



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

APR 14 1994

MEMORANDUM

OFFICE OF
WATER

SUBJECT: National Pollutant Discharge Elimination System (NPDES) FY 1995
Operating Guidance and Enforcement Measures for Strategic Targeted
Activities for Results Systems (STARS)

FROM: Richard T. Kuhlman, Acting Director
Enforcement Division

TO: Enforcement and Compliance Branch Chiefs
Regions I - X

Attached is the Enforcement Division's FY 1995 NPDES Operating Guidance and STARS measures. A draft of these materials was discussed at the March 31, 1994 Regional Conference Call, at which time general agreement was reached on their content.

Since there have been no subsequent requests for changes from the Regions, the final FY 1995 Guidance and Measures are the same as their draft versions with one exception. We have included feedlots among the enforcement priority considerations highlighted for FY 1995.

Also, as discussed in the conference call, we recognize for NPDES permit violations in "special" waterbodies posted as unfit for swimming or fishing that the source for the violations may be other than the typical municipal and industrial wastewater discharges covered under NPDES. These violations may result from pesticide runoff or air borne pollutants for which we do not have direct enforcement responsibility.

If there are any questions, please call me at (202) 260-8304 or Richard Lawrence, on my staff, at (202) 260-9510.

Attachments

cc: Fred Stiehl
Kathy Summerlee
John Lyon
Rick Duffy
Rich Kuhlman
Mark Charles
Dave Lyons
Elaine Stanley
Sally Seymour

FY 1995 NPDES Compliance Monitoring and Enforcement Operating Guidance and STARS Measures

General

The guidance for FY 1995 is very similar to that provided in FY 1994. Accordingly, for FY 1995, we will use the priorities and procedures as contained in the FY 1994 OW Operating Guidance for OWEC (attached) and the supplementary requirements outlined in the "Regional Compliance Enforcement Strategies for FY 1994" memorandum (attached) dated September 21, 1993. As you may recall, this memorandum provided a framework for developing both Regional Enforcement Strategies and Strategic Targeted Activities for Results System (STARS) commitments.

Operating Guidance

In addition to the core set of guidance described in the FY 1994 guidance documents, there are additional NPDES enforcement considerations for FY 1995. Some of these involve only additional details on the enforcement priorities in the FY 1994 documents.

Among these additional considerations for FY 1995 are three enforcement priorities Steve Herman, Assistant Administrator for the Office of Enforcement, has recently emphasized. They are: 1) the Combined Sewer Overflow Dry Weather Flows Enforcement Initiative, 2) "special" waterbodies like stream segments posted as unfit for fishing and swimming, and 3) facilities in reportable noncompliance for pretreatment violations. In addition, consideration will need to be given to the requirements of the NPDES Watershed Strategy. It has been finalized and was sent by Robert Perciasepe, the Assistant Administrator for Water, to the Regions on March 21, 1994. Finally, two other areas, whole effluent toxicity data quality as well as feedlots, will need increased emphasis in FY 1995.

STARS Measures

The STARS measures for FY 1995 will be the same as for FY 1994 (see attached) with two additional reporting requirements. These new requirements involve watersheds and sectors. At the end of FY 1995, the Regions are requested to provide the total number of enforcement actions and inspections for each of these two areas. Definitions for watersheds and sectors are not currently available, so we will provide guidance on this matter later in the year.

For FY 1994, we requested you develop Regional enforcement strategies (see September 21, 1993 memorandum referred to above) and provided flexibility in deployment of inspection resources allowing you to commit to less than the goal of 100% coverage for inspections. In FY 1995, we will require enforcement strategies and will put more emphasis on the need for each Region to provide a detailed explanation of use of inspection resources as part of a fully developed enforcement strategy. Without a detailed explanation, we will require 100% inspection of majors.

FY 1994 OWEC Operating Guidance

and

Enforcement Strategies Memorandum of

September 21, 1993



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

SEP 21 1993

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Regional Compliance and Enforcement Strategies
for FY 1994
FROM: *Anna Lassiter*
Richard Kozlowski, Director
Enforcement Division
TO: Regional Compliance Branch Chiefs
Regions I - X

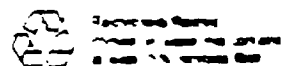
This memorandum establishes a framework for Regional Enforcement Strategies consistent with the Office of Wastewater Enforcement and Compliance 5-Year Strategy, and Mike Cook's August 31, 1993 memorandum, "Negotiation of FY 94 OWEC STARS and OWEC Accountability System Commitments". The Regional strategic plans will be incorporated into the commitment process as appropriate and discussed, with the already established enforcement measures, during quarterly conference calls.

The approach presented here is consistent with the discussion at the February 1992 Branch Chiefs' Meeting on measures of program effectiveness, and my subsequent memorandum dated May 10, 1993, "FY 1994 New Enforcement Program Effectiveness Measures". We request that each Region submit a short Regional Enforcement Strategy that presents specific goals for the program, with a short discussion of the activities which will be undertaken to achieve the goals, including measures for following program implementation and success ("customized Regional goals").

Please submit your Regional Enforcement Strategy by September 30, 1993, or as quickly thereafter as possible, and submit all STARS data including inspection targets under the STARS schedule. If you have any questions, please contact me on 202/260-8304, or Carol Galloway, on 202/260-8313.

Attachment

cc: Mike Cook
Cynthia Dougherty
Mike Quigley
Anna Garcia
Anne Lassiter
Rich Kuhlman



FRAMEWORK FOR REGIONAL ENFORCEMENT STRATEGIES

Consistent with the Office of Wastewater Enforcement and Compliance Strategic Plan, the Regions are encouraged to tailor enforcement activities based on watershed planning and risk-based priorities. The Regional Enforcement Strategies should describe program goals for FY 1994 and provide a brief description of the types of activities that will be undertaken to achieve those goals. Since the strategies will provide a basis, along with the other established enforcement measures, for assessing Regional performance, the goals and activities should be as clear and objective as possible.

Regional performance will be evaluated by review of the "core enforcement measures" (referrals, administrative actions, inspections, compliance rates, and response to SNC). In addition, we will use the "new" enforcement measures developed over the last year (May 10, 1993 memorandum is attached). Reporting on and discussing the Regional enforcement strategies will allow the Region to put the more quantifiable enforcement measures into the broader context of the Regions' priorities.

The Regional Enforcement Strategy should consider the following topics which are discussed in detail below:

- Regional priorities including watersheds, geographic and other initiatives, etc.
- "New" program areas including pretreatment, sludge, CSOs, storm water, etc.
- Regional customized goals
- Tailored inspection strategy with commitments

We encourage tailoring enforcement resources to the most critical Regional priorities and encourage using a mix of enforcement tools. The Agency will continue to place high priority on judicial referrals; however, we recognize the utility of administrative actions and encourage the use of administrative penalty authorities consistent with Agency policy. In addition, we must continue to ensure timely and appropriate enforcement is taken for all cases of Significant Noncompliance (SNC). In the future, however, we may redefine SNC to more closely follow Regional and State priorities, and will solicit your input in that process. Likewise, it is imperative that we maintain the integrity of the national enforcement database in the Permit Compliance System (PCS). Therefore, we will continue to set our target for data entry into PCS at 95%.

Regional Priorities:

The Region should summarize the State and EPA enforcement priorities to support priority watersheds, waterbodies, or other geographic targets. In addition, other initiatives and priorities should be included such as: sanitary overflows; the data quality initiative; dry weather CSO overflows, etc.

"New" Program Areas

The Region should describe what its approach will be in terms of implementing the pretreatment program, sludge, CSOs and storm water. The Region may choose this vehicle to present its plan for storm water activities in FY 1994 in lieu of doing the separate plan which is called for by the Storm Water Enforcement Strategy.

Regional Customized Goals:

The Region may define specific enforcement objectives and identify milestones of progress toward the goals consistent with Regional priorities. For each goal, the Region should explain the environmental objective and any key milestones or events projected. Progress toward the goals will be discussed during quarterly conference calls between the Office Director and the Region. At the end of the fiscal year, the Region will submit a short narrative on the status of the goals and the extent the goals were accomplished. This narrative will be submitted to the Office Director for his review with the other quantitative end of year measures of enforcement program effectiveness.

Regional Inspection Strategy:

Regions are asked to develop an inspection plan based on their allocation of inspection resources in the workload model, which reflects the priorities and needs of the Region. The Region should work with its States to determine how best the Region as a whole can address the universe of regulatory responsibilities including: NPDES majors, minors, approved pretreatment programs, industrial users, storm water permittees, permittees with CSOs, Class I sludge facilities, and facilities that are multi-media.

The plan should include information on the number of inspections in each category (pretreatment, storm water, sludge, NPDES, CSO, multi-media) that will be undertaken by the Region and States. However, the Region will be asked to commit only to the total number of inspections to be conducted during the year. The Regions should consider the following as guidance for determining which facilities should be considered a priority for inspections.

In recognition of the severe resource constraints under which Regions and Headquarters are operating and the substantial increase in regulatory responsibilities which have accrued since the 1987 amendments to the Clean Water Act, the previous policy which required the inspection of all NPDES major facilities annually and the inspection (or audit) of all approved pretreatment programs annually is suspended for FY 1994. Regions now have the option of developing an inspection plan for 1994, based on the allocation of inspection resources in the workload model, which reflects the priorities and needs of the Region. This year will serve as a transition year in which new approaches and ideas for the inspection program can be developed.

In developing the plan, the Region should work with its States to determine how best the Region as a whole can address the universe of regulatory responsibilities. Specifically, the Region should address how best to use its inspection resources considering all of its responsibilities for NPDES majors and minors, approved pretreatment programs, industrial users, Class I sludge facilities, storm water permittees, POTWs subject to combined sewer overflow requirements, facilities that are multi-media, and other special initiatives such as feedlots. The plan should include information on the number of inspections in each category that will be undertaken by the Region and each State and should provide some narrative description of the overall strategy being pursued by the Region. Consistent with past policy, the plan should reflect some Regional oversight of state inspection programs. The plans will be due at the time that inspection commitments are normally submitted for the STARS system--the first of September.

During the remainder of FY 1993 and into FY 1994, working with Regions and States, Headquarters will initiate a quality action team (QAT) to look at needed changes to the inspection program. Two issues which might be considered are whether a national inspection scheme can and should be developed which would target inspections on some basis--perhaps a statistically-based or a risk-based approach and whether inspection protocols for various programs can reasonably be integrated for resource efficiencies. The products of this review would be available for planning in FY 1995. We are now seeking volunteers to participate in this QAT and are interested in having representatives from the Environmental Services, as well as Water Management Divisions.

In developing inspection plans for 1994, the Regions should consider the following as guidance for determining which facilities should be considered a priority for inspection:

1. Any facility for which there is an active enforcement case or a potential case where an inspection is needed to provide evidentiary support or verify current compliance status.

2. Any facility which is located in a priority watershed and is suspected of causing environmental harm or endangering public health. This might include a minor NPDES permittee, an industrial facility regulated under storm water requirements, feedlots, industrial users, or any other regulated facility
3. Any facility, not located in a priority watershed, but suspected of causing environmental harm or endangerment to public health.
4. Any NPDES major which was in SNC during the previous 12 months (inspection year) or is currently in SNC, to the extent inspection resources allow.
4. Municipal permittees which have approved pretreatment programs and are Class I sludge facilities. The inspection might be either a NPDES, pretreatment, or sludge inspection or might be a visit which screens for all three programs.
5. Any facility which is suspected of having a compliance problem. For example, sanitary sewers suspected of having overflow problems might be included.

This approach should allow Regions and States to make the most effective possible use of limited inspection resources in 1994. We can then build upon that experience and the planned 93-94 review to formalize our national inspection strategy for 1995.

In the absence of a Region-specific Inspection Strategy, we will assume that all major NPDES facilities should be inspected each year.

OWEC Section
of
OW Operating Guidance
For FY 1994

OFFICE OF WASTEWATER ENFORCEMENT AND COMPLIANCE

In the past twenty years, since the enactment of the Clean Water Act, EPA has seen progress in the improvement of the quality of the Nation's water, due in large part to success in the control of point source discharges. Through the 1987 Amendments to the Act, our responsibilities continue to grow. The amended Act ratified existing programs, such as technology-based and water-quality based effluent limits for point source dischargers and provided new program areas of responsibility, such as permitting to control sewage sludge contamination, setting up and implementing the State Revolving Fund, and the Mexican Border Initiatives.

OWEC is responsible for directing the NPDES point source and pretreatment programs, sewage sludge management program and the enforcement and compliance program. OWEC manages the Construction Grants program for building and maintaining pollution control infrastructure and the State Revolving Fund program, assisting States to develop long-term, self-sustaining programs. OWEC develops regulations and guidelines for municipal water pollution control, and manages the Sections 104(b)(3) and 106 grant programs. FY 1994 guidance for the 106 program was issued March 3, 1993.

OWEC activities of interest to Regions for FY 1994 include: (1) support for new and ongoing NPDES, pretreatment, and sludge programs by providing guidance, technical assistance, training, workshops, seminars, public information programs and national meetings which communicate the goals and methods of achieving effective control of environmental pollution of the Nation's waters; (2) improvement of the evidentiary hearing process on NPDES permits to achieve more timely decisions and more rapid resolution of permit appeals and implementation of controls; (3) support for NPDES, pretreatment, sludge, storm water, and CSO programs by providing data management oversight and policy, developing guidance, and providing technical assistance and training to promote the effective implementation of the Clean Water Act; (4) support for national SCORE activities through the small flows clearinghouse national training center, O&M onsite technical assistance program and selected demonstration projects.

SEE ALSO FY 1994 KEY DIRECTION

Watershed Approaches/Geographic Targeting

- Integration of Watershed Focus
- Mexican Border

Wet Weather Runoff

- Storm water
- Combined Sewer Overflows
- TMDLs

Building State and Local Partners

- Drinking Water SRF
- Wastewater SRF
- NPDES and State Sludge Permit Programs
- National Toxic Rule Implementation

Activities for FY 1994 include:

Permit Issuance

- Incorporate toxic limits when issuing/reissuing major and minor NPDES permits and when implementing/updating pretreatment programs to meet water quality standards. Encourage use of the watershed protection approach for incorporating water quality based limits for toxics into expired and never issued NPDES permits to reduce the backlog.
- Integrate pollution prevention practices into NPDES, pretreatment, and sludge programs through outreach and training of POTWs and industrial dischargers and development of model pollution prevention language for permits.
- Headquarters will work with Regions to establish a permit fee system.
- Begin permit issuance for sludge use facilities which need site-specific limits.

> Enforcement and Compliance

- Headquarters, with Regions and States, will complete development of a strategy for NPDES authorities to secure compliance with requirements regulating feedlot discharges.
- Regions and States should continue to ensure that all SNC violations of NPDES permits are responded to on a timely and appropriate basis and uphold the standard that at least 95 % of required data is entered into PCS.
- Regions and States should utilize enforcement, as appropriate, to address violations by major and minor NPDES permittees and industrial users to support Regional watershed initiatives.
- Regions and States may choose to address control of stormwater discharges and the CSO dryweather enforcement initiative by targeting specific watersheds.

- **Regions and States should continue to identify noncompliance among pretreatment POTWs and industrial users contributing toxic pollutants into public sewers and respond to this noncompliance in a manner which: 1) returns the facility in question to compliance, and, 2) deters other similar violators from future noncompliance.**
- **Regions should begin implementation of the Compliance Monitoring and Enforcement Strategy for Sludge, focusing particularly on establishing inventory data for Class I facilities based on reporting by the regulated facilities.**
- **As a part of the Agencywide data quality enforcement initiative, Regions and States should target inspections, focus inspections on accuracy of reporting and take enforcement actions against nonreporters and facilities reporting fraudulent or incorrect data. Regions and States may prioritize certain geographic areas or watersheds for this enforcement activity.**

Municipal and State Support

- **Encourage States to assure that projects funded through the SRF program reflect priority water problems, including, where appropriate, combined sewer overflows, storm water, nonpoint source, ground water and wetlands issues, and reflect consideration for watershed management and pollution prevention. Utilize more comprehensive water-quality methods to identify projects for funding.**
- **Headquarters and Regions will continue to accelerate the phaseout of the construction grants program, including full implementation of the Completion/Closeout Strategy initiated in 1991.**
- **Address fiscal constraints that may limit the ability of the States to implement portions of their wastewater programs. Assist the States in evaluating financing options without advocating the use of a specific type. Each State, based on its funding structure, will be deciding upon a number of alternative financing mechanisms to resolve funding shortfalls.**
- **Headquarters and Regions will provide technical guidance and assistance to States and municipalities on land application, disposal and incineration of domestic sewage sludge (biosolids).**
- **Regions, States and municipalities will work to identify base level loading and water body measuring, protocols and procedures that will allow for an adequate means to improve program effectiveness of the wet weather programs.**
- **Accelerate implementation of Municipal Water Pollution Prevention (MWPP) programs and encourage source reduction at POTWs. Promote and foster efficient use of water and water conservation activities. Provide national leadership to Water Use Efficiency Clearinghouse and the WAVE program.**
- **Support Youth and the Environment programs that assist disadvantaged youth in learning and working in the environmental field.**

FY 1994 OWEC STARS Measures

for

Enforcement Division

* = NPDES STATE
ENFORCEMENT
MEASURES

OFFICE OF WATER
FY 1994

Program Area: Wastewater Enforcement and Compliance

GOAL: Reduce and eliminate pollution to the Nation's waters from point sources through aggressive implementation and enforcement of Federal and State standards under the Clean Water Act.

OBJECTIVE: Assess toxicity control needs and reissue major permits in a timely manner.

MEASURE: Track, against targets, the number of permits reissued to major facilities during FY94 which have had water quality based toxic limits included or found to not need toxic limits through a water quality based evaluation for toxics.

STARS CODE: WQ-13
TARGETED: Q 4
REPORTED ONLY: Q 2
SUNSET: FY 96

OBJECTIVE: Effectively implement approved local pretreatment programs.

* **MEASURE:** Track, by Region, against annual targets, for approved local pretreatment programs: 1) the number audited by EPA and the number audited by approved pretreatment States; and 2) the number inspected by EPA and the number inspected by approved pretreatment States.

STARS CODE: WQ-14
TARGETED: Q 4
REPORTED ONLY: Q 2
SUNSET: FY 96

OFFICE OF WATER

FY 1994

Program Area: Wastewater Enforcement and Compliance

GOAL: Reduce and eliminate pollution to the Nation's waters from point sources through aggressive implementation and enforcement of Federal and State standards under the Clean Water Act.

OBJECTIVE: Achieve and maintain high levels of compliance with the NPDES program.

STARS CODE: WQ/E-5

TARGETED:

REPORTED ONLY: Q 2,3,4

SUNSET: FY 96

MEASURE: Report, by Region and State, the number of major NPDES facilities, as well as the number of POTWs with approved pretreatment programs. Of these, track by Region and State the number and percent in significant noncompliance for each universe.

STARS CODE: WQ/E-6

TARGETED:

REPORTED ONLY: Q 2,3,4

SUNSET: FY 96

MEASURE: Report, by Region and State, the number of major NPDES facilities, as well as the number of POTWs with approved pretreatment programs in significant noncompliance on two or more consecutive quarters without returning to compliance (Active Exceptions List) -- list both new facilities (those in SNC for two or more quarters) and unresolved facilities (those facilities which are in SNC for three or more quarters).

STARS CODE: WQ/E-7

TARGETED:

REPORTED ONLY: Q 2,3,4

SUNSET: FY 96

MEASURE: Report, by Region and State, the number of major NPDES facilities, as well as the number of POTWs with approved pretreatment programs that are on the previous exceptions list which have returned to compliance, the number addressed by a formal enforcement action (Resolved Exceptions List). Identify reported Exceptions List facilities by name and NPDES number and number of quarters in significant noncompliance.

OFFICE OF WATER

FY 1994

Program Area: Wastewater Enforcement and Compliance

GOAL: Reduce and eliminate pollution to the Nation's waters from point sources through aggressive implementation and enforcement of Federal and State standards under the Clean Water Act.

OBJECTIVE: Achieve and maintain high levels of compliance in the NPDES program. (continued)

**STARS CODE: WQ/E-8
TARGETED:
REPORTED ONLY: Q 2,3,4
SUNSET: FY 96**

*** MEASURE: For NPDES, Sludge and Pretreatment violators, report, by Region, the total number of (a) EPA Administrative Compliance Orders and the total number of State equivalent actions issued; of these, report the number issued to POTWs for not implementing pretreatment; (b) Class I and Class II proposed and final administrative penalty orders issued by EPA; and (c) Administrative penalties imposed by States.**

**STARS CODE: WQ/E-9
TARGETED:
REPORTED ONLY: Q 2,3,4
SUNSET: FY 96**

*** MEASURE: Report, by State, the active civil and criminal case docket, the number of civil and criminal referrals sent to the State Attorneys General, the number of civil and criminal cases filed, the number of civil and criminal cases concluded (identify the penalty amount obtained by the State in the cases concluded).**

OBJECTIVE: Identify compliance problems and guide corrective action through inspections.

**STARS CODE: WQ/E-10
TARGETED: Q 2,4
REPORTED ONLY:
SUNSET: FY 96**

*** MEASURE: Track, by Region and State, against semi-annual targets, the number of major facilities with NPDES inspections; the number of Class I facilities receiving sludge management inspections; and the number of pretreatment POTWs receiving pretreatment compliance inspections. (combine EPA and State inspections and report each of the above three categories separately).**

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Program Area: Wastewater Enforcement and Compliance

negotiated on a State-by-State basis and must include Headquarters in the approval process.

Regional quarterly reports for these measures will be reported to the Director of the Office of Wastewater Enforcement and Compliance.

* WQ-14

A local pretreatment program audit is a detailed on-site review of an approved program to determine its adequacy. The audit report identifies needed modifications to the approved local program and/or the POTW's NPDES permit to address any problems. The audit includes a review of the substantive requirements of the program, including local limits, to ensure protection against pass through and interference with treatment works and the methods of sludge disposal. The auditor reviews the procedures used by the POTW to ensure effective implementation and reviews the quality of local permits and determinations (such as implementation of the combined wastestream formula). In addition, the audit includes, as one component, all the elements of a pretreatment compliance inspection (PCI).

In certain cases, non-pretreatment States will be allowed to conduct audits for EPA. If a non-pretreatment State has the experience, training, resources and capabilities to effectively conduct audits, these audits could be counted. A determination of whether a non-pretreatment State could conduct the audit for EPA will be worked out between EPA HQ and the Region during the commitment negotiation process on a case-by-case basis.

The pretreatment compliance inspection (PCI) assesses POTW compliance with its approved pretreatment program and its NPDES permit requirements for implementation of that program. The checklist to be used in conducting a PCI assesses the POTW's compliance monitoring and enforcement program, as

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Program Area: Wastewater Enforcement and Compliance

meaning includes any and all administrative appeals to permit conditions for major facilities, whether the appeals stay or do not stay permit conditions. Evidentiary hearings for EPA issued permits are not considered to be pending if they are on appeal to the Administrator.

An evidentiary hearing should be regarded as resolved once an ALJ decision has been issued, a negotiated settlement has been reached, or the evidentiary hearing request has been denied or withdrawn.

* WQ E-5

A facility is reported to be in significant noncompliance for failure to comply with NPDES permit requirements if it meet the criteria in the QNCR Guidance Manual, 1985. An approved pretreatment program should be identified as in significant noncompliance when it meets the criteria for SNC identified in the FY 1990 Reporting an Evaluating POTW Noncompliance with Pretreatment Requirements, issued September 27, 1989.

* WQ E-6/7

NOTE: For STARS report the number only. As part of OWECAS, report both the number and the name and the number of quarters the facility has been in SNC.

Also, the name list must be submitted with the numbers; only the fact sheet, with justification, will be reported by the 15th day of the beginning of the next quarter. In regard to all major permittees listed in significant noncompliance on the Quarterly Noncompliance Report (QNCR) for any quarter, Regions/NPDES States are expected to ensure that these facilities have returned to compliance or have been addressed with a formal enforcement action by the permit authority within the following quarter (generally within 60 days of the end of that quarter). In the rare

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circumstances where formal enforcement action is not taken, the administering Agency is expected to have a written record that clearly justifies why the alternative action (e.g., enforcement action, permit modification in process, etc.) was more appropriate. Where it is apparent that the State will not take appropriate formal enforcement action before the end of the following quarter, the States should expect the Regions to do so. This translates for Exceptions List reporting as follows:

Exceptions Lists reporting involves tracking the compliance status of major permittees listed in significant noncompliance on two or more consecutive QNCRs without being addressed with a formal enforcement action. Reporting begins on January 1, 1993 based on permittees in SNC for the quarters ending June 30, and September 30, that have not been addressed with a formal enforcement action by November 30. Regions are also expected to complete and submit with their Exceptions List a fact sheet which provides adequate justification for a facility on the Exceptions List. The fact sheet should be submitted by the 15th day of the beginning of the next quarter. After a permittee has been reported as returned to compliance or addressed by a formal enforcement action, it should be dropped from subsequent lists.

Reporting is to be based on the quarter reported in the QNCR (one quarter lag).

Returned to compliance (refer to the QNCR Guidance for a more detailed discussion of SNC and SNC resolution) for Exceptions List facilities refers to compliance with the permit, order, or decree requirement for which the permittee was placed on the Exceptions List (e.g., same outfall, same parameter). Compliance with the conditions of a formal enforcement action taken in response to an Exception List violation counts as an enforcement action (rather than return to compliance) unless the requirements of the

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action are completely fulfilled and the permittee achieves absolute compliance with permit limitations. The Exceptions List includes pretreatment SNC.

Formal enforcement actions against non-federal permittees include any statutory remedy such as Federal Administrative Order or State equivalent action, a judicial referral (sent to HQ/DOJ/SAG), or a court approved consent decree. A section 309(g) penalty administrative Order (AO) will not, by itself, count as a formal enforcement action since it only assesses penalties for past violations and does not establish remedies for continuing noncompliance. Unless the facility has returned to compliance, a 309(a) compliance order should accompany the 309(g) penalty order. Formal enforcement actions against federal permittees include Federal Facility Compliance Agreements, documenting the dispute and forwarding it to Headquarters for resolution, or granting them Presidential exemption.

WQ E-8

Headquarters will report EPA Administrative Compliance Orders (AOs) and State equivalent actions from PCS. All AOs must be entered into PCS by the 2nd update of the new quarter to be counted in the report. For pretreatment, only AOs issued to POTWs should be counted here. Where an AO or APO includes both pretreatment and NPDES violations, the AO/APO should be counted once and considered a pretreatment AO/APO. For purposes of counting State penalty orders, any order which proposes the assessment of a cash penalty against a violator may be counted. Where the State has a two step process (similar to EPA's process) the proposed order should be counted.

WQ E-9

The active case docket consists of all referrals currently at the State Attorney General and the number of referrals filed in State Court. A case

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Program Area: Wastewater Enforcement and Compliance

is concluded when a signed consent decree is filed with the State Court; the case is dismissed by the State Court; the case is withdrawn by the State Attorney General after it is filed in a State Court; or the State Attorney General declines to file the case. OE will report the same data for Federal referrals; State referrals will be reported to the Regions.

WQ E-10

As the inspections strategy states, all major facilities should receive the appropriate type of inspection each year by either EPA or the State. As part of the NPDES inspection for at least Class I facilities, verification of sludge management practices should be conducted as appropriate. EPA and States collectively commit to the number of major permittees inspected each year with a Compliance Evaluation Inspection (CEI), Compliance Sampling Inspection (CSI), Toxic Inspection (TOX), Biomonitoring Inspection (BIO), Performance Audit Inspection (PAI), Diagnostic Inspection (DIAG), or Reconnaissance Inspection (RI). Reconnaissance Inspections will only count toward the commitment when they are done on facilities that meet the following criteria:

- (1) The facility has not been in SNC for any of the four quarters prior to the inspection.
- (2) The facility is not a primary industry as defined by 40 CFR, Part 122, Appendix A.
- (3) The facility is not a municipal facility with a pretreatment program.

Commitments for major permittee inspections should be semi-annual targets and are to reflect the number of major permittees inspected at least once. The universe of major permittees to be inspected is defined as those listed

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as majors in PCS. Multiple inspections of one major permittee will count as only one major permittee inspected.

When conducting inspections of POTWs with approved pretreatment programs, a pretreatment inspection component (PCI) should be added, using the established PCI checklist. An NPDES inspection with a pretreatment component will be counted toward the commitments for majors, and the PCI will count toward the commitment for POTW pretreatment inspections. (This will be automatically calculated by PCS.) Regions are encouraged to continue CSI inspections of POTWs where appropriate. Industrial user inspections done in conjunction with audits or PCIs or those done independent of POTW inspections will be counted as IU inspections. Tracking of inspections will be done at Headquarters based on retrievals from the Permit Compliance System (PCS) according to the following schedule:

INSPECTIONS

RETRIEVAL DATE

The First working day
after the second update in:

July 1, 1993 through Sep. 30, 1993
July 1, 1993 through Dec. 31, 1993
July 1, 1993 through March 31, 1994
July 1, 1993 through June 30, 1994

Jan. 1994
April 1994
July 1994
Oct. 1994

Inspections may not be entered into PCS until the inspection report with all necessary lab results has been completed and the inspector's reviewer or supervisor has signed the completed 3560-3 form.

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Program Area: Wastewater Enforcement and Compliance

Note: STARS only tracks the number of major permittees inspected. Regional and State inspection plans should be established by FY 1993 in accordance with guidance on inspection plans.