

Pretreatment Toolbox Enforcement RVIPA 2019

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Enforcement

- *What to know and where to go?*



Enforcement: Legal Authority

- **Where does it all begin?**

- 40 CFR 403.8(f)(1)(vi)(A)
 - Obtain remedies for noncompliance by any IU with any pretreatment standards or requirements
- Derived from state law
- Local Regulations
 - Enforce against Industrial Users (IUs)
 - All violations must be actionable
 - Remedies must be non-exclusive

Enforcement: Legal Authority

- **Clean Water Act**
- **STRICT LIABILITY**
 - Users are held legally responsible for noncompliance, regardless of intent or negligence
- **Applies to IUs of POTW**
 - Need a range of administrative and judicial enforcement options

Enforcement

- **Clues you might be on the right track for an effective ERP**
 - Violators return to compliant as soon as possible
 - Noncompliant users are penalized for pretreatment violations
 - Further noncompliance has been deterred
 - Added expenses incurred by the POTW for a noncompliance have been recovered

Enforcement: Legal Authority



- **Keys to effective enforcement:**

- Follow the approved ERP/ERG
- Documentation
- Notification
- Escalation

Enforcement

- **What guides us with our enforcement actions?**
 - Approved Enforcement Response Plans and Enforcement Response Guides

Enforcement: ERP/ERG

- **Enforcement Response Plan (ERP)/Enforcement Response Guide (ERG)**

- Describes expected violation types that could occur within a programs guidelines
- Respective enforcement responses from the Control Authority
- Who is responsible for taking enforcement
- Don't lock yourself into one type of enforcement only or into a specific enforcement path

Enforcement

- **Factors to consider for appropriate enforcement response**
 - Magnitude of violation(s)
 - Duration of violation(s)
 - Effect on POTW, including a violation of BMPs, which will adversely affect the operation and implementation of the pretreatment program
 - Effect on receiving water
 - Pattern of past violations/success of previous enforcement actions
 - Attitude and actions of the IU*

Enforcement

- **Keys to effective enforcement response**

- Consistent
- Fair
- Timeliness of Actions

Enforcement

- **Violation Types**

- Unauthorized Discharges
- Prohibited Standards
- Permit Limits
- Monitoring
- Reporting
- Permit Conditions
- Compliance Schedules
- Enforcement Orders/Actions
- Best Management Practices

- **Enforcement Types**

- Notice of Violation
- Significant Non-Compliance
- Administrative Fines
- Show Cause Orders
- Consent Orders
- Compliance Orders
- Cease & Desist
- Injunctive Relief
- Civil/Criminal Prosecution

Enforcement: Types of Violations

- **Unauthorized Discharges**

- Unpermitted or non-permitted, with or without harm to the POTW
- Unpermitted: unaware of requirement to obtain a permit or notified of requirement to apply but fails to.
- Non-permitted: fails to make application for permit renewal.

- **Prohibited Standards**

- With or without harm to POTW

- **Permit Limits**

- Isolated or chronic;
- Minor or significant; and/or
- With or without harm to POTW

Enforcement: Types of Violations

- **Monitoring requirements violations**
 - Could be the result of a user's failure to perform:
 - All self-monitoring required or a portion thereof*
 - Compliance monitoring as required*
 - Monitoring in accordance with 40 CFR 136

Enforcement: Types of Violations

- **Reporting requirements violations**
 - Failure to comply with record keeping requirements as specified in 40 CFR 403.12(o)*;
 - Failure to provide 24 hour notice;
 - Failure to provide notifications, reports, or plans*;
 - Failure to provide reports by specified deadlines;
 - Falsification or “doctoring” of paperwork;
 - Failure to provide schedule of compliance activity reports by specified deadlines; and
 - Failure to properly sign or certify reports

Enforcement: Types of Violations

- **Permit Condition Violations**
 - Failure to mitigate;
 - Dilute wastestream in lieu of (adequate) pretreatment;
 - Failure to install or maintain monitoring point and/or pretreatment equipment
- **Compliance schedule deadlines violations**
 - Failure to perform specified activity by imposed deadline
- **Enforcement orders/actions**
 - Failure to respond as required

Enforcement: Types of Enforcement

- **Notice of Violation**

- Initial POTW response
- Official notice
- Provides IU opportunity to correct deficiency
- Issued for minor or infrequent violations

- **When to issue a NOV?**

- No harm unpermitted discharges
- Minor effluent limit violations
- Monitoring violations
- Reporting violations
- Missed Compliance Schedule deadlines

Enforcement: Types of Enforcement

- **Administrative Fines**

- Issued at POTW's discretion
- Punitive in nature
- Deterrent for future violations
- Monetary penalty
- Assessed directly by the Control Authority – no court order needed

Enforcement: Types of Enforcement

Administrative Fines
continued

- **Factors for determining fine amounts:**
 - Type, severity, number of violations
 - Duration of noncompliance
 - Impact of the violation on the POTW, environment, human health
 - Whether the IU derived any economic benefit or savings from the noncompliance
- **Type of fine schedules:**
 - Flat rate
 - Flat rate with escalation
 - Fines calculated using a matrix
 - Fine based on type of noncompliance
 - Fine in addition to cost recovery
 - Fine based on economic benefit of noncompliance*

Enforcement: Types of Enforcement

Administrative Fines continued

- **Methods to assess administrative fines:**
 - Sewer bill
 - NOV
 - Administrative Order
 - Show Cause Hearing

Enforcement: Types of Enforcement

- **Types of Administrative Orders**
 - Cease and Desist Order
 - Consent Order
 - Show Cause Order
 - Compliance Order

Enforcement: Types of Enforcement

Administrative Orders Continued

- **Cease and Desist Order:**
 - An AO directing an IU to immediately halt illegal or unauthorized discharges
 - Used where the discharge could cause interference or pass through or otherwise create an emergency situation

Enforcement: Types of Enforcement

Administrative Orders Continued

- **Consent Order:**

- An AO embodying a legally enforceable agreement between the CA and the noncompliant IU
- Designed to restore the IU to compliance status

- **Elements of Consent Orders:**

- Compliance Schedule
- Fines or remedial actions
- Signatures of CA and IU representatives*

Enforcement: Types of Enforcement

Administrative Orders Continued

- **Show Cause Order*:**
 - An AO directing a noncompliant IU:
 - To appear before the CA
 - Explain its noncompliance
 - Show cause why more severe enforcement actions against the IU should not go forward

Enforcement: Types of Enforcement

Administrative Orders Continued

- **Compliance Order:**
 - An AO directing a noncompliant IU to achieve or restore compliance by a date specified in the order
 - Used to require development of management plans or spill plans
- **Compliance Order Cont.:**
 - Issued when noncompliance cannot be resolved without
 - Construction,
 - Repairs, or
 - Process Changes

Enforcement: Types of Enforcement

- **Civil Litigation:**

- Pursued when the corrective action required is costly and/or complex
- The penalty to be assessed exceeds that which the CA can assess administratively
- When the IU is considered to be unwilling to cooperate, and court supervised settlement is needed

Enforcement: Types of Enforcement

Civil Litigation Continued

- **Civil Litigation:**
 - Emergency situations where injunctive relief is necessary to halt or prevent discharges which threaten human health, the POTW, or the environment
 - To impose civil penalties and recover losses due to noncompliance
- **Civil Litigation:**
 - Available Remedies
 - Consent Decree
 - Injunctions
 - Civil penalties & cost recovery

Enforcement: Types of Enforcement

Civil Litigation Continued

- **Consent Decree:**
 - A court supervised settlement agreement, the violation of which may be considered contempt of court
 - Used when the IU is willing to acknowledge and correct the noncompliance and agree on penalty
- **Injunctions, Injunctive relief:**
 - A court order which restrains or compels action by the IU

Enforcement: Types of Enforcement

Civil Litigation
Continued

- **Civil Penalties:**
 - A monetary or other punitive measure, usually associated with a court action
- For a Pretreatment program, this is usually referred to as “fines” (this may be more of an administrative action rather than a civil procedure depending on your legal authority for enforcement within your jurisdiction)

Enforcement: Types of Enforcement

Civil Litigation Continued

- **Cost Recoveries**
- **For expenses that the CA incurred when:**
 - Responding to the noncompliance
 - Restoring the wastewater treatment plant and/or conveyances
 - Paying for medical treatment of injured employees
 - Paying for any fines assessed to the CA for NPDES permit violations

Enforcement: Types of Enforcement

- **Criminal Prosecution:**

- Acted upon when violations of the law are punishable, upon conviction, by fines and/or imprisonment
- Criminal Intent and/or negligence must be **PROVEN**.
- The CA has the burden of proof and must compile evidence of the alleged violation

- **Criminal Prosecution Continued:**

- IU must have *intended* to break the law
 - IU was so indifferent to the act that it could be deemed criminally negligent
- **Criminal offenses are either misdemeanors or felonies**

Enforcement: Types of Enforcement

- **Supplemental Enforcement:**
 - Newspaper publication
 - Termination of services
 - Performance bond/liability insurance
 - Increased monitoring/reporting
 - Required BMPs

Enforcement: Types of Enforcement

- **Significant Noncompliance (SNC): Narrative**
- Violation of a pretreatment standard or requirement, as defined by 40 CFR 403.3(l)
 - Daily maximum
 - Long-term averages
 - Instantaneous limit
 - Narrative standard
- Discharge that causes imminent endangerment or results in the POTW exercising its emergency authority
- Failure to properly report noncompliance

Enforcement: Types of Enforcement

Significant Noncompliance (SNC) continued:

- Failure to meet , within 90 days, a compliance schedule milestone
- Failure to submit a report (including compliance certifications) within 45 days of the due date
 - 45 days is only if your Streamlining has been approved, if not the standard 30 days has to be enforced
- Other violations or groups of violations, which may include a violation of BMPs, which the POTW determines could adversely affect the operation or implementation of your pretreatment program

Enforcement: Types of Enforcement

- **Significant Noncompliance (SNC): Numerical**
- Chronic Violations
 - 66% or more of all the measurements during a 6-month period exceed allowable numeric limits
 - Same pollutants only
- Technical Review Criteria (TRC)
 - 33% or more of all the measurements during a 6-month period equal or exceeded
 - ***the product of the allowable numeric limit multiplied by the applicable TRC***
 - Same pollutants only

Enforcement: Types of Enforcement

Significant Noncompliance (SNC) continued:

- **Chronic and TRC SNC Calculations**

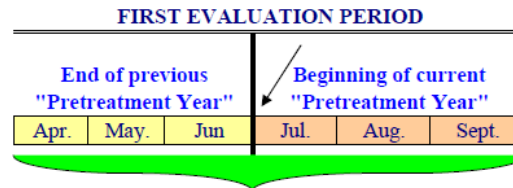
- Calculate SNC quarterly using the “rolling quarters” method
- Evaluate a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l)
- Categorical daily maximums and monthly averages

Enforcement: Types of Enforcement

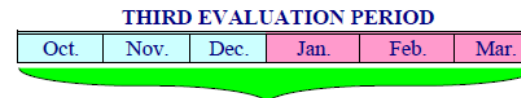
Significant Noncompliance (SNC) continued:

DETERMINATION OF INDUSTRIAL USER (IU) SIGNIFICANT NONCOMPLIANCE (SNC) for City of Dallas, PALS Pretreatment Year

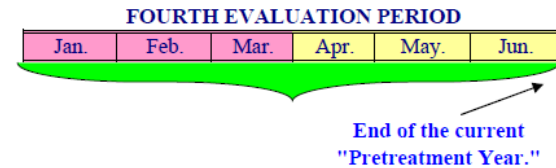
1. The POTW (in conjunction with the Approval Authority) must establish its "Pretreatment Year."
2. At the end of each quarter, POTWs and States should evaluate their IU's compliance status for the two criteria which are evaluated on a six month time frame (i.e., the "A" and "B" criteria-403.8(f)(2)(viii)(A) and (B) as illustrated below. The example below assumes a "Pretreatment Year" equal to the City of Dallas Pretreatment Year - July 1st thru June 30th.



3. At the end of the first quarter (Sept 30th in our example), the POTW must evaluate the data from an industrial user for the previous six months (e.g., beginning with April 1st of the previous "Pretreatment Year" as in our example). Likewise, the POTW must evaluate six months of data at the end of each subsequent quarter (e.g., Dec 31st, Mar 31st, and Jun 30st).



4. At the end of the "Pretreatment Year," the POTW must summarize the compliance status of its industrial users over the reporting period and report on this compliance status to the Approval Authority. The POTW must publish all industrial users which were identified in SNC during the "Pretreatment Year," unless the IU was previously published for violations which occurred solely in the last quarter of the previous "Year."



The information provided above was obtained from 40 CFR Part 403.8.

Enforcement: Types of Enforcement

Significant
Noncompliance (SNC)
continued:

433.17 Metal Finishing New Source
 Silver - Monthly Avg. = 0.24 mg/L
 TRC = 1.2 * (0.24) = 0.288 mg/L

Month	Result (mg/L)	Category
January	0.29	Previous Year
February	0.19	Previous Year
March	0.23	Previous Year
April	0.25	1st Qtr
May	0.34	1st Qtr
June	0.19	1st Qtr
July	0.11	2nd Qtr
August	0.06	2nd Qtr
September	0.25	2nd Qtr
October	0.26	3rd Qtr
November	0.28	3rd Qtr
December	0.25	3rd Qtr
January	0.03	4th Qtr
February	0.25	4th Qtr
March	0.29	4th Qtr
April	0.21	Previous Year
May	0.27	Previous Year
June	0.19	1st Qtr

Handwritten annotations:
 - SNC TRC (pointing to the TRC value)
 - Not SNC (pointing to the 'Previous Year' column)
 - SNC Chronic (pointing to the 1st, 2nd, and 3rd quarters)
 - Not SNC (pointing to the 4th quarter)

Questions?

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