

A COPY IF THIS GUIDANCE IS AVAILABLE UPON REQUEST.

GUIDANCE FOR REPORTING AND EVALUATING POTW NONCOMPLIANCE WITH PRETREATMENT REQUIREMENTS

**United States Environmental Protection Agency
Office of Water
Office of Water Enforcement Permits
Washington, D.C.**

September 30, 1987

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

September 30, 1987

**OFFICE OF
WATER**

MEMORANDUM

SUBJECT: Guidance for Reporting and Evaluating POTW Noncompliance
with Pretreatment Implementation Requirements

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

TO: Regional Water Management Division Directors,
NPDES State Pretreatment Program Directors

The Office of Water Enforcement and Permits has completed development of a guidance for evaluating and reporting noncompliance by Publicly Owned Treatment Works (POTWs) that have failed to implement their approved pretreatment programs. The Guidance identifies criteria for evaluating the principal POTW activities that are essential to fully implement most local programs. POTWs that meet the criteria in the definition should be reported by EPA and approved States on the Quarterly Noncompliance Report (QNCR).

These criteria were developed by an EPA workgroup and presented to States and Regions at the National Pretreatment Coordinators Meeting, December 17, 1986. Draft guidance was developed and circulated for comment in May 1987. In general, your comments supported the criteria that were proposed in the draft. We also received comments from former PIRT members. As a result, the final guidance has been modified in two areas. Under the criteria for POTW inspections of SIUs, the percent coverage has been increased to 80% of the levels required in the permit or approved program. If no specific permit or program requirement was established, the guidance recommends reporting any POTW that failed to sample or inspect at least 50% of its SIUs in a 12 month period. The second area of change was for enforcement of pretreatment standards. Several PIRT comments wanted a specific criterion for failure to develop adequate local limits. Instead of adding new criteria, we expanded the discussions under the criteria for issuance of SIU control mechanisms, implementation of pretreatment standards, and enforcement against interference and pass-through. The discussions include minimum local limit requirements and recommended procedures to resolve these and other deficiencies of approved programs.

For FY 1988, EPA Regions and States should use this guidance to identify POTWs that are failing to implement their approved programs and should report them on the QNCR. While formal enforcement is not automatically required as a response to noncompliance reported on the QNCR, Regions and approved States should seriously consider the use of an administrative order (and, perhaps, with a penalty depending on the egregiousness of the lack of implementation) to establish a schedule to correct the violations. The Strategic Planning and Management System for FY 1988 contains two measures:

WQE-12 which addresses the POTWs compliance assessment process; and WQE-13 which will track how frequently POTW noncompliance is addressed by formal enforcement. Further explanation of this measure can be found in "Definitions and Performance Expectations" in "A Guide to the Office of Water Accountability System and Mid-Year Evaluations" (Fiscal Year 1988). EPA Regions should assist States in applying the definition of reportable noncompliance, identifying noncomplying POTWs, and tracking cases where formal enforcement is taken. The Office of Enforcement and Compliance Monitoring is developing more specific guidance on the criteria for judicial referrals and the burden of proof for demonstrating noncompliance for POTW pretreatment implementation. That guidance will be distributed to the Regions for review before it is made final.

If you have questions regarding the guidance or SPMS reporting, please contact Bill Jordan, Director, Enforcement Division, or Anne Lassiter, Chief, Policy Development Branch (202/475-8307). The staff contact is Ed Bender (202/475-8331).

cc: Glenn Unterberger
Gerald Bryan
Pretreatment Coordinators, EPA and States
Regional Compliance Branch Chiefs
Regional Counsels
Rebecca Hanmer

TABLE OF CONTENTS

I. Introduction	1
A. Background	1
B. Existing Rule	1
C. Definition of Reportable Noncompliance	2
II. Applying the Criteria	4
A. Failure to Issue Control Mechanisms to Significant IUS in a Timely Fashion	4
B. Failure to Inspect Significant IUs	5
C. Failure to Establish and Enforce IU Self-Monitoring where Required by the Approved Program	5
D. Failure to Implement Pretreatment Standards	6
E. Failure to Enforce Against Pass-Through and Interference	8
F. Failure to Submit Pretreatment Reports Within 30 days	9
G. Failure to meet Compliance Milestones by 90 days or more	9
H. Any Other Violation(s) of Concern to the Approval Authority	9
III. Reporting on the QNCR	10
A. Format	10
B. Description of the Noncompliance	10
C. Compliance Status	11
IV. Examples of Reporting on the QNCR	12
A. Example 1	12
B. Example 2	13
V. Compliance Evaluation	14
VI. Response to Noncompliance	17
VII. Summary	18