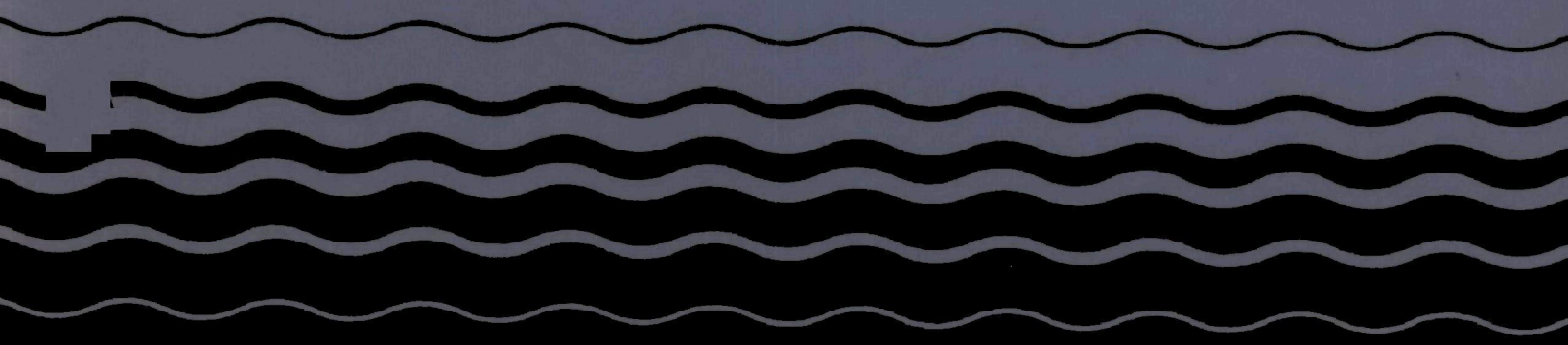


Water



Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements





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 Draft guidance was developed and circulated for comment in May 1987.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

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

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I. INTRODUCTION

A. Background

EPA Regions and NPDES States must report certain permit violations on the Quarterly Noncompliance Report (QNCR) which meet criteria identified in the existing NPDES Regulations (40 CFR Part 123.45). One of the violations that must be reported is a POTW's failure to adequately implement its approved pretreatment program. The interpretation of adequate implementation is currently left to the discretion of the Region and approved States.

The Office of Water Enforcement and Permits has developed a definition of reportable noncompliance for POTW pretreatment program implementation which establishes criteria to evaluate adequate implementation. Although the size and complexity of local pretreatment programs varies greatly among Control Authorities, all POTWs must perform certain basic activities to implement their pretreatment programs. The definition of reportable noncompliance establishes criteria in five basic areas of POTW program implementation: IU control mechanisms; compliance monitoring and inspections; POTW enforcement; POTW reporting to the Approval Authority; and other POTW implementation requirements.

The purpose of this Guidance is to explain the basis for the definition and its criteria, provide examples of how to apply the criteria, explain how to report noncompliance for POTW pretreatment program implementation on the QNCR and suggest appropriate responses to noncompliance. This Guidance should be used to fulfill requirements for reporting POTW pretreatment noncompliance that are described in the FY 1988 Agency Operating Guidance and included as a performance measure for EPA and approved State programs under the Strategic Planning and Management System (SPMS).

B. Existing Rule

The QNCR is the basic mechanism for reporting violations of NPDES permit requirements. Major POTW permittees¹ must be reported on the QNCR:

- (1) if they are under an enforcement order for previous permit violations; or
- (2) if their noncompliance meets specific criteria (Category I noncompliance); or
- (3) if the regulatory agency believes the violation(s) causes problems or is otherwise of concern (Category II noncompliance).

The specific requirements of the existing rule which relate to pretreatment program implementation are as follows:

1. **Enforcement Orders** - All POTWs that are under existing enforcement orders (e.g., administrative orders, judicial orders, or consent decrees) for violations of pretreatment implementation requirements must be listed on the QNCR and the compliance status must be reported on each subsequent QNCR until the POTW returns to full compliance with the implementation requirements.

¹ Major POTW permittees are those with a dry weather flow of at least 1 million gallons per day or a BOD/TSS loading equivalent to a population of at least 10,000 people. Any POTW (including a minor POTW) with an approved local pretreatment program should have its pretreatment violations reported on the QNCR.

2. **Category I pretreatment program noncompliance** - A POTW must be reported on the QNCR:
 - a) if it violates any requirements of an enforcement order, or
 - b) if it has failed to submit a pretreatment report (e.g., to submit an Annual Report or to publish a list of significant violators) within 30 days from the due date specified in the permit or enforcement order, or
 - c) if it has failed to complete a pretreatment milestone within 90 days from the due date specified in the permit or enforcement order.
3. **Category II** - A POTW must be reported on the QNCR if the instance of noncompliance is:
 - a) a pass-through of pollutants which causes or has the potential to cause a water quality problem or health problem,
 - b) a *failure of an approved POTW to implement its approved program adequately* [emphasis added], including failure to enforce industrial pretreatment requirements on industrial users as required by the approved program,² or
 - c) any other violation or group of violations which the Director or Regional Administrator considers to be of substantial concern.

C. Definition of Reportable Noncompliance

OWEP has developed criteria to evaluate local program implementation that explain and clarify the existing regulations. As stated, these criteria highlight activities that control authorities should use to implement their programs. These activities include:

- 1) establishment of IU control mechanisms,
- 2) POTW compliance monitoring and inspections,
- 3) POTW enforcement of pretreatment requirements,
- 4) POTW reporting to the Approval Authority, and
- 5) Other POTW implementation requirements.

Collectively, these activities are the framework for the definition of reportable noncompliance (Table 1), which should be used by EPA Regions and approved States to report POTW noncompliance with pretreatment requirements on the QNCR.

The following table summarizes the reportable noncompliance criteria. A more detailed explanation of their application is contained in Section II of this guidance.

² The permit should require compliance with 40 CFR part Section 403, and the approved program. Thus the permit is the basis for enforcing requirements of the approved program or the Part 403 regulations.

TABLE 1

DEFINITION OF REPORTABLE NONCOMPLIANCE

A POTW should be reported on the QNCR if the violation of its approved pretreatment program, its NPDES permit or an enforcement order³ meets one or more of the following lettered criteria for implementation of its approved pretreatment program:

I. Issuance of IU Control Mechanisms

- A) Failed to issue, reissue, or ratify industrial user permits, contracts, or other control mechanisms, where required, for "significant industrial users", within six months after program approval. Thereafter, each "significant industrial user" control mechanism should be reissued within 90 days of the date required in the approved program, NPDES permit, or an enforcement order.

II. POTW Compliance Monitoring and Inspections

- B) Failed to conduct at least eighty percent of the inspections and samplings of "significant industrial users" required by the permit, the approved program, or an enforcement order.
- C) Failed to establish and enforce self-monitoring requirements that are necessary to monitor SIU compliance as required by the approved program, the NPDES permit, or an enforcement order.

III. POTW Enforcement

- D) Failed to develop, implement, and enforce pretreatment standards (including categorical standards and local limits) in an effective and timely manner or as required by the approved program, NPDES permit, or an enforcement order.
- E) Failed to undertake effective enforcement against the industrial user(s) for instances of pass-through and interference as defined in 40 CFR Section 403.3 and required by Section 403.5 and defined in the approved program.

IV. POTW Reporting to the Approval Authority

- F) Failed to submit a pretreatment report (e.g., annual report or publication of significant violators) to the Approval Authority within 30 days of the due date specified in the NPDES permit, enforcement order, or approved program.⁴

V. Other POTW Implementation Violations

- G) Failed to complete a pretreatment implementation compliance schedule milestone within 90 days of the due date specified in the NPDES permit, enforcement order, or approved program.⁴
- H) Any other violation or group of violations of local program implementation requirements based on the NPDES permit, approved program or 40 CFR Part 403 which the Director or Regional Administrator considers to be of substantial concern.⁴

³ The term enforcement order means an administrative order, judicial order or consent decree. (See Section 123.45)

⁴ Existing QNCR criterion (40 CFR Part 123.45); the violation must be reported.

II. APPLYING THE CRITERIA

The criteria for reporting POTW noncompliance with pretreatment requirements are based on the General Pretreatment Regulations [particularly Section 403.8(f)(2)], approved pretreatment programs, and NPDES permit conditions (particularly Part III). Where specific conditions, deadlines, or procedures are specified in the regulations or the approved program, and incorporated or referenced in the NPDES permit, POTW performance should be evaluated against those requirements. Any failure to meet those requirements is a violation. The criteria included in this Guidance establish a basis for determining when a violation or series of violations should be reported on the QNCR for failure to implement a pretreatment program. If the POTW is identified as meeting one or more of the criteria, the POTW should be considered in reportable noncompliance and reported on the QNCR.

POTW performance should be evaluated using the information routinely obtained from pretreatment compliance inspections, annual reports, pretreatment audits and Discharge Monitoring Reports (DMRs) as well as any special sources of information. All annual reports should include a Pretreatment Performance Summary of SIU compliance information.⁵ This summary should be useful to assess the effectiveness of pretreatment implementation. Pretreatment staff should review the approved program, the NPDES permit, and any correspondence with the POTW regarding its pretreatment program to identify any specific procedures, levels of performance, or milestones that may apply to implementation of the particular program. Where these requirements exist, they should be recorded on fact sheets and possibly added to the specific requirements in the permit.

ISSUANCE OF IU CONTROL MECHANISMS

A. Failure to Issue Control Mechanisms to Significant IUs in a Timely Fashion

The POTW can use contracts⁶, individual permits, or sewer use ordinances as control mechanisms. Control mechanisms establish enforceable limits, monitoring conditions, and reporting requirements for the industrial user. In some cases, an approved program may have a sewer use ordinance that defines the limits (including local limits) and a separate mechanism for establishing monitoring conditions at each facility. Technically, if a control mechanism expires, control of the SIU and enforcement of some pretreatment requirements may be suspended. Therefore, timely issuance and renewal of all control mechanisms is essential.

All Control Authorities must apply pretreatment standards to their industrial users. Where the approved program requires that individual control mechanisms be developed for significant industrial users, but does not include a timeframe, the POTW should be given a deadline to issue them. Some States include schedules for issuing specific SIU permits in a POTW's NPDES permit. Where the POTW has missed two or more deadlines specified in a permit or enforcement order for issuing individual control mechanisms by 90 days or more, the violation must be reported on the QNCR as a schedule violation. In general, EPA believes that where individual control mechanisms are required by the approved program, the POTW should issue control mechanisms to all SIUs within six months after the program is approved or after new pretreatment standards (categorical or local limits) are established, so that full implementation can be evaluated by an audit within one year after approval. Any delay in this schedule should be reported on the QNCR.

⁵ USEPA. Pretreatment Compliance Monitoring and Enforcement Guidance (PCME). 1986. Recommended specific data. EPA proposed rules for annual reports that include the PCME data

⁶ Proposed rule change to 40 CFR 403 on June 12, 1986 (51 FR 21454) would make contracts an unacceptable control mechanism to obtain penalties

The POTW should also maintain and update its inventory of SIUs. EPA is considering further rulemaking to require annual updates of the IU inventory by all POTWs. The IU inventory is the foundation for applying pretreatment controls and monitoring IU compliance. POTWs that fail to maintain an adequate inventory of SIUs and annually update the inventory should be reported on the QNCR. Where necessary, permits should be modified to require routine updates of the IU inventory.

POTW COMPLIANCE MONITORING AND INSPECTIONS

B. Failure to Inspect Significant Industrial Users

POTWs are required to possess the legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to verify the compliance status of their industrial users independent of information provided by the industrial user [40 CFR 403.8 (f)(4)]. In the PCME Guidance, EPA recommended that the Control Authority conduct at least one inspection and/or sampling visit for each significant industrial user annually.

The approved program and/or the NPDES permit may establish other requirements for inspections or use a different definition of significant industrial user. In those cases where the permit or approved program identifies specific requirements for inspection and sampling, these requirements should be used as a basis to evaluate POTW compliance. If the POTW has failed to inspect or sample at least 80% of the significant industrial users as required by the permit or the approved program, the POTW should be reported on the QNCR for its failure inspect. POTW sampling of all IUs is essential to evaluate IU compliance where IUs do not submit self-monitoring information. In the absence of specific inspection coverage requirements in the approved program or permit, the Approval Authority should report any POTW which has not inspected or sampled at least 50% of all SIUs within a 12 month period. In addition, if the approved program or permit does not contain specific criteria, the Approval Authority should modify the NPDES permit to be sure that the POTW conducts inspections or sampling visits of all SIUs at least annually.

C. Failure to Establish and Enforce IU Self-Monitoring where Required by the Approved Program

All categorical IUs are required to report at least twice a year [40 CFR (403.12)]. POTWs also have authority to require monitoring and reporting from non-categorical IUs. As a result, most POTWs have established self-monitoring requirements for SIUs as a means of securing adequate data to assess SIU compliance at less cost to the POTW than if all data were developed by the POTW through sampling. Where a program does not require SIU self-monitoring, the visits and inspections conducted by the POTW must be sufficient in scope or frequency to assure compliance.

IU self-monitoring requirements should specify the location, frequency, and method of sampling the wastewater; the procedure for analysis and calculation of the result; the limits; and the reporting requirements. These self-monitoring requirements may be applied, in general, through an ordinance, through specific control mechanisms, or through a combination of general and specific mechanisms. Where self-monitoring is used, it should be required frequently enough to accurately demonstrate the continuing compliance of the SIU. A POTW may use a combination of SIU self-monitoring and its own data collection to evaluate SIU compliance with its limits. As a guide, EPA has published self-monitoring frequencies for significant industrial users that are related to their process wastestream flow rates. (See section 2.2 of the PCME Guidance).

In most situations, effluent monitoring information should be available so that the compliance of a SIU with a monthly, 4-day or other average limit can be determined at least once a quarter. This frequency is higher than the implied minimum in the regulations; however, this frequency is more likely to promote continued compliance and a more timely POTW response to violations. Under proposed rules⁷ for pretreatment, SIU violations would trigger additional self-monitoring. For each violation the SIU detects, it would be required to resample and submit both sample results for review by the Control Authority.

In evaluating compliance with this criterion, EPA and approved States should examine the requirements of the permit and determine whether the Control Authority has established self-monitoring requirements as required. Where appropriate requirements have been established, the Control Authority must ensure that SIUs comply with all aspects of the requirements and report in the manner required in the control mechanism. Where the Control Authority fails to establish appropriate requirements or to adequately enforce (e.g., POTW should respond in writing to all SNC violations for IU self-monitoring) these requirements once established, the Control Authority should be considered in noncompliance and listed on the QNCR.

POTW ENFORCEMENT

D. Failure to Implement Pretreatment Standards

1. Application of Local Limits

Implementation of pretreatment standards requires the development of local limits as well as the enforcement of all pretreatment standards. The discussion of local limits in the preamble to the 1981 General Pretreatment Regulations states in part: "These [local] limits are developed initially as a prerequisite to POTW pretreatment program approval and are updated thereafter as necessary to reflect changing conditions at the POTW." In order to comply with their permit and the regulations, each POTW should have already conducted a technical evaluation, using available techniques, to determine the maximum allowable treatment plant headworks (influent) loading for six metals (cadmium, chromium, copper, lead, nickel and zinc)⁸ and other pollutants which have reasonable potential for pass-through, interference, or sludge contamination. Therefore, any POTW that has not conducted this evaluation and adopted appropriate local limits should be reported on the QNCR for failure to adequately implement their approved pretreatment program.

If any POTW program has already been approved without the analysis of the impact of the pollutants of concern and adoption of local limits, the Approval Authority should report the POTW on the QNCR and immediately require the POTW to initiate an analysis and to adopt appropriate local limits. This requirement should be incorporated in the POTW's NPDES permit as soon as feasible. Where a POTW has previously adopted local limits but has not demonstrated that those limits are based on sound technical analysis, the Approval Authority should require the POTW to demonstrate that the local limits are sufficiently stringent to protect against pass-through, interference and sludge contamination. POTWs which cannot demonstrate that their limits provide adequate protection should be reported on the QNCR and required to revise those limits within a specific time set forth in a permit modification.

⁷ See proposed amendments to General Pretreatment Regulations. 51 FR 2154, June 12, 1986.

⁸ See discussion from Rebecca Hanmer, Director, OWEP. USEPA Memorandum "Local Limits Requirements for POTW Pretreatment Programs". August 5, 1985.

2. POTW Enforcement and IU Significant Noncompliance

The Control Authority must have the legal authority--usually expressed through a sewer use ordinance--to require the development of compliance schedules by IUs and to obtain remedies for noncompliance, including injunctive relief and civil or criminal penalties [40 CFR 403.8(f)(iv) and (vi)]. In addition, the Control Authority must have an attorney's statement, which among other things, identifies how the Control Authority will ensure compliance with pretreatment standards and requirements and enforce them in the event of noncompliance by industrial users [Section 403.9(b)(1)(iii)]. Further procedures for enforcement may be contained in the approved program, sewer use ordinance or NPDES permit.

The attorney's statement and compliance monitoring sections of the approved program, taken in combination with the NPDES permit, may provide a comprehensive set of enforcement procedures which the POTW should follow to ensure the compliance of industrial users with pretreatment standards. Where such procedures are inadequate, EPA strongly recommends that POTWs develop written enforcement procedures which describe how and when enforcement authorities are applied (See section 3.3 of the PCME). These procedures serve to inform industrial users of the likely response to violations and assist the POTW in applying sanctions in an equitable manner.

The Approval Authority must periodically evaluate whether the POTW is effectively enforcing pretreatment standards. In evaluating performance, the Approval Authority should examine both whether the POTW is following its enforcement procedures and whether the program is effective in ensuring compliance with pretreatment standards. One of the indicators the Approval Authority should use in evaluating effectiveness is the level of compliance of SIUs with pretreatment standards. Where the level of significant noncompliance (SNC)⁹ of SIUs is 20% or greater, there is a reasonable presumption that the Control Authority is either not effectively enforcing its procedures or that the procedures are inadequate. The burden of proving that this is not the case should fall on the Control Authority.

EPA and NPDES States have been using a definition of significant noncompliance for major permittees to set priorities for formal enforcement and as a tool to evaluate the effectiveness of Regional and State compliance programs. Major industrial permittees, a subset of all industrial permittees, generally have the largest direct discharge flows, and highest toxic pollutant loadings. Therefore their noncompliance has the greatest potential to adversely affect water quality or pose human health problems. In terms of priorities, the significant industrial users within a POTW should be considered to be similar to the major industrial permittees by the approved State or EPA Region.

Enforcement followup by EPA Regions and approved States is generally considered to be effective if the levels of significant noncompliance among major industrial permittees is maintained below 6%. Given the fact that most approved pretreatment programs are still relatively inexperienced, a 20% level of SNC for SIUs appears to be a reasonable starting point to assume that POTW enforcement is inadequate. As POTWs gain experience, the level of SNC should decrease, and thus, this definition can be made more stringent.

⁹ See SNC definition included in section 3.4.1 of the PCME. The ANPR for the Domestic Sewage Study recommended that the definition of SNC in the PCME be incorporated into the definition of significant violators for industrial users (Section 403.8(f)(2)).

3. Enforcement Response Procedures

Although most approved programs describe the authorities that are available to the POTW and the procedures for addressing SIU noncompliance, few programs specify what action will be taken or when it should occur. POTWs have been required to develop enforcement response procedures under consent decrees with specific timeframes for initiating informal to formal enforcement. These timeframes range from 14 to 60 days.

While a specific timeframe for POTW action against an SIU in SNC has not been set, as a general rule EPA recommends that a POTW respond initially to each violation within 30 days from the date the violation is reported or identified to the POTW. As part of the initial responses, the POTW should evaluate the violation and contact the SIU (e.g., telephone call, warning letter, or meeting). Where formal enforcement is needed as a subsequent enforcement response, the appropriate timeframe is 90 days from the date of the initial response to the violation. This timeframe is equivalent to the expectation for initiating formal enforcement in the NPDES program.

The Approval Authority should review the Control Authority's actions carefully to determine whether it has evaluated the violations and contacted the SIU in a timely manner, escalating the response when compliance is not achieved. If this review reveals that the Control Authority has often not followed its own procedures or that the Control Authority has not appropriately used its full authorities to achieve compliance by its SIUs, the Control Authority should be judged to be in noncompliance.

Where the Control Authority is judged to have followed its procedures in almost all cases, but the level of significant noncompliance among SIUs is 20% or greater, the adequacy of Control Authority enforcement procedures should be reviewed. If the procedures are found to be inadequate, the procedures should be modified. The Approval Authority might require modification of the approved program, through the NPDES permit or possibly an administrative order requiring the adoption of new procedures along the lines of those included in the PCME Guidance. The Control Authority should be listed on the QNCR in noncompliance until it has taken those actions required of it by the Approval Authority.

Even where the SIUs have a low level of significant noncompliance, the Approval Authority should review the performance of the Control Authority to ensure that it is, in fact, implementing its enforcement procedures and that the procedures are adequate to obtain remedies for noncompliance. For example, where a Control Authority fails to identify all violations or fails to respond to violations when they do occur, the POTW should normally be identified as in noncompliance on the QNCR.

E. Failure to Enforce Against Pass-Through and Interference

Definitions of industrial user discharges that interfere with a POTW or pass-through the treatment works were promulgated January 14, 1987 (52 FR 1586).

Interference generally involves the discharge of a pollutant(s) which reduces the effectiveness of treatment such that an NPDES permit limit is exceeded. The pollutant that caused the interference will be different from the pollutant in the permit that was exceeded. (If the pollutant that causes the violation is the same as the pollutant in the permit that was exceeded, pass-through has occurred.) The POTW is responsible for identifying and controlling the discharge of pollutants from IUs that may inhibit or disrupt the plant operations or the use and disposal of sludge. The POTW must monitor IU contributions and establish local limits to protect its sludge.

The POTW should have written procedures to investigate, control and eliminate interference and pass-through. Whenever interference or pass-through is identified, the POTW should apply such procedures to correct the problem. Section 403.5 of the General Pretreatment Regulations requires that the POTW develop and enforce local limits to prevent interference and pass-through from industrial contributors to the treatment works. If a POTW has permit limit violations that are attributable to industrial loadings to its plant, it is also a violation of Section 403.5. The POTW should be reported on

the QNCR for failure to enforce against pass-through and/or interference, if the POTW has two or more instances of pass-through and interference in any month or 3 or more instances in a quarter.

The POTW is responsible for monitoring to detect these discharges and enforcing against the IU where it contributes to permit exceedances. The PCME Guidance recommends one inspection and/or sampling visit each year for each SIU. Many Approval Authorities require the POTW through its NPDES permit, to monitor the influent, effluent, and sludge at least annually to evaluate the potential for interference and pass-through. In a few cases, special monitoring has been required for septage and other waste haulers or to monitor corrective actions for past violations of interference and pass-through. POTWs that fail to have quarterly monitoring of their SIUs (by the POTW or SIU as discussed under the previous criterion) and/or have not developed appropriate local limits to prevent interference or pass through are generally unprepared or unable to enforce against interference or pass-through. These POTWs should be reported as failing to adequately implement their pretreatment programs.

POTW REPORTING TO THE APPROVAL AUTHORITY

F. Failure to Submit Pretreatment Reports Within 30 days

This criterion already exists under Category I of 40 CFR Part 123.45(a). The term "pretreatment report" should be interpreted to include any report required by the Approval Authority from the POTW (including publication of significant violators in the newspaper as required by Section 403.8(f)(2)(vii) of the General Pretreatment Regulations). Where specific dates are established for these or other reports from the POTW, they may be tracked as schedule requirements in PCS. When deadlines are missed, the POTW should be notified immediately because these reports contain information which is essential to determine compliance status. When the due date is missed by 30 days or more, the POTW should be reported on the QNCR as in noncompliance.

OTHER POTW IMPLEMENTATION VIOLATIONS

G. Failure to meet Compliance Schedule Milestones by 90 Days or more

Compliance schedules are frequently used to require construction of additional treatment, corrective action, Spill Prevention Contingency and Countermeasure plans, additional monitoring that may be needed to attain compliance with the permit, and any other requirements, especially local limits. The schedules divide the process into major steps (milestones) that can be verified by inspection or review. Most schedules include progress reports. EPA recommends that the milestones be set at least every six months throughout the schedule. The schedules can be incorporated as part of the permit if final compliance will not exceed the regulatory compliance deadline. If the compliance schedule is to resolve a violation that has occurred after the regulatory compliance deadline, the schedule must be placed in an administrative order, judicial order, or a consent decree.

The existing rule for QNCR reporting requires that all permittees be listed on the QNCR if they are under an enforcement order. If the permittee is in compliance with the order, the compliance status is "resolved pending". If the permittee has missed a compliance schedule date by 90 days or more, the permittee must be reported as noncompliant on the QNCR. For POTW pretreatment programs, a failure to attain final compliance within 90 days of the compliance deadline in an enforcement order is considered SNC.

H. Any Other Violation(s) of Concern to the Approval Authority

This criterion allows the Approval Authority to identify any POTW as in reportable noncompliance for a single violation or any combination of violations which are judged to be important even though they may not be covered by the specific criteria in the definition. These violations may include instances where the approved program and/or implementation requirements are considered to be inadequate to control IU contributions to the POTW (e.g. failure to develop and/or enforce local limits), to monitor for SIU compliance with pretreatment requirements, or to enforce requirements and obtain remedies for SIU noncompliance.

III. REPORTING ON THE QNCR

The Quarterly Noncompliance Report is prepared by NPDES States and EPA Regions each quarter. It lists violations of Federally designated major NPDES permittees that are of concern to the Agency. The format is described in Section 123.45(a) of the Regulations. For each instance of noncompliance, the report must show the date, basis and type of the violation, the date and type of action the agency has taken, and the current compliance status. The agency should also explain mitigating circumstances or remedial actions which the permittee may have planned. Detailed guidance for preparing the QNCR is available upon request to the Regions or OWE. The following discussion summarizes the basic requirements for reporting POTW pretreatment violations.

The QNCR must be submitted to EPA Headquarters sixty days after the reporting quarter ends. The QNCR covers Federally designated majors. Generally, a POTW over 1 MGD is automatically designated as a major. This includes the vast majority of the POTW Control Authorities. All POTW pretreatment implementation violations should be reported on the QNCR, regardless of whether the control authority is classified as a major or a minor POTW.

A. Format

The general format for the QNCR is described in the Regulations. A list of abbreviations and codes used by the State Agency or EPA Region that prepares the report should be attached to each QNCR. If the Permit Compliance System (PCS) is used to generate the QNCR, standard abbreviations are automatically used and no special list of abbreviations or codes is needed for the submittal to Headquarters. (Note that a list of abbreviations may be needed for Freedom of Information Act requests.) The format is intended to provide the minimum information that is necessary to describe the violation, show how and when the agency responded, explain any mitigating circumstances or clarifying comments, and indicate the current compliance status of the permittee.

The description of the permittee should include the name of the permit holder, the name of the municipality, and the NPDES permit number. The permittee should be the Control Authority for the local pretreatment program. If other municipal permittees are subject to the Control Authority, they should be listed under the comments portion of the entry. The Control Authority is responsible for violations by other permittees covered by the Control Authority's pretreatment program. Similarly, industrial users that contribute to the violation should be listed under comments.

B. Description of the Noncompliance

Under the permittee's name and permit number, information on each instance of noncompliance must be reported. For pretreatment violations, the description should summarize the criteria that were violated and reference the QNCR Regulation subparagraph. The subparagraph of the August 1985 Regulations that apply would be as follows:

**QNCR (Section 123.45)
Regulation Subparagraph**

Type of violation

- | | |
|---|-------------|
| 1) Failure to implement or enforce industrial pretreatment requirements
(Criteria A-E) | (a)(iii)(B) |
| 2) Pretreatment Report - 30 days overdue
(Criterion F) | (a)(ii)(D) |
| 3) Compliance schedule - 90 days overdue
(Criterion G) | (a)(iii)(C) |
| 4) Other violation or violations of concern
(Criterion H) | (a)(iii)(G) |

The criterion should be listed under the type of violation as the example (Section IV) shows.

Each violation should include the date. If the POTW has missed a deadline, the deadline is the date of the violation. The last day of the month is used as the violation date for violations of monthly averages. In some cases, the Agency may have discovered the violation through an audit or inspection of the POTW program. The inspection/audit date should be noted under comments. In the examples, all dates on the QNCR are written in six digit numbers representing the month, day, and year. The date, January 9, 1987 is entered as 010987 for the PCS generated QNCR.

The Region or approved State should contact the POTW promptly when a pretreatment implementation violation is detected. The Region/State should also indicate its response to the POTW's failure to implement an approved program on the QNCR. In determining the appropriate response, the Region/State should consider the impact of the violation, POTW compliance history, the number of SIUs, and the nature and/or duration of the violation. Initial violations may be resolved through training, conferences, or on-site reviews. The Regional/State response should be timely and escalate to formal enforcement (an administrative order or judicial referral) if the POTW fails or is unable to comply in a timely fashion (see example 2). The date the action was taken should also be indicated on the QNCR. Planned actions by the POTW or its IUs and projected dates should be noted under comments.

C. Compliance Status

The QNCR also tracks the status of each instance of reportable noncompliance. Three status codes are usually reported: noncompliance (NC), resolved pending (RP), and resolved (RE). "Noncompliance" means the violation or pattern of violations is continuing. "Resolved pending" means the permittee is making acceptable progress according to a formal schedule (i.e., through an administrative or judicial order) to correct the violation. "Resolved" means the permittee no longer exceeds the QNCR criteria for which they are listed. For the "noncompliance" and "resolved pending" status, the status date is generally the last date of the report period. The status date for "resolved" is either the date the noncompliance requirement is fulfilled or the last day of the report period in which the permittee no longer meets the QNCR criteria.

The "comments" column can be used to describe the violation, explain permittee progress, indicate potential remedies, projected dates of compliance, and explain agency responses. Other information can also be reported under comments, including the name of noncomplying SIUs; the level of performance or degree of failure by the POTW; the names of other permittees that are covered by the Control Authority; agency plans for training or technical assistance; and the manner in which the agency learned of the violation.

IV. EXAMPLES OF REPORTING ON THE QNCR

The following examples illustrate how violations and agency responses are reported. Example 1 is a moderate size POTW that has refused to implement the program. Example 2 is a small POTW which needs assistance. In each example, instances of noncompliance were addressed by an administrative order after an initial warning.

A) Example 1

Scenario: Hometown's pretreatment program was approved in June 1985. The permit required an annual report, fifteen days after the end of each year, beginning January 15, 1986. The program required that permits be issued to 15 SIUs by June 30, 1986. The POTW was audited in August 1986 and had failed to permit and inspect its IUs and failed to submit an annual report.

QNCR Listing

Hometown WWTP, Hometown, US 00007				
INSTANCE OF NONCOMPLIANCE	DATE	REG SUBPARA	ACTION (AGENCY/DATE)	COMPLIANCE STATUS (DATE)
Issue permits (Criterion A)	063086	(iii)(B)	Audit (EPA/083086) AO #123 (State/033187)	RP (033187)
Inspect SIUs (Criterion B)	083086	(iii)(B)	Audit (EPA/083086) AO #123 (State/033187)	RP (033187)
Submit Annual Report (Criteria F)	011587	(ii)(C)	Phone call (State/013087) AO #123 (State/033187)	RP (033187)
COMMENTS				
AO requires submission of annual report by 4/30/87, and permit issuance and sampling inspections of all SIUs by 6/30/87. Control Authority includes two other permittees: Suburb One, Permit No. US 00008 and Suburb Two, Permit No. US 00009 who must meet the schedule for inspections.				

Discussion: The entry on QNCR for Hometown shows the name and permit number of the facility. The Control Authority also covers two other permittees. Three reportable noncompliance criteria were exceeded (see sections I and II of this guidance). The annual report was due January 15, 1987, according to the NPDES permit for Hometown. The approved program was the basis for the other reported violations. The "reg subpara" identifies the section of the existing QNCR which covers the violations. The State has called the city which promised to submit the annual report. After discussion with the city and its outlying jurisdictions, an administrative order was issued with a compliance schedule to resolve all three violations. Hometown is following an enforceable schedule that will lead to compliance, so its compliance status is shown as "RP" (resolved pending) for all three violations. The comments indicate the compliance deadlines.

B) Example 2

Scenario: Little Burg's pretreatment program was approved January 1, 1986. The facility has two SIUs, one is a food processor and the other is a pharmaceutical manufacturer. Little Burg has had loads that have resulted in permit violations of BOD (March - June 1986). The State Approval Authority issued an administrative order September 30, 1986 to establish a schedule for issuing IU permits. The BOD violations were considered resolved for reporting purposes as of October 1, 1986.

QNCR Listing

Little Burg WWTP, Little Burg, US 0008				
INSTANCE OF NONCOMPLIANCE	DATE	REG SUBPARA	ACTION (AGENCY/DATE)	COMPLIANCE STATUS (DATE)
Enforce against IU pass-through/ interference (Criterion E)	033186	(iii)(B)	AO#1 (State/093086) Warning letter (State/041586)	RP (033187)
Criteria E	043086	(iii)(B)	AO#1 (State/093086) Warning letter (State/051586)	RP (033187)
Criteria E	053186	(iii)(B)	same	RP (033187)
Criteria E	063086	(iii)(B)	same	RP (033187)
COMMENTS				
State has provided training to Little Burg and PRELIM to calculate local limits (10/86). City will issue permits by 4/15/87.				

Discussion: Little Burg has a history of problems from industrial loadings. The pretreatment violation is a lack of enforcement against interference and pass-through. The same violation occurred four months in a row. The POTW also had a violation of its BOD limit which met the criteria for reporting on the QNCR. In this case DMR data were critical flags of an interference/pass-through problem. The solution is believed to be local limits and permits for the SIUs. The administrative order established a schedule which is being tracked. The original BOD violations have been resolved because the SIUs have reduced their loads and are preparing to add treatment. When the POTW has completed the development of local limits and issued the permits, the instances of noncompliance will be deleted from the QNCR. The State will continue to monitor progress each quarter through reports and/or inspections.

V. COMPLIANCE EVALUATION

EPA or the approved State should use pretreatment compliance inspections, annual reports, audits, and DMRs to evaluate the compliance status of the permittee. At a minimum, available data should be reviewed every six months to determine whether the POTW is in compliance. This review may occur in conjunction with the conduct of an audit or inspection or the receipt of a report. Once the facility is shown on the QNCR, quarterly evaluations are needed to update the compliance status on each QNCR.

Compliance with permit effluent limits, compliance schedules, and reporting can be tracked in PCS, which is EPA's automated data system. The dates for submission and receipt of periodic reports and routine requirements should also be tracked in PCS. WENDB data already require that receipt of an annual report (or periodic report) and its due date must be entered into PCS as a permit schedule requirement. This tracking would allow Regions and States to forecast when reports are expected and detect reporting violations, similar to the process for tracking discharge monitoring reports and other scheduled events.

The Pretreatment Permits and Enforcement Tracking System, (PPETS), has been developed, as a part of PCS, to track the overall performance of POTWs with their pretreatment requirements and the compliance rates of significant industrial users. Users guides and training will be provided to Regions and States in the fall of 1987. A few examples of the data which PPETS will include for each POTW are the number of significant users (SIUs), the number of required control mechanisms not issued, the number of SIUs not inspected or sampled, the number of SIUs in significant noncompliance (SNC), and the number of enforcement actions. Most of the data in PPETS will only be indicative of potential violations. The apparent violation should be verified as a continuing problem before the instance of noncompliance is reported on the QNCR. The data elements in PCS and PPETS that may apply to reportable noncompliance are summarized for each criterion in Table 2.

Once the POTW has been reported on the QNCR it should continue to be reported each quarter until the instance of noncompliance is reported as resolved. Compliance with an enforcement order (both judicial and administrative) should be tracked on the QNCR from the date the order is issued until it is met in full. EPA and/or the approved State should verify the compliance status of the POTW each quarter through periodic reports from the POTW, compliance inspections, audits, meetings, or requests for compliance data and information.

Table 2

**REPORTABLE NONCOMPLIANCE CRITERIA AND RELATED PCS/PPETS
DATA ELEMENTS**

Criterion	Data Source	Data Element
Criterion A -- Failure to Issue Control Mechanisms	PPETS	<ul style="list-style-type: none"> o Number of SIUs without required control mechanisms¹⁰ o Control mechanism deficiencies
Criterion B -- Failure to Inspect SIUs	PPETS	<ul style="list-style-type: none"> o Number of SIUs not inspected or sampled¹⁰ o SIUs in SNC but not inspected or sampled¹⁰ o SIUs not inspected at required frequency o Inadequacy of POTW inspections
Criterion C -- Failure to Establish Self-Monitoring	PPETS	<ul style="list-style-type: none"> o SIUs in SNC with self-monitoring¹⁰
Criterion D -- Failure to Implement Standards	PCS	<ul style="list-style-type: none"> o Violation Summary o Effluent data¹⁰
	PPETS	<ul style="list-style-type: none"> o SIUs in SNC¹⁰ o Number of enforcement actions¹⁰ o Amount of Penalties¹⁰ o Adopted local limits¹⁰ o Technical evaluation for local limits¹⁰

¹⁰ Water Enforcement National Data Base (WENDB) data elements for which data entry is required, not optional

Table 2
(Continued)

Criterion	Data Source	Data Element
Criterion D (Continued) -- Failure to Implement Standards	PPETS	<ul style="list-style-type: none"> o Deficiencies in POTW application of standards o Date permit required implementation¹⁰ o Number of significant violators published in the newspaper¹⁰
Criterion E -- Failure to Enforce	PCS	<ul style="list-style-type: none"> o Violation summary o Effluent data¹⁰
	PPETS	<ul style="list-style-type: none"> o Same as Criterion D o Pass Through/Interference incidents o Deficiencies in POTW sampling o Deficiencies in POTW application of standards o Enforcement response procedures used
Criterion F -- Failure to Submit Annual Report	PCS	<ul style="list-style-type: none"> o reporting schedule o permit reporting¹⁰
Criterion G -- Failure to Meet Compliance Schedules	PCS	<ul style="list-style-type: none"> o compliance schedule events¹⁰

¹⁰ Water Enforcement National Data Base (WENDB) data elements for which data entry is required, not optional

VI. RESPONSE TO POTW NONCOMPLIANCE

The QNCR requires reporting of noncompliance, as well as the action taken by the approved State or EPA Region to resolve the noncompliance. EPA Regions and approved States should review and verify all problems or violations related to POTW program implementation, regardless of whether they are or will be reported on the QNCR. Specific implementation requirements must be identified and compliance should be systematically reviewed and evaluated. In determining the appropriate response, the Approval Authority should consider the nature of the violation, the length of time the POTW has been approved, and the compliance history of the permittee.

Given the fact that implementation of pretreatment program requirements is a relatively new experience for many POTWs, formal enforcement may not be initially appropriate. The POTW may be unaware of how to correct the violations that have occurred and may need training and guidance from the Approval Authority. The opportunity for a "second chance" is an important option for the Approval Authority. In all cases, the POTW should be advised of its violations. However, if the violation is the first such problem and the POTW is willing to implement the approved program and needed corrective action, then technical assistance may be appropriate to help the POTW personnel understand what is expected and when.

EPA recommends closely monitoring the progress of the POTW in issuing, reissuing, or ratifying its control mechanisms. If the POTW consistently fails to issue and maintain its control mechanisms in a timely fashion--that is issuance in accordance with the approved program or permit or the requirement of an enforcement order within 90 days after permit expiration--the Approval Authority should issue a warning letter or administrative order to the Control Authority and establish a schedule for issuing the necessary control mechanisms.

Where a schedule is needed for corrective action, the Approval Authority may wish to establish that schedule in an enforcement order. When a schedule extends for 90 days or longer, EPA recommends that the Approval Authority establish the schedule in an enforcement order. A detailed schedule with intermediate milestones will help the POTW allocate appropriate time and priority to the required tasks, while helping the Approval Authority assess the POTW's progress. The Approval Authority may use a 308 letter to obtain information and time estimates from the POTW to develop the compliance schedule. Compliance with an enforcement order is tracked on the QNCR until the POTW has returned to full compliance with the NPDES permit.

Formal enforcement will be the appropriate initial response in a growing number of cases as POTWs become more knowledgeable of their implementation responsibilities. Where the POTW has substantially failed to implement its approved program or demonstrates inadequate commitment to corrective action on a timely basis, the Approval Authority should initiate formal enforcement action.¹¹ Formal enforcement may also be appropriate as an initial response where the POTW's failure to enforce has contributed to interference, pass-through, or significant water quality impacts. When a violation by the POTW has been identified and the POTW has failed to initiate corrective action in the quarter following identification on the QNCR, the Approval Authority should strongly consider formal enforcement action.

¹¹ EPA Headquarters is developing criteria for bringing formal enforcement actions and model pleadings and complaints for judicial actions against POTWs for failure to implement their pretreatment programs.

VII. SUMMARY

The QNCR is an important tool to identify priority violations of permit conditions, to overview the effectiveness of State and EPA compliance and enforcement activities, to provide a framework to achieve a nationally consistent pretreatment program, and to compile national statistics on noncompliance for the NPDES program. The existing rule for noncompliance reporting requires EPA and the States to report instances where POTWs have failed to adequately implement and enforce their approved pretreatment program.

Nearly 1500 POTWs are now approved. Pretreatment will be the primary mechanism to control toxic and hazardous pollutants which may enter the POTW or its sludge. Therefore, it is vital that EPA and the approved States routinely evaluate POTW compliance with the requirements of their approved program and report POTWs that have failed to adequately implement their approved program.

This Guidance is intended to assist Regions and approved States evaluate and report POTW noncompliance with pretreatment requirements. The Guidance explains the criteria that should be used to evaluate principal activities and functions necessary to implement the program. In some cases, approved States and Regions may need to modify the program and/or NPDES permit because the existing requirements are inadequate or because conditions have changed. In general, those POTWs that meet the definition of reportable noncompliance should be priorities for resolving the inadequacies in approved programs or permits.

EPA plans to incorporate specific criteria into the NPDES Regulations for noncompliance reporting of POTWs which fail to adequately implement their pretreatment programs. The regulation will be developed after Regions and approved States have had the opportunity to use this Guidance for at least 12 months to assess the effectiveness of the criteria in identifying serious noncompliance. Comments on the use of this guidance and the reporting of POTW noncompliance required under the Strategic Planning and Management System in FY 1988 will be carefully evaluated for future regulatory and program reporting requirements.