and State levels. Also, substantial automation of the Quarterly Noncompliance Report (QNCR) will save time and resources.

PERMIT COMPLIANCE SYSTEM POLICY STATEMENT
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

STATEMENT OF POLICY

It is EPA policy that the Permit Compliance System (PCS) shall be the national data base for the National Pollutant Discharge Elimination System (NPDES) program. All EPA Regions must use PCS directly, and all NPDES States must either use PCS directly or develop and maintain an interface.

As our primary data source, PCS will promote national consistency and uniformity in permit and compliance evaluation. To achieve national consistency and uniformity in the NPDES program, the required data in PCS must be complete and accurate. Facility, permits (i.e., events and limits), measurement, inspection, compliance schedule, and enforcement action data are required. These required data elements are further defined in Attachments 1 and 2. They comprise the Water Enforcement National Data Base (WENDB) which has been redefined as the core of information necessary to enable PCS to function as a useful operational and management tool and so that PCS can be used to conduct oversight of the effectiveness of the NPDES program.

All required data for NPDES and non-NPDES States must be entered into PCS by September 30, 1986 and maintained regularly thereafter. This will require Regions and States to start entering data as early as possible, and not wait until late FY 1986.

By the end of FY 1986, direct users of PCS shall establish, with Office of Water Enforcement and Permits (OWEP) assistance, a Quality Assurance program for data in PCS. The program shall define:

- monthly measurement of the level of data entered;
- appropriate time frames to ensure that data are entered in PCS in a timely manner; and
- nationally consistent standards of known data quality based on proven statistical methods of quality assurance. PCS Quality Assurance shall address the completeness (for assurance of full data entry) and accuracy of the data entered into PCS.

Adoption of PCS by States should be formalized in each State's §106 Program Plan, State/EPA Agreement, or in a separate agreement. Each plan should clearly define EPA's and the NPDES State's responsibilities regarding PCS. The Key Management Practices in this Policy Statement should be incorporated into the §106 Program Plan.

IMPLEMENTATION STRATEGY

Key Management Practices

To effectively implement and uphold this PCS Policy Statement and enhance PCS' capabilities, there are certain key management practices that must be implemented:

- The following milestones have been established to facilitate the entry of all required data by the end of FY 1986:

  - All required National Municipal Policy (NMP) data must be entered into PCS by October 31, 1985 (See Attachment 1).

  - All required data for non-NPDES States must be entered into PCS by March 31, 1986.

- NPDES permits shall be enforceable and tracked for compliance using PCS. The Office of Water Enforcement and Permits (OWEP) recognizes there may be situations where permit limits and monitoring conditions are not initially compatible with PCS data entry and tracking. In these cases, Regions should ensure that appropriate steps are taken by the permit writer to identify difficult permits to the PCS coder, and to mutually resolve any coding issues. The Regions should work closely with their NPDES States using PCS, to address similar data entry problems with State-issued NPDES permits.

- WENDB is the minimum standard of data entry for PCS (see the attached lists of data requirements). If States and Regions wish to enter NPDES data beyond what has been required, they may do so. For example, if States want to enter Discharge Monitoring Report (DMR) data for minor facilities, the option is available in PCS and the States' may use it as their resources allow. EPA will ensure that sufficient computer space is available for the currently projected use of PCS.

- All DMRs submitted to EPA Regional Offices (including DMRs submitted by NPDES States for EPA entry into PCS) must be preprinted using the Office of Management and Budget (OMB) approved DMR form. NPDES States directly using PCS are not required to use the OMB-approved form; however, its use is strongly encouraged. With the continuing demand for more complete information and with stable, if not diminishing, data entry resources, it is to EPA's and NPDES States' benefit to preprint DMRs. The use of preprinted DMRs will greatly reduce PCS' data entry burden, making available resources to be used in other areas (e.g., PCS quality assurance, data entry for other PCS records, etc.).

- The frequency with which DMRs are submitted to the EPA or NPDES State is important for ensuring timely entry of data into PCS and timely review of permittee's compliance status. Quarterly, semi-annual, or annual submission of DMRs creates a major data entry burden and impedes the compliance evaluation process. As a result, the usefulness of DMR data for compliance evaluation decreases substantially. Monthly submittal of DMRs alleviates this problem and enhances PCS' effectiveness significantly. It is recommended that monthly submittal of DMRs be incorporated into major permits as they are reissued. With approximately 20 percent of the permits reissued each year, it will take five years to complete the transition to monthly submittal for all major permittees.

- EPA Regions should coordinate with their respective States to develop strategies that describe each State's plans to either use PCS directly or develop an interface. These strategies should include the rationale for selecting one of these methods of data entry into PCS, an outline of all requirements necessary for implementing the selected method, the mechanisms to be used to supply sufficient resources, and a schedule for attainment not to exceed September 30, 1986. If a State is a current user of PCS via one of these methods, the strategy should describe its needs for enhancing its PCS usage or improving its PCS interface, the mechanisms to be used to supply sufficient resources, and a schedule for attainment not to exceed September 30, 1986.

- When writing or revising a Memorandum of Agreement (MOA), the Region and State should specify the State's intent to use or interface with PCS. The MOA should address the rationale for selecting one of these selected methods of data entry into PCS, an outline of all requirements necessary for implementing the selected method, the mechanisms to be used to supply sufficient resources, and a schedule for attainment.

Responsibilities

Office of Water Enforcement and Permits: It is OWEP's full responsibility to maintain the structure (i.e., the computer software) of PCS and to operate the system. OWEP will continue to support time-sharing funds needs, training, and the necessary resources to continue the operation of PCS. OWEP will work with the EPA Regions and NPDES States to continually evaluate and improve, where feasible, the system's software, time-share funding, operation, and maintenance. OWEP will maintain a Steering Committee and User Group, organize the national meetings, and work closely with the Regional and State representatives on major decisions related to PCS.

OWEP will oversee the Regions' and States' progress in fulfilling this policy statement by assessing the quantity of data entered each quarter.

EPA Regions and NPDES States: It is the EPA Regions' and NPDES States' full responsibility to maintain the infrastructure of PCS by accurately entering data in a timely manner. Also, EPA Regions and NPDES States are responsible for participating in PCS Workgroups and contributing to improvements to PCS.

Three National PCS meetings are held each year, one for the Steering Committee and two for the PCS Users Group. EPA Regions are expected to attend all three meetings. NPDES States directly using PCS are invited to attend the State portions of these meetings. More meetings may be scheduled during the year if necessary.

Since consistent and objective compliance tracking is a central component of an effective and credible enforcement program, NPDES States are strongly urged to use PCS directly. We realize, however, that there may be some cases where NPDES States cannot use PCS directly. In these instances, in accordance with §123.41 of the regulations, EPA requests from the States all required information (as indicated in the attachments) for entry into PCS. This can be achieved one of two ways:

- A State Automated Data Processing (ADP) interface can be developed. It is the EPA Region's responsibility to work with the NPDES State to develop an effective State ADP interface. The State, however, should take the lead in developing the interface and work closely with the Region to ensure the interface is effective. It should be realized that system interfaces are often troublesome and unwieldy; they are often ineffective and limit the States' flexibility to change their systems quickly to meet management needs. In the event a State ADP interface is developed, there must be formal agreement that the State will operate the interface, maintain the interface software, and be fully responsible for making any changes to the interface based on changes made to its automated data base. This will ensure that the NPDES State will be held responsible for system compatibility. If the State does not accept full responsibility with system compatibility, then changes must not be made to the State system without the prior knowledge of EPA. The State is responsible for ensuring that the data are transferred to PCS in a timely manner, accurately, and completely. Interfaces must be developed and maintained so that they operate with maximum efficiency all of the time.

- OWEP recognizes that FY 1986 will be a transition year for PCS. NPDES States will begin using PCS or will develop interfaces. In the event that neither of these alternatives is accomplished by the end of FY 1986, in accordance with the FY 1986 Guidance for the Oversight of NPDES Programs, the State will be responsible for submitting all required information (as indicated in the attachments) in hard copy format. The data must be submitted either already

coded onto PCS coding sheets or in a format that can be readily transferred onto PCS coding sheets. Also, the data must be submitted at regular intervals to ensure timely entry into PCS. Once the data are received by EPA, it is the EPA Region's responsibility to enter the data into PCS in a timely manner.

Funding

- §106 grant funds may be used for interface software development. However, they cannot be used for maintenance of the interface software for State-initiated changes to a State ADP system or for the operation and maintenance of a separate State ADP system.

- §106 grant funds may be used for State data entry if and only if the State uses PCS directly or the State provides data to PCS via an interface that meets the standards of this policy.

- If requested by a State, EPA will agree to pay for its time-sharing costs to implement this policy, within given resources.

- Headquarters will continue to pursue alternative methods of reducing the data entry burden on Regions and States.

10/31/85
Date

Lawrence J. Jensen
Assistant Administrator for Water

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

OCT 31 1985

OFFICE OF WATER

MEMORANDUM

SUBJECT: Permit Compliance System (PCS) Policy Statement

FROM: Lawrence J. Jensen
Assistant Administrator for Water (WH-556)

TO: Regional Water Management Division Directors
Regions I - X

I am pleased to issue the attached policy statement on the Permit Compliance System (PCS). This policy statement represents an important step in the continuing effort to support a reliable and effective automated information system for the National Pollutant Discharge Elimination System (NPDES) program.

PCS is the national data base for the NPDES program. It serves as the primary source of NPDES information for EPA, NPDES States, Congress, and the public. The use and support of PCS by EPA Regions and NPDES States are crucial to the effectiveness and proper oversight of the NPDES program. This policy statement establishes for EPA and NPDES States the key management practices and responsibilities central to PCS' ability to contribute to the overall integrity of the NPDES program and the achievement of our long-term environmental goals. One of the requirements is to have Regions and States enter all required data into PCS by September 30, 1986 (see Attachment 1 of the PCS Policy Statement). While the aim of the policy is a consistent approach across Regional and State NPDES programs, it retains flexibility for Regions and States to tailor agreements to the unique conditions of each State.

The PCS Policy Statement is effective immediately. The Office of Water Enforcement and Permits will monitor implementation of the policy statement and issue special instructions as necessary. Regional Water Management Division Directors and their State counterparts are responsible for ensuring that their staffs receive sufficient support to apply the principles of the policy to their PCS activities.

I look forward to a strong commitment to this policy statement by EPA and State NPDES programs. You can be assured of my full support as EPA and the States move forward with its implementation.

Attachments

cc: Administrator
Deputy Administrator
State Directors
PCS Steering Committee
PCS Users Group

ATTACHMENT 1

REQUIRED DATA TO BE ENTERED INTO PCS

Information Type[1]	Majors	Minor 92-500s	Other Minors
Permit Facility Data	X	X	X
Permit Event Data	X	X	X
Inspection Data	X	X	X
Parameter Limits and Pipe Schedule Data	X		
Compliance Schedule Data	X	X	
DMR Measurement Data	X		
Significant Noncompliance Flag		X	
Enforcement Action Data (Enforcement Action Data, Compliance Schedule Data, and Interim Limits Data from all active formal enforcement actions)	X		
Enforcement Action Data (Type Action, ENAC; Issue Date, ENDT; and Date Compliance Required, ERDT; from all active formal enforcement actions)		X	
Pretreatment Approval[2]	X	X	X
National Municipal Policy Data[3]	X	X	X

[1]For each of the categories listed in this chart, the Information Type is the set of core data elements listed in Attachment 2.

[2]Pretreatment Program Required Indicator, PRET; one data element.

[3]All required data as described in May 16, 1985 memorandum on National Municipal Policy Tracking in PCS. This includes Facility User Data Element 6 (RDF6), Compliance Schedule and Enforcement Action information.

ATTACHMENT 2

WATER ENFORCEMENT NATIONAL DATA BASE (WENDB) ELEMENTS

Data Element Name	Acronym
COMMON KEY	
NPDES Number	NPID
COMPLIANCE SCHEDULE RECORD	
Compliance Schedule Number	CSCH
Data Source Code	DSCD
Compliance Actual Date	DTAC
Compliance Report Received Date	DTRC
Compliance Schedule Date	DTSC
Compliance Schedule Event Code	EVNT
COMPLIANCE VIOLATION RECORD	
*Compliance Violation Date	CVDT
*Violation Compliance Event Code	CVEV
*Compliance Violation Code	CVIO
*Significant Non-Compliance Code (Compliance)	SNCC
*Significant Non-Compliance Date (Compliance)	SNDC
*Violation Compliance Schedule Number	VCSN
*Violation Data Source Code	VDCD
ENFORCEMENT ACTION RECORD	
Enforcement Action Response Achieved Date	EADR
Enforcement Action Comment Line 1	ECM1
Enforcement Action Comment Line 2	ECM2
Enforcement Action Comment Line 3	ECM3
Enforcement Action Comment Line 4	ECM4
Enforcement Action Comment Line 5	ECM5
Enforcement Action Compliance Violation Code	ECVC
Enforcement Action Compliance Violation Date	ECVD
Enforcement Action Modification Number	EMOD
Enforcement Action Code	ENAC
Enforcement Action Date	ENDT
Enforcement Action Status Code	ENST
Enforcement Action Response Due Date	ERDT
Enforcement Action Status Date	ESDT
Enforcement Action Season Number	ESEA
Enforcement Action Source Code	EVCD
Enforcement Action Discharge Number	EVDS

* Usually generated by PCS; can be manually entered.

WENDB ELEMENTS
(Continued)

Data Element Name	Acronym
Enforcement Action Event Code	EVEV
Enforcement Action Limit Type-Alphabetic	EVLM
Enforcement Action Monitoring Date	EVMD
Enforcement Action Monitoring Location	EVML
Enforcement Action STORET Parameter Code	EVPR
Enforcement Action Discharge Designator	EVRD
Enforcement Action Compliance Schedule	EVSN
Enforcement Action Violation Type	EVTP
EVIDENTIARY HEARING RECORD	
Evidentiary Hearing Event Date	EHDT
Evidentiary Hearing Event Code	EHEV
INSPECTION RECORD	
Inspection Date	DTIN
Inspector Code	INSP
Inspection Type	TYPI
MEASUREMENT VIOLATION RECORD	
Measurement Concentration Average	MCAV
Measurement Concentration Minimum	MCMN
Measurement Concentration Maximum	MCMX
Measurement Quantity Average	MQAV
Measurement Quantity Maximum	MQMX
Violation Date (Measurement)	MVDT
No Discharge Indicator	NODI
*Significant Non-Compliance Code (Measurement)	SNCE
*Significant Non-Compliance Date (Measurement)	SNDE
Violation Measurement Designator	VDRD
Measurement Discharge Number	VDSC
Violation Monitoring Location	VMLO
Violation STORET Parameter	VPRM
PARAMETER LIMITS RECORD	
Change of Limit Status	COLS
Contested Parameter Indicator	CONP
Modification Period End Date	ELED
Modification Period Start Date	ELSD
Concentration Average Limit	LCAV
Concentration Minimum Limit	LCMN
Concentration Maximum Limit	LCMX
Concentration Unit Code	LCUC
Quantity Average Limit	LQAV

WENDB ELEMENTS
(Continued)

Data Element Name	Acronym
Pipe Inactive Code	PIAC
Report Units	REUN
Initial Report Date	STRP
Initial Submission Date - State	STSS
Initial Submission Date - EPA	STSU
Submission Unit - EPA	SUUN
Submission Unit - State	SUUS

NOTE: Additional data elements subject to approval:

Frequency of Analysis	FRAN
Sample Type	SAMP
Compliance Schedule File Number	CSFN
Enforcement Action File Number	ERFN
Permit Limits File Number	LSFN
Inspection Comments (First Three Characters for the Number of Industrial Users Inspected)	ICOM
Facility Inactive Date	IADD
Reissuance Control Indicator	RCIN
Pipe Inactive Date	PIDT

Total:	111	WENDB elements
plus additional data elements:	+ 9	data elements
New total:	120	WENDB elements

APPENDIX IV

SCENARIO 1

B/R-46/88

MUNICIPALS

QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

October through December 1985

FACILITY NAME — FACILITY STATUS
LOCATION
NPDES PERMIT # — FINAL LIMITS — GRANT

INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Alpha STP Anyville XX0000398	Noncompliant				
All effluent	(001)		NOV (EPA) 111585		Operational problems with trickling filter. Expect compliance next quarter. (SNC)
BOD,5 day	(001) 113085	(ii)(C)		NC 123185	
TSS	(001) 113085	(ii)(C)		NC 123185	
BOD,5 day	(001) TRC 103185	(ii)(C)		NC 123185	
TSS	(001) TRC 103185	(ii)(C)		NC 123185	
BOD,5 day	(001) TRC 093085	(ii)(C)		NC 123185	
TSS	(001) TRC 093085	(ii)(C)		NC 123185	
BOD,5 day	(001) 083185	(ii)(C)		NC 123185	
TSS	(001) 083185	(ii)(C)		NC 123185	

U/R-46/88

MUNICIPALS

QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

January through March 1986

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Alpha STP Anyville XX0000398	Resolved				
All effluent	(001)		NOV (EPA) 111585		Operational problems with trickling filter corrected.
BOD,5 day	(001) 113085	(ii)(C)		RE 033186	
TSS	(001) 113085	(ii)(C)		RE 033186	
BOD,5 day	(001) TRC 103185	(ii)(C)		RE 033186	
TSS	(001) TRC 103185	(ii)(C)		RE 033186	
BOD,5 day	(001) TRC 093085	(ii)(C)		RE 033186	
TSS	(001) TRC 093085	(ii)(C)		RE 033186	
BOD,5 day	(001) 083185	(ii)(C)		RE 033186	
TSS	(001) 083185	(ii)(C)		RE 033186	

ONCR SCENARIO 1

NARRATIVE

1st Quarter: October - December 1985

The Alpha Sewage Treatment Plant (STP) experienced operational problems with its trickling filter. These problems resulted in violations of its NPDES permit limits for BOD and TSS the four months of August through November 1985. The violations met TRC for two of these months. EPA inspected the facility and determined that the operations problems were being corrected. There were no violations in the last month of the reporting period and EPA expected full compliance the following quarter. The facility was reported as noncompliant for this period.

2nd Quarter: January - March 1986

The Alpha STP corrected the operational problems with its trickling filter and was in compliance with its permit limits all three months of this quarter. It appears on the ONCR as Resolved.

SCENARIO 2

C/R #9

MUNICIPALS

QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

October through December 1985

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Alpha STP Anyville XX0000398	Resolved Pending				
All effluent	(001)		AO# 85-21 (EPA) 111585		Order includes compliance schedule for repair/ construction with interim limits for BOD and TSS.
BOD, 5 day	(001) 113085	(ii)(C)		RP 111585	
TSS	(001) 113005	(ii)(C)		RP 111585	
BOD, 5 day	(001) TRC 103185	(ii)(C)		RP 111585	
TSS	(001) TRC 103185	(ii)(C)		RP 111585	
BOD, 5 day	(001) TRC 093085	(ii)(C)		RP 111585	
TSS	(001) TRC 093085	(ii)(C)		RP 111585	
BOD, 5 day	(001) 083185	(ii)(C)		RP 111585	
TSS	(001) 083185	(ii)(C)		RP 111585	

MUNICI[illegible]S

QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

January through March 1986

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Alpha STP Anyville XX0000398	Noncompliant				
AO# 85-21			Warning L. (EPA) 040186		
BOD,5 day	(001) 022886	(ii)(A)		NC 033186	Minor violations of interim limits
TSS	(001) 022886	(ii)(A)		NC 033186	
BOD,5 day	(001) 013186	(ii)(A)		NC 033186	
TSS	(001) 013186	(ii)(A)		NC 033186	
All effluent	(001)		AO# 85-21 (EPA) 111585		Order includes compliance schedule for repair/ construction
BOD,5 day	(001) 113085	(ii)(C)		RP 111585	
TSS	(001) 113085	(ii)(C)		RP 111585	
BOD,5 day	(001) TRC 103185	(ii)(C)		RP 111585	
TSS	(001) TRC 103185	(ii)(C)		RP 111585	
BOD,5 day	(001) TRC 093085	(ii)(C)		RP 111585	
TSS	(001) TRC 093085	(ii)(C)		RP 111585	
BOD,5 day	(001) 083185	(ii)(C)		RP 111585	
TSS	(001) 083185	(ii)(C)		RP 111585	

MUNICIPALS

QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

April through June 1986

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENT
	Resolved Pending				
Anyville XX0000398					Compliance with interim limits attained
AO# 85-21					
BOD,5 day	(001) 022886	(11)(A)	Warning L. (EPA) 040186		
TSS	(001) 022886	(11)(A)		RP 063086	
BOD,5 day	(001) 013186	(11)(A)		RP 063086	
TSS	(001) 013186	(11)(A)		RP 063086	
				RP 063086	
All effluent	(001)		AO# 85-21 (EPA) 111585		Order includes compliance schedule for repair/ construction
BOD,5 day	(001) 113085	(11)(C)			
TSS	(001) 113085	(11)(C)		RP 111585	
BOD,5 day	(001) TRC 103185	(11)(C)		RP 111585	
TSS	(001) TRC 103185	(11)(C)		RP 111585	
BOD,5 day	(001) TRC 091085	(11)(C)		RP 111585	
TSS	(001) TRC 091085	(11)(C)		RP 111585	
BOD,5 day	(001) 083185	(11)(C)		RP 111585	
TSS	(001) 083185	(11)(C)		RP 111585	
				RP 111585	

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MUNICIPALS

QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

July through September 1986

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Alpha STP Anyville XX0000398	Noncompliant				
AO# 85-21 Failure to Complete Construction	053186 (11)(B)			NC 093086	
AO# 85-21			Warning L. (EPA) 040186		
BOD, 5 day	(001) 022886	(11)(A)		RP 063086	
TSS	(001) 022986	(11)(A)		RP 063086	
BOD, 5 day	(001) 013186	(11)(A)		RP 063086	
TSS	(001) 013186	(11)(A)		RP 063086	
All effluent	(001)		AO# 85-21 (EPA) 111585		Order includes compliance schedule for repair/ construction
BOD, 5 day	(001) 113085	(11)(C)		RP 111585	
TSS	(001) 113085	(11)(C)		RP 111585	
BOD, 5 day	(001) IRC 103185	(11)(C)		RP 111585	
TSS	(001) IRC 103185	(11)(C)		RP 111585	
BOD, 5 day	(001) IRC 093085	(11)(C)		RP 111585	
TSS	(001) IRC 093185	(11)(C)		RP 111585	
BOD, 5 day	(001) 083185	(11)(C)		RP 111585	
TSS	(001) 083185	(11)(C)		RP 111585	

MUNICIPALS

QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

October through December 1986

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Alpha STP Anyville XX0000398	Resolved				
AO# 85-21 Failure to Complete Construction	053186	(11)(B)		RE 121486	Construction completed 103086. AO# 85-21 closed out 121486.
AO# 85-21			Warning L. (EPA) 040186		AO Closed-out 121486
BOD,5 day	(001) 022886	(11)(A)		RE 121486	
TSS	(001) 022886	(11)(A)		RE 121486	
BOD,5 day	(001) 013186	(11)(A)		RE 121486	
TSS	(001) 013186	(11)(A)		RE 121486	
All effluent	(001)		AO# 85-21 (EPA) 111585		Order includes compliance schedule for repair/ construction
BOD,5 day	(001) 113085	(11)(C)		RE 121486	
TSS	(001) 113085	(11)(C)		RE 121486	
BOD,5 day	(001) TRC 103185	(11)(C)		RE 121486	
TSS	(001) TRC 103185	(11)(C)		RE 121486	
BOD,5 day	(001) TRC 093085	(11)(C)		RE 121486	
TSS	(001) TRC 093085	(11)(C)		RE 121486	
BOD,5 day	(001) 083185	(11)(C)		RE 121486	
TSS	(001) 083185	(11)(C)		RE 121486	

a. Failure to Start Construction, End Construction, or Attain Final Compliance within 90 days of the scheduled date is Category I noncompliance. Attain final compliance would include the final milestone in a compliance schedule; for pretreatment it would include the submittal of an approvable pretreatment program by a POTW.

b. Failure to achieve any other schedule milestone (other than a report) within 90 days of the scheduled date is Category II noncompliance. This includes all pretreatment milestones and events scheduled for major NPDES permittees except the submittal of an approvable pretreatment program by a POTW. Submittal of an approvable pretreatment program is considered equivalent to "Attain Final Compliance" and is therefore Category I.

3. Reporting

Category I and Category II violations of reporting requirements in an enforcement order are determined the same way as permit reporting violations.

a. DMRs, Pretreatment Reports, and the Compliance Schedule Final Report of Progress (i.e., attain final compliance) that are submitted 30 or more days late are Category I noncompliance. Pretreatment reports include the POTW annual report and any other pretreatment report required of a major NPDES permittee.

b. Additional reports that are submitted 30 days or more late are Category II noncompliance.

c. All reports (including DMRs, Pretreatment Reports, the Compliance Schedule Final Report of Progress, and any other reports) that are incomplete or deficient are Category II noncompliance.

4. Other

Any violation of an enforcement order requirement other than an effluent, schedule, or reporting requirement must be reported on the ONCR as Category I noncompliance.

a. These violations would include failure to pay stipulated penalties, maintain required staffing or follow prescribed operation and maintenance procedures.

b. There is no Category II noncompliance with "other" enforcement order requirements.

RESOLUTION OF REPORTED INSTANCES OF ENFORCEMENT ORDER NONCOMPLIANCE

Once an instance of enforcement order noncompliance has been reported as noncompliant on the ONCR, it must be carried as noncompliant (NC) until resolution, as defined below, has been accomplished.

1. Resolution of enforcement order effluent violations is accomplished through:
   a. Return to compliance with the effluent limitations in an ENFORCEMENT ORDER so that Category I criterion (i.e., any violation) is not met for one complete quarter. Report as resolved pending (RP) and continue to report on future ONCRs.
   b. ISSUANCE OF an appropriate formal ENFORCEMENT ORDER with a compliance schedule. Report as resolved pending (RP) and continue to report on future ONCRs.
   c. Completion of the requirements of the enforcement order resulting in return to compliance with the permit and subsequent CLOSE-OUT of the order. Report as resolved (RE) and drop from future ONCRs.
2. Resolution of enforcement order schedule, reporting, or "other" violations is accomplished through:
   a. Return to compliance with the requirement in the ENFORCEMENT ORDER by achieving the scheduled milestone, submitting the required report or missing data, or fulfilling the narrative requirement for which the permittee was noncompliant. Report as resolved pending (RP) and continue to report on future ONCRs.

b. ISSUANCE OF an appropriate formal ENFORCEMENT ORDER with a revised compliance schedule, or revised reporting or narrative requirements when necessary. Report as resolved pending (RP) and continue to report on future ONCRs.

c. Completion of the requirements of the enforcement order resulting in return to compliance with the permit and subsequent CLOSE-OUT of the order. Report as resolved (RE) and drop from future ONCRs.

FORMAT OF INSTANCES OF ENFORCEMENT ORDER NONCOMPLIANCE

Entries for instances of enforcement order noncompliance should include the following:

- Instance of Noncompliance
  - Specifics of instance of noncompliance as outlined in subsections 1-4 to follow
  - Docket number of the violated order or other identification (such as date of issuance) if there is docket number
  - Date of the instance of noncompliance
  - Citation of the subparagraph in the regulation that best describes the instance of noncompliance (cited here or in the Comments Section)
- Agency Action
  - Type of agency action in response to violation (e.g., warning letter, administrative order, court order, or collection of stipulated penalties) and docket number, if appropriate
  - Agency that took the action (EPA or State)
  - Date the action was taken

- Status of the Instance of Noncompliance

  - Status
    - Noncompliant (NC)
    - Resolved Pending (RP)
    - Resolved (RE)

  - Status Date
    - Generally the last day of the quarter reported in the QNCR for a status of NC
    - Generally the date of issuance of the order for a status of RP due to order issuance
    - Generally the last day of the quarter in which the permittee no longer meets the Category I QNCR effluent criterion (i.e., the permittee is compliant for the entire quarter) or the date the schedule, reporting, or "other" requirement is fulfilled for a status of RP due to compliance with the violated order
    - Generally the date of order close-out for a status of RE

- Comments

  - Cause of violation

  - Corrective actions taken by the facility

  - Projected date of compliance

  - Significant Noncompliance (SNC) indication (see Part 2 of this Guidance)

EXAMPLE 1

INSTANCE OF NONCOMPLIANCE/DATE		SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
AO#86-01 TSS	123185	(ii)(A)	Warning Letter (State) 021286	NC 123185	Violation was marginal; compliance expected for next quarter

1. Effluent

Instances of enforcement order effluent noncompliance should be reported by:

- Violated parameter
- Violated pipe for permittees with multiple outfalls
- Docket number of violated order or other identification (such as date of issuance) if there is no docket number
- Date of the instance of noncompliance
- Subparagraph in regulation that best describes the instance of noncompliance (cited here or in Comment Section)

a. Violation of Monthly Average Effluent Limits

The date of noncompliance for violations of monthly average effluent limits can be given as month/year (e.g., 12/85) or as the last day of the month (e.g., 12/31/85). All violations of monthly average limits in the enforcement order during the quarter being reported must be listed.

Example 2

INSTANCE OF NONCOMPLIANCE	(OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
AO#86-01			
TSS		123185	ii)(a)

b. Violation of Other Limits

EXAMPLE 3

INSTANCE OF NONCOMPLIANCE	(OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
AO#86-02			
Cl	(001)	121785	(ii)(A)
Cl	(001)	121585	(ii)(A)

APPENDIX II

ABBREVIATIONS FREQUENCLY USED IN THE FIELD OF WATER POLLUTION CONTROL

ADM - Administrative

ADP - Automated Data Processing

AG - Attorney General

AO - Administrative Order

AOL - Attain Operational Level

AT - Advanced Treatment

AWT - Advanced Water Treatment

BAT - Best Available Technology

BCT - Best Conventional Technology

BCCT - Best Conventional Control Technology

BIO - See CBI

BEJ - Best Engineering Judgement

BPJ - Best Professional Judgement

BPT - Best Practical Treatment

CBI or BIO - Compliance Biomonitoring Inspection (Incl. CEI)

CCP - Composite Correction Plan

CD - Consent Decree

CDO - Cease and Desist Order

CEI - Compliance Evaluation Inspection

CERCLA - Consolidated Environmental Response, Compensation and Liability Act

CFR - Code of Federal Regulations

CHR - Chronic

CLN - Common Law of Nuisance

CS - Construction Schedule

CSI - Compliance Sampling Inspection

CSI-T - Compliance Sampling Inspection - Toxics

CSO - Combined Sewer Overflow

CWA - Clean Water Act

DI or DIAG - Diagnostic Inspection

DIS - Discretionary

DMR - Discharge Monitoring Report

DOJ - Department of Justice (US)

EPA - Environmental Protection Agency

F or FEL - Final Effluent Limits

FDF - Fundamentally Different Factor

FEL - Final Effluent Limits

FFCA - Federal Facility Compliance Agreement

GROUP I POLLUTANTS - Inorganic and Oxygen Demanding

GROUP II POLLUTANTS - Toxics

IAG - Interagency Agreement

IEL - Interim Effluent Limits

I/I - Infiltration and Inflow

INT - Interim Effluent Limits

L1, L2 - Letter (First), Second Letter

LOV - Letter of Violation

LSI - Legal Support Inspection

MCP - Municipal Compliance Plan

MPRSA - Marine Protection, Research, and Sanctuaries Act

NC - Noncompliance

NCR - Noncompliance Report

NEIC - National Enforcement Investigations Center

NOV - Notice of Violation

NPDES - National Pollutant Discharge Elimination System

NPL - National Priority List

NPS - Non Point Source

ODC - Other Direct Charges

OGC - Office of General Council

OIG - Office of Inspector General

O&M - Operations and Maintenance/Management

PAI - Performance Audit Inspection

PC - Phone Call

PCS - Permit Compliance System

POTW - Publicly Owned Treatment Works

P & S - Plans and Specifications

QNCR - Quarterly Noncompliance Report

RCRA - Resource Conservation and Recovery Act

RE - Resolved

RHFA - Rivers and Harbors Act

RI - Reconnaissance Inspection

RP - Resolved Pending

RPT - Report

SAG - State Attorney General

SCH - Schedule

SCO - Show Cause Order

SDWA - Safe Drinking Water Act

SNC - Significant Noncompliance

SPCC - Spill Prevention Control and Countermeasures

ST - State

STP - Sewage Treatment Plant

TA - Technical Assistance

TF - Trickling Filter

TOX SAMP or TOX - See XSI

TRC - Technical Review Criteria

WAS - Waste Activated Sludge

WLA - Waste Load Allocation

WQM - Water Quality Management

WWTF - Wastewater Treatment Facility

WWTP - Wastewater Treatment Plant

XSI or TOX SAMP or TOX - Toxics Sampling Inspection

S - Facility Constructed with P.L. 92-500 Grant Funds

Standard abbreviations for parameters and measurements (e.g., BOD_5, TSS, mg/l, ppm, MGD) are all acceptable.

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME	STORET CLASS	TRC CLASS
72108	% OF TIME EXCEEDING PH LIMITS	17	
39337	A-BHC-ALPHA	11	2
34361	A-ENDOSULFAN-ALPHA	11	2
77856	ABIETIC ACID WHOLE WATER UG	07	2
34205	ACENAPHTHENE	07	2
34208	ACENAPHTHENE,SED UG/KG DRY WGT	07	2
34200	ACENAPHTHYLENE	07	2
00697	ACETIC ACID	07	2
81552	ACETONE	07	2
79539	ACETONE IN WASTE	07	2
81553	ACETOPHENONE	07	2
32020	ACID COMPOUNDS	07	2
82206	ACIDITY	13	1
00437	ACIDITY, CO2 PHENOL (AS CACO3)	06	1
00436	ACIDITY, MINERAL METHYL ORANGE, AS CACO3	06	1
00435	ACIDITY, TOTAL (AS CACO3)	06	1
00700	ACIDS,TOTAL VOLATILE (AS ACETIC ACID)	07	2
34210	ACROLEIN	11	2
32252	ACRYLIC POLYMER IN DRILLING FLUIDS	07	
34215	ACRYLONITRILE	07	2
TB1CA	ACUTE LC 50 FTHD MINNOW FL-THRU DEFN		2
TA1CA	ACUTE LC 50 FTHD MINNOW STATIC DEFN		2
TB1AA	ACUTE LC 50 MYCD SHRIMP FL-THRU DEFN		2
TA1AA	ACUTE LC 50 MYCD SHRIMP STATIC DEFN		2
TB1BA	ACUTE LC 50 SHEE MINNOW FL-THRU DEFN		2
TA1BA	ACUTE LC 50 SHEE MINNOW STATIC DEFN		2
39053	ALDICARB	11	2
39330	ALDRIN	11	2
78216	ALDRIN + DIELDRIN	11	2
01325	ALGAE, FLOATING MATS(SEVERITY)	13	
60050	ALGAE, TOTAL (CELLS/ML)	03	
82215	ALGAL, BIOMASS PERCENT	03	
74051	ALGICIDES, GENERAL	01	1
00425	ALKALINITY, BICARBO-NATE (MG/L AS CACO3)	06	1
00430	ALKALINITY, CARBO- NATE (MG/L AS C	06	1
00415	ALKALINITY, PHENOL- PHTHALINE METHOD	06	1
00410	ALKALINITY, TOTAL (AS CACO3)	06	1
45130	ALKYL BENZENE SULFONATED (ABS	07	2
80000	ALPHA ACTIVITY PICOCURIES/MG	14	2
00149	ALPHA EMITTING RADI-UM ISOTOPES, DISSOL.	14	2
80029	ALPHA GROSS RADIOACTIVITY	14	2
80045	ALPHA, GROSS PARTICULE ACTIVTY	14	
01501	ALPHA, TOTAL	14	2
01502	ALPHA, TOTAL, COUNTING ERROR	14	2
01251	ALUMINUM	08	1
32253	ALUMINUM STEARATE WAT SOL IN DRIL	07	
82392	ALUMINUM SULFATE	06	1
01106	ALUMINUM, DISSOLVED (AS AL)	08	1
01109	ALUMINUM, IONIC	08	1
01105	ALUMINUM, TOTAL (AS AL)	08	1

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME	STORET CLASS	TRC CLASS
82056	ALUMINUM, TOTAL KG/BATCH	08	1
82051	AMIBEN (CHLORAMBEN)	11	2
78146	AMINOTROL - METHYLENE PHOSPHATE	07	2
61574	AMMONIA (AS N) + UNIONIZED AMMON	09	1
82230	AMMONIA & AMMONIUM- TOTAL	06	1
00619	AMMONIA, UNIONIZED	07	1
77089	ANILINE WHOLE WATER, UG	07	2
34220	ANTHRACENE	07	2
01095	ANTIMONY, DISSOLVED (AS SB)	08	2
01097	ANTIMONY, TOTAL (AS SB)	08	2
01284	APPLICATION DAILY SPRAY IRRIGATION	13	
01285	APPLICATION MONTHLY SPRAY IRRIGATION	13	
01286	APPLICATION PERIOD SPRAY IRRIGATION	17	
01287	APPLICATION WEEKLY SPRAY IRRIGATION	17	
84107	AREA INSPECTION VISUAL	13	
82223	AREA OF DISPOSAL- USED	17	
01252	ARSENIC	08	2
01000	ARSENIC, DISSOLVED (AS AS)	08	2
01002	ARSENIC, TOTAL (AS AS)	08	2
00978	ARSENIC, TOTAL RECOVERABLE	08	2
00948	ASBESTOS	06	2
34225	ASBESTOS (FIBROUS)	06	2
39033	ATRAZINE	11	2
00959	ATTAPULGITE IN DRILLING FLUIDS	06	
77625	AZOBENZENE	07	2
39338	B-BHC-BETA	11	2
34356	B-ENDOSULFAN-BETA	11	2
39002	BALAN (BENEFIN)	11	2
81394	BALLAST WATER FLOW	05	
00960	BARITE IN DRILLING FLUIDS	06	
01005	BARIUM, DISSOLVED (AS BA)	08	2
01007	BARIUM, TOTAL (AS BA)	08	2
00563	BAROID NOS. 2,4,5,6 DMCO NO. 1,2,3,6 GPD	07	
00562	BAROID NOS. 3,7 GPD	07	
32015	BASE/NEUTRAL COMPOUNDS	07	2
01302	BAYER 73 LAMPREYCIDEIN WATER, MG/L	07	2
38710	BENTAZON, TOTAL	11	2
00961	BENTONITE IN DRILLING FLUIDS	06	
34030	BENZENE	07	2
82183	BENZENE HEXACHLORIDE	11	2
39120	BENZIDINE	07	2
77247	BENZIOC ACIDS-TOTAL	07	2
45364	BENZISOTHIAZOLE	07	2
34526	BENZO(A)ANTHRACENE	07	2
34247	BENZO(A)PYRENE	07	2
34230	BENZO(B)FLUORANTHENE (3,4-BENZO)	07	2
34521	BENZO(GHI)PERYLENE	07	2
34242	BENZO(K)FLUORANTHENE	07	2
32251	BENZOFURAN	07	2
00998	BERYLIUM	08	2

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME	STORET CLASS	TRC CLASS
01010	BERYLLIUM, DISSOLVED (AS BE)	08	2
01012	BERYLLIUM, TOTAL (AS BE)	08	2
03501	BETA, TOTAL	14	2
03502	BETA, TOTAL, COUNTING ERROR	14	2
82197	BETASAN(N-2-MERCAPTOETHYLBENZENESULFAMID	11	2
00440	BICARBONATE ION- (AS HCO3)	06	1
00320	BIO OXYGEN DEMAND (MG/L ULT 1ST S	10	1
00321	BIO OXYGEN DEMAND (MG/L ULT 2ND S	10	1
00311	BIO OXYGEN DEMAND DILVD - 5 DAY (	10	1
85002	BIO OXYGEN DEMAND-5 (#/YEAR)	15	1
61400	BIOASSAY (24 HR.)	03	2
61401	BIOASSAY (48 HR.)	03	2
61402	BIOASSAY (96 HR.)	03	2
01289	BIOCIDES	17	1
00570	BIOMASS, PLANKTON (ML/L)	03	
34268	BIS (CHLOROMETHYL) ETHER	07	2
78147	BIS (TRICHLOROMETHYL) SULFONE	07	2
34283	BIS (2-CHLORO- ISOPROPYL) ETHE	07	2
34278	BIS (2-CHLOROETHOXY) METHANE	07	2
34273	BIS (2-CHLOROETHYL) ETHER	07	2
39100	BIS (2-ETHYLHEXYL) PHTHALATE	07	2
77763	BIS -- PHENOL-A (ALPHA)	07	2
00190	BIS ETHER, UG/L	07	2
01017	BISMUTH, TOTAL (AS BI)	08	2
81651	BISPHENOL-A	07	2
82424	BOD LOWER INFLUENT	10	1
00319	BOD (MG/L ULT. ALL STAGES)	10	1
00352	BOD 35-DAY-20 DEG C	04	1
82236	BOD-5 LB/CU FT PROCESS	10	1
80126	BOD, CARBONACEOUS 5 DAY,5 C	10	1
80082	BOD, CARBONACEOUS 05 DAY, 20C	10	1
80087	BOD, CARBONACEOUS 20 DAY, 20C	10	1
50076	BOD, PERCENT REMOVAL(TOTAL)	10	1
00324	BOD, 20-DAY (20 DEG. C)	10	1
81385	BOD, 20-DAY, PERCENT REMOVAL	10	1
80276	BOD, 28-DAY (20 DEG. C)	10	1
00310	BOD, 5-DAY (20 DEG. C)	10	1
00318	BOD, 5-DAY KG/1000 GALLONS	10	1
81010	BOD, 5-DAY PERCENT REMOVAL	10	1
47024	BOD,5-DAY,20C LB/DAY/CFS OF STREAMFLOW	10	1
00140	BOD,5DAY,20C LB PER TON OF PRODUCTION	10	1
00698	BORIC ACID, MG/L	07	2
01020	BORON, DISSOLVED (AS B)	08	2
01022	BORON, TOTAL (AS B)	08	2
82057	BORON, TOTAL KG/BATCH	08	1
82198	BROMACIL (HYVAR)	11	2
71870	BROMIDE (AS BR)	06	1
71872	BROMINE CHLORIDE	06	1
71871	BROMINE REPORTED AS THE ELEMENT	06	1
32104	BROMOFORM	07	2

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME	STORET CLASS	TRC CLASS
81561	BUTHDIENE TOTAL	07	2
34292	BUTYL BENZYL PHTHALATE	07	2
81410	BUTYLATE (SUTAN)	11	2
80999	BYPASS OF TREATMENT, HOURS/MONTH	17	
80998	BYPASS OF TREATMENT OCCURRENCES/MO	17	
01253	CADMIUM	08	2
01113	CADMIUM TOTAL RECOVERAB	08	2
61527	CADMIUM SLUDGE SOLID (MG/KG)	08	2
61528	CADMIUM SLUDGE, TOTAL (MG/L)	08	2
01025	CADMIUM, DISSOLVED (AS CD)	08	2
01027	CADMIUM, TOTAL (AS CD)	08	2
00915	CALCIUM, DISSOLVED (AS CA)	08	1
01293	CALCIUM, PCT EXCHANGE	08	1
01294	CALCIUM, PCT IN WATER, (PCT)	08	1
00916	CALCIUM, TOTAL (AS CA)	08	1
39640	CAPTAN	11	2
78168	CARBAMATES	07	2
77700	CARBARYL TOTAL	11	2
81405	CARBOFURAN	11	2
00405	CARBON DIOXIDE (MG/L AS CO2)	06	1
77041	CARBON DISULFIDE	06	1
32102	CARBON TETRACHLORIDE	07	2
32005	CARBON, CHLOROFORM EXTRACTABLES	07	2
00681	CARBON, DISSOLVED ORGANIC (AS C)	07	2
00690	CARBON, TOTAL (AS C)	06	1
00685	CARBON, TOTAL INORGANIC (AS C)	06	1
81383	CARBONACEOUS OXYGEN DEMAND, % REMOVAL	10	1
00445	CARBONATE ION- (AS CO3)	06	1
74024	CAUSTIC IN DRILLING FLUIDS	13	
80279	CBOD5 / NH3-N	03	1
32254	CELLULOSE POLYMER IN DRILLING FLUIDS	07	
28801	CERIUM, TOTAL	14	2
01117	CESIUM,TOTAL (AS CS)	08	2
00335	CHEM. OXYGEN DEMAND (LOW LEVEL) (	10	1
80115	CHEM. OXYGEN DEMAND (COD) % REMOVAL	10	1
80108	CHEM. OXYGEN DEMAND (COD) KG/1000 GAL.	10	1
00340	CHEM. OXYGEN DEMAND (HIGH LEVEL) (	10	1
00146	CHEM. OXYGEN DEMAND, LB/TON OF PRODUCTIO	10	1
80103	CHEMICAL OXYGEN DEMAND (COD)	10	1
77447	CHLORAL	07	2
39108	CHLORAL HYDRATE	07	2
78148	CHLORAMINE RESIDUAL	07	2
39350	CHLORDANE (TECH MIX. AND METABOLITES)	11	2
39129	CHLORENDIC ACID	07	2
00940	CHLORIDE (AS CL)	06	1
47027	CHLORIDE, LB/DAY/CFS OF STREAMFLOW	06	1
70352	CHLORIDE, ORGANIC, TOTAL	07	2
00166	CHLORIDE, PERCENT REMOVAL	06	1
82209	CHLORIDES & SULFATES	06	1
34033	CHLORINATED ETHANES	07	2

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME	STORET CLASS	TRC CLASS
74052	CHLORINATED HYDRO- CARBONS, GENERA	01	2
34032	CHLORINATED METHANES	07	2
81397	CHLORINATED ORGANIC COMPOUNDS	07	2
78217	CHLORINATED PESTI- CIDES, TOTAL	11	2
00188	CHLORINATED PESTI- CIDES, TOT & PC	11	2
34034	CHLORINATED PHENOLS	07	2
50068	CHLORINATION	17	2
00370	CHLORINE DEMAND,1 HR	06	1
50058	CHLORINE DOSE	17	2
50059	CHLORINE RATE-POUNDSPER DAY	06	2
81400	CHLORINE USAGE	06	2
50066	CHLORINE, COMBINED AVAILABLE	06	2
50064	CHLORINE, FREE AVAILABLE	17	2
50060	CHLORINE, TOTAL RESIDUAL	17	2
00183	CHLORINE, TOTAL RES.DURATION OFVIOLATION	06	2
34301	CHLOROBENZENE	07	2
81520	CHLOROBUTADIENE (CHLOROPRENE)	11	2
34306	CHLORODIBROMOMETHANE	07	2
82231	CHLORODIMEFORM	07	2
34311	CHLOROETHANE	07	2
39793	CHLOROETHYLENE BISTHIOCYANATE	07	2
32106	CHLOROFORM	07	2
32270	CHLOROFORM EXTRACTABLES, T	07	2
32230	CHLOROPHYLL A	03	
01254	CHROMIUM	08	2
01118	CHROMIUM TOTAL RECOVERAB	08	2
61512	CHROMIUM SLUDGE SOLID (MG/KG)	08	2
61513	CHROMIUM SLUDGE TOTAL (MG/L)	08	2
01030	CHROMIUM, DISSOLVED (AS CR)	08	2
01032	CHROMIUM, HEXAVALENT (AS CR)	08	2
01220	CHROMIUM, HEXAVALENT DISSOLVED (AS CR)	08	2
01031	CHROMIUM, SUSPENDED (UG/L AS CR)	08	2
01034	CHROMIUM, TOTAL (AS CR)	08	2
82059	CHROMIUM, TOTAL KG/BATCH	08	2
82058	CHROMIUM, TOTAL PERCENT REMOVAL	08	2
01029	CHROMIUM, TOTAL DRY WEIGHT (AS CR)	08	2
01033	CHROMIUM, TRIVALENT (AS CR)	08	2
82399	CHROMIUM,HEXAVALENT KG/BATCH	08	2
34320	CHRYSENE	07	2
34704	CIS-1,3-DICHLORO PROPENE	07	2
00032	CLOUD COVER (PCT)	13	
00158	CN, FREE (AMENABLE TO CHLORINE)KG/	06	2
00184	COAGULANTS ADDED POUNDS PER DAY	17	
01035	COBALT, DISSOLVED (AS CO)	08	1
01037	COBALT, TOTAL (AS CO)	08	1
74055	COLIFORM, FECAL GENERAL	01	
31612	COLIFORM, FECAL 10/ML	02	
31613	COLIFORM, FECAL MF, M-FC AGAR,44.5C,24HR	02	
31616	COLIFORM, FECAL MF, M-FC BROTH,44.5C	02	
31625	COLIFORM, FECAL MF, M-FC, 0.7UM	02	

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME	STORET CLASS	TRC CLASS
48201	COLIFORM, FECAL MPN + MEMBRANE FTL 44.5C	02	
31505	COLIFORM, TOT. MPN, COMPLETED, (100 ML)	02	
74056	COLIFORM, TOTAL. GENERAL	01	
31502	COLIFORM, TOTAL 10/ML	02	
31503	COLIFORM, TOTAL MF, DELAYED,M-ENDO MED.	02	
31504	COLIFORM, TOTAL MF, IMMED.LES ENDO AGAR	02	
31501	COLIFORM, TOTAL MF, IMMED.M-ENDO MED 35C	02	
01290	COLOR (ADMI UNITS)	13	
00080	COLOR (PT-CO UNITS)	13	
00084	COLOR MG/L	13	
01139	COLUMBIUM, TOTAL	08	2
00144	COMBINED METALS SUM	08	2
01256	COPPER	08	2
01119	COPPER TOTAL RECOVERAB	08	2
01089	COPPER AS SUSPENDED BLACK OXIDE	08	2
61506	COPPER SLUDGE SOLID (MG/KG)	08	2
61507	COPPER SLUDGE SOLID (MG/L)	08	2
01040	COPPER, DISSOLVED (AS CU)	08	2
01041	COPPER, SUSPENDED (UG/L AS CU)	08	2
01042	COPPER, TOTAL (AS CU)	08	2
00159	COPPER, TOTAL KG/BATCH	08	2
81293	COUMAPHOS	11	2
70226	CURRENT DIRECTION DEG FROM TRUE N	13	
00725	CYANATE (AS OCN)	06	2
61556	CYANIDE SLUDGE SOLID (M	06	2
01257	CYANIDE (A)	08	2
32019	CYANIDE AND THIOCYANATE - TOTAL	07	2
00724	CYANIDE COMPLEXED TO RANGE OF COM	06	2
81208	CYANIDE FREE NOT AMENABLE TO CHL	06	2
01291	CYANIDE, FILTERABLE,TOTAL IN WATER	06	2
00719	CYANIDE, FREE-WATER+WASTEWATERS, UG/L	06	2
00720	CYANIDE, TOTAL (AS CN)	05	2
00723	CYANIDE,DISSOLVED STD METHOD	06	2
00722	CYANIDE,FREE (AMEN. TO CHLORINATION)	06	2
81892	CYCLOATE (RONEET)	11	2
81570	CYCLOHEXANE	07	2
77101	CYCLOHEXYL AMINE (AMINO HEXAHYD	07	2
81690	CYCOHEXANONE IN WHOLE WATER SAMPLE (MG/L	07	2
70314	DACONIL (C8CL4N2) IN WATER MG/L	11	2
39770	DACTHAL	11	2
82576	DAILY EXCURSION TIME(MIN)	13	
82578	DAY - MAX EXCURSION TIME (MIN)	13	
39365	DDE	11	2
39370	DDT	11	2
38925	DECHLORANE PLUS	06	2
81678	DEHYDROABIETIC ACID IN WHOLE WATER SAMPL	07	2
39007	DELNAV	11	2
34259	DELTA BENZENE HEXACHLORIDE	11	2
71820	DENSITY OF WATER AT 20C (G/ML)	13	
72025	DEPTH OF POND OR RESERVOIR IN FEET	13	

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME		STORET CLASS	TRC CLASS
72019	DEPTH TO WATER LEVELFT BELOW LANDSURFACE		13	
00068	DEPTH, MAX OF SAMPLE(FEET)		18	
39110	DI-N-BUTYL PHTHALATE		07	2
34596	DI-N-OCTYL PHTHALATE		07	2
39570	DIAZINON		11	2
34556	DIBENZO (A,H)	ANTHRACENE	07	2
32105	DIBROMOCHLORO-	METHANE	07	2
39150	DICHLONE		11	2
81524	DICHLOROBENZENE		07	2
78155	DICHLOROBENZYLTRIFLUORIDE		07	2
32101	DICHLOROBROMOMETHANE		07	2
82529	DICHLOROBUTADIENE	IN WATER MG/L	07	2
82225	DICHLOROBUTENE-	(ISOMERS)	07	2
34040	DICHLORODEHYDRO-	ABIETIC ACID	07	2
34668	DICHLORODIFLUORO-	METHANE	07	2
77984	DICHLOROTRIFLUORO-	ETHANE	07	2
77983	DICHLOROTOLUENE		07	2
81572	DICYCLOPENTADIENE		07	2
39131	DIDECYLDIMETHYL	AMMONIUM CHLORI	07	2
39380	DIELDRIN		11	2
34336	DIETHYL PHTHALATE		07	2
78149	DIETHYLAMINOETHANOL		07	2
78214	DIETHYLBENZENE		07	2
81346	DIETHYLHEXYL	PHTHALATE ISOME	07	2
46312	DIETHYLHEXYL-	PHTHALATE	07	2
82192	DIETHYLSTILBESTEROL		07	2
82207	DIFFERENTIAL PRESSURE ANNULAR WELL HEAD		17	
39031	DIFOLATAN		11	2
00172	DIGESTER SOLIDS	CONTENT, PERCEN	15	1
39122	DIMETHOXYBENZIDINE		07	2
82213	DIMETHYL BENZIDINE		07	2
34341	DIMETHYL PHTHALATE		07	2
01352	DISCHARGE FLOW AS % OF STREAM FLOW		05	
82370	DISSOLVED	RADIOACTIVE GAS	14	2
00177	DISSOLVED OXYGEN	DEMAND	10	1
39010	DISULFOTON		11	2
00637	DITHIOCARBONATES		07	1
39650	DIURON		11	2
32255	DOS-3 IN DRILLING	FLUIDS	07	
84108	DRAIN FIELD INSP	ASSESSMENT	13	
74011	DRILL CUTTING	(OIL RIGS)	17	
00499	DRILLED SOLIDS IN	DRILLING FLUIDS	15	1
81381	DURATION OF	DISCHARGE	13	
39013	DYFONATE		11	2
78150	DYPHYLLINE		07	2
78151	EDTA		07	2
82228	EDTA AMMONIATED		07	2
34351	ENDOSULFAN SULFATE		11	2
39388	ENDOSULFAN, TOTAL		11	2
39390	ENDRIN		11	2

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME		STORET CLASS	TRC CLASS
34366	ENDRIN ALDEHYDE		11	2
81401	ENTERIC VIRUSES		03	
81679	EPICHLOROHYDRIN		07	2
81894	EPTC (EPTAM)		11	2
82193	ESTRADIOL		07	2
77004	ETHANOL	WHOLE WATER, UG	07	2
39398	ETHION		11	2
37371	ETHYL BENZENE		07	2
78113	ETHYL BENZENE	WHOLE WATER, UG	07	2
73010	ETHYL ETHER BY GAS	CHROMATOGRAPH (	07	2
81586	ETHYL METHYL-	DIOXOLANE	07	2
46315	ETHYL PARATHION		11	2
34371	ETHYLBENZENE		07	2
78202	ETHYLENE	CHLOROHYDRIN	07	2
34102	ETHYLENE GLYCOL	DINITRATE	11	2
76999	ETHYLENE OXIDE		07	2
82044	ETHYLENE, DISSOLVED IN WATER (UG/L C2H4)		07	2
79746	ETHYLHEXYL		07	2
84106	EVAPORATOR / BED	OBSV - ASSESSME	13	
31615	FECAL COLIFORM, MPN,EC MED, 44.5C		02	
50075	FERRICYANIDE		06	2
80887	FERROCHROME LIGNO-	SULFONATED FRWT	15	1
81318	FERROCYANIDE		06	1
82064	FERROUS SULFATE		06	1
82387	FIRST STAGE OXYGEN	DEMAND % REMOVA	10	1
01340	FISH, DEAD	(SEVERITY)	13	
74020	FLOW - PUMP OUT		05	
00058	FLOW RATE		05	
00056	FLOW RATE		05	
74060	FLOW RATE		05	
82221	FLOW VOLUME DAILY-	INTO A WELL	05	
00164	FLOW, GALLONS/BATCH		05	
50050	FLOW, IN CONDUIT OR THRU TREATMENT PLANT		05	
50047	FLOW, MAXIMUM DURING 24 HR PERIOD		05	
82220	FLOW, TOTAL MG/MO		05	
50049	FLOW, WASTEWATER BY-PASSING TRTMNT PLANT		05	
34376	FLUORANTHENE		07	2
34381	FLUORENE		07	2
32016	FLUORIDE - COMPLEX		07	2
32018	FLUORIDE - FREE		07	1
00950	FLUORIDE, DISSOLVED	(AS F)	06	1
00951	FLUORIDE, TOTAL	(AS F)	06	1
00952	FLUOROBORATES		06	1
01288	FOAMING AGENTS		07	2
71880	FORMALDEHYDE		07	2
82229	FREE ACID		13	
82390	FREE ACID, TOTAL		06	1
77647	FREON 113 (1,1,1-TRIFLOURO-2,2-		07	2
72049	FRESHWATER IN	DRILLING FLUIDS	13	
81588	FURFURAL		07	2

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME		STORET CLASS	TRC CLASS
39340	G-BHC-DELTA		11	2
81392	GALLONS DISTILLED		13	
05501	GAMMA, TOTAL		14	2
05502	GAMMA, TOTAL	COUNTING ERROR	14	2
01310	GAS BUBBLE	SEVERITY	13	
00174	GAS, DIGESTER,	VOLUME OF	17	
72047	GASES, TOTAL	DISSOLVED	13	
79743	GLYPHOSATE, TOTAL		07	2
71910	GOLD, TOTAL	(AS AU)	08	1
78152	GUAFENSIN		07	2
79751	GUANIDINE NITRATE IN WATER, (UG/L)		07	2
39580	GUTHION		11	2
78203	HALOGENATED HYDRO-	CARBONS, TOTAL	07	2
81375	HALOGENATED ORGANICS		07	2
34011	HALOGENATED TOLUENE		07	2
00900	HARDNESS, TOTAL	(AS CACO3)	06	1
81398	HEAT (SUMMER)		13	
81386	HEAT (SUMMER)		13	
81399	HEAT (WINTER)		13	
81387	HEAT (WINTER)		13	
39410	HEPTACHLOR		11	2
39420	HEPTACHLOR EPOXIDE		11	2
00148	HERBICIDES, TOTAL		07	2
39700	HEXACHLOROBENZENE		07	2
81885	HEXACHLOROBIPHENYL	WHOLE WATER, UG	07	2
39702	HEXACHLOROBUTADIENE		07	2
34391	HEXACHLOROBUTADIENE,TOT & UG/L		07	2
34386	HEXACHLOROCYCLO-	PENTADIENE	07	2
77835	HEXACHLOROCYCLOHEXANE (BHC) TOTAL		07	2
34396	HEXACHLOROETHANE		07	2
82196	HEXAMETHYL-	PHOSPHORAMIDE(H	11	2
77542	HEXAMETHYLBENZENE		07	2
01255	HEXAVALENT CHROMIUM		08	2
82203	HMX-1,3,5,7-TETRA	NOSINE	07	2
81313	HYDRAZINE		06	2
81308	HYDROCARBONS	NITRATED	07	2
39942	HYDROCARBONS,	AROMATIC	07	2
00551	HYDROCARBONS,IN H2O,IR,CCl4 EXT. CHROMAT		07	2
00439	HYDROCHLORIC ACID	GPD	06	1
00438	HYDROCHLORIC ACID	IN WHOLE WATER	06	1
00142	HYDROGEN CYANIDE		06	2
00191	HYDROGEN ION	CONCENTRATION M	06	
00139	HYDROGEN PEROXIDE		06	1
71875	HYDROGEN SULFIDE		06	1
77165	HYDROQUINONE	WHOLE WATER, UG	07	2
78153	HYDROXYACETOPHENONE		07	2
01355	ICE COVER, FLOATING OR SOLID (SEVERITY)		13	
32256	IMCO LUBE 106 IN	DRILLING FLUIDS	07	
32257	IMCO LUBRIKLEEN IN	DRILLING FLUIDS	07	
00566	IMCO NOS. 1,2,3,6	GPD	07	

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME	STORET CLASS	TRC CLASS
00564	IMCO NOS. 4,5 GPD	07	
32258	IMCO PHOS IN DRILLING FLUIDS	07	
77202	INDENE	07	2
34403	INDENO (1,2,3-CD) PYRENE	07	2
74006	INERT PLASTIC SPHERES IN DRIL	17	
50056	INJECTION PRESSURE- AT WELL HEAD	13	
61576	INTAKE-DISCHARGE TEMP DIFFERENCE	16	
71865	IODIDE (AS I)	06	1
18501	IODINE 129	14	2
01258	IRON	08	1
00980	IRON TOTAL RECOVERAB	07	1
00988	IRON AMD MAGANESE - SOLUBLE	07	1
00987	IRON AMD MAGANESE - TOTAL	07	1
01046	IRON, DISSOLVED (AS FE)	08	1
01045	IRON, TOTAL (AS FE)	08	1
82218	IRON, TOTAL PERCENT REMOVAL	08	1
00147	IRON, TOTAL LB PER 1000LB OF PRODU	08	1
01170	IRON, TOTAL DRY WEIGHT (AS FE)	08	1
00160	IRON,TOTAL KG/BATCH	08	1
00155	ISOOCTYL SILVEX	11	2
00156	ISOOCTYL 2,4,5-T	11	2
34408	ISOPHORONE	11	2
34035	ISOPOMARIC ACID	07	2
34042	ISOPRENE	07	2
77015	ISOPROPANOL	07	2
75062	ISOPROPYL ALCOHOL (C3H8O). SED. U	07	2
78219	ISOTHIAZOLONE	07	2
39017	KELTHANE	11	2
81281	KEPONE	11	2
32259	KWIK SEAL IN DRILLING FLUIDS	07	
01182	LANTHANUM, TOTAL	08	2
01259	LEAD	08	2
17501	LEAD	14	2
01114	LEAD TOTAL RECOVERAB	08	2
61503	LEAD SLUDGE SOLID (MG/KG)	08	2
61504	LEAD SLUDGE TOTAL (MG/L)	08	2
01049	LEAD, DISSOLVED (AS PB)	08	2
01051	LEAD, TOTAL (AS PB)	08	2
01052	LEAD, TOTAL DRY WEIGHT (AS PB)	08	2
72107	LENGTH OF LONGEST PH EXCURSION	17	
80888	LIGHTLY TREATED LIG-NOSULFONATED MUD GPD	15	1
00963	LIGNITE IN DRILLING FLUIDS	06	
00964	LIGNOSULFATE IN DRILLING FLUIDS	06	
00965	LIME IN DRILLING FLUIDS	06	
77828	LINOLEIC ACID	07	2
34036	LINOLENIC ACID	07	2
01130	LITHIUM, DISSOLVED (AS LI)	08	1
01132	LITHIUM, TOTAL (AS LI)	08	1
78156	M - ALKYLDIMETHLBENZYLAMCL	07	2
11123	MAGANESE TOTAL RECOVERAB	08	1

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME		STORET CLASS	TRC CLASS
00925	MAGNESIUM, DISSOLVED	(AS MG)	08	1
01292	MAGNESIUM, PCT	EXCHANGE	08	2
00927	MAGNESIUM, TOTAL	(AS MG)	08	1
39530	MALATHION		11	2
01056	MANGANESE, DISSOLVED	(AS MN)	08	1
01055	MANGANESE, TOTAL	(AS MN)	08	1
82060	MANGANESE, TOTAL	MG/BATCH	08	1
82540	MB 121 IN WATER	LBS/MONTH	07	2
82211	MERCAPTANS, TOTAL		11	2
78154	MERCAPTOBENZOTHIAZOLE		07	2
01260	MERCURY		08	2
71901	MERCURY	TOTAL RECOVERAB	08	1
71890	MERCURY, DISSOLVED	(AS HG)	08	2
71900	MERCURY, TOTAL	(AS HG)	08	2
39480	METHOXYCHLOR		11	2
34413	METHYL BROMIDE		07	2
34418	METHYL CHLORIDE		07	2
81595	METHYL ETHYL KETONE		07	2
81596	METHYL ISOBUTYL	KETONE (MIBK)	07	2
00143	METHYL MERCAPTAN		07	2
81597	METHYL METHACRYLATE		07	2
39600	METHYL PARATHION		11	2
45097	METHYL STYRENE		07	2
45268	METHYLENE	BIS-THIOCYANATE	07	2
34423	METHYLENE CHLORIDE		07	2
34425	METHYLENE CHLORIDE, SUSP	UG/L	07	2
00966	MICA IN DRILLING	FLUIDS	06	
82239	MICROSCOPIC ANALYSIS		03	
39755	MIREX		11	2
82238	MIXED LIQUOR		17	
01060	MOLYBDENUM	DISSOLVED (AS M	08	2
01062	MOLYBDENUM, TOTAL	(AS MO)	08	2
34031	MONO-CHLORO-BENZENES		07	2
50073	MONOBORO CHLORATE		06	1
78213	MONOCHLOROACETIC	ACID	07	2
78143	MONOCHLOROBENZYLTRIFLUORIDE		07	2
34039	MONOCHLORODEHYDRO-	BEIETIC ACID	07	2
78204	MONOCHLOROTOLUENE		07	2
82577	MONTH EXCURSION TIME(MIN)		13	
34428	N-NITRO-N-PROPYL-	AMINE	07	2
34438	N-NITROSODIMETHYL-	AMINE	07	2
34433	N-NITROSODIPHENYL-	AMINE	07	2
79752	N,N'DIETHYL CARBANILIDE,	(UG/L)	07	2
34696	NAPHTHALENE		07	2
78157	NAPHTHENIC ACID		07	2
79745	NEPTUNE BLUE		07	2
61575	NET RATE OF ADDITIONOF HEAT		17	
78159	NIACINAMIDE		07	2
01261	NICKEL		08	2
01074	NICKEL	TOTAL RECOVERAB	08	2

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME	STORET CLASS	TRC CLASS
61515	NICKEL SLUDGE SOLID (MG/KG)	08	2
61516	NICKEL SLUDGE TOTAL (MG/L)	08	2
01065	NICKEL, DISSOLVED (AS NI)	08	2
01066	NICKEL, SUSPENDED (UG/L AS NI)	08	2
01067	NICKEL, TOTAL (AS NI)	08	2
00161	NICKEL, TOTAL KG/BATCH	08	2
00178	NICOTINE SULFATE UG/L	06	1
00695	NITRILOTRIACETIC ACID (NTA)	07	1
00630	NITRITE PLUS NITRATE TOTAL 1 DET. (AS N)	09	1
34447	NITROBENZENE	07	2
82189	NITROCELLULOSE	07	2
00696	NITROFURANS	07	2
61539	NITROGEN AS NO3, SLUDGE SOLID (M	09	1
82385	NITROGEN OXIDES (AS N)	09	1
61533	NITROGEN SLUDGE SOLID (MG/KG)	09	1
61534	NITROGEN SLUDGE TOTAL (MG/L)	09	1
01299	NITROGEN-NITRATE IN WATER, (PCT)	09	1
01298	NITROGEN-NITRITE IN WATER, (PCT)	09	1
00610	NITROGEN, AMMONIA TOTAL (AS N)	09	1
71845	NITROGEN, AMMONIA TOTAL (AS NH4)	09	1
00151	NITROGEN, AMMONIA LB/DAY/CFS STREAMFLOW	09	1
00175	NITROGEN, AMMONIA, PERCENT REMOVAL	09	1
00623	NITROGEN, KJELDAHL, DISSOLVED (AS N	09	1
00625	NITROGEN, KJELDAHL TOTAL (AS N)	09	1
00620	NITROGEN, NITRATE TOTAL (AS N)	09	1
71850	NITROGEN, NITRATE TOTAL (AS NO3)	09	1
00615	NITROGEN, NITRITE TOTAL (AS N)	09	1
71855	NITROGEN, NITRITE TOTAL (AS NO2)	09	1
00605	NITROGEN, ORGANIC TOTAL (AS N)	09	1
00600	NITROGEN, TOTAL (AS N)	09	1
81393	NITROGEN, TOTAL KJELDAHL, % REM	09	1
00640	NITROGEN,INORGANIC TOTAL	09	1
82386	NITROGEN,OXIDIZED	09	1
81382	NITROGENOUS OXYGEN DEMAND (20-DAY,	10	1
81384	NITROGENOUS OXYGEN DEMAND, % REMOV	10	1
34101	NITROGLYCERIN BY GAS CHROMATOGRAPHY	11	2
79753	NITROGUANIDINE IN WATER, (UG/L)	07	2
78656	NITROSEDIPHENYLAMINE	07	2
78160	NITROSTYRENE	07	2
00404	NON-IONIC DISPERSANT (NALSPERSE 7348)	06	1
80278	NON-NITROGENOUS BOD	07	1
74007	NUTSHELLS IN DRILLING FLUIDS	17	
78215	O - CHLOROBENZYL CHLORIDE	07	2
77889	OCTACHLORO- CYCLOPENTENE	07	2
00085	ODOR (THRESHOLD NO. AT ROOM TEMPERATURE)	13	
00087	ODOR (THRESHOLD NO. AT 60 DEG CENT)	13	
82173	OIL & GREASE AROMATIC	07	1
01300	OIL & GREASE SEVERITY	13	
00558	OIL & GREASE % REMOVAL	07	1
00560	OIL & GREASE (FREON EXTR.-IR METH)TOT,RC	07	1

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME		STORET CLASS	TRC CLASS
84105	OIL - SEPARATOR	OBSV - ASSESSME	13	
00550	OIL AND GREASE	(SOXHLET EXTR.)	07	1
00556	OIL AND GREASE	FREON EXTR-GRAV	07	1
00182	OIL AND GREASE	MG/SQUARE METER	07	1
84066	OIL AND GREASE	VISUAL	07	1
00152	OIL AND GREASE LB.	PER TON OFPRODU	07	1
00552	OIL AND GREASE,	HEXANE EXTR MET	07	1
00555	OIL AND GREASE,	KG/1000 GALLONS	07	1
00153	OIL AND GREASE,	LB/DAY/CFSSTREA	07	1
32250	OIL, PETROLEUM ETHEREXTRACTABLES (MG/L)		07	2
77832	OLEIC ACID	WHOLE WATER UG	07	2
82199	ORDRAM (HYDRAM)		11	2
81299	ORGANIC CHEMICAL	SUBSTANCES	07	2
81396	ORGANIC COMPOUNDS,	CHLOROFORM EXTR	07	2
81815	ORTHENE		11	2
81676	ORTHO-CRESOL	MG/L	11	2
70507	ORTHO-PHOSPHATE	TOTAL (AS P)	12	1
74061	OVERFLOW USE	HOURS/MONTH	17	
74062	OVERFLOW USE	OCCURRENCES/MON	17	
34046	OXIDENTS RELEASED,	TOTAL RESIDUAL	17	
34045	OXIDENTS, FREE	AVAILABLE	17	
34044	OXIDENTS, TOTAL	RESIDUAL	17	
82210	OXYGEN DEMAND	FIRST STAGE	10	1
81018	OXYGEN DEMAND, TOTAL LB/DAY/CFSSF		10	1
34048	OXYGEN INJECTION	DIVERSION	17	
34049	OXYGEN INJECTION	INTERRUPTION	17	
34047	OXYGEN TRANSFER	EFFICIENCY	17	
00300	OXYGEN, DISSOLVED	(DO)	04	
00301	OXYGEN, DISSOLVED	PERCENT SATURAT	04	
00387	OZONE		07	1
00386	OZONE - RESIDUAL		07	1
01210	PALLADIUM, TOTAL	(AS PD)	08	2
79744	PANTHALIUM, TOTAL		07	2
78205	PARABEN (METHYL AND PROPYL)		07	2
34452	PARACHLOROMETA	CRESOL	07	2
82416	PARAQUAT		11	2
39540	PARATHION		11	2
00185	PARTICULATES, FLOAT-ING MG/SQUARE METER		17	
00186	PARTICULATES, FLOAT-ING, DRY WEIGHT MG/L		17	
34671	PCB-1016	(AROCHLOR 1016)	07	2
39488	PCB-1221	(AROCHLOR 1221)	07	2
39492	PCB-1232	(AROCHLOR 1232)	07	2
39496	PCB-1242	(AROCHLOR 1242)	07	2
39500	PCB-1248	(AROCHLOR 1248)	07	2
39504	PCB-1254	(AROCHLOR 1254)	07	2
39508	PCB-1260	(AROCHLOR 1260)	07	2
39032	PENTACHLOROPHENOL		07	2
74053	PESTICIDES, GENERAL		01	2
45501	PETROL HYDROCARBONS,TOTAL RECOVERABLE		07	2
00400	PH		13	

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME		STORET CLASS	TRC CLASS
82214	PH CHANGE (RANGE)		13	
82575	PH EXCHANGE (SU)		13	
00403	PH, LIB		13	
34461	PHENATHRENE		07	2
34694	PHENOL, TOTAL	SINGLE COMPOUND	07	2
78218	PHENOLIC COMPOUNDS, UNCHLORINATED		07	2
34043	PHENOLICS, TOTAL		07	2
32730	PHENOLICS, TOTAL	RECOVERABLE	07	2
82194	PHENOXY ACETIC ACID		07	2
00653	PHOSPHATE	TOTAL SOLUBLE	12	1
00660	PHOSPHATE, ORTHO	(AS PO4)	12	1
00650	PHOSPHATE, TOTAL	(AS PO4)	12	1
70505	PHOSPHATE, TOTAL	COLOR. METHOD (	12	1
00671	PHOSPHATE DISSOLVED/ORTHOPHOSPHATE	(AS P)	12	1
00655	PHOSPHATE,POLY	(AS PO4)	12	1
39058	PHOSPHATED	PESTICIDES	11	2
29620	PHOSPHOROUS 32, TOTAL		14	1
00442	PHOSPHORUS, TOT ELEMENTAL	(MG/L)	12	1
00665	PHOSPHORUS, TOTAL	(AS P)	12	1
81012	PHOSPHORUS, TOTAL	PERCENT REMOVAL	12	1
71888	PHOSPHORUS,TOTAL	SOLUBLE (AS PO4	12	1
39117	PHTHALATE ESTERS		07	2
77566	PHTHALIC ACID		07	2
82093	PHYTOPLANKTON		03	
00180	PLANT CAPACITY FACT.	PERCENT OF CAPACITY	13	
50043	PLANT INTAKE AS %	OF STREAM FLOW	13	
01171	PLATINUM, TOTAL	(AS PT)	08	2
00195	PLUME SURFACE AREA	ACRES	13	
19501	POLONIUM 210		14	2
82541	POLYACRILAMIDE	CHLORIDE LB. MO	07	2
39521	POLYBROMINATED	BIPHENYLS	07	2
39524	POLYBROMINATED	DIPHENYL OXIDES	07	2
39516	POLYCHLORINATED	BIPHENYLS (PCBS	07	2
78161	POLYMETHYLACRYLIC ACID		07	2
84110	POND OBSERVATION		13	
00962	POTASSIUM CHLORIDE	IN DRILLING FLU	06	
00935	POTASSIUM, DISSOLVED	(AS K)	08	1
01296	POTASSIUM, PCT	EXCHANGE	08	1
00937	POTASSIUM, TOTAL	(AS K)	08	1
01295	POTASSIUM, TOTAL PCTIN WATER,	(PCT)	08	1
01266	PRESSURE AS PERTAING TO WELLS		17	
50057	PRESSURE IN ANNULUS OF WASTE INJECT WELL		13	
82224	PRESSURE, BOTTOM-AT WELL BOTTOM		13	
00168	PRODUCTION, TOTAL,	MEGAWATTS	17	
82065	PROPARGITE, MG/L		06	1
81706	PROPYLENE OXIDE		07	2
72035	PUMP HOURS		17	
34469	PYRENE		07	2
39930	PYRETHRINS		11	2
39782	R-BHC (LINDANE)-	GAMMA	11	2

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME	STORET CLASS	TRC CLASS
03520	RADIATION, GROSS BETA	14	2
82077	RADIATION, GROSS ALPHA MICROCURI	14	2
82066	RADIOACTIVITY, GROSS MICROCURIES/ML	14	2
00189	RADIOACTIVITY, PC/L	14	2
11503	RADIUM 226 + RADIUM 228, TOTAL (PC/L)	14	2
09503	RADIUM 226, DISSOLVED	14	2
09501	RADIUM 226, TOTAL	14	2
11501	RADIUM 228, TOTAL	14	2
46529	RAINFALL, INCHES	13	
81362	RDX, DISSOLVED	07	2
81364	RDX, TOTAL	07	2
81391	RECIRCULATION FLOW	13	
81005	RECIRCULATION, PER- CENT OF PLANT FLOW	17	
00546	RESIDUE, SETTLEABLE	15	1
00515	RESIDUE, NOT FLTRBLE (DRIED AT 105C)	15	1
70295	RESIDUE, TOTAL FILTERABLE (MG/	15	1
81015	RESIDUE, TOTAL FILTERABLE - (#	15	1
81021	RESIDUE, TOTAL VOLATILE - (#/D	15	1
82063	RESIDUE, TOTAL FIL- TRABLE KG/BATCH	15	1
81013	RESIDUE, VOLATILE NONFILTERABLE(#	15	1
82212	RESIN ACIDS, TOTAL	07	2
82067	RHODIUM, TOTAL, MG/L	14	2
82202	ROTENONE	11	2
01137	RUBIDIUM,TOTAL (AS RB)	08	1
01336	RUNOFF-SPRAY IRRIGA-TION FIELD TO STREAM	13	
00480	SALINITY	13	
82322	SAMARIUM, TOTAL AS SM IN WATER,	08	2
00968	SAND IN DRILLING FLUIDS	06	
81207	SEAWATER GEL MUD CFD	15	1
72048	SEAWATER IN DRILLING FLUIDS	13	
61518	SELENIUM SLUDGE SOLID (M	08	2
01145	SELENIUM, DISSOLVED (AS SE)	08	2
01147	SELENIUM, TOTAL (AS SE)	08	2
00981	SELENIUM, TOTAL RECOVERABLE	08	2
00171	SEPTAGE DISCHARGED TO TREATMENT FA	17	
81402	SETTLEABLE SOLIDS PERCENT REMOVAL	15	1
01265	SETTLING INDEX AS PERTAINING TO WELLS	07	
39750	SEVIN	11	2
81899	SEVIN (CARBARYL) IN TISSUE	11	2
00955	SILICA, DISSOLVED (AS SIO2)	15	1
00956	SILICA, TOTAL (AS SIO2)	15	1
01142	SILICON, TOTAL	06	1
01263	SILVER	08	2
01079	SILVER TOTAL RECOVERAB	08	2
01075	SILVER, DISSOLVED (AS AG)	08	2
01077	SILVER, TOTAL (AS AG)	08	2
00162	SILVER, TOTAL KG/BATCH	08	2
01316	SLUDGE BUILD-UP IN WATER (FEET)	15	1
84109	SLUDGE BUILDUP VISUAL	13	
81014	SLUDGE RETURN RATE, % OF PLANT FLOW	17	

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME		STORET CLASS	TRC CLASS
82219	SLUDGE SETTLEABILITY 30 MINUTE		15	1
82222	SLUDGE VOLUME DAILY INTO A WELL		15	1
00165	SLUDGE VOLUME INDEX (SVI)		17	
00173	SLUDGE, RATE OF	WASTING	15	1
82208	SODIUM ARSENITE		08	1
00967	SODIUM BICARBONATE	IN DRILLING FLU	06	
00726	SODIUM CHLORATE		06	2
32017	SODIUM CHLORIDE (SALT)		07	1
00727	SODIUM DICHROMATE		06	2
01301	SODIUM HEXAMETAPHOS-PHATE IN WATER, UG/L		06	1
00728	SODIUM NITRITE		06	1
39794	SODIUM PENTACHLORO- PHENATE		07	2
82389	SODIUM SULFATE,	TOTAL	06	1
78169	SODIUM-O-PPTH		07	2
00932	SODIUM, %		08	1
00930	SODIUM, DISSOLVED	(AS NA)	08	1
00929	SODIUM, TOTAL	(AS NA)	08	1
00525	SOLIDS, FIXED	DISSOLVED	15	1
00540	SOLIDS, FIXED	SUSPENDED	15	1
00545	SOLIDS, SETTLEABLE		15	1
81011	SOLIDS, SUSPENDED	PERCENT REMOVAL	15	1
00500	SOLIDS, TOTAL		15	1
70296	SOLIDS, TOTAL	DISSOLVED (TDS)	15	1
70300	SOLIDS, TOTAL	DISSOLVED- 180	15	1
00510	SOLIDS, TOTAL	FIXED	15	1
00530	SOLIDS, TOTAL	SUSPENDED	15	1
00163	SOLIDS, TOTAL	SUSPENDED, KG/B	15	1
00505	SOLIDS, TOTAL	VOLATILE	15	1
82287	SOLIDS, TOTAL NON-	VOLATILE, NON-F	15	1
70297	SOLIDS, TOTAL SUS-	PENDED KG/1000	15	1
00150	SOLIDS, TOTAL SUSP.	LB/DAY/CFSSTREAMFLOW	15	1
00520	SOLIDS, VOLATILE	DISSOLVED	15	1
00535	SOLIDS, VOLATILE	SUSPENDED	15	1
00167	SOLIDS,DRY,DISCHARGETO SOL.HANDLING SYS.		15	1
00169	SOLIDS,DRY,INCIN.AS%OFDRYSOL.FROMTRMTPLT		15	1
00170	SOLIDS,DRY,REMOVEDFROM SOL.HANDLING SYS.		15	1
00157	SOLIDS,TOT. VOLATILE PERCENT REMOVAL		15	1
00141	SOLIDS,TOTAL SUSP	LBS/TON OF PROD	15	1
70322	SOLIDS,VOLATILE	% OF TOTAL SOLI	15	1
81009	SOLIDS,VOLATILE	SUSPENDED % REM	15	1
00095	SPECIFIC CONDUCTANCE		13	
82205	SPECIFIC GRAVITY		13	
82216	SPRAY IRRIGATION-	APPLICATION RAT	17	
00065	STAGE, STREAM (FEET)		13	
32261	STARCH IN DRILLING	FLUIDS	07	
81395	STORM WATER FLOW		05	
00061	STREAM FLOW,	INSTANTANEOUS	05	
00060	STREAM FLOW,	MEAN.DAILY	05	
00004	STREAM WIDTH (FEET)		18	
74054	STREPTOCOCCI, FECAL GENERAL		01	

PCS PRAMETER TABLE
TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME	STORET CLASS	TRC CLASS
31673	STREPTOCOCCI, FECAL MF, KF AGAR,35C,48HR	02	
31675	STREPTOCOCCI, FECAL MPN,KF BROTH 35C	02	
31671	STREPTOCOCCI, FECAL PLATE COUNT KF AGAR	02	
31674	STREPTOCOCCI, FECAL 10/ML	02	
13501	STRONTIUM 90, TOTAL	14	2
01082	STRONTIUM,TOTAL (AS SR)	08	2
81708	STYRENE	07	2
78162	SUBSTITUTED AROMATICS	07	2
78163	SULFABENZAMIDE	07	2
78164	SULFACETAMIDE	07	2
00154	SULFATE (AS S)	06	1
81020	SULFATE - (#/DAY)	06	1
00945	SULFATE, TOTAL (AS SO4)	06	1
78165	SULFATHIAZOLE	07	2
00746	SULFIDE, DISSOLVED, (AS S)	06	1
81621	SULFIDE, TOTAL	06	1
00745	SULFIDE, TOTAL (AS S)	06	1
00741	SULFITE (AS S)	06	1
00740	SULFITE (AS SO3)	06	1
00760	SULFITE WASTE LIQUOR PEARL BENSON INDEX	06	1
82201	SULFOTEPP(BLADAFUME)	11	2
81795	SULFUR DIOXIDE TOTAL	06	1
60107	SULFUR, TOTAL	06	1
00441	SULPHUR, TOTAL ELEMENTAL (MG/L)	06	1
38260	SURFACTANTS (MBAS)	07	1
85001	SUSPENDED SOLIDS (#/YEAR)	03	1
82318	TANTALUM, TOTAL	08	
01331	TASTE (SEVERITY)	13	
01064	TELLURIUM, TOTAL	08	2
00018	TEMP DIFF. BETWEEN SAMPLE AND UPST	16	
00016	TEMP. DIFF. BETWEEN SAMPLE AND UPSTREAM	16	
81389	TEMP. DIFFERENCE, SUMMER (DEG. C)	16	
81390	TEMP. DIFFERENCE, WINTER (DEG. C)	16	
00136	TEMPERATURE OF SAMPL UPON ARRIVAL AT LAB	16	
82234	TEMPERATURE RATE OF CHANGE DEG. C/HR	16	
74029	TEMPERATURE RATE OF CHANGE DEG. F/HOUR	16	
00020	TEMPERATURE, AIR (DEGREES CENTIG	16	
00021	TEMPERATURE, AIR (DEGREES FAHREN	16	
74025	TEMPERATURE, SUMMER	01	
74027	TEMPERATURE, SUMMER	01	
00010	TEMPERATURE, WATER DEG. CENTIGRADE	16	
00011	TEMPERATURE, WATER DEG. FAHRENHEIT	16	
74026	TEMPERATURE, WINTER	01	
74028	TEMPERATURE, WINTER	01	
78145	TETRA SODIUM EDTA	07	2
78028	TETRACHLOROBENZENE	07	2
34475	TETRACHLOROETHYLENE	07	2
81870	TETRACHLOROGUAIACOL (4CG) IN WHOLE WATER	07	2
78166	TETRAHYDRO-3,5-DIMETHYL-2-HYDRO-1,3,5-TH	07	2
81607	TETRAHYDROFURAN	07	2

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME	STORET CLASS	TRC CLASS
01057	THALLIUM, DISSOLVED (AS TL)	08	2
01059	THALLIUM, TOTAL (AS TL)	08	2
00982	THALLIUM, TOTAL RECOVERABLE	08	2
78167	THEOPHYLLINE	07	2
00015	THERMAL DISCHARGE MILLION BTUS PE	13	
00017	THERMAL DISCHARGE MILLION BTUS PE	13	
82195	THIOCARBAMATES	11	2
00730	THIOCYANATE (AS SCN)	06	2
81317	THIOSULFATE ION(2-)	06	2
01262	TIN	08	2
01100	TIN, DISSOLVED (AS SN)	08	1
01102	TIN, TOTAL (AS SN)	08	1
00983	TIN, TOTAL RECOVERABLE	08	2
01150	TITANIUM, DISSOLVED (AS TI)	08	2
01152	TITANIUM, TOTAL (AS TI)	08	2
01153	TITANIUM, TOTAL DRY WEIGHT (AS TI)	08	2
34010	TOLUENE	07	2
78144	TOLUENE-2,4 -DIISOCYANITE	07	2
74009	TORQ TRIM IT IN DRILLING FLUIDS	17	
01273	TOTAL ACID PRIORITY POLLUTANTS	17	2
01277	TOTAL AGG CONCENTRATION #1	07	
01278	TOTAL AGG CONCENTRATION #2	07	
01279	TOTAL AGG CONCENTRATION #3	07	
01276	TOTAL AGG CONCENTRATION #4	17	
01280	TOTAL AGG CONCENTRATION #5	07	
01281	TOTAL AGG CONCENTRATION #6	07	
01282	TOTAL AGG CONCENTRATION #7	07	
01283	TOTAL AGG CONCENTRATION #8	07	
01274	TOTAL BASE/NEUTRAL PRIORITY POLLUT	17	2
00680	TOTAL ORGANIC CARBON (TOC)	07	1
00679	TOTAL ORGANIC CARBON(TOC) KG/1000GALLONS	07	1
70353	TOTAL ORGANIC HALIDES	07	2
00343	TOTAL OXYGEN DEMAND (TOD)	10	1
82560	TOTAL PESTICIDES	11	2
19500	TOTAL POLONIUM	08	2
00145	TOTAL PRODUCTION	17	
78171	TOTAL PURGEABLE AROMATICS	07	2
39084	TOTAL PURGEABLE HALOCARBONS	07	2
71911	TOTAL RARE EARTH METALS (MG/L)	08	1
82237	TOTAL SUSP. SOLIDS- LB/CU FT PROCESS	15	1
78141	TOTAL TOXIC ORGANICS (MG/L)	07	2
01275	TOTAL VOLATILE POLLUTANTS	17	2
39400	TOXAPHENE	11	2
00187	TOXICITY CONCENTRATION M	03	2
61406	TOXICITY, FINAL CONC TOXICITY UNITS	03	2
34699	TRANS-1,3-DICHLORO PROPENE	07	2
00077	TRANSPARENCY, SECCHI DISC (IN	13	
39030	TREFLAN (TRIFLURALIN)	11	2
34717	TRIARYL PHOSPHATE	12	1
82516	TRICHLOROBENZENE	07	2

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME		STORET CLASS	TRC CLASS
81853	TRICHLOROETHANE		07	2
39180	TRICHLOROETHYLENE		07	2
34488	TRICHLOROFLUORO-	METHANE	07	2
82227	TRICHLOROPHENATE-	(ISOMERS)	07	2
81848	TRICHLOROPHENOL		07	2
77676	TRICHOROTULENE		06	2
82190	TRIETHANOLAMINE		07	2
81284	TRIFLURALIN	(C13H16F3N3O4)	11	2
82080	TRIHALOMETHANE,	TOTAL IN WATER,	07	2
78136	TRIMETHYL BENZENE	IN WHOLE WATER	07	2
81358	TRINITROTOLUENE	(TNT), DISSOLVE	07	2
81360	TRINITROTOLUENE	(TNT), TOTAL	07	2
39786	TRITHION		11	2
07000	TRITIUM (1 H3),TOTAL		14	2
82126	TRITIUM, TOTAL		14	2
07001	TRITIUM, TOTAL COUN-TING	ERROR (PC/L)	14	2
07020	TRITIUM, TOTAL NET	INCREASE H-3 UN	14	2
01155	TUNGSTEN, DISSOLVED MG/L		08	2
01154	TUNGSTEN, TOTAL,MG/L		08	2
00070	TURBIDITY		13	
01350	TURBIDITY (SEVERITY)		13	
82235	TURBIDITY, % INCREAS	OVER INTAKE	13	
00076	TURBIDITY, HCH	TURBIDIMITER	13	
00075	TURBIDITY, HELLIGE	(PPM-SILICON DI	13	
00192	ULT. CARBONACEOUS	OXYGEN DEMAND (	10	1
00181	ULTIMATE OXYGEN	DEMAND MG/L	10	1
00176	ULTIMATE OXYGEN	DEMAND, PER. RE	10	1
22703	URANIUM, NATURAL,	DISSOLVED	14	2
22708	URANIUM, NATURAL,	TOTAL	14	2
28012	URANIUM, NATURAL,	TOTAL (IN PCI/L	14	2
22706	URANIUM, TOTAL AS U3O8		08	2
22622	URANIUM, 235 TOTAL		14	2
22601	URANIUM, 238 TOTAL		14	2
00989	URANYL-ION		08	2
01085	VANADIUM, DISSOLVED	(AS V)	08	1
01087	VANADIUM, TOTAL	(AS V)	08	1
82061	VANADIUM, TOTAL	KG/BATCH	08	1
01088	VANADIUM, TOTAL DRY WEIGHT	(AS V)	08	1
01128	VANADIUM, TOTAL RECOVERABLE		08	1
81380	VELOCITY OF DIS-	CHARGE, METERS/	13	
82200	VERNAM (S-PROPYLDI- PROPYLTHIOCARBAMATE)		11	2
77057	VINYL ACETATE		07	2
39175	VINYL CHLORIDE		07	2
00475	VISCOSITY		13	
82558	VOLATILE HALOGENATED HYDROCARBONS		07	2
82559	VOLATILE HYDROCARBONS		07	2
00179	WASTE HEAT REJECTION RATE BTU/HOUR		13	
82391	WATER TREATMENT	ADDITIVES	17	
00036	WIND DIRECTION	(DEG FROM TRUE	13	
32262	XC POLYMER IN	DRILLING FLUIDS	07	2

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME		STORET CLASS	TRC CLASS
81551	XYLENE		07	2
01264	ZINC		08	2
61509	ZINC	SLUDGE SOLID (M	08	2
01094	ZINC	TOTAL RECOVERAB	08	2
61510	ZINC SLUDGE TOTAL (MG/L)		08	2
01090	ZINC, DISSOLVED	(AS ZN)	08	2
01092	ZINC, TOTAL	(AS ZN)	08	2
82062	ZINC, TOTAL	MG/BATCH	08	2
01162	ZIRCONIUM,TOTAL		08	2
34496	1,1-DICHLOROETHANE		07	2
34501	1,1-DICHLOROETHYLENE		07	2
34506	1,1,1-TRICHLORO-	ETHANE	07	2
34511	1,1,2-TRICHLORO-	ETHANE	07	2
77652	1,1,2-TRICHLORO-	TRIFLUORETHANE	07	2
34516	1,1,2,2-TETRACHLORO-ETHANE		07	2
77651	1,2 ETHYLENE-DIBROMITE (DIBROMORTHANE)		07	2
81574	1,2-CIS-DICHLORO-ETHYLENE		07	2
34561	1,2-DICHLORO-	PROPYLENE	07	2
34536	1,2-DICHLOROBENZENE		07	2
32103	1,2-DICHLOROETHANE		07	2
34531	1,2-DICHLOROETHANE		07	2
34541	1,2-DICHLOROPROPANE		07	2
34346	1,2-DIPHENYL-	HYDRAZINE	07	2
34546	1,2-TRANS-DICHLORO- ETHYLENE		07	2
34551	1,2,4-TRICHLORO-	BENZENE	07	2
34566	1,3-DICHLOROBENZENE		07	2
34571	1,4-DICHLOROBENZENE		07	2
82388	1,4_____DIOXANE		11	2
39305	1,4'-DDT (O,P'-DDT)		11	2
82204	2-ACETYL AMINO-	FLOURCENE	07	2
77287	2-CHLOROANILINE	WHOLE WATER, UG	07	2
77046	2-CHLOROETHANOL		07	2
34576	2-CHLOROETHYL	VINYL ETHER (MI	07	2
34581	2-CHLORONAPHTHALENE		07	2
34586	2-CHLOROPHENOL		07	2
82232	2-ETHYL-2-METHYL-	DIOXOLANE	07	2
82191	2-NAPHTHYLAMINE		07	2
34591	2-NITROPHENOL		07	2
82226	2-SECONDARY BUTYL-	4,6-DINITROPHEN	07	2
39109	2,2-DICHLOROVINYL	DIMETHYLPHOSPHA	11	2
76993	2,2DIBROMO-3-NITRILOPROPIONAMIDE		07	2
77770	2,3,4,6-TETRACHLORO-PHENOL		07	2
34675	2,3,7,8-TETRACHLORO-DIBENZO-P-DIOXIN		11	2
34601	2,4-DICHLOROPHENOL		07	2
39730	2,4-DICHLOROPHENOXYACETIC ACID IN WATER		11	2
34606	2,4-DIMETHYLPHENOL		07	2
34616	2,4-DINITROPHENOL		07	2
34611	2,4-DINITROTOLUENE		07	2
39740	2,4,5 - T		11	2
34621	2,4,6-TRICHLORO-	PHENOL	07	2

TRC CLASS CODES BY PARAMETER NAME

PARAMETER	PARAMETER NAME	STORET CLASS	TRC CLASS
34626	2,6-DINITROTOLUENE	07	2
34631	3,3'-DICHLORO- BENZIDINE	07	2
34041	3,4,5 TRICHLORO- GUACACOL	07	2
34636	4-BROMOPHENYL PHENYL ETHER	07	2
34641	4-CHLOROPHENYL PHENYL ETHER	07	2
34646	4-NITROPHENOL	07	2
39310	4,4'-DDD (P,P'-DDD)	11	2
39320	4,4'-DDE (P,P'-DDE)	11	2
39300	4,4'-DDT (P,P'-DDT)	11	2
34657	4,6-DINITRO-O-CRESOL	07	2
34038	9,10 DICHLOROSTEARIC ACID	07	2
34037	9,10 EPOXYSTEARIC ACID	07	2

1,012 RECORDS PRINTED

MUNICIPALS

QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

October through December 1985

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Alpha STP Anyville XX0000398	Resolved Pending				
All effluent	(001)		AO# 85-21 (EPA) 111585		Order includes compliance schedule for repair/ construction with interim limits for BOD and TSS.
BOD,5 day	(001) 113085	(ii)(C)		RP 111585	
TSS	(001) 113085	(ii)(C)		RP 111585	
BOD,5 day	(001) TRC 103185	(ii)(C)		RP 111585	
TSS	(001) TRC 103185	(ii)(C)		RP 111585	
BOD,5 day	(001) TRC 093085	(ii)(C)		RP 111585	
TSS	(001) TRC 093085	(ii)(C)		RP 111585	
BOD,5 day	(001) 083185	(ii)(C)		RP 111585	
TSS	(001) 083185	(ii)(C)		RP 111585	

SCENARIO 3

QNCR SCENARIO 2

NARRATIVE

1st Quarter: October - December 1985

The Alpha STP experienced operational problems with its trickling filter which resulted in violations of its NPDES permit limits for BOD and TSS four months of the reporting period, August through November 1985. Violations for two of these months met TRC. EPA inspected the facility and determined that the trickling filter required major repairs to correct the problem. EPA issued an AO on November 15, 1985 which included a compliance schedule for repairs and construction of the trickling filter. The AO also included interim limits for BOD and TSS. The facility was reported as Resolved Pending (RP), as of the date of the AO, for this reporting period.

2nd Quarter: January - March 1986

The Alpha STP violated its AO interim limits for BOD and TSS in the months of January and February. These violations, although not TRC, coupled with violations for two months of the previous quarter, qualify the facility as reportable/noncompliant for chronic violations. The violations occurring in the 1st quarter are still listed as RP. Violations for the current quarter are listed as Noncompliant (NC) and the warning letter sent by EPA March 1, 1986 is noted.

3rd Quarter: April - June 1986

Throughout this quarter, the Alpha STP met its AO interim limits. It is still carried on the QNCR since it has not yet completed construction or attained final compliance to close out the AO. Violations for the preceding quarter are listed as RP as of the end of this period.

4th Quarter: July - September 1986

The AO issued to the Alpha STP required the facility to complete construction by May 31, 1986. Ninety days later, this construction date still was not met. The facility was reported as NC for this quarter for the violation of its compliance schedule for "end construction" date.

MUNICIPALS

QUARTERLY NONCOMPLIANCE REPORT
XLRXIA
(REGION XI)

January through March 1986

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Alpha STP Anyville XX0000398	Noncompliant				
AO# 85-21			Wa ning L. (EPA) 040186		
BOD,5 day	(001) 022886	(ii)(A)		NC 033186	Minor violations of interim limits
TSS	(001) 022886	(ii)(A)		NC 033186	
BOD,5 day	(001) 013186	(ii)(A)		NC 033186	
TSS	(001) 013186	(ii)(A)		NC 033186	
All effluent	(001)		AO# 85-21 (EPA) 111585		Order includes compliance schedule for repair/ construction
BOD,5 day	(001) 113085	(ii)(C)		RP 111585	
TSS	(001) 113085	(ii)(C)		RP 111585	
BOD,5 day	(001) TRC 103185	(ii)(C)		RP 111585	
TSS	(001) TRC 103185	(ii)(C)		RP 111585	
BOD,5 day	(001) TRC 093085	(ii)(C)		RP 111585	
TSS	(001) TRC 093085	(ii)(C)		RP 111585	
BOD,5 day	(001) 083185	(ii)(C)		RP 111585	
TSS	(001) 083185	(ii)(C)		RP 111585	

MUNICIPALS

QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

April through June 1986

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Alpha STP Anyville XX0000398	Resolved Pending				Compliance with interim limits attained.
AO# 85-21			Warning L. (EPA) 040186		
BOD,5 day	(001) 022886	(ii)(A)		RP 063086	
TSS	(001) 022886	(ii)(A)		RP 063086	
BOD,5 day	(001) 013186	(ii)(A)		RP 063086	
TSS	(001) 013186	(ii)(A)		RP 063086	
All effluent	(001)		AO# 85-21 (EPA) 111585		Order includes compliance schedule for repair/ construction
BOD,5 day	(001) 113085	(ii)(C)		RP 111585	
TSS	(001) 113085	(ii)(C)		RP 111585	
BOD,5 day	(001) TRC 103185	(ii)(C)		RP 111585	
TSS	(001) TRC 103185	(ii)(C)		RP 111585	
BOD,5 day	(001) TRC 093085	(ii)(C)		RP 111585	
TSS	(001) TRC 093085	(ii)(C)		RP 111585	
BOD,5 day	(001) 083185	(ii)(C)		RP 111585	
TSS	(001) 083185	(ii)(C)		RP 111585	

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QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

July through September 1986

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Alpha STP Anyville XX0000398	Noncompliant				
AO# 85-21 Failure to Complete Construction	053186	(ii)(B)		NC 093086	
AO# 85-21			Warning L. (EPA) 040186		
BOD,5 day	(001) 022886	(ii)(A)		RP 063086	
TSS	(001) 022886	(ii)(A)		RP 063086	
BOD,5 day	(001) 013186	(ii)(A)		RP 063086	
TSS	(001) 013186	(ii)(A)		RP 063086	
All effluent	(001)		AO# 85-21 (EPA) 111585		Order includes compliance schedule for repair/ construction
BOD,5 day	(001) 113085	(ii)(C)		RP 111585	
TSS	(001) 113085	(ii)(C)		RP 111585	
BOD,5 day	(001) TRC 103185	(ii)(C)		RP 111585	
TSS	(001) TRC 103185	(ii)(C)		RP 111585	
BOD,5 day	(001) TRC 093085	(ii)(C)		RP 111585	
TSS	(001) TRC 093085	(ii)(C)		RP 111585	
BOD,5 day	(001) 083185	(ii)(C)		RP 111585	
TSS	(001) 083185	(ii)(C)		RP 111585	

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QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

October through December 1986

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS		FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE		SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Alpha STP Anytown XX0000398 All effluent	(001)					
BOD, 5 day	(001)	123186	(ii)(C)		NC 123186	
TSS	(001)	123186	(ii)(C)		NC 123186	
BOD, 5 day	(001)	113086	(ii)(C)		NC 123186	
TSS	(001)	113086	(ii)(C)		NC 123186	
BOD, 5 day	(001)	103186	(ii)(C)		NC 123186	
TSS	(001)	103186	(ii)(C)		NC 123186	
BOD, 5 day	(001)	093086	(ii)(C)		NC 123186	
TSS	(001)	093086	(ii)(C)		NC 123186	
BOD, 5 day	(001)	083186	(ii)(C)		NC 123186	
TSS	(001)	083186	(ii)(C)		NC 123186	
AO# 85-21 Failed to attain final compliance	(001)	080186	(ii)(B)		NC 123186	Start-up problems, operator error. New order with training requirements will supercede AO# 85-21.
AO# 85-21 Failure to complete construction		053186	(ii)(B)		RP 103086	Construction completed 103086. AO# 85-21 closed out 121486.

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QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

October through December 1986

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
AO# 85-21			Warning L (EPA) 040186		
BOD, 5 day	(001) 022886	(ii)(A)		RP 063086	
TSS	(001) 022886	(ii)(A)		RP 063086	
BOD, 5 day	(001) 013186	(ii)(A)		RP 063086	
TSS	(001) 013186	(ii)(A)		RP 063086	
			AO# 85-21 (EPA) 111585		Order includes compliance schedule for repair/ construction.
BOD, 5 day	(001) 113085	(ii)(C)		RP 111585	
TSS	(001) 113085	(ii)(C)		RP 111585	
BOD, 5 day	(001) TRC 103185	(ii)(C)		RP 111585	
TSS	(001) TRC 103185	(ii)(C)		RP 111585	
BOD, 5 day	(001) TRC 093085	(ii)(C)		RP 111585	
TSS	(001) TRC 093085	(ii)(C)		RP 111585	
BOD, 5 day	(001) 083185	(ii)(C)		RP 111585	
TSS	(001) 083185	(ii)(C)		RP 111585	

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QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

January through March 1987

FACILITY NAME
LOCATION
NPDES PERMIT # — FINAL LIMITS — FACILITY STATUS — GRANT

INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE		SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Alpha STP Anytown XX0000398		Resolved Pending				
All effluent	(001)			AO# 87-48 (EPA) 011587		Supercedes AO# 85-21. Contains training requirements.
BOD, 5 day	(001)	022887	(ii)(C)		RP 011587	
TSS	(001)	028887	(ii)(C)		RP 011587	
BOD, 5 day	(001)	013187	(ii)(C)		RP 011587	
TSS	(001)	013187	(ii)(C)		RP 011587	
AO# 85-21						
BOD, 5 day	(001)	123186	(ii)(C)		RP 011587	
TSS	(001)	123186	(ii)(C)		RP 011587	
BOD, 5 day	(001)	113086	(ii)(C)		RP 011587	
TSS	(001)	113086	(ii)(C)		RP 011587	
BOD, 5 day	(001)	103186	(ii)(C)		RP 011587	
TSS	(001)	103186	(ii)(C)		RP 011587	
BOD, 5 day	(001)	093086	(ii)(C)		RP 011587	
TSS	(001)	093086	(ii)(C)		RP 011587	
BOD, 5 day	(001)	083186	(ii)(C)		RP 011587	
TSS	(001)	083186	(ii)(C)		RP 011587	
AO# 85-21						
Failed to attain final compliance.	(001)	080186	(ii)(B)		RP 011587	Start-up problems. Operator error. New Order with training requirements supercedes AO# 85-21.

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QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

April through June 1987

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
Alpha STP Anytown XX0000398	Resolved				Training complete. Compliance with permit limits attained. AO# 87-48 closed out 071487.
All effluent	(001)		AO# 87-48 (EPA) 011587	RE 061487	Supercedes AO# 85-21. Contains training requirements.
AO# 87-48					
BOD, 5 day	(001)	022887	(ii)(C)	RE 061487	
TSS	(001)	022887	(ii)(C)	RE 061487	
BOD, 5 day	(001)	013187	(ii)(C)	RE 061487	
TSS	(001)	013187	(ii)(C)	RE 061487	
AO# 85-21					
BOD, 5 day	(001)	123186	(ii)(C)	RE 061487	
TSS	(001)	123186	(ii)(C)	RE 061487	
BOD, 5 day	(001)	113086	(ii)(C)	RE 061487	
TSS	(001)	113086	(ii)(C)	RE 061487	
BOD, 5 day	(001)	103186	(ii)(C)	RE 061487	
TSS	(001)	103186	(ii)(C)	RE 061487	
BOD, 5 day	(001)	093086	(ii)(C)	RE 061487	
TSS	(001)	093086	(ii)(C)	RE 061487	
BOD, 5 day	(001)	083186	(ii)(C)	RE 061487	
TSS	(001)	083186	(ii)(C)	RE 061487	
AO# 85-21 Failure to attain final compliance	(001)	080186	(ii)(B)	AO# 85-21 (EPA) 111585	Start-up problems. Operator error. New Order with training requirements supercedes AO# 85-21.

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QUARTERLY NONCOMPLIANCE REPORT
XLRXIA
(REGION XI)

January through March 1987

FACILITY NAME
LOCATION
NPDES PERMIT #

FACILITY STATUS

INSTANCE OF NONCOMPLIANCE	FINAL LIMITS (OUTFALL)/DATE	GRANT SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
AO# 85-21 failure to complete construction	053186	(ii)(B)		RP 010586	Construction completed 103086. AO# 85-21 closed out 121486.
AO# 85-21			Warning L. (EPA) 040186		
BOD, 5 day	9001) 022886	(ii)(A)		RP 063086	
TSS	(001) 022886	(ii)(A)		RP 063086	
BOD, 5 day	(001) 013186	(ii)(A)		RP 063086	
TSS	(001) 013186	(ii)(A)		RP 063086	
			AO# 85-21 (EPA) 111585		Order includes compliance schedule for repair construction
BOD, 5 day	(001) 113085	(ii)(C)		RP 111585	
TSS	(001) 113085	(ii)(C)		RP 111585	
BOD, 5 day	(001) TRC 103185	(ii)(C)		RP 111585	
TSS	(001) TRC 103185	(ii)(C)		RP 111585	
BOD, 5 day	(001) TRC 093085	(ii)(C)		RP 111585	
TSS	(001) TRC 093085	(ii)(C)		RP 111585	
BOD, 5 day	(001) 083185	(ii)(C)		RP 111585	
TSS	(001) 083185	(ii)(C)		RP 111585	

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MUNICIPALS

QUARTERLY NONCOMPLIANCE REPORT
XERXIA
(REGION XI)

April through June 1987

FACILITY NAME LOCATION NPDES PERMIT #	FINAL LIMITS	FACILITY STATUS GRANT			
INSTANCE OF NONCOMPLIANCE	(OUTFALL)/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
AO# 85-21 Failure to complete construction	053186	(ii)(B)		RP 103086	Construction completed 103086. AO# 85-21 closed out 121486.
AO# 85-21			Warning L. (EPA) 040186		
BOD, 5 day	(001) 022886	(ii)(A)		RP 063086	
TSS	(001) 022886	(ii)(A)		RP 063086	
BOD, 5 day	(001) 013186	(ii)(A)		RP 063086	
TSS	(001) 013186	(ii)(A)		RP 063086	
			AO# 85-21 (EPA) 111585		Order includes compliance schedule for repair/ construction with interim limits for BOD and TSS.
BOD,5 day	(001) 113085	(ii)(C)		RP 111585	
TSS	(001) 113085	(ii)(C)		RP 111585	
BOD,5 day	(001) TRC 103185	(ii)(C)		RP 111585	
TSS	(001) TRC 103185	(ii)(C)		RP 111585	
BOD,5 day	(001) TRC 093085	(ii)(C)		RP 111585	
TSS	(001) TRC 093085	(ii)(C)		RP 111585	
BOD,5 day	(001) 083185	(ii)(C)		RP 111585	
TSS	(001) 083185	(ii)(C)		RP 111585	

QNCR SCENARIO 3

NARRATIVE

1st Quarter: October - December 1985

The Alpha STP experienced operational problems with its trickling filter which resulted in violations of its NPDES permit limits for BOD and TSS four months of the reporting period, August through November 1985. Violations for two of these months met TRC. EPA inspected the facility and determined that the trickling filter required major repairs to correct the problem. EPA issued an AO on November 15, 1985 which included a compliance schedule for repairs and construction of the trickling filter. The AO also included interim limits for BOD and TSS. The facility was reported as Resolved Pending (RP), as of the date of the AO, for this reporting period.

2nd Quarter: January - March 1986

The Alpha STP violated its AO interim limits for BOD and TSS in the months of January and February. These violations, although not TRC, coupled with violations for two months of the previous quarter, qualify the facility as reportable noncompliant for chronic violations. The violations occurring in the 1st quarter are still listed as RP. Violations for the current quarter are listed as Noncompliant (NC) and the warning letter sent by EPA March 1, 1986 is noted.

3rd Quarter: April - June 1986

Throughout this quarter, the Alpha STP met its AO interim limits. It is still carried on the QNCR since it has not yet completed construction or attained final compliance to close out the AO. Violations for the preceding quarter are listed as RP as of the end of this period.

4th Quarter: July - September 1986

The AO issued to the Alpha STP required the facility to complete construction by May 31, 1986. Ninety days later, this construction date still was not met. The facility was reported as NC for this quarter for the violation of its compliance schedule for "end construction" date.

5th Quarter: October - December 1986

The Alpha STP completed construction on October 30, 1986, and the AO was closed out on December 14, 1986. However, even after given a reasonable amount of time to iron out start-up problems, the facility was still violating its permit limits this quarter. The date set in the AO for the facility to attain final compliance with NPDES permit limits for BOD and TSS was August 1, 1986. The QNCR lists the facility as having violated that compliance schedule date and also lists the subsequent permit violations. The facility is reported as NC as of the last day of the reporting period. EPA determined that the problems were due to operator error. EPA decided it would issue a new AO with training requirements which would supercede AO# 85-21.

6th Quarter: January - March 1987

EPA issued AO# 87-48 on January 15, 1987. This AO superceded the closed out AO# 85-21 and contained training requirements for operators. Violations of permit limits continued through January and February 1987. These violations and those of the previous quarter are listed as RP as of the date of the AO.

7th Quarter: April - June 1987

Training was completed in February 1987. With no further violations of permit limits, AO# 87-48 was closed out June 14, 1987. The facility is listed as RE for this period. All violations of AO# 87-48 are listed as resolved as of the AO close-out date.

TECHNICAL GUIDANCE

I. CALCULATION OF TECHNICAL REVIEW CRITERIA VIOLATIONS OF PERCENT REMOVAL

Since percent removal limitations are the minimum allowed, violations of percent removal are not evaluated based on the Technical Review Criteria (TRC) times the limit; instead they are evaluated based on the TRC times the percent allowed to pass-through the facility. For instance, if a permittee has a BOD limit of 85 percent removal, 15 percent of the influent BOD is allowed in the effluent. Effluent measurements that meet or exceeds the TRC times the percent allowed (1.4 x 15%) would be TRC violations. Thus any percent pass-through that equals or exceeds 21 percent is a TRC violation. If 21 percent is allowed to pass-through before TRC magnitude is met, more than 79 percent must be removed if TRC magnitude is not to be met.

Example 1

If % removal limit = 90%

and TRC = 1.2

Then % allowed to pass-through = 100% - % removal limit

= 100% - 90%

= 10%

and % allowed to pass-through based on TRC

= TRC x % allowed to pass-through

= 1.2 x 10%

= 12%

and % removal limit based on TRC = 100% - % allowed to pass-through based on TRC

= 100% - 12%

= 88%

VIII. A. Penalty Calculations for POTW Failure to Implement an Approved Pretreatment Program.

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

DEC 22 1988

OFFICE OF WATER

MEMORANDUM

SUBJECT: Guidance on Penalty Calculations for POTW Failure to Implement an Approved Pretreatment Program

FROM: James R. Elder, Director
Office of Water Enforcement and Permits (EN-335)

John Lyon, Acting Associate Enforcement Counsel for Water (LE-134W)
Office of Enforcement and Compliance Monitoring

TO: Regional Water Management Division Directors
Regional Counsels

The attached Guidance is provided to assist you and your staff in applying the Clean Water Act (CWA) Civil Penalty Policy in cases where a POTW has failed to adequately implement its approved pretreatment program. The Guidance is based on the existing CWA Penalty Policy, as well as the August 28, 1987 amendment to the Civil Penalty Policy and the Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements. As a result, both administrative and judicial civil penalties for settlement should be calculated using this Guidance.

A draft version of this Guidance was provided to the Regions for comment on August 1, 1988. We wish to thank you for your timely and helpful comments and your overall support for this Guidance. The most significant comments on the previous draft were received on the "Ability to Pay" discussion which encouraged the recovery of penalties from industrial users. Based on comments received, that discussion has been revised, and the Guidance is now flexible as to the method which a municipality should use to pay penalties.

Several Regions requested additional guidance on estimating the economic benefit of failure to implement, especially for failure to enforce pretreatment standards. We have added Table 2 to the Guidance which provides resource estimates for enforcement responses to instances of noncompliance. The basic assumptions are drawn from earlier guidance and from resource estimates used by the Agency. At this time, we do not have additional data on program implementation costs to update Table 1. We do plan to develop such data during the coming year.

The major components of this Guidance will be incorporated into the Civil Penalty Policy later this fiscal year. However, this Guidance is effective immediately as a more detailed explanation of how to calculate penalties in pretreatment implementation cases.

If you have any further questions on the use of this Guidance, please feel free to contact one of us (Jim Elder at 475-8488 or John Lyon at 475-8180) or your staff may contact Ed Bender at 475-8331.

Attachment

PENALTY CALCULATIONS FOR A POTW'S FAILURE TO IMPLEMENT ITS APPROVED PRETREATMENT PROGRAM GUIDANCE

I. INTRODUCTION

The Clean Water Act Civil Penalty Policy (Feb. 11, 1986) establishes a systematic approach for obtaining appropriate settlement penalties for violations of the Act. The Policy and Methodology were amended August 28, 1987 to include a methodology for the calculation of administrative penalties. One of the changes in the amendment was the addition of a gravity factor to address the significance of non-effluent violations. This Guidance applies the Civil Penalty Policy with amendment to implementation cases.*

In September 1987, OWEP issued "Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements" (RNC Guidance). That document provides a definition of reportable noncompliance (RNC) that is used to evaluate POTW implementation violations of approved pretreatment programs. The definition consists of eight criteria for determining when violations of an approved pretreatment program, of related NPDES permit requirements, or of regulatory requirements for implementation are of sufficient magnitude and degree to require that a POTW be reported on the QNCR for failure to implement an approved pretreatment program. The criteria are as follows:

1. POTW failure to issue control mechanisms to Significant Industrial Users in a timely fashion.

2. POTW failure to inspect Significant Industrial Users.

3. POTW failure to establish and enforce industrial user self-monitoring where required by the approved program.

4. POTW failure to implement and enforce pretreatment standards (including local limits).

5. POTW failure to undertake effective enforcement against the industrial user for instances of interference and pass/through.

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* This Guidance, should be applied to calculate settlement penalties for both administrative and judicial cases against POTWs that fail to implement approved pretreatment programs.

6. POTW failure to submit pretreatment reports.

7. POTW failure to complete pretreatment compliance schedule milestones on a timely basis.

8. POTW failure to comply with other pretreatment program requirements which are of substantial concern.

The purpose of this Guidance is to provide Regions with a methodology to apply the CWA Penalty Policy, as amended, to calculate administrative and civil judicial penalties for failure to implement cases, using the criteria outlined in the RNC Guidance.

As in the CWA Penalty Policy, this calculated penalty should represent a reasonable and defensible penalty which the Agency believes it can and should obtain in settlement. In general, the settlement penalty should recover a) full economic benefit (avoided costs--salaries, financing, operating costs, and capital expenditures), and b) some gravity related to the type and pattern of the violation(s), even after adjustments.

Note: This guidance discusses the additional considerations that should be used in the penalty calculation for failure to implement. Penalty amounts for effluent violations should be included and calculated according to the existing CWA Penalty Policy and Methodology. However, Section III of this document, "Example of Penalty Calculation", does include penalties for both effluent and pretreatment implementation violations.

II. PENALTY CALCULATION METHODOLOGY - Pretreatment Implementation

The basic methodology of the CWA Civil Penalty Policy should be used to calculate settlement penalties in POTW pretreatment implementation cases. The three components of a settlement penalty (Economic Benefit, Gravity, and adjustments) are discussed below.

A) Economic Benefit

The following steps summarize the process to calculate economic benefit for pretreatment program activities:

- Obtain estimates of the costs to the POTW to implement its pretreatment program from the approved program submission.
- Update that information based on more current data from a pretreatment compliance inspection, a pretreatment audit, an annual report, or a 308 letter, if available.
- The economic benefit component of the civil penalty policy should be calculated using the EPA computer program "BEN".

- For purposes of the "BEN" calculation, the value of delayed implementation includes delayed capital investment, delayed cost in developing or updating local limits, and annual pretreatment program operating and maintenance (O&M) costs that were avoided. Use separate BEN runs if changes in operating costs have occurred.

1) Estimating Avoided or Delayed Costs for Implementation

The approved pretreatment program will probably include a budget for program implementation. There may also be discussion of implementation activities and costs in the approved program elements covering the compliance monitoring and administrative procedures. Such data in the approved program submission provides a basis for developing the economic benefit derived by a POTW by not implementing its approved program. In particular, where a POTW has not complied with that budget, economic benefit may be represented in part by the amount of the budget the POTW has failed to expend. The Region should use data developed through audits, inspections, annual reports or 308 letters to develop these cost estimates.

In many cases, the POTW will have complied with the resource commitments in the approved program but still fail to adequately implement the required program. This may be the result of unrealistic estimates initially, the failure to update resource needs, changes in pretreatment program requirements or a failure to carry out required activities with existing resources. In such cases, economic benefit may be developed by estimating the specific costs that were avoided for required implementation activities.

Where specific costs estimates for non-implementation are not available, the costs avoided by the POTW for failure to implement can be expressed as a percent of the total implementation cost or as an estimated cost for each required activity that was not implemented. Pretreatment implementation costs for POTWs were evaluated as part of an earlier study (JRB Associates, 1982 "Funding Manual for Local Pretreatment Programs" EPA Contract No. 68-01-5052). This assumes that the POTW budget includes all costs associated with implementation. Based on a review of several programs, a table (Table 1) was developed for small, medium, and large programs to show the percent of total costs which each implementation activity represented. The small POTW pretreatment programs were all under 5 MGD flow and covered ten or fewer significant industrial users (SIU) with a total implementation cost ranging from $10,000-$50,000.00 annually. The medium sized POTW pretreatment programs had total flows from 5-15 MGD and up to 50 SIUs with an annual cost from $25,000-$200,000.00. The large POTW programs had flows over 15 MGD with 20 or more SIUs with annual implementation costs ranging from $100,000 to more than $350,000.00.

Table 1. Typical Program Costs for Implementation Activities by Program Size (as % of Total Cost)

Activity	Small	Medium	Large
1. Sampling and Industrial Review (*Criteria B, C,)	22%	19%	18%
2. Laboratory Analysis (*Criteria B, C, D)	34%	34%	39%
3. Technical Assistance (*Criteria A, D and E)	17%	26%	20%
4. Legal Assistance (*Criteria A, D, E)	13%	10%	13%
5. Program Administration (*all Criteria)	14	11	10
	100%	100%	100%

This Table can be used to assist in developing costs for a specific program activity where costs are unavailable or determined to be inadequate. For example, if a medium-sized POTW had costs for implementation of $100,000, but this POTW had failed to perform any compliance inspections of its IUs, the percentage from Table 1, activity 1 for a medium-sized program could be applied to total costs. The inspection costs in this case could be estimated to be $19,000.00. The costs of "avoided implementation" may differ from year to year depending on whether the activities are one-time or periodic (such as permit issuance or updating local limits) or continuing tasks (such as inspections). The costs of issuing permits may be 20% of an annual implementation budget of $120,000 or $24,000 for a particular year. If this POTW failed to issue four of the eight required permits, $12,000.00 in expenses would be avoided for that year.

Another approach to development of avoided costs is to estimate the labor and overhead costs for particular activities. This approach may also be used in combination with Table 1, where the budget does not cover costs for specific implementation requirements (e.g., IU permitting or enforcement). For example, if each permit required one month of engineering labor and analysis at $36,000.00/year, each permit would cost $3,000.00. The total avoided cost of four permits would also be $12,000.00. The cost of permit re-issuance could be lower than the initial issuance cost. This value would be entered under the variable for annual operating and maintenance expenses for

* Criteria from RNC Guidance that are likely to be associated with listed activity.

a particular year. If the permits were issued late, as opposed to not issued at all, avoided costs (economic benefit) could be calculated for the period of delay.

If a POTW has failed to enforce against IUs or delayed enforcement against IUs, the POTW has received economic benefit by avoiding or delaying that action. Even when specific program costs for enforcement can be identified, it may be difficult to quantify the avoided or delayed costs. Where necessary, one approach to calculating the avoided costs by the POTW for inadequate enforcement is to assume that each IU violation would require a POTW enforcement response (see discussion in Pretreatment Compliance Monitoring and Enforcement Guidance (PCME), September 1986). The expected response against the IU would escalate with the duration and magnitude of the violation, either based on the POTW's own enforcement procedures or the Enforcement Response Guide in the PCME. As a guide for the cost to the POTW of each type of enforcement response and the delay that may have occurred, you may wish to use the table below. It is based on EPA's pricing factors and the enforcement response timeframes discussed in the RNC guidance.

Table 2. Resource Cost and Response Time for POTW Enforcement Actions

Initial Response to Violations	POTW Time to Respond*	Cost of Action in Workdays
Telephone calls	5 days	0.05-0.2
Warning Letters	10 days	0.2
Meeting	30 days	0.5
Demand Inspections	30 days	0.5-2.0
Follow-up for Continued Noncompliance		
On-site evaluation	15 days	0.5-2.0
Meeting	30 days	0.5
Formal Enforcement		
Administrative	60 days	10-50
Judicial	60 days	30-100
Penalty assessment and Collection	60 days	2-50

* Response time reflects EPA's expectation as to the amount of time in which the POTW should take enforcement action after notification of an IU violation. For example, the POTW initial response to notification noncompliance should occur within 5 days when it is a telephone call and within 30 days when it is a Demand Inspection.

The time required to complete a specific enforcement response should be evaluated based on the enforcement procedures developed by the POTW and the size and complexity of the IU. SIUs with significant noncompliance would be expected to require more POTW effort to resolve the noncompliance. The level of response should be escalated in relation to the magnitude and duration of noncompliance. The avoided enforcement costs would increase based on the number of IUs that were in noncompliance and not addressed by POTW enforcement. The actual cost can be estimated from salaries. EPA assumes each work year consists of 220 workdays after leave and holidays are subtracted. Typical EPA annual salaries and benefits (assuming 15% of salary) are as follows: inspectors $32,000, permit engineers $40,000, staff attorneys and chemists $37,000. However, it would be appropriate to use the salary scale of the affected POTW, if available.

The next three sections discuss the calculation of economic benefit, gravity, and adjustment to the penalty for pretreatment implementation violations. In some cases you may have effluent violations as well as implementation problems and additional penalty calculations will be required for these violations.

2) **Using BEN**

The BEN User's Manual provides basic instructions for entering variables and discusses the effect of changes in economic data and compliance dates on the estimate of economic benefit. The Manual describes the variables that are typically associated with construction and operation of wastewater treatment systems; however, there are a few special considerations for developing pretreatment implementation costs. If effluent violations are involved, a separate BEN run should be made to calculate the economic benefit of inadequate treatment, avoided operations and maintenance costs for the treatment system, or any other cause not related to implementation of a pretreatment program. The BEN estimates should be combined to develop the settlement penalty.

The capital investment for pretreatment is usually related to sampling and safety equipment, vehicles for inspections, and perhaps laboratory facilities. These typically have a shorter useful life (3 to 7 years)* than that which is assumed for pollution control equipment (15 years is the standard BEN value for tankage and pumps). The useful life is an optional input variable.

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* United States Tax Guide No. 17 categorizes real property, vehicles, and equipment according to its useful life for purposes of depreciation.

* Annual operating and maintenance costs related to pretreatment implementation include the costs to the POTW of: (a) IU permitting; (b) POTW monitoring, inspections, and analysis of IU compliance; (c) legal and technical assistance, (d) cost of taking enforcement actions, (e) updating local limits; and (f) program administration. The costs identified for operation and maintenance should include all salaries, supplies, maintenance, and support necessary to the operation of the pretreatment program. Most of the avoided costs of implementation will be the O&M expenses (see previous discussion). Since annual operating and maintenance costs and the level of implementation may vary each year, separate BEN runs may be needed to determine these costs, depending on the specific period of noncompliance.*

The Ben variable "one time, non-depreciable expenditures" is not likely to be appropriate for inclusion in the BEN penalty calculation for POTW implementation cases. All expenditures for pretreatment implementation are likely to be recurring at some frequency, so they are not truly one-time as, for example, the purchase of land. Even the development of local limits and the survey of industrial users are likely to require periodic updating. Most "set-up costs" were incurred as part of program development. In addition, a POTW does not pay income tax, so depreciation does not affect the POTW's economic benefit.

Economic benefit should be calculated from the initial date of noncompliance up to the time where the POTW was or is realistically expected to be in compliance.

B) Gravity Component

The gravity component of the existing Penalty Policy quantifies the penalty based primarily on the characteristics and consequences of effluent violations, although the amendment to the Penalty Policy adds a Factor E for non-effluent violations. The gravity of pretreatment implementation violations is evaluated primarily on the degree and pattern of failure to implement a required activity and the potential and actual impact of non-implementation. Thus, some modification or amplification of the gravity factors in the CWA Civil Penalty Policy is needed to reflect the characteristics of implementation violations.

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* BEN will adjust cost estimates to current year dollars. POTWs are considered "not for profit" entities.

Pursuant to the amended CWA Civil Penalty Policy, five factors (A-E) are used to evaluate gravity. This Guidance presents the relationship of each factor to pretreatment implementation. The methodology for calculation of the gravity component is the same as in the CWA Penalty Policy -- that is each factor is calculated on a monthly basis with each violation presumed to continue until corrected. The gravity amount equals the sum of factors A through E plus 1, multiplied by $1,000.00 for each month of violation.

Note: Where effluent violations also exist, they should be considered in the appropriate monthly gravity component. Effluent violations are considered specifically under factor A, and they may also increase the levels for factors B, C, and D. All non-effluent violations would be evaluated under factor E. The penalty for effluent violations should be added to penalties for pretreatment implementation violations.

The basis for evaluation of performance on implementation is identified in the RNC Guidance. The RNC criteria identify the basis for evaluating implementation activities to determine the number of and most significant implementation violations. Of course, where actual approved program requirements vary from the RNC criteria, the program requirements should be the basis for evaluating performance.

The "Guidance on Bringing Enforcement Action Against POTWs for Failure to Implement Pretreatment Programs", August 4, 1988, discuss guidelines for evaluating the severity of pretreatment implementation violations (see Table 3 and discussion in that guidance).

The gravity factors as they are to be applied for pretreatment implementation cases are listed below:

Gravity Factor A. Significance of the Effluent Violation

This factor should be applied without change from current CWA Penalty Policy methodology to effluent violations where they occur. This factor is not applicable to failure to implement violations.

Gravity Factor B. Impact of the Violation

Failure to implement may result in POTW permit effluent limit violations, interference with the treatment works, pass through of pollutants from inadequately regulated IUs, and/or sludge contamination which may cause or contribute to harm to the environment or in extreme cases, a human health problem. Both effluent violations and all RNC criteria that are met by the POTW should be evaluated in selecting the value. The violation that gives the highest factor value should be used for each month. The value chosen should increase where the potential impact or evidence of an actual impact effects

more than one of the listed categories. Also, where a POTW is Federally funded and is potentially damaged, a higher value should be assigned:

(i)	Impact on Human Health; or	Range: 10-Stat Max
(ii)	Impact on Aquatic Environment; or	Range: 1-10
(iii)	Potential Impact of Inadequately Controlled IU Discharges on POTW	Range: 0-10

Gravity Factor C. <u>Number of Violations</u> Range: 0-5

Each RNC criterion that is met is counted as a violation for the month. The more criteria that are met the higher the value chosen should be. In addition, this "number of violations" factor may be weighted more heavily to account for serious violations other than the most significant violation which was accounted for in factor "A" or "E". Effluent violations should also be included under this factor as part of normal Penalty Policy calculations.

Gravity Factor D. <u>Duration of Noncompliance</u> Range: 0-5

This factor allows consideration of continuing long-term violations of a permit (including effluent limits, schedules, and reporting requirements) and should include evaluation of all RNC criteria. The value should be increased if the same criterion is met for 3 or more months. When the violation is corrected for that criterion, a value of 0 is appropriate for the monthly gravity component in the months following the correction.

Gravity Factor E. <u>Significance of Non-effluent Violations</u>

The significance of a violation of an implementation requirement is evaluated based on the percent of a requirement that the POTW has failed to implement. All of the criteria identified in the RNC Guidance should be evaluated to identify the required activity for that month in which performance has been most inadequate. That activity will be deemed the most significant pretreatment implementation violation, and gravity factor E should be determined for that violation. Higher values within the range could be used for violations by large POTW programs and for programs with high rates of IU noncompliance. Higher values may be appropriate in such cases because the failure to implement may result in a higher discharge of toxic compounds to the environment. Factor E can also be used to address other permit violations such as reporting or schedule milestone violations.

% of a Requirement that The POTW Failed to Implement	Value Range
80-100%	3-10
41-79	2-7
20-40	1-4
0-19	0-3

C) **Adjustments**

1) **Recalcitrance (to increase penalty)** **Range: 0-150% of the preliminary penalty amount**

In addition to the discussion in the CWA Penalty Policy, recalcitrance includes consideration of whether the POTW continued i: noncompliance after notification of the violations. The existence o: audits or PCIs and follow up letters identifying these violations to which the POTW has failed to respond, generally indicate that recalcitrance should be increased. If the POTW has failed to compl with an administratively-imposed compliance schedule, the recalcitrance adjustment should be increased. Recalcitrance is indicated because the POTW was reminded of the requirements and notified of its violation, and yet failed to remedy the situation.

2) **Ability to Pay (to decrease penalty).**

The ability to pay adjustment becomes an issue when the municipality is incapable of raising sufficient funds to pay the proposed penalty. Ability of the municipality (or sewerage authority to pay should rarely be a factor in pretreatment implementation cases since few involve large capitalization projects. Thus, the economic impact on the community from a penalty will be relatively small compared to the capital and O&M costs associated with the wastewater treatment system.

Funds to pay a penalty can come from a variety of sources within the municipality including unrestricted reserves, contingency funds, and any annual budget surpluses. The municipality could also make a one time assessment to the violating IUs or to all users of the system to cover the penalty amount. Where there is insufficient cash on hand to pay the entire penalty immediately, a payment plan can be developed which raises the needed funds over a specific time period (e.g., 6 - 12 months). This spreads the impact of the penalty over a longer period. Where a POTW chooses to assess all users to cover penalty, the impact is likely to be small. Even a small municipali with 3,500 connections (service population about 10,000) with an

existing sewer charge of $10/month could raise rates by 10% ($1) for 12 months and generate sufficient cash to pay a penalty of almost $50,000, which equates to about $.35/capita/month.

In determining whether ability to pay will become an issue, the standard Financial Capability Guidebook procedures can be used. While a specific municipality's debt situation could become an issue, the procedures primarily look at the increase in user fees which would be needed to generate the penalty amount compared to the median household income (MHI) of the community. Where the total wastewater treatment burden divided by the MHI is less than the standard indicators (between 1.00 - 1.75% of the MHIis considered an affordable sewer rate), ability to pay is not usually considered to be a problem.

3. Litigation Considerations (to decrease penalty)

The legal basis and clarity of the implementation requirements of an approved program and an NPDES permit are important factors in assessing the strength of the case. Where requirements are ambiguous, the likelihood of proving a violation is reduced, and this may be a basis for adjusting the penalty amount.* Otherwise, assessment of this factor will depend largely upon the facts of the individual case.

III. EXAMPLE OF PENALTY CALCULATION

The RNC Guidance (See pages 12 and 13) includes two examples of POTWs that failed to implement their approved pretreatment programs. The "Hometown" example will be used as a basis for computing a penalty to illustrate this Guidance. As noted previously, this example does include a penalty calculation for effluent violations.

A) Revised Scenario:

Hometown's pretreatment program was approved in June 1985. The annual implementation costs identified in the approved program were $100,000.00, plus the cost for issuing each SIU permit. The NPDES permit required an annual report fifteen days after the end of the year, beginning January 15, 1986. The approved program required that all 15 permits be issued by June 30, 1986. An August, 1986, audit of the program revealed that the POTW had failed to issue ten required permits and had not inspected its IUs as of that date. In addition, the POTW failed to submit its 1986 annual report on time. The State issued an administrative order on March 31, 1987 that required submission of an annual report by April 30, 1987 and permit issuance by June 30, 1987 and sampling inspections of all SIUs by August 30, 1987. The annual report was submitted September 30, 1987

* See OECM/OWEP "Guidance on Bringing Enforcement Actions Against POTWs for Failure to Implement Pretreatment Programs". August 4, 1988, for further discussion on assessing the strength of a case.

but as of January 31, 1988 only eight permits were issued and half of the IUs were not inspected. This facility was on the Exceptions List for failure to implement its approved pretreatment program and for effluent violations. Thus, judicial action is appropriate. Full compliance was expected by April, 1988. Instances of noncompliance are tabulated below for both effluent violations and pretreatment implementation violations.

1. Effluent Violations

Monthly Average Effluent Limit Violations

Permit Limits: TSS 30mg/l; BOD 30mg/l; Cyanide 0.01mg/l; Copper 0.200 mg/l

Date	Value (all mg/l)
July, 1986	TSS 45 Cyanide 0.015 Copper 0.25
August, 1986	TSS 37 Cyanide 0.012 Copper 0.3
November, 1986	TSS 41 Cyanide 0.018 Copper 0.28 BOD 47
March, 1987	TSS 38 Cyanide 0.016 Copper 0.3 BOD 43
April, 1987	TSS 40 Cyanide 0.021 Copper 0.4
June, 1987	TSS 44 Cyanide 0.014 Copper 0.3
August, 1987	TSS 41 Cyanide 0.03 Copper 0.4
October, 1987	TSS 37 Cyanide 0.016 Copper 0.3
December, 1987	TSS 39

2. Pretreatment Implementation Violations

Description of Violation Violations	Initial Date of Noncompliance*	Compliance Date
Failed to Issue permits (RNC criterion A)	6/30/86	60% Issued (1/31/88)
Failed to Inspect IUs (RNC criterion B)	8/30/86	50% Inspecte (1/31/88)
Failed to Submit Annual Report (RNC criterion F)	1/15/87	(9/30/87)

* Under the same circumstances, this could be the date of program approval.

The minimum civil penalty for settlement can be determined as follows:

3. Estimates of Avoided Costs for Implementation Violations

The effluent violations are indicative of interference and pass-through caused by IU inputs of cyanide and metals that should be controlled by implementing pretreatment. The POTW has operated and maintained secondary treatment. Thus, the economic benefit is only calculated for pretreatment implementation violations. Since the approved program provided no information on the cost of issuing IU permits, an estimated cost has to be developed. The implementation costs are considered operation and maintenance costs (limited to certain time periods) for the BEN calculation of economic benefit. The BEN inputs and rationale are presented below for each violation.

1) Issue permits @ $3,000.00/permit

7/86 - 9/87, 10 unissued permits avoided cost-$30,000.00
10/87 - 1/88, 7 unissued permits avoided cost-$21,000.00

EPA uses a pricing factor of 40 days for issuing major, non-municipal, technology-based NPDES permits. SIU permits should be issued more quickly because there is less public notice. While the IU control mechanisms are likely to require similar types of evaluation and technical review as the comparable industries with NPDES permits, they are also likely to be smaller in size. Site and sampling data should already be available to the POTW, and there is no need for State certification as there is for EPA issued permits. Balancing the above facts with the limited POTW experience in issuing permits, thirty days was selected as an average time to issue a permit at a cost of $100.00 per day.

2) Inspection costs

7/86 - 12/86, no inspections avoided cost-$19,000.00/yr
1/87 - 9/87, 60% uninspected avoided cost-$11,000.00/yr
10/87 - 1/88, 50% uninspected avoided cost-$ 9,500.00/yr

From Table 1, use the sampling and industrial review percentage (19% for a medium-size program), multiplied by the total annual program implementation costs ($100,000). Therefore, inspections are estimated to cost $19,000.00/year. The POTW began conducting inspections after the audit--40% of the SIUs were inspected by January, 1987, and 50% were inspected by October, 1987.

3) Annual report - $5,000.00

Annual report costs are presumed to be part of program administration. This portion was estimated to be 5% of the total program costs (See Table 1).

B. Economic Benefit Component

BEN Inputs for each variable each are shown below:

1. Case Name=Hometown
2. Initial Capital Investment= 0
3. One-time non-depreciable expenditures= 0

Four separate BEN runs were made for avoided costs from permitting, inspection, and reporting violations. The avoided cost changed as permits were issued and inspections were completed. The time periods correspond to information obtained from the POTW in the senario.

	BEN Run			
	1	2	3	4
4. Annual O&M costs (all 1985 dollars)				
a) permits ($3,000 each)	30000 (10 unissued)	30000 (10)	30000 (10)	21000 (7)
b) inspections (% inspected)		19000 (0%)	11000 (40%)	9500 (50%)
c) annual report			5000	
5. Initial Date Noncompliance	7/86	8/86	1/87	10/87

6. Compliance Date	7/86	12/86	9/87	4/88
7. Penalty paid	4/88	4/88	4/88	4/88

(Remaining variables use standard values)

Results from BEN

Run 1	3,150
Run 2	20,018
Run 3	36,659
Run 4	15,803
Total	$75,630

Economic Benefit

D. Gravity Component

In developing the gravity amount, both effluent and pretreatment implementation violations should be included. A table showing the gravity calculation is provided below, along with a general description of the rationale for selection of values.

The values chosen for June-August 1986 reflect both the July and August effluent violations and the ten unissued permits which were to have been issued by June 30. The failure to issue permits was identified in the August audit and treated as the most significant violation and given a "3" under Factor E beginning in the month of July. (This factor could have been higher if the SIUs were major sources of toxics). September, 1986 represented the third month that the pretreatment implementation violation had continued, so Factor C was assessed at "1". Both effluent and implementation violations were counted under Factor D. The value assessed for Factor B, was related to the presumed IU impacts on NPDES permit violations. There was no evidence of any impact to the aquatic environment or human health from the effluent violations. For January, 1987, Factors C and D were increased to reflect the continuing effluent and implementation violations and the additional violations of the AO schedule. Factors were reduced in September, 1987 to reflec submission of the annual report, the issuance of some permits and the progress with inspections.

	Factors						
Month/Year	A	B	C	D	E	+1	Total
June, 1986	0	0	0	0	0	1	1000
July	3	1	0	0	3	1	8000
August	2	1	1	1	3	1	9000
Sept	0	0	1	1	3	1	6000
Oct.	3	0	1	1	3	1	9000
Nov.	4	1	1	1	3	1	11000
Dec., 1986	0	0	1	1	3	1	6000
Jan., 1987	0	0	2	2	3	1	8000
Feb.	0	0	2	2	3	1	8000
Mar.	4	1	2	2	3	1	13000
Apr.	5	2	2	2	3	1	15000
May	0	0	2	2	3	1	8000
June	3	2	2	2	3	1	13000
July	0	0	2	2	3	1	8000
Aug.	4	2	2	2	3	1	14000
Sept.	0	0	1	2	2	1	6000
Oct.	3	2	1	1	2	1	10000
Nov.	0	0	1	1	2	1	5000
Dec.	1	0	1	1	2	1	6000
Jan. 1988	2	0	1	1	2	1	7000
Feb.	0	0	1	1	2	1	5000
Mar.	0	0	1	0	1	1	3000
							179,000

E. Adjustment Factors

1. Recalcitrance

A factor ranging from 0 percent (good compliance record, cooperation in remedying the violation) to 150 percent (extremely recalcitrant, despite repeated attempts to encourage compliance) of the total of the Economic Benefit and Gravity Components may be used to increase the penalty based upon the history of recalcitrance exhibited by the POTW. In this case, the POTW was advised of the implementation problems through an audit and an alternate schedule for compliance was established under an administrative order. Implementation was improved, but it was still inadequate. A factor of 20% was used because the POTW has failed to meet an administrative order schedule to fully implement its approved program.

Additional penalty .20 x ($75,630 + 179,000) = $ 50,800

Penalty Running total $ 304,800

2. Ability to Pay (Subtraction)

Several factors need to be considered in evaluating the defendant's ability to pay -- for example, domestic and industrial user fees, the cost of implementation relative to other municipalities, the size of the industrial users, the type of industrial base, and the financial condition of the city and its IUs. The combined bills for SIUs were 10% of all user charges, and IUs contributed 8% of the flow in 1986. The Hometown POTW is 10 MGD, with over 25,000 service connections and a $200 annual sewer rate. Assuming each connection represents a household with a MHI of $20,000, Hometown could afford a rate increase of about $12 annually per household. [EPA considers affordable sewer rates to range from 1.5 to 1.75 percent of the MHI (i.e., $250 to $275 per year)]. The POTW has an A Bond rating, strong financial condition, and has maintained the same user fees since 1984, prior to approval of the pretreatment program. There are no fees for permit issuance, discharger applications, or IU inspections. The results of the financial capability analysis indicate that if Howmetown used a general sewer rate increase to fund the penalty, it would be considered affordable. At this time, no adjustment for ability to pay seems appropriate.

Penalty Running Total $ 304,800

3. **Litigation Considerations** (Subtraction)

The federal case for Hometown is a strong one. The POTW has specific requirements for permitting and inspecting its industrial users. These are specified in the approved program and were incorporated into the NPDES permit in June 1985. The pretreatment audit identified specific violations, and the POTW began to address them. There is no evidence that the POTW was confused or that the requirements for implementation have changed. The failure to implement has contributed to permit limit exceedances for cyanide and copper, which are of concern. The large industrial community is an underused source of revenue for implementation and the current implementation violations may have provided them with some economic benefit. Therefore, there is no basis for adjustment for litigation considerations.

Final Penalty for Settlement $ 304,800

IV. Intent of Guidance

The guidance and procedures set out in this document are intended solely for the use of government personnel. They are not intended, and cannot be relied upon, to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these guidance and procedures and to change them at any time without public notice. In addition, any settlement penalty calculations under this Guidance, made in anticipation of litigation, are likely to be exempt from disclosure under the Freedom of Information Act. As a matter of public interest, the Agency may release this information in some cases.

VIII. B. Guidance on Bringing Enforcement Actions Against POTWs for Failure to Implement Pretreatment Programs. (Sample pleadings excluded)

GUIDANCE ON BRINGING ENFORCEMENT ACTIONS AGAINST POTWS
FOR FAILURE TO IMPLEMENT PRETREATMENT PROGRAMS
August 4, 1988

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I. EXECUTIVE SUMMARY

This guidance document explains the legal and policy considerations involved in deciding whether and how EPA shall pursue Federal enforcement responses under the Clean Water Act against POTWs that have been indentified on the Quarterly NonCompliance Report as having failed to adequately implement their pretreatment programs.

Municipal pretreatment programs must be fully implemented in order to effectively control industrial discharges of toxic, hazardous, and concentrated conventional wastes into public sewers and, ultimately, our rivers and lakes. Now that EPA has approved virtually all Federally required local pretreatment programs, EPA is placing a high priority on assuring local program implementation. Thus, EPA Regions and NPDES States now record on the Quarterly Noncompliance Report those POTWs that have failed to adequately implement their pretreatment program requirements. EPA enforcement actions are necessary to ensure that POTWs fully implement their pretreatment programs. Indeed, this guidance document is intended to help EPA pursue enforcement actions in this area and establish a strong enforcement presence so as to assure proper program implementation on a broad scale from POTWs.

The decision to initiate an enforcement action against a POTW for its failure to adequately implement its pretreatment program requires a careful analysis of the underlying pretreatment program requirements, the legal basis for the violations and the seriousness of the violations. This is particularly true because of the differing implementation requirements which may apply to individual POTWs. In addition, the flexibility which many implementation requirements intentionally allow necessitates the use of considerable judgment in deciding whether to find a POTW in violation.

From a legal and equitable perspective, EPA is in the strongest position to enforce pretreatment program implementation requirements that are contained in a POTW's NPDES permit, either directly within the pages of a permit or indirectly through a permit condition that requires a POTW to implement its approved program and/or comply with the pretreatment regulations, 40 CFR 403.

The following approach should be useful in identifying potential pretreatment implementation violations for possible enforcement responses. First, examine the POTW's permit to identify all pretreatment activities the POTW is required to implement. Second, review all pretreatment program annual reports that the POTW has submitted since its program was

approved. All pretreatment audits and inspections should also be reviewed to identify potential violations.

Third, compile a list of all pretreatment implementation requirements applicable to the POTW which available information indicates the POTW may have violated. (See Tables 1 and 2 for possible examples, such as failure to issue industrial user (IU) control mechanisms, failure to establish necessary local limits, or failure to enforce IU pretreatment requirements adequately.) Fourth, in some cases, send a §308 letter to obtain more complete information necessary to support an enforcement case.

Once all potential violations have been identified, each violation must be evaluated to determine the strength of EPA's claim of violations in light of the facts and any imprecision in the way the underlying pretreatment implementation requirements define compliance.

Despite the flexibility a POTW may have in implementing some pretreatment requirements, the fundamental yardstick for measuring compliance is that a POTW must act reasonably by implementing its pretreatment requirements consistent with an effective pretreatment program: i.e., a program that will prevent interference and pass through, and improve opportunities to recycle municipal and industrial wastestreams and sludges (see 40 CFR 403.2). EPA should evaluate the reasonableness of the POTW's implementation activity in light of both the flexibility afforded by the applicable requirements and the impact or severity of the potential violations. Preparing a table similar to the one in Attachment A for evaluating program implementation violations could be helpful in making enforcement decisions in this area.

As a general rule, the strongest enforcement case against a POTW for failure to implement its pretreatment program will contain POTW effluent limit violations attributable to inadequate implementation and a number of related POTW pretreatment implementation violations. Such cases are compelling because they indicate that a POTW's implementation of its program has been so deficient that IU discharges have not been adequately controlled and these discharges have caused a POTW to exceed the effluent limits in its permit (or otherwise violate its permit). This type of case may very well be appropriate for civil judicial enforcement.

The lack of POTW permit effluent discharge violations (attributable to inadequate pretreatment implementation) does not mean that EPA should overlook or trivialize other types of implementation violations. Inadequate pretreatment implementation still could result, for example, in the POTW discharging increased loadings of pollutants (including

toxics) not yet controlled by its permit, or in increasing the risk of future effluent limit violations. Thus, for example, a POTW that has failed to issue control mechanisms to a number of its significant IUs in direct violation of a permit requirement to do so is committing a serious violation that may very well be subject to an enforcement response.

Other cases in which a POTW is running a sloppy pretreatment program, with clear implementation violations, but in which there is so far no evidence of interference or pass through problems, may be appropriately dealt with by issuance of a traditional compliance administrative order or by assessment of an administrative penalty, or by initiation of a civil judicial action. EPA's pursuit of a penalty in these circumstances should have great value in demonstrating to POTWs that they must fully implement their pretreatment programs now and not wait until after effluent violations occur.[1] Such enforcement actions should help EPA send the message that prevention is the goal of pretreatment programs, not damage control after POTW effluent limits violations or other unwarranted discharges have occurred.

If an IU has caused interference or pass through at the POTW, or has violated local limits, categorical standards or other pretreatment requirements, EPA may bring a joint action against both the IU and the POTW. The importance of joining an IU in an enforcement action is increased if an IU is a primary cause of a POTW's effluent limit violations, if an IU has obtained a significant economic benefit from its noncompliance, or if an IU needs to install pretreatment equipment at its facility, especially if a POTW is unwilling or unable to force an IU to install the necessary equipment.

A model judicial complaint and consent decree for pretreatment failure to implement cases are included as attachments to this guidance. Model administrative pleadings will be prepared shortly for Regional distribution.

<u>Disclaimer</u>

This guidance document is intended solely for the use of Agency enforcement personnel. This guidance creates no rights, is not binding on the Agency, and the Agency may change this guidance without notice.

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[1] Instructions on how to determine settlement penalties using the standard CWA Civil Penalty Policy criteria of economic benefit, gravity and appropriate adjustments are contained in EPA's draft Guidance, "Penalty Calculations for a POTW's Failure to Implement It's Pretreatment Program," distributed for Regional comment on August 1, 1988.

II. INTRODUCTION: POTW Implementation as the Key to an Effective National Pretreatment Program

A. Purpose of this Guidance

This document provides guidance on how and under what circumstances EPA should pursue administrative and judicial enforcement actions against Publicly Owned Treatment Works (POTWs) for violations of their pretreatment program implementation obligations arising under the Clean Water Act.

Local pretreatment programs must be fully implemented in order to effectively control industrial discharges of toxic, hazardous, and concentrated conventional wastes into public sewers and, ultimately, our rivers and lakes. Now that EPA has approved virtually all Federally required local pretreatment programs, EPA is placing a high priority on assuring local program implementation. Thus, EPA Regions and NPDES States now record on the Quarterly Noncompliance Report those POTWs that have failed to adequately implement their pretreatment program requirements. EPA enforcement actions are necessary to ensure that POTWs fully implement their pretreatment programs.

National guidance is needed for bringing enforcement actions against POTWs for their failure to adequately implement their pretreatment programs for four reasons. First, the determination of whether a POTW is violating its pretreatment program requirements, and whether such violations are serious, may involve careful, subtle judgments. Second, even though the failure to adequately implement may be clear, subtle legal issues may be involved in determining the best way to frame the Government's cause of action. Third, there is a need for national consistency to ensure that POTWs and their industrial users receive a consistent and strong message that pretreatment requirements must be complied with and that violations will not be tolerated. Fourth, pretreatment implementation cases are new and thus there are neither settled nor litigated precedents to follow in this area.

This guidance document builds upon the Office of Water Enforcement and Permit's (OWEP) definition of Reportable Noncompliance for POTW pretreatment program implementation.[2] EPA Regions and NPDES States use this definition of Reportable Noncompliance to identify and list on the Quarterly Noncompliance Report (QNCR) those POTWs that have failed to

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[2] U.S. EPA, OWEP. Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Requirements. September 1987.

adequately implement their pretreatment program requirements. Given finite resources, EPA enforcement actions will not be appropriate for all of the POTWs that are listed on the QNCR for Reportable Noncompliance with pretreatment implementation requirements. This guidance document is intended to help EPA Regions select the best cases for enforcement in this area and thus establish a strong enforcement presence in order to ensure full program implementation across the nation by local POTWs.

B. Related Pretreatment Guidance Documents

In addition to this guidance document, there are five other EPA documents that are particularly relevant to bringing enforcement actions against POTWs for failure to implement. As indicated above, on September 30 1987, EPA issued a guidance document that explains how POTW noncompliance with pretreatment implementation requirements should be evaluated and reported on the QNCR. In short, today's guidance document expands upon the September 1987 Reportable Noncompliance guidance by detailing the considerations involved in bringing an enforcement action against a POTW listed on the QNCR pursuant to the definition of Reportable Noncompliance.

Another important document is OWEP's July 25, 1986 guidance, entitled, "Pretreatment Compliance Monitoring and Enforcement Guidance" (published as an EPA document in September 1986). This document provides POTWs with information about their pretreatment implementation responsibilities and describes the procedures POTWs should implement in order to successfully operate their approved pretreatment programs. In short, the document recommends standards of performance for a good pretreatment program.

Two other guidance documents, both issued on September 20, 1985, are also relevant to bringing failure to implement cases.[3] One document, entitled "Guidance on Obtaining Submittal and Implementation of Approvable Pretreatment Program," discusses EPA enforcement and permitting policy on obtaining POTW pretreatment program submittal and implementation. The other document, entitled "Choosing Between Clean Water Act §309(b) and §309(f) as a Cause of Action in Pretreatment Enforcement Cases" describes the legal considerations involved in choosing a cause of action in a pretreatment case.

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[3] Copies of both documents are contained in the CWA Compliance/Enforcement Policy Compendium, Volume II, §VI.B. Copies of the Compendium are in OECM's new computer data base, the Enforcement Document Retrieval System.

Finally, on August 1, 1988, EPA distributed draft guidance, for Regional review, that explains how the CWA Civil Penalty Policy should be applied to cases in which a POTW has failed to adequately implement its pretreatment program. This document, entitled "Penalty Calculations for a POTW's Failure to Implement It's Pretreatment Program" discusses the specific considerations involved in making penalty policy calculations for failure to implement violations.

C. Background on the National Pretreatment Program

The National Pretreatment Program is an integral part of the national goal to eliminate the discharge of pollutants into the nation's waters (§101 of CWA). The National Pretreatment Program's primary goal is to protect POTWs and the environment from the detrimental impact that may occur when toxic, hazardous or concentrated conventional wastes are discharged into a sewage system. With the retention of the Domestic Sewage Exclusion in RCRA, and as RCRA regulations for the disposal of hazardous waste in land fills become more restrictive, the amount of hazardous waste entering POTWs is expected to increase.[4] Thus, the role of pretreatment in controlling hazardous waste must also increase.

The role of pretreatment in controlling toxic pollutants must also increase as water quality-based toxics limits and monitoring requirements become a more common provision in the NPDES permits of POTWs. In order to comply with water quality-based toxics requirements, POTWs must fully implement their pretreatment programs in order to effectively control the discharge of toxic pollutants by industrial users.

The governmental entity that primarily implements pretreatment controls on industrial users (IUs) is usually the local municipality. The municipality, through its POTW, is called the Control Authority because it has the primary responsibility to control the industrial wastes that are

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[4] The domestic sewage exclusion in RCRA, §1004(27), allows wastes which otherwise would be considered hazardous and regulated under RCRA, to be exempted from RCRA regulations when mixed with domestic sewage and discharged to a POTW. Pursuant to RCRA §3018, EPA concluded that the Domestic Sewage exclusion should be retained because the CWA pretreatment program is the best way to control hazardous waste discharges to POTWs.

entering its sewer system.[5] The Agency confirmed this responsibility that POTWs have in the preamble to its final 1978 General Pretreatment Regulations, 43 F.R. 27736, June 26, 1978. In that preamble the Agency stated:

> "Thus in the amendments to sections 309 and 402 of the Clean Water Act, Congress assigned the primary responsibilities for enforcing national pretreatment standards to the POTWs, while providing the EPA or the NPDES state with the responsibility to assure that local government fulfills this obligation." 43 F.R. at 27740.

U.S. EPA is performing four basic activities to ensure the success of the National Pretreatment Program. First, EPA has been developing national categorical pretreatment standards that contain effluent discharge limits for particular industrial processes.

Second, EPA has promulgated the General Pretreatment Regulations, 40 CFR 403. These regulations, inter alia, establish the criteria and procedures for the development, approval and implementation of local POTW pretreatment programs. Section 403.5 of these regulations prohibits the discharge of pollutants, by IUs, into a POTW that may cause interference or pass through at a POTW.

Third, EPA has issued guidance documents and conducted training seminars in order to help POTWs understand, develop and implement effective pretreatment programs.

Fourth, EPA must ensure that POTWs receive a strong message that full implementation of their pretreatment programs is required and will be legally enforced. With approximately 1500 approved local programs, the push to get POTWs to develop pretreatment programs is now largely complete. The next step is to make sure that these local pretreatment programs are fully implemented: Approved local programs must not be allowed to sit on the shelf and gather dust. Lifeless rivers, poisoned water supplies and crippled

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[5] States also play an important role in the National Pretreatment Program. Once a state has been authorized by EPA to operate the National Pretreatment Program in its territory, the state is then responsible for approving, monitoring and regulating the performance of all the local POTW pretreatment programs. To date, 24 States have received federal pretreatment authority. These states are called Approval Authorities. For those states without an approved pretreatment program, EPA is the Approval Authority.

sewage treatment plants are the possible consequences if POTWs do not fully implement their pretreatment programs.

In order to ensure that POTWs fully implement their pretreatment programs, EPA intends to focus much of its oversight and enforcement resources on proper and full implementation of local pretreatment programs. To this end, EPA Regions now identify those POTWs that have failed to adequately implement their pretreatment programs and report these POTWs on the QNCR pursuant to the definition of Reportable Noncompliance for pretreatment program implementation. EPA Regions should then initiate enforcement actions against POTWs with serious pretreatment implementation violations.[6] Such enforcement actions are necessary to force the violating POTW to comply and to deter other POTWs from neglecting their pretreatment obligations.

III. LEGAL BASIS FOR ENFORCING POTW PRETREATMENT PROGRAM IMPLEMENTATION: Look First to a POTW's Permit

A. Statutory Authority for Requiring POTW Pretreatment Programs

Section 301 of the Clean Water Act prohibits the discharge of any pollutant except in compliance with the effluent limits established in §301 and the requirements in sections 302, 306, 307, 308, 402 and 404. The most relevant sections for pretreatment are 307 and 402.

EPA's authority to establish pretreatment effluent standards is contained in §307 of the Act. Section 307(b)(1) requires EPA to promulgate regulations:

> "establishing pretreatment standards for [the] introduction of pollutants into treatments works ... which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operations of such treatment works. ... Pretreatment standards under this subsection ... shall be established to prevent the discharge of any pollutant through treatment works ... which are publicly owned, which pollutant

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[6] Of course, EPA Regions should initiate these enforcement cases consistent with the role of a state that has an approved state pretreatment program. EPA Regions should encourage states with approved programs to initiate state enforcement actions against violating POTWs.

interferes with, passes through, or otherwise is incompatible with such works."

In 1977, Congress amended §402(b)(8) to require a state that wishes to receive EPA approval to operate the NPDES program in its territory to have adequate authority:[7]

> "[t]o insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 307(b) of this Act into such works and a program to assure compliance with such pretreatment standards by each such source ..."

Section 402(b)(8) further mandates that a state program have adequate authority to require POTWs to inform the state permitting agency of (1) the introduction of pollutants into the POTW from a new source, (2) a substantial change in the volume or character of pollutants coming into the POTW from an existing source and (3) any anticipated impact of such changes on the POTW's effluent discharge. In short, any state desiring to administer its own NPDES permit program must issue permits that require POTWs to have programs that will assure compliance with pretreatment standards.

The language of §402 indicates that POTWs are obligated to have programs to assure compliance with pretreatment requirements and gives EPA and approved states the authority and obligation to require POTWs to develop and implement effective pretreatment programs.

B. Civil Judicial Enforcement Authority

EPA's civil authority to obtain injunctive relief to enforce the obligation that POTWs adequately implement their pretreatment programs is contained in §309(a)(3) of the Act, which reads, in pertinent part:

> "Whenever ... the Administrator finds that any person is in violation of section 301, 302, 306, 307, 308, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit

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[7] The requirements that govern a state NPDES program under §402(b) of the Act also apply to U.S. EPA where EPA is administering the NPDES program. §402(a)(3).

> issued under section 402 of this Act by him or a State ..., he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section."

Section 309(b) of the Act authorizes EPA, in pertinent part,:

> ... to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he [EPA Administrator] is authorized to issue a compliance order under subsection(a) of this section. ...

Civil penalty liability is established in §309(d) of the Act, which reads, in pertinent part:

> "Any person who violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator, or by a State, ..., or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act, and any person who violates an order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed $25,000 for each violation."

Thus, §309(b) and (d) of the Act give EPA plenary authority to bring a civil action for injunctive relief and penalties against a municipality that has violated the pretreatment implementation requirements contained in its NPDES permit and any requirements contained in an approved pretreatment program incorporated by reference into the permit. EPA also can enforce the pretreatment regulations, 40 CFR 403, if the permit (or approved program incorporated by reference into the permit) appropriately references the regulations. Specifically, EPA's cause of action under §309(b) and (d), in those circumstances, is that the POTW has violated a permit condition authorized by the statute for the purpose of implementing §307 of the Act.

In some circumstances, EPA may seek to require a POTW to implement an approved program or regulatory requirement in the absence of an NPDES permit condition requiring program implementation or compliance with the regulations where, for example, EPA can establish that the absence of an active pretreatment program is contributing to POTW effluent violations or the absence of a pretreatment program is causing apparent environmental problems. In this situation,

EPA could sue the POTW for NPDES permit violations other than inadequate implementation under § 309(b) and (d) of the Act and seek pretreatment implementation as "appropriate relief" under §309(b).

Also in some circumstances, EPA may seek injunctive relief under §309(f) of the Act to require a POTW to implement a pretreatment program (in the absence of a permit condition requiring implementation) if one or more IUs are violating federal pretreatment standards. Under §309(f) of the Act, EPA would have to establish that requiring a POTW to implement a pretreatment program is an element of "appropriate relief" and that such appropriate injunctive relief would remedy the IU noncompliance with federal pretreatment standards.[8]

As a general rule, EPA will be in the strongest position, from a legal and equitable perspective, to bring an enforcement action against a POTW for pretreatment program implementation violations when the case is based on violations of the POTW's NPDES permit related to pretreatment implementation. Permit requirements vary across POTWs and thus each permit must be reviewed to identify the specific implementation requirements. The ideal NPDES permit for a POTW with a pretreatment program should establish three types of implementation requirements as conditions of the permit:[9]

(1) The permit should incorporate by reference the approved pretreatment program and require the POTW to comply with and implement the program.
(2) The permit should require the POTW to comply with the federal pretreatment regulations at 40 CFR 403 and to implement its approved pretreatment program consistent with the federal pretreatment regulations. The permit also should require the POTW to comply, within 30 days after receiving notice from its Approval Authority, with all revisions to the pretreatment regulations subsequently promulgated.
(3) The permit should, as needed, set out more specific requirements relating to important implementation procedures of the pretreatment program, and require the POTW to comply with these requirements by specific dates. For example, the permit could require the POTW

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[8] Further details on bringing cases in these limited circumstances are contained in the two September 20, 1985, documents discussed earlier, at page 5.

[9] Permits that lack all three of these provisions should be modified as soon as possible, but no later than when the permit is next re-issued.

to inspect and sample IUs on an enumerated schedule (perhaps a specific number each quarter), beyond just simply requiring an inspection and sampling program.

The strongest enforcement cases consequently are likely to contain allegations that the POTW has violated its permit by failing to, for example,:

(1) perform a specific pretreatment activity directly required by its permit;
(2) fully implement its approved pretreatment program as explicitly required by its permit; and/or
(3) comply with the 40 CFR 403 regulations (especially, §§403.5 and 403.8(f)) as directly required by its permit.

C. Administrative Enforcement Authority

Under §309(a)(3) of the Act, EPA can administratively order a POTW to comply with the pretreatment program requirements contained in its permit and its approved pretreatment program incorporated by reference into the permit. EPA Regions also can issue an administrative order (AO) requiring a POTW to comply with the pretreatment regulations if the permit (or approved program incorporated into the permit by reference) requires compliance with the regulations. As stated previously, EPA is in the strongest position to enforce a pretreatment implementation requirement, either administratively or judicially, if the POTW's permit (or approved program or regulations, incorporated into the permit) imposes that requirement on the POTW

If neither the permit nor the incorporated program requires a POTW to comply with the regulations, and a POTW is otherwise in compliance with its permit and approved program, but not with requirements in the regulations, then the recommended course of action is for the Region (or authorized state) to expeditiously modify a POTW's permit to incorporate all applicable pretreatment regulatory requirements into the permit explicitly or by reference.[10] An AO may, nevertheless, be an appropriate tool for enforcing pretreatment program implementation not otherwise required in the POTW's permit, where, for example, the POTW is violating effluent limits in its permit which violations are related to the POTW's failure to implement its local pretreatment program.

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[10] Applicable regulatory procedures to modify permits must, naturally, be followed.

The Water Quality Act of 1987 authorized EPA to assess penalties administratively for violations of the Clean Water Act. Under §309(g), EPA may impose penalties for virtually the entire range of violations that are subject to civil penalties under §309(d). Administrative penalties may be assessed up to a maximum of $25,000 following Class 1 informal procedures and a maximum of $125,000 under Class 2 formal APA procedures. Administrative penalties cannot be imposed for violations of §309(a) administrative compliance orders, but, of course, may be imposed for underlying violations.[11] Administrative penalty authority, by itself, does not include the power to directly order a violator to stop continuing violations or take alternative activities to achieve compliance.

Subject to these qualifications, EPA now has administrative authority to assess penalties against a POTW that violates (1) the pretreatment implementation requirements contained in its permit, (2) an approved program incorporated into its permit, or (3) the pretreatment regulations if the permit or approved program appropriately references the regulations. Regions should review EPA's "Guidance Documents for Implementation of Administrative Penalty Authorities," August 1987, for the details on how to initiate these enforcement actions.[12]

D. Criminal Penalty Authority

Under §309(c), EPA has the authority to assess criminal penalties for negligent or knowing violations of the Act, for violations that knowingly put another person in imminent danger of death or serious bodily injury, or for making false statements under the Act. Criminal penalties can be assessed for the entire range of violations that are covered by EPA's civil and administrative authorities in §309(a), (b) and (d). For example, a POTW that falsely reports to its Approval Authority that it is complying with a pretreatment implementation requirement is a potential candidate for criminal enforcement.

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[11] Civil penalties can be imposed judicially under §309(d) of the Act for violations of administrative (compliance) orders issued pursuant to §309(a) of the Act.

[12] EPA Regions should, naturally, include a copy of the POTW's permit in any proposed administrative penalty action sent to Headquarters for review.

IV. IDENTIFYING POTW PRETREATMENT IMPLEMENTATION VIOLATIONS LIKELY TO MERIT AN ENFORCEMENT RESPONSE:

Evaluating a POTW's Actions In Light of Allowed Flexibility and Impact of the Violation

A. Identifying Potential Violations

Once a POTW is listed on the QNCR for Reportable Noncompliance with pretreatment program implementation requirements (or the noncompliance otherwise comes to the Region's attention), the Region should evaluate whether to initiate an enforcement action.[13] In order to perform this evaluation, the Region should identify all potential pretreatment violations. Once the Region has identified all potential violations, it must examine the extent, scope, and impact of these potential violations to determine whether and what kind of an enforcement response is warranted.

This evaluation is necessary because some pretreatment requirements intentionally allow a POTW considerable flexibility in implementation. This flexibility may result in a pretreatment requirement lacking a completely precise definition of noncompliance, thereby calling for some exercise of judgment in determining whether a POTW violated the pretreatment requirement.

As an example, consider a POTW with a permit condition that requires the POTW to "analyze self-monitoring reports submitted by its IUs and then respond to those reports that indicate violations or other problems." Assume the facts reveal that this POTW reads each self-monitoring report and usually, but not always, writes a letter to those IUs that are violating their local limits. By themselves these facts may not be sufficient to demonstrate that this POTW has failed to implement this requirement in a reasonable fashion and thus has violated this pretreatment requirement. In contrast, if the facts revealed that the POTW rarely read the self-monitoring reports and that most were sitting in a pile unopened, this would almost certainly be a violation of the pretreatment implementation requirement.

The following approach should prove helpful in identifying all potential violations. First, the region should

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[13] Before a POTW appears on the QNCR for Reportable Noncompliance, a region or state Approval Authority is likely to have already initiated informal enforcement actions against the POTW (e.g., NOVs or compliance meetings) in an attempt to correct the violations and bring the POTW back into compliance.

examine the POTW's permit (and approved program and Federal regulations where the permit incorporates these requirements by reference) to identify all pretreatment activities the POTW is required to implement. The Region must perform this step carefully, since the specific enforceable requirements set out in POTW permits (or approved programs appropriately incorporated in a POTW permit) can vary significantly across the 1500 or so POTWs with approved pretreatment programs. EPA's Pretreatment Compliance Monitoring and Enforcement Guidance serves as a good reference point for the kinds of requirements that are likely to be applicable in a strongly crafted permit to obtain effective program implementation. In addition, 40 CFR 403.5 and 403.8 detail elements of an acceptable local pretreatment program. Indeed, the permit may very well require the POTW to implement its local program consistent with the Part 403 regulations.[14]

Second, the region should compare all available compliance information to the identified, applicable pretreatment program requirements. At a minimum, the Region should review all pretreatment program annual reports that the POTW has submitted since its program was approved. The annual reports should be checked to make certain that they are complete and supply all the information required by the permit or approved program.[15] Naturally, all pretreatment program audits and inspections that have been performed by the Region or the state should also be reviewed to identify potential violations.

Third, the region should compile a list of all pretreatment implementation requirements applicable to the POTW which available information indicates the POTW may have violated. Fourth, in some circumstances, the region may wish to obtain more additional information by issuing a §308 letter to a POTW to fill in gaps in compliance information.

As a rough check that all potential violations have been identified, the Region should review the definition of Reportable Noncompliance contained in Table 1 and the examples of possible pretreatment implementation violations

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[14] Table 2 provides a listing of some potential violations that might arise from a POTW's failure to comply, as instructed to by its permit, with the federal pretreatment regulations.

[15] Pursuant to the PIRT June 1986 proposed rule, EPA will be promulgating shortly a final regulation, 40 CFR 403.12(i), requiring POTWs with approved pretreatment programs to submit annual reports describing the POTW's pretreatment activities.

TABLE 1*

DEFINITION OF REPORTABLE NONCOMPLIANCE

A POTW should be reported on the QNCR if the violation of its approved pretreatment program, its NPDES permit or an enforcement order[3] meets one or more of the following lettered criteria for implementation of its approved pretreatment program:

I. Issuance of IU Control Mechanisms

A) Failed to issue, reissue, or ratify industrial user permits, contracts, or other control mechanisms, where required, for "significant industrial users", within six months after program approval. Thereafter, each "significant industrial user" control mechanism should be reissued within 90 days of the date required in the approved program, NPDES permit, or an enforcement order.

II. POTW Compliance Monitoring and Inspections

B) Failed to conduct at least eighty percent of the inspections and samplings of "significant industrial users" required by the permit, the approved program, or an enforcement order.

C) Failed to establish and enforce self-monitoring requirements that are necessary to monitor SIU compliance as required by the approved program, the NPDES permit, or an enforcement order.

III. POTW Enforcement

D) Failed to develop, implement, and enforce pretreatment standards (including categorical standards and local limits) in an effective and timely manner or as required by the approved program, NPDES permit, or an enforcement order.

E) Failed to undertake effective enforcement against the industrial user(s) for instances of pass-through and interference as defined in 40 CFR Section 403.3 and required by Section 403.5 and defined in the approved program.

IV. POTW Reporting to the Approval Authority

F) Failed to submit a pretreatment report (e.g., annual report or publication of significant violators) to the Approval Authority within 30 days of the due date specified in the NPDES permit, enforcement order, or approved program.[4]

V. Other POTW Implementation Violations

G) Failed to complete a pretreatment implementation compliance schedule milestone within 90 days of the due date specified in the NPDES permit, enforcement order, or approved program.[4]

H) Any other violation or group of violations of local program implementation requirements based on the NPDES permit, approved program or 40 CFR Part 403 which the Director or Regional Administrator considers to be of substantial concern.[4]

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[3] The term enforcement order means an administrative order, judicial order or consent decree. (See Section 123.45)

[4] Existing QNCR criterion (40 CFR Part 123.45); the violation must be reported.

Reprinted from: U.S. EPA, OWEP, "Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements", September 30, 1987.

listed in Table 2. Table 2 contains a listing of possible violations based on a reasonable interpretation of the pretreatment implementation regulations (40 CFR 403) when such regulations are incorporated by reference into the permit. While the list in Table 2 is not exhaustive, it is illustrative of those violations that may justify an enforcement response by EPA for failure to implement.

Once all potential violations have been identified, each potential violation must be evaluated to determine the strength of EPA's claim of violation in light of the facts and any imprecision in the way the underlying pretreatment implementation requirement defines compliance.[16] Each potential violation should be evaluated in this manner to determine the strength of a possible EPA claim of a violation of an underlying pretreatment requirement. After these evaluations are completed the Region should produce a table of violations which the Region concludes are strong enough to pursue. Such a table should describe each violation and identify the specific underlying legal requirement that was violated. In addition, such a table should indicate the duration of the violation and indicate how strong the evidence is supporting the violation. A model form for this process is included here as attachment A.

B. Determining the Extent To Which Identified Violations Warrant an Enforcement Response: How Strong Are EPA's Claims?

The strength of EPA's claims naturally will affect EPA's decision regarding whether to pursue an enforcement action against a POTW for failing to implement a local pretreatment program. In turn, the strength of EPA's enforcement claims depends to a large degree on the extent to which identified violations demonstrate that a POTW has acted unreasonably in meeting pretreatment program implementation requirements, given (1) the flexibility afforded by many requirements and (2) the impact or severity of the violations. More specifically, the more flexible the implementation requirements, the more important the need to demonstrate the extensiveness or severity of the violation.

1. Evaluating Unreasonable POTW Action Under Flexible Implementation Requirements. Some pretreatment implementa-

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[16] Recall that EPA is in the strongest position to enforce a requirement if the requirement is expressly stated in the permit, in the approved program incorporated by reference into the permit, or in the regulations if the permit requires the POTW to comply with the regulations.

TABLE 2

EXAMPLES OF VIOLATIONS BASED ON A REASONABLE INTERPRETATION OF PRETREATMENT IMPLEMENTATION REGULATIONS WHEN INCORPORATED BY REFERENCE INTO THE PERMIT*

1. Failed to develop and/or implement procedures that reasonably identify all IUs, including new users. See 40 CFR 403.8(f)(2)(i).

2. Failed to develop and/or implement procedures that reasonably identify all incoming pollutants, including changes in the nature and volume of incoming pollutants. See 40 CFR 403.8(f)(2)(ii).

3. Lack of procedures to keep POTW itself informed of minimum legal requirements of pretreatment or keep its IUs informed. See 40 CFR 403.8(f)(2)(iii).

4. Failed to implement a system that allows the orderly receipt and informed analysis of self-monitoring reports. See 40 CFR 403.8(f)(2)(iv).

5. Failed to inspect and sample the effluent from IUs as often as is necessary to assure compliance with pretreatment standards and requirements. See 40 CFR 403.8(f)(2)(v).

6. Failed to investigate or respond adequately to instances of IU noncompliance. See 40 CFR 403.8(f)(2)(vi).

7. Failed to publish, at least annually, in the largest daily newspaper, a list of those IUs which, during the previous 12 months, were significantly violating applicable Pretreatment Standards and Requirements. See 40 CFR 403.8(f)(2)(vii).

8. Changes to POTW's legal authority such that the program no longer satisfies the minimum legal requirements of 40 CFR 403.8(f)(1).

9. Has never enforced its local limits beyond a telephone call or letter to the violating IU despite repeated violations by IUs. See 40 CFR 403.5(c)

10. Deficient POTW resources (supplies, equipment, personnel) which seriously hinder a POTW's ability to implement an effective pretreatment program pursuant to 40 CFR 403.8(f)(1) & (2). See 40 CFR 403.8(f)(3).

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* EPA's enforcement case is strongest where the violations are based on an implementation requirement contained in a POTW's permit, either explicitly or by reference.

tion requirements are quite specific and thus the determination of whether a POTW fully complied with such requirements will be straightforward. For example, if a permit requires a POTW to issue control mechanisms to all its significant IUs within one year of program approval, one year after program approval the facts should be clear whether or not a POTW complied with this requirement.

However, the pretreatment requirements contained in permits and approved programs, as well as the regulations, are often written in general terms that give a POTW considerable flexibility in implementing a given requirement. Indeed, virtually all regulatory implementation requirements allow some flexibility in implementation. While a POTW may have considerable flexibility in implementing some pretreatment requirements, a POTW must act reasonably by implementing its pretreatment requirements consistent with the objectives of the National Pretreatment Program. These objectives are presented in 40 CFR 403.2:

> (a) To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sewage;
> (b) To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and
> (c) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

POTWs are on notice of these objectives and thus should implement a pretreatment program that "assure[s] compliance with pretreatment standards to the extent applicable under section 307(b)." 40 CFR 122.44(j)(2).[17] In short, a POTW's implementation of its pretreatment requirements must be reasonable: that is, consistent with the objectives of an effective pretreatment program.

In determining whether a POTW's implementation of a pretreatment requirement is reasonable or appropriate, the Regions again may wish to review OWEP's July 1986, "Pretreatment Compliance Monitoring and Enforcement Guidance". This document provides POTWs with information about their pretreatment implementation responsibilities and describes the

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[17] The last sentence of §403.8(b) and the first sentence of §403.8(f)(2) contain similar language requiring a POTW to implement its pretreatment program in order to ensure compliance with pretreatment standards. See also §402(b)(8) of the Act.

rationale behind the procedures POTWs should implement in order to successfully operate their approved programs.

For example, one such potentially flexible requirement is the important permit condition that a POTW enforce all pretreatment standards and requirements, including local limits and categorical pretreatment standards.[18] There will be situations in which a POTW's performance is so inadequate that there is no doubt that this requirement was violated. For example, there is no doubt that a POTW that generally ignores most violations of local limits by its IUs, has never enforced beyond issuing a letter of violation to an IU, and that consequently has violated its effluent limits due to interference or pass through problems has violated its requirement to enforce pretreatment standards and requirements.

In contrast, consider a POTW that regularly issues letters of violations, has collected penalties from some IUs that were violating local limits, but has allowed a few IUs to violate local limits and cause interference violations without escalating its enforcement response beyond the issuance of "lenient" compliance schedules for the IUs. Such facts may paint a much more complicated picture on which to base a finding that this POTW is not complying with its obligation to enforce pretreatment standards. In situations such as this, EPA Regions must evaluate all the facts to determine whether a POTW has taken reasonable actions consistent with its obligation to enforce its program. If the Region believes that a POTW has not taken reasonable actions to comply with its obligation here and specific deficiencies can be identified, then this POTW should be considered in violation of its permit.

2. Evaluating the Impact or Severity of Identified Violations.

a. Inadequate Program Implementation Causing POTW Effluent Limit Violations. The most significant pretreatment implementation violation is failing to prevent interference or

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[18] Much of the lack of precision in this requirement can be eliminated if a POTW is required to develop and implement an enforcement response plan that details how a POTW will respond to different kinds of violations by its IUs. See Enforcement Response Guide, §3.3 and Table 3-2, in OWEP's July 1986 "Pretreatment Compliance Monitoring and Enforcement Guidance."

pass through.[19] By regulatory definition, interference or pass through basically exists when an IU discharge is a cause of POTW effluent limit violation or inability to use or dispose of sewage sludge properly. Thus, a POTW which is violating its permit limits because of the IU discharges it is accepting has failed to implement a successful pretreatment program as defined by the Act.

A POTW that has experienced repeated interference or pass through problems but has taken no definite action to remedy the situation (i.e., to control the discharges of its IUs) generally should be an ideal candidate for an enforcement action. The fact that effluent violations have occurred at the POTW strongly suggests that the POTW is not effectively implementing its pretreatment program.

b. Inadequate Implementation Not Causing Effluent Violations. The lack of an interference or pass through violation, or any permit effluent discharge violation, does not mean that EPA should overlook or trivialize other types of implementation violations.

Beyond undermining the integrity of the national pretreatment program, a POTW's failure to implement a pretreatment program which does not lead to effluent limits violations can result in the discharge to waters of the United States or in a POTW's sludge of higher levels of pollutants, particularly toxics, which may not yet be controlled under the POTW's permit. In addition, an improperly implemented pretreatment program may allow slug loadings from IUs which might go undetected if the POTW is not sampling its effluent at appropriate times.

Moreover, inadequate implementation by one POTW may give its IUs an unfair advantage relative to industries discharging into another POTW and thereby may induce the second POTW to forego adequate pretreatment program implementation. Finally, inadequate local program implementation generally jeopardizes the ability of the National Pretreatment Program to effectively control industrial discharges of toxic and hazardous pollutants.

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[19] Recall that §402(8) of the Act requires pretreatment programs to assure compliance with pretreatment standards and that such standards, pursuant to §307(b) of the Act, are "established to prevent the discharge of any pollutant through [publicly owned] treatment works ... which pollutant interferes with, passes through, or otherwise is incompatible with such works. [emphasis added]" See also 40 CFR 403.5(a) and (c).

Thus, a Region should evaluate each violation to determine its severity or seriousness. Violations that are truly minor, with no impact on the ability of a POTW to conduct an effective pretreatment program, should be so identified. Each violation should be evaluated with respect to the general guidelines listed in Table 3.

A Region may find it helpful to assign a numerical ranking to each identified violation reflective of its severity. The model form for creating a list of violations in Attachment A contains a numerical scale ranging from 1 (minor violation) to 5 (violation creating injury or risk of injury to human health or the environment) which may be used to rate the severity of each identified violation.

Of course, a violation which may not be severe and may not present EPA with a strong enforcement claim individually may very well warrant enforcement action by EPA if the POTW is committing a number of such violations simultaneously, even if the enforceable requirements afford a considerable amount of flexibility. Such a broad pattern of minor failures can add up to inadequate program implementation when viewed as a whole. Naturally, the more such violations are present, the stronger EPA's enforcement case.

V. ENFORCEMENT OPTIONS FOR FAILURE TO IMPLEMENT

A. General Considerations for Choosing an Appropriate Enforcement Response

Once a POTW has been identified as having pretreatment implementation violations meriting a formal enforcement response, the Region has several options to choose from in selecting an appropriate enforcement response. The available statutory enforcement responses are:

1. Administrative (compliance) Order -- §309(a)
2. Administrative penalty assessment -- §309(g)
3. Civil Judicial Action -- §309(b) & (d), 309(f)[20]
4. Criminal Judicial Action Referral -- §309(c).

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[20] If there is not enforceable permit language requiring pretreatment program implementation but an IU is violating federal pretreatment standards, EPA can use §309(f) to initiate a judicial action seeking appropriate injunctive relief against both the IU and the POTW [see page 10]. Section 402(h) also may provide a useful cause of action in some circumstances where a sewer hook-up ban may be appropriate relief to pursue.

TABLE 3

GENERAL GUIDELINES FOR EVALUATING THE SEVERITY OF PRETREATMENT IMPLEMENTATION VIOLATIONS*

For each potential violation, consider:

A. Importance of activity at issue to environmental success of the POTW's pretreatment program.

B. Any identifiable environmental/public health harm or risk created by the alleged violation?

C. Is the quantity of pollutants being discharged into the receiving stream higher than it would otherwise be if the POTW was complying with the requirement at issue? By how much?

D. Did the POTW benefit economically from the alleged violation?

E. Are IUs benefiting economically (avoiding the costs of compliance) by the POTW's failure to implement this program requirement?

F. Has the violation persisted after the POTW was informed of this violation? And then ordered to remedy the situation?

G. How long has this violation persisted over time or is it more like a single, isolated incident of noncompliance?

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* In general, this evaluation should be performed after a POTW has been listed on the QNCR for Reportable Noncompliance with pretreatment program implementation requirements.

In selecting an appropriate enforcement response, the Region should consider the overall severity of the violations, the compliance history and commitment of the POTW in question, whether injunctive relief is needed, whether a penalty is appropriate and if so, how large a penalty, and what kind of message needs to be sent to other POTWs (i.e., general deterrence).

The Regions should carefully consider using EPA's new administrative penalty authority in appropriate circumstances. The Regions should review the Agency guidance documents issued by the Office of Water and the Office of Enforcement and Compliance Monitoring (August 1987) for implementation of the new administrative penalty authorities. The document entitled "Guidance on Choosing Among Clean Water Act Administrative, Civil and Criminal Enforcement Remedies" should be particularly helpful in laying out the considerations involved in choosing between administrative and judicial enforcement actions.

As a general rule, the strongest enforcement case against a POTW for failure to implement its pretreatment program will generally involve POTW effluent violations and a number of related pretreatment implementation violations. In other words, the POTW's implementation of its pretreatment program has been so deficient that IU discharges have not been adequately controlled and these discharges have caused a POTW to exceed the effluent limits in its permit (or otherwise violate its permit). This type of case which calls for both injunctive relief and a substantial civil penalty is likely to be appropriate for civil judicial enforcement.

A case in which a POTW is running a sloppy or inadequate pretreatment program, with identifiable implementation violations, but in which there is so far no evidence of POTW effluent limit violations, may be appropriately dealt with by issuance of a traditional compliance administrative order or by assessment of an administrative penalty, or by initiation of a civil judicial action. EPA's pursuit of a penalty in these situations could have great value in demonstrating to POTWs that they must fully implement their pretreatment programs now and not wait until serious effluent violations occur. Enforcement actions initiated against POTWs for failure to implement in the absence of effluent limit violations (related to inadequate implementation) should help EPA send the message that prevention is the goal of pretreatment programs, not damage control after effluent limit violations have occurred.

There may be cases in which the POTW is complying with its permit and approved program, but nevertheless the Region believes that the POTW's pretreatment performance is inade-

quate. This situation is likely when the approved program does not specify all the necessary actions that the POTW should perform. In such a situation, if there are indeed no clear violations of the permit or approved program, the best course of action may be for the Region or approved state to expeditiously modify the POTW's permit and/or approved program to establish specific program implementation requirements to remedy the situation.[21]

In summary, civil judicial enforcement cases are most likely to be appropriate when the violations are severe, injunctive relief is necessary, and/or a penalty should be assessed in excess of EPA's new administrative penalty authority.

B. Penalty Assessments

Naturally, in determining an appropriate settlement penalty, the CWA Civil Penalty Policy must be followed. Earlier this month, EPA distributed draft guidance -- "Penalty Calculations for a POTW's Failure to Implement It's Pretreatment Program" -- that explains the specific considerations involved in making penalty policy calculations for failure to implement violations. In short, EPA should collect a penalty that recovers a POTW's full economic benefit stemming from the pretreatment implementation noncompliance plus an additional gravity amount based on the type and pattern of the violations. The POTW's economic benefit may accrue from costs avoided by not hiring program personnel, not issuing IU wastewater discharge permits, not conducting inspections or wastewater testing, failing to maintain records or submit reports, or failing to install or operate necessary equipment.

In applying the Penalty Policy adjustment factor for ability to pay to these cases, it should be stressed that since pretreatment programs are designed to control industrial discharges, the costs of the programs should be paid by IUs through appropriate user charges levied by a POTW. In assessing ability to pay, a POTW's ability to recover penalty amounts from its IUs is relevant. A per capita approach based simply on the residential service population of a POTW is not appropriate as the basis for establishing a settlement penalty for a POTW failure to implement case.

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[21] Recall that EPA is in the strongest position to enforce a pretreatment requirement if the requirement is expressly stated in the permit, in the approved program incorporated by reference into the permit, or in the regulations if the permit requires the POTW to comply with the regulations.

C. Joining Industrial Users (IUs) and States

If an IU has caused interference or pass through at the POTW, or has violated local limits, categorical standards or other pretreatment requirements, EPA may include such an IU in a civil enforcement action. The importance of joining an IU in an enforcement action is increased if an IU is a primary cause of a POTW's effluent limit violations or if the IU needs to install pretreatment equipment at its facility, especially if a POTW is unwilling or unable to force an IU to install the necessary equipment. In general, if an IU has obtained an economic benefit from its noncompliance with pretreatment standards and requirements and its noncompliance is contributing to a POTW's problems, then in order to obtain a complete remedy and an appropriate penalty consistent with the Agency's Penalty Policy, EPA may very well want to include such an IU in any judicial action brought against a POTW for failure to implement. Similarly, if a Region contemplates an enforcement action against an IU for pretreatment violations, which violations have caused problems at the POTW and the POTW has failed to adequately respond to the IU's violations, claims against the IU and the POTW should generally be joined in a single civil action.

Pursuant to §309(e) of the Act, whenever EPA brings a judicial enforcement action against a POTW, the state in which a POTW is located must be joined as a party. If state law prevents a POTW from raising revenues needed to comply with any judgment entered against it, the Act makes a state liable for payment of such expenses. States may be joined in judicial enforcement actions against POTWs for failure to implement as either defendants or plaintiffs, as appropriate. Further details on how to join states under §309(e) is found in EPA's February 4, 1987, "Interim Guidance on Joining States as Plaintiffs."

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CHAPTER IX. Federal Facility Enforcement - Policies and Guidance (Being Revised)

Attachment A

Model Form for Listing and Evaluating Pretreatment Implementation Violations

SUMMARY OF PRETREATMENT IMPLEMENTATION VIOLATIONS
FOR _____

ENFORCEMENT SENSITIVE - PREPARED IN ANTICIPATION OF LITIGATION

Prepared by: _____ on _____

NPDES permit effective date: _____; expiration date _____

DATE POTW pretreatment program approved: _____

Is approved program incorporated by reference into permit? _____ When _____
Does the permit require the POTW to comply with 40 CFR 403? _____

Date POTW listed on QNCR for Reportable Noncompliance _____

Directions for the use of this form:

This form should be used to briefly describe each violation, indicate its duration, identify the pretreatment implementation requirement that was violated (e.g., violation of §x of the permit), and then rate the severity of the violation using the scale below. Violations may be identified pursuant to §IV of EPA's "Guidance on Bringing Enforcement Actions Against POTWs for Failure to Implement Pretreatment Programs".

The numerical scale below may be used to evaluate the severity of each violation. Each violation should be rated with a number 1 to 5 pursuant to this scale:

1. Minor violation with little if any impact on success of pretreatment program.
2. Violation has distinct negative impact on effectiveness of pretreatment program
3. Violation is allowing IUs to violate local limits and/or categorical limits.
4. POTW's final effluent limits are being exceeded.
5. Violation has caused an injury or risk of injury to human health/environment.

Description of Violation	Duration	Source of Pretreatment Implementation Requirement	Severity of Violation	Evidence

Total Severity Score _____

Mercury Analyses Flawed

A Technical Informational Document
For Wastewater Permitees & Laboratories

Thomas J. Mugan, Bureau of Wastewater
Wisconsin Department of Natural Resources
Madison, Wisconsin

February 1991

MERCURY ANALYSES FLAWED

The Wisconsin Department of Natural Resources has become aware that much of the mercury data being routinely generated by permittees for their wastewater effluents are inaccurate. "Detects" reported at or just above the widely assumed detection limit of 0.2 $\mu g/l$, have in a number of cases been shown to be false. The specific reasons for this may potentially vary with the situation, and we feel it is important to eliminate as many potential causes as possible. The purpose of this material is to provide information to improve future mercury data and to eventually drive down the analytical detection limit.

GENERAL INFORMATION ON MERCURY

Mercury is a silverish metallic element which is a liquid at room temperature. It is used in the manufacture of batteries, drugs and chemicals. It is also used in mercury-vapor lamps, dental fillings, electrical controls and scientific and electrical instruments.

Mercury exists in natural waters primarily in the elemental liquid mercury form, in the inorganic mercury(II) oxidation state and in organo-mercury compounds such as methyl mercury. Conversion of one form to another may take place continually depending on conditions. Mercury originates in water from contact with natural minerals, direct discharge of mercury-containing wastes to waterways and from atmospheric deposition. Rainwater contains significant quantities of mercury and research indicates that mercury levels in rain may exceed Wisconsin's surface water quality standard by a factor of 10 or more.

Mercury exists in the air at significant levels primarily in the elemental mercury vapor state. Natural sources of atmospheric mercury include volcanic activity and volatilization of elemental mercury from natural geologic deposits. Manmade sources originate from metal smelting operations, chlor-alkali plants, application of latex paint and from burning of trash and fossil fuels such as coal.

Exposure to mercury in the environment can cause damage to the brain, kidneys and developing fetuses, depending on exposure time, chemical form and dosage. Mercury can be taken into the body via inhalation, ingestion or through the skin. It has not been shown to cause cancer.

THE PRESENT SITUATION

In most cases, if mercury is detected in a permittee's effluent, the level would exceed the water quality based effluent limit. This is because the water quality standard for mercury is very low in comparison to the limit of detection using standard analytical procedures. Unlike certain organic contaminants having limitations below lab detection limits, small amounts of mercury are commonly used in a wide variety of applications and thus mercury finds its way into most waters, including domestic wastewater. Fortunately, mercury tends to accumulate in the sludge thus greatly reducing mercury levels in the effluents from wastewater treatment plants.

Wastewater permittees need to take care in selecting a laboratory to perform their chemical analyses for pollutants, particularly for those substances where a "detect" will trigger some regulatory action. Initial cost should not be the sole criterion when choosing a lab. Data produced under the conditions

... inadequate quality control can end up being much more expensive than if it was done right the first time.

Good analytical data are necessary for good decision-making. The Department believes it is necessary for permittees and particularly laboratories to go that extra mile to make sure data are accurate and reproducible. This will likely increase the cost somewhat that commercial labs must charge, but we feel the extra expense is warranted. While an alternative might be to create a separate laboratory certification category for mercury, we prefer to take less drastic measures at this time. However, voluntary efforts on the part of the labs will be needed. For the "down to business" lab this creates a real opportunity to gain that competitive edge.

The presence of mercury in water is normally determined by Cold Vapor Atomic Absorption (EPA Method 245.1 or 245.2. This involves chemical oxidation and digestion of all the mercury to the mercury(II) oxidation state then chemical reduction to its elemental state, purging from solution at room temperature using compressed air (elemental mercury is very volatile) and sweeping the air-mercury vapor mixture into an atomic absorption cell for measurement.

The widely reported detection limit for the method is 0.2 µg/L. Newer methods are much more sensitive but even at this higher level, contamination is possible unless special care is taken to avoid it. Each lab needs to take the needed analytical precautions, including those outlined below, and then make their own determination of what level of detection they can actually achieve for a given sample matrix (water, wastewater, sludge).

Recently, some labs have successfully achieved much lower detection limits. For example, the EPA lab in Duluth can make measurements down to around 0.002 µg/L using "strict clean room" conditions along with other precautions while still using the standard method. The Wisconsin State Lab of Hygiene has been able to achieve detection limits of about 0.03 to 0.05 µg/L without clean room conditions by just paying strict attention to potential contamination sources and following proper QC procedures. Using gold pre-trapping and other modified analytical procedures, some researchers have reported even lower detection limits (below .0001 µg/L).

The sooner improvements take place, the better. We will continue to monitor the data being generated and push for development of laboratory capabilities which can "see" mercury down to the low-ng/l and even sub-ng/l levels. We expect that eventually, achievement of these levels of detection will be commonplace. At this time, our first concern is to assure that whatever levels are being reported are accurate.

INGREDIENTS FOR IMPROVED MERCURY DATA

What follows, in outline form, is a set of precautions permittees and laboratories should take when generating mercury data using conventional methods.

A. Eliminate Contamination During Sampling

1. We recommend grab sampling for now. If we can determine that sampler contamination is not significant, this may be changed later. (If taking surface water samples, note that the plastics used in some Kemmerer and Van Dorn samplers have been found to be a source of mercury contamination.)

2. Sample containers must be free of mercury. Glass or teflon containers are best because they are easiest to clean. Prior to filling, rigorously acid-wash the containers.

3. Take steps to avoid contamination during grab sampling. Avoid head space in the bottles and screw caps on tightly to prevent mercury exchange through the threads. Collect samples from below the water surface. Minimize the time the sample container is left uncapped, open to the atmosphere. Do not breathe on samples (dental fillings may contain mercury). Handle sample bottles with gloves and store in sealed plastic bags.

4. Add proper mercury-free preservative to the sample.

5. Use sample duplicates and field blanks to check adequacy of procedures.

6. A detailed method of cleaning, sampling and storage for ultra-clean methods is available on request.

B. Eliminate Airborne Contamination in the Lab

1. Physically separate mercury analyses from areas of the lab where reagents containing mercury (such as those used in the total kjeldahl nitrogen test) are used or where instruments (such as mercury barometers or manometers) containing mercury are used.

2. Perform sample preparation and clean-up in a separate room. Consider procedures used in the sample digestion step as a risk for airborne contamination. Potassium permanganate may scavenge mercury from the air.

3. Make sure that the source of purge gas is uncontaminated. Use clean, compressed, inert gas (for example, argon) or clean compressed air.

4. Dispose of spent purge gas using a chemical absorbent and venting to a hood.

C. Pay Close Attention to Reagents and Glassware

1. Make sure water used for dilutions and clean-up is mercury-free. (Note: Deionized water can be very high in mercury. Check deionized water every time D.I. cylinders or columns are changed.)

2. Purchase "trace metals grade" reagents.

3. Analyze reagent blanks to prescreen for mercury contamination. When doing this, if possible, use larger quantities (of reagents such as acids) than normally used for samples to account for additive effects of slight contamination from various sources. If performing large quantities of tests, consider ordering reagents from specific lots which you know to be contamination-free.

4. Rigorously acid-clean all glassware.

5. Consider dedicating a set of glassware exclusively for mercury analyses.

6. Avoid plastic!

7. One lab reports using stannous chloride to rinse glassware as a means to remove adsorbed mercury residues. If you do this, follow it by a dilute nitric acid rinse and last by a deionized water rinse.

D. Maintain Instrument in Good Working Order

1. Keep instrument clean.

2. Make sure power source is constant.

3. Newer technology lamps provide a more stable light source.

4. Lamps with fewer hours provide a brighter, more constant light source.

5. Make sure instrument has sufficient warm-up time before running analyses.

E. Minimize Interferences

1. Free chlorine interferes positively and will form when samples containing chloride are treated with potassium permanganate. Refer to Standard Methods for proper procedures to remove this interference.

F. Follow Quality Assurance Procedures at Least to the Extent Required by Chapter NR 149, Wis. Adm. Code

1. Perform runs of quality control samples including:

   a. Reagent blanks
   b. Spikes
   c. Standard additions
   d. Replicates
   e. Standards

2. Perform careful calibrations.

3. Calculate and use control limits.

4. Note unusual circumstances.

G. Calculate Your Method Detection Limit (MDL)

1. Use the EPA procedure given in 40 CFR, Part 136, Appendix B or other approved statistical method.

2. Perform the MDL procedure on a real environmental matrix, for example a wastewater effluent.

3. Adhere to the MDL for reporting out results.

4. Repeat MDL determinations regularly.

H. Use Consistent Procedures for Reporting Results

1. Always report the limit of detection along with results.

2. If reporting a result as not detected, be careful not to omit the < (less than) sign.

3. Note any inconsistencies or abnormalities.

There may be other precautions which might be specific to individual labs or circumstances. We would be glad to hear of any knowledge or experiences which could be shared to the benefit of others.

Should you have questions or comments about this information please contact Tom Mugan - WW/2, Department of Natural Resources, Box 7921, Madison, WI 53707, phone (608) 266-7420.

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APPENDIX B

Mercury Emission Estimates

Table B-1. Mercury Emission Estimates - Current Scenario
Used Fluorescent Bulb Management

		Distribution percent	Annual Hg in(out)	Percent of input
	Hg input:	100%	24.3 Mg	100%
	Total air emissions:		(4.00) Mg	16.5%
Subtitle D transport		98%	23.8 Mg	98%
	Garbage trucks:	80%	19.1 Mg	78%
	Relamping trucks:	20%	4.8 Mg	20%
Transport air emissions				
	Garbage trucks:	6.6%	(1.26) Mg	5.2%
	Relamping trucks:	3.4%	(0.16) Mg	0.7%
Remainder				
	Garbage trucks:	93.4%	17.8 Mg	73%
	Relamping trucks:	96.6%	4.60 Mg	19%
Incineration input				
	Garbage trucks:	16%	2.85 Mg	12%
	Relamping trucks:	0%	0.00 Mg	0%
	Total:		2.85 Mg	12%
Incinerator emissions				
	Flue gas:	90%	(2.56) Mg	11%
	Bottom ash:	5%	0.14 Mg	0.6%
	Fly ash:	5%	0.14 Mg	0.6%
Landfill input				
	Garbage trucks:	84%	14.9 Mg	61%
	Relamping trucks:	100%	4.60 Mg	19%
	Incinerator ash:	100%	0.28 Mg	1.2%
	Total:		19.8 Mg	82%
Landfill emissions				
	Leachate:	0.0005%	(0.0001) Mg	0.0004%
	Gas:	0.0005%	(0.0001) Mg	0.0004%
	Retained:	99.9999%	19.8 Mg	82%
Recycling input		2%	0.49 Mg	2.0%
	Transport air emissions:	0.18%	(0.001) Mg	0.004%
	Storage air emissions:	1.7%	(0.008) Mg	0.03%
	Remainder:		0.48 Mg	2.0%
Recycling plant				
	Hg recovery:	98.8%	0.47 Mg	1.9%
	Residue:	0.8%	(0.004) Mg	0.02%
	Plant air emissions:	0.4%	(0.002) Mg	0.008%
	Total air emissions:	1.2%	(0.006) Mg	0.02%

Table B-2. Mercury Emission Estimates - 50 % Recycling
Used Fluorescent Bulb Management

		Distribution percent	Annual Hg in(out)	Percent of input
	Hg input:	100%	24.3 Mg	100%
	Total air emissions:		(2.98) Mg	12.3%
Subtitle D transport		50%	12.2 Mg	50%
	Garbage trucks:	100%	12.2 Mg	50%
	Relamping trucks:	0%	0.0 Mg	0%
Transport air emissions				
	Garbage trucks:	8.3%	(1.00) Mg	4.1%
	Relamping trucks:	3.4%	0.00 Mg	0%
Remainder				
	Garbage trucks:	91.7%	11.1 Mg	46%
	Relamping trucks:	96.6%	0.00 Mg	0%
Incineration input				
	Garbage trucks:	16%	1.78 Mg	7.3%
	Relamping trucks:	0%	0.00 Mg	0%
	Total:		1.78 Mg	7.3%
Incinerator emissions				
	Flue gas:	90%	(1.60) Mg	6.6%
	Bottom ash:	5%	0.09 Mg	0.37%
	Fly ash:	5%	0.09 Mg	0.37%
Landfill input				
	Garbage trucks:	84%	9.4 Mg	39%
	Relamping trucks:	100%	0.00 Mg	0%
	Incinerator ash:	100%	0.18 Mg	0.73%
	Total:		9.5 Mg	39%
Landfill emissions				
	Leachate:	0.0005%	(0.00005) Mg	0.0002%
	Gas:	0.0005%	(0.00005) Mg	0.0002%
	Retained:	99.999%	9.5 Mg	39%
Recycling input		50%	12.2 Mg	50%
Single stage transport		50%	6.08 Mg	25.0%
	Transport air emissions:	0.18%	(0.011) Mg	0.05%
	Storage air emissions:	1.7%	(0.103) Mg	0.43%
	Remainder:	98.1%	5.96 Mg	24.5%
Dual stage transport		50%	6.08 Mg	25.0%
	Transport air emissions:	0.22%	(0.013) Mg	0.06%
	Storage air emissions:	1.7%	(0.103) Mg	0.43%
	Remainder:	98.1%	5.96 Mg	24.5%
Recycling plant			11.9 Mg	49.1%
	Hg recovery:	98.8%	11.78 Mg	48.5%
	Residue:	0.8%	(0.095) Mg	0.39%
	Plant air emissions:	0.4%	(0.048) Mg	0.20%
	Total air emissions:	1.2%	(0.143) Mg	0.59%

Table B-3. Mercury Emission Estimates - 80 % Recycling
Used Fluorescent Bulb Management

		Distribution percent	Annual Hg in(out)	Percent of input
	Hg input:	100%	24.3 Mg	100%
	Total air emissions:		(1.64) Mg	6.8%
Subtitle D transport		20%	4.9 Mg	20%
	Garbage trucks:	100%	4.9 Mg	20%
	Relamping trucks:	0%	0.0 Mg	0%
Transport air emissions				
	Garbage trucks:	8.3%	(0.40) Mg	1.7%
	Relamping trucks:	3.4%	0.00 Mg	0%
Remainder				
	Garbage trucks:	91.7%	4.5 Mg	18%
	Relamping trucks:	96.6%	0.00 Mg	0%
Incineration input				
	Garbage trucks:	16%	0.71 Mg	2.9%
	Relamping trucks:	0%	0.00 Mg	0%
	Total:		0.71 Mg	2.9%
Incinerator emissions				
	Flue gas:	90%	(0.64) Mg	2.6%
	Bottom ash:	5%	0.04 Mg	0.15%
	Fly ash:	5%	0.04 Mg	0.15%
Landfill input				
	Garbage trucks:	84%	3.7 Mg	15%
	Relamping trucks:	100%	0.00 Mg	0%
	Incinerator ash:	100%	0.07 Mg	0.29%
	Total:		3.8 Mg	16%
Landfill emissions				
	Leachate:	0.0005%	(0.00002) Mg	0.0001%
	Gas:	0.0005%	(0.00002) Mg	0.0001%
	Retained:	99.999%	3.8 Mg	16%
Recycling input		80%	19.4 Mg	80%
Single stage transport		50%	9.72 Mg	40.0%
	Transport air emissions:	0.18%	(0.017) Mg	0.07%
	Storage air emissions:	1.7%	(0.165) Mg	0.68%
	Remainder:	98.1%	9.54 Mg	39.2%
Dual stage transport		50%	9.72 Mg	40.0%
	Transport air emissions:	0.22%	(0.021) Mg	0.09%
	Storage air emissions:	1.7%	(0.165) Mg	0.68%
	Remainder:	98.1%	9.53 Mg	39.2%
Recycling plant			19.1 Mg	78.5%
	Hg recovery:	98.8%	18.84 Mg	77.5%
	Residue:	0.8%	(0.153) Mg	0.63%
	Plant air emissions:	0.4%	(0.076) Mg	0.31%
	Total air emissions:	1.2%	(0.229) Mg	0.94%

CHAPTER X. Setting Priorities for Addressing Discharges from Separate Sanitary Sewers

THE ENFORCEMENT MANAGEMENT SYSTEM

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

(CLEAN WATER ACT)

CHAPTER X: Setting Priorities for Addressing Discharges from Separate Sanitary Sewers

U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF REGULATORY ENFORCEMENT

1996

Setting Priorities for Addressing Discharges from Separate Sanitary Sewers

Discharges of raw or diluted sewage from separate sanitary sewers before treatment can cause significant public health and environmental problems. The exposure of the public to these discharges and the potential health and environmental impacts are the primary reasons EPA is developing this additional guidance on these discharges. This document provides a method of setting priorities for regulatory response, and serves as a supplement to the Enforcement Management System guidance (EMS, revised February 27, 1986). As such, this document addresses only those discharges which are in violation of the Clean Water Act. As a general rule, the discharges covered by this guidance constitute a subset of all discharges from separate sanitary sewer systems.

Legal Status

In the context of this document, a "discharge from a separate sanitary sewer system" (or "discharge") is defined as any wastewater (including that combined with rainfall induced infiltration/inflow) which is discharged from a separate sanitary sewer that reaches waters of the United States prior to treatment at a wastewater treatment plant. Some permits have specific requirements for these discharges, others have specific prohibitions under most circumstances, and still other permits are silent on the status of these discharges.

The legal status of any of these discharges is specifically related to the permit language and the circumstances under which the discharge occurs. Many permits authorize these discharges when there are no feasible alternatives, such as when there are circumstances beyond the control of the municipality (similar to the concepts in the bypass regulation at 40 CFR Part 122.41 (m)). Other permits allow these discharges when specific requirements are met, such as effluent limitations and monitoring/reporting.

Most permits require that any non-compliance including overflows be reported at the end of each month with the discharge monitoring report (DMR) submittal. As a minimum, permits generally require that overflow summaries include the date, time, duration, location, estimated volume, cause, as well as any observed environmental impacts, and what actions were taken or are being taken to address the overflow. Most permits also require that any non-compliance including overflows which may endanger health or the environment be reported within 24 hours, and in writing within five days. Examples of overflows which may endanger health or the environment include major line breaks, overflow events which result in fish kills or other significant harm, and overflow events which occur in environmentally sensitive areas.

For a person to be in violation of the Clean Water Act: 1) a person must own, operate, or have substantial control over the conveyance from which the discharge of pollutants occurs, 2) the discharge must be prohibited by a permit, be a violation of the permit language, or not be authorized by a permit, and 3) the discharge must reach waters of the United States. In addition, discharges that do not reach waters of the United States may nevertheless be in violation of Clean Water Act permit requirements, such as those requiring proper operation and maintenance (O&M), or may be in violation of state law.

Statement of Principles

The following six principles should be considered as EPA Regions and States set priorities for addressing violating discharges from separate sanitary sewers:

1. All discharges (wet weather or dry weather) which cause or contribute significantly to water quality or public health problems (such as a discharge to a public drinking water supply) should be addressed as soon as physically and financially possible. Other discharges may, if appropriate, be addressed in the context of watershed/basin plans (in conjunction with state or federal NPDES authorities).

2. Discharges which occur in high public use or public access areas and thus expose the public to discharges of raw sewage (i.e., discharges which occur in residential or business areas, near or within parks or recreation areas, etc.) should be addressed as soon as physically and financially possible.

3. Dry weather discharges should be addressed as soon as physically and financially possible.

4. Discharges due to inadequate operation and routine maintenance should be addressed as soon as possible. (Physical and financial considerations should be taken into account only in cases where overflow remedies are capital intensive.)

5. Discharges which could be addressed through a comprehensive preventive maintenance program or with minor capital investment should be addressed as soon as physically and financially possible.

6. With respect to principles 1 through 5 above, schedules of compliance which require significant capital investments should take into account the financial capabilities of the specific municipality, as well as any procedures required by state and local law for publicly owned facilities in planning, design, bid, award, and construction. (See later sections on Schedules).

Causes of Sanitary Sewer Discharges

Discharges from separate sanitary sewers can be caused by a variety of factors including, but not limited to:

1. Inadequate O&M of the collection system. For example, failure to routinely clean out pipes, failure to properly seal or maintain manholes, failure to have regular maintenance of deteriorating sewer lines, failure to remedy poor construction, failure to design and implement a long term replacement or rehabilitation program for an aging system, failure to deal expeditiously with line blockages, or failure to maintain pump stations (including back-up power).

2. Inadequate capacity of the sewer system so that systems which experience increases in flow during storm events are unable to convey the sewage to the wastewater treatment plant. For example, allowing new development without modeling to determine the impact on downstream pipe capacity, insufficient allowance for extraneous flows in initial pipe design (e.g. unapproved connection of area drains, roof leaders, foundation drains), or overly optimistic Infiltration/Inflow reduction calculations.

3. Insufficient capacity at the wastewater treatment plant so that discharges from the collection system must occur on a regular basis to limit flows to the treatment plant. For example, basic plant designs which do not allow sufficient design capacity for storm flows.

4. Vandalism and/or facility or pipeline failures which occur independent of adequate O&M practices.

Applicable Guidance

For many years, EPA and the States have been working with municipalities to prevent discharges from separate sanitary sewer systems. The preferred method has been to use the general policy on responding to all violations of the Clean Water Act which is contained in the EMS guidance. Factors which are considered are the frequency, magnitude, and duration of the violations, the environmental/public health impacts, and the culpability of the violator. This guidance sets up a series of guiding principles for responding to separate sanitary sewer discharge violations, and it supplements the current EMS.

Every EPA Region and State uses some form of this general enforcement response guidance as appropriate to the individual state processes and authorities. Under the guidance, various EPA Regions and States have taken a large number of formal enforcement actions over the past several years to address sanitary sewer discharge problems across the country. Responses have included administrative orders and/or civil judicial actions

against larger municipalities to address sanitary sewer discharge problems, resulting in substantial injunctive relief in some cases.

As a result of EPA Region and State enforcement efforts, a number of municipalities have invested substantial resources in diagnostic evaluations and designing, staffing, and implementing O&M plans. Other municipalities have undertaken major rehabilitation efforts and/or new construction to prevent sanitary sewer discharges.

Priorities for Response

There are approximately 18,500 municipal separate sanitary sewage collection systems (serving a population of 135 million), all of which can, under certain circumstances, experience discharges. Given this fact, the Agency has developed a list of priorities in dealing with the broad spectrum of separate sanitary sewer discharges to ensure that the finite enforcement resources of EPA and the States are used in ways that result in maximum environmental and public health benefit. However, these priorities should be altered in a specific situation by the degree of health or environmental risks presented by the condition(s).

In the absence of site-specific information, all separate sanitary sewer discharges should be considered high risk because such discharges of raw sewage may present a serious public health and/or environmental threat. Accordingly, first priority should be given within categories (such as dry weather discharges and wet weather discharges) to those discharges which can be most quickly addressed. The priority scheme listed below takes this into account by first ensuring that municipalities are taking all necessary steps to properly operate and maintain their sewerage systems. Corrective action for basic O&M is typically accomplished in a short time, and can yield significant public health and environmental results.

Risk again becomes a determinant factor when conditions warrant long term corrective action. The goal here should be to ensure that capital intensive, lengthy compliance projects are prioritized to derive maximum health and environmental gains.

The priorities for correcting separate sanitary sewer discharges are typically as follows:

1) Dry weather, O&M related: examples include lift stations or pumps that are not coordinated, a treatment plant that is not adjusted according to the influent flow, poor communication between field crews and management, infiltration/inflow, and/or pretreatment problems.

2) Dry weather, preventive maintenance related: examples include pumps that fail due to poor maintenance, improperly calibrated flow meters and remote monitoring equipment, insufficient maintenance staff, deteriorated pipes, and/or sewers that are not cleaned regularly.

3) Dry weather, capacity related: examples include an insufficient number or undersized pumps or lift stations, undersized pipes, and/or insufficient plant capacity.

4) Wet weather, O&M related: examples include excessive inflow and/or infiltration (such as from improperly sealed manhole covers), inadequate pretreatment program (i.e. excessive industrial connections without regard to line capacity), uncoordinated pump operations, treatment plant operation that is not adjusted according to the influent flow, poor coordination between field crews and management, illegal connections, and/or no coordination between weather forecast authorities and sewer system management.

5) Wet weather, preventive maintenance related: examples include poor pump maintenance leading to failure, improperly calibrated flow meters and remote monitoring equipment, insufficient maintenance staff, and/or sewers that are not cleaned regularly.

6) Wet weather, O&M minor capital improvement related: examples include the upgrading of monitoring equipment, pumps, or computer programs, and/or repair or replacement of broken manholes or collapsed pipes.

7) Wet weather capacity, quick solution related: examples include a known collection system segment that is a "bottleneck", pumps beyond repair in need of replacement, and/or need for additional crews or technical staff.

8) Wet weather, capacity, health impact related requiring long term corrective action: examples include frequent discharges to public recreational areas, shellfish beds, and/or poor pretreatment where the total flow is large.

9) Wet weather, capacity, sensitive area related requiring long term corrective action: examples include discharges to ecologically and environmentally sensitive areas, as defined by State or Federal government.

Selecting A Response

The appropriate regulatory response and permittee response for separate sanitary sewer discharges will depend on the specifics of each case. The regulatory response can be informal, formal, or some combination thereof. Typical regulatory

responses include a phone call, Letter of Violation (LOV), Section 308 Information Request, Administrative Order (AO), Administrative Penalty Order (APO), and/or judicial action. The permittee response can range from providing any required information to low cost, non-capital or low capital improvements to more capital intensive discharge control plans.

The attached chart lists some categories of separate sanitary sewer noncompliance along with the range of response for each instance. The chart is intended as a guide. The responses listed on the chart are not to be considered mandatory responses in any given situation. EPA and the States should use the full range of regulatory response options (informal, formal, or some combination thereof) to ensure that the appropriate response or remedy is undertaken by the permittee or municipality. All regulatory responses should be in accordance with the concept of the EMS regarding orderly escalation of enforcement action.

Developing Compliance Schedules

A compliance schedule should allow adequate time for all phases of a sanitary sewer discharge control program, including development of an O&M plan, diagnostic evaluation of the collector system, construction, and enhanced O&M. Municipalities should be given a reasonable length of time to develop schedules so they can realistically assess their compliance needs, examine their financing alternatives, and work out reasonable schedules for achieving compliance. Nevertheless, timelines for schedules should be as short as physically and financially possible.

Short Term Schedules

In general, short term schedules would be appropriate for sanitary sewer discharges involving O&M problems, or where only minor capital expenses are needed to correct the problem. The schedule should have interim dates and a final compliance date incorporated in the administrative order or enforcement mechanism.

Comprehensive Discharge Control Schedules

Comprehensive discharge control schedules should be used where specific measures must be taken to correct the discharges, and the measures are complicated, costly, or require a significant period of time to implement. If appropriate, these schedules should include the use of temporary measures to address high impact problems, especially where a long term project is required to correct the sanitary sewer discharge violation.

When working with municipalities to develop comprehensive schedules, EPA Regions and States should be sensitive to their

special problems and needs, including consideration of a municipality's financial picture. Factors that should be considered are the municipality's current bond rating, the amount of outstanding indebtedness, population and income information, grant eligibility and past grant experience, the presence or absence of user charges, and whether increased user charges would be an effective fund-raising mechanism, and a comparison of user charges with other municipalities of similar size and population.

Physical capability should be considered when schedules are developed. Schedules should include interim milestones and intermediate relief based on sound construction techniques and scheduling such as critical path method. Compliance schedules should be based on current sewer system physical inspection data adequate to design sanitary sewer discharge control facilities. Schedules should not normally require extraordinary measures such as overtime, short bidding times, or other accelerated building techniques. Where possible, schedule development should be completed according to normal municipal government contracting requirements.

Financial capability should also be considered in schedule development, including fiscally sound municipal financing techniques such as issuing revenue bonds, staging bond issuance, sequencing project starts, sensitivity to rate increase percentages over time.

Note: The intent of this guidance is to aid the Regions and States in setting priorities for enforcement actions based on limited resources and the need to provide a consistent level of response to violations. This does not represent final Agency action, but is intended solely as guidance. This guidance is not intended for use in pleading, or at hearing or trial. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties. This guidance supplements the Agency's Enforcement Management System Guide (revised February 27, 1986).

ENFORCEMENT RESPONSE GUIDE
DISCHARGES FROM SEPARATE SANITARY SEWERS

NONCOMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
Discharge without a permit or in violation of general prohibition	Isolated & infrequent, dry weather O&M related	Phone call, LOV, 308 request
Discharge without a permit or in violation of general prohibition	Isolated & infrequent, dry weather capacity related	308 request, AO, APO, Judicial action
Discharge without a permit or in violation of general prohibition	Isolated & infrequent, wet weather O&M related	Phone call, LOV, 308 request
Discharge without a permit or in violation of general prohibition	Isolated & infrequent, wet weather, quick and easy solution	LOV, 308 request
Discharge without a permit or in violation of general prohibition	Isolated & infrequent, wet weather capacity related, health and/or sensitive areas	LOV, 308 request, AO, APO
Discharge without a permit or in violation of general prohibition	Isolated & infrequent, wet weather capacity related, non-health, non-sensitive areas	Phone call, LOV, 308 request
Discharge without a permit or in violation of general prohibition	Cause unknown	Phone call, LOV, 308 request
Discharge without a permit or in violation of general prohibition	Permittee does not respond to letters, does not follow through on verbal or written agreement	AO, APO, judicial action
Discharge without a permit or in violation of general prohibition	Frequent, does not significantly affect water quality, no potential public health impact	LOV, 308 request, AO, APO
Discharge without a permit or in violation of general prohibition	Frequent, cause or contribute significantly to WQ problems, or occur in high public use and public access areas, or otherwise affect public health	AO, APO, judicial action

ENFORCEMENT RESPONSE GUIDE
DISCHARGES FROM SEPARATE SANITARY SEWERS

NONCOMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
Missed interim date in CDCP	Will not cause late final date or other interim dates	LOV
Missed interim date in CDCP	Will result in other missed dates, no good and valid cause	LOV, AO, APO, judicial action
Missed final date in CDCP	Violation due to force majeure	Contact permittee and require documentation of good or valid cause
Missed final date in CDCP	Failure or refusal to comply without good and valid cause	AO, APO or judicial action
Failure to report overflows (as specified in permit)	Isolated and infrequent, health related	Phone call, LOV, AO, APO
Failure to report overflows (as specified in permit)	Isolated and infrequent, water quality and environment related	Phone call, LOV, AO, APO
Failure to report overflows (as specified in permit)	Permittee does not respond to letters, does not follow through on verbal or written agreement, or frequent violation	AO, APO, judicial action, request for criminal investigation
Failure to report permit requirements	Any instance	Phone, LOV, AO, APO

CDCP = Comprehensive Discharge Control Plan

REPORTABLE NONCOMPLIANCE (QNCR)

Type of Violation	Section of Regulation	Category	SNC*
B. Violations of Enforcement Order Requirements:			
1. Violation of Effluent Limits:			
a. Exceed 30 day avg any month	iiA	I	J-yes A-yes (if limit is as stringent as current (prior) permit, it is SNC only if there are 2 TRC/6 or 4/6 months)
b. Other violations with WQ or health impacts	iiA	I	yes
2. Violations of Compliance Schedule Milestones by 30 days or more:			
a. Start Construction Milestone	iiB	I	yes
b. End Construction Milestone	iiB	I	yes
c. Attain Final Compliance (incl. submit approvable pretreatment program)	iiB	I	yes
d. Other Schedule Milestones	iiiC	II	J-yes A-no
3. Reports late by 30 days or more:			
a. Discharge Monitoring Reports (DMRs)	iiD	I	yes
b. Pretreatment Reports	iiD	I	yes
c. CS Report of Final Compliance	iiD	I	yes
d. Other Reports	iiiD	II	J-yes A-no
e. Incomplete or Deficient Reports	iiiE	II	J-yes A-no
4. Other order requirements	iiA	I	yes

J-Judicial Orders
A-Administrative Orders or their State equivalents

REPORTABLE NONCOMPLIANCE (QNCR)

Type of Violation	Section of Regulation	Category	SNC
A. Violations of Permit Requirements:			
1. Violation of Effluent Limits:			
a. Exceed 30 day avg by TRC 2/6 months	iiC	I	yes
b. Exceed 30 day avg 4/6 months (chronic)	iiC	I	yes
c. Other violations with WQ or health impacts	iiiA1	II	yes
d. Unauthorized bypass with WQ or health impacts	iiiA2	II	yes
e. Unpermitted discharge with WQ or health impacts	iiiA3	II	yes
f. Pollutant passthrough with WQ or health impacts	iiiA4	II	yes
2. Violations of Compliance Schedule Milestones by 90 days or more:			
a. Start Construction Milestone	iiB	I	yes
b. End Construction Milestone	iiB	I	yes
c. Attain Final Compliance (incl. submit approvable pretreatment program)	iiB	I	yes
d. Other Schedule Milestones	iiiC	II	no
3. Reports late by 30 days or more:			
a. Discharge Monitoring Reports (DMRs)	iiD	I	yes
b. Pretreatment Reports	iiD	I	yes
c. CS Report of Final Compliance	iiD	I	yes
d. Other Reports	iiiD	II	no
e. Incomplete or Deficient Reports	iiiE	II	no
4. Other permit requirements:			
a. Failure to implement a pretreatment program or enforce indirect users	iiiB	II	no
b. Violations of narrative requirements	iiiF	II	no
c. Any other violation of concern to the Director	iiiG	II	no

SEMI-ANNUAL SUMMARY REPORT
XERXIA
(Region XI)
January - June, 1985

	PERMIT LIMITATION	ENFORCEMENT ORDER LIMITATION
Major Municipals in noncompliance with a monthly average effluent limitation for two months of the six:	7	4
Major Non-Municipals in noncompliance with a monthly average effluent limitation for two months of the six:	6	2
Major Federals in noncompliance with a monthly average effluent limitation for two months of the six:	0	0

This count includes major permittees that are reported in the QNCR for Category I permit effluent violations, and may include major permittees that are reported on the QNCR for Category I enforcement order effluent violations or Category II permit effluent violations of permit or order limitations.

III. FORMAT

The regulations do not specify a format for the SSSR. A suggested format can be found on page 3-3.

I. INTRODUCTION

In addition to establishing the QNCR, Section 123.45 of the Code of Federal Regulations, Title 40, establishes the Semi-Annual Statistical Summary Report (SSSR) of major facilities that are not complying with their NPDES permit effluent limitations. The SSSR is to be prepared by the States that are approved to administer the NPDES program and by EPA Regions for the States not yet approved. The SSSR is to be completed according to the following schedule:

Reporting Period	SSSR Completed By
January through June	August 31
July through December	February 28.

NPDES States must forward their SSSRs to the Regions; the Regions then submit the SSSRs for all States (approved and unapproved) to the Office of Water Enforcement and Permits (OWEP). All SSSRs must be received by OWEP within 14 days of the completion dates specified above.

II. DETERMINING INSTANCES OF NONCOMPLIANCE TO BE REPORTED

The SSSR reports summary information on major NPDES permittees with instances of noncompliance with monthly average effluent limitations. Any major permittee that exceeds the effective monthly average effluent limitation in its permit or enforcement order for a given Group I or Group II parameter at a given pipe for two months of the six month reporting period must be counted in the SSSR.

GUIDANCE FOR PREPARATION OF QUARTERLY
AND SEMI-ANNUAL NONCOMPLIANCE REPORTS
(PER SECTION 123.45, CODE OF FEDERAL REGULATIONS, TITLE 40)

PART 3: SEMI-ANNUAL STATISTICAL SUMMARY REPORTS

February 28 for permittees in SNC on the July-September and October-December QNCRs;

May 31 for permittees in SNC on the October-December and January-March QNCRs;

August 31 for permittees in SNC on the January-March and April-June QNCRs;

November 30 for permittees in SNC on the April-June and July-September QNCRs.

For the purposes of the Exceptions List, a formal enforcement order is defined in the National Guidance for Oversight of NPDES Programs FY 1986 (page 19). Orders are to be counted as follows:

- Administrative orders and State equivalents are counted when issued (signed);
- Judicial referrals are counted when forwarded to Headquarters, the Department of Justice, or the State Attorney General.

Permittees that appear on the Exceptions List must be accompanied with a justification of the administering agency's failure to respond to these "priority violations" with a formal enforcement order within the timeframes specified.

4. Other

Any violation of a judicial order requirement other than an effluent, schedule, or reporting requirement is SNC. These violations would include failure to pay stipulated penalties, maintain required staffing or follow prescribed operation and maintenance procedures.

D. RESOLUTION OF SIGNIFICANT NONCOMPLIANCE

An instance of SNC is considered resolved when the SNC criteria are no longer met during the review period or when the permittee formerly in SNC exhibits compliance for all three months of the most recent quarter.

III. EXCEPTIONS LIST

The Exceptions List is a report that is submitted as part of the SPMS reports. Its purpose is to track timely enforcement against major permittees that are in SNC in accordance with the Guidance for Oversight of NPDES Programs and the Enforcement Management System Guide.

Any major permittee that is listed on the ONCR for two consecutive quarters for the same instance of SNC (e.g., same pipe, same parameter for effluent violations; same milestone for schedule violations; same report for reporting violations; and same requirement for "other" violations) must be listed on the Exceptions List unless the permittee was addressed with a formal enforcement order prior to the completion date of the second ONCR:

1. Effluent

a. Violation of Monthly Average Effluent Limits

Any violation of a monthly average effluent limitation cited in a judical order is SNC.

b. Violation of Other Limits

Any violation of an effluent limitation cited in a judicial order that causes or has the potential to cause a water quality or health problem is SNC.

2. Schedule

a. Failure to Start Construction, End Construction, or Attain Final Compliance within 90 days of the scheduled date is SNC.

b. Failure to achieve any other schedule milestone (other than a report) within 90 days of the scheduled date is SNC. This includes all milestones and events scheduled as part of the pretreatment program.

3. Reporting

a. DMRs, Pretreatment Reports, and the Compliance Schedule Final Report of Progress (i.e., attain final compliance) that are submitted 30 or more days late are SNC.

b. Additional reports that are submitted 30 days or more late are SNC.

c. All reports (including DMRs, Pretreatment Reports, the Compliance Schedule Final Report of Progress, and any other reports) that are incomplete or deficient are SNC.

1) Violation of Monthly Average Effluent Limits

Any violation of a monthly average effluent limitation cited in an enforcement order is SNC.

2) Violation of Other Limits

Any violation of an effluent limitation cited in an enforcement order that causes or has the potential to cause a water quality or health problem is SNC.

2. Schedule

Administrative order SNC criteria are the same as enforcement order schedule Category I ONCR criteria. Therefore, Failure to Start Construction, End Construction, or Attain Final Compliance within 90 days of the scheduled date is SNC.

3. Reporting

Administrative Order reporting SNC criteria are the same as enforcement order reporting Category I ONCR criteria. Therefore, DMRs, Pretreatment Reports, and the Compliance Schedule Final Report of Progress (i.e., attain final compliance) that are submitted 30 or more days late are SNC.

4. Other

Any violation of an administrative order requirement other than an effluent, schedule, or reporting requirement is SNC. These violations would include failure to pay stipulated penalties, maintain required staffing or follow prescribed operation and maintenance procedures.

C. JUDICIAL ORDER SIGNIFICANT NONCOMPLIANCE

Since violations of judicial orders are of special concern to EPA, judicial order SNC criteria are the same as enforcement order ONCR criteria.

B. ADMINISTRATIVE ORDER SIGNIFICANT NONCOMPLIANCE

1. Effluent

Administrative order effluent SNC criteria are currently determined by the level (stringency) of the effluent limitations established compared to the permit limitations.

a. Effluent limitations that are as stringent as the current permit (or in the case of an order issued with the reissuance of a permit such as BAT permits, as stringent as the prior (or BPT) permit).

Administrative order effluent SNC criteria in this case are the same as permit effluent SNC criteria:

1) Violation of Monthly Average Effluent Limits

a) TRC Violations

A violation of a given Group I or Group II parameter at a given discharge point that equals or exceeds the product of TRC times the limit for any two or more months during the two quarter review period is SNC.

b) Chronic Violations

Violation of a given Group I or Group II parameter limit at a given pipe by any amount (not necessarily TRC times the limit or greater) for any four or more months during the two quarter review period is SNC.

2) Violation of Other Limits

Any effluent violation that causes or has the potential to cause a water quality or health problem is SNC.

b. Effluent limitations that are less stringent than the current permit.

Administrative order effluent SNC criteria in this case are the same as enforcement order effluent QNCR criteria:

a. Violation of Monthly Average Effluent Limits

1) TRC Violations

A violation of a given Group I or Group II parameter at a given discharge point that equals or exceeds the product of TRC times the limit for any two or more months during the two quarter review period is SNC.

2) Chronic Violations

Violation of a given Group I or Group II parameter limit at a given pipe by <u>any</u> amount (not necessarily TRC times the limit or greater) for any four or more months during the two quarter review period is SNC.

b. Violation of Other Limits

<u>Any</u> effluent violation that causes or has the potential to cause a water quality or health problem is SNC.

2. <u>Schedule</u>

Permit schedule SNC criteria are the same as permit schedule Category I ONCR criteria. Therefore, Failure to Start Construction, End Construction, or Attain Final Compliance within 90 days of the scheduled date is SNC.

3. <u>Reporting</u>

Permit reporting SNC criteria are the same as permit reporting Category I ONCR criteria. Therefore, DMRs, Pretreatment Reports, and the Compliance Schedule Final Report of Progress (i.e., attain final compliance) that are submitted 30 or more days late are SNC.

4. <u>Other</u>

There are no "other" permit SNC violations.

I. INTRODUCTION

In order to manage most effectively the NPDES program with the limited resources available, EPA has developed criteria for tracking and acting upon priority violations as directed by the Strategic Planning and Management System (SPMS). These violations have been defined as a subset of those instances of noncompliance reported on the Quarterly Noncompliance Report (QNCR) and are called Significant Noncompliance (SNC).

SNC is used to report priority violations within EPA's management accountability system and generally indicates the need for agency action unless the problems are corrected. This in no way implies that action will <u>not</u> be initiated against permittees with violations that do not meet SNC criteria. It merely indicates that attention should be focused on those priority violations within the timeframes specified in the Agency Guidance.

The following sections (II.A-C) assume reader familiarity with the QNCR reporting criteria. SNC as a subset of the QNCR is shown in chart form in Appendix I.

II. DEFINITION

SNC is currently defined by criteria for violations of permit, administrative order, and judicial order requirements.

A. PERMIT SIGNIFICANT NONCOMPLIANCE

1. <u>Effluent</u>

Permit effluent SNC criteria are the same as permit effluent QNCR criteria with the exception of violations that are of concern to the Director but have not caused or did not have the potential

GUIDANCE FOR PREPARATION OF QUARTERLY
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PART 2: SIGNIFICANT NONCOMPLIANCE

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MAR 13 1986

GUIDANCE FOR PREPARATION OF QUARTERLY
AND SEMI-ANNUAL NONCOMPLIANCE REPORTS
(PER SECTION 123.45, CODE OF FEDERAL REGULATIONS, TITLE 40)

This violation is listed because it met Category II criteria after October 1, 1985 (namely on November 1, 1985). This violation should continue to be listed until the permittee has satisfied <u>all</u> of the requirements of the order, the order is closed out, or the requirements of the order are nullified by or incorporated into a new order.

EXAMPLE 2

INSTANCE OF NONCOMPLIANCE/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
AO#86-01 TSS 123185	(ii)(A)	Warning Letter (State) 021286	NC 123185	Violation was marginal: compliance expected for next quarter
TSS TRC 093085	(ii)(C)	AO#86-01(State) 102385	RP 102385	Order establish
TSS TRC 083185	(ii)(C)			schedule and II
TSS 073185	(ii)(C)			for TSS

B. ORDERS ISSUED PRIOR TO OCTOBER 1, 1985, BUT VIOLATED ON OR SUBSEQUENT TO OCTOBER 1, 1985

Orders issued prior to the effective date of the regulation need not be listed until they are violated. Once these orders are violated (Category I or II noncompliance), the violations must continue to be listed until the permittee has fully satisfied the requirements of the order, the order is closed out, or the requirements of the order are nullified by or incorporated into a new order.

EXAMPLE 3

INSTANCE OF NONCOMPLIANCE/DATE	SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
AO#84-55 Failure to award contract 080185	(iii)(C)	Meeting w/ City (State) 011586	NC 123185	City is awaiting Council vote: Awarding of contract expected by 031286.

Note that in the example above, the date of noncompliance is listed as August 1, 1985 - the scheduled date of the milestone.

- the order was issued on or subsequent to October 1, 1985
- the order (issued prior to October 1, 1985) was violated on or subsequent to October 1, 1985

These orders must be listed until the permittee has fully satisfied the requirements of the order, the order is closed out, or the requirements of the order are nullified by or incorporated into a new order.

In the first two cases above, satisfaction of the order requirements and close-out of the order, the violations that were addressed by the order should be reported as resolved (RE) before they and the orders are dropped from the QNCR. In the case of orders that are nullified by or incorporated into new orders, the violations should continue to appear; the old orders may be dropped, but a reference should be made in the Comment Section as to why they were dropped.

A. ORDERS ISSUED ON OR SUBSEQUENT TO OCTOBER 1, 1985

Orders issued on or subsequent to the effective date of the regulation must be listed with both the instance of noncompliance that was addressed by the order and all subsequent violations of the order.

EXAMPLE 1

INSTANCE OF NONCOMPLIANCE/DATE			SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
TSS	TRC	093085	(ii)(C)	AO#86-01(State) 102385	RP 102385	Order establ
TSS	TRC	083185	(ii)(C)			schedule and
TSS		073185	(ii)(C)			for TSS

c. Incomplete Reports

EXAMPLE 8

INSTANCE OF NONCOMPLIANCE	(OUTFALL) / DATE	SUBPARAGRAPH IN REGULATION
AO#85-03 Failure to report status of anaerobic digestor installation	123185	(iii)(E)

4. Other

Instances of other enforcement order noncompliance should be reported by:

- Instance of noncompliance
- Docket number of violated order
- Date of the instance of noncompliance
- Subparagraph in regulation that best describes the instance of noncompliance (cited here or in Comment Section)

EXAMPLE 9

INSTANCE OF NONCOMPLIANCE	(OUTFALL) / DATE	SUBPARAGRAPH IN REGULATION
AO#85-14 Failure to obtain staff at specified training levels	120485	(iii)(F)

V. LISTING ACTIVE ENFORCEMENT ORDERS ON THE ONCR

In addition to Category I and Category II noncompliance, the regulations require that all major permittees with active enforcement orders (i.e., administrative and judicial orders, consent decrees, and their equivalent State orders and decrees) issued in response to previous instances of Category I or II noncompliance be listed on the ONCR if:

3. Reporting

Instances of enforcement order reporting noncompliance should be reported by:

- Missing/deficient report
- Portion of incomplete report
- Docket number of violated order or other identification (such as date of issuance) if there is no docket number
- Date of the instance of noncompliance
  - The due date is generally used for reports such as progress reports - not the date 30 days after the due date
  - The last day of the period covered is generally used for measurement reports such as DMRs
- Subparagraph in regulation that best describes the instance of noncompliance (cited here or in Comment Section)

a. Late DMRs, Pretreatment Reports, and the Compliance Schedule Final Report of Progress

EXAMPLE 6

INSTANCE OF NONCOMPLIANCE (OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
AO#XI-82-12 Failure to submit final progress report of compliance	110185	(iii)(D)
AO#85-36 Failure to submit pretreatment annual report	113085	(ii)(D)

b. Other Late Reports

EXAMPLE 7

INSTANCE OF NONCOMPLIANCE (OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
AO#85-24 Failure to submit third progress report	110185	(iii)(D)

2. Compliance Schedule

Instances of enforcement order compliance schedule noncompliance should be reported by:

- Unachieved milestone
- Docket number of violated order or other identification (such as date of issuance) if there is no docket number
- Date of the instance of noncompliance
  - The scheduled date is generally used - not the date 90 days after the scheduled date
- Subparagraph in regulation that best describes the instance of noncompliance (cited here or in Comment Section)

a. Failure to Start Construction, End Construction, or Attain Final Compliance

EXAMPLE 4

INSTANCE OF NONCOMPLIANCE	(OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
AO# XI-82-12 Failure to attain operational level		090185	(ii)(B)
AO# 84-14 Failure to submit an approvable pretreatment program		080185	(ii)(A)

b. Failure to Achieve Other Schedule Milestones

EXAMPLE 5

INSTANCE OF NONCOMPLIANCE	(OUTFALL)	/ DATE	SUBPARAGRAPH IN REGULATION
AO#84-55 Failure to award contract		080185	(iii)(C)

APPENDIX B

Mercury Emission Estimates

Table B-1. Mercury Emission Estimates - Current Scenario
Used Fluorescent Bulb Management

		Distribution percent	Annual Hg in(out)	Percent of input
	Hg input:	100%	24.3 Mg	100%
	Total air emissions:		(4.00) Mg	16.5%
Subtitle D transport		98%	23.8 Mg	98%
	Garbage trucks:	80%	19.1 Mg	78%
	Relamping trucks:	20%	4.8 Mg	20%
Transport air emissions				
	Garbage trucks:	6.6%	(1.26) Mg	5.2%
	Relamping trucks:	3.4%	(0.16) Mg	0.7%
Remainder				
	Garbage trucks:	93.4%	17.8 Mg	73%
	Relamping trucks:	96.6%	4.60 Mg	19%
Incineration input				
	Garbage trucks:	16%	2.85 Mg	12%
	Relamping trucks:	0%	0.00 Mg	0%
	Total:		2.85 Mg	12%
Incinerator emissions				
	Flue gas:	90%	(2.56) Mg	11%
	Bottom ash:	5%	0.14 Mg	0.6%
	Fly ash:	5%	0.14 Mg	0.6%
Landfill input				
	Garbage trucks:	84%	14.9 Mg	61%
	Relamping trucks:	100%	4.60 Mg	19%
	Incinerator ash:	100%	0.28 Mg	1.2%
	Total:		19.8 Mg	82%
Landfill emissions				
	Leachate:	0.0005%	(0.0001) Mg	0.0004%
	Gas:	0.0005%	(0.0001) Mg	0.0004%
	Retained:	99.999%	19.8 Mg	82%
Recycling input		2%	0.49 Mg	2.0%
	Transport air emissions:	0.18%	(0.001) Mg	0.004%
	Storage air emissions:	1.7%	(0.008) Mg	0.03%
	Remainder:		0.48 Mg	2.0%
Recycling plant				
	Hg recovery:	98.8%	0.47 Mg	1.9%
	Residue:	0.8%	(0.004) Mg	0.02%
	Plant air emissions:	0.4%	(0.002) Mg	0.008%
	Total air emissions:	1.2%	(0.006) Mg	0.02%

Table B-2. Mercury Emission Estimates - 50 % Recycling
Used Fluorescent Bulb Management

		Distribution percent	Annual Hg in(out)	Percent of input
	Hg input:	100%	24.3 Mg	100%
	Total air emissions:		(2.98) Mg	12.3%
Subtitle D transport		50%	12.2 Mg	50%
	Garbage trucks:	100%	12.2 Mg	50%
	Relamping trucks:	0%	0.0 Mg	0%
Transport air emissions				
	Garbage trucks:	8.3%	(1.00) Mg	4.1%
	Relamping trucks:	3.4%	0.00 Mg	0%
Remainder				
	Garbage trucks:	91.7%	11.1 Mg	46%
	Relamping trucks:	96.6%	0.00 Mg	0%
Incineration input				
	Garbage trucks:	16%	1.78 Mg	7.3%
	Relamping trucks:	0%	0.00 Mg	0%
	Total:		1.78 Mg	7.3%
Incinerator emissions				
	Flue gas:	90%	(1.60) Mg	6.6%
	Bottom ash:	5%	0.09 Mg	0.37%
	Fly ash:	5%	0.09 Mg	0.37%
Landfill input				
	Garbage trucks:	84%	9.4 Mg	39%
	Relamping trucks:	100%	0.00 Mg	0%
	Incinerator ash:	100%	0.18 Mg	0.73%
	Total:		9.5 Mg	39%
Landfill emissions				
	Leachate:	0.0005%	(0.00005) Mg	0.0002%
	Gas:	0.0005%	(0.00005) Mg	0.0002%
	Retained:	99.999%	9.5 Mg	39%
Recycling input		50%	12.2 Mg	50%
Single stage transport		50%	6.08 Mg	25.0%
	Transport air emissions:	0.18%	(0.011) Mg	0.05%
	Storage air emissions:	1.7%	(0.103) Mg	0.43%
	Remainder:	98.1%	5.96 Mg	24.5%
Dual stage transport		50%	6.08 Mg	25.0%
	Transport air emissions:	0.22%	(0.013) Mg	0.06%
	Storage air emissions:	1.7%	(0.103) Mg	0.43%
	Remainder:	98.1%	5.96 Mg	24.5%
Recycling plant			11.9 Mg	49.1%
	Hg recovery:	98.8%	11.78 Mg	48.5%
	Residue:	0.8%	(0.095) Mg	0.39%
	Plant air emissions:	0.4%	(0.048) Mg	0.20%
	Total air emissions:	1.2%	(0.143) Mg	0.59%

Table B-3. Mercury Emission Estimates - 80 % Recycling
Used Fluorescent Bulb Management

		Distribution percent	Annual Hg in(out)	Percent of input
	Hg input:	100%	24.3 Mg	100%
	Total air emissions:		(1.64) Mg	6.8%
Subtitle D transport		20%	4.9 Mg	20%
	Garbage trucks:	100%	4.9 Mg	20%
	Relamping trucks:	0%	0.0 Mg	0%
Transport air emissions				
	Garbage trucks:	8.3%	(0.40) Mg	1.7%
	Relamping trucks:	3.4%	0.00 Mg	0%
Remainder				
	Garbage trucks:	91.7%	4.5 Mg	18%
	Relamping trucks:	96.6%	0.00 Mg	0%
Incineration input				
	Garbage trucks:	16%	0.71 Mg	2.9%
	Relamping trucks:	0%	0.00 Mg	0%
	Total:		0.71 Mg	2.9%
Incinerator emissions				
	Flue gas:	90%	(0.64) Mg	2.6%
	Bottom ash:	5%	0.04 Mg	0.15%
	Fly ash:	5%	0.04 Mg	0.15%
Landfill input				
	Garbage trucks:	84%	3.7 Mg	15%
	Relamping trucks:	100%	0.00 Mg	0%
	Incinerator ash:	100%	0.07 Mg	0.29%
	Total:		3.8 Mg	16%
Landfill emissions				
	Leachate:	0.0005%	(0.00002) Mg	0.0001%
	Gas:	0.0005%	(0.00002) Mg	0.0001%
	Retained:	99.999%	3.8 Mg	16%
Recycling input		80%	19.4 Mg	80%
Single stage transport		50%	9.72 Mg	40.0%
	Transport air emissions:	0.18%	(0.017) Mg	0.07%
	Storage air emissions:	1.7%	(0.165) Mg	0.68%
	Remainder:	98.1%	9.54 Mg	39.2%
Dual stage transport		50%	9.72 Mg	40.0%
	Transport air emissions:	0.22%	(0.021) Mg	0.09%
	Storage air emissions:	1.7%	(0.165) Mg	0.68%
	Remainder:	98.1%	9.53 Mg	39.2%
Recycling plant			19.1 Mg	78.5%
	Hg recovery:	98.8%	18.84 Mg	77.5%
	Residue:	0.8%	(0.153) Mg	0.63%
	Plant air emissions:	0.4%	(0.076) Mg	0.31%
	Total air emissions:	1.2%	(0.229) Mg	0.94%

CHAPTER X. Setting Priorities for Addressing Discharges from Separate Sanitary Sewers

THE ENFORCEMENT MANAGEMENT SYSTEM

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

(CLEAN WATER ACT)

CHAPTER X: Setting Priorities for Addressing Discharges from Separate Sanitary Sewers

U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF REGULATORY ENFORCEMENT

1996

Setting Priorities for Addressing Discharges from Separate Sanitary Sewers

Discharges of raw or diluted sewage from separate sanitary sewers before treatment can cause significant public health and environmental problems. The exposure of the public to these discharges and the potential health and environmental impacts are the primary reasons EPA is developing this additional guidance on these discharges. This document provides a method of setting priorities for regulatory response, and serves as a supplement to the Enforcement Management System guidance (EMS, revised February 27, 1986). As such, this document addresses only those discharges which are in violation of the Clean Water Act. As a general rule, the discharges covered by this guidance constitute a subset of all discharges from separate sanitary sewer systems.

Legal Status

In the context of this document, a "discharge from a separate sanitary sewer system" (or "discharge") is defined as any wastewater (including that combined with rainfall induced infiltration/inflow) which is discharged from a separate sanitary sewer that reaches waters of the United States prior to treatment at a wastewater treatment plant. Some permits have specific requirements for these discharges, others have specific prohibitions under most circumstances, and still other permits are silent on the status of these discharges.

The legal status of any of these discharges is specifically related to the permit language and the circumstances under which the discharge occurs. Many permits authorize these discharges when there are no feasible alternatives, such as when there are circumstances beyond the control of the municipality (similar to the concepts in the bypass regulation at 40 CFR Part 122.41 (m)). Other permits allow these discharges when specific requirements are met, such as effluent limitations and monitoring/reporting.

Most permits require that any non-compliance including overflows be reported at the end of each month with the discharge monitoring report (DMR) submittal. As a minimum, permits generally require that overflow summaries include the date, time, duration, location, estimated volume, cause, as well as any observed environmental impacts, and what actions were taken or are being taken to address the overflow. Most permits also require that any non-compliance including overflows which may endanger health or the environment be reported within 24 hours, and in writing within five days. Examples of overflows which may endanger health or the environment include major line breaks, overflow events which result in fish kills or other significant harm, and overflow events which occur in environmentally sensitive areas.

For a person to be in violation of the Clean Water Act: 1) a person must own, operate, or have substantial control over the conveyance from which the discharge of pollutants occurs, 2) the discharge must be prohibited by a permit, be a violation of the permit language, or not be authorized by a permit, and 3) the discharge must reach waters of the United States. In addition, discharges that do not reach waters of the United States may nevertheless be in violation of Clean Water Act permit requirements, such as those requiring proper operation and maintenance (O&M), or may be in violation of state law.

Statement of Principles

The following six principles should be considered as EPA Regions and States set priorities for addressing violating discharges from separate sanitary sewers:

1. All discharges (wet weather or dry weather) which cause or contribute significantly to water quality or public health problems (such as a discharge to a public drinking water supply) should be addressed as soon as physically and financially possible. Other discharges may, if appropriate, be addressed in the context of watershed/basin plans (in conjunction with state or federal NPDES authorities).

2. Discharges which occur in high public use or public access areas and thus expose the public to discharges of raw sewage (i.e., discharges which occur in residential or business areas, near or within parks or recreation areas, etc.) should be addressed as soon as physically and financially possible.

3. Dry weather discharges should be addressed as soon as physically and financially possible.

4. Discharges due to inadequate operation and routine maintenance should be addressed as soon as possible. (Physical and financial considerations should be taken into account only in cases where overflow remedies are capital intensive.)

5. Discharges which could be addressed through a comprehensive preventive maintenance program or with minor capital investment should be addressed as soon as physically and financially possible.

6. With respect to principles 1 through 5 above, schedules of compliance which require significant capital investments should take into account the financial capabilities of the specific municipality, as well as any procedures required by state and local law for publicly owned facilities in planning, design, bid, award, and construction. (See later sections on Schedules).

Causes of Sanitary Sewer Discharges

Discharges from separate sanitary sewers can be caused by a variety of factors including, but not limited to:

1. Inadequate O&M of the collection system. For example, failure to routinely clean out pipes, failure to properly seal or maintain manholes, failure to have regular maintenance of deteriorating sewer lines, failure to remedy poor construction, failure to design and implement a long term replacement or rehabilitation program for an aging system, failure to deal expeditiously with line blockages, or failure to maintain pump stations (including back-up power).

2. Inadequate capacity of the sewer system so that systems which experience increases in flow during storm events are unable to convey the sewage to the wastewater treatment plant. For example, allowing new development without modeling to determine the impact on downstream pipe capacity, insufficient allowance for extraneous flows in initial pipe design (e.g. unapproved connection of area drains, roof leaders, foundation drains), or overly optimistic Infiltration/Inflow reduction calculations.

3. Insufficient capacity at the wastewater treatment plant so that discharges from the collection system must occur on a regular basis to limit flows to the treatment plant. For example, basic plant designs which do not allow sufficient design capacity for storm flows.

4. Vandalism and/or facility or pipeline failures which occur independent of adequate O&M practices.

Applicable Guidance

For many years, EPA and the States have been working with municipalities to prevent discharges from separate sanitary sewer systems. The preferred method has been to use the general policy on responding to all violations of the Clean Water Act which is contained in the EMS guidance. Factors which are considered are the frequency, magnitude, and duration of the violations, the environmental/public health impacts, and the culpability of the violator. This guidance sets up a series of guiding principles for responding to separate sanitary sewer discharge violations, and it supplements the current EMS.

Every EPA Region and State uses some form of this general enforcement response guidance as appropriate to the individual state processes and authorities. Under the guidance, various EPA Regions and States have taken a large number of formal enforcement actions over the past several years to address sanitary sewer discharge problems across the country. Responses have included administrative orders and/or civil judicial actions

against larger municipalities to address sanitary sewer discharge problems, resulting in substantial injunctive relief in some cases.

As a result of EPA Region and State enforcement efforts, a number of municipalities have invested substantial resources in diagnostic evaluations and designing, staffing, and implementing O&M plans. Other municipalities have undertaken major rehabilitation efforts and/or new construction to prevent sanitary sewer discharges.

Priorities for Response

There are approximately 18,500 municipal separate sanitary sewage collection systems (serving a population of 135 million), all of which can, under certain circumstances, experience discharges. Given this fact, the Agency has developed a list of priorities in dealing with the broad spectrum of separate sanitary sewer discharges to ensure that the finite enforcement resources of EPA and the States are used in ways that result in maximum environmental and public health benefit. However, these priorities should be altered in a specific situation by the degree of health or environmental risks presented by the condition(s).

In the absence of site-specific information, all separate sanitary sewer discharges should be considered high risk because such discharges of raw sewage may present a serious public health and/or environmental threat. Accordingly, first priority should be given within categories (such as dry weather discharges and wet weather discharges) to those discharges which can be most quickly addressed. The priority scheme listed below takes this into account by first ensuring that municipalities are taking all necessary steps to properly operate and maintain their sewerage systems. Corrective action for basic O&M is typically accomplished in a short time, and can yield significant public health and environmental results.

Risk again becomes a determinant factor when conditions warrant long term corrective action. The goal here should be to ensure that capital intensive, lengthy compliance projects are prioritized to derive maximum health and environmental gains.

The priorities for correcting separate sanitary sewer discharges are typically as follows:

1) Dry weather, O&M related: examples include lift stations or pumps that are not coordinated, a treatment plant that is not adjusted according to the influent flow, poor communication between field crews and management, infiltration/inflow, and/or pretreatment problems.

2) Dry weather, preventive maintenance related: examples include pumps that fail due to poor maintenance, improperly calibrated flow meters and remote monitoring equipment, insufficient maintenance staff, deteriorated pipes, and/or sewers that are not cleaned regularly.

3) Dry weather, capacity related: examples include an insufficient number or undersized pumps or lift stations, undersized pipes, and/or insufficient plant capacity.

4) Wet weather, O&M related: examples include excessive inflow and/or infiltration (such as from improperly sealed manhole covers), inadequate pretreatment program (i.e. excessive industrial connections without regard to line capacity), uncoordinated pump operations, treatment plant operation that is not adjusted according to the influent flow, poor coordination between field crews and management, illegal connections, and/or no coordination between weather forecast authorities and sewer system management.

5) Wet weather, preventive maintenance related: examples include poor pump maintenance leading to failure, improperly calibrated flow meters and remote monitoring equipment, insufficient maintenance staff, and/or sewers that are not cleaned regularly.

6) Wet weather, O&M minor capital improvement related: examples include the upgrading of monitoring equipment, pumps, or computer programs, and/or repair or replacement of broken manholes or collapsed pipes.

7) Wet weather capacity, quick solution related: examples include a known collection system segment that is a "bottleneck", pumps beyond repair in need of replacement, and/or need for additional crews or technical staff.

8) Wet weather, capacity, health impact related requiring long term corrective action: examples include frequent discharges to public recreational areas, shellfish beds, and/or poor pretreatment where the total flow is large.

9) Wet weather, capacity, sensitive area related requiring long term corrective action: examples include discharges to ecologically and environmentally sensitive areas, as defined by State or Federal government.

Selecting A Response

The appropriate regulatory response and permittee response for separate sanitary sewer discharges will depend on the specifics of each case. The regulatory response can be informal, formal, or some combination thereof. Typical regulatory

responses include a phone call, Letter of Violation (LOV), Section 308 Information Request, Administrative Order (AO), Administrative Penalty Order (APO), and/or judicial action. The permittee response can range from providing any required information to low cost, non-capital or low capital improvements to more capital intensive discharge control plans.

The attached chart lists some categories of separate sanitary sewer noncompliance along with the range of response for each instance. The chart is intended as a guide. The responses listed on the chart are not to be considered mandatory responses in any given situation. EPA and the States should use the full range of regulatory response options (informal, formal, or some combination thereof) to ensure that the appropriate response or remedy is undertaken by the permittee or municipality. All regulatory responses should be in accordance with the concept of the EMS regarding orderly escalation of enforcement action.

Developing Compliance Schedules

A compliance schedule should allow adequate time for all phases of a sanitary sewer discharge control program, including development of an O&M plan, diagnostic evaluation of the collector system, construction, and enhanced O&M. Municipalities should be given a reasonable length of time to develop schedules so they can realistically assess their compliance needs, examine their financing alternatives, and work out reasonable schedules for achieving compliance. Nevertheless, timelines for schedules should be as short as physically and financially possible.

Short Term Schedules

In general, short term schedules would be appropriate for sanitary sewer discharges involving O&M problems, or where only minor capital expenses are needed to correct the problem. The schedule should have interim dates and a final compliance date incorporated in the administrative order or enforcement mechanism.

Comprehensive Discharge Control Schedules

Comprehensive discharge control schedules should be used where specific measures must be taken to correct the discharges, and the measures are complicated, costly, or require a significant period of time to implement. If appropriate, these schedules should include the use of temporary measures to address high impact problems, especially where a long term project is required to correct the sanitary sewer discharge violation.

When working with municipalities to develop comprehensive schedules, EPA Regions and States should be sensitive to their

special problems and needs, including consideration of a municipality's financial picture. Factors that should be considered are the municipality's current bond rating, the amount of outstanding indebtedness, population and income information, grant eligibility and past grant experience, the presence or absence of user charges, and whether increased user charges would be an effective fund-raising mechanism, and a comparison of user charges with other municipalities of similar size and population.

Physical capability should be considered when schedules are developed. Schedules should include interim milestones and intermediate relief based on sound construction techniques and scheduling such as critical path method. Compliance schedules should be based on current sewer system physical inspection data adequate to design sanitary sewer discharge control facilities. Schedules should not normally require extraordinary measures such as overtime, short bidding times, or other accelerated building techniques. Where possible, schedule development should be completed according to normal municipal government contracting requirements.

Financial capability should also be considered in schedule development, including fiscally sound municipal financing techniques such as issuing revenue bonds, staging bond issuance, sequencing project starts, sensitivity to rate increase percentages over time.

Note: The intent of this guidance is to aid the Regions and States in setting priorities for enforcement actions based on limited resources and the need to provide a consistent level of response to violations. This does not represent final Agency action, but is intended solely as guidance. This guidance is not intended for use in pleading, or at hearing or trial. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties. This guidance supplements the Agency's Enforcement Management System Guide (revised February 27, 1986).

ENFORCEMENT RESPONSE GUIDE
DISCHARGES FROM SEPARATE SANITARY SEWERS

NONCOMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
Discharge without a permit or in violation of general prohibition	Isolated & infrequent, dry weather O&M related	Phone call, LOV, 308 request
Discharge without a permit or in violation of general prohibition	Isolated & infrequent, dry weather capacity related	308 request, AO, APO, Judicial action
Discharge without a permit or in violation of general prohibition	Isolated & infrequent, wet weather O&M related	Phone call, LOV, 308 request
Discharge without a permit or in violation of general prohibition	Isolated & infrequent, wet weather, quick and easy solution	LOV, 308 request
Discharge without a permit or in violation of general prohibition	Isolated & infrequent, wet weather capacity related, health and/or sensitive areas	LOV, 308 request, AO, APO
Discharge without a permit or in violation of general prohibition	Isolated & infrequent, wet weather capacity related, non-health, non-sensitive areas	Phone call, LOV, 308 request
Discharge without a permit or in violation of general prohibition	Cause unknown	Phone call, LOV, 308 request
Discharge without a permit or in violation of general prohibition	Permittee does not respond to letters, does not follow through on verbal or written agreement	AO, APO, judicial action
Discharge without a permit or in violation of general prohibition	Frequent, does not significantly affect water quality, no potential public health impact	LOV, 308 request, AO, APO
Discharge without a permit or in violation of general prohibition	Frequent, cause or contribute significantly to WQ problems, or occur in high public use and public access areas, or otherwise affect public health	AO, APO, judicial action

ENFORCEMENT RESPONSE GUIDE
DISCHARGES FROM SEPARATE SANITARY SEWERS

NONCOMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
Missed interim date in CDCP	Will not cause late final date or other interim dates	LOV
Missed interim date in CDCP	Will result in other missed dates, no good and valid cause	LOV, AO, APO, judicial action
Missed final date in CDCP	Violation due to force majeure	Contact permittee and require documentation of good or valid cause
Missed final date in CDCP	Failure or refusal to comply without good and valid cause	AO, APO or judicial action
Failure to report overflows (as specified in permit)	Isolated and infrequent, health related	Phone call, LOV, AO, APO
Failure to report overflows (as specified in permit)	Isolated and infrequent, water quality and environment related	Phone call, LOV, AO, APO
Failure to report overflows (as specified in permit)	Permittee does not respond to letters, does not follow through on verbal or written agreement, or frequent violation	AO, APO, judicial action, request for criminal investigation
Failure to report permit requirements	Any instance	Phone, LOV, AO, APO

CDCP = Comprehensive Discharge Control Plan

REPORTABLE NONCOMPLIANCE (QNCR)

Type of Violation	Section of Regulation	Category	SNC*
B. Violations of Enforcement Order Requirements:			
1. Violation of Effluent Limits:			
a. Exceed 30 day avg any month	iiA	I	J-yes A-yes (if limit is as strinnent as current (prior) permit, it is SNC only if there are 2 TRC/6 or 4/6 months)
b. Other violations with WQ or health impacts	iiA	I	yes
2. Violations of Compliance Schedule Milestones by 90 days or more:			
a. Start Construction Milestone	iiB	I	yes
b. End Construction Milestone	iiB	I	yes
c. Attain Final Compliance (incl. submit approvable pretreatment program)	iiB	I	yes
d. Other Schedule Milestones	iiiC	II	J-yes A-no
3. Reports late by 30 days or more:			
a. Discharge Monitoring Reports (DMRs)	iiD	I	yes
b. Pretreatment Reports	iiD	I	yes
c. CS Report of Final Compliance	iiD	I	yes
d. Other Reports	iiiD	II	J-yes A-no
e. Incomplete or Deficient Reports	iiiE	II	J-yes A-no
4. Other order requirements	iiA	I	yes

J-Judicial Orders
A-Administrative Orders or their State equivalents

This count includes major permittees that are reported in the QNCR for Category I permit effluent violations, and may include major permittees that are reported on the QNCR for Category I enforcement order effluent violations or Category II permit effluent violations of permit or order limitations.

III. FORMAT

The regulations do not specify a format for the SSSR. A suggested format can be found on page 3-3.

4. Other

Any violation of a judicial order requirement other than an effluent, schedule, or reporting requirement is SNC. These violations would include failure to pay stipulated penalties, maintain required staffing or follow prescribed operation and maintenance procedures.

D. RESOLUTION OF SIGNIFICANT NONCOMPLIANCE

An instance of SNC is considered resolved when the SNC criteria are no longer met during the review period or when the permittee formerly in SNC exhibits compliance for all three months of the most recent quarter.

III. EXCEPTIONS LIST

The Exceptions List is a report that is submitted as part of the SPMS reports. Its purpose is to track timely enforcement against major permittees that are in SNC in accordance with the Guidance for Oversight of NPDES Programs and the Enforcement Management System Guide.

Any major permittee that is listed on the ONCR for two consecutive quarters for the same instance of SNC (e.g., same pipe, same parameter for effluent violations; same milestone for schedule violations; same report for reporting violations; and same requirement for "other" violations) must be listed on the Exceptions List unless the permittee was addressed with a formal enforcement order prior to the completion date of the second ONCR:

1) Violation of Monthly Average Effluent Limits

Any violation of a monthly average effluent limitation cited in an enforcement order is SNC.

2) Violation of Other Limits

Any violation of an effluent limitation cited in an enforcement order that causes or has the potential to cause a water quality or health problem is SNC.

2. Schedule

Administrative order SNC criteria are the same as enforcement order schedule Category I ONCR criteria. Therefore, Failure to Start Construction, End Construction, or Attain Final Compliance within 90 days of the scheduled date is SNC.

3. Reporting

Administrative Order reporting SNC criteria are the same as enforcement order reporting Category I ONCR criteria. Therefore, DMRs, Pretreatment Reports, and the Compliance Schedule Final Report of Progress (i.e., attain final compliance) that are submitted 30 or more days late are SNC.

4. Other

Any violation of an administrative order requirement other than an effluent, schedule, or reporting requirement is SNC. These violations would include failure to pay stipulated penalties, maintain required staffing or follow prescribed operation and maintenance procedures.

C. JUDICIAL ORDER SIGNIFICANT NONCOMPLIANCE

Since violations of judicial orders are of special concern to EPA, judicial order SNC criteria are the same as enforcement order ONCR criteria.

a. Violation of Monthly Average Effluent Limits

1) TRC Violations

A violation of a given Group I or Group II parameter at a given discharge point that equals or exceeds the product of TRC times the limit for any two or more months during the two quarter review period is SNC.

2) Chronic Violations

Violation of a given Group I or Group II parameter limit at a given pipe by <u>any</u> amount (not necessarily TRC times the limit or greater) for any four or more months during the two quarter review period is SNC.

b. Violation of Other Limits

<u>Any</u> effluent violation that causes or has the potential to cause a water quality or health problem is SNC.

2. <u>Schedule</u>

Permit schedule SNC criteria are the same as permit schedule Category I ONCR criteria. Therefore, Failure to Start Construction, End Construction, or Attain Final Compliance within 90 days of the scheduled date is SNC.

3. <u>Reporting</u>

Permit reporting SNC criteria are the same as permit reporting Category I ONCR criteria. Therefore, DMRs, Pretreatment Reports, and the Compliance Schedule Final Report of Progress (i.e., attain final compliance) that are submitted 30 or more days late are SNC.

4. <u>Other</u>

There are no "other" permit SNC violations.

LIST OF APPENDICES

APPENDIX I - Noncompliance to be Reported in the QNCR (by Subparagraph)

APPENDIX II - Acceptable Quarterly Noncompliance Report Abbreviations

APPENDIX III - Current Listing of Group I and Group II Pollutants

APPENDIX IV - Sample Quarterly Noncompliance Report

APPENDIX V - Technical Guidance

This violation is listed because it met Category II criteria after October 1, 1985 (namely on November 1, 1985). This violation should continue to be listed until the permittee has satisfied all of the requirements of the order, the order is closed out, or the requirements of the order are nullified by or incorporated into a new order.

- the order was issued on or subsequent to October 1, 1985
- the order (issued prior to October 1, 1985) was violated on or subsequent to October 1, 1985

These orders must be listed until the permittee has fully satisfied the requirements of the order, the order is closed out, or the requirements of the order are nullified by or incorporated into a new order.

In the first two cases above, satisfaction of the order requirements and close-out of the order, the violations that were addressed by the order should be reported as resolved (RE) before they and the orders are dropped from the QNCR. In the case of orders that are nullified by or incorporated into new orders, the violations should continue to appear; the old orders may be dropped, but a reference should be made in the Comment Section as to why they were dropped.

A. ORDERS ISSUED ON OR SUBSEQUENT TO OCTOBER 1, 1985

Orders issued on or subsequent to the effective date of the regulation must be listed with both the instance of noncompliance that was addressed by the order and all subsequent violations of the order.

EXAMPLE 1

INSTANCE OF NONCOMPLIANCE/DATE			SUBPARAGRAPH IN REGULATION	ACTION (AGENCY)/DATE	STATUS/DATE	COMMENTS
TSS	TRC	093085	(ii)(C)	AO#86-01(State) 102385	RP 102385	Order establ.
TSS	TRC	083185	(ii)(C)			schedule and
TSS		073185	(ii)(C)			for TSS

3. Reporting

Instances of enforcement order reporting noncompliance should be reported by:

- Missing/deficient report
- Portion of incomplete report
- Docket number of violated order or other identification (such as date of issuance) if there is no docket number
- Date of the instance of noncompliance
  - The due date is generally used for reports such as progress reports - not the date 30 days after the due date
  - The last day of the period covered is generally used for measurement reports such as DMRs
- Subparagraph in regulation that best describes the instance of noncompliance (cited here or in Comment Section)

a. Late DMRs, Pretreatment Reports, and the Compliance Schedule Final Report of Progress

EXAMPLE 6

INSTANCE OF NONCOMPLIANCE	(OUTFALL) / DATE	SUBPARAGRAPH IN REGULATION
AO#XI-82-12 Failure to submit final progress report of compliance	110185	(iii)(D)
AO#85-36 Failure to submit pretreatment annual report	113085	(ii)(D)

b. Other Late Reports

EXAMPLE 7

INSTANCE OF NONCOMPLIANCE	(OUTFALL) / DATE	SUBPARAGRAPH IN REGULATION
AO#85-24 Failure to submit third progress report	110185	(iii)(D)