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

SEP 21 1995

MEMORANDUM

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SUBJECT: Revision of NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Non-Monthly Average Limits

FROM: Steven A. Herman
Assistant Administrator

TO: Water Management Division Directors, Regions I-X
Regional Counsels

This memorandum transmits to you the NPDES program's new SNC definition. This revision of the SNC criteria was needed because the current definition results in many significant violators escaping detection as SNC and, therefore, avoiding routine enforcement consideration. The expeditious development of these criteria was due in large part to the outstanding support from members of the SNC Workgroup from various States and all ten Regions.

The option for the change to the SNC criteria that I have selected basically entails the application of the current SNC criteria for Monthly Averages to Non-Monthly Averages as recommended by the national SNC Workgroup. In making my decision, I carefully considered information provided by you and your staff, the SNC Workgroup, and the Water Enforcement Division (WED) here at Headquarters.

In brief, I selected the Workgroup option for the following reasons. First, it is fully consistent with the President's Reinventing Environmental Regulation guidance and will result in better targeting of limited enforcement resources to violations posing the greatest risks to health and the environment. Second, no new reports are required. The data to calculate the SNC based on the new criteria is already provided in the NPDES national data base known as the Permit Compliance System (PCS).

Third, the violations of the Non-Monthly Average SNC facilities do pose a significant threat to the environment/public health. Toxics and other risk-based water quality based limits are being violated in a large majority of the new SNC cases. Among the new SNC are non-toxic pollutants, such as nutrients and oxygen demanding parameters, which have been documented by EPA as being among the top five causes of water quality impairment.

Recycled/Recyclable
Printed with Soy/Canola Ink on paper that contains at least 75% recycled fiber

Also, close to three quarters of the non-toxic SNC violators, which will be captured by the new SNC criteria, are repeat offenders and therefore are among the worst violators.

Attachment I provides the official new SNC definition. Attachment II-A provides details on the Regulatory Reinvention analysis and Attachment II-B discusses the SNC definition options.

IMPLEMENTATION

Although I am officially selecting this new SNC definition today, I am delaying formal implementation for one year. This delay is, in part, a response to the Regions' request for time, prior to officially reporting the new SNC, to reduce the initial increase in SNC from the new definition. In addition, this delay will allow the time necessary to make changes in PCS to automate the calculation and reporting of the new SNC.

I expect the Regions (and States), over approximately the next two years, will take formal enforcement actions to reduce or eliminate this increase in SNC. Until the changes are made in PCS, I request that the Regions and States use the Non-Monthly Average SNC software, which will soon be made available to you by OECA, to temporarily identify Non-Monthly Average SNC facilities. Where appropriate, I request that Timely and Appropriate ("T and A") enforcement action be considered while PCS changes are being made.

Also during this interim period, it would be useful to report SNC counts for Non-Monthly Averages along with other quarterly enforcement reports. Although this interim reporting is optional, the data would help WED in developing its recommendation on a revision to the standard acceptable level of SNC (plus "T and A" and the Exceptions List) which Headquarters uses in routine Regional performance reviews. In revising this bench mark level of acceptable SNC, the goal will be to draw a reasonable balance between resources and the new SNC rate.

Once the changes in PCS are completed, all categories of SNC will be integrated into the routine quarterly SNC count and will appear on the Quarterly Noncompliance Report (QNCR). Also, I wish to remind the Regions (and States) that they may remove SNC indicators in PCS for those occasional violations that technically meet the SNC criteria but, in reality, do not constitute a significant infraction. Such deletions must be documented in a facility's file.

As appropriate, these and other implementation issues will be discussed with the Regions in the near future. If you have any questions regarding the SNC criteria or their implementation,

please contact Brian Maas, Acting Director, Water Enforcement Division at (202) 564-2240 or have your staff call Richard Lawrence at (202) 564-3511. Again, I wish to thank you and all the workgroup members for your outstanding efforts and perseverance, and look forward to working with you on implementation.

Attachments

cc: Water Enforcement Branch Chiefs
Michael Cook
OECA Office Directors
Fred Stiehl
Workgroup Members

ATTACHMENT I

Significant Noncompliance (SNC) Criteria for National Pollutant Discharge Elimination System Violations

1. Effluent Violations of Monthly Average Limits

a. TRC Violations

A 40% exceedance of specific pollutant limits listed in Exhibit A or a 20% exceedance of a specific pollutant limit from Exhibit B at a given discharge point for any two or more months during the two consecutive quarter review period is SNC.

b. Chronic Violations

Violation of any monthly effluent limit at a given pipe by any amount for any four or more months during the two consecutive quarter review period is SNC.

2. **Effluent Violations of Non-Monthly Average Limits***

TRC and chronic SNC criteria are the same as for monthly average violations as described in section 1. a. and b. above. However, the following caveat also applies:

When a parameter has both a monthly average and a non-monthly average limit, a facility would only be considered in SNC for the non-monthly limits if the monthly average is also violated to some degree (but less than SNC).

3. Other Effluent Violations

Any effluent violation that causes or has the potential to cause a water quality or human health problem is SNC.

4. Non-Effluent Violations

Any unauthorized bypass, unpermitted discharge, or 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, fishing bans, or other restrictions of beneficial uses) is SNC. In the case of POTWs implementing Approved Pretreatment Programs, failure to implement or enforce those programs is SNC.

***NOTE: Non-monthly average SNC applies to all maximum and all average (other than monthly average) statistical base codes.**

5. Permit Schedule Violations

Any failure to start construction, end construction, or attain final compliance within 90 days of the scheduled date is SNC. Also, all pretreatment schedule milestones missed by 90 days or more are SNC.

6. Permit Reporting Violations

Discharge Monitoring Reports, POTW Pretreatment Performance Reports, and the Compliance Schedule Final Report of Progress (i.e., whether final compliance has been attained) that are not submitted at all or are submitted 30 or more days late are SNC.

7. Enforcement Orders

a. Judicial Order

Any violation of a Judicial Order is SNC.

b. Administrative Order (AO)

Any violation of an effluent limit (or other water quality/health impact) established in an AO is SNC. However, when an AO limit is as stringent as an applicable permit limit, the facility is SNC only if the permit effluent SNC criteria, set out in number 1-3 above, are met.

Any unauthorized bypass, unpermitted discharge or pass-through of pollutants which cause or has the potential to cause a water quality problem or human health problem is SNC.

Any schedule or reporting violations listed above in sections 5 and 6 respectively are SNC.

Any violations of narrative requirements or any other violation of concern to the Director is SNC.

Exhibit A
SNC Conventional Pollutants
(40% exceedance of limit)

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

Exhibit B
SNC Toxic Pollutants
(20% exceedance of limit)

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.3