

Expedited Settlement Agreements as a Tool to Address SNC

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The Mechanics

1. EPA compliance monitoring activities reveal a violation.
 - a) Based on inspection - Use inspection report follow-up process
 - b) Records review - Send letter of violation
2. If violation(s) not resolved, send an ESA package.
3. Respondent submits to EPA, within 60 days:
 - a) Signed ESA offer sheet
 - b) Itemized list of actions taken to resolve violations appearing on ESA worksheet
4. EPA public notices the ESA.
5. EPA sends to respondent notice that the ESA has been entered by Regional Hearing Clerk.
6. Respondent pays penalty.

Types of permitted facilities/discharges eligible for the ESA

- ▶ POTWs
- ▶ Privately-owned sewage treatment systems
- ▶ Process/industrial wastewater facilities, excluding stormwater
- ▶ Non-tribally owned facilities, including those in Indian Country
- ▶ EPA may use this tool for facilities with EPA- or state-issued permits

Scope of Alleged Violations

- ▶ Permit violations that CAN be addressed:
 - ▶ DMR non-receipt within previous 24 months
 - ▶ Effluent violations within previous 12 months
 - ▶ Recordkeeping and other reporting deficiencies within previous 24 months
 - ▶ O&M deficiencies within previous 24 months
 - ▶ Failure to meet industrial waste obligations of a POTW permit within previous 60 months

- ▶ Permit violations and circumstances that CANNOT be addressed:
 - ▶ Evidence of significant harm or imminent/substantial endangerment
 - ▶ > \$54,000 in total state/EPA NPDES penalties (ESAs or otherwise) against the same owner/operator in past five years
 - ▶ Estimated economic benefit of noncompliance exceeds the ESA offer
 - ▶ Refusal to provide access or records
 - ▶ Evidence of deliberate concealment of records

Next Steps

- ▶ Three-year pilot.
- ▶ In early 2020, consult with tribes and request OECA concurrence on use of ESAs with tribally-owned facilities.
- ▶ After three years, evaluate impact on Region 8's enforcement program.
 - ▶ Effect in deterring noncompliance?
 - ▶ Effect on shortening the enforcement pipeline?
 - ▶ Effect on total enforcement rate?
 - ▶ Rate of ESA acceptance?
 - ▶ Changes in penalty amounts collected?