



Office of Inspector General

Audit Report

Water

Region 10's National Pollutant Discharge Elimination System Permit Program

E1HWF7-10-0012-8100076

March 13, 1998

Lake Coeur d'Alene, Idaho

**Inspector General Division
Conducting the Audit**

Region covered

Program Office Involved

Cover Photograph

**Western Audit Division
Seattle Branch Office**

Region 10

Office of Water

Lake Coeur d'Alene, Idaho

March 13, 1998

MEMORANDUM

SUBJECT: Region 10's National Pollutant Discharge Elimination System Permit Program
Audit Report No. E1HWF7-10-0012-8100076

FROM: Truman R. Beeler
Divisional Inspector General for Audits
Western Audit Division

TO: Chuck Clarke
Regional Administrator
EPA Region 10

Attached is our final report titled Region 10's National Pollutant Discharge Elimination System Permit Program. The purpose of this audit was to determine whether the Region effectively regulated point sources discharging pollutants into the waters of the United States.

This audit report contains findings that describe problems the Office of Inspector General has identified and corrective actions the OIG recommends. This audit report represents the opinion of the OIG and the findings contained in this audit report do not necessarily represent the final EPA position. Final determinations on matters in this audit report will be made by EPA managers in accordance with established EPA audit resolution procedures.

In accordance with EPA Order 2750, we have designated the Regional Administrator as the Action Official for this report. The Action Official is required to provide our office with a written response to the audit report within 90 days of the report date. The response should address all recommendations. For corrective actions planned but not completed by the response date, reference to specific milestone dates will assist us in deciding whether to close this report. We have no objection to the release of this report to the public.

We appreciate the cooperation from your staff during this review. Should you or your staff have any questions about this report, please call Truman Beeler, Western Divisional

Inspector General for Audit, at (415) 744-2445, or Janet Tursich of our Seattle Office at (206) 553-2998.

Attachment

Distribution: Appendix D

EXECUTIVE SUMMARY

PURPOSE

The purpose of the audit was to determine whether Region 10 (the Region) effectively regulated point sources discharging pollutants into the waters of the United States. The Federal Water Pollution Control Act of 1972 initiated a broad Federal effort to restore and maintain the Nation's waterways, including the creation of a permit program to regulate and reduce point source pollution. The Region is responsible for operating the National Pollution Discharge Elimination System (NPDES) Permit Program in nondelegated States and for Federal and Tribal dischargers in delegated States. The audit focused principally on dischargers in the nondelegated States of Alaska and Idaho.

The objectives were to determine whether the Region:

- Issued required NPDES permits for all municipal and industrial dischargers.
- Regulated dischargers to comply with permit conditions through effective compliance monitoring activities.
- Took appropriate and timely enforcement actions against permittees in Significant Noncompliance (SNC) in the States of Alaska and Idaho, and Federal facilities in the State of Washington.
- Maintained a management reporting system that was current and complete for dischargers in the States of Alaska and Idaho.

RESULTS IN BRIEF

The Region could make improvements in several areas of its NPDES Permit Program to more effectively regulate and reduce point source water pollution. It needs to improve: (i) the process for issuing and renewing permits; (ii) compliance monitoring of dischargers; (iii) enforcement of compliance for dischargers that violated permit conditions; and (iv) reporting on new permit limits and conditions. Our findings are summarized below and discussed in detail in CHAPTERS 2 through 5 of this report.

Permits Not Issued or Renewed

The Region did not issue or renew most of the required NPDES permits for municipal and industrial dischargers in the States of Alaska and Idaho. While it issued 33 permits in the past 2½ years, there were 1,000 applications from dischargers waiting to be processed. Seventy percent of these applications were received over 4 years ago. Dischargers without permits were not subject to regulation. Dischargers operating under administratively extended permits that were written prior to the Water Quality Act of 1987 were not subject to these more stringent requirements. Regional information for three watersheds in the States of Alaska and Idaho identified dischargers without current permits that were contributing to water quality problems. We attribute the large backlog of applications principally to a Regional decision, made with EPA Headquarters, Office of Water's knowledge, to focus management attention and resources on a few selected permits and watershed permitting.

Also, for fiscal 1997, the Regional Administrator (RA) did not report the significant permit backlog in the annual Federal Manager's Financial Integrity Act (FMFIA) assurance letter to the EPA Administrator. In our opinion, the backlog should be reported as a deficiency because it is adversely affecting the Region's ability to meet the Office of Water's program goals, and is resulting in large numbers of dischargers in the States of Alaska and Idaho violating the Clean Water Act (CWA).

To address the permit backlog, the Region issued a Comprehensive Plan (the Plan) in April 1997 that sets out a 3-year plan (fiscals 1997-1999) "that prioritizes the permits, implements innovative policies, relies on partnerships, and lays the foundation for issuing permits for the period after completion of this plan (year 2000 +)." While the Plan is a positive step toward addressing the problem, the Region acknowledges that the Plan will not substantially reduce the backlog by fiscal 1999 and "with current resources, will result in NPDES Permit Unit (NPU) addressing only 6% of the total universe of permits and 39 % of all major facilities in Idaho and Alaska." Also, our review disclosed that during the first year (fiscal 1997) several tasks critical to the success of the Plan had not been performed.

Compliance Monitoring Could Be Improved

The Region could improve its compliance monitoring to help ensure that dischargers comply with permit conditions and NPDES regulations:

Compliance Inspections. The Region did not perform some of the NPDES compliance inspections of major dischargers that it committed to in its Memorandum of Agreement (MOA) with EPA Headquarters. Without compliance inspections, there is an increased opportunity for permit violations to go undetected. In addition, many inspection reports were not timely and actions were not taken on reported problems. As a result, instances of noncompliance were not corrected or not corrected timely.

Citizen Complaints. The Region did not have adequate procedures to track citizen complaints, document actions taken on such complaints, and notify citizens of actions taken. Actions were not taken on some complaints related to permit and other NPDES violations which appeared to warrant followup, resulting in potential adverse environmental impact.

Some Dischargers Not Adequately Regulated. The Region did not have procedures to ensure that dischargers under storm water and seafood general permits, and minor dischargers were in compliance with permit conditions. Some dischargers violated permit conditions and NPDES regulations, and adversely affected water quality.

Enforcement Against Significant Violators Can Be Improved

The Region did not respond in an appropriate or timely manner to violations by dischargers that were in SNC with NPDES permit conditions. The Region did not take formal enforcement action as required against 19 of the 25 dischargers in SNC for 1 or more quarters during the period October 1994 through December 1996. In addition, we reviewed files for all 10 dischargers that were in SNC for 2 or more consecutive quarters and concluded that the Region did not have written justification for not taking formal enforcement action against 9 dischargers. EPA's enforcement guidance requires that formal enforcement actions be taken against dischargers in SNC. At a minimum, the guidance requires a written justification in those rare instances when formal enforcement action is not taken. These conditions occurred because the Region did not have effective management controls to ensure that either appropriate and timely enforcement actions were taken or that decisions to take no action were justified and documented. Failure to take appropriate enforcement action against violators weakens the effectiveness of the NPDES Program to protect public health and the environment.

The Region took formal enforcement action consistent with EPA guidance against 6 of the 25 dischargers in SNC during the period of our audit. However, actions against three of the dischargers did not meet EPA's timeliness guidelines of 2 months after identifying the violation. For the three dischargers, formal enforcement action was not taken for 5 to 8 months after the violations became known to the Region. More timely enforcement action could lead to quicker return to compliance with permit requirements.

Management Reporting System Could Be More Current and Complete

The Region's management reporting system for NPDES permit information is the Permit Compliance System (PCS). The PCS was generally current and complete, except for new or renewed permits. The Region did not input some permit effluent limits and reporting requirements into the PCS timely and completely for dischargers receiving new or renewed permits. For four major dischargers, permit effluent limits were not input for an average of 4 months after the permits were issued. Also, for six of the eight new permits, reporting requirements were not input to PCS. Without current and complete permit information in PCS, Quarterly Noncompliance Reports (QNCRs) generated from the PCS were not an effective tool

for identifying violations for dischargers with new or renewed permits. The PCS was not updated timely for new or renewed permits because the Region had not given high enough priority to this effort.

RECOMMENDATIONS

Specific recommendations follow the findings in CHAPTERS 2 through 5. Overall, we recommend that the Regional Administrator strengthen the NPDES Permit Program by:

1. Reporting the permit backlog as a deficiency in the annual assurance letter to the Administrator and fully implementing the NPU's Comprehensive Plan.
 2. Monitoring dischargers' compliance with permit conditions and NPDES regulations.
 3. Taking appropriate and timely enforcement actions for SNC dischargers.
 4. Updating the management reporting system to input priority data for new permits.
-

REGION COMMENTS AND OIG EVALUATION

A draft report was provided to the Region on November 25, 1997 for its comments. The Region responded to the draft report on January 23, 1998 and its response is included as APPENDIX C to this report. Except for recommendation 2-1, the Region concurred with the recommendations and described corrective actions that have been taken or will be taken.

The Region did not concur with recommendation 2-1 in Chapter 2 that the Region report the backlog of NPDES permit applications as a material weakness in the next annual FMFIA assurance letter to the EPA Administrator. The Region acknowledged the backlog and stated that a strategic plan has been developed and is being implemented to address the backlog.

We have changed the recommendation to state that the Region report the backlog of NPDES permit applications as a management control deficiency instead of a material weakness in the next annual FMFIA assurance letter to the Administrator for EPA's Integrity Act Report. We believe that the large backlog of permit applications is an indicator that the NPDES Permit Program is not achieving its intended results and should be reported as a management control deficiency. While the strategic plan is a positive step toward correcting the problem, the Region acknowledged that the Plan will not substantially reduce the backlog by fiscal 1999.

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CHAPTER 1

INTRODUCTION

PURPOSE

The purpose of the audit was to determine whether the Region effectively regulated point sources discharging pollutants into the water of the United States. The audit focused primarily on those dischargers in the nondelegated States of Alaska and Idaho.

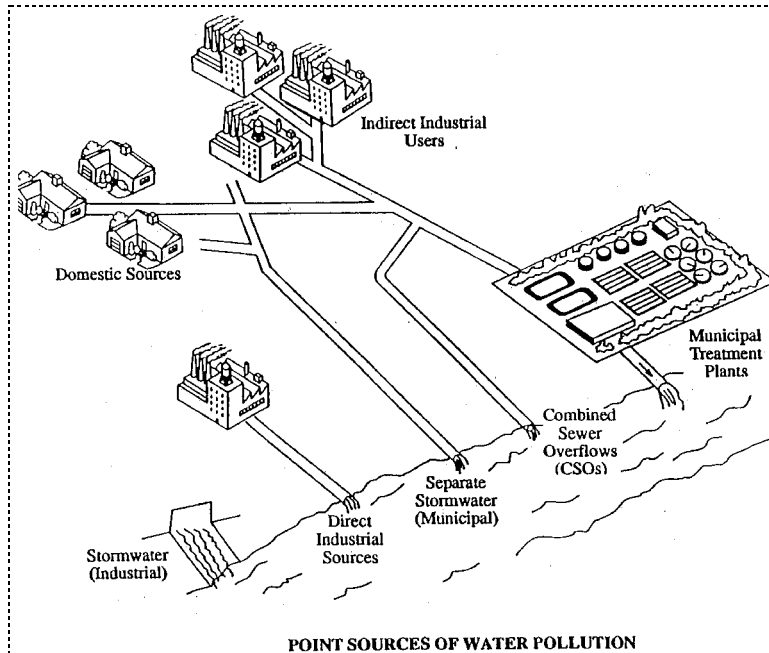
The specific objectives were to determine whether the Region:

- Issued required NPDES permits for all municipal and industrial dischargers.
- Regulated dischargers to comply with permit conditions through effective compliance monitoring activities.
- Took appropriate and timely enforcement actions against permittees in SNC in the States of Alaska and Idaho, and Federal facilities in the State of Washington.
- Maintained a management reporting system that was current and complete for dischargers in the States of Alaska and Idaho.

BACKGROUND

The Federal Water Pollution Control Act of 1972 initiated a broad Federal effort to restore and maintain the Nation's waterways, including the creation of a permit program to regulate and reduce point source pollution. (See graphic on the next page for types of point source dischargers.) Congress reauthorized and renamed the Act in 1977 to the Clean Water Act and amended it in 1987.

The NPDES Permit Program provides the first major Federal direct enforcement authority against polluters. It is illegal for point sources to discharge pollutants into the nation's navigable waters without a permit. The purpose of the permit is to control and eliminate water pollution, and to focus on the pollutants determined to be harmful to receiving waters and on the sources of such pollutants.



A point source is defined at 40 CFR 122.2 as “any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.”

Compliance Monitoring and Enforcement

Section 309 of the CWA authorizes EPA to bring civil or criminal actions against those who violate their NPDES permit conditions. EPA promotes a systematic approach to compliance monitoring and enforcement with the objective of achieving consistent national implementation of the NPDES Permit Program established by the CWA. EPA uses the Enforcement Management System (EMS) as a framework for the management of the enforcement program. The EMS constitutes a system for collecting, evaluating, and translating compliance information into timely and appropriate enforcement actions.

Management Reporting

Reporting requirements for the NPDES were implemented in August 1985 with the publication of 40 CFR 123. The reporting requirements included the QNCR as the tracking mechanism for major facilities that violate their permit limits, schedules, reporting requirements, or formal enforcement actions.

In October 1985, the PCS Policy Statement established the PCS as the data base for NPDES reporting. The PCS was established to provide an overall inventory for the NPDES Permit Program. The data gathered in the PCS is to be used to: (i) respond to Congress and the public; (ii) encourage a proper EPA/State oversight role by identifying major permit violators; and (iii) serve as an operational and management tool for tracking permit issuance, compliance, and enforcement actions. Beginning in fiscal 1990, QNCRs were generated by the PCS.

Water Quality Standards Required

Congress amended the CWA with the Water Quality Act of 1987. The amendments outlined a strategy to accomplish the goal of meeting water quality standards set by the States. EPA's guidance document states "A water quality standard consists of three elements: (i) the designated beneficial use or uses of a waterbody or segment of a waterbody; (ii) the water quality criteria necessary to protect the use or uses of that particular waterbody; and (iii) an antidegradation policy."

States are required to adopt additional controls (water quality based limitations) on point source discharges that are stricter than technology-based limits (minimum level of pollutant controls) where water quality standards are not met. Under the CWA, this is done through a waste load allocation calculated from a total maximum daily load (TMDL) of pollutants for a waterbody.

The Region's NPDES Responsibilities

The NPDES Permit Program in the Region is performed by the NPU and the NPDES Compliance Unit in the Office of Water. The two units oversee the delegated States' (Oregon and Washington) NPDES Permit Program. The two units have permitting and compliance responsibility for: (i) the nondelegated States of Alaska and Idaho; (ii) Federal facilities in the State of Washington; and (iii) Tribal lands in the States of Oregon and Washington.

The NPU is responsible for receiving and reviewing permit applications, drafting and issuing permits, renewing permits, tracking permit data in PCS, managing the municipal sludge and pretreatment programs, and reporting on program accomplishments to the Office of Water in EPA Headquarters.

The NPDES Compliance Unit is responsible for tracking permit conditions in PCS, monitoring discharger compliance, scheduling compliance inspections, enforcing compliance and reporting noncompliance, and reporting on program accomplishments to the

Office of Enforcement and Compliance Assurance in EPA
Headquarters.

**PRIOR AUDIT
COVERAGE**

There have been no audits performed on the Region's NPDES Permit Program. A special review was conducted and a report (No. E2AWP2-10-0002-2400024) was issued on March 12, 1992 regarding an improperly issued NPDES permit to a discharger in Alaska.

CHAPTER 2

PERMITS NOT ISSUED OR RENEWED

The Region did not issue or renew most of the required NPDES permits for municipal and industrial dischargers in the States of Alaska and Idaho. While it issued 33 permits in the past 2½ years, there were 1,000 applications from dischargers waiting to be processed. Seventy percent of these applications were received over 4 years ago. Dischargers without permits were not subject to regulation. Dischargers operating under administratively extended permits that were written prior to the Water Quality Act of 1987 were not subject to these more stringent requirements. Regional information for three watersheds in the States of Alaska and Idaho identified dischargers without current permits that were contributing to water quality problems. We attribute the large backlog of applications principally to a Regional decision, made with EPA Headquarters, Office of Water's knowledge, to focus management attention and resources on a few selected permits and watershed permitting.

To address the permit backlog, the Region issued a Comprehensive Plan in April 1997 that sets out a 3-year plan (fiscals 1997-1999) "that prioritizes the permits, implements innovative policies, relies on partnerships, and lays the foundation for issuing permits for the period after the completion of this plan (year 2000 +)." While the Plan is a positive step toward addressing the problem, the Region acknowledges that the Plan will not substantially reduce the backlog in the next 3 years and "with current resources, will result in NPU addressing only 6% of the total universe of permits and 39% of all major dischargers in Idaho and Alaska." Also, our review disclosed that during the first year (fiscal 1997) several tasks critical to the success had not been performed. Accordingly, we believe that the RA needs to: (i) report the permit issuance backlog as a deficiency in the next Federal Manager's Financial Integrity Act assurance letter to the Administrator; and (ii) aggressively monitor all tasks to help assure that the Region meets its targets for permit issuances through fiscal 1999.

BACKGROUND

The CWA established the NPDES Permit Program to regulate and reduce point source pollution. It is illegal for point sources to discharge pollutants into the nation's navigable waters without an NPDES permit. The purpose of the permit is to control and eliminate water pollution, and to focus on the pollutants determined to be harmful to receiving waters. Regulated pollutants are conventional pollutants, such as suspended solids; nonconventional pollutants, such as ammonia; and toxic pollutants, such as individual heavy metals and toxic organic compounds.

40 CFR Subpart B, Section 122.21 states any person who discharges or proposes to discharge pollutants ... shall submit a complete application:

- for a new discharge, at least 180 days before the date on which the discharge is to commence.
- for permittees with current effective permits, 180 days before the existing permit expires.

If the Region does not issue a permit to a new discharger before the discharge commences, the discharger is in violation of the CWA. Also, if a discharger does not submit an application prior to the expiration date of the existing permit, it is in violation of the CWA.

If a current discharger submits an application 180 days before its permit expires, the current permit is automatically "administratively" extended until the Region acts on the permit application. Administratively extended permits require the discharger to continue to meet its current permit effluent limits, monitoring and reporting requirements. However, if the permit was written prior to the Water Quality Act of 1987, the limits derived from additional or more stringent State water quality standards are not imposed.

Until recently, for purposes of prioritizing permit issuance and oversight, municipal and industrial dischargers were divided into "major" and "minor" sources. Major municipal dischargers were those which have a design or actual flow of one million gallons per day or greater, a service population of 10,000 or greater, or a significant impact on water quality. Industrial dischargers were classified as "majors" through a rating system which allocates points in various categories, such as flow, pollutant loadings,

potential public health impacts, and water quality factors. The watershed approach focuses the Region on all the dischargers in a designated watershed, regardless of the major or minor classification.

NPDES Watershed Approach

In a March 1996 memorandum, EPA Headquarters, Office of Water provided guidance on issuing permits focusing on the “watershed” approach. It describes a holistic approach where decisions about point source controls are based on an overall assessment of environmental priorities and concerns within a watershed. This is accomplished by developing a watershed management plan and issuing permits in accordance with the priorities and management strategies described in the plan. This strategy emphasizes permit development for both major and minor dischargers that pose a significant environmental threat to a basin. While major dischargers often remain high priorities for permit issuance, minor dischargers can take on increased importance.

The March 1996 memorandum also recognizes that there will be some initial backlog in issuing permits while setting up and implementing watershed plans and schedules. However, the guidance indicates that the permit backlog should be eliminated within a reasonable period of time.

Permit Complexity

Today’s permits are more complex than those in years past. In addition to technology-based limits (minimum level of pollutant controls) applicable to all sources, permits must address limits derived from additional or more stringent State water quality standards. These pollutant-specific standards are established pursuant to the CWA to achieve or maintain the beneficial uses of a particular waterway as determined by the State. Therefore, water quality based limitations are used when it has been determined that more stringent limits than technology based effluent limits must be applied to a discharge in order to protect “designated use” of the receiving waters.

SOME PERMITS ISSUED

The Region issued 33 permits to municipal and industrial dischargers for Alaska and Idaho during the period October 1994 through March 1997. We examined 18 of the 33 issued permits to determine if the permit conditions were appropriate. We concluded that for the permits reviewed, the Region developed permit conditions and issued permits in accordance with national

regulations (40 CFR Part 122), including States' water quality standards.

**PERMITS NOT ISSUED
OR RENEWED**

A large backlog of unprocessed permit applications had built up over the years and 70 percent were more than 4 years old. As of March 31, 1997, the age of these applications was as follows:

<u>Applications</u>	<u>Dates Received by the Region</u>	<u>Age</u>
25	October 1996 through March 1997	less than 6 months
126	October 1994 through September 1996	1 to 2 years
150	October 1992 through September 1994	3 to 4 years
<u>699</u>	Before October 1992	over 4 years
<u>1,000</u>		

As summarized below, the backlog included applications for:
 (i) applications received, no permit issued (i.e. new dischargers);
 (ii) dischargers with expired permits; and (iii) dischargers whose permits were administratively extended.

	<u>AK</u>	<u>ID</u>	<u>Total</u>
Applications received, no permit issued	287	170	457
Permits expired and not administratively extended	184	91	275
Permits administratively extended	<u>108</u>	<u>160</u>	<u>268</u>
TOTAL APPLICATIONS THAT NEED NEW OR REISSUED PERMITS	<u>579</u>	<u>421</u>	<u>1,000</u>

While EPA's latest guidance on issuing permits provides for less emphasis on major dischargers, majors generally have the greatest point source impact on water quality. For applications received since October 1992, we reviewed a judgment sample of 52 to obtain a perspective on the mix of major and minor dischargers. We found that 15 of 48, or 31 percent, of the valid applications were from major dischargers (4 of the sampled applications were for dischargers no longer in business as of March 31, 1997). Further, 3 of these 15 major dischargers were operating without a current permit in violation of the CWA and 12 had administratively extended permits that expired between 1989 and 1997.

**UNPERMITTED
DISCHARGERS
ADVERSELY AFFECT
WATER QUALITY**

To obtain a perspective on the environmental significance of not issuing or renewing permits, we reviewed Regional information on water pollution problems in six of the eight watersheds in the States of Alaska and Idaho. The Region prepared summaries for these watersheds that identified point source dischargers that caused water impairments. Regional information on three watersheds identified dischargers without current permits that were contributing to water quality problems.

Unalaska Bay, Alaska

The Unalaska Bay watershed has been designated as “impaired waters” by the Alaska Department of Environmental Conservation. The Bay has approximately 2 square miles that are heavily degraded, 12 square miles that are moderately degraded, and 25 square miles that are slightly degraded. The watershed summary identified 10 point source dischargers (5 majors and 5 minors) as pollution sources. All of these point source dischargers were required to have a permit. We determined that four minor dischargers were operating without permits. In addition, two dischargers (one major and one minor) were operating with administratively extended permits. The administratively extended permits were extended prior to the State’s current water quality standards being issued; and it is likely they do not address current effluent limits necessary to protect or improve this impaired watershed. Timely Regional action on permits for 6 of the 10 point source dischargers in this impaired watershed is necessary.

Boise River Watershed, Idaho

The watershed summary indicates that fisheries and riparian habitat are at risk along the entire length of the Boise River due to development pressures and flooding concerns. The summary reported that the River from the City of Boise downstream is more degraded and the severity of the problem is rated high. The major point source dischargers are: (i) wastewater treatment plants for the Cities of Boise, Nampa and Caldwell; (ii) Armour Meats, an industrial discharger; and (iii) the City of Boise’s storm water. Since the five administratively extended permits for these dischargers were issued prior to the Water Quality Act of 1987, it is likely they do not meet the State’s current water quality standards. Therefore, timely Regional action on these permits is necessary to protect or improve water quality.

**Coeur d’Alene Basin
Watershed, Idaho**

The South Fork Coeur d’Alene River is identified as the most contaminated river in the Region. The River is currently listed as “water quality limited” as a result of point and nonpoint source

loads of heavy metals. There are 9 major and 11 minor point source dischargers in the river drainage. Of the nine major permits, two were current, six were administratively extended, and one was expired. The discharger with the expired permit has been operating without a permit for 17 years. Since the six administratively extended permits were issued prior to the Water Quality Act of 1987, it is likely they do not meet the State's current water quality standards.



Mining Operation in the Coeur d'Alene Watershed

PRIOR METHODS WERE INSUFFICIENT

We concluded that the large backlog of applications developed primarily because the Region had not focused management attention and the necessary resources over the last several years to issue the required permits. The Region advised it did not issue more than 33 permits in the last 2 ½ years because it focused its resources on a few complex and controversial permits where dischargers challenged the permit conditions. These dischargers were primarily major permittees contributing to significant environmental problems. We are aware that the Region's focus on a few selected permits during a period of increasing unprocessed

applications was done with EPA Headquarters, Office of Water's knowledge.

While the Region's explanation is acknowledged, we noted that there were 26 employees working on permits for some period of time during the 2 ½ years but only 12 of them issued permits. A dramatic increase in permit writer productivity and/or innovative methods will be needed to reduce or eliminate the backlog.

REGIONAL ACTION TO ADDRESS THE PERMIT BACKLOG

To the Region's credit, it recently addressed the permit backlog problem as part of a comprehensive review of the activities of its NPU. As a result of this review, in April 1997 it issued a Comprehensive Plan (the Plan) for addressing the permit backlog during fiscal 1997 through 1999. The Plan identified the significant backlog of expired permits and new source applicants as illustrated by the following statement from the Plan:

NPU recognizes this significant workload and has responded with a three year plan that prioritizes the permits, implements innovative policies, relies on partnerships, and lays the foundation for issuing permits for the period after the completion of this plan (year 2000 +). Over the next three years we plan to issue permits for sources selected largely by their environmental significance and their location in high priority watersheds.

The plan sets an aggressive permit writing target for the next three years which, with current resources, will result in the NPU addressing only 6% of the total universe of permits and 39% of all major dischargers in Idaho and Alaska.

One positive aspect of the Plan, if implemented, is that it will result in current permits for the most environmentally significant dischargers. Also, the Region had issued two general permits (GPs) and expects to issue two more in the near future. GPs cover many dischargers who have applied individually for a permit. Therefore, one GP will eliminate many applications from the backlog. Also, the Region is currently working on the data base to identify dischargers that are no longer in business and need to be deleted from the data base. However, as reported by the NPU,

even if the Region completes all the tasks as identified in the Plan, it will not eliminate the backlog in the foreseeable future.

**Federal Manager's
Financial Integrity Act**

Since the significant permit backlog will not be eliminated in the foreseeable future, we believe that the FMFIA process requires that the RA report the backlog to the EPA Administrator as a deficiency in management controls. FMFIA requires the RA to annually make a systemic assessment of management controls in the Region that protect programs and resources from fraud, waste and mismanagement, and help control programs to achieve intended outcomes. After the assessment is made, the RA is required to provide personal assurance that management controls are reasonable to ensure the protection of programs, operations, and functions and to notify the Administrator of any deficiencies in management controls.

For fiscal 1997, the RA did not report the significant permit backlog in his assurance letter to the EPA Administrator. In our opinion, the backlog is adversely affecting the Region's ability to meet Office of Water program goals, and is resulting in large numbers of dischargers in the States of Alaska and Idaho violating the CWA. As such, it should have been reported to the EPA Administrator as a deficiency in management controls.

**Comprehensive Plan
Needs to be
Aggressively Monitored**

In order to make progress in permitting the most environmentally significant dischargers, the Region must complete key tasks in the Plan. Since the Plan covers a 3-year period beginning fiscal 1997, we evaluated the status of key tasks identified by the Region to be accomplished in fiscal 1997 related to its goal "To issue permits to facilities that have been strategically targeted for their environmental significance and their location in high priority watersheds." Based on this evaluation, the Region did accomplish some tasks, but did not accomplish other key tasks as of September 30, 1997 as described below.

TASK	DUE DATE AND STATUS
1. Identify permits for issuance and modification for the next 3 fiscal years.	Fiscal 1996. Completed.
2. Assign the workload to permit writers.	Fiscal 1997. Completed.
3. Permit writers develop individual schedules for permit development and issuance.	June 30, 1997 and update annually. Not done as of September 30, 1997.
4. Issue identified permits over the next 3 fiscal years in accordance with the schedule that is developed.	Not subject to evaluation since task 3 was not done.
5. Reevaluate the list of permits and new applications to be issued. Reevaluation is a continuous process, however, a formal reevaluation shall be done mid-fiscal year to determine if workload is still appropriate. Adjust workload and reassign permits accordingly.	June 30, 1997 and update annually. Not done.

The lack of timely completion of some key tasks raises serious questions whether the Region will achieve its desired results by the end of fiscal 1999. In our opinion, accomplishment of tasks 3, 4, and 5 listed in Objective 1 is critical to the Region's success of issuing permits for the most environmentally significant dischargers. By not performing these tasks in fiscal 1997, Regional management lacks the information necessary to assess progress toward meeting its goal, and to make necessary workload adjustments in the remaining years of the Plan.

Also, the Region has not completed tasks for Objective 3 which is to develop and utilize innovative strategies and improve processes in order to increase the Region's ability to issue NPDES permits. Task 1 provides that the "NPU will convene a team to evaluate alternative and innovative means of issuing NPDES permits (i.e. improving processes and approaches to getting the job done)." This task was to be completed with a report by June 30, 1997. As of September 30, 1997, the report had not been prepared. Another task under the Objective is to work with Office of Regional Counsel (ORC) to investigate and develop strategies to streamline the responses to legal challenges where possible. The NPU had a meeting with ORC and identified some problems and possible

solutions, but has not finalized any strategies. We believe that Regional management needs to monitor all tasks in the Plan associated with addressing the permit backlog.

RECOMMENDATIONS

We recommend that the Regional Administrator:

- 2-1. Report the backlog of NPDES permit applications as a deficiency in the next annual FMFIA assurance letter to the EPA Administrator.
- 2-2. Aggressively monitor Objective 1, tasks 3, 4, and 5 in the Plan to help assure issuance of permits to strategically targeted dischargers by September 30, 1999.
- 2-3. Monitor the accomplishment of all the tasks identified in the Plan relating to eliminating the permit backlog.

REGION COMMENTS

In its response to the draft report, the Region did not concur with recommendation 2-1 that the Region report the backlog of NPDES permit applications as a material weakness in the next annual FMFIA assurance letter to the EPA Administrator. The Region acknowledged the backlog and stated that a strategic plan has been developed and is being implemented to address the backlog. The Region concurred with recommendations 2-2 and 2-3.

OIG EVALUATION

We have changed the recommendation to state that the Region report the backlog of NPDES permit applications as a management control deficiency instead of a material weakness in the next annual FMFIA assurance letter to the Administrator for EPA's Integrity Act Report. We believe that the large backlog of permit applications is an indicator that the NPDES Permit Program is not achieving its intended results and should be reported as a management control deficiency to the Administrator. While the strategic plan is a positive step toward correcting the problem, the Region acknowledges that the Plan will not substantially reduce the backlog by fiscal 1999.

Agency guidance for preparing assurance letters to the Administrator states that “Offices should continuously review the effectiveness of their program strategies and guidance -- management controls -- in achieving program goals” It also states that “The AA/RA transmittal memo to the Administrator documents their personal assurance that their Offices’ management controls reasonably ensure the protection of program, operation, and functions under their control from waste, fraud, abuse, and mismanagement.” The memo discusses “the basis for the AA/RA’s assessment, and formally advises the Administrator of significant management control problems that impede achievement of major program goals”

OMB Circular No. A-123 “provides guidance to Federal managers on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on management controls. The Circular is issued under the authority of the Federal Managers’ Financial Integrity Act of 1982” It states that “Agency managers and employees should identify deficiencies in management controls Agency managers and staff should be encouraged to identify and report deficiencies, as this reflects positively on the agency’s commitment to recognizing and addressing management problems. Failing to report a known deficiency would reflect adversely on the agency.”

The Circular also states that “Management accountability is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs and mitigating adverse aspects of agency operations, and assuring that programs are managed with integrity and in compliance with applicable law.”

Our audit identified significant deficiencies related to NPDES permitting in the following areas which should be reported to the Administrator.

- Timeliness of program performance. The Region received 70 percent of the unprocessed applications more than 4 years ago. The strategic plan provided for addressing only 6 percent of the total universe of permits through fiscal 1999. While the plan indicates this will result in current permits for the most environmentally significant dischargers, it is silent on how the Region will address the rest of the

dischargers that need permits according to the Act. Further, as disclosed in our audit report, the Region has not met all important milestones in the Plan.

- Increasing productivity. In the last 2½ years, 12 permit writers issued only 33 permits (21 major, 10 minor, and 2 general). A significant increase in productivity will be needed to achieve a meaningful reduction in the backlog.
- Mitigating adverse affects. The Region did not effectively regulate dischargers and many contributed to water quality problems.
- Management of programs in compliance with applicable laws. There were 732 dischargers in violation of the law because the Region failed to issue or renew their permits. In addition, most of the 268 dischargers, whose permits were administratively extended, were not held to requirements of the Water Quality Act of 1987 because the permits were issued prior to the Act.

We believe that the backlog and related deficiencies described above impede achievement of major goals of the NPDES Permit Program and should be reported to the Administrator.

CHAPTER 3

COMPLIANCE MONITORING COULD BE IMPROVED

The Region could improve its compliance monitoring to help ensure that dischargers comply with permit conditions and NPDES regulations:

Compliance Inspections. The Region did not perform some of the NPDES compliance inspections of major dischargers that it committed to in its MOA with EPA Headquarters. Without compliance inspections, there is an increased opportunity for permit violations to go undetected. In addition, many inspection reports were not timely and actions were not taken on reported problems. As a result, instances of noncompliance were not corrected or not corrected timely.

Citizen Complaints. The Region did not have adequate procedures to track citizen complaints, document actions taken on such complaints, and notify citizens of actions taken. Actions were not taken on some complaints related to permit and other NPDES violations which appeared to warrant followup, resulting in potential adverse environmental impact.

Some Dischargers Not Adequately Regulated. The Region did not have procedures to ensure that dischargers under storm water and seafood general permits, and minor dischargers were in compliance with permit conditions. Some dischargers violated permit conditions and NPDES regulations, and adversely affected water quality.

The Region did perform successfully in some other areas of its compliance monitoring program. It met its pretreatment inspection and audit commitments in inspection years 1995 and 1996, and also met its NPDES compliance inspection commitment in 1996 for Idaho. The Region's targeting of NPDES inspections generally appeared to be consistent with EPA guidance, and the mix of NPDES inspection types provided adequate coverage. Also,

compliance inspections were generally performed in accordance with EPA's NPDES compliance inspection manual. In addition, the Region assured that the Whole Effluent Toxicity reports submitted by permittees were reviewed and corrective action was initiated, as necessary.

**COMPLIANCE
INSPECTION ACTIVITIES
COULD BE IMPROVED**

The Region could improve its compliance inspection activities to help assure discharger adherence to permit conditions. In inspection years 1995 and 1996 the Region did not perform some of the inspections of major dischargers that it committed to in its MOAs with EPA Headquarters. In addition, for those inspections performed, many reports were not completed timely and violations identified were not followed up by the Region.

Commitments Were Not Met

The Region did not meet its compliance inspection commitments in 1995 for major dischargers in Alaska and Idaho, and in 1996 for dischargers in Alaska:

Year/ State	Commitment (#)	Actual (#)	Fell Short By (%)
1995 Alaska	86	65	24%
1995 Idaho	65	56	14%
1996 Alaska	81	57	30%

Although the regulations (40 CFR 123.26) and national EPA guidance (NPDES Inspection Strategy) require all major dischargers to be inspected at least once a year, the Region committed to a lesser number with EPA Headquarters. The Region committed to inspect from 84 to 94 percent (depending on the State and the year) of the major dischargers (excluding placer mine dischargers, whom Headquarters granted the Region a waiver from inspecting due to their remote locations).

The Region stated it did not meet its commitments for compliance inspections of major dischargers in 1995 and 1996 because: (i) it used some of its available resources to perform inspections of minor

dischargers that were not planned; and (ii) some dischargers planned for inspection were no longer in business or the discharger was not operating (seasonal operations) when the inspections were planned.

Completion of fewer major discharger inspections than required and committed to means less: (i) independent verification of permittee compliance; (ii) development of enforcement information; (iii) improvement of permittee performance; (iv) improvement of data quality assurance; (v) support of permit development; and (vi) maintenance of a regulatory presence for these major dischargers. Considering the value of inspections, and considering that the regulations and guidance require annual inspections of all major dischargers, we believe that the Region should implement controls to assure that, at a minimum, MOA commitments for inspections are met.

Reports Were Not Timely

The reports of inspections were not provided to the Region's Compliance Unit timely. From the inspection reports submitted for inspection years 1995, 1996, and 1997, we sampled 22 to assess the timeliness of the reports. Nine inspection reports out of our sample of 22 were not submitted to the Region's Compliance Unit timely. For these nine reports, it took from 64 to 364 days from the inspection to the date the report was received by the Compliance Unit. The average for these nine reports was 123 days.

The NPDES Inspection Strategy states that sampling inspection reports should be forwarded to the Compliance Unit within 45 days of the inspection date. For nonsampling inspections, the report should be forwarded within 30 days.

When inspection reports are not submitted timely, the Region loses the opportunity to take timely enforcement or followup action on inspections that identify permit noncompliance. To illustrate, one inspection report in our sample that identified permit noncompliance was not forwarded to the Compliance Unit until a year after the inspection. Thus, there was a significant delay in the Unit's ability to initiate corrective action.

The reports were not timely because the inspectors were not aware of the specific criterion for report timeliness. The Region advised that its procedures would be modified to incorporate the timeliness guidelines for submitting inspection reports, and that these guidelines would be emphasized to the inspectors.

No Followup On Noncompliance

For the 7 of 22 inspections that were submitted to the Compliance Unit with identified permit noncompliance, the compliance files did not contain any evidence indicating that the inspection results were followed up by the Unit. Because compliance inspections are one of the primary mechanisms used by the Region to monitor discharger compliance, followup on results is important.

The lack of followup on inspection reports was due partly to Compliance Officers considering such followup a lower priority for their time. However, during June 1997, the Region implemented a procedure requiring Compliance Officers to transmit inspection reports to the discharger with a letter pointing out permit noncompliance issues reported by the inspector and directing the discharger to correct the problems or face enforcement action. In our opinion, this action, if routinely followed, will correct the problem of not following up on inspection report results.

CITIZEN COMPLAINTS NEED TO BE ADDRESSED

The Region's procedures for documenting and taking action on citizen complaints relating to potential permit and other NPDES violations needed improvement. While Compliance Officers sometimes took action on citizen complaints relating to such violations, we noted other instances where followup was not taken. Also, the Region did not always provide written responses to citizen complaints as required by the regulations.

A valuable source of information for identifying permit violators and unpermitted dischargers (NPDES violators) is citizen complaints. Headquarter's Enforcement Management System (EMS) Manual recognizes that reports and complaints from citizens are potential sources of information for use in an enforcement system. Regulations specify requirements for investigation and response. 40 CFR Part 123.26 states that there should be procedures for receiving and ensuring proper consideration of information submitted by the public about violations. 40 CFR Part 123.27 stipulates that EPA should investigate and provide written responses to all citizen complaints about NPDES violations.

We attribute the lack of followup on citizen complaints, in part, to the lack of a system to record the complaint and track its resolution. Accordingly, we believe that the Region needs to maintain a log or establish other procedures to ensure citizen complaints are documented and followup actions are taken and

tracked. Also, the Region needs to implement procedures to notify the complainants regarding actions taken.

Citizen Complaints Are A Good Source Of Information

There were instances where the Region investigated citizen complaints and effectively followed up with an enforcement action. One involved a construction company working on an Alaska Department of Transportation (DOT) project. There was a citizen complaint in October 1996 which alleged storm water violations on the project. After investigation, the Region issued an Administrative Penalty Complaint to the contractor and DOT.

Some Complaints Did Not Get Adequate Attention

However, we identified citizen complaints related to NPDES violations that were not followed up by the Region. The following two examples illustrate the Region's lack of adequate attention to some citizen complaints:

Coquille Indian Development

There was a citizen complaint about the Coquille Indian Development in Coos Bay, Oregon that was referred by the State to the Region in December 1995. The complaint stated that storm water runoff from the Development had caused a creek and lake to have turbidity problems and become very muddy. The complainant provided pictures to illustrate the problem. Based on our review, we concluded that no followup action had been taken by the Region on this complaint.

City of Tacoma

The Puyallup Indian Tribe complained to the Region in June 1996 about an unpermitted discharge by the City of Tacoma on Tribal lands. Historically, the discharge had been a source of sediment loading to Tribal lands. While the Region advised that it was working on an MOA that would address this issue, staff working on the MOA advised they were not aware of the Tribe's specific complaint, and there was no indication of Regional followup on the complaint.

SOME DISCHARGERS NOT ADEQUATELY REGULATED

The Region did not effectively regulate: (i) general storm water permit dischargers; (ii) general seafood permit dischargers; and (iii) minor dischargers. The Region had inadequate and inconsistent procedures for compliance monitoring of dischargers under the two types of general permits. In addition, the Region did not monitor compliance of most minor dischargers, and therefore could not report on compliance of those dischargers as required by regulation.

Background

EPA classifies dischargers as "major" or "minor" sources. Major

municipal facilities are those which have a flow of at least one million gallons per day, a service population of at least 10,000, or a significant impact on water quality. EPA classifies industrial facilities through a separate rating system. The Region is moving toward the Watershed approach, in which minor dischargers can be just as important as major dischargers.

The term “storm water” represents large volumes of water that can result from rain, snow melt, surface runoff, street washing, and other drainage. For over a decade, EPA has attempted to develop a workable program to control storm water discharges. Storm water from municipal separate storm water sewers and storm water associated with industrial point sources are considered point source discharges under the CWA, and are addressed under the NPDES Permit Program.

Generally, storm water discharges from industrial sources are regulated by general permits. General permits are a management tool designed to enable EPA to issue one permit covering a specified class of dischargers within a defined geographic area. General permits apply the same set of limitations to a group of dischargers as would be imposed through individual permits. Besides storm water, the Region also issued general permits covering Alaska seafood dischargers, oil and gas operators, and placer miners. The Region indicated it will probably use more general permits in the future, as opposed to individual permits, in order to help streamline the permitting process.

Requirements

Regulations (40 CFR 123.26) state that programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees (and for investigation for possible enforcement of failure to submit these notices and reports), and that programs shall maintain a schedule of reports required to be submitted by permittees.

The EPA EMS Guide states that regions should have documented, in-place pre-enforcement screening procedures that should require the forecast of reports due within a specified period of time, and also specific guidelines for determining obvious compliance from noncompliance. The guidelines should at least establish criteria to be used to determine receipt vs. nonreceipt. In addition, there should be an identifiable process for determining which dischargers

have not applied for permits after being required to do so and for following through in these cases.

Regulations (40 CFR Part 122.28) for general permits state that dischargers shall submit a written notice of intent (NOI) to be covered by the general permit. The NOI includes a certification that the discharger has read the permit and will comply with all permit requirements. The Region's general permits for storm water and seafood include the requirement for submittal of an NOI, as well as various other reporting requirements.

Regulations (40 CFR Part 123.45) and national EPA guidance (Final QNCR Guidance) require the Region to annually submit statistical noncompliance reports on nonmajor NPDES permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines.

General Storm Water Permits Not Monitored

For general storm water permits (covering both major and minor dischargers), the Region had no system to track discharger compliance. The Region did not track whether the dischargers required to be covered under the general permits had submitted the required NOIs. Also, it did not track other reporting requirements of general dischargers, such as the preparation or submission of Storm Water Pollution Prevention Plans (SWPPP).

There are two reasons for the inadequate monitoring of dischargers under general storm water permits. First, the Region disinvested in the storm water program because it viewed it as a low priority among competing programs. This resulted in the allocation of minimal resources to deal with storm water compliance monitoring and enforcement issues. Second, since many general permits were for minor dischargers, the Region did not input reporting requirements for dischargers under general permits into Permit Compliance System (PCS). Instead, the Compliance Officers were responsible for maintaining a tracking system for the general permit separate from PCS. As a result, we found varying degrees of effectiveness in the different tracking systems used for dischargers under general permits.

Storm Water Affects Water Quality

There is a disparity between the importance placed on storm water issues by EPA Headquarters and the Region. Headquarters has emphasized the importance of and placed high priority on storm water issues, yet the Region has disinvested in this program.

Various studies estimate that about 60 percent of dischargers required to have storm water permit coverage are not covered (they have not submitted the required NOI certifying that they have read the permit and will comply with the requirements). The magnitude of the environmental impact from point source storm water discharges indicates that the Region has placed too low of a priority on the storm water program, and needs to reconsider its decision to disinvest in storm water compliance issues:

- In EPA's Strategic Plan submitted to Congress in September 1997, EPA stated that urban runoff is a leading cause of water quality problems. Urban runoff causes beach closures and shellfish bed closures in coastal areas. Discharges from storm drains, sanitary sewers, and combined sewers are point source discharges. Controlling these sources of pollution will be a major priority for EPA's point source control programs in the coming 5 to 10 years.
- In a report to the Congress dated March 1995, EPA stated that storm water discharges have been linked to one-third of all assessed surface water quality impairments nationwide. Significant sources of contaminated storm water include urban runoff, industrial activities, construction, mining, other types of resource extraction, and different commercial activities.
- Storm water runoff from a number of diffuse sources, including municipal separate storm sewers and urban runoff, are the leading cause of surface water quality impairment cited by States. States report that urban runoff/storm sewers is the second leading source of water quality impairment in lakes and estuaries, and the third leading source of water quality impairment in rivers.
- Alaska reported that urban runoff is the major source of impaired rivers and streams, and urban development is also the major source of pollution in 26 impaired lakes. The State attributes impairments at 34 estuaries partly to urban development.
- The Region reported that besides two sewage treatment plants, major pollution sources in the Boise River watershed include the many area storm drains. Storm sewers are suspected to be a significant contributor to the water quality

problems in the Boise River, and several sand and gravel operations along the river might also contribute to the degradation of the watershed.

Our audit identified several instances where there appeared to be an adverse environmental effect as a result of unregulated point source storm water dischargers in the States of Alaska and Idaho.

**S&S Sand & Gravel
Extraction Operations**

The Region received many citizen complaints about a sand & gravel operation in both Juneau and Sitka, Alaska. Both sand & gravel pits were owned by the same operator, S&S. In Juneau, S&S had been discharging without a permit into impaired waters for 10 years. For the Sitka operation, S&S first applied for the wrong type of permit, then sent in an inadequate SWPPP, and recently sent in an incomplete application for the correct type of permit. Meanwhile, S&S continued to discharge contaminated storm water. S&S was considered to be uncooperative and has had ongoing complaints about two of its quarries in Alaska. This is an important, high-visibility issue in Sitka. However, the Region did not take any action against these unregulated discharges.

Wal-Mart Construction Site

There were many complaints that excavated soil from a Wal-Mart construction site in Idaho was being dumped along the edge of Sand Creek and other low lying areas, possibly wetlands. The State sent some letters to Wal-Mart and its contractor attempting to get corrective action, but had problems getting them to comply with the regulations. This matter was referred to the Region in February 1996, but the Region did not followup.

Bark Mill Expansion Site

There were complaints made by a citizen in late 1996 about a bark mill in Idaho, alleging violations of air quality regulations and CWA Section 404, wetlands regulations. The citizen alleged that the bark mill's proposed expansion site was surrounded by wetlands and runoff from stored raw bark material would flow directly into a creek and into the wetland area, as well as the old creek bed. The bark mill did not have the required storm water permit, nor had the Region addressed the apparent storm water violations at the mill.

**Kenai River Water Study
Findings**

A publication in early 1997 discussed a water-quality study by State of Alaska researchers in 1994 which raised serious concerns about the health of the Kenai River in Alaska. The study indicated that new roads, shopping centers, and storm sewers might be affecting the Kenai River's health. The study noted that efforts to deal with one of the main concerns, untreated storm sewer drains, were slow

in development. The Region had not done any followup on this potential storm water-related problem.

Moscow, Idaho Construction Site

Citizens and the city of Moscow notified the Region about unpermitted storm water discharges at a construction site. The site developer apparently had applied for a permit but it was not granted because of missing information on the NOI. The Region sent the developer a letter describing the missing information on the NOI. However, the information was not received and the Region did not take followup action; responsibility for the problem fell to the city of Moscow to enforce compliance. The Lewiston Tribune reported on this issue in December 1995.

Sandpoint, Idaho Highway Construction Project

In November and December 1994, the State of Idaho informed the Region of severe erosion and slope failure on a State highway construction project which was covered by EPA's NPDES General Storm Water Permit. The erosion contributed a significant amount of sediment to tributaries of Sand Creek and associated wetlands, and the State informed the Region that the SWPPP for the project did not meet Federal requirements. The State sent a video to the Region which graphically showed this erosion. The Region did not take any action as a result of the State's referral.

General Seafood Permits Not Monitored

For seafood general permits, the Region did not adequately track compliance of dischargers covered by those permits and did not take action when noncompliance was identified. Although the Region had established a new system for tracking these dischargers, the portion of the system to track reporting requirements had not yet been implemented. The system, however, did identify that almost 10 percent of dischargers required to submit an NOI had not done so, yet no followup action had been taken.

Tracking compliance of dischargers under general permits was given a low priority by the Region. When reporting requirements were not tracked, the Region was not alerted to instances of noncompliance with those requirements, and therefore could not initiate enforcement action. In addition, when followup actions were not taken on identified instances of noncompliance, those dischargers were not effectively regulated. Because the Region anticipates issuing more general permits as opposed to individual permits in the future, compliance monitoring of general dischargers will only become more important.

Minor Dischargers Not Monitored

Compliance of minor dischargers was another area that was not adequately monitored by the Region. The Region had not implemented a system for tracking minor discharger compliance. It generally did not review or track Discharge Monitoring Reports (DMRs) for minor dischargers in PCS. As a result, it could not report on the compliance status of these permittees as required by regulation. Also, without tracking and reporting on noncompliance of minor dischargers, the Region was not alerted to instances of noncompliance, and therefore could not initiate enforcement action. The Region did not monitor compliance of most minor dischargers because it considered those dischargers to be a low priority. In the past, EPA generally considered minor dischargers to be a low priority nationwide. However, because the Region is going toward the Watershed approach, compliance monitoring of minor dischargers will become more important.

SUMMARY

The Region needs to improve its compliance monitoring of dischargers in several areas. The Region should meet its inspection commitments and ensure that reports are submitted timely and followup actions are taken on reported problems. The Region should ensure that appropriate actions are taken on violations reported by citizen complaints. Finally, the Region should establish adequate and consistent procedures to ensure that dischargers under all general permits and minor dischargers are required to comply with permit conditions and NPDES regulations. These improvements are needed to ensure that the Region consistently identifies violators and takes corrective actions.

RECOMMENDATIONS

We recommend that the Regional Administrator:

- 3-1. Establish controls to assure that the Region meets its compliance inspection commitments.
- 3-2. Establish procedures for inspectors to issue timely reports.
- 3-3. Assure that the Compliance Officers notify dischargers of the results of inspections.
- 3-4. Establish a log or other procedures to ensure that citizen complaints relating to potential permit and other NPDES violations are documented, resolution

of complaints are tracked, and the complainant is notified of the resolution.

- 3-5. Commit resources to compliance monitoring activities for the general storm water permits. Specifically, resources should be committed to perform the following activities: (i) reconcile those dischargers required to submit an NOI and those dischargers who have submitted an NOI; (ii) send letters to those dischargers violating the NOI requirements; (iii) initiate appropriate enforcement actions; and (iv) track reporting requirements stipulated by the general permits.

- 3-6. Establish and implement procedures to ensure adequate and consistent compliance monitoring of dischargers under all general permits (particularly general permits for storm water and seafood) and minor dischargers. At a minimum, the procedures should include adequate tracking of: (i) dischargers required to be covered by permits; and (ii) discharger submittals of required reports. Procedures should also include appropriate enforcement on instances of identified noncompliance.

**REGION COMMENTS
AND OIG EVALUATION**

The Region concurred with the recommendations and stated that it has implemented corrective action. We consider the corrective action to be satisfactory.

CHAPTER 4

ENFORCEMENT AGAINST SIGNIFICANT VIOLATORS COULD BE IMPROVED

The Region did not respond in an appropriate or timely manner to violations by dischargers that were in Significant Noncompliance (SNC) with NPDES permit conditions. The Region did not take formal enforcement action against 19 of the 25 dischargers in SNC for 1 or more quarters during the period October 1994 through December 1996. In addition, we reviewed files for 10 of those dischargers that were in SNC for 2 or more consecutive quarters and concluded that the Region did not have written justification for not taking formal enforcement action against 9 dischargers. EPA's enforcement guidance requires that formal enforcement actions be taken against dischargers in SNC. At a minimum, the guidance requires a written justification in those rare instances when formal enforcement action is not taken. These conditions occurred because the Region did not have effective management controls to ensure that either appropriate and timely enforcement actions were taken or that decisions to take no action were justified and documented. Failure to take appropriate enforcement action against violators weakens the effectiveness of the NPDES Program to protect public health and the environment.

The Region took formal enforcement action consistent with EPA guidance against 6 of the 25 dischargers in SNC during the period of our audit. However, actions against three of the dischargers did not meet EPA's timeliness guidelines of 2 months after identifying the violation. For the three dischargers, formal enforcement action was not taken for 5 to 8 months after the violations became known to the Region. More timely enforcement action could lead to quicker return to compliance with permit requirements.

BACKGROUND

The ultimate goal of the enforcement program is to improve environmental quality through compliance with environmental laws. EPA guidance states that the NPDES Permit Program will be effective only to the extent that EPA is able to systematically take timely and appropriate enforcement action against violators to

achieve full compliance with the CWA. EPA's enforcement program is designed to accomplish four major objectives:

- identify instances of noncompliance;
- return the violator to compliance;
- recover any economic advantage obtained by the violator's noncompliance; and
- deter other regulated dischargers from noncompliance.

Enforcement Actions

Enforcement ranges from simple informal actions, such as phone calls and Letters of Violation, to formal Administrative Orders, and civil and/or criminal judicial actions. EPA can also seek substantial monetary penalties which promote environmental compliance and help protect public health by deterring future violations by the same discharger and by other members of the regulated community.

Because there are powerful disincentives to compliance, such as costly pollution control measures and inconvenient compliance measures, enforcement evens the scale by adding a powerful incentive in favor of compliance. Penalties promote a national level playing field by ensuring that violators do not obtain an unfair economic advantage over competitors who have done whatever was necessary to comply on time.

EPA uses the EMS to translate compliance information into timely and appropriate enforcement actions. The EMS stipulates minimum requirements for each of the seven basic principles included in an effective enforcement program, such as the pre-enforcement screening process and the formal enforcement evaluation. The EMS also includes a response guide that matches types of violations to a narrow range of appropriate enforcement responses.

40 CFR 123.45 provides requirements for listing discharger violations and resulting regulatory enforcement action on Quarterly Noncompliance Reports (QNCR). This regulation includes reporting requirements for violations that meet specific, quantifiable reporting criteria, as well as for violations that are more difficult to quantify but are of sufficient concern to be considered reportable. A subset of QNCR violations are identified as SNC. A discharger reported in SNC indicates a violation of sufficient magnitude and/or duration to be considered a high enforcement response priority. If the discharger is still considered in SNC after 2 quarters and no

formal enforcement action has been taken, the discharger is placed on the Exceptions List (EL).

Enforcement Requirements

Headquarter's EMS Manual requires an enforcement response to all SNC violations in a timely and appropriate manner. Unless there is supportable justification, the response must be a formal enforcement action or a return to compliance by the permittee generally within one quarter from the date that the SNC violation is first reported on the QNCR. The EMS intends that a formal enforcement action be initiated before the violation appears on the next QNCR, generally within 60 days of the first QNCR. QNCRs are not available until 60 to 90 days after the end of quarter; enforcement action is not expected to be initiated until the QNCR is available. In the rare circumstances when formal enforcement action is not taken, the Region is expected to have a written record that clearly justifies why the alternative action (informal enforcement action or permit modification) was more appropriate. The EMS Manual does not provide an option for taking no action against SNC violators.

According to the NPDES Permit Writer Training Manual, although there are some legitimate justifications for dischargers appearing on the EL, the EL generally indicates dischargers for which the Region failed to handle enforcement in a timely and appropriate manner.

NO FORMAL ENFORCEMENT ACTION

The Region did not take formal enforcement action against 19 of the 25 dischargers in SNC for 1 or more quarters during the period October 1994 through December 1996. EPA's guidance states that only in rare circumstances should EPA not take formal enforcement action against dischargers in SNC. In our opinion, not taking formal enforcement action on over 75 percent of the dischargers in SNC does not meet the intent of this guidance. Of the 19 dischargers without formal enforcement actions, 10 dischargers remained in SNC for 2 or more consecutive quarters, placing them on the EL. Also, for 9 of these 10 dischargers, the Compliance Officer did not document the decision not to take formal action in the compliance file, nor was there any indication of formal concurrence in this decision by the Region's Compliance Unit Chief.

If appropriate and timely enforcement action is not taken against dischargers in SNC, there is increased risk that dischargers will not return to compliance timely and the deterrent effect of enforcement

is lessened, increasing the risk to public health and the environment. Without documentation justifying decisions not to take formal action, Regional management lacks a clear decision-making trail necessary to provide assurance that Compliance Officers are making enforcement decisions consistent with enforcement guidance, leaving it open to scrutiny and, in our opinion, loss of credibility.

The following are five examples of conditions that we found with respect to the absence of formal enforcement actions and the lack of documentation justifying decisions to take no such actions. The Region did not take any action, formal or informal, against these dischargers. These examples are from the ten dischargers remaining in SNC for 2 or more consecutive quarters without formal enforcement action, resulting in the dischargers being reported on the EL. Our conclusions are based on a review of the compliance files and discussions with the responsible Compliance Officers.

**DOD Army - Fort Lewis,
WA**

This discharger was in SNC for the third and fourth quarters of fiscal 1995, and continued to violate permit conditions through April 1997. However, no enforcement action was taken against the discharger nor was there documentation in the file justifying the lack of action.

As early as June 1995, the Army notified the Region that it was going to continue to exceed its permit limit for Chlorine (Cl). The Army justified its violation on the basis that it was necessary to control bacterial contamination. In January and February 1996, citizen lawsuits against Fort Lewis lead the Army to send a letter to the Compliance Officer requesting EPA's views on its compliance posture. In response, the Compliance Officer advised the Army that it had violated its NPDES permit over the past several years, and that the violations collectively were cause for concern. The DMRs through April 1997 show continued permit limit violations for Cl. According to the Compliance Officer, the Army assured the Region it would construct a new dechlorination facility.

EPA's enforcement guidance requires a formal enforcement action against a discharger in SNC. In the rare circumstances when formal enforcement action is not taken, the guidance requires documentation justifying this decision. In our opinion, at the very least an informal enforcement action was required when the Army informed the Region of its intent to violate the Cl permit limit. It

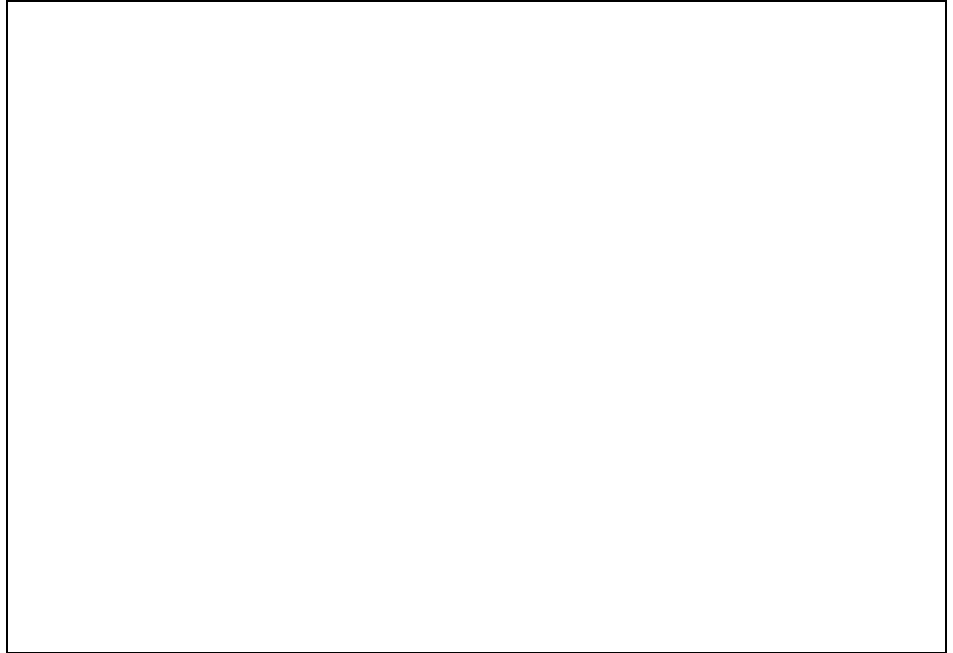
would also have been reasonable to negotiate a Compliance Agreement stipulating enforceable milestones for completion of the new dechlorination facility.

**International Seafoods,
AK**

This discharger was in SNC from the second quarter of fiscal 1996 through the first quarter of fiscal 1997 for violating its permit limits for its seafood processing waste discharge. In addition, the discharger continued to appear as a violator on the QNCR for the quarter ended March 1997. However, no enforcement action was taken against the discharger nor was there any documentation in the file justifying the lack of action.

The permit violations were the result of the discharger installing a new fish powder processing unit that increased Total Suspended Solids and Oil and Grease. The Compliance Officer believed that the current permit limits were inappropriate and needed to be revised since the discharger had changed its processing method. The discharger did not submit an application for permit reissuance until after the new unit went on line (permit expired in January 1997).

EPA's enforcement guidance requires formal enforcement action in the above circumstances to assure that the regulated community complies with permitting requirements. In the rare circumstances when formal enforcement action is not taken, the guidance requires documentation justifying this decision. In our opinion, it was reasonable to expect the new process to cause the discharger to violate its permit effluent limits; however, the discharger should have submitted the application 6 months before the new process went on line. Therefore, it would have been appropriate for the Region to pursue an enforcement action.



International Seafoods Processing Plant

City of Twin Falls, ID

This discharger was in SNC from the third quarter of fiscal 1996 through the first quarter of fiscal 1997 for violating its permit effluent limits for nitrogen and ammonia. The discharger returned to compliance for the quarter ended March 1997. During the period of SNC, no enforcement action was taken against the discharger nor was there any documentation in the file justifying the lack of action.

The Compliance Officer was considering an enforcement action, and had been waiting to see if the discharger would be on the SNC list for the second quarter of fiscal 1997. While EPA's enforcement guidance provides some latitude for violators that return to compliance, the guidance also requires documentation justifying a decision to take no action. In our opinion, a discharger in SNC for 3 consecutive quarters requires at the very least an informal enforcement action, such as a Letter of Violation.

Cook Inlet Processing, AK

This discharger was in SNC from the second quarter of fiscal 1995 through the first quarter of fiscal 1996 for violating its permit effluent limits for both its seafood processing waste discharge and its sanitary wastewater discharge. In addition, the discharger continued to appear as a violator on the QNCR for the quarter

ended March 1997. However, no enforcement action was taken against the discharger nor was there any documentation in the file justifying the lack of action.

Concerning the sanitary wastewater discharge, the Compliance Officer believes that the discharge has no impact on the environment and has been just trying to get the discharger to get its treatment system to work so it could meet its permit limits. Apparently the permittee was working on the problem, but had been working on it for 7 years. Although the EL stated that this violation was under enforcement review, the Compliance Officer does not intend to take any informal or formal enforcement action regarding this sanitary discharge.

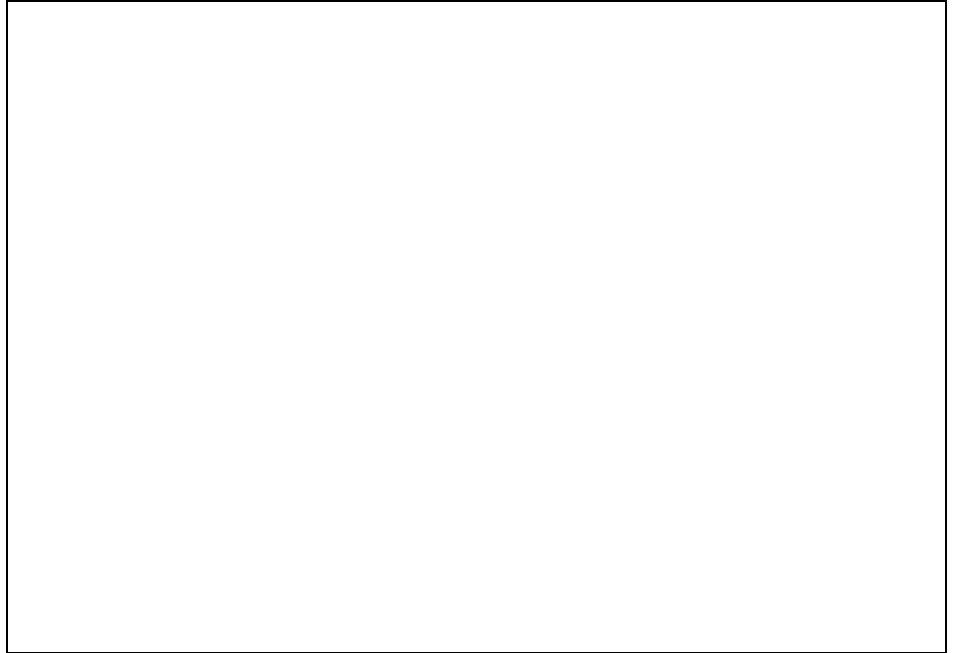
EPA's enforcement guidance requires a formal enforcement action against a discharger in SNC. In the rare circumstances when formal enforcement action is not taken, the guidance requires documentation justifying this decision. In our opinion, the guidance requires the Region to go on record concerning the violations for the sanitary wastewater discharge, by at least taking an informal enforcement action, such as a Letter of Violation.

Faros Seafoods, Inc, AK

This discharger was in SNC for the first and second quarters of fiscal 1995 for failure to submit DMRs. During this period, no enforcement action was taken against the discharger nor was there any documentation in the file justifying the lack of action.

The Compliance Officer believed that since the discharger was very small, it would not have the resources to pay a penalty without going into default. The Compliance Officer evidently knew the discharger was on the verge of shutting down, and the discharger did eventually cease operations.

EPA's enforcement guidance does not indicate that enforcement can be waived for economic reasons. The guidance directs that in the rare circumstances when formal enforcement action is not taken, documentation is required justifying this decision. In our opinion, even though it was a small discharger by comparison, it was classified as a "major" discharger by EPA, and having a non-quantified discharge for several months and not being cited by the Region is questionable. The Region should have at least taken an informal enforcement action, such as a Letter of Violation.



Faros Seafoods Unloading Area

ENFORCEMENT ACTION NOT TIMELY

Formal enforcement action was taken against 6 of the 25 dischargers in SNC for 1 or more quarters during the period October 1994 through December 1996. The enforcement mechanisms used were consistent with Agency guidance. However, actions against three of the dischargers did not meet EPA's timeliness guidelines of action within 2 months after identifying the violation. For the three dischargers, formal enforcement action was not taken for 5 to 8 months after being reported in SNC. More timely enforcement action could lead to quicker return to compliance with permit requirements.

The delays in formal enforcement action against the three dischargers are discussed below:

- Hecla Mining (ID) was reported in SNC for the fourth quarter of fiscal 1995 through the first quarter of fiscal 1996. While the Region met with the discharger in March 1996 to discuss its violations, an enforcement action (a penalty) was not proposed until August 1996, or 8 months after the violations were known to the Region.

- Sunshine Precious Metals (ID) was reported in SNC for the fourth quarter of fiscal 1996 through the first quarter of fiscal 1997. An enforcement action (a penalty) was not proposed until May 1997, or 5 months after the violations were known to the Region.
- The City of Hailey (ID) was reported in SNC for the first and second quarters of fiscal 1996. An enforcement action (an Administrative Order) was not issued until August 1996, or 5 months after the violations were known to the Region.

INEFFECTIVE MANAGEMENT CONTROLS

We attribute the underlying causes of inadequate enforcement and documentation for dischargers in SNC to: (i) the Region not having sufficient controls to ensure that appropriate and timely enforcement actions were taken; and (ii) Regional management not emphasizing the importance of Agency guidance requiring formal enforcement action against dischargers in SNC. We believe a good starting point for corrective action would be for the Region to update its written EMS to be consistent with the Headquarter's EMS and the Agency's enforcement policy for SNC violators. In addition, the Region should implement procedures to document decisions in those rare circumstances when formal enforcement action is not taken. These documentation procedures should require written concurrence by Regional management.

Although EPA Headquarters requires all regions to have a written EMS that is consistent with the Headquarter's EMS, Regional management informed us that its EMS Manual was outdated. Consequently, it had not required Compliance Officers to follow it. Since the EMS is a process to collect, evaluate, and translate compliance information into appropriate and timely enforcement actions, without a current EMS in place and implemented, the Region was not efficiently and effectively performing these functions. The Region advised during the audit that it has already assigned staff to update its EMS Manual.

Inadequate documentation occurred because Compliance Officers were not required to document in the compliance files decisions not to take formal enforcement action against dischargers in SNC. Compliance Officers may not be aware of the requirement to

document decisions to take no formal enforcement action, or they may not consider it a priority for their time. In addition, decisions were not subject to formal written concurrence by the Region's Compliance Unit Chief. The Region advised that in the past it used a Violation Notification Form to record enforcement decisions, but use of that form was discontinued several years ago. Review of compliance files revealed that the Region also sometimes used a Record of Decision form to record enforcement decisions in the past.

RECOMMENDATIONS

We recommend that the Regional Administrator:

- 4-1. Implement controls to ensure that: (i) appropriate and timely enforcement actions are taken against dischargers in SNC; and (ii) the importance of Agency guidance requiring formal enforcement action against dischargers in SNC is emphasized to the Compliance Unit staff. As a first step, the Region should update and implement its EMS Manual, ensuring its consistency with the Headquarter's EMS and the Agency's enforcement policy for SNC violators.
- 4-2. Ensure that all decisions not to take formal enforcement action against SNC violators are justified and adequately documented in the compliance file. This could be accomplished through a standard Record of Decision form completed by the Compliance Officer and signed by the Compliance Unit Chief.
- 4-3. Implement procedures that require the Compliance Unit Chief to provide written concurrence in all decisions to take no formal action against violators in SNC.

REGION COMMENTS AND OIG EVALUATION

The Region concurred with the recommendations and stated that it has either implemented or is in the process of implementing corrective actions. We consider the corrective actions implemented or proposed to be satisfactory.

CHAPTER 5

MANAGEMENT REPORTING SYSTEM COULD BE MORE CURRENT AND COMPLETE

The Region's management reporting system for NPDES permit information is the PCS. The PCS was generally current and complete, except for new or renewed permits. The Region did not input permit effluent limits and reporting requirements into the PCS timely and completely for dischargers receiving new or renewed permits. For four major dischargers, permit effluent limits were not input for an average of 4 months after the permit was issued. Also, for six of the eight new permits, reporting requirements were not input to PCS. Without current and complete permit information, QNCRs generated from the PCS were not an effective tool for identifying violations for dischargers with new or renewed permits. The PCS was not updated timely for new or renewed permits because the Region had not given high enough priority to this effort.

BACKGROUND

The PCS is EPA's national data base for NPDES data. EPA established the PCS to provide an overall inventory for the NPDES Permit Program. PCS is also used by the Region as an operational and management tool for tracking permit issuance, compliance, and enforcement.

Information on a discharger's permit effluent limits and reporting requirements are intended to be current and complete in PCS. Regional staff are responsible for inputting effluent limits and reporting requirements for permits into PCS. Regional practice provides that input is to be documented by the staff initialing and dating the new or renewed permits at the time of entry into PCS.

The PCS generates DMRs to assist dischargers in reporting their effluent data to the Region for input to PCS. PCS also includes provisions for inputting data on compliance with reporting requirements such as, due dates for plans, reports, inspections, and construction milestones.

PCS generates the QNCR to assist the Region in monitoring compliance with permit effluent limitations and reporting requirements. EPA regulation 40 CFR 123.45 established QNCRs as a tracking mechanism for dischargers that violate their permit effluent limits and/or reporting requirements. The QNCR is only useful as a tool to identify permit violations if the underlying PCS information on the discharger is current and complete.

INFORMATION ON NEW PERMITS WAS NOT INPUT TIMELY OR COMPLETELY

The information in PCS for dischargers in the States of Alaska and Idaho was generally current and complete, except for new or renewed permits. The Region did not input permit effluent limits and reporting requirements into the PCS timely and completely for dischargers receiving new or renewed permits. Effluent limits were not input timely and reporting requirements were not always input to PCS.

New Permit Effluent Limits Were Not Input Timely

The Region issued new permits to nine major dischargers during our audit period. We compared the date of the permit for these major dischargers with the date the permit effluent limits were input to PCS. For five of the permits, we could not determine the date of input because the permit had not been annotated with the PCS entry date. For the other four permits, the average time between permit issuance and PCS input was almost 4 months as shown below:

<u>Permit No.</u>	<u>Date of Permit</u>	<u>Date of PCS Input</u>	<u>Delay in Input</u>
AK0022942	12-23-94	03-01-95	68 days
AK0028657	04-29-96	09-06-96	130
ID0027090	05-02-95	08-02-95	92
ID0000019	10-01-96	03-31-97	<u>181</u>
Average			<u>118</u> days

Reporting Requirements Were Not Always Input to PCS

Reporting requirements for new and renewed permits were not always being input to PCS. We judgmentally selected eight new permits with various plans and reports required to be submitted to the Region. These eight permits had requirements for 35 plan/report due dates. We compared these permit reporting requirements with information in PCS. The PCS had not been updated for six of the permits, and due dates for 23 of the plans/reports were not in PCS. Examples of this condition are detailed below:

- Permit No. AK0022543 Anchorage-Eagle River. The permit was issued on April 12, 1995 with due dates for five plans/reports. As of May 16, 1997, due dates for three of the plans/reports had not been input to PCS.
- Permit No. AK0037303 Trident Seafoods-Akutan. The permit was issued on April 29, 1996 with due dates for six plans/reports. As of May 16, 1997, due dates for six of the plans/reports had not been input to PCS.
- Permit No. ID0000019 Potlatch Corp.-St. Maries. The permit was issued on October 1, 1996 with due dates for three plans/reports. As of May 16, 1996, due dates for three of the plans/reports had not been input to PCS.

**QNCRs ARE
INEFFECTIVE AS AN
ENFORCEMENT TOOL**

For those dischargers whose new permit effluent limits and reporting requirements were not input timely or not input at all, the PCS was not an effective tool to detect noncompliance with the permit conditions; and violations were not reflected in the generated QNCRs. This QNCR weakness reduced the Region's ability to identify and take timely enforcement action against violators.

We identified several instances where permit violations should have been reflected in a QNCR, but were not. These violations involved non-reporting of effluent data as well as non-submittal of plans/reports as required. Examples of the violations that we noted include:

Non-reporting of effluent data limits:

- Permit No. AK0022543 Anchorage - Eagle River. This discharger did not submit DMRs for new effluent limits for 4 months after the effective date of its permit.
- Permit No. ID0000019 Potlatch - St. Maries. This discharger did not submit DMRs for new effluent limits for 6 months after the effective date of its permit.

Non-submittal of plans/reports as required:

- Permit No. AK0022543 Anchorage-Eagle River. This permit required that a progress report on the preparation

of a Sludge Disposal Contingency Plan and a Sludge Sampling Report be submitted to the Region in May 1996. The Contingency Plan was not submitted until November 1996 (6 months late) and the Sampling Report was not submitted until August 1996 (3 months late).

- Permit No. AK0028657 Unisea-Dutch Harbor. This permit required that a Seafloor Monitoring Plan be submitted to the Region 60 days before the survey occurred (December 2, 1996) and a Visual Monitoring Plan be submitted by May 31, 1997. The Seafloor Monitoring Plan was not provided to the Region until August 12, 1997 (over 10 months late). The Visual Monitoring Plan was not provided until August 12, 1997 (over 2 months late).

All of the above violations were subject to enforcement actions by the Region. However, the Region advised that it would not normally initiate enforcement action for such violations; particularly for the failure to submit DMRs on new effluent limits. The Region advised that it was partly at fault because it had not provided the dischargers preprinted DMRs with the new effluent limits. We believe that the Region's perspective increases the importance of assuring that new permit effluent limits and reporting requirements are input timely to PCS.

REGIONAL GUIDANCE NEEDS IMPROVEMENT

The new or renewed permit effluent limits and reporting requirements had not been input timely to PCS because the Region had not established priorities for PCS input. Input of new permit effluent limits and reporting requirements receive low priority compared to DMR data input. We believe that the Regional management should set written priorities for the timely input of new and renewed permit requirements into the PCS. Procedures should also ensure that staff follow the Region's practice of documenting the input of new permit requirements into the PCS with initials and dates of input written on the permits.

RECOMMENDATIONS

We recommend that the Regional Administrator:

- 5-1. Establish written priorities and procedures for PCS input that ensure that new permit effluent limits and reporting requirements are input into the PCS as soon as the permit is effective.
- 5-2. Improve procedures to ensure that the entry date of new permit effluent limits and reporting requirements into the PCS are documented on the permit with the date of entry and initials of personnel making entries.

**REGION COMMENTS
AND OIG EVALUATION**

The Region concurred with the recommendations and stated that it has either implemented or is in the process of implementing corrective actions. We consider the corrective actions implemented or proposed to be satisfactory.

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APPENDIX A

AUDIT SCOPE AND METHODOLOGY

This section describes the audit scope and methodology, including sample selection for our review of permits, applications, compliance inspections, enforcement activities, and management reporting.

We performed our audit in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. Audit fieldwork was performed between March 1997 and September 1997. The audit covered management controls in effect for the period October 1994 to March 1997. In addition, we reviewed the Region's progress on its Comprehensive Plan through September 30, 1997. Our audit focused primarily on the nondelegated States of Alaska and Idaho.

We interviewed officials in the Region's Office of Water and the operation offices in Alaska and Idaho. We reviewed applicable laws, regulations, and directives and examined records maintained by the Region.

The scope included a review of management controls associated with: (i) permit issuance and renewal; (ii) compliance monitoring; (iii) enforcement; and (iv) management reporting system. We obtained an understanding of management controls through inquiries, observations, and inspections of documents and records. We assessed the control environment, policies and procedures, and risk for the four program areas listed above.

The management control deficiencies that were identified in the audit are described in the report, along with recommendations for corrective actions. We also reviewed the Region's 1997 annual FMFIA assurance letter to the Administrator.

Permit Sampling

Our review of permits included a judgmental sample of 18 out of 33 permits issued for the States of Alaska and Idaho. The sample included a mix of: general, municipal, industry, and Federal dischargers.

Application Sampling

We judgmentally selected a sample of 52 out of 301 applications from dischargers in the States of Alaska and Idaho that were received between October 1992 and March 1997. The sample included a mix of categories where the applicant never received a permit, the permit expired and had not been administratively extended, and the permit expired and it was administratively extended. The sample also included a mix of municipals and industries.

Compliance
Inspection Sampling

We selected a judgment sample of 22 compliance inspections, including 13 major dischargers (municipal and industrial) for Alaska and Idaho out of 291, and 9 miscellaneous dischargers such as Federal, Tribal, and minor for the States of Alaska, Idaho, and Washington. The sample also included a mix of the two inspection types reported and included inspections during inspection years 1995, 1996, and through April 18, 1997.

Enforcement
Sampling

We reviewed all 25 dischargers that were reported by PCS as being in SNC for a quarter or more. The 25 dischargers in SNC were a mix of municipals and industries in the States of Alaska and Idaho, and a Federal discharger in the State of Washington. The time period included fiscal 1995 through the first quarter of fiscal 1997.

Management
Reporting Sampling

Our review of management reporting included a judgment sample of 24 monitoring reports and 35 compliance plans and reports. These samples were from the permit sample of 18 issued permits in the States of Alaska and Idaho.

APPENDIX B

ACRONYMS

AK	Alaska
Cl	Chlorine
CFR	Code of Federal Regulation
CWA	Clean Water Act
DMR	Discharge Monitoring Report
DOT	Department of Transportation
EL	Exceptions List
EMS	Enforcement Management System
FMFIA	Federal Managers' Financial Integrity Act of 1982
GP	General Permit
ID	Idaho
MOA	Memorandum of Agreement
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NPU	NPDES Permit Unit
OIG	Office of Inspector General
OR	Oregon
ORC	Office of Regional Counsel
PCS	Permit Compliance System
QNCR	Quarterly Noncompliance Report
RA	Regional Administrator
SNC	Significant Noncompliance
SWPPP	Storm Water Pollution Prevention Plan
TMDL	Total Maximum Daily Load
WA	Washington

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APPENDIX C

REGION RESPONSE TO DRAFT REPORT

Attached is the Region's comments to the draft report.

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue
Seattle, Washington 98101

JAN 23 1998

Reply To

Attn Of: OW-130

MEMORANDUM

SUBJECT: Draft Report on Region 10's NPDES Permit Program, Draft
Report No. E1HWF7-10-0012

FROM: Chuck Clarke
Regional Administrator
EPA Region 10

TO: Truman R. Beeler
Divisional Inspector General for Audits
Western Audit Division

Thank you for providing us the opportunity to review the draft report on the Region's NPDES Permit and Compliance Program. Our responses are attached for your consideration in preparing the final report. Since the draft position papers were prepared, we have completed certain tasks and have outlined them in the attachment. Where appropriate, we have provided target dates for addressing other recommendations.

We are committed to managing an effective NPDES program and generally accept the recommendations in the report. Our attention will continue to be focused towards priority watersheds that have been significantly impacted by point sources and targeted significant categories of dischargers.

Please inform us if you wish to discuss our responses. I have asked that Roger Mochnick, Assistant Director, Office of Water (206)553-1216, be our contact person.

Attachments

cc: Charles Reisig, OIG Team Leader
Janet Tursich, OIG Auditor-in-Charge

EPA Region 10 Response to the OIG's NPDES Draft Audit Report

A. NPDES Permit Program

Recommendation 2-1: Report the backlog of NPDES permit applications as a material weakness in the next annual FMFIA assurance letter to the EPA Administrator.

Non-concur. The Region acknowledges the backlog. As outlined in the report, a strategic plan has been developed and is being implemented to address the backlog. In addition, the Region hired a permit writer in 1997 and expects to hire another one in FY 98. The Region's policy is to continue to focus its limited permit resources, in the near term, on point sources located in the highest priority watersheds, selected major industrial categories and on New Source applicants. Our eventual goal will be to address all applications. Finally, as was stated in the report, the data base the Region used to estimate its permit workload in its strategic plan is outdated and is being updated. Initial estimates are that the backlog will decrease by at least 33 percent. Given the above, the Region feels that reasonable steps are being taken to address the backlog.

Recommendation 2-2: Aggressively monitor Objective 1, tasks 3, 4, and 5 in the Plan to help assure issuance of permits to strategically targeted dischargers by September 30, 1999. **Recommendation 2-3:** Monitor the accomplishment of all tasks identified in the Plan relating to eliminating the permit backlog.

Concur with comment

- ! Task 3, (permit writers develop individual permit workplans) is completed. The individual workplan is a tool that permit writers are employing to manage their individual projects. However, the most important task was assigning the permits to the individual permit writers for the next 3 years (Task 3). This was completed during the first quarter of FY 97.
- ! Task 5 (re-evaluating Tier 1 permits) was completed and will be re-evaluated each year.

! The watersheds identified in the report are high priority for the Region. The permits associated with these watersheds are contained in the unit plan as priority facilities for permitting. In addition, the mid-reach of the Middle Snake River in Idaho is a high priority watershed. EPA completed 3 TMDLs in Unalaska Bay and issued permits to the affected facilities. There is one remaining "Major" facility (Westward) which is scheduled for issuance in FY98.

! It is hard to predict impediments to issuance of the permits. Of particular concern is Endangered Species Act Consultation. Many of the high priority facilities discharge to waterbodies with listed or threatened species. EPA cannot issue permits until the Region is in receipt of an approval letter from the affected Service(s).

**THIS PORTION OF THE RESPONSE DELETED BECAUSE OF CHANGES
MADE IN THE FINAL AUDIT REPORT**

! Page 8, Table of applications: There are only a few "majors" without permits and/or whose permit could not be administratively extended. They are listed as Tier 1 facilities in the Unit Plan.

! The current permit status for Tier 1 permits in the Unit Plan is: permits issued (14), public notice awaiting state certification (6), at public notice (14), permits being drafted (24), additional permits targeted in FY 98 for drafting (17). This represents approximately 75% of the facilities identified as Tier 1.

B. NPDES Compliance Program

Recommendation 3-1: Establish controls to assure that the Region meets its compliance inspection commitments.

Concur with comment. Region 10 NPDES Compliance Unit (NCU) has established a process to ensure that the targeted inspections reflect the commitments. We have also initiated an inspection tracking program that will monitor our progress and enable us to make any necessary mid-course corrections. However, at times the NCU may not inspect 100% of the major dischargers or facilities on the commitment list if other dischargers are deemed to be of greater environmental concern. EPA HQ concurs with this approach. For instance, some minor dischargers pose larger environmental concerns than listed majors. In such cases, environmental protection must take precedent. The NCU will target 85-90% of all majors during the inspection planning process at the beginning of each fiscal year. Those not inspected will be a high priority the following year.

Corrective action process implemented 4th Q FY97.

Recommendation 3-2: Establish procedures for inspectors to issue timely reports.

Concur with comment. Region 10 NPDES Compliance Unit (NCU) has established inspection report submittal dates of 45 days for sampling inspections and 30 days for evaluation inspections as stated in the IG report. Due diligence will be utilized to adhere to the stipulated time frames. Inspection dates and report submittals will be more closely tracked by the NPDES data management support group and the Unit Manager. We have also developed a guidance document for writing inspection reports and have forwarded it to the inspectors. In the transmittal memo for the guidance, we have stated that the reports should in most cases be submitted within two weeks. This time frame is an internal target and is intended to provide a buffer to ensure that 30 and 45 day official targets are met. During the FY97

dairy initiative the average time for completed reports for the 64 inspections was two weeks.

Corrective Action established 4th Q FY97.

Recommendation 3-3: Assure that the new procedures requiring Compliance Officers to notify dischargers of the results of inspections continue to be consistently implemented.

Concur with comment. Compliance Officers have been notified that inspection reports are to be forwarded to the facilities immediately after completion. In addition, we have implemented an inspection report routing form which provides detailed written instructions as well as due dates for each activity for each person involved in the forwarding of inspection reports.

Corrective action implemented 3rd Q FY97.

Recommendation 3-4: Establish a log or other procedures to ensure that citizen complaints relating to potential permit and other NPDES violations are documented, resolution of complaints are tracked, and the complainant is notified of the resolution.

Concur with comment. The Seattle based NCU staff has initiated the following compliance tracking system: complaint received, follow-up action, and potential enforcement action. Complainant will be notified of follow-up action, when requested.

Corrective action implemented 4th Q FY97.

Recommendation 3-5: Commit resources to compliance monitoring activities for the general storm water permits. Specifically, resources should be committed to perform the following activities: (i) reconciliations between those dischargers required to submit an NOI and those discharges who have submitted an NOI; (ii) send letters to those dischargers violating the NOI requirements; (iii) initiate appropriate enforcement actions; and (iv) track reporting. Requirements stipulated by the general permits.

Concur with comment. No additional resources are being planned beyond what is now allocated by Region 10 for storm water monitoring activities. However, as discussed earlier, environmental concerns including storm water activities warranting EPA actions will take precedent over other concerns.

Region 10 is also attempting to track those facilities required to submit NOIs and those facilities that are currently doing so. Additionally, notices of violation are being sent to noncompliant facilities and appropriate enforcement actions are being taken. For example, the NCU recently initiated and settled a storm water violation case with the Alaska Department of Transportation. The NCU is also currently investigating two other potential storm water violation cases in Alaska and Washington.

Corrective action implemented 1st Q FY97.

Recommendation 3-6: Establish and implement procedures to ensure adequate and consistent compliance monitoring of dischargers under all general permits (particularly general permits for storm water and seafood) and minor dischargers. At a minimum, the procedures should include adequate tracking of: (i) dischargers required to be covered by permits; and (ii) discharger submittals of required reports. Procedures should also include appropriate enforcement on instances of identified noncompliance.

Concur with comment. The NCU has recently initiated a new compliance monitoring system termed the NPDES Compliance Evaluation Program (NCEP). This new system will enable the Unit to evaluate the compliance status of any facility submitting DMRs including minors. The NCEP is intended to supplement the existing compliance monitoring systems, such as PCS. The focus for NCEP will be those facilities that are priority sector facilities or those located in priority watersheds. The NCU manager and the Data Tracking Coordinator will meet on a monthly basis to evaluate the compliance information from the monitoring system and, with input from the compliance officers, will determine the appropriate enforcement actions. The NCU manager has also recently initiated quarterly conference calls with headquarters to discuss pending enforcement actions.

Corrective action implemented 1st Q FY98.

Recommendation 4-1: Implement controls to ensure that: (i) appropriate and timely enforcement actions are taken against discharges in SNC; and (ii) the importance of Agency guidance requiring formal enforcement actions against dischargers in SNC

is emphasized to the Compliance Unit staff. As a first step, the Region should update and implement its EMS Manual, ensuring its consistency with Headquarters's EMS and the Agency's enforcement policy for SNC violators.

Concur with comment. The NPDES Unit Manager and the Data Management Coordinator have recently initiated quarterly conference calls with Headquarters Enforcement Coordinator to decide appropriate enforcement actions for facilities on the SNC. The NCU is also currently updating the EMS process to be consistent with Agency guidelines. This should be completed by March 1, 1998. In addition, NCEP will alert the compliance officers of the facilities that are nearing SNC. This information will be used to proactively deal with facilities nearing SNC.

Corrective action completed 2nd Q FY98.

Recommendation 4-2: Ensure that all decisions not to take formal enforcement action against SNC violators are justified and adequately documented in the compliance file. This could be accomplished through a standard Record of Decision form completed by the Compliance Officer and signed by the Compliance Unit Chief.

Concur with comment. The Compliance Officers and Unit Manager will immediately begin to use standard Record of Decisions forms. Additionally, "no enforcement actions" will be discussed with Headquarters Regional Coordinator via monthly conference calls.

Corrective action implemented 2nd Q FY98.

Recommendation 4-3: Implement procedures that require the Compliance Unit Chief to provide written concurrence in all decisions to take no formal action against violators in SNC.

Concur comment. See above response under 4-2.

Recommendation 5-1: Establish written priorities and procedures for PCS input that ensure that new permit effluent limits and reporting requirements are input into the PCS as soon as the permit is effective.

Concur with comment. The written priorities and procedures for PCS input are already documented in the PCS Quality Assurance

Guidance Manual, dated August 1992. The NPDES Compliance Unit's data quality objectives for timeliness, accuracy, completeness and

consistency will be at least as stringent as the national standards summarized in Tables 2 and 3 of that document (tables available on request). The NCU has also established a procedure whereby after a permit is coded/updated in PCS, the data entry staff provides the compliance officer with the permit, a Limitations Summary Report, and Compliance Schedule Report to review for data completeness and accuracy.

Corrective action implemented 2nd Q FY98, completed 4th Q FY98.

Recommendation 5-2: Improve procedures to ensure that the entry date of new permit effluent limits and reporting requirements into the PCS are documented on the permit with the date of entry and initials of personnel making entries.

Concur with comment. The NCU's data entry staff will ensure that they document the date of data entry and initial the permit. The NCU has recently initiated a backup system to catch undocumented permits before they are filed in the administrative records by instructing the file clerk to flag and return any permits not documented to the data entry staff.

Corrective action implemented 2nd Q FY98, completed 4th Q FY98.

APPENDIX D

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