
APPENDIX I

EPA'S MEMORANDUM ON DEFICIENCY NOTICE GUIDANCE



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MEMORANDUM

OFFICE OF ENFORCEMENT

SUBJECT: "Deficiency Notice" Implementation to Improve Quality Assurance in NPDES Permittee Self-Monitoring Activities

FROM: Director, Enforcement Division (EN-338)

TO: Enforcement Division Directors, Regions I - X
Surveillance and Analysis Division Directors, Regions I - X
Director, National Enforcement Investigations Center, Denver

The Enforcement Divisions and the Surveillance and Analysis Divisions in several Regions have developed a form, called a Deficiency Notice, which their inspectors issue at the end of compliance inspections. This Deficiency Notice alerts NPDES permittees to problems in their routine self-monitoring activities. On June 11, 1979, the Office of Water Enforcement proposed that all the Regional offices adopt this form along with the Guidance for its use, and asked for your comments on this proposal. The Deficiency Notice and Guidance, which are attached, reflect your comments.

We have ordered the Deficiency Notice Forms, which will be printed on no-carbon-required paper and will be color coded in pads to correlate with the NPDES Compliance Inspection Form (EPA 3560-3). You may reproduce the attached form for use until you receive these forms.

The Deficiency Notice was designed so that State NPDES programs might easily use it. However, EPA cannot now sanction its use by the States since the Office of Management and Budget (OMB) has not authorized the form for non-Federal use. We will attempt to get OMB approval.

Since the Deficiency Notice provides a swift and simple mechanism for responding to deficiencies in self-monitoring data, I believe that its use will substantially improve the performance of wastewater treatment facilities without creating additional resource burdens or enforcement problems. If you have any questions about the Deficiency Notice or its use, please do not hesitate to call Gary Polvi of my staff at 755-0994.

J. Brian Molloy

Attachments

DEFICIENCY NOTICE GUIDANCE

Purpose

The purpose for using the Deficiency Notice is to provide a swift and simple method for improving the quality of data from NPDES self-monitoring activities. Since an inspector may issue a Deficiency Notice during any NPDES compliance inspection to alert the permittee to either existing or potential problems in self-monitoring, its receipt prompts the permittee to quickly take corrective action, as close as possible to the time the inspector perceives the problem.

Scope

The Deficiency Notice is a tool for use in conjunction with any type of EPA NPDES compliance inspection (i.e., compliance evaluation, sampling, performance audit, biomonitoring, etc.), during which the inspector identifies problems with self-monitoring that warrant response.

The Deficiency Notice and Guidance were designed so that State NPDES compliance monitoring programs could also easily use them. (Note the use of the term "regulatory authority" throughout this guidance.) However, EPA cannot yet sanction the States' use of this form because the Office of Management and Budget (OMB) has not yet approved the form for non-Federal use.

Use of the Deficiency Notice does not apply to a wide range of possible permit violations. It is to be used by the inspector to alert permittees to deficiencies in their self-monitoring activities only. The enforcement office of the regulatory authority (i.e., the EPA Regional Enforcement Division or its State counterpart), not the inspector, will continue to handle violations relative to compliance schedules or effluent limitations.

Form Description

The Deficiency Notice (see attachment) is one page long and is for use in conjunction with the standard EPA Compliance Inspection Form (EPA 3560-3 September, 1977). The reverse side of the Notice contains general instructions to inspectors for completing the form. The regulatory authority using the form may add other specific instructions that do not conflict with this guidance.

The form has four sections: (1) basic facility data, (2) deficiencies, (3) comments, and (4) inspector identification. These sections contain individual spaces where the inspector during an inspection can log deficiencies in the following self-monitoring activities: (1) monitoring location, (2) flow measurement, (3) sample collection/holding time, (4) sample preservation, (5) test procedures, (6) record keeping, (7) other self-monitoring deficiencies (i.e., sampling frequency, instrument calibration, etc.). Since the existing Compliance Inspection Form (which inspectors now complete) includes questions and answers relating to the above seven activities, inspectors should not need much additional time to complete this Deficiency Notice.

Administrative Procedures

With few exceptions (see March 7, 1977 EMS Guide), the handling and tracking of Deficiency Notices will follow the normal EPA Enforcement Management System (EMS) procedures. Inspectors can issue the Deficiency Notice to a permittee immediately following a compliance inspection if they discover any permit deficiencies which the Notice includes. Under unusual circumstances inspectors may delay issuing a Deficiency Notice until after conferring with other officials of the regulatory authority.

EMS requires the offices responsible for inspections and for NPDES enforcement to jointly establish a policy delineating the procedure for the permittee to appropriately respond to the Deficiency Notice. In the EPA Regions, the Directors of the Enforcement Division and the Surveillance and Analysis (S&A) Division will develop this policy. If the offices agree to allow the permittee to submit a separate written response rather than to include the response as part of a regular Discharge Monitoring Report (DMR) submission, they will require the inspector to record the necessary mailing instructions and deadline for response under the additional comment section of the Deficiency Notice. The inspector indicates the appropriate method for the permittee's response in the "requested action" section of the Deficiency Notice. Due to the nature of most self-monitoring problems it is reasonable for the regulatory authority to ask that the permittee submit a written description of any corrective actions within 15 work days after receiving the Notice. Where the permittee is asked to respond as part of a regular DMR submission, a similar reporting time allowance should be allotted. In either response option, the inspector should always indicate in the Deficiency Notice the requested date for permittee response.

Having the permittee document Deficiency Notice corrective actions as part of a regular DMR submission establishes accountability for the compliance inspection in the official NPDES permit compliance file even before a compliance review is undertaken. This is a resource efficient method of documenting the minimum benefit from performing inspections.

The issuance of a Deficiency Notice is not a formal enforcement action. It is not intended and must not be construed as an administrative or legal order to the permittee. Therefore, the action by the permittee to respond is voluntary, but incentive for such response comes from the positive consideration it may have on further formal enforcement follow-up of the inspection.

When the regulatory authority receives the permittee's response to the Deficiency Notice, they will review the inspection data and the permittee's response according to EMS procedures. If during routine reviews of inspection data, the authorities note deficiencies in self-monitoring data and note that the inspector did not issue a Deficiency Notice, they may issue one at any time.

The responsibility for all enforcement activity shall always remain in the enforcement/compliance review office of the regulatory authority. After agreement between the Directors of the Regional Enforcement Division and the S&A Division, these offices should incorporate details for insuring which office retains which responsibility into the Regional EMS. Whether or not a Deficiency Notice has been issued, the enforcement office of the regulatory authority can take administrative or legal action at any time. Also, a Deficiency Notice may not be appropriate in those cases where additional enforcement action is expected or litigation against the permittee is already underway.

EPA Deficiency Notice Form

<p align="center">DEFICIENCY NOTICE</p> <p align="center">NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)</p> <p align="center"><i>(Read instructions on back of last part before completing)</i></p>		<p>PERMITTEE (<i>Facility</i>) NAME AND ADDRESS</p>	
<p>PERMITTEE REPRESENTATIVE (<i>Receiving this Notice</i>)/Title</p>		<p>NPDES PERMIT NO.</p>	
<p>During the compliance inspection carried out on (<i>Date</i>) _____ the deficiencies noted below were found. Additional areas of deficiency may be brought to your attention following a complete review of the Inspection Report and other information on file with the REGULATORY AUTHORITY administering your NPDES PERMIT.</p>			
DEFICIENCIES			
<p>MONITORING LOCATION (<i>Describe</i>)</p>			
<p>FLOW MEASUREMENT (<i>Describe</i>)</p>			
<p>SAMPLE COLLECTION / HOLDING TIME (<i>Describe</i>)</p>			
<p>SAMPLE PRESERVATION (<i>Describe</i>)</p>			
<p>TEST PROCEDURES SECTION 304(h). 40 CFR 136 (<i>Describe</i>)</p>			
<p>RECORD KEEPING (<i>Describe</i>)</p>			
<p>OTHER SELF-MONITORING DEFICIENCIES (<i>Describe</i>)</p>			
<p>ADDITIONAL COMMENTS</p>			
<p>REQUESTED ACTION—Your attention to the correction of the deficiencies noted above is requested. Receipt of a description of the corrective actions taken will be considered in the determination of the need for further Administrative or Legal Action. Your response is to be (Inspector line out inappropriate response method): (1) include with your next NPDES Discharge Monitoring Report (DMR) or (2) submitted as directed by the inspector. Questions regarding possible follow-up action can be answered by the REGULATORY AUTHORITY to which your DMRs are submitted and which administers your NPDES Permit.</p>			
INSPECTOR'S SIGNATURE	INSPECTOR'S ADDRESS/PHONE NO.	REGULATORY AUTHORITY/ADDRESS	DATE
INSPECTOR'S PRINTED NAME			