



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MAY 29 2008

MEMORANDUM

SUBJECT: Clarification of NPDES EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations

FROM: Mark Pollins, Director
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TO: NPDES Compliance and Enforcement Branch Chiefs,
EPA Regions 1 – 10

One outcome of the Office of Inspector General's (OIG) evaluation report, *Better Oversight Needed for Major Facilities with Water Discharge Permits in Long-Term Noncompliance* (Report No. 2007-P-00023) was the Office of Enforcement and Compliance Assurance's (OECA) commitment to clarify the language in the 1989 *Enforcement Management System (EMS)* guidance regarding timely and appropriate action against National Pollutant Discharge Elimination System (NPDES) facilities with significant noncompliance (SNC) violations. Thus, the purpose of this memorandum is to supplement OECA's national NPDES guidance by incorporating the attached "Enforcement Response Timeline for SNC Violations at NPDES Major Facilities" into the *EMS* by reference.

The attached timeline supplements and clarifies the following expectations described in the *EMS* at Chapter II, Attachment B, page 2:

All SNC violations must be responded to in a timely and appropriate manner by administering agencies (see Attachment A). The responses should reflect the nature and severity of the violation, and unless there is supportable justification, the response must be a formal 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 U.S. EPA to take a formal enforcement action. In the rare circumstances 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 may take the form of a "Violation Summary."

The attached timeline was developed by the Office of Civil Enforcement (OCE) and the Office Compliance (OC) in consultation with the Regions. It clarifies -- via chart and narrative example -- that an action (whether it be a formal enforcement action, an alternative action, or a permittee's return to compliance) is considered timely if it is taken by the time the same SNC violation appears on the second official quarterly noncompliance report (QNCR). If a timely action is not taken, the facility is added to EPA's "Watch List." The specific dates in the chart are based on EPA's fiscal quarters, final QNCR pull dates obtained from OC, and approximate dates associated with processing the Watch List obtained from OC.

Please call me at (202) 564-4001 if you have any questions or concerns regarding this subject.

Attachment

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ATTACHMENT
Enforcement Response Timeline
for SNC Violations at NPDES Major Facilities

| Violation Identified | Violation Appears on 1st Official QNCR | Same Violation¹ Appears on 2nd Official QNCR | Timely and Appropriate Action Taken or Permittee has Corrected Problem. Facility Not Added to Watch List. | Timely and Appropriate Action <i>Not</i> Taken or Permittee has <i>Not</i> Corrected Problem by Date in Prior Column. Facility Added to Watch List². |
|---|--|---|--|--|
| JAN – MAR (Fiscal Year Quarter 2 or FY Q2) | June 15 | Sept. 15 | Sept. 15 | ≈ Sept. 30 |
| APRIL – JUNE (FY Q3) | September 15 | Dec. 15 | Dec. 15 | ≈ Dec. 30 |
| JULY – SEPT (FY Q4) | December 15 | March 15 | March 15 | ≈ March 30 |
| OCT – DEC (FY Q1) | March 15 | June 15 | June 15 | ≈ June 30 |

Timeline Example

The administering agency identifies a Clean Water Act violation at an NPDES major facility on May 15th (in FY Q3) after reviewing discharge monitoring report (DMR) data and inspection results, and determines that the violation is subject to the reporting criteria and requirements in the federal regulations at 40 CFR 123.45. The facility with the violation appears on the first official quarterly noncompliance report (QNCR) on September 15th. If the permittee or the administering agency does not act and the same violation continues, it will appear on the second official QNCR on December 15th. Subsequently, the lack of a timely and appropriate response will result in the facility being added to EPA's Watch List on December 30th. If, on the other hand, the permittee promptly corrects the problem or the administering agency issues a timely and appropriate action prior to the same violation appearing on the second official QNCR on December 15th, the response is considered to be timely and the facility will not be added to EPA's Watch List on December 30th.

¹ "Same SNC violation" involves the same discharge pipe, same parameter for effluent violations, same milestone for schedule violations, same report for reporting violations, and same requirement for "other" violations. See, U.S. EPA, Office of Water, March 13, 1986, *Final Quarterly Noncompliance Report Guidance*, Chapter 2, pages 2-6.

² In January, 2004, U.S. EPA's Office of Enforcement and Compliance Assurance implemented its national facility "Watch List" project for tracking facilities with NPDES violations that have not received timely and appropriate action. The Watch List replaces the "Exceptions List" process. The Watch List dates in the last column are approximate because they are dependent on data processing time, which ranges from 10 to 20 days from the date that the QNCR is generated. This timeline does not apply to Watch List pilot criteria.