



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

JUL 12 2019

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Regional Role in Reducing the NPDES Rate of Significant Noncompliance

FROM: Susan Parker Bodine 

TO: Regional Administrators

The purpose of this memorandum is to communicate expectations of the Office of Enforcement and Compliance Assurance (OECA) for Regional implementation of the newly announced “Reducing Significant Noncompliance with National Pollutant Discharge Elimination System Permits” National Compliance Initiative (NCI).¹ This NCI implements the [EPA’s 2018-2022 Strategic Plan](#) and the associated Strategic Measure and Priority Goal to increase compliance. In particular, the goal of this NCI is to reduce the National Pollutant Discharge Elimination System (NPDES) significant non-compliance (SNC) baseline rate by 50% by the end of FY 2022, while assuring that the worst SNC violators are timely and appropriately addressed. Given that facilities in SNC are found across the country, we can only achieve this goal if each EPA Region fully participates in this NCI.

To develop this NCI, OECA and Region 4 formed a SNC workgroup, including several sub-workgroups, that included members from all the Regions and numerous states. The role of the workgroup and the sub-workgroups is to coordinate the overall initiative and to identify, compile, and share with the Regions and states best practices for reducing the SNC rate and for remediating specific SNC violations.

The structure for this initiative was initially communicated to Regions and states through a June 2018 OECA NPDES SNC Fact Sheet that described how regions and states would work collaboratively together on this NCI. This memorandum expands upon that Fact Sheet based on numerous discussions with regions and states, including input from the Regional Enforcement and Compliance Assurance Division Directors, the Regional Water Branch Chiefs and the state Association of Clean Water Agencies.

In summary we are asking Regions, beginning in the fourth quarter of FY 2019, to:

1. Begin meeting quarterly with each authorized state to discuss and review:
 - a. the SNC rate in the state, the success of the state’s and the EPA’s approach for reducing the SNC rate, and, when needed, new approaches for reducing and preventing SNC;

¹ The “Reducing Significant Noncompliance with National Pollutant Discharge Elimination System Permits” NCI is included in the Agency’s final selection of FY 2020-2023 NCIs. See the OECA memorandum, [“FY2020- FY2023 National Compliance Initiatives”](#) (June 7, 2019).

- b. the completeness and accuracy of NPDES compliance data and approaches for reducing incomplete and inaccurate data; and
- c. unresolved, high priority and new SNC/Category 1 noncompliance violations, including how and when SNC/Category 1 violations will be addressed timely and appropriately with a focus on SNCs of greatest concern (*i.e.*, a large number of SNC violations and/or a significant threat to human health or the environment).

These discussions should provide a strong foundation for a mutual understanding of the steps to, and timing for, resolving SNCs at the facility level, including confirmation of who will take the lead for any necessary inspection or enforcement.² Regions should document these discussions so they can more easily follow up with their states.

2. Work with each authorized state that has incomplete or inaccurate compliance data in the Integrated Compliance Information System (ICIS) to identify the cause of these problems and, where possible, help the state correct these problems to reduce its SNC noncompliance rate. The Region should focus on the states with data issues having the biggest impact on the SNC rate first and should address at least one state's data issues in FY 2019.

Improvement in compliance data will be an important element of attaining the FY 2019 and FY 2022 goals set forth in the Agency's Strategic Plan. Currently, "DMR non-receipt" is the basis for 60% of the SNC rate. A significant portion of this "non-receipt" is not a result of non-submittal of discharge monitoring reports (DMRs) by the permittee. Rather, it is probably the result of internal state data system issues or problems in how the state system communicates with the ICIS-NPDES system. Any ICIS issue that cannot be resolved by the authorized state and the Region should be elevated to Randy Hill, Director, Enforcement Targeting and Data Division, Office of Compliance, for resolution.

3. Discuss the best/most effective approaches for reducing the SNC rate with states that have a rate above the goal for the fiscal year or are otherwise interested in improving their compliance program. Regions should talk with these states about identified approaches for reducing the SNC rate and deterring and addressing SNC violations. The EPA-State SNC Workgroup is compiling such approaches that have been effective. In addition, please seek out states to participate in compliance pilots identified by the SNC Workgroup to test new approaches.
4. Examine both the completeness of permit limit, DMR, and the effluent SNC rate data for each jurisdiction where Regions are directly implementing the NPDES program in non-authorized states/territories or in Indian country and develop a written plan for how the Region will reduce the SNC rate in each direct implementation (DI) area. These plans should be developed and in place no later than the end of FY 2019. Development and implementation of these direct implementation plans is critical to show EPA leadership for this initiative. Regions already are demonstrating this leadership having reduced the DI SNC rate from 39.3% at the beginning of FY 2018 to 25.8% at the beginning of FY 2019.

Further details on these four key roles for the region are set forth in the Addendum to this memorandum. I want to thank all the Regions for their efforts to reduce the SNC rate, including the Regions' leadership

² See OECA policy, [Enhancing Effective Partnerships between the EPA and the States in Civil Enforcement and Compliance Assurance Work](#) (July 11, 2019), that outlines principles and best practices for State and EPA collaboration in inspections and enforcement, work planning and implementation, National Compliance Initiatives, and outcome and performance measurement.

and participation on the EPA-state SNC Workgroup. OECA looks forward to working with you and supporting your efforts with your states to reduce the NPDES SNC rate.

Addendum: Detailed Description of OECA's Expectations of Regions for Implementing the NPDES SNC Initiative

cc: Lawrence Starfield, Principal Deputy Assistant Administrator, OECA
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Deputy Regional Administrators
ECAD Directors
Regional Counsels
Regional Water Division Directors
OECA Office Directors
Regional Water Enforcement Branch Chiefs
NPDES SNC Initiative Steering Committee

ADDENDUM
**Detailed Description of OECA's Expectations of Regions
for Implementing the NPDES SNC National Compliance Initiative (NCI)**

The purpose of this Addendum is to provide additional details on expectations for Regional action on the NPDES SNC initiative to support the national effort to achieve the goals of this NCI.¹

1. During the Fourth Quarter of FY 2019, Begin Meeting Quarterly with Each Authorized State

Holding quarterly EPA-state SNC meetings to discuss progress in reducing the SNC rate as well as addressing unresolved, high priority and new SNC/Category 1 violations, is the most important request being made of the Regions for the SNC initiative and entails direct engagement with authorized states in the effort to reduce the SNC rate. Each Region is being asked to arrange a meeting (in-person or over the phone) with each of its authorized states every quarter to discuss matters related to the SNC rate in the particular state.² The objectives of these meetings are to work with the authorized state to better understand the state's NPDES program priorities and strategies for reducing and addressing SNC and, understand the root causes behind SNC in that state. The meetings should focus on identification of specific activities to prevent, deter, and promptly address SNC, and a review of the highest priority facilities currently in SNC with decisions about how to timely and appropriately address them (including determining whether the state or the EPA will address the SNC), and tracking those SNCs to resolution. Additionally, Regions should be identifying opportunities for the EPA to work-share and/or commit resources to an authorized state's effort to reduce its SNC rate, particularly where the state is having difficulty making progress reducing the rate and where the EPA can help the authorized state achieve its NPDES SNC-related program goals.³ In these meetings Regions should evaluate whether the state is implementing an effective strategy for reducing the SNC rate and timely and appropriately addressing SNCs. To assure the parties have a clear understanding of each other's planned actions and commitments, the Region and state will need to agree on and document specific expectations for when and how each discussed SNC will be addressed and continue to be discussed until they are resolved.

Regions should work with their states to determine the appropriate response to permittee SNC.⁴ The factors that the Region should discuss with their states are: the full range of compliance assurance toolbox options, prompt return to compliance, deterrence from future noncompliance,

¹ The goal of this NCI is to reduce the national rolling 4-quarter NPDES SNC rate by 12.5% by the end of FY 2019 and 50% by the end of FY 2022 - from a baseline of 29.4%. This goal applies to the universe of all NPDES individually permitted major and minor facilities with Category 1 noncompliance (see 40 CFR § 123.45), including facilities in NPDES authorized states and territories and in states, territories and Indian Country where the EPA is directly implementing the program.

² Some Regions already meet regularly with their states to discuss NPDES enforcement and compliance matters. If the Region already holds quarterly NPDES meetings with its states, we ask that such meetings be modified to ensure that the objectives discussed in this section are met. Further, the quarterly meetings described herein may be broader, covering other subjects that the Region and the state historically have discussed or other matters that warrant discussion. These quarterly meetings may be in-person or electronic, but at least one meeting per year should be in-person.

³ To demonstrate shared accountability in this effort, Regions should consider adding specific commitments related to this effort to reduce the SNC rate to PPAs/PPGs or state NPDES grant agreements.

⁴ Nothing in this memo supersedes the [Clean Water Act NPDES Enforcement Management System \(EMS\)](#) or the requirements in the EMS and other EPA regulations and policies for timely and appropriate response to NPDES SNC violations.

efficient use of enforcement/compliance resources, and addressing the highest priority SNC violators first.

The SNC discussions with authorized states should begin no later than the fourth quarter of FY 2019. These meetings should be well-documented by the Region and include:

- a. Discussion of the current SNC rate, the trend in the SNC rate, what types of SNC are driving the rate (effluent, reporting or schedule violations), and what is known about the causes of SNC for sectors or facilities in the state;⁵
- b. Discussion of the strategies, approaches and tools being used by the state to reduce the SNC rate, including activities to prevent, deter, and promptly address SNC, the state's priorities related to reducing NPDES noncompliance, and opportunities for the EPA and the state to work-share to assure progress in reducing the SNC rate;⁶
- c. Consideration of work-sharing, training, resources, and technical assistance that might assist the states in reducing their SNC rate as well as discussion of best practices identified by the national workgroup that could be considered in this state;
- d. Review of the completeness and reliability of compliance and SNC related data (e.g. permit limit and compliance data) being reported by the state to the EPA and, where issues with the data are identified, the strategies to be employed and EPA assistance available to correct these issues;⁷
- e. Review of the permittees currently in SNC in the state, with a particular focus on a list of "high priority" SNCs selected by the Region and state that will be addressed first, the resolution of which will be tracked by the Region and discussed at succeeding quarterly meetings.^{8,9} In some states it may not be feasible to discuss the entire SNC list at each quarterly meeting and discussion may need to focus on "high priority" SNCs with limited discussion of other SNCs.
 - These "high priority" SNCs should be identified where evidence of the seriousness of violations and harm to the environment or human health by a SNC permittee convinces the Region and state that this SNC permittee should take priority over other SNCs. Priority also should be given to permittees that have proven recalcitrant and are not already on an appropriate pathway to compliance with the Region or state.

⁵ Data on the NPDES SNC rate and lists of facilities in SNC are posted on the "[CWA NPDES SNC/Category 1 Violations](#)" [EPA/state](#) dashboard. Additional dashboard functionality will be considered to facilitate and inform the quarterly EPA-state SNC discussions.

⁶ Discussions with authorized states should include consideration of federal facilities in SNC. OECA's Federal Facilities Enforcement Office (FFEO) will provide assistance to regions and states to address federal facilities in SNC, including providing resources and case support.

⁷ For state-by-state information on NPDES compliance data completeness, see the public ECHO "[NPDES eRule Readiness and Data Completeness Dashboard](#)."

⁸ OECA has developed a tool for the EPA and states to use to help identify high priority NPDES SNCs – the SNC Violations Tracker in ECHO. OECA will pilot use of the tool and prioritizing criteria for four quarters and then make revisions to the tool as needed based on input received through this process.

⁹ If the Region and state are unable to agree on a list of high priority SNC permittees or what constitutes timely and appropriate action, see the process for EPA-state resolution of such matters described in the OECA policy, [Enhancing Effective Partnerships between the EPA and the States in Civil Enforcement and Compliance Assurance Work](#) (July 11, 2019).

- In identifying high priority SNCs, the Region and state should identify NPDES permittees that are either currently in SNC or have been determined likely to be in SNC soon if not addressed (based on the predictive tools we are developing).
 - The Region and state should discuss work-sharing and determine who will address each high priority SNC and in what time-frame.
- f. Review of the high priority, unresolved SNCs discussed at previous quarterly meetings to assess progress in addressing these SNCs and returning them to compliance.
 - g. Regions should give more attention via the quarterly discussions to states with an SNC rate above the national target for the fiscal year.
2. **Work with Each Authorized State that has Incomplete or Inaccurate Compliance Data**
Discussion of issues with compliance data is an important element of the quarterly SNC discussions with the authorized states, and the offer of EPA collaboration and technical assistance can be an element of this discussion.¹⁰ Each Region should evaluate the ICIS data accuracy and completeness issues, and other compliance data quality issues, for each authorized state and, where applicable, communicate that the EPA wants to assist the state to resolve these issues as expeditiously as possible. Regions should work with the Office of Compliance, Enforcement Targeting and Data Division to determine what resources, expertise and/or training¹¹ can be made available to meet state needs and solve data system and data input problems. The Region should focus first on the states with the data issues having the biggest impact on the SNC rate and should address at least one such state's data issues in FY 2019.¹²
3. **Discuss the Findings of the SNC Workgroup with the States**
Each Region should discuss with the states the findings of the SNC Workgroup about approaches and mechanisms for deterring, reducing or addressing SNC that appear effective in other states or that otherwise appear promising. A focus of the NPDES SNC Communications sub-workgroup is to identify, compile, and disseminate this information to the Regions and authorized states. Sources for this information will include best practices and programs in states or an EPA Region that have achieved low SNC rates, particularly programs that have achieved substantial success in preventing or reducing SNC, academic studies, and pilot programs/studies developed by the Workgroup.¹³ The role of the Regions is to present these approaches for reducing the SNC rate to states as a part of the quarterly SNC rate discussion, or separately, where there is a need and a good fit.

¹⁰ Currently, Regions and the Office of Compliance are working with a number of states to help them address technical problems that are producing incomplete compliance data in ICIS-NPDES. Correcting compliance data "completeness" issues will produce reductions in the SNC rate because every permit with incomplete compliance data is treated as an SNC. Offers of assistance should be made where the Region has determined that the problem is one that is appropriate for federal assistance, and the EPA resources, Regional or headquarters, are needed to assist with the specific problem are available.

¹¹ ICIS training is currently being developed by the Office of Compliance to help states properly enter permitting and compliance data to the system.

¹² The EPA's longstanding national goal for NPDES permit limit and DMR data completeness is 95%. This is the goal for each state's NPDES data in ICIS-NPDES.

¹³ Certain NPDES facilities may present unique challenges and require particular approaches to address and prevent SNC. Federal facilities are one such example – see memorandum, [Addressing Federal Facility Noncompliance under the Clean Water Act National Pollution Discharge Elimination System Program](#), July 26, 2018.

4. Develop a Written Plan for How the Region Will Reduce the SNC Rate in Each EPA Direct Implementation Area

For Regions implementing the NPDES program in non-authorized states/territories or in Indian country, the Region should examine the completeness of permit limit and DMR data and the SNC/Cat 1 noncompliance rate for these direct implementation jurisdictions and enhance efforts to provide complete data and to reduce the SNC rate.

By the end of FY 2019, each Region should develop a written tailored plan describing how the Region intends to reduce the SNC rate in each of its direct implementation areas to meet the Agency's Strategic goals.¹⁴ The plans should describe the strategies that the Region intends to deploy to deter and prevent SNC, and to promptly address permittees in SNC. In developing these plans, the Regions should consider the programs and practices identified by the NPDES SNC Workgroup as effective for reducing SNC rates and engage in appropriate consultation and coordination with the affected state, territory, or tribe.

¹⁴ The SNC Workgroup will establish a mechanism for the Regions to use to internally share the direct implementation SNC rate reduction plans, probably via a SharePoint site.