



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

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

Subject: Regional Guidance for Tracking Clean Water Act (CWA) NPDES
Inspection-Related Violations and Wet Weather Significant Noncompliance

From: Lisa Lund, Director *Lisa Lund*
Office of Compliance

for Walker Smith, Director *Walker Smith*
Office of Civil Enforcement

To: Deputy Regional Administrators

This memorandum outlines and provides technical guidance for the Office of Enforcement and Compliance Assurance's (OECA's) expectation that regional offices should identify and report violations that are determined via any National Pollutant Discharge Elimination System (NPDES) inspection or other compliance monitoring activity, and evaluate those violations based on the existing NPDES core program guidance (i.e., *Enforcement Management System or EMS*), the Single-Event Violation Data Entry Guides, the CWA NPDES Compliance Monitoring Strategy (CMS), and the Interim Significant Noncompliance Policy for CWA Violations Associated with CSOs, SSOs, CAFOs, and Storm Water (Interim WW SNC Policy). As discussed below, OECA will begin measuring progress in violation reporting beginning in FY2009. Improved tracking of inspection-related results will: allow OECA to meet existing regulatory requirements, serve as a model for states, increase transparency/accountability of information, and provide greater opportunities for compliance and enforcement program management. Improving CWA violation tracking will make this program more consistent with violation tracking in other media programs and will help OECA better support information needs both from within and outside the Agency (e.g., responding to Inspector General¹ and General Accounting Office audits, reporting GPRA results, answering FOIAs, etc.).

EPA's policies and guidance regarding the NPDES compliance and enforcement program have recently been updated to focus on wet weather point sources in addition to the traditional NPDES major and minor point sources (i.e., "core" program). A complete

¹ e.g., EPA Office of Inspector General Report: "Better Enforcement Oversight Needed for Major Facilities with Water Discharge Permits in Long-Term Significant Noncompliance," May 14, 2007, pp. 18-19.

picture of inspection results, compliance determinations, and timely responses to violations - in particular significant noncompliance (SNC) violations - are critical for managing the national NPDES program. Tracking inspection-related violations is an important component of each of the following guidance or policy documents: the Single-Event Violation Data Entry Guides for PCS and ICIS-NPDES, the CMS, and the Interim WW SNC Policy. Because there is some overlap of data needed to implement each of these documents, this memorandum consolidates the approach that OECA plans to use to track NPDES inspections, single-event violations (SEVs), WW SNC violations, and enforcement responses (both informal and formal). In summary, the tracking requirements include:

- Finding/Compliance Determination: Recording in ICIS-NPDES or PCS the violation-type, start date, and discovering agency² based on a Regional inspection (or other compliance monitoring activity);
- SNC Determination: Determining whether the violation rises to the SNC level (known in database terms as RNC/SNC detection);
- Resolution/Return to Compliance: Recording the addressing action (if any) for the violation and/or SNC, the appropriate RNC resolution code (which will resolve RNC or SNC), and indicating the violation end date (which may correspond with the enforcement action, or may be the date that the Region has verified a return to compliance – particularly when facilities return to compliance on their own for minor violations that did not require enforcement action).

OECA will review reporting of NPDES inspections conducted per the CMS, SEVs identified, and WW SNC violations in FY2009. OECA will examine the number of Regional NPDES inspections conducted, number/percent of Regional inspections that identified violations, and the number/percent of violations identified as WW SNC. The WW SNC violation information will be critical to follow-up discussions between OECA and the Regions to identify any implementation issues associated with the Interim WW SNC Policy and to determine if refinements are needed to the Policy. This memorandum provides technical details outlining how information should be entered into ICIS-NPDES or PCS.

To ensure that inspection, violation, and WW SNC data reporting are done appropriately, please evaluate your Regional business processes to verify that inspection findings (which should be listed on the completed Inspection Form 3560 as SEVs) are reviewed by the appropriate managers to determine violations and SNC. Once these determinations are made, the completed form or similar SEV and SNC determination documentation should be provided to the Regional data steward to enter violations and SNCs into the database. This is the process followed under the Clean Air Act and Resource Conservation and Recovery Act programs; however, OECA is aware that in some Regions, compliance determinations (violations and/or SNC) are not provided to data stewards for tracking in ICIS-NPDES or PCS. It is important that determinations be tracked electronically, not solely in hard copy inspection files, to better document:

² Discovering or “lead agency” will be added to ICIS-NPDES in December 2008. Regions do not have to enter this information into ICIS-NPDES until this change is made.

1. the historic noncompliance record, which is useful for the state, public, and future investigative staff;
2. evidence of ongoing violations which can be used in Agency compliance evaluation and enforcement response decision-making;
3. valuable targeting information regarding where EPA most frequently finds violations (geographic, sector, etc.);
4. the results of inspections; and
5. reporting practices that set an example for the states and meet regulatory requirements (e.g. 40 CFR 123.26) to have a “management information system which supports compliance evaluation activities.”

Violation and SNC determinations should be entered into the database shortly after they have been made. Regions should not wait until an enforcement action is taken before entering inspection and violation data. Violations should be reported for any inspected facility using the list included in the ICIS-NPDES/PCS Single-Event Code table. To minimize reporting burden, EPA has developed criteria for how multiple occurrences (e.g., spills) can be entered only once as a date range (see PCS or ICIS-NPDES SEV Data Entry Guides). SNC violations are mainly identified via self-monitoring report data for NPDES majors facilities and via inspection report data for wet weather sources (per the Interim WW SNC Policy). Lastly, Regions may elect to determine and report SNC violations at traditional non-major NPDES facilities (*i.e.*, non-wet weather minors); however, this is purely discretionary.

Please see Attachment 1 - Technical Guidance – Regional NPDES Violation and SNC Reporting for more details about the reporting process. If you have any questions about this memorandum, please contact one of us or have your staff contact: Michael Barrette at 202-564-7019 (violation reporting and measures), Rick Duffy at 202-564-5014 (inspections and Compliance Monitoring Strategy), Kathryn Greenwald at 202-564-3252 or Robert Klepp at 202-564-5805 (Interim WW SNC Policy and enforcement response).

cc: Catherine McCabe, OECA
Regional Senior Enforcement Managers
Regional NPDES Compliance and Enforcement Branch Chiefs
Regional Enforcement Coordinators

Attachment 1 - Technical Guidance – Regional NPDES Violation and WW SNC Reporting
Attachment 2 – Final Single Event Violation Data Entry Guide for ICIS-NPDES
Attachment 3 – Data Flow Graphic for SEV and WW SNC Data Entry

Attachment 1

Technical Guidance – Regional NPDES Inspection Results, Single Event Violations, and WW SNC Reporting October, 2008

Background and Context Regarding Single Event Violation and SNC reporting.

Below are descriptions of the three policy areas that relate to inspection results, violation tracking and significant noncompliance designation. This technical guidance ties these together by consolidating Regional tracking requirements in one place. Tracking inspections conducted in support of the *CMS* and WW SNC violations identified per the *Interim WW SNC Policy* and the *Enforcement Management System* is reliant on reporting of underlying SEV information, which provides a level of detail about the type of inspection conducted and the type of violation identified and evaluated for SNC Status.

Single Event Violation Background

The NPDES compliance program has traditionally been based on automated evaluation of discharge monitoring reports (DMR) to permit limits. This has left an information gap in regard to the outcome of NPDES-program inspections performed by the Regional offices and states – an important area of measure for EPA, and of interest to the public. Additionally, the majority of point sources covered by the wet weather program areas do not meet the definition of NPDES major and do not have traditional effluent limits or DMRs, so it becomes critically important that inspection results are tracked. Inspection results are frequently the only source of compliance determinations, yet this information often resides only in inspection files (not in a data system).

On March 7, 2007, OECA/OC issued a memorandum to the Regions transmitting the “Regional Pilot for Single Event Violation (SEV) Data Entry Guide for the Integrated Compliance Information System.” This test period provided the Regions with a chance to review and comment on procedures for entering SEVs. OC has concluded this pilot and is now issuing this guide in final form (see Attachment 2). Additionally, OECA is committed to improving the tracking of inspection-results in response to a recent audit of the NPDES compliance program conducted by the Office of the Inspector General. The Single Event Violation Data Entry Guide for the Permit Compliance System (PCS) issued May 22, 2006, will also be revised to reflect the changes discussed in this memorandum.

Compliance Monitoring Strategy (CMS) Background

The CMS, which was signed on October 17, 2007, sets out inspection frequency goals for EPA and states with respect to various categories of regulated activities. The CMS lengthened the period of time between required inspections at NPDES major facilities, and established new criteria for inspection frequency in wet weather universes. The data tracking requirements discussed in this memorandum and technical guidance are

relevant to the CMS, because inspection frequency may vary based upon prior inspection results. For example, in many universes, the CMS specifies that a facility with no violations or very minor ones would not need a subsequent inspection for another five years, whereas facilities with major violations requiring enforcement may need an inspection within one year. Therefore, the tracking of SEVs and WW SNC will assist the Regions to determine when the next inspection is needed (particularly in those states where EPA is the administering agency).

Wet Weather SNC Background

OECA issued the *Interim Wet Weather Significant Non-Compliance Policy (WW SNC Policy)* to EPA Regions only on October 23, 2007. The *WW SNC Policy* implementation begins for Regions only in fiscal year 2009 (FY09) and includes tracking and reporting WW SNC information during this Regional pilot implementation period. The four focus areas of the *Interim WW SNC Policy* are combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), concentrated animal feeding operations (CAFOs), and storm water point source discharges covered by the program under the Clean Water Act (CWA). The intent of *WW SNC Policy* is to provide a framework for EPA Regions to identify the most significant violations in national wet weather priority areas. Because of the nature of wet weather point sources (i.e., no traditional effluent limits and DMRs), most of the wet weather violations will be SEVs identified during the course of NPDES compliance monitoring inspections conducted per the CMS.

The WW SNC tracking approach discussed in this memorandum is a “short term” approach. It can be implemented quickly because it uses existing ICIS-NPDES and PCS data fields with limited need for system changes described below. After reviewing results from the implementation period, OECA - in consultation with the Regions - will evaluate the need for refining the policy and determine whether long-term tracking changes are needed.

Relationship between SEVs and SNC

The ICIS-NPDES and PCS databases include an extensive listing of common SEVs relating to NPDES facilities and identified during inspections or other compliance monitoring activities. Some of these SEVs are directly related to the four wet weather priority areas discussed in the *Interim WW SNC Policy*. When the Regions discover violations that meet either the WW SNC criteria, or the traditional NPDES major SNC criteria discussed in EPA’s 1989 *Enforcement Management System (EMS)*, SEVs should be designated as SNC using specific Reportable Noncompliance (RNC) “detection codes.” This process is discussed in more detail below, and in the ICIS-NPDES and PCS SEV Data Entry Guides.

Reporting

Any violation included in the SEV code table in ICIS-NPDES and PCS³ and discovered by the Regional office at a major, non-major, or unpermitted facility should be reported by the EPA Regional office. Discovery can be via inspections or other compliance monitoring activities. The violation code table is included in both the ICIS-NPDES and PCS SEV Data Entry Guides. Regions are expected to report their SEVs in either PCS or ICIS-NPDES, depending on which database is the system of record for the State where the violation was found. The Region should select the SEV code or codes that most closely match the violation identified, or if not found in the code table, should use the "other" designation.

As outlined in the ICIS-NPDES and PCS SEV Data Entry Guides, for reporting SEVs, the Regions should enter the start date of the violation, and where possible, the end date (when it is reached). The end date relates to the date on which the facility returns to compliance (not necessarily when the enforcement action is taken). If the Region does not have specific information about return to compliance, the Region should enter the date the enforcement action is taken or the date the compliance schedule is implemented as the violation end date. Facilities with open SEVs (meaning a start date was entered, but no end date) will continue to appear in violation in the national and the public databases until the end date is entered. The Region should use its judgment in regard to "ending" a single-event violation. For example, if the violation is determined to be closed prior to the issuance of an enforcement action, it can be "ended" in the database.

When a Region determines that an SEV rises to the level of SNC, the Region must select a RNC/SNC detection code (B, G, I, or J)⁴ that most closely fits the violation. Selecting one of these detection codes will cause the facility to receive a quarterly SNC designation of "E-Effluent Monthly". If other detection codes are used, the facility will not be reported as SNC, but will be reported as RNC. Attachment 3, entitled "Reporting a Single Event Violations (SEV) that meets the Wet Weather SNC definition," provides a visual depiction of data entry flow.

Appropriate linkages between NPDES inspection data, associated violations, and resulting enforcement responses should be entered into ICIS-NPDES to ensure that all activities are linked. An inspection should be linked to all violations identified during the inspection, which in turn should be linked to any resulting enforcement action or permit modification. These linkages are particularly important when focusing on SEVs and WW SNCs because they will be used to evaluate timeliness.

³ The list of single-event violations is identical for ICIS-NPDES and PCS.

⁴ RNC/SNC Detection Code Descriptions:

Code B: Discretionary or manual entry of a violation of a pass-through of pollutants

Code G: Discretionary or manual entry of Category II permit limit violation

Code I: Discretionary or manual entry of violations or an unauthorized by-pass

Code J: Discretionary or manual entry of violations of an unpermitted discharge

With regard to “resolving” a WW SNC violation after it is detected, data entry works the same way it does with traditional NPDES major SNC violations (an enforcement action and compliance schedule will automatically “resolve” the SNC). The SEV end date, if known, should be entered as discussed earlier. Also, the *Interim WW SNC policy* does allow informal actions to address some WW SNC violations. Due to data system limitations, the entry of an informal action will not automatically resolve WW SNC determinations, so the Region will have to manually resolve WW SNC in the data system in these situations.

Timeliness of Reporting

All single event violations and associated RNC detection codes (which trigger SNC listing) should be reported in the data system before the QNCR reporting deadlines in 40 CFR 123.45 (d). For example, for the time period January through March, the reporting of any SEVs and associated RNC detection codes should be completed by May 31st. It is critical that SEVs and RNC detection codes be reported soon after identification and, normally, prior to an enforcement action being taken. SNC determinations (made by selecting the appropriate RNC detection codes) entered into the data system by the QNCR reporting deadline places that facility in SNC for the quarter when noncompliance was identified. Regions should not wait until after taking an enforcement action to report SEVs and associated RNC detection codes in the data system. On May 28, 2008, OECA issued a memorandum entitled “Clarification of NPDES EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations.” This memorandum only addresses timely reporting of and action against SNC violations at NPDES major facilities and does not address reporting of SEVs and WW SNC violations, however, the timeline presented serves as an example of OECA’s interpretation of “timely” in the NPDES program.

The EPA Region should provide the facility some advance notice of an alleged violation before it appears on the Enforcement Compliance History Online (ECHO) website. When a facility has received a copy of the inspection report indicating deficiencies, or has received some type of notice of violation, they have been put on sufficient notice of the EPA’s findings. Because SNC is a management tool for prioritizing violations, an EPA Region should not notify the facility that a violation meets EPA’s SNC criteria, but rather should make the facility aware of deficiencies or violations.

System Changes

There are some system enhancements noted below that will enable better data entry and analysis. Specifically:

1. PCS was upgraded to allow SEV end dates.⁵
2. PCS was upgraded to allow SEV to be designated as State or EPA⁶.

^{5,6} A memorandum discussing PCS system changes and data entry was signed by Lucy Reed on September 25, 2008 (Technical Update Regarding Data Fields Associated with Tracking Single Event Violations).

3. ICIS-NPDES will be upgraded to allow SEVs to be designated as being State or EPA.⁷

The Single Event Violation Data Entry Guide for the Permit Compliance System (PCS) will be updated to reflect the system changes discussed above. EPA will provide technical details on the system enhancements for regional and state data stewards at a later date. The tracking approach discussed in this Technical Guidance is designed to use existing system capabilities so implementation can begin in FY09. EPA will also be examining long-term options for WW SNC tracking that may involve ICIS-NPDES changes. Regions and States will be asked to participate in this process.

Data Reports

The information entered by the Regional offices will be available to view within the Online Tracking Information System. Selecting minors with designations equivalent to SNC (meaning QNCR codes S, E, X, D, and T) is done by selecting "Category I violations (minors)." Additional menu choices allow further analysis of specific wet weather universes (based on permit components). In regard to public access to the data, OECA at this time is not changing the existing display of data in ECHO as a result of this technical guidance. ECHO currently shows single-event violations, and the quarterly noncompliance report value for minors, but it does not label minor facilities as being in SNC.

Measuring

OECA plans to analyze the Regional violation/SNC discovery rate for Regional inspections, and particularly for wet weather sources. OECA plans to conduct an analysis of SEV and WW SNC violation reporting at the end of the FY09 by examining the number of facility inspections performed by each Region and comparing them to the number of facilities that were reported in the data systems to have SEVs and WW SNC violations. These measures may also be evaluated in specific NPDES universes corresponding to the *CMS* and *Interim WW SNC Policy*. Because this technical guidance applies to the Region only, EPA may conduct additional measurement or evaluation (as specified under the *CMS* and/or the *State Review Framework*) in those Regions that administer the NPDES program within a state or territory.

Additional Information

Please refer to the Data Flow Graphic for SEV and WW SNC Data Entry, and the Final Single Event Violation Data Entry Guide for ICIS-NPDES for more information. Please contact Michael Barrette at 202-564-7019 if you have questions regarding SEVs,

⁷ This enhancement will not be available by October 1, 2008 but EPA Headquarters will work with the regions to analyze mid-year and end-of-year reviews. This may involve some manual reconciliation to separate EPA-reported from State-reported Single-Event Violations. Target date for enhancement to ICIS-NPDES is December 14, 2008.

and data entry procedures, contact Rick Duffy at 202-564-5014 for questions related to implementation of the *CMS*, and contact Kathryn Greenwald at 202-564-3252 or Robert Klepp at 202-564-5805 for questions related to implementation of the *Interim WW SNC Policy*.