



NORTH CAROLINA
Environmental Quality

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Governor

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Secretary

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Director

Memorandum

To: Caroline Robinson, Compliance and Expedited Permitting Unit Supervisor

From: Molly Nicholson, Aquatic Toxicity Branch Supervisor 

Through: Chris Johnson, Water Sciences Section Environmental Program Manager 

Subject: **WET Enforcement Response Strategy**

The objective of this memo is to provide clarification on the enforcement response for Whole Effluent Toxicity (WET) testing in NPDES permits. This strategy was created to align with EPA's recommendation for there not to be an assessment of single failures to meet limits for chronic toxicity in the absence of environmental harm. This memo pertains to permits that contain WET limit conditions.

Chronic WET Testing: Each test result will be evaluated for compliance. Upon failure or a chronic value below the permit limit, the facility will be issued a Notice of Violation (NOV) and required to perform a minimum of one multiple-concentration test per month for the following two months. This gives the facility the opportunity to average chronic values (ChVs) for the bioassay quarter and influence the Division's enforcement response. A civil penalty assessment (CPA) will be issued if the average ChV is below the permit limit. The initial test will not be considered in the civil penalty determination. Facilities issued a civil penalty can contact their regional office to seek regulatory relief via Special Orders by Consent (SOCs). The base civil penalty for each chronic test violation is \$1,000.

Acute WET Testing: Each test result will be evaluated for compliance. Upon failure or an LC50 below the permit limit, the facility will be issued a NOV and required to perform monthly WET tests until a single test is passed. Upon passing, testing will revert to the original testing frequency. Two consecutive violations will result in a CPA. The base civil penalty for each acute test violation is \$500. The acute test CPA is lower than the chronic test CPA because the receiving stream area being affected is restricted to the immediate area of discharge.

Non-reporting: Facilities that fail to perform a required test or fail to submit an Aquatic Toxicity (AT) form to the Aquatic Toxicology Branch within thirty days after a required testing month may receive a NOV. A second non-reporting violation within twelve months may result in a CPA. The base civil penalty for each non-reporting violation is \$1,000.

Alternate/Second Species Testing: These test results are used to ensure that the current testing species is the most sensitive to the facility's effluent. ChVs or LC50s below the permit limit will not result in enforcement. Facilities who do not complete all four required tests prior to submitting a permit renewal application may be sent a Notice of Deficiency (NOD) and asked to perform the missing tests monthly for four months.

CPAs: Base penalties may be increased based on the number of enforcements a facility has received within the past twelve months. An enforcement cost will also be included in each CPA to compensate for the time spent reviewing and issuing the penalty.

