1. Issue NOV and penalty per ERP.

a. Require preliminary investigation into the cause - See the IUP for the following conditions requiring prior notification of changes, and notification of potential problems – Additional NOVs for violations of these conditions may be necessary

* Part II, 25. Report of Changed Conditions;
* Part II, 30. Reports of Potential Problems;
* Part II, 6. Duty to Mitigate – Prevention of Adverse Impact;
* Part II, 7. Facilities Operation, Bypass;
* Part II, 8. Removed Substances;
* Part III, 1. Slug/Spill Control Plan;
* also, be aware of the second sentence in paragraph one of Part II, 9. Upset Conditions and Part II, 18. Need to Halt or Reduce not a Defense.

b. If a violation of one of these conditions is the underlying cause of the limits violation, consider a stronger enforcement action for this underlying cause than for the limits violation itself.

c. RESAMPLE, RESAMPLE, RESAMPLE.

2. WHY RESAMPLE?

a. Because your ERP says you will require the SIU to "conduct additional monitoring and return to compliance" (Enforcement Chart, page 2, Permit limits Violations, Expected Action from User column," Appendix 8-A, *Comprehensive Guide*).

b. If it's a limits violation from self-monitoring, the SIU is required to resample by their IUP. Per Part II, 2, b., of Division's Generic IUP, Appendix 6-B, *Comprehensive Guide*, the SIU must

* Call the POTW within 24 hours of the SIU's becoming aware of the violation.
* Collect a new sample and submit results to the POTW within 30 days of the SIU's becoming aware of the violation. Only one repeat sample per violation is required, but see below for discussion on how to avoid SNC.

c. To confirm the violations continue ... or don't continue…

d. If they don't continue, wouldn't it be nice for the SIU to avoid SNC with Limits? Publishing an SIU in the paper based on one bad sample puts the POTW in a difficult position.

e. If they do continue:

* How bad it is?
* Is there any pattern?
* Is there anything the POTW can do? For example, can the POTW raise the limit - see 10. below)?
* Are the SIU's efforts to comply working?

f. If they do continue: the additional data will help in developing an interim limit should an enforceable compliance schedule (see 8. below) be needed or in development of a new IUP limit (see 10. below).

3. Significant Noncompliance (SNC) is a way of separating out the more significant violations for additional ESCALATED enforcement action. As soon as practical after detecting the violation, do a preliminary SNC with Limits determination. See *Comprehensive Guide*, Chapter 7, Section D. Also see guidance regarding SNC with Reporting in the handouts for the Pretreatment Annual Report workshops.

a. Remember it takes 66% regular violations (above the limit by any amount) or 33% TRC violations (equal to or above the TRC limit) to make SNC with limits.

* FOR EVERY REGULAR VIOLATION, YOU NEED AT LEAST ONE COMPLIANT RESULT TO AVOID SNC (less if you have more than 4 samples for the six month period)
* FOR EVERY TRC VIOLATION, YOU NEED AT LEAST THREE COMPLIANT RESULTS TO AVOID SNC (less if you have more than 4 samples for the six month period)

#### SO RESAMPLE, RESAMPLE, RESAMPLE

4. Consider the following in the resampling:

a. Have the SIU be the one to collect the repeat samples (see 2.b. above for instances where the SIU must perform the resampling). Why should you have more work when they are the ones in violation? Ensure the SIU is using proper sample collection and analysis techniques, and is collecting representative samples. Get a split of the SIU’s sample if you are unsure.

b. If the repeat samples are collected by the POTW, have the SIU pay the costs.

c. Watch the sample collectors (POTW and SIU) collect the samples to confirm they are following correct procedures.

d. Collect splits samples to investigate if it's a sample collection and/or analytical problem.

e. Tell the SIU how additional self-monitoring may help them avoid SNC. They may voluntarily do more than you ask, and if they chose not to, and then complain about being in SNC, you may want to point out your earlier recommendation.

e. Consider laboratory analysis turn around time, especially during holiday periods.

IF THE RESAMPLE RESULTS ALSO SHOW VIOLATIONS, NOW WHAT???

5. If the POTW has capacity available, consider giving the SIU some of it by raising their IUP limit. See item 10. below. If you cannot increase the IUP limit, or do not want to yet…..

6. If the SIU's preliminary investigation has identified the problem and can correct it before the end of the six month period, do another preliminary SNC determination to see if enough compliant samples can be collected after the problem is corrected to avoid SNC.

7. If the SIU still doesn't know the cause, or needs more time to correct the problem, look at where you are in the six month period.

a. If the six month period isn't over yet, there may be time to get the SIU under an enforceable compliance schedule (see 8. below) or modify the IUP (see 10. below) and collect enough compliant samples before the end of the six month period, then the SIU is never in SNC. - the POTW doesn't have to issue a public notice. (The SIU must still be listed on the SNCR form.)

7. b. If the six month period is over, and the SIU will be SNC, now what?

* The POTW must take whatever ESCALATED enforcement actions required in its ERP (NOV, penalty, public notice).
* In order to properly follow its ERP, the POTW must take whatever actions are necessary to ensure the SIU is not SNC for the second period.

The SIU has solved the problem and data for this second six month period no longer shows SNC.

The SIU has received an enforceable compliance schedule (see 8. below), and is in compliance with that schedule   
OR   
the POTW has revised the IUP to raise the limit (see 10. below), and the SIU is in compliance with the new limit

8. What is an enforceable compliance schedule? A compliance schedule with an interim limit and stipulated penalties for failure to meet the interim limit, perform required self-monitoring, or meet the compliance schedule due dates; i.e. it gives the SIU a limit they can comply with while they thoroughly investigate the cause of and solutions to the problem and then fix the problem. This schedule is issued separate from (outside of) the IUP. The schedule can be issued as a Consent Order (signed by the POTW and the SIU) or as an Administrative Order (signed only by the POTW).

9. Why issue an enforceable compliance schedule (see 8. above)? When an SIU does not know the cause, or needs more time to correct the problem.

10. Why modify the SIU's IUP?

a. If the POTW has capacity available, consider giving the SIU some of it.

b. If the SIU previously could comply and now they can't, they must have changed something. Their IUP requires them to give you prior notification of all changes. Before raising their limit, it is appropriate for them to be able to explain why their discharge increase (and for the POTW to issue an NOV for failure to tell the POTW about this change before they made it) before you grant them an increase. An enforceable compliance schedule (see 8. above) can be issued to cover the time for the SIU's investigation.

11. The sooner you get an SIU on an enforceable compliance schedule (see 8. above) or modify the IUP (see 10. below), the sooner the SIU stops being in violation, avoiding NOVs and penalties and maybe even the second public notice.

12. You can wait to issue the enforceable compliance schedule (see 8. above) or modify the IUP (see 10. below), but why?

a. You may not have enough data to comfortably assign an interim limit (or new IUP limit).

b. You don't have a firm enough schedule of activities.

c. It won't take very long for the SIU to complete the corrective actions.

13. Generally, as soon as the POTW and SIU feel comfortable with data enough to develop an interim limit, and have general idea of a schedule of events, go ahead and issue enforceable compliance schedule (see 8. above).

IN SUMMARY:

14. If the sample frequency is only once per six months, collecting the sample early in the six month period will decrease the possibility of SNC with Limits by resampling. Encourage your SIUs to sample themselves...they can change their own SNC status.

15. If the SIU does get in SNC with Limits, the POTW has another six months to increase sampling and require the SIU to begin an investigation. There will be plenty of time to develop and issue an enforceable compliance schedule (see 8. above) or modify the IUP (see 10. below) by the end of the second period (or at least very soon after the end of the period). POTWs unable to do this are neglecting their pretreatment program and will be subject to enforcement by the Division.