

DEFINITION OF SIGNIFICANT NONCOMPLIANCE

From 40 CFR Part 403.8 (f)(2)(viii)

For the purposes of this provision, a Significant Industrial User (or any Industrial User which violates paragraphs (f)(2)(viii)(C), (D), or (H) of this section) is in significant noncompliance if its violation meets one or more of the following criteria:

- (A) Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);
- (B) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (C) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);
- (D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;
- (E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- (F) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (G) Failure to accurately report noncompliance;

SNC Guidance
EPA April 15, 1997



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

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SIGNIFICANT NONCOMPLIANCE

April 15, 1997

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The following discussion is intended to provide clarification on calculating and reporting Significant Noncompliance (SNC). Pretreatment Annual Reports and Inspections frequently request information regarding which calendar quarters Industrial Users (IUs) were found to be in SNC. Subsequent to the end of each calendar quarter each POTW must document SNC calculations for all criteria identified at 40 CFR Part 403.8(f)(2)(vii)(A-H). Of the eight SNC criteria that must be evaluated there are only two criteria that are evaluated based on a six month rolling window (chronic effluent violations and TRC violations). All other criteria are evaluated strictly on a calendar quarter. Refer to Table 1 for time frames to be evaluated for each calendar quarter.

Table 1 - SNC Time Frames

SNC Quarter	Chronic Effluent and TRC Violations 40CFR §403.8(f)(2)(vii)(A&B)	Reporting Requirements and Other Criteria 40 CFR §403.8(f)(2)(vii)(C-H)
1st Quarter	October-March	January-March
2nd Quarter	January-June	April-June
3rd Quarter	April-September	July-September
4th Quarter	July-December	October-December

SNC for Reporting Violations and Other Criteria at 40 CFR §403.8(f)(2)(vii)(C-H)

SNC for reporting violations and other criteria at 40 CFR §403.8(f)(2)(vii)(C-H) are evaluated for each calendar quarter. The quarter in which the facility is in SNC is the quarter in which the report was due or that the incident occurred.

SNC for Effluent Violations 40 CFR §403.8(f)(2)(vii)(A&B)

Due to the rolling six month window, SNC calculations for effluent violations could show a facility in SNC for two quarters for the same violation data. It is EPA Region VIII's position that a facility should not be placed in SNC for two quarters for the same effluent violation data. Refer to the following example for clarification.



Example SNC Calculation for Effluent Violations:

Assume a facility has a daily maximum chromium limit of 2.0 mg/l. The following is a compilation of effluent data for the facility.

SAMPLE DATED	RESULT (MG/L)	PERMIT LIMIT (MG/L)	TECHNICAL REVIEW CRITERIA (TRC) LIMIT (2.0 MG/L X 1.2)	VIOLATION OF LIMIT	VIOLATION OF TRC
7/5/96	1.2	2.0	2.4	N	N
8/6/96	2.2	2.0	2.4	Y	N
9/5/96	1.5	2.0	2.4	N	N
10/9/96	3.3	2.0	2.4	Y	Y
11/7/96	2.7	2.0	2.4	Y	Y
12/7/96	2.2	2.0	2.4	Y	N
1/5/97	1.6	2.0	2.4	N	N
2/7/97	1.4	2.0	2.4	N	N
3/5/97	1.4	2.0	2.4	N	N

4th Quarter 1996 SNC Calculations

Chronic Effluent Violations

Chronic effluent violations are defined at 40 CFR Part 403.8(f)(2)(vii)(A) as those violations in which 66 % or more of all measurements taken during a six month window exceed the daily maximum or the average limit for the same pollutant parameter.

From Table 1 we know we have to look at all measurements between July 1, 1996 and December 31, 1996. Four out of six measurements exceed the permit limit of 2.0 mg/l $[(4 \div 6) \times 100 = 66\%]$. The facility is in SNC during the 4th quarter of 1996 for chronic effluent violations.

Technical Review Criteria Violations



Technical Review Criteria (TRC) violations are defined at 40 CFR Part 403.8(f)(2)(vii)(B) as violations in which 33% or more of all measurements taken during a six month window exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for BOD,TSS,fats,oil,and grease, and 1.2 for all other pollutants except pH).

From Table 1 we know we have to look at all measurements between July 1, 1996 and December 31, 1996. Two out of six measurements exceed the TRC limit of 2.4 mg/l $[(2 \div 6) \times 100 = 33\%]$. The facility is in SNC during the 4th quarter of 1996 for TRC effluent violations.

1st Quarter 1997 SNC Calculations

Chronic Effluent Violations

From Table 1 we know we have to look at all measurements between October 1, 1996 and March 31, 1997. Three out of six measurements exceed the permit limit of 2.0 mg/l $[(3 \div 6) \times 100 = 50\%]$. The facility is not SNC during the 4th quarter of 1996 for chronic effluent violations.

Technical Review Criteria Violations

From Table 1 we know we have to look at all measurements between October 1, 1996 and March 31, 1997. Two out of six measurements exceed the TRC limit of 2.4 mg/l $[(2 \div 6) \times 100 = 33\%]$. The data indicates the facility is in SNC during the 4th quarter of 1996 for TRC effluent violations. However, since the facility was already in SNC for the same violations as shown in the fourth quarter 1996 calculations the facility will not be considered as SNC for the 1st quarter of 1997. Provided the facility was published as SNC for the fourth quarter of 1996, the facility does not need to be published again for first quarter 1997. Had there been one or more violations in the first quarter of 1997 the facility would have been considered as SNC for the fourth quarter of 1996 and the first quarter of 1997 regardless of the magnitude of the first quarter violation(s).

Had the facility not been in SNC for the fourth quarter of 1996 but was determined to be in SNC the 1st quarter of 1997, regardless of whether or not there were violations in the January - March time frame, the facility would be considered SNC for the 1st quarter of 1997. This scenario tends to occur when there are variable monitoring frequencies from one quarter to another.





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

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OFFICE OF
WATER

MEMORANDUM

SUBJECT: Application and Use of the Regulatory Definition of Significant Noncompliance for Industrial Users

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

TO: Water Management Division Directors, Regions I-X
Approved Pretreatment State Coordinators

Background:

On July 24, 1990, the Agency replaced the definition of "significant violation" with the definition of "significant noncompliance" (SNC) (see 40 CFR 403.8(f)(2)(vii) and 55 Fed. Reg. 30082). This change eliminated the inconsistencies which arose in applying the significant violation criteria and established more parity in tracking violations committed by industrial users. The definition of SNC parallels the Pretreatment Compliance Monitoring and Enforcement Guidance (PCME) definition of SNC published in 1986.

This memorandum responds to several questions from States, publicly owned treatment works (POTWs), and industry regarding the application of the SNC definition. One frequently asked question is whether the time frame for determining SNC for technical review criteria effluent violations is a static six month period (i.e., a fixed six month calendar interval) or a rolling six month time frame (i.e., the current day minus six months). POTWs and industry have also inquired whether all data must be used to calculate SNC. The following discussion is provided to promote consistency in the application of this definition. Regions, States and POTWs should determine SNC in the manner prescribed below.

Pretreatment POTWs are required to notify the public of significant industrial users which meet the definition of SNC through publication in the newspaper. The POTW should also use the SNC criteria as the basis for reporting an industrial user's compliance status to the Approval Authority in its Pretreatment Performance Report. According to 40 CFR 403.12(i)(2), the POTW must report on the compliance status of its industrial user universe at the frequency specified by the State or EPA National Pollution Discharge Elimination System (NPDES) permit, but in no case less than once per year. Finally, the definition of SNC is used to determine whether a formal enforcement action against a user is warranted in accordance with the POTW's Enforcement Response Plan (ERP).

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Applying the Definition: Use of the Six Month Time Frame:

There are seven criteria set forth in §403.3(f)(2)(vii). Two of these criteria concern violations evaluated over a six month time frame. The Agency intends for Control Authorities to evaluate these criteria on a rolling basis. The EPA's long established practice in the NPDES program is to evaluate SNC for direct dischargers each quarter using data from the previous six months. Similarly, Control Authorities should determine SNC for their universe of industrial users on the same rolling quarters basis using fixed quarters established by the Control Authority to correspond to its "pretreatment year" (e.g., March 31, June 30, September 30 and December 31).

At the end of each quarter, POTWs and States are to evaluate their industrial user's compliance status using the two criteria of the SNC definition which are evaluated on a six month time frame (i.e., the "A" and "B" criteria under the regulatory definition). Under this system, each industrial user is evaluated for SNC four times during the year, and the total evaluation period covers 15 months (i.e., beginning with the last quarter of the previous pretreatment year through the end of the current year). When the POTW is required to publish, it must list in the newspaper all industrial users which have been identified as SNC during the previous year (i.e., the SNC criteria were met during any of the previous four quarters).

If a facility has been determined to be in SNC based solely on violations which occurred in the first quarter of the 15 month evaluation period (i.e., the last quarter of the previous pretreatment year) and the facility has demonstrated consistent compliance in the subsequent four quarters, then the POTW is not required to republish the Industrial User (IU) in the newspaper if the IU was published in the previous year for the same violations.

Use of Industrial User and POTW Data in Determining SNC:

Several POTWs have inquired whether all data, including Control Authority sampling and industrial user self-monitoring, must be used in determining SNC. This question arises from the concern that an industrial user may choose to conduct its sampling efforts at times in which it knows that it is in compliance (e.g., during early morning start-up or during periods in which the industrial process is down). The concern is that use of these unrepresentative data will allow the industry to craft its compliance status such that it will never be in SNC.

The regulation defining SNC clearly requires that all measurements taken in the appropriate six month period must be used to determine a facility's SNC status. Therefore, any and all samples obtained through appropriate sampling techniques which have been analyzed in accordance with the procedures established in 40 CFR Part 136 must be used to determine whether the facility is in SNC.

The General Pretreatment Regulations further state that periodic compliance reports must be based on data obtained through appropriate sampling and analysis, and the data must be representative of conditions occurring during the reporting period [403.3(f)(1)(iv)]

and 403.12(g)(3)). The Control Authority must require that frequency and scope of industrial user self-monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

The nature and scope of the sampling undertaken by an industrial user is under the control of the Control Authority through the issuance of an industrial user permit. These permits should specify the sampling locations and sample collection method necessary to ensure that representative samples are obtained for all regulated waste streams. By requiring industrial users to obtain representative samples, the Control Authority will ensure that industrial users do not evade noncompliance through selective sampling of their industrial processes.

Conclusion:

The Control Authority is required to screen all compliance data, whether generated through industrial user self-monitoring or by the Control Authority, to identify any violations of pretreatment requirements. Whenever there is a violation, the Control Authority must take appropriate enforcement action, as defined in its ERP. After this initial enforcement response, the Control Authority should closely track the industrial user's progress toward compliance by increasing the frequency of user self-monitoring, increasing the POTW's monitoring, or both.

When follow-up activity indicates that the violations persist or that satisfactory progress toward compliance is not being made, the Control Authority is required to escalate its enforcement response in accordance with the procedures established in its ERP. At a minimum EPA expects POTWs to address SNC with an enforceable order that requires a return to compliance by a specific deadline. When this enforceable order involves a compliance schedule, the industrial user remains in SNC during the period of the schedule (unless the facility returns to compliance prior to the end of the schedule). For example, if the duration of the schedule is two years, the facility should be published in both years. Of course, the POTW should explain in its publication that the violations have been addressed with a formal enforcement action (similar to a "resolved pending" listing on the Quarterly Noncompliance Report).

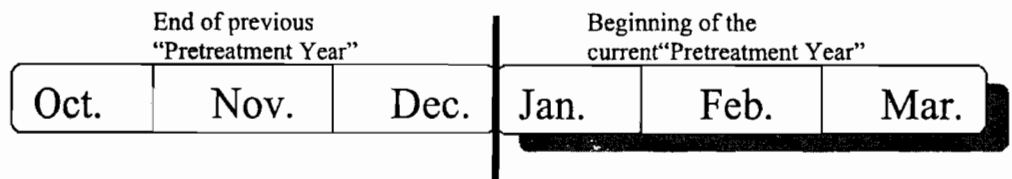
The definition of SNC provides a benchmark against which the compliance status of an industrial user and the enforcement activities of POTWs can be measured. The concept of significant noncompliance plays a pivotal role in the implementation and enforcement of the National Pretreatment Program. In order for the definition to succeed, it is critical that each Control Authority apply it on a consistent basis. If you have any further questions on this issue, please feel free to call me at (202) 260-5850. The staff person familiar with these issues is Leo Okster at (202) 260-8329.

cc: Cynthia Dougherty
Regional Water Compliance Branch Chiefs
Regional Pretreatment Coordinators
Lead Regional Pretreatment Attorneys

Determination of Industrial User (IU) Significant Noncompliance (SNC)

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.B(f)(2)(vii) (A) and (B) as illustrated below. The example below assumes a "Pretreatment Year" equal to the calendar year.

FIRST EVALUATION PERIOD



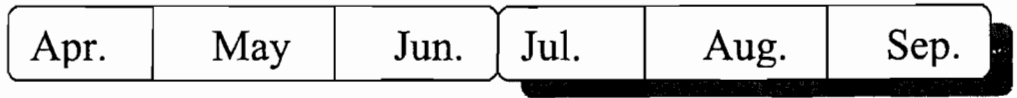
3. At the end of the first quarter (March 31st in our example), the POTW must evaluate the data from an industrial user for the previous six months (i.e., beginning with October 1 of the previous "Pretreatment Year" as in our example). Likewise, the POTW must evaluate six months of data at the end of each subsequent quarter (i.e., June 30th, September 30th, and December 31st).

SECOND EVALUATION PERIOD



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."

THIRD EVALUATION PERIOD



FOURTH EVALUATION PERIOD

