

CY 2010 Annual Non-Compliance Report (ANCR) – Summary Violation Rates Fall Significantly for States Submitting Detailed Data August 2012

Background

National Pollution Discharge Elimination System (NPDES) program regulation (40 CFR 123.45(c)), requires states to report summary information on violations and enforcement activities at the smaller individually permitted facilities covered by the Annual Non-Compliance Report (ANCR).

EPA began publicizing this report and the associated data in FY 2008. By CY 2010, the violation rates for states that provide detailed data to EPA (verified states) dropped significantly, while violation rates for states that provide general statistics without detailed supporting information (non-verified states) rose significantly. Both of these changes are good.

EPA believes the falling violation rates in verified states are due, in large measure, to the fact that their data is available to the public. EPA believes this fact leads to increased attention to data quality, which reduces the number of false violations caused by poor data entry, and fewer actual violations by permittees. In short, providing information to the public, combined with the power of public accountability, is driving better performance by regulated facilities and government.

EPA believes the rising violation rates in non-verified states reflects better attention to reviewing and tracking violations that would not have been reported to EPA in prior years.

Authorized states or territories typically take the lead on enforcement activities within their jurisdictions. EPA has the lead responsibility in the remaining states and on tribal lands, and EPA retains the authority to act in authorized states. For example, if the state requests help, if a case is of national interest, or if EPA is not satisfied with the state's response EPA may initiate an enforcement response.

When permit violations are detected, the enforcement process generally begins with informal actions, but can escalate to more formal enforcement actions depending on the severity and duration of the violation.

Neither states nor EPA have resources to carry out enforcement for every NPDES violation. But EPA expects permitting authorities to have an enforcement presence in all aspects of the NPDES program to deter noncompliance. The information in this report allows users to evaluate how vigorous the enforcement program is for the smaller individually permitted facilities covered by the ANCR. Additional information about other enforcement actions is available on the ECHO website, and at www.epa.gov/compliance.

Report Summary for CY 2010

Permitting authorities reviewed discharge data for 82% of ANCR permittees to determine whether violations occurred (compared to 87% in 2009 and 75% in 2008).

Violation rates generally are dropping in states with verified data, while rising for the states that report only summary data, but the rates are starting to converge.

Table 1. Violation and Serious Violation Rate Trends by Year

Year	2008	2009	2010
Violation Rate – Verified States	73%	63%	47%
Violation Rate – Non-Verified States	39%	36%	44%
Violation Rate – Overall	45%	45%	45%
Category I Violation Rate – Verified	60%	46%	35%
Category I Violation Rate – Non-Verified	18%	25%	25%
Category I Violation Rate - Overall	26%	28%	29%

- Enforcement increased from 2008 to 2009, and again to 2010.
 - Overall, the percent of ANCR permittees with violations that received formal enforcement actions jumped to 10%, which is an increase from 7.7% in 2009 and 7.6% in 2008.
 - 1,631 ANCR permittees received formal enforcement actions. This is an increase from 1,156 in 2009, and 1,014 in 2008.
 - EPA Regions indicated that 141 noncompliant ANCR permittees received formal enforcement actions from EPA in calendar year 2010 (compared to 15 in 2009). EPA's NPDES program does not receive funds that are comparable to the State and Tribal Assistance Grants (CWA sections 106 and 319) that are available to authorized states.
 - Additionally, 74% of ANCR permittees with violations received an informal enforcement action, such as a warning letter, from a permitting authority. This is a significant increase from the 53% reported in 2009.
- Permitting authorities assessed \$17.7 million in penalties in 2010, down from \$23 million in 2009.
- There continues to be a wide variability in penalty assessments by state. Permitting authorities in CA, IL, NY and TX accounted for 58% of all penalties (\$10.4 million out of \$17.7 million), while permitting authorities in 21 states and territories assessed no penalties.