

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

PROCEDURE FOR DETERMINING SIGNIFICANT NON-COMPLIANCE FOR VERMONT'S WATER POLLUTION CONTROL PERMIT PROGRAM

PURPOSE

It is the purpose of this procedure to establish which types of non-compliance will normally be given priority in Agency response efforts with respect to discharge permits issued pursuant to 10 VSA §1263; except that this procedure does not apply to indirect discharge permits issued pursuant to the Indirect Discharge Rules, Chapter 14: Environmental Protection Rules.

PROCEDURE

The following represents a portion of the Department's procedure with regard to compliance with schedules, conditions and effluent limits in discharge permits.

- 1) Each and every instance of failure to meet permit schedules, conditions or effluent limits is considered a violation and, at the discretion of the Department, may lead to a Department response ranging from a telephone contact for explanation to an enforcement action.
- 2) Response to instances of significant non-compliance with permit schedules, conditions and effluent limits will generally be given priority by the Department. The type of response will be at the discretion of the Department. Significant non-compliance is defined below. Instances of significant non-compliance for major facilities will be reported to EPA on a quarterly basis.
- 3) The basis for determining compliance with permit effluent limits is primarily self-monitoring as required in the permit. The sampling frequency must be adequate to assure representative samples that accurately characterize the discharge during the sampling period (weekly, monthly).

Where the Department determines the effluent quality is likely to vary significantly day-to-day, or diurnally, such that the normal frequency of sampling in the permit probably would not result in representative effluent characterization during the sampling period (monthly, weekly), the Department may amend the permit and increase the sampling frequency.

- 4) Significant Non-compliance. The categories of significant non-compliance are: violations of requirements resulting from previous enforcement actions, violations of permit compliance schedules, violations of permit effluent limits, and violations of sampling and reporting requirements.

A. Violations of Previous Enforcement Actions

Violation of a requirement imposed in an enforcement action such as a consent decree, court order, assurance of discontinuance (10 VSA §8007), administrative order (10 VSA, §8008), or emergency administrative order (10 VSA §8009) is considered significant non-compliance.

B. Violations of Compliance Schedules

For compliance schedules contained in discharge permits, or orders issued pursuant to 10 VSA, §1272, significant non-compliance is failure to meet a scheduled date by 90 days, provided the reason for failure to meet the schedule is not due solely or primarily to unavailability of federal or state grant or loans where state statute or Department policy prescribe that compliance schedules be based on the availability of federal or state funding.

In determining significant non-compliance with compliance schedules the Department will also consider factors within and outside the permittee's control.

C. Violations of Permit Effluent Limits

Violations of flow will not be considered in determining significant non-compliance unless flow contributes to significant non-compliance of other effluent limitations.

Where the permittee performs more than the number of tests in the sampling period required by the permit, all test results shall be submitted. The average of all test results will be used to determine violations of monthly average effluent limits.

Department sampling results will be used in conjunction with the permittee's self-monitoring results to determine significant non-compliance.

Cases of significant non-compliance for permit effluent limits are defined according to the magnitude and/or duration of the violation. Effluent violations will be evaluated on a parameter by parameter and outfall by outfall basis.

The magnitude of violations which defines significant non-compliance is based on exceeding Technical Review Criteria (TRC) for a specified time period (duration). The following TRC's are for four pollutant groups:

Group I* - Inorganic and Oxygen Demanding Pollutants (such as BOD, TSS, COD, nutrients)	TRC = 1.4 x permit limit
Group II* - Toxic Pollutants (such as heavy metals, cyanide, organics)	TRC = 1.2 x permit limit
Group III - Escherichia coli bacteria, Fecal Coliform bacteria	TRC = 10 x permit limit
Group IV - pH	Greater than \pm 1.0 s.u. outside permit limits

aa) Violations of Maximum Day Effluent Limits

Significant non-compliance for maximum daily limits based on self-monitoring data will vary based on the sampling frequency required in the permit for the parameter, as follows:

Quarterly or 1/2 months	2 TRC violations in any consecutive 12 months
Monthly	2 TRC violations in any consecutive 6 months
Twice Monthly	3 TRC violations in any consecutive 6 months
Weekly	4 TRC violations in any consecutive 6 months
Daily	5 violations in a month

bb) Violations of Monthly Average Effluent Limits

For all permittees, significant non-compliance is exceeding the TRC for the monthly average for any two months in any consecutive six month period.

cc) SNC Criteria for Chronic Violations

In some cases, a permittee will regularly violate the permit limit, but not exceed the TRC.

These chronic violations will be considered significant non-compliance if the monthly average permit limits were exceeded in any four months during any consecutive six month period.

For Escherichia coli bacteria or fecal coliform bacteria permit limits, chronic significant non-compliance shall be non-compliance of greater than 50% in any consecutive six month period.

dd) Permit violations resulting in the discharge of wastes which cause or contribute to a violation of the Vermont Water Quality Standards, interferes with any publically owned treatment works, or passes through such works without treatment, will be considered significant non-compliance.

D. Violations of Sampling & Reporting Requirements

Failure to submit required monitoring results within 30 days of the due date required in the permit for two reporting periods in any consecutive 12 month period will be considered significant non-compliance.

Performance of less than 90% of the analyses required in the permit for any parameter with a discharge limitation during any consecutive 12 month period will be considered significant non-compliance.



William C. Brierley, Commissioner
Department of Environmental Conservation

9-3-95
Effective Date

*See Attachment No. 1 for a more detailed list of parameters in each group.

Attachment No. 1

Group I - Inorganic and Oxygen Demanding Pollutants TRC = 1.4

Oxygen Demand

Biochemical Oxygen Demand
Chemical Oxygen Demand
Total Oxygen Demands
Total Organic Carbon
Other

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium

Solids

Total Suspended Solids (Residues)
Total Dissolved Solids (Residues)
Other

Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Nutrients

Phosphorus Compounds
Nitrogen Compounds
Other

Metals

Aluminum
Cobalt
Iron
Vanadium

Detergents and Oil

MBAS
NTA
Oil and Grease
Other detergents or algicides

Group II - Toxic Pollutants TRC = 1.2

Heavy Metals (all forms)

Antimony
Arsenic
Beryllium
Cadmium
Chromium
Copper
Lead
Nickel
Mercury
Selenium
Silver
Thallium
Zinc

Attachment No. 1 - continued

Inorganic (non-conventional)

Cyanide

Total Residual Chlorine

All organics except those specifically listed in Group I.