



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

AUG 25 1993

OFFICE OF  
WATER

**MEMORANDUM**

SUBJECT: Results of SNC Study

FROM: Michael B. Cook, Director *Michael B. Cook*  
Office of Wastewater Enforcement and Compliance

TO: Water Management Division Directors  
Regions I - X

During our FY 1992 mid-years, we found a significant number of State permits that did not contain monthly average limitations for toxic parameters. This is inconsistent with EPA's regulation, 40 CFR §122.45(d)<sup>1</sup>, which requires average monthly discharge limitations for all permittees unless impracticable. We have studied this issue and have found significant ramifications for permits and enforcement. The findings of this study and my recommendations to you follow.

From the enforcement standpoint, the lack of monthly averages in permits presents a problem since the regulatory basis for determining Reportable Noncompliance (RNC) and Significant Noncompliance (SNC) is dependent upon the monthly average (40 CFR §123.45). As you know, regulations require we publicize RNC on the Quarterly Noncompliance Report (QNCR). We report national SNC rates as a key indicator of the status of the program, and use SNCs to drive our "timely and appropriate" enforcement system. The absence of monthly averages skews our compliance

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<sup>1</sup> §122.45 Calculating NPDES permits conditions (applicable to State NPDES programs, see §123.25). "(d) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as: (1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and (2) Average weekly and average monthly discharge limitations for POTWs."

picture and our enforcement response program, and presents inequities in assessing penalties. In assessing penalties for monthly average violations, we assume violation for each day of the month, while daily maximum penalties are based on one day of violation. This can create significant inequity in the penalty amounts assessed for facilities with similar violations where the only difference is the use of monthly average limits versus daily maximum limits.

We conducted a study to determine if the absence of monthly averages is a national or local issue. Using the PCS database, we looked at the current effluent limits and determined that nationally approximately 45 percent of the major permits were issued without monthly average numeric limits for all parameters with numeric limits. Of greater concern is that 15 percent of the major permits were issued without monthly average limits for half of the limited pollutant parameters.

Since effluent RNC/SNC is dependent upon monthly averages, we investigated the impact on the effluent RNC/SNC rate by applying the RNC/SNC criteria to daily maximums. The study period was from April 1992 to September 1992. Applying these criteria beyond just monthly averages, the national RNC/SNC rate would have more than doubled from 6 percent (445 major facilities) to 15 percent (1,080 major facilities).

The study also examined whether or not the daily maximum violations identified were already addressed by formal enforcement actions. In each region, we looked at the state which showed the greatest increase in the RNC/SNC rate after applying the criteria beyond monthly averages. For each state we identified the facilities with violations and looked at all enforcement actions in PCS against those facilities. Our analysis indicated that very little formal enforcement was taken to address these violations.

As a result of this study, I recommend that you consider both the importance of getting monthly average effluent limits into all permits where practicable, and increased enforcement attention on violations of non-monthly average limits. The existing NPDES rule at 40 CFR 122.45(d) requires monthly averages unless impracticable. I ask you to ensure that the permits you issue and State permits you review include a monthly average limit for all pollutants limited, except for those where the fact sheet explains that monthly average limits are impracticable. In my May 14, 1993 memorandum entitled, "Review of Mid-year Enforcement Activity," I stated that facilities with violations of "Non-SNC" effluent limits (daily maximums, etc.) should be high priority candidates for enforcement. I hope you give strong consideration to identifying "non-SNC" effluent violations and taking enforcement action, especially in priority watersheds or geographic areas of concern.

To aid you in identifying these "Non-SNC" violations, we will make available for national use, a program that was developed by Region II for New York State for this purpose. The program is being modified for national use and should be available within the next month.

I would appreciate your immediate attention to this key issue. If you have any questions, please contact me or Richard Kozlowski at (202) 260-8304.

cc: Richard Kozlowski  
Cynthia Dougherty