



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

SEP 27 1989

MEMORANDUM

**SUBJECT:** FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements OFFICE OF WATER

**FROM:** James B. Elder, Director  
Office of Water Enforcement and Permits (EN-335)

**TO:** Regional Water Management Division Directors,  
Regions I-X  
NPDES State Pretreatment Program Directors

Attached is the final "FY 1990 Guidance for Reporting and Evaluating Noncompliance with Pretreatment Implementation Requirements". This Guidance defines criteria for determining which POTWs should be reported on the Quarterly Noncompliance Report (QNCR) for failure to implement pretreatment requirements and criteria for determining which pretreatment violations by POTWs meet the level of significant noncompliance (SNC). It also establishes timely and appropriate criteria for responding to noncompliance for pretreatment implementation violations. The timely and appropriate definition adopted for the pretreatment program is the same as for the NPDES program.

The comments received from you on the August 9, 1989 draft were timely and thoughtful. Perhaps the most frequent comment was the recommendation that we drop the separate definition for reportable noncompliance (RNC). As indicated in the August 9 letter, a workgroup is evaluating possible changes to the Quarterly Noncompliance Report and RNC/SNC reporting system. The workgroup should complete its assessment and recommend changes in FY 1990. A final decision as to whether to continue the use of both an RNC and an SNC definition will await the recommendation of that group. For FY 1990, we will use both the RNC and SNC definitions.

Two commenters suggested that the criterion addressing issuance of control mechanisms established an excessively long timeframe (180 days) for permit issuance and reissuance. Suggestions were made to shorten the timeframe for IU permit issuance and reissuance to as little as 90 days. While we did not make this change, we have added to the SNC definition a provision that EPA Regions and States may designate a POTW as in significant noncompliance if any violation substantially interferes with the ability of the POTW to attain program objectives.

The FY 1990 SPMS requirements include two measures for POTW pretreatment implementation: 1) WQ/E-5, the number and percent of approved programs in significant noncompliance with pretreatment implementation requirements; and 2) WQ/E-10, the number of POTWs that meet the criteria for reportable noncompliance. We will track performance on both these measures for FY 1990 as a means of evaluating the efficacy of the new SNC definition.

Regions and States are expected to initiate timely and appropriate actions to resolve instances of significant noncompliance, including POTW pretreatment implementation violations. POTWs which meet the definition of SNC for pretreatment implementation and are not addressed on a timely basis will be carried on the Exceptions List until they have been resolved or received a formal enforcement response. All POTWs with approved pretreatment programs should be tracked for both RNC and SNC.

If you have any questions regarding the use of this document, you may contact me (475-8488) or Richard Kozlowski, Director, Enforcement Division (475-8304). The staff contact is Anne Lassiter, Chief, Policy Development Branch (475-8307).

Attachment

**FY 1990 GUIDANCE FOR REPORTING AND EVALUATING  
POTW NONCOMPLIANCE WITH PRETREATMENT REQUIREMENTS**

## TABLE OF CONTENTS

	Page
I. Executive Summary	1
II. Introduction	2
A. Background	2
B. Existing Rule	3
C. Determination of Inadequate Program Implementation for QNCR Listing	4
III. Applying the Criteria	7
A. Level I Criteria	7
1. Failure to Enforce Against Pass Through and Interference	7
2. Failure to Submit Pretreatment Reports Within 30 days	9
3. Failure to Meet Compliance Milestones by 90 days or More	9
B. Level II Criteria	10
1. Failure to Issue Control Mechanisms to Significant IUS in a Timely Fashion	10
2. Failure to Inspect or Sample Significant Industrial Users	11
3. Failure to Enforce Pretreatment Standards and Reporting Requirements	11
4. Any Other Violation(s) of Concern to the Approval Authority	15
IV. Compliance Evaluation	15
V. Reporting on the QNCR	20
A. Format	20
B. Description of the Noncompliance	21
C. Compliance Status	22
VI. Examples of Reporting on the QNCR	23
VII. Response to POTW Significant Noncompliance for Failure to Implement Approved Pretreatment Programs	24

## I. Executive Summary

The QNCR is an important tool to identify priority violations of permit conditions, to overview the effectiveness of State and EPA compliance and enforcement activities, to provide a framework to achieve a nationally consistent pretreatment program, and to compile national statistics on noncompliance for the NPDES program. The existing rule for noncompliance reporting requires EPA and the States to report instances where POTWs have failed to adequately implement and enforce their approved pretreatment program.

Nearly 1500 POTWs are now approved. Pretreatment will be the primary mechanism to control toxic and hazardous pollutants which may enter the POTW or its sludge. Therefore, it is vital that EPA and the approved States routinely evaluate POTW compliance with the requirements of their approved programs and report POTWs that have failed to adequately implement their approved program.

This Guidance is intended to assist Regions and approved States to evaluate and report POTW noncompliance with pretreatment requirements and to take formal enforcement action where violations are of a significant nature. The Guidance explains the criteria that should be used to evaluate principal activities and functions necessary to implement the program. In some cases, approved States and Regions may need to modify the program and/or NPDES permit because the existing requirements are inadequate or because conditions have changed. In general, those POTWs that meet the definition of reportable noncompliance should be priorities for resolving the inadequacies in approved programs or permits. POTWs that meet any Level I criterion or two or more Level II criteria are considered to be in significant noncompliance. In addition, the Region/approved State may designate any failure to implement violation as SNC if it substantially impairs the ability of the POTW to achieve its program objectives. POTWs with violations which meet SNC criteria must resolve those violations before appearing on the 2nd QNCR or the Region or approved State is expected to take formal enforcement action. Where the violation is not resolved and formal enforcement action is not taken on a timely basis, the POTW should be listed on the Exceptions List until such time as the violation is corrected or the POTW has been put on a schedule for correction through formal enforcement.

## II. INTRODUCTION

### A. Background

EPA Regions and NPDES States must report certain permit violations on the Quarterly Noncompliance Report (QNCR) which meet criteria identified in the existing NPDES Regulations (40 CFR Part 123.45). One of the violations that must be reported is a POTW's failure to adequately implement its approved pretreatment program. Prior to September 1987, the interpretation of adequate implementation was left to the discretion of the Regions and approved States.

In September 1987, the Office of Water Enforcement and Permits issued "Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements" which provided a definition of reportable noncompliance (RNC) for POTW pretreatment program implementation. These criteria were to be used in determining when a POTW should be reported on the QNCR. This guidance established criteria which covered five basic areas of POTW program implementation: IU control mechanisms; IU inspections; POTW enforcement; POTW reporting to the Approval Authority; and other POTW implementation requirements.

Now, based on experience with the use of that definition in Fiscal Years 1988 and 1989, EPA has revised the RNC criteria and has developed a new definition of significant noncompliance (SNC) for POTW's that have failed to adequately implement their approved pretreatment programs. The new definition of RNC will be used to determine which POTWs should be reported on the QNCR for failure to implement approved pretreatment programs. The definition of SNC is used to identify the instances of noncompliance that are subject to formal enforcement action, if not resolved on a timely and appropriate basis.

The purpose of this Guidance is to explain the RNC/SNC criteria, with examples of how to apply the criteria; describe how to report noncompliance for POTW pretreatment program implementation on the QNCR and establish timely and appropriate criteria for response to significant noncompliance. This Guidance should be used as a basis for reporting POTW pretreatment noncompliance as required in the Agency Operating Guidance and included as a performance measure for EPA and approved State programs under the Strategic Planning and Management System (SPMS).

## B. Existing Rule

The QNCR is the basic mechanism for reporting violations of NPDES permit requirements. Major<sup>1</sup> POTW permittees must be reported on the QNCR:

- (1) if they are under an enforcement order for previous permit violations; or
- (2) if their noncompliance meets specific criteria (Category I noncompliance); or
- (3) if the regulatory agency believes the violation(s) causes problems or is otherwise of concern (Category II noncompliance).

The specific requirements of the existing rule which relate to pretreatment program implementation are as follows:

1. Enforcement Orders - All POTWs that are under existing enforcement orders (e.g., administrative orders, judicial orders, or consent decrees) for violations of pretreatment implementation requirements (except for orders addressing schedule and reporting violations) must be listed on the QNCR and the compliance status must be reported on each subsequent QNCR until the POTW returns to full compliance with the implementation requirements.
2. Category I pretreatment program noncompliance - A POTW must be reported on the QNCR:
  - a) if it violates any requirement of an enforcement order (except schedule or reporting requirements as noted below), or
  - b) if it has failed to submit a pretreatment report (e.g., to submit Annual Report or to publish a list of significant violators) within 30 days from the due date specified in the permit or enforcement order, or
  - c) if it has failed to complete a pretreatment milestone within 90 days from the due date specified in the permit or enforcement order.

<sup>1</sup> Major POTW permittees are those with a dry weather flow of at least 1 million gallons per day or a BOD/TSS loading equivalent to a population of at least 10,000 people. Any POTW (including a minor POTW) with an approved local pretreatment program should have its pretreatment violations reported on the QNCR.

3. Category II - A POTW must be reported on the QNCR if the instance of noncompliance is:
- a) a pass through of pollutants which causes or has the potential to cause a water quality problem or health problem,
  - b) a failure of an approved POTW to implement its approved program adequately [emphasis added], including failure to enforce industrial pretreatment requirements on industrial users as required by the approved program,<sup>2</sup> or
  - c) any other violation or group of violations which the Director or Regional Administrator considers to be of substantial concern.

**C. Determination of Inadequate Program Implementation for QNCR Listing**

OWEP has developed criteria to evaluate local program implementation that explain and clarify the existing regulations. As stated, these criteria highlight activities that control authorities must undertake to implement their programs. These activities include:

- 1) POTW establishment of IU control mechanisms,
- 2) POTW compliance monitoring and inspections
- 3) POTW enforcement of pretreatment standards and reporting requirements
- 4) POTW reporting to the Approval Authority, and
- 5) Other POTW implementation requirements.

Collectively, these criteria provide the framework for the definition of reportable noncompliance which should be used by EPA Regions and approved States to report POTW noncompliance with pretreatment requirements on the QNCR. These same criteria also provide the basis for a definition of significant noncompliance for pretreatment program implementation. POTWs with pretreatment violations which meet the level of SNC must either resolve these violations on a timely basis or the Region or approved State must take formal enforcement action on a timely basis. The attached table, Table 1, identifies the individual violations which constitute the criteria for reporting noncompliance on the QNCR, as well as the criteria for SNC.

<sup>2</sup> The permit is the basis for enforcing requirements of the approved program or the Part 403 regulations. It should at least require compliance with 40 CFR part 403 and the approved program and ideally it should provide more specific implementation requirements when they are necessary to evaluate noncompliance.



TABLE 1

## DEFINITIONS OF REPORTABLE AND SIGNIFICANT NONCOMPLIANCE

A POTW should be reported on the ONCR if the violation of its approved pretreatment program, its NPDES permit or the General Pretreatment Regulations (40 CFR Part 403) meets any of the following Level I or Level II criteria for inadequate implementation of its approved pretreatment program. A POTW should be considered to be in significant noncompliance if it meets any one of the following Level I criteria or two or more of the Level II criteria. The POTW may also be identified as in significant noncompliance if it meets any one of the Level II criteria if that violation substantially impairs the ability of the POTW to achieve program objectives.

A. Level I

- 1) Failed to take effective action against industrial users for instances of pass through and/or interference as defined in 40 CFR Part 403.3 and required in Section 403.5, and as specified in the approved program or the NPDES permit. Actions taken in response to discharges which result in pass through and/or interference that failed to eliminate the causal discharge within 90 days of identifying the responsible industry or failed to place the responsible industry on an enforceable schedule within 90 days of identification are not considered to be effective, unless otherwise defined in an approved enforcement response plan.
- 2) 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.<sup>3</sup>
- 3) 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.

<sup>3</sup> The term enforcement order means an administrative order, judicial order or consent decree. (See 40 CFR 123.45)

TABLE 1 (Continued)

B. Level II

- 1) Failed to issue, reissue, or ratify industrial user permits, or other enforceable control mechanisms, where required, for at least 90% of the "significant industrial users", within 180 days after program approval (or after permit expiration), or within 180 days of the date required in the approved program, NPDES permit, or enforcement order.
- 2) Failed to conduct a complete inspection or sampling of at least eighty percent of the "significant industrial users" as required by the permit, the approved program, or enforcement order.
- 3) Failed to enforce pretreatment standards or reporting requirements -- including self-monitoring requirements -- as required by the approved program, the NPDES permit, or the General Pretreatment Regulations. Failed to take appropriate action against a violation within thirty (30) days of being notified of such violation. Actions taken in response to incidents of significant noncompliance that failed to return the SIU to compliance (or in compliance with an enforceable compliance schedule) within 90 days of the receipt of information establishing significant noncompliance are not considered effective unless otherwise defined in an approved program enforcement response plan.
- 4) 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.<sup>5</sup>

<sup>4</sup> See SNC definition for industrial users, section 3.4.1 of the PCME. EPA proposed to use that definition to identify significant noncompliers for the annual public notification requirement (section 403.8(f)(2)(vii)). Significant noncompliance (SNC) includes certain violations of pretreatment standards, reporting, schedules and enforcement orders by SIUs.

<sup>5</sup> Existing QNCR criterion (40 CFR Part 123.45); the violation must be reported.

### III. Applying the Criteria

The criteria for reporting POTW noncompliance with pretreatment requirements are based on the General Pretreatment Regulations [particularly 403.8(f)(2)], approved pretreatment programs, and NPDES permit conditions (particularly Part III). Where specific conditions, deadlines, or procedures are specified in the Regulations or the approved program, and incorporated or referenced in the NPDES permit, POTW performance should be evaluated against those requirements. Any failure to meet those requirements is a violation. The criteria included in this Guidance establish a basis for determining when a violation or series of violations should be reported on the QNCR for failure to implement a pretreatment program. If the POTW is identified as meeting one or more of the criteria, the POTW should be reported on the QNCR. If the POTW's violations meet the criteria for significant noncompliance, the violation must be reported in the QNCR and it must be resolved or EPA or the approved State must take formal enforcement action to resolve the violation before the POTW appears on the second QNCR. This definition of "timely and appropriate" is the same as for the NPDES program.

POTW performance should be evaluated using the information routinely obtained from pretreatment compliance inspections, annual reports, pretreatment audits and Discharge Monitoring Reports (DMRs) as well as any special sources of information. All annual reports should include the compliance status of IUs, a summary of compliance and enforcement activities, and other information, as required by Section 403.12(i) of the General Pretreatment Regulations. This information should be useful to assess the effectiveness of pretreatment implementation. Pretreatment staff should review the approved program, the NPDES permit, and any correspondence with the POTW regarding its pretreatment program to identify any specific procedures, levels of performance, or milestones that may apply to implementation of the particular program.

- A. LEVEL I CRITERIA (a POTW is considered to be RNC and SNC for any violation listed below)
1. Failure to Enforce Against Pass Through and Interference

Definitions of industrial user discharges that interfere with a POTW or pass through the treatment works were promulgated January 14, 1987 (52 FR 1586).

Protection against interference and pass through are fundamental objectives of implementing a local pretreatment program. Interference generally involves the discharge of a pollutant(s) which reduces the effectiveness of treatment such that a permit requirement is violated. (If the pollutant that causes the violation is the same as the permit pollutant limit that was exceeded, pass through has occurred.) The POTW is responsible for identifying and controlling the discharge of pollutants from IUs that may inhibit or disrupt the plant operations or the use and disposal of sludge. The POTW must monitor IU contributions and establish local limits to protect its sludge.

The POTW should have written procedures to investigate, control and eliminate interference and pass through. Whenever interference or pass through is identified, the POTW should apply such procedures to correct the problem. The effectiveness of POTW actions against IUs that cause interference and pass through is evaluated based on the timeliness of the POTW response, the degree to which the problem is abated, and the use of the maximum enforcement authority required to resolve the problem.

Whenever an industrial source has been identified as a cause of such violations, the control authority must respond in a rapid and aggressive manner to avoid continuing problems, consistent with the POTWs approved enforcement procedures. Where there are no approved procedures, a reasonable expectation would be that the interference/pass through would be corrected within 90 days after the industrial source has been identified as causing the interference or pass through or that an enforcement order setting an expeditions compliance schedule for corrective action would be issued within 90 days after the source is identified. Where the SIU does not comply with the schedule, the POTW would be expected to make use of full enforcement authorities to secure compliance.

Section 403.5 of the General Pretreatment Regulations requires that the POTW develop and enforce local limits to prevent interference and pass through from industrial contributors to the treatment works. If a POTW has permit limit violations that are attributable to industrial loadings to its plant, it may also be a violation of the requirement to enforce local limits. However, interference or pass through may reflect the fact that the approved program includes inadequate local limits. If such is the case the POTW should be required to modify its approved pretreatment program.

2. Failure to Submit Pretreatment Reports Within 30 days

This criterion already exists under Category I of 40 CFR Part 123.45(a). The term "pretreatment report" should be interpreted to include any report required by the Approval Authority from the POTW (including publication of significant violators/noncompliers in the newspaper as required by Section 403.8(f)(2)(vii) of the General Pretreatment Regulations). Where specific dates are established for these or other reports from the POTW, they may be tracked in PCS. When deadlines are missed, the POTW should be notified immediately because these reports contain information which is essential to determine compliance status. When the due date is missed by 30 days or more, the POTW should be reported on the QNCR as in noncompliance. A POTW which meets this criterion would also be considered in significant noncompliance.

3. Failure to meet Compliance Schedule Milestones by 90 Days or more

This criterion is also included in Category I of 40 CFR Part 123.45(a). Compliance schedules are frequently used to require construction of additional treatment, corrective action to correct inadequacies in implementation, Spill Prevention Contingency and Countermeasure plans, additional monitoring that may be needed to attain compliance with the permit, and any other requirements, especially the development or revision of local limits. The schedules should divide the corrective action into major steps (milestones) that can be verified by inspection or review. Most schedules include progress reports. EPA recommends that the milestones be set at least every six months throughout the schedule. The schedules can be incorporated as part of the POTW's NPDES permit if final compliance will not exceed the regulatory compliance deadline. If the compliance schedule is to resolve a violation that has occurred after the regulatory compliance deadline, the schedule must be placed in an administrative order, judicial order, or a consent decree outside the NPDES permit.

The existing rule for QNCR reporting requires that all permittees be listed on the QNCR if they are under an enforcement order. If the permittee is in compliance with the order, the compliance status is "resolved pending". If the permittee has missed a compliance schedule date by 90 days or more, the permittee must be reported as noncompliant on the QNCR. For POTW pretreatment programs, a failure to begin corrective action, complete corrective action, or attain final compliance within 90 days of the compliance deadline in an enforcement order is considered SNC.

B. LEVEL II CRITERIA (a POTW is considered RNC for meeting any criterion and SNC for meeting two or more of the criteria listed, except that a POTW may be identified as meeting SNC if it meets any one of the criteria listed below if the violation substantially impairs the ability of the POTW to achieve program objectives.)

1. Failure to Issue Control Mechanisms to Significant Industrial Users in a Timely Fashion

Control mechanisms establish enforceable limits, monitoring conditions, and reporting requirements for the industrial user. In some cases, an approved program may have a sewer use ordinance that defines the limits (including local limits) and an individual mechanism for establishing monitoring conditions at each facility. Technically, if a control mechanism expires, control of the SIU and enforcement of some pretreatment requirements may be suspended. Therefore, timely issuance and renewal of all control mechanisms is essential.

All Control Authorities must apply pretreatment standards to their industrial users. Where the approved program requires that individual control mechanisms be developed for significant industrial users, but does not include a timeframe for issuance, the POTW should be given a deadline to issue them through an enforcement order. Some States include schedules for issuing specific SIU permits in a POTW's NPDES permit. Where the POTW has missed one or more deadlines specified in a permit or enforcement order for issuing individual control mechanisms by 90 days or more, the violation must be reported on the QNCR as a schedule violation.

For failure to issue control mechanisms, where individual control mechanisms are required by the approved program or the NPDES permit, the POTW should issue or reissue control mechanisms to 90% of the SIUs within six months following the required date or, if there is no required date, within six months after the program is approved. Where initial issuance of individual control mechanisms has occurred, POTWs should be expected to reissue 90% of required control mechanisms within six months of expiration. POTWs that fail to meet these timeframes should be reported on the QNCR.

Some POTWs have stated that delay in submission of an application by the SIU or delay in review by a State agency causes unavoidable delays in issuance of control mechanisms. The POTW should establish a schedule for IU applications and any other required preliminary steps which allows for the timely review and issuance of a control mechanism prior to its expiration.

2. Failure to Inspect or Sample Significant Industrial Users

POTWs are required to carry out all inspections, surveillance, and monitoring procedures necessary to verify the compliance status of their industrial users independent of information provided by the industrial user [40 CFR 403.8 (f)(2)(iv)]. In the PCME Guidance, EPA recommended that the Control Authority conduct at least one inspection and/or sampling visit for each significant industrial user annually.

The approved program and/or the NPDES permit may establish other requirements for inspections or use a different definition of significant industrial user. In those cases where the permit or approved program identifies specific requirements for inspection or sampling, these requirements should be used as a basis to evaluate POTW compliance. If the POTW has failed to either inspect or sample at least 80% of the significant industrial users as required by the permit or the approved program, the POTW should be reported on the QNCR for its failure to inspect. POTW sampling of all IUs is essential to evaluate IU compliance where IUs do not submit self-monitoring information. In the absence of specific inspection coverage requirements in the approved program or permit, the Approval Authority should also report any POTW which has not either inspected or sampled at least 80% of all SIUs within a 12 month period.

3. Failure to Enforce Pretreatment Standards and Reporting Requirements

a. IU Reporting and Self-Monitoring Requirements

All categorical IUs are required to report at least twice a year (40 CFR 403.12). POTWs also have authority to require monitoring and reporting from non-categorical IUs. As a result, most POTWs have established self-monitoring requirements for SIUs as a means of securing adequate data to assess SIU compliance at less cost to the POTW than if all data were developed by the POTW through sampling. Where an approved program does not require SIU self-monitoring, the visits and inspections conducted by the POTW must be sufficient in scope or frequency to assure compliance.

In evaluating compliance with this criterion, EPA and approved States should examine the requirements of the NPDES permit and the approved pretreatment program and determine whether the Control Authority has established self-monitoring requirements as required. IU self-monitoring requirements should specify the location, frequency, and method of sampling the wastewater; the procedure for analysis and calculation of the result; the pollutant limits; and the reporting requirements. Under certain conditions, SIU violations may trigger additional self-monitoring (See 403.12(g)). For each violation the SIU detects, it must notify the POTW and resample and submit both sample results for review by the Control Authority. These self-monitoring requirements may be applied, in general, through an ordinance, through specific control mechanisms, or through a combination of general and specific mechanisms. Where self-monitoring is used, it should be required frequently enough so that in combination with POTW monitoring, compliance of the SIU can be accurately assessed.

Where appropriate requirements have been established, the Control Authority must ensure that SIUs comply with all aspects of the requirements and report in the manner required in the control mechanism. Where the Control Authority fails to establish appropriate requirements or to adequately enforce these requirements once established (i.e., POTW should respond in writing to all SNC violations for IU self-monitoring and reporting), the Control Authority should be considered in noncompliance and listed on the QNCR.

b. POTW Enforcement and IU Significant Noncompliance

The Control Authority must have the legal authority -- usually expressed through a sewer use ordinance -- to require the development of compliance schedules by IUs and to obtain remedies for noncompliance, including injunctive relief and civil or criminal penalties [40 CFR 403.8(f)(1)(iv) and (vi)]. In addition, the Control Authority must have an attorney's statement, which among other things, identifies how the Control Authority will ensure compliance with pretreatment standards and requirements and enforce them in the event of non-compliance by industrial users [403.9(b)(1)(iii)]. Further, procedures for enforcement may be contained in the approved program, sewer use ordinance, or NPDES permit.

The attorney's statement and compliance monitoring sections of the approved program, taken in combination with the NPDES permit, may provide a comprehensive set of enforcement procedures



which the POTW should follow to ensure the compliance of industrial users with pretreatment standards. Where such procedures are inadequate, EPA strongly recommends that POTWs develop written enforcement procedures which describe how, when, and by whom enforcement authorities are applied (See section 3.3 of the PCME). In fact, amendments to the General Pretreatment Regulations proposed on November 23, 1989 (40 CFR Parts 122 and 403) require POTWs to develop such procedures. These procedures must be approved by the Approval Authority. (After the NPDES permit is modified or reissued to incorporate these regulatory changes, these procedures become enforceable requirements of the pretreatment program.) These procedures serve to inform industrial users of the likely response to violations and assist the POTW in applying sanctions in an equitable manner.

The Approval Authority must periodically evaluate whether the POTW is effectively enforcing pretreatment requirements. In evaluating performance, the Approval Authority should examine both whether the POTW is following its enforcement procedures, where there are such approved procedures, and whether the program is effective in ensuring compliance with pretreatment standards. Regardless of whether there are procedures, one of the indicators the Approval Authority should use in evaluating effectiveness is the level of compliance of SIUs with pretreatment standards. Where the level of significant noncompliance (SNC) of SIUs is 15% or greater over a six month period without formal POTW actions or penalties where appropriate, there is a reasonable presumption that overall the Control Authority is not effectively enforcing its program. To overcome the presumption of ineffective enforcement, the POTW should be able to demonstrate maximum use of its enforcement authorities on a timeframe consistent with its enforcement procedures or, in the absence of written procedures, with the timeframes included in this document.

The Approval Authority should also review the nature and timeliness of the actions taken by the POTW to obtain compliance from individual SIUs. As a general rule, EPA recommends that a POTW respond initially to all violations with either formal or informal enforcement action within 30 days from the date the violation is reported or identified to the POTW. Frequently, the initial action will be informal (e.g., telephone call, warning letter, or meeting.) Where informal action does not bring compliance, the POTW should promptly escalate the level of enforcement response. As a general rule, escalation should occur within 90 days of the initial action, if compliance has not been achieved. Where an SIU continues to violate, so that the pattern of violations meets the criteria for significant noncompliance, the violation should be resolved within 90 days of the receipt of information which established the SIU to be in SNC or the POTW should issue an enforceable schedule for resolution of the noncompliance within that 90 days.

Under certain emergency situations -- to protect public welfare and property -- the initial response should be immediate and should include a formal enforcement action. The POTW should exercise any and all authority that is necessary to resolve instances of significant noncompliance or establish a schedule for resolving them.

The Control Authority should also use its authority to assess penalties against noncomplying industrial users to recapture the economic benefit of delaying compliance. Penalties would be expected as part of the response to violations of most compliance schedules and for violations which were related to interference and pass through at the POTW. EPA uses a computer model "BEN" to estimate the economic benefit. Economic benefit results from delaying capital expenditures, one-time costs for construction/acquisition of treatment facilities, and the avoided cost of operating and maintaining the treatment works. Control authorities should use procedures which consider economic benefit as part of their penalty assessment process.

The Approval Authority should review the Control Authority's overall actions carefully to determine whether it has routinely evaluated the violations and contacted the SIUs in a timely manner, escalating the response when compliance is not achieved. If this review reveals that the Control Authority has often not followed its own procedures or that the Control Authority has not appropriately used its full authorities to achieve compliance by its SIUs, the Control Authority should be judged to be in noncompliance.

Where the Control Authority is judged to have followed its procedures in almost all cases, but the level of significant noncompliance among SIUs is 15% or greater, the adequacy of Control Authority enforcement procedures should be reviewed. If the procedures are found to be inadequate, the procedures should be modified. The Approval Authority might require modification of the approved program, through the NPDES permit, or might issue an administrative order requiring the adoption of new procedures along the lines of those included in the PCME Guidance.

Even where the SIUs have a low level of significant non-compliance, the Approval Authority should review the performance of the Control Authority to ensure that it is, in fact, implementing its enforcement procedures and that the procedures are adequate to obtain remedies for noncompliance. For example, where a Control Authority fails to identify all violations or fails to respond to violations when they do occur, the POTW should normally be identified as in noncompliance on the QNCR.

c. Local limits

A POTW that has violations of its NPDES permit limitations which are attributed to interference or pass-through from non-domestic contributions, should be reported on the QNCR (40 CFR 123.45 (a)). Likewise, a POTW which fails to enforce its approved local limits should be included on the QNCR. Just as for limits based on national categorical pretreatment standards, POTWs are expected to exercise the full range of enforcement mechanisms available to ensure the compliance of industrial users with approved local limits. In assessing the effectiveness of enforcement of local limits, the same criteria should be applied as for enforcement of national pretreatment standards.

4. Any Other Violation(s) of Concern to the Approval Authority

This criterion allows the Approval Authority to identify any POTW as in reportable noncompliance for a single violation or any combination of violations which are judged to be important even though they may not be covered by the specific criteria in the definition. These violations might include such violations as failure to update an industrial user inventory, failure to staff the pretreatment program consistent with the approved program or NPDES permit, issuance of control mechanisms of inadequate quality, or failure to develop or analyze local limits as required by an NPDES permit or enforcement order.

IV. Compliance Evaluation

EPA or the approved State should use annual (or more frequent) reports, pretreatment compliance inspections, audits, any follow-up reports, and DMRs to evaluate the compliance status of the permittee. At a minimum, data should be reviewed every six months to determine whether the POTW is in compliance. The Approval Authority should attempt to schedule audits and/or inspections and receipt of reports to support this six month review. Once the facility is shown on the QNCR, quarterly evaluations are needed to update the compliance status on each QNCR.

Compliance with permit effluent limits, compliance schedules, and reporting can be tracked in PCS, which is EPA's automated data system. The dates for submission and receipt of periodic reports and routine requirements should also be tracked in PCS. WENDB data elements already include the date of receipt of an annual report (or periodic report). This tracking would allow Regions and States to forecast when reports are expected and detect reporting violations, similar to the process for tracking discharge monitoring reports and other scheduled events.

The Pretreatment Permits and Enforcement Tracking System, (PPETS), has been developed, as a part of PCS, to track the overall performance of POTWs with their pretreatment requirements and the compliance rates of significant industrial users. Most of the data in PPETS will only be indicative of potential violations. The apparent violation should be verified as a continuing problem before the instance of noncompliance is reported on the QNCR. The data elements in PCS and PPETS that may apply to reportable noncompliance are summarized for each criterion in Table 2.

Once the POTW has been reported on the QNCR it should continue to be reported each quarter until the instance of noncompliance is reported as resolved. Compliance with an enforcement order (both judicial and administrative) should be tracked on the QNCR from the date the order is issued until it is met in full. EPA and/or the approved State should verify the compliance status of the POTW each quarter once it is listed on the QNCR through periodic reports from the POTW, compliance inspections, audits, meetings, or by a 308 letter to the POTW for compliance data and information on the status of the pretreatment implementation violation.

Table 2

REPORTABLE NONCOMPLIANCE CRITERIA AND RELATED PPETS  
DATA ELEMENTS

<u>Criterion</u>	<u>Data Source</u>	<u>Data Element</u>
Criterion II-1 -- Failure to Issue Control Mechanisms	PPETS -	<ul style="list-style-type: none"> <li>o Number of SIUs without required mechanisms*</li> <li>o Control mechanism deficiencies</li> </ul>
Criterion II-2  -- Failure to Inspect SIUs	PPETS -	<ul style="list-style-type: none"> <li>o SIUs not inspected or sampled</li> <li>o Number of SIUs*</li> <li>o SIUs in SNC but not inspected or sampled</li> <li>o SIUs not inspected at required frequency</li> <li>o Inadequacy of POTW inspections</li> </ul>
Criteria II-2  -- Failure to Enforce Standards and Reporting Requirements	PCS -	<ul style="list-style-type: none"> <li>o Violation summary</li> <li>o Effluent data*</li> </ul>
	PPETS -	<ul style="list-style-type: none"> <li>o SIUs in SNC*</li> <li>o Adequacy of POTW monitoring</li> <li>o SIUs in SNC with self-monitoring*</li> </ul>

<u>Criterion</u>	<u>Data Source</u>	<u>Data Element</u>
Criterion I-1  -- Failure to Enforce against Interference and Pass-through	PCS -	<ul style="list-style-type: none"> <li>o Number of enforcement actions*</li> <li>o Existing local limits</li> <li>o Headworks analysis</li> <li>o Deficiencies in POTW application of standards</li> <li>o Violation Summary</li> <li>o Effluent data*</li> </ul>
	PPETS -	<ul style="list-style-type: none"> <li>o SIUs in SNC*</li> <li>o Number of enforcement actions*</li> <li>o Number of IUs assessed penalties</li> <li>o Number of significant violators published in the newspaper*</li> <li>o Pass Through/ Interference incidents</li> <li>o Deficiencies in POTW sampling</li> </ul>

<u>Criterion</u>	<u>Data Source</u>	<u>Data Element</u>
		<ul style="list-style-type: none"> <li>o Deficiencies in POTW application of standards</li> <li>o Enforcement response procedures</li> </ul>
Criterion I-2		
-- Failure to Submit Annual Reports	PCS -	<ul style="list-style-type: none"> <li>o Reporting schedule</li> <li>o Permit reporting*</li> </ul>
Criterion I-3		
-- Failure to Meet Compliance Schedules	PCS -	<ul style="list-style-type: none"> <li>o Compliance schedule events*</li> </ul>

---

\* Water Enforcement National Data Base (WENDB) data elements for which data entry is required, not optional.

## V. Reporting on the QNCR

The Quarterly Noncompliance Report is prepared by NPDES States and EPA Regions each quarter. It lists violations of Federally designated major NPDES permittees that are of concern to the Agency. The format is described in Section 123.45(a) of the NPDES Regulations. For each instance of noncompliance, the report must show the date, basis and type of the violation, the date and type of action the agency has taken, and the current compliance status. The agency should also explain mitigating circumstances or remedial actions which the permittee may have planned. Detailed guidance for preparing the QNCR is available upon request to the Regions or OWEP. The following discussion summarizes the basic requirements for reporting POTW pretreatment violations.

The QNCR must be submitted to EPA Headquarters sixty days after the reporting quarter ends. The QNCR covers Federally designated majors. Generally, a POTW over 1 MGD is automatically designated as a major. This includes the vast majority of the POTW Control Authorities. All POTW pretreatment implementation violations should be reported on the QNCR, regardless of whether the control authority is classified as a major or a minor POTW.

### A. Format

The general format for the QNCR is described in the Regulations. A list of abbreviations and codes used by the State Agency or EPA Region that prepares the report should be attached to each QNCR. If the Permit Compliance System (PCS) is used to generate the QNCR, standard abbreviations are automatically used and no special list of abbreviations or codes is needed for the submittal to Headquarters. (Note that a list of abbreviations may be needed for Freedom of Information Act requests.) The format is intended to provide the minimum information that is necessary to describe the violation, show how and when the agency responded, explain any mitigating circumstances or clarifying comments, and indicate the current compliance status of the permittee.

The description of the permittee should include the name of the permit holder, the name of the municipality, and the NPDES permit number. The permittee should be the Control Authority for the local pretreatment program. If other municipal permittees are subject to the Control Authority, they should be listed under the comments portion of the entry. The Control Authority is responsible for violations by other permittees covered by the Control Authority's pretreatment program. Similarly, industrial users that contribute to the violation should be listed under comments.



## B. Description of the Noncompliance

Under the permittee's name and permit number, information on each instance of noncompliance must be reported. For pretreatment violations, the description should summarize the criteria that were violated and reference the QNCR Regulation subparagraph. The subparagraph of the August 1985 Regulations that apply would be as follows:

<u>Type of violation</u> <u>Regulation Subparagraph</u>	QNCR (section 123.45)
1) Failure to implement or enforce industrial pretreatment requirements (Criteria I-1 and II-1, -2, and -3)	(a)(iii)(B)
2) Pretreatment Report - 30 days overdue (Criterion I-2)	(a)(ii)(D)
3) Compliance schedule - 90 days overdue (Criterion I-3)	(a)(iii)(C)
4) Other violation or violations of concern (Criterion II-4)	(a)(iii)(G)

The criterion should be listed under the type of violation as the example (Section VI) shows.

Each violation should include the date. If the POTW has missed a deadline, the deadline is the date of the violation. The last day of the month is used as the violation date for violations of monthly averages. In some cases, the Agency may have discovered the violation through an audit or inspection of the POTW program. The inspection/audit date should be noted under comments. In the examples, all dates on the QNCR are written in six digit numbers representing the month, day, and year. The date, January 9, 1987 is entered as 010987 for the PCS generated QNCR.

The violation date of some implementation requirements may be the date the program was approved. Where the POTW has taken no action to implement a requirement since approval of the program, this beginning date would be appropriate. In other cases, the POTW may have been issued a specific deadline. These deadlines may be established through a permit or a compliance order. For example, some programs require annual inspections of

all SIUs as a condition of the NPDES permit but do not establish specific timeframes. In the absence of a particular compliance date, the specific deadline should be assumed to be one year after the effective date of the NPDES permit. Thus, the initial date of the violation is one year after the effective date of the permit.

The Region or approved State should contact the POTW promptly when a pretreatment implementation violation is detected. The Region/State should also indicate the action taken in response to the POTW's failure to implement an approved program on the QNCR. In determining the appropriate response, the Region/State should consider the impact of the violation, POTW compliance history, the number of SIUs, and the nature and/or duration of the violation. Initial violations may be resolved through training, conferences, or on-site reviews. The Regional/State response should be timely and escalate to formal enforcement (an administrative order or judicial referral) if the POTW fails or is unable to comply in a timely fashion. The date the action was taken should also be indicated. Planned actions by the POTW or its IUs and projected dates should be noted under comments.

#### C. Compliance Status

The QNCR also tracks the status of each instance of reportable noncompliance. Three status codes are usually reported: noncompliance (NC), resolved pending (RP), and resolved (RE). "Noncompliance" means the violation or pattern of violations is continuing. "Resolved pending" means the permittee is making acceptable progress according to an enforceable schedule (i.e., through an administrative or judicial order) to correct the violation. "Resolved" means the permittee no longer exceeds the QNCR criteria for which they are listed. For the "noncompliance" and "resolved pending" status, the status date is generally the last date of the report period. The status date for "resolved" is either the date the noncompliance requirement is fulfilled or the last day of the report period in which the permittee no longer meets the QNCR criteria.

The "comments" column can be used to describe the violation, explain permittee progress, indicate potential remedies, project dates of compliance, and explain agency responses. Other information can also be reported under comments, including the name of noncomplying SIUs; the level of performance or degree of failure by the POTW; the names of other permittees that are covered by the Control Authority; agency plans for training or technical assistance; and the manner in which the agency learned of the violation.

## VI. Example of Reporting on the QNCR

The following example illustrates how violations and Agency responses are reported. This is a moderate-sized POTW that has refused to implement the program.

Scenario: Hometown's pretreatment program was approved in June 1985. The permit required an annual report, fifteen days after the end of each year, beginning January 15, 1986. The program required that permits be issued to 15 SIUs by June 30, 1986. The POTW was audited in August 1986 and had failed to permit and inspect its IUs and failed to submit an annual report. Hometown meets the criteria for SNC.

### QNCR Listing

Hometown WWTP, Hometown, US 00007

INSTANCE OF COMPLIANCE	REG			
NONCOMPLIANCE		SUBPARA	ACTION	(AGENCY/DATE)
STATUS	DATE			
Issue permits (Criterion II-1) RP (033187)	063086	(iii)(B)	AO #123	(State/033187)
Inspect SIUs (Criterion II-2) RP (033187)	083086	(iii)(B)	AO #123	(State/033187)
Submit Annual Report RP (033187) (Criteria I-2) COMMENTS	011587	(ii)(C)	Phone call AO #123	(State/013087) (State/033187)

AO requires submission of annual report by 4/30/87, and permit issuance and sampling inspections of all SIUs by 6/30/87. EPA Audit 8/30/86 identified violations of permit inspection requirements Control Authority includes two other permittees: Suburb One, Permit No. US 00008 and Suburb Two, Permit No. US 00009 who must meet the schedule for inspections.

Discussion: The entry on the QNCR for Hometown shows the name and permit number of the facility. The Control Authority also covers two other permittees. Three reportable noncompliance criteria were exceeded (see sections I and II of this guidance).

The annual report was due January 15, 1987, according to the NPDES permit for Hometown. The approved program was the basis for the other reported violations. The "reg subpara" identifies the section of the existing QNCR which covers the violations. The State has called the city which promised to submit the annual report. After discussion with the city and its outlying jurisdictions, an administrative order was issued with a compliance schedule to resolve all three violations. Hometown is following an enforceable schedule that will lead to compliance, so its compliance status is shown as "resolved pending" "RP" for all three violations. The comments indicate the compliance deadlines.

VII. Response to POTW Significant Noncompliance for Failure to Implement Approved Pretreatment Programs

This Guidance establishes criteria for determining when a POTW's failure to implement pretreatment program requirements meets the level of significant noncompliance. In all instances where the violation is judged to be SNC, the violation must be addressed on a "timely and appropriate" basis. The definition for "timely and appropriate" for pretreatment implementation will be the same as for NPDES violations. That is, the violation must be resolved or EPA or the approved State must take formal enforcement action to resolve the violation before the POTW appears on the second QNCR. In the rare circumstances where formal enforcement is not taken and the violation not resolved, the administering agency must prepare a written record to justify why no action or the alternate action was more appropriate. Where "timely and appropriate" enforcement action is not taken, the POTW will be listed on the Exceptions List and will be tracked until such time as the violation is fully resolved. Each justification for the Exceptions List will be evaluated individually to determine whether the failure to take action was justified. The justification should make clear the reason for not taking action and discuss such factors as the nature of the implementation requirement schedule, the expected date of compliance, and the alternative process that will be used to resolve the violation.