

Murfreesboro Water and Sewer Department



Industrial Pretreatment Enforcement Response Plan

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I. PURPOSE OF THE ENFORCEMENT RESPONSE PLAN

This Enforcement Response Plan (ERP) provides guidance to Murfreesboro Water and Sewer Department in resolving violations of the local pretreatment program. The ERP outlines, in a step-by-step approach, the procedures to be followed by staff to identify, document, and respond to pretreatment violations. The plan provides guidance in selecting initial and follow-up enforcement actions, indicates staff responsibilities for these actions, and specifies appropriate time frames in which to take them.

To ensure that Publicly Owned Treatment Works (POTWs) develop and implement specific enforcement procedures, the U.S. Environmental Protection Agency (EPA) proposed regulations on November 23, 1988 (53 Fed. Reg. 47632), amending the General Pretreatment Regulations, paragraph 40 CFR 403.8(f)(5), (Regulations) requiring all POTW's with approved pretreatment programs to develop and implement enforcement response plans. The ERP specifies criteria by which POTW personnel will determine the enforcement action most appropriate to the nature of the violation.

A flexible and appropriate ERP tailored to the particular needs of the City is necessary in carrying out a successful pretreatment program. All enforcement actions should consider any unique or unusual aspects of a specific situation. Therefore, this is not intended to limit the judgement and flexibility of the City.

The 40 CFR Regulations, at a minimum, require the ERP to:

- (1) describe how the POTW will investigate instances of noncompliance;
- (2) describe types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user (IU) violations and the time periods which responses will take place;
- (3) identify the official(s) responsible for each type of response; and,
- (4) adequately reflect the POTW's primary responsibility in enforcing all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8(f)(1&2).

Department personnel utilized in developing this ERP consisted of:

- (1) Pretreatment Coordinator;
- (2) Assistant Director;
- (3) Director;
- (4) Murfreesboro City Attorney; and,
- (5) Consulting Engineer.

An effective enforcement response plan will help alleviate many difficulties that may arise in enforcing a pretreatment program. Adherence to the plan makes the POTW less likely to react inconsistently to similar instances of noncompliance or to arbitrarily select enforcement measures. Because the Control Authority is following documented enforcement procedures, industries will be less likely to view the enforcement action as subjective or unreasonable.

II. ADMINISTRATIVE ENFORCEMENT REMEDIES

The enforcement process is initiated by the discovery of an industrial user violation. Once a violation is identified, the Department must categorize the violation and determine the most appropriate response. This response should be proportionate to the violation's severity, promote compliance in a timely manner, and be authorized under State law and the Control Authority's sewer use ordinance or regulations.

Included here is an overview of the types of enforcement responses available in Chapter 33 of the Murfreesboro City Code [§33-36 (35)]. The specific response depends on the severity of the violation, its duration, its effect on the environment and the treatment plant, and the user's compliance history as well as its good faith in taking corrective action.

A. Notice of Violation

A Notice of Violation (NOV) is an official communication from the Department notifying the noncompliant industrial user (IU) that a pretreatment violation has occurred. The NOV is an appropriate initial response to nonsignificant violations, and may be the only response necessary in cases of infrequent and generally minor violations. This action provides the IU with an opportunity to correct noncompliance on its own initiative rather than according to a schedule of actions determined by the Control Authority. Additionally, the NOV documents initial attempts of the Control Authority to resolve the noncompliance.

NOVs are official communications and should be issued on Control Authority letterhead. Typically, a NOV contains the following minimum findings of fact:

- The City of Murfreesboro is charged with constructing, maintaining, and regulating the sewer system and treatment works.
- To protect the sewer system (and treatment works), Murfreesboro Water and Sewer Department administers a pretreatment program.
- Under this program, the industrial user was issued a permit.
- The permit contained numerical limits on the quality of pollutants which the industry could discharge as well as self-monitoring requirements and other duties.
- On (date), analysis showed that the concentration or loading of (pollutant) exceeded the permit limitation etc.

A NOV should be drafted and issued to the IU immediately upon detection of the violation. Each day that a violation continues may be considered as a separate violation, and a separate NOV may be issued for each such day. As a general rule, the NOV should be received by the user no later than five business days after discovery of the noncompliance. The NOV may either be hand-delivered to the industrial user by Control Authority personnel or sent to the industrial user via certified mail. When appropriate, an IU may be notified of a violation via telephone, email, or facsimile transmission in advance of the written NOV.

IUs have fifteen days from the receipt of a Notice of Violation to respond. The response must include an explanation for the violation and a plan for correction and prevention of such events. Should a user fail to return to compliance following receipt of the NOV, the Department may proceed to more stringent enforcement measures [§33-36 (35)(b-h)].

Because NOVs may serve as evidence in judicial proceedings, a copy signed by the responsible Control Authority official should be placed in the industrial user's file, along with the certified mail receipt or similar statement by the deliverer.

As with any enforcement procedure, a NOV should facilitate closer monitoring of the noncompliant user. If the IU does not return to compliance, the Department may escalate to more stringent enforcement responses.

B. Administrative Orders

An Administrative Order is an enforcement document that directs an IU to undertake or to cease specified activities. The terms of an Administrative Order may or may not be negotiated with the industrial user. This response is recommended as the first formal enforcement action to significant noncompliance (unless judicial proceedings are more appropriate), and may incorporate compliance schedules, administrative penalties, and termination of service orders. The following elements should be present in all Administrative Orders:

- Title. The title should specify the type of order being issued, to whom it is being issued, summarize the purpose(s) of the order, contain an identification number and be printed on the letterhead of the Department.
- Legal authority. The authority under which the order is issued (i.e., its enabling legislation and/or sewer use ordinance) should be provided.
- Findings of noncompliance. All violations must be carefully described, including the date(s), the specific permit conditions/ordinance provisions violated, and any damages attributable to the violation
- Ordered activity. All orders should clearly set out all required activity including installation of treatment technology, additional monitoring, appearance at a show-cause hearing, etc.
- Milestone dates for corrective actions. Where compliance schedules are used, all progress dates must be clearly established including due dates for my required written reports.
- Standard clauses. These clauses provide that:
 - a) compliance with the terms and conditions of the order will not be construed to relieve the user of its obligation to comply with all applicable laws;
 - b) violation of the order may subject the user to all penalties available under Chapter 33;
 - c) no provision of the order will be construed to limit the Department's authority to issue additional orders or take other action deemed necessary; and
 - d) the provisions of the order shall be binding upon the user, its officers, and employees.

The circumstances of an IU's noncompliance may dictate the type of order needed to achieve the most effective return to compliance. More than one type of order may be used to respond to a particular instance of noncompliance. The Department must determine which type of Administrative Order is appropriate for the given situation.

This section focuses on the types of administrative orders outlined in Chapter 33 of the Murfreesboro City Code [§33-36 (35)(c)].

(1) Administrative Compliance Order

A Compliance Order directs the user to achieve or restore compliance by a date specified in the order. It is issued unilaterally and its terms need not be discussed with the industry in advance. The compliance order is usually issued when noncompliance cannot be resolved without construction, repair, or process changes. Compliance orders are also frequently used to require industrial users to develop management practices, spill prevention programs and related pretreatment program requirements.

The compliance order should document the noncompliance and state required actions to be accomplished by specific dates, including interim and final reporting requirements. A compliance schedule should be firm but reasonable, taking into account factors relevant to an appropriate time schedule. The time necessary for any obtaining construction permits, design and/or construction must be considered. To ensure that the user is making acceptable progress, intermediate dates or “milestones” must be established. The Department is required to track the user’s performance against the milestones and escalate the enforcement response as needed. When confronted with a user not making good faith efforts to achieve compliance, the compliance order is an effective means of ensuring that necessary corrections are implemented.

The Department may design compliance schedules, set milestone dates, prescribe additional or supplemental reporting requirements, or order the industrial user to achieve compliance by a certain date. A compliance order, which is typically issued without the user’s involvement, may result in a compliance schedule that is not feasible. A negotiated Consent Order can help prevent such situations and reduce the time and effort necessary to enforce the order.

(2) Administrative Consent Order

Consent Orders are assurances of voluntary compliance, which establish an agreement with the industrial user responsible for noncompliance. This enforcement action should normally contain three elements: (1) a compliance schedule; (2) stipulated fines or remedial actions; and (3) the signatures of the Department Director and the industrial representatives. A Consent Order combines the force of an Administrative Order with the flexibility of a negotiated settlement.

A consent order is appropriate when the user assumes responsibility for its noncompliance and is willing (in good faith) to correct its cause(s). The user need not admit the noncompliance in the text of the order. Thus, signing the order is neither an admission of liability for purposes of civil litigation nor a plea of guilty for purposes of criminal prosecution. However, the Department must make sure that the consent order prohibits future violations and provides for corrective action on the part of the industry. Since both parties have agreed to its terms, a Consent Order helps to encourage cooperation, accelerate compliance efforts, and preserve working relationships.

The provisions of a consent order should be carefully drafted to prevent conflicting interpretations by the parties. Such terms may include findings of show cause hearings or outcomes of confidential settlement negotiations. Also, the Department may take a user’s extenuating circumstances (e.g. financial difficulties, technical problems and other impediments to necessary corrective action) into consideration. The consent order should address every identified (and potential) deficiency in the user’s compliance status at the time of the order. The orders must include a schedule of specific actions to be taken by the user to correct the noncompliance within a time period also specified by the order. Although the provisions of a Consent Order reflect a voluntary agreement, the enforceability is equal to that of a Cease and Desist or a Compliance Order.

(3) Show Cause Hearing

A Show Cause Order is typically issued when informal contacts or NOV's have failed to resolve a violation or other type of noncompliance. This order directs the user to appear before the Department, explain the noncompliance, and show cause why more severe enforcement actions should not proceed. However, the show cause order/hearing can also be used to investigate violations of previous orders.

A Show Cause Hearing is conducted by the Director or official designated as the hearing officer. The hearing may be formal or informal, and may be either open or closed to the public. Regardless of the approach, the findings from the hearing should be carefully documented. Conducted according to the rules of evidence, a formal hearing is typically used to put forth the facts of noncompliance, with verbatim transcripts and cross-examination of witnesses. In response, the IU may admit or deny the noncompliance, explain mitigating circumstances, demonstrate its eventual compliance and describe all other corrective measures. The hearing officer should explore the circumstances surrounding the noncompliance and evaluate the sufficiency of the evidence for subsequent civil or criminal actions. The hearing can also serve to educate, if the user does not understand the nature of the violation.

The Department must then determine whether further action is warranted and, if so, its nature and extent. If the problems causing the noncompliance appear to be resolved or nearly resolved at the hearing's conclusion, a Consent Order may be drafted. Should the hearing result in an impasse, more stringent measures may be necessary, such as issuance of a Compliance Order, imposing a penalty, or referral of the case to the City attorney for civil litigation or criminal prosecution. The results of a formal show cause hearing, along with any data and testimonies submitted as evidence, are generally available to the public and may also serve as evidentiary support for future enforcement actions.

Unlike judicial enforcement in which the Department must affirmatively prove the noncompliance, Show Cause Hearings place the burden of proof on the user to show why its permit should not be suspended or revoked or why it should not be fined or sued for its noncompliance. The show cause hearing involves a greater amount of time and a greater expenditure of resources to provide results than Cease and Desist or Compliance Orders.

(4) Cease and Desist Order

A Cease and Desist Order directs a noncompliant user to cease illegal or unauthorized discharges immediately or to terminate its discharge altogether. This action should be used in situations where the discharge could cause interference or pass through, or otherwise create an emergency situation. The order may be issued immediately upon discovery of the problem or following a hearing. In an emergency, the order to cease and desist may be given by telephone. However, a subsequent written order should be served on the industrial user, either in person or by registered mail.

The order allows for immediate cessation of unauthorized discharges, thus halting the noncompliance and removing any threat to the POTW or receiving stream. If the user fails to comply with a Cease and Desist Order, the Department may take independent action to halt the discharge, such as terminating water service or blocking the user's connection point.

C. Administrative Penalties

An Administrative Penalty is a monetary assessment by the Department for violations of pretreatment standards and requirements. Penalties are among the most effective responses to user noncompliance because they may be assessed at the Department's discretion and the amount of the penalties may be determined on an individual basis. Administrative penalties differ from civil penalties (penalties imposed through court proceedings), since administrative penalties are assessed by the Department directly and do not require court intervention unless the user contests the action or refuses to pay the penalty. Such penalties are punitive in nature and are not related to a specific cost born by the Department. Instead, administrative penalties are to recapture the full or partial economic benefit of noncompliance, and to deter future violations.

A penalty is recommended as an escalated enforcement response, particularly when NOVs or administrative orders have not prompted a return to compliance. Whether penalties are appropriate responses to noncompliance also depends greatly on the circumstances surrounding the violation. When using this enforcement response, either singly or in conjunction with another response (e.g., an administrative order requiring the industrial user to take steps to return to compliance), the Department should consider the following factors:

- The type and severity of the violation
- The number of violations cited
- The duration of the noncompliance
- The impact of the violation on the wastewater treatment plant and the environment (e.g., whether the violation caused pass through or interference)
- Whether the violation threatened human health
- Whether the industrial user derived any economic benefit or savings from the noncompliance
- The compliance history of the user
- Whether the user is making good faith efforts to restore compliance
- Other policy considerations normally involved in an enforcement decision

Suggestions for instances when penalties are particularly appropriate include:

- When the industrial user remains in noncompliance after receiving repeated NOVs
- When the industrial user violates the terms of an administrative order (such as failing to meet a compliance schedule deadline).

The process of assessing administrative penalties involves three steps: (1) determining the amount of the penalty; (2) selecting a mechanism through which to impose the penalty; and (3) collecting the penalty. To successfully assess administrative penalties, the Department must have adequate legal authority, well-defined procedures, and complete documentation of the noncompliance (such as chain-of-custody forms and detailed sampling records). If the industrial user challenges the penalty in court, the Department must be prepared to defend its actions. The amount of the penalty should be proportionate to the economic benefit enjoyed by the industrial user from the noncompliance and the harm caused by the violation.

Once the violation is documented and an appropriate penalty amount has been determined, the Department must notify the industrial user of the penalties assessed and collect the penalties. There are a variety of mechanisms available to assess administrative penalties:

- **Assessment on Sewer Bill.** The Department may add an Administrative Penalty to other sewer charges when billing the industry for sewer services. The additional charge should be identified as a penalty for noncompliance and also include a comment indicating that if compliance is not achieved before the next billing period, an escalated enforcement action will be taken against the industrial user.
- **Notice of Violation.** A NOV may be used to notify the industrial user of its pretreatment violation(s) and to inform the user that an Administrative Penalty has been assessed. The Notice should include a provision explaining that full payment is due within a specified period of time.
- **Administrative Order.** A formal order may be issued specifying that the industrial user is in noncompliance and outlining actions which are required of the industry including the payment of an Administrative Penalty.
- **Show Cause Hearing.** One outcome of such a meeting may be the assessment of an Administrative Penalty. This should be followed up in writing to the user. In some cases, a show cause may be granted to give the industry an opportunity to appeal the penalty.

Whatever the assessment process selected, it should at a minimum specify the violations for which the Administrative Penalty is being assessed, indicate the amount of the penalty, and order the industrial user to take corrective action to return to compliance.

III. CIVIL LITIGATION

Civil litigation is the formal process of filing lawsuits against industrial users to secure court ordered action to correct violations and to secure penalties for violations including the recovery of costs to the POTW. It is normally pursued when the corrective action required is costly and complex, the penalty to be assessed exceeds that which the Department can assess administratively or when the industrial user is considered to be recalcitrant and unwilling to cooperate. The term “civil litigation” also includes enforcement measures which require involvement or approval by the courts, such as injunctive relief and settlement agreements. Civil litigation is similar to criminal prosecution in that it requires the full cooperation of the attorney and may result in court trials of industrial users and assessment of penalties. However, civil litigation is conducted for different purposes and requires a less stringent burden of proof in order for the Department to prevail.

Civil litigation is an appropriate enforcement response in three general situations:

- (1) emergency situations where injunctive relief is necessary to halt or prevent discharges which threaten human health or the environment, or interfere with the POTW;
- (2) when efforts to restore compliance through cooperation with the industrial user have failed and a court supervised settlement (consent decree) is necessary to enforce program requirements; or
- (3) to impose civil penalties and recover losses incurred due to the noncompliance.

Finally, successfully concluded civil litigation helps to deter future noncompliance through establishment of favorable judicial precedent. Also, the awareness that litigation is a viable

enforcement option will influence industrial users to respond promptly to less formal enforcement measures, such as notices of violation or administrative orders. Although the different types of civil litigation are discussed separately below, they are frequently used in combination (e.g., the Department may seek an injunction to halt or prevent discharges while a civil enforcement suit is pending).

In a formal complaint filed with the court, the Department must ask for the specific relief to which it is entitled under State law and the sewer use ordinance. In consultation with the City Attorney, the Department should, in advance of the trial, determine:

- the provisions of its sewer use ordinance and/or wastewater permit which the user has allegedly violated;
- the amount to seek as recovery of damages (including spill response expenses, additional compliance monitoring costs, attorney's fees, court costs, and reimbursement of any penalties levied upon the Department for NPDES violations); and
- whether to seek civil penalties and the appropriate amounts of these penalties. Since it is unlikely (and may be impossible) that the Department will be awarded a greater sum in damages and penalties than it seeks in the complaint, the maximum amount of civil penalties allowed under the ordinance should routinely be sought.

To make an informed decision on the advisability of civil litigation, the Department must understand the legal procedures involved in preparing a lawsuit. These procedures include identification of parties to be named as defendants in the complaint and the relief to be requested from the court. In addition, the Department must be prepared to cooperate with the industrial user during the "discovery" process (i.e., the pretrial investigation and exchange of information between the parties). The Department's attorney can help to identify the correct parties, but he or she will require the assistance of pretreatment personnel who have first-hand knowledge of persons responsible for the industry's compliance status. As a general rule, all "appropriate" parties should be named in the complaint and the liability of each can then be determined through the litigation process.

One major concern with pursuing both civil and criminal enforcement is the applicable Statute of Limitations. A Statute of Limitations restricts the amount of time the Department will have to initiate the law suit once it becomes aware of a violation, after which time the Department will have forfeited its ability to pursue an action for that violation.

A. Injunctive Relief

Injunctions are court orders that direct parties to do something or refrain from doing something. The Control Authority should seek injunctive relief if the delays involved in filing suit would result in irreparable harm. The General Pretreatment Regulations require a Control Authority to have authority and procedures to immediately and effectively halt or prevent my discharge of pollutants which reasonably appears to present an imminent danger to health or welfare. If an industrial user refuses to comply with a Cease And Desist Order, the Department may be forced to seek injunctive relief.

B. Civil Penalties and Cost Recovery

Civil litigation (i.e., going to trial) may be necessary to recover costs associated with noncompliance and to impose civil penalties. A successful civil suit may force the industrial user to pay for all such expenses incurred by the Department in responding to the non-compliance. This includes restoration of the Department's physical plant, payment for medical treatment of injured employees, and indemnification of the Department for all penalties assessed against it for NPDES permit violations.

Even in situations where a noncompliant discharge has not caused actual damage, the prospect of civil penalties (in conjunction with adverse publicity and injunctions against future violations) and the costs associated with defending civil suits may be sufficient to convince potentially noncompliant industries that no alternative exists to consistent compliance. Since amounts recoverable as penalties are likely to be less than those imposed as civil penalties, the Department may be forced to sue users to recover penalties of appropriate severity.

IV. CRIMINAL PROSECUTION

Criminal prosecution is the formal process of charging individuals and/or organizations with violations of ordinance provisions that are punishable, upon conviction, by fines and/or imprisonment. The purposes of criminal prosecution are to punish noncompliance established through court proceedings and to deter future noncompliance. Criminal offenses are traditionally defined as either felonies or misdemeanors. Under Federal law, felonies are offenses punishable by death or imprisonment for a term exceeding one year. Knowing violations of the Clean Water Act are punishable by fines up to \$50,000 per day of violation, imprisonment for up to 3 years, or both. Knowing endangerment of human health (placing another person in imminent danger of death or serious bodily injury) is punishable by fines up to \$1,000,000 (in the case of a corporation), imprisonment of up to 15 years, or both. Fines and prison sentences under the Act are doubled for second offenses. Federal law defines misdemeanors as offenses other than felonies. Misdemeanors are generally punishable by fines of up to \$1,000 or imprisonment for less than 1 year. Typical misdemeanors punishable under a sewer use ordinance include tampering with monitoring equipment, falsifying self-monitoring reports, or failing to report illegal discharges.

There are two elements to a crime: (1) an act in violation of the law; and (2) criminal intent. An act, which might be characterized as "criminal", may not result in prosecution if the prosecutor cannot prove intent or criminal negligence. In other words, the industrial user either must have intended to break the law or was so indifferent to the nature and implications of its act that it could be deemed criminally negligent. Unless a prosecutor can prove both of these elements, criminal prosecution is not a viable enforcement option.

Actions that may be characterized as environmental crimes include willful or negligent:

- violations of the ordinance;
- violations of sewer connection permits or industrial wastewater discharge permits (such as construction of unauthorized connection points, discharges in excess of permit limits, or failure to submit self-monitoring reports);
- violations of administrative orders issued to implement pretreatment program requirements (such as orders to cease and desist illegal discharges or show cause orders);
- violations of regulations which implement general grants of authority in the ordinance; and
- failure to notify the Control Authority of unauthorized discharges (such as slug loads).

Noncompliance may also be prosecuted under ordinance provisions not directly related to environmental protection. For example, industry employees who alter monitoring reports and tamper with sampling equipment may be charged with conspiracy to commit crimes.

Criminal prosecution is appropriate when the Department has evidence of noncompliance which shows criminal intent. It is recommended in cases involving repeated violations, aggravated violations (such as discharges which endanger the health of treatment plant employees), and when less formal efforts to restore compliance have failed. Criminal prosecution may be brought prior to, concurrently with, or subsequent to civil litigation.

Although civil litigation and criminal prosecution are not mutually exclusive, evidence that the named defendant(s) committed an illegal act with criminal intent must be present before an indictment is sought. When evidence sufficient to indict and convict is present, other factors may influence the type of enforcement response before initiating criminal prosecution. Mitigating factors include prompt and complete disclosure of the noncompliance and good faith efforts in trying to restore compliance (such as voluntarily installing pretreatment equipment or exceeding compliance schedule requirements). Likewise, efforts to conceal the scope and extent of violations or to mislead investigators should be fully examined when deciding whether to proceed with criminal prosecution.

Because of the presumption of innocence in criminal trials, prosecutors must determine if each element of an offense can be proved. The presumption of innocence means that the defendant industrial user does not have to prove its innocence. Unless the prosecution can prove that an illegal act was performed with criminal intent, the defendant will be acquitted. Unless there is strong evidence of noncompliance, the prosecutor may exercise discretion and decline the case.

V. TERMINATION OF SERVICE

Termination of service is the revocation of an industrial user's privilege to discharge industrial wastewater into the Department's sewer system. Termination may be accomplished by physical severance of the industry's connection to the collection system, by issuance of an Administrative Order which compels the user to terminate its discharge, or by a court ruling. However, since termination of service may force industries to halt production and may force closure (if discharge privileges are not reinstated), the legal and operational implications of termination must be carefully considered before using this enforcement response.

Termination of service is an appropriate response to industries which have not responded adequately to previous enforcement responses. In situations where the Department must act immediately to halt or prevent a discharge which presents a threat to human health, the environment or the POTW, cease and desist orders and termination of service are the only appropriate responses. Unlike civil and criminal proceedings, termination of sewer service is an administrative response which can be implemented directly by the Department. The ability to terminate service to an industrial user should be available regardless of the user's compliance status.

The decision to terminate service requires careful consideration of its legal and procedural consequences. It is likely that forcing an industrial user to halt production will damage the industry's economic position. Nonetheless, this drastic measure is sometimes necessary to address emergency situations or industries resistant to previous enforcement measures. Service termination is sometimes used as an initial response to noncompliance which causes or threatens to cause an emergency

situation. However, it is more frequently used as an escalated response to a significant violation when other enforcement responses fail to bring the industrial user into compliance.

In addition to being an effective remedy for past or continuing noncompliance, the prospect of termination of service deters unauthorized or illegal discharges. For users whose service is terminated, two alternatives to local sewer service exist: (1) having wastewater hauled away; or (2) obtaining a direct discharge (NPDES) permit. If these alternatives are not feasible for an industry, it has a strong incentive to avoid termination of sewer service and remain in compliance. When the regulated community is aware that this enforcement response is available and likely to be used as an escalated response, industrial users generally respond more quickly to preliminary (less severe) enforcement measures.

There are three basic methods to terminate sewer service:

- Physically sever (or plug) the industry's connection to the POTW's collection system
- Halt the discharge by revoking the industry's discharge permit
- Issue a cease and desist order

There are advantages and disadvantages to each of these methods. Severing the sewer line is immediately effective but even a temporary plug may be costly to install and remove. Revoking discharge permits or issuing cease and desist orders are easy policies to reverse but rely on the industry to carry out the specific directives.

All of these methods of termination require notice to the industrial user. This notice fulfills the legal due process requirements associated with service termination and enables the user to halt production in time to avoid backflows, spills and other harm to its facility as well as time to look for alternative means of wastewater disposal. A termination of service notice should be delivered to a responsible party at the IU by personal delivery or certified mail.

VI. SUPPLEMENTAL ENFORCEMENT REMEDIES

Supplemental or innovative enforcement responses are normally used in conjunction with more traditional approaches. Supplemental enforcement responses are typically low cost and are designed to reinforce the compliance obligations of industrial users. The application of these responses must be determined on an individual basis.

Certain supplemental responses require actions on the part of noncompliant users. To ensure that users are legally bound to perform these actions, the techniques should be included as terms of administrative orders or settlement agreements. When considering supplemental enforcement responses, the Department should not consider itself limited to those responses and may develop additional supplemental responses.

A. Responses For Which Specific Authority Is Necessary

Specific legal authority is advisable whenever the supplemental response requires the industrial user to pay fees or to take particular actions. Specific legal authority may also be appropriate for several enforcement responses implemented by the Control Authority itself.

(1) Annual Publication of Significant Noncompliance.

EPA regulations require annual publication of a list of industrial users which were significantly violating applicable pretreatment standards or requirements [see 40 CFR 403.8(f)(2)(viii)]. Publication of this list is intended to deter industrial users from committing pretreatment violations and to satisfy the public's right to know of violations affecting its immediate environment and causing additional expenditures of public funds to operate and maintain the treatment system. Although Federal law requires only annual publication of the list of significant violators, it does not prohibit publication on a more frequent basis. Publishing the names of violators at quarterly or semiannual intervals may be an effective means of encouraging compliance.

While public notice is not a direct enforcement action against a user, awareness that significant violations result in public notice will deter users concerned with their public image. Once users are put on public notice, reaction from the general public and from environmental interest groups may hasten a return to compliance. Publication on a more frequent basis may also avoid noticing users which have already returned to compliance.

Publishing the names of noncompliant industries (prior to admissions of liability) raises the prospect of suits for libel. The public notice should contain details regarding both the violation and any subsequent remedial measure taken by the user. A detailed, balanced notice will preclude many suits based on the assertion that the notice was unfair or misleading. Also, thorough and consistent QA/QC procedures and chain-of-custody practices are an absolute necessity to establish the validity of the data regarding violations. Careful documentation of compliance and enforcement activities provides rebuttal to charges of inaccurate publication.

The manner in which the public notice is published can also avert accusations of unfair or inequitable treatment. EPA regulations require only that a list of the names of significant violators be published and that an accompanying statement regarding the violations during the previous twelve months (or whatever publication period is adopted) be included. However, the notice may also explain mitigating circumstances surrounding the violation, such as:

- Current compliance status
- Methods being used to attain compliance
- Type and severity of the violation
- Duration of the violation

By balancing the text of the notice with favorable information, the user receives credit for any "good faith" efforts it is making.

The list of significant violators may be placed in the legal notices section of the newspaper or elsewhere, at the discretion of the Department. Placement in a forward section of the newspaper may result in a significantly larger readership and greater effectiveness. The Department must ensure that the notice will be published with concise, accurate information that will not be misinterpreted.

(2) Water Service Termination

Termination of water service is equally effective as an enforcement response. Like sewer termination, the lack of fresh water will force an industry to halt production until service is restored. The Department has jurisdiction over both water and sewer services allowing joint termination for noncompliance with the pretreatment program. Regardless, the Department should clearly indicate to its industrial users that a violation might also result in the severance of water services.

B. Responses For Which Specific Authority Is Not Necessary

Many supplemental enforcement responses do not require specific legal authorization in sewer use ordinances.

(1) Increased Monitoring and Reporting

Generally, industrial users demonstrating a history of noncompliance should be subject to increased surveillance (i.e., sampling and inspections). Since recurring violations indicate that at least one chronic problem exists at the facility, the Department should monitor the user closely and, if necessary require user self-monitoring until the problem is corrected and consistent compliance is demonstrated. Increased surveillance and more stringent self-monitoring requirements for chronic violators provide a powerful incentive to return to compliance.

The Department should schedule more frequent inspection and sampling visits to verify any increased self-monitoring data. The costs of additional monitoring (both sampling and analysis) should be passed on the industry. The increased compliance information provides greater data on the extent of the user's noncompliance and will establish when consistent compliance is achieved. It is essential that any compliance information be as current as possible.

Self-monitoring requirements serve to deter further violations due to the expense involved. Consequently, the frequency of the industrial user's reporting schedule must also be increased to coincide with increased self-monitoring requirements.

(2) Short Term Permits

The permit renewal process represents a good opportunity to evaluate the efficiency of treatment and the compliance status of each industrial user. Permit re-applications provide updated data on the facility and can help to make industries aware of new or revised pretreatment requirements and obligations

Although the duration a permit must be no more than five years, the minimum length of a permit's effective period is discretionary. The permit renewal process provides leverage to ensure that necessary improvements in the facility's operation are being accomplished. A short-term permit may be issued to a noncompliant industry to provide a more frequent review of the industrial user's circumstances. This also allows easy adjustment of monitoring and reporting requirements and the addition of compliance schedules. An effective period of between 12 and 18 months typically serves as a sufficient interval for a facility to achieve consistent compliance.

VII. APPEALS

Any finding, determination, and/or assessment made by the Director may be appealed to the Murfreesboro Water and Sewer Board, provided the appeal is made within ten (10) days of the written decision of the Director, by filing written notice of the appeal with the City Recorder of the City of Murfreesboro, Murfreesboro City Hall, 111 W. Vine St., Murfreesboro, Tennessee. The determination of the Murfreesboro Water and Sewer Board is final, subject to appeal to the Chancery Court by writ of certiorari. [*Murfreesboro City Code 33-40 (12)*]

VIII. INDUSTRIAL USER INVENTORY

In order to implement an effective ERP, all industries subject to pretreatment program requirements must be identified and controlled. Therefore, the Murfreesboro Water and Sewer Department (MWSD) has developed a systematic approach to the identification of industrial users (IUs).

All new construction or major renovation must be approved by the City plans review process. During this process, any commercial facility with a potential for process discharge is required to complete a preliminary IU screening form. The Department then reviews the form. If the evaluation finds that there is no discharge or the discharge will not be significant, the facility is exempt from pretreatment obligations. If the facility is deemed significant, or there is some question as to the impact the facility may pose, completion of a detailed industrial user permit application is required.

As required in their discharge permit, all active IUs are required to complete a new industrial user application any time a process change or expansion is planned. Field personnel are instructed to report any facility that they have reason to believe is discharging process wastes without the knowledge of the Department.

All IUs subject to pretreatment program requirements are issued an Industrial User Discharge Permit and are added to the database of regulated facilities. This list is included in the Pretreatment Semi-Annual Report provided to the Tennessee Department of Environment and Conservation. Permitted industries are placed into one of the three categories: (1) Categorical, (2) Significant, or (3) Non-classified.

The Department maintains a database, which details relevant information on each IU. This includes background information, contact names and phone numbers, and type, volume and quality of the discharge. This information is compiled from permit applications, industrial inspections, communication with IUs, field observations, monitoring equipment, and analytical data. Industrial User information is updated daily as needed and maintained in a computerized database and Department pretreatment program files.

IX. COMPLIANCE MONITORING PROCEDURES

Compliance monitoring activities conducted by MWSD are necessary to identify and document violations that can be presented as admissible and irrefutable evidence in administrative actions and legal proceedings. MWSD does not generally require self-monitoring by permitted IUs. Self-monitoring may be required in enforcement actions where it is necessary for process control. All other compliance monitoring is performed by MWSD. Approved monitoring manholes with stationary, refrigerated samplers and flow meters are required at categorical/significant IUs. Only MWSD personnel has access to these locked monitoring stations.

Sampling and analysis is the principal monitoring tool used to determine program compliance. MWSD personnel conduct all sampling activities. Sample analysis is performed both in-house and by commercial laboratories. Standard protocols and proper QA/QC procedures are required for sample collection and analysis.

X. INDUSTRIAL INSPECTIONS

Inspections are conducted by the Department to verify compliance and identify problems or violations. A standard inspection form is used to document the visit, and is signed and dated by the inspector. Any noncompliance is documented on the form for follow-up either by letter or scheduled visit. IU operational data and conditions must be evaluated against the information provided on the IU permit application. Any undocumented items, incomplete information, or discrepancies are noted, and a new application must then be submitted.

Each facility permitted by MWSD must be inspected at least annually. In addition to routine sample collection, any IU may receive additional visits during the year. Such visits may be necessary to track compliance schedule activities, verify changes process, evaluate discharge, investigate spills, calibrate or repair equipment, or just maintain a regulatory presence.

Regular, annual inspections are scheduled randomly, rather than at the same time each year. Other visits are conducted according to need. Inspections may be scheduled in advance (annual inspection) or unannounced (suspected violations, spills, etc.).

XI. DATA SCREENING

Data from laboratory analysis and field monitoring equipment are reviewed for noncompliance on an “as-generated” basis. Any violation is noted and the appropriate enforcement action is initiated. The plant Superintendent, Director, or Assistant Director is notified depending on the nature and severity of the violation. Screening and tracking of data is accomplished manually and by computer.

XII. IDENTIFICATION OF VIOLATIONS

Pretreatment violations regardless of the severity will initiate the enforcement process. Discovery of a violation may occur as a result of any number of activities. The list below represents the most common sources of identifying violations.

- review of surveillance sampling results;
- spill/accidental discharge reports from IU s;
- 24-hour violation notification requirements;
- site visits by POTW staff;
- information provided by IU employees or private citizens;
- observations by field personnel;
- review of Administrative Order requirements
- review of IU files; and,
- information provided by other agencies.

Once a violation is identified, it is the responsibility of the Pretreatment Coordinator to initiate the appropriate response as required in the plan. When determining an appropriate response, particularly on which includes the imposition of penalties, the specific procedures outlined in the Enforcement Response Plan must be followed.

XIII. ENFORCEMENT RESPONSES

Available enforcement responses are outlined below. Upon notification of an initial violation by phone call, letter, meeting, or NOV, the IU has 30 days to correct the problem and respond. If any violation occurs during that 30-day period, the IU must demonstrate good faith was exercised to prevent or mitigate further violations during that period. A repeat occurrence does not necessarily indicate the same parameter, condition, or procedural requirement was found in violation. Each violation is evaluated for enforcement action.

Documented Communication – A phone call, email or facsimile transmission to the principal contact at the IU that describes the nature of the violation and the consequences of reoccurrence. The IU principal contact must give verbal assurance that the situation will be addressed. A follow up phone call or written response from the IU may be requested depending on the nature of the violation. MWSD has a standard form for documenting phone calls. Any pretreatment personnel may initiate this action.

Informative Letter or Meeting – This is an informal notice that a minor infraction of the pretreatment program has occurred. This response is used only when no harm or no significant violation occurs. Issued by the Pretreatment Coordinator.

Notice of Violation (NOV) – A NOV is a formal notification of a serious or potentially serious violation. A description of the violation, the desired corrective action or response, and possible escalated enforcement actions are outlined in the document. A NOV is typically issued for discharge limits violations unless harm has been caused or a more stringent response is warranted. A penalty may or may not be included with a NOV. Issued by the Pretreatment Coordinator.

Increased Monitoring – Certain violations (discharge limits, etc) result in increased monitoring by the Department. This may include increased frequency of sampling and analysis and the installation of monitoring equipment. The additional cost of such action will be passed on the IU.

Penalty – Penalties may accompany a NOV or AO depending on the nature and severity of the violation. Penalties for discharge limits violations are calculated by the method shown in Section XV, and may be assessed separately or added to the IU's sewer bill.

Administrative Order (AO) – An AO may require an IU to undertake or cease specific activities. Penalties, compliance schedules, and service termination orders may be included with an AO. The four most common types of Administrative Orders are outlined below. Issued by the Director or Assistant Director.

Type of Order	Typical Use
Cease and Desist	Situations where a violation has become chronic or recurring
Consent	An agreed or negotiated (between POTW & IU) compliance plan
Show Cause Hearing	Determine if an action should proceed or more stringent action is necessary
Compliance	An imposed compliance schedule with specific calendar milestone requirements

Emergency Suspension – An emergency suspension of discharge from an IU may be enacted to prevent damage to the POTW, harm to the environment, or injury to life. This requires the IU to immediately cease operation or discharge until the situation is resolved. Normally issued by the Director or Assistant Director, or in emergency situations, by the POTW Superintendent or the Pretreatment Coordinator.

Civil Action – A formal process of litigation where lawsuits are filed against an IU to secure court ordered action in correcting violations including recovery of costs to the POTW. It is used typically when a corrective action is costly and complex or when the IU is unwilling to cooperate. Initiated by the City Attorney.

Termination of Service – The revocation of an IU’s privilege to discharge industrial wastewater into the POTW system. This may be accomplished either physically, through an AO, or by court ruling. This action may result in the closure of the industry. The Director of the Murfreesboro Water & Sewer Department shall make the decision to terminate service. Such action is subject to appeal as set forth in Section VII of this Enforcement Response Plan.

Criminal Prosecution – The formal process of charging an IU or individual with violations of ordinance provisions that are punishable, upon conviction, by fines and/or imprisonment. A criminal violation must include two elements: a violation of the law, and criminal intent. Such offenses are usually deemed either misdemeanors or felonies. The Clean Water Act characterizes certain environmental crimes as felonies and are, therefore, governed by Federal law. Misdemeanors are offenses punishable under local code and are initiated by the City Attorney.

XIV. ENFORCEMENT PROCEDURES

Generally, all violations identified by the Department are review, evaluated, and addressed by the appropriate enforcement response that falls within the guidelines of the ERP. The majority of enforcement actions begin with a NOV. Any Department personnel who discover a violation will immediately inform the Pretreatment Coordinator or the next responsible person identified in the personnel section [XV]. The Pretreatment Coordinator is then responsible for taking the appropriate action or initiating the appropriate response.

For the purpose of calculating penalties, there are two categories of violations: (1) limits violations and (2) all other violations. The method for calculating these penalties is outlined in Sections XVI and XVII, respectively. The procedures and terms outlined below provide additional guidance in implementing a response and promote uniform application of this guide.

BOD, TSS, Ammonia Nitrogen, and Edible Oils & Greases – A surcharge is assessed for these parameters at specific concentration ranges. This ERP does not address surcharges. A violation and enforcement response occurs only when the established ceiling concentration or loading value is exceeded. Such violations are addressed as any other limit violation.

pH – A compliance range, rather than a discharge limit, is exclusive to this parameter. Therefore, the enforcement response to pH noncompliance is distinct. These penalties are calculated under Section XVII. Noncompliance is addressed under Discharge Limit Violations in the Enforcement Response Matrix. Where pH noncompliance is suspected, a recording pH monitor may be installed to determine the extent. Each exceedance is a separate violation.

Daily Violation – A daily violation is an exceedance of any daily limit. Generally, there can be only a single daily violation event for a specific parameter per day. Exceptions to this include pH, slug loads and discrete sampling. Multiple parameter exceedances on a single day are separate violations and penalties are individually assessed.

Monthly Violation – Monthly violations are exceedances of the monthly average limit. There can be only a single monthly average violation event for a specific parameter per month. Multiple parameter exceedances for monthly average limits are separate violations and penalties are individually assessed.

Recurring Violation – For all parameters other than pH, a recurring daily violation is one that occurs more than 3 times over any rolling three-week period. A recurring monthly violation is one that occurs more than 3 times over any rolling three-month period. A recurring pH violation is one that occurs (or exists) for more than:

- 3 days within a rolling seven-day period during daily monitoring; or
- a total of 8 hours over any rolling seven-day period during continuous monitoring; or
- 96 instances over any rolling seven-day period during continuous monitoring.

Chronic Violation – Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements for each pollutant parameter taken during a 6-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 1200-4-14-.03(1);

Technical Review Criteria (TRC) Violation – Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements for each pollutant parameter taken during a 6-month period equal or exceed the product of the numeric pretreatment standard or requirement, including instantaneous limits, as defined by 1200-4-14-.03(1) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH). TRC calculations for pH are not required by this rule.

Significant Violation – A significant violation is any violation that:

- remains uncorrected 45 days after notification of noncompliance;
- is part of a pattern of noncompliance over a twelve-month period;
- involves a failure to accurately report noncompliance;
- resulted in the POTW exercising its emergency authority; or, that
- resulted in the IU being in Significant Noncompliance.

Significant Noncompliance – An IU is in significant noncompliance if its violation meets one or more of the following criteria:

- Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all the measurements taken for the same pollutant parameter during a 6 month period equal exceeded (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.1(I);
- Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6 month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40CFR 403.3(I) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oils, and grease, and 1.2 for all other pollutants except pH);
- Any other violation of a pretreatment Standard or Requirement as defined by 40 CFR 403.3(I) (daily maximum, long-term average, instantaneous limits, or narrative standard) that

the POTW determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);

- Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge;
- Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- Failure to accurately report noncompliance;
- Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local pretreatment program.

As necessary, the Department may enact more stringent criteria defining significant noncompliance.

XV. PERSONNEL

Pretreatment Technician – Responsible for sample collection, chain-of-custody information, sample delivery, monitoring equipment installation and maintenance, and field analysis. Coordinates with POTW staff on day-to-day and special enforcement activities. Observes IU operations and reports any non-routine or unusual conditions to POTW staff. Assists in IU inspections.

Pretreatment Coordinator – Responsible for day-to-day implementation and operation of the program. Issues NOVs, assesses penalties, assists in all enforcement actions, publishes annual list of violators, and prepares semi-annual reports to State. Coordinates activities of field personnel. Responds to complaints, spills, or other incidents. Reviews permit applications, develops and issues permits. Notifies and advises Superintendent of potential or actual POTW problems due to IU discharges. Reviews surveillance data and sampling frequencies.

Laboratory Technician - Responsible for chain-of-custody and analysis of IU samples. Helps coordinate activities of field personnel. Inputs analytical data into database. Generates monthly laboratory reports for distribution. Notifies POTW staff of potential problems due to IU discharges.

Plant Superintendent – Responsible for day-to-day operation of wastewater treatment plant. Advises staff on potential or actual compliance issues. Reviews IU reports for potential problems.

Director/Assistant Director – Responsible for compliance with terms and conditions of NPDES permit. Has authority to issue administrative orders, conduct show cause hearings, and initiate judicial proceedings.

Water & Sewer Board – Conducts hearings regarding enforcement matters when requested by an IU.

City Attorney – Advises staff on enforcement matters and coordinates judicial responses deemed necessary by the Director or Water and Sewer Board. Initiates civil and criminal actions.

XVI. PENALTY CALCULATION FOR DISCHARGE LIMITS VIOLATIONS

Monetary penalties for IUDP limit violations are calculated using a point system based on violation threshold, recurrence, and IU flow. Each of the three tables below are utilized in the calculation.

TABLE 1 - CONCENTRATION FACTOR

Concentration	Daily	Monthly
≥ Tier 1 (Limit)	n/a	2
≥ Tier 2 (33%)	1	3
≥ Tier 3 (66%)	2	4

TABLE 2 – RECURRENCE FACTOR

Recurrences	Factor
0	n/a
1	2
2	4
> 2	AO

TABLE 3 – DISCHARGE FLOW FACTOR

Flow (GPD)	0 – 2,500	≤ 5,000	≤ 10,000	≤ 25,000	≤ 50,000	≤ 100,000	> 100,000
Factor	1	2	3	4	5	6	7

A. Procedure for Calculating Penalty

- (1) Using Table 1, determine the **Concentration Factor** according to the magnitude of the violation. If the violation concentration (Daily or Monthly) is . . .
 - < 33% (limit x 1.33) greater than the discharge limit select the Tier 1 factor
 - ≥ 33%, but < 66% greater than the discharge limit select the Tier 2 factor
 - ≥ 66% (limit x 1.66) greater than the discharge limit select the Tier 3 factor
- (2) Determine the **Recurrence Factor** using Table 2. If the violation is isolated or there is no ongoing violation history, the factor is 0. The appropriate factor is selected for recurrences up to two. More than two recurring violations require issuance of an Administrative Order.
- (3) No penalty is assessed if both the Concentration Factor and Recurrence Factor are “n/a”.
- (4) Determine the **Discharge Flow Factor** in Table 3 using the IU’s average discharge flow.
- (5) Calculate the penalty by multiplying the base penalty amount (\$100.00) times each of the three factors. The maximum penalty for a single discharge limit violation cannot exceed \$10,000.00. Each parameter violated is a separate violation.

B. Examples of Calculations

Example 1

- An IU exceeds the daily limit for copper (1.5 mg/L) with a concentration of 2.33 mg/L. The IU has no prior history of violation. The average flow from the facility is 30,000 GPD.
- The **Base Penalty Amount** is **\$100.00**.

- The Concentration Factor is determined by comparing the concentration (2.33) to values from Table 1. The Tier 1 value is 1.5 (Cu limit) and is exceeded. The Tier 2 value (1.5 x 1.33 = 2.0) is also exceeded, but the concentration is less than the Tier 3 value (1.5 x 1.66 = 2.5). Therefore, for a daily, tier 2 violation, the **Concentration Factor** is **1**.
- The IU had no previous violations, so there is **no** (n/a) **Recurrence Factor** from Table 2.
- For a flow of 30,000 GPD, Table 3 shows a **Discharge Flow Factor** of **5**.
- The penalty can now be calculated:

$$\text{Base Penalty} \times \text{Concentration Factor} \times \text{Recurrence Factor} \times \text{Discharge Flow Factor}$$

$$\$100.00 \times 1 \times 5 = \$500.00$$

Example 2

- An IU had a monthly average concentration for zinc of 2.075 mg/L. The monthly average limit is 1.25 mg/L. This is the third month in a row the IU has violated the monthly zinc limit. Average flow from the facility is 110,000 GPD.
- The Concentration Factor is determined by comparing the concentration (2.075) to values obtained from Table 1. The Tier 1 monthly value of 1.25 (Zn limit) is exceeded. The Tier 2 value (1.25 x 1.33 = 1.663) is also exceeded, but the concentration is equal to Tier 3 value (1.25 x 1.66 = 2.075). The Concentration Factor is 4.
- The IU had two previous monthly violations; therefore the Recurrence Factor from Table 2 is 4.
- Using Table 3, the Discharge Flow Factor for a flow of 110,000 GPD is 7.
- The penalty can now be calculated:

$$\text{Base Penalty} \times \text{Concentration Factor} \times \text{Recurrence Factor} \times \text{Discharge Flow Factor}$$

$$\$100.00 \times 4 \times 4 \times 7 = \$11,200.00$$

- A penalty for a given limits violation cannot exceed \$10,000.00, therefore the penalty is \$10,000.00.

XVII. PENALTY CALCULATION FOR OTHER VIOLATIONS

Penalties for violations, other than discharge limits, are calculated using a point system based on five possible components of the violation.

Table 4 – Noncompliance Evaluation

Component	Degree of Noncompliance				
	→ Significance →				
Magnitude of the violation	n/a	1	2	3	4
Duration of the violation	n/a	1	2	3	4
Effect on the POTW and/or receiving waters	n/a	1	2	3	4
IU compliance history	n/a	1	2	3	4
Good faith of the IU	n/a	1	2	3	4

A. Procedure for Calculating Penalty

- (1) Using **Table 4**, assign a **Degree of Noncompliance** point value for each **Component**.
- (2) Each increase in point value indicates a more significant or higher degree of noncompliance.
- (3) A **Component** value of “n/a” is omitted from the calculation.
- (4) Multiply the base penalty amount (\$500.00) times the point value for each component.
- (5) Maximum penalty for a single violation cannot exceed \$10,000.00.
- (6) Multiple violations are calculated individually.

XVIII. ENFORCEMENT RESPONSE MATRIX

A. UNAUTHORIZED DISCHARGE (NO PERMIT)

Type of Non-Compliance	Nature of Violation	Enforcement Response	Personnel	
Unpermitted Discharge	IU unaware of requirement No harm to POTW or environment	Documented Phone Call and permit application	Coordinator	
		NOV & permit application	Coordinator	
	IU unaware of requirement Harm to POTW or environment	Administrative Order and permit application	Director, Asst.	
		Civil action	City Attorney	
	Continued failure to apply after notice	Show Cause Hearing and permit application	Director, Asst.	
		Administrative Order	Director, Asst.	
		Civil action	City Attorney	
		Service Termination	Director	
	Nonpermitted Discharge (Failure To Renew)	Application not submitted within 10 days of due date	Phone Call	Coordinator
			NOV	Coordinator
Application not submitted within 30 days of notification		Show Cause Hearing	Director, Asst.	
		Administrative Order	Director, Asst.	
		Civil action	City Attorney	
		Service Termination	Director	

B. DISCHARGE LIMIT VIOLATION

Type of Non-Compliance	Nature of Violation	Enforcement Response	Personnel
Exceedance Of Local or Federal Pretreatment Standard (Permit Limit)	Isolated, Not significant No harm to POTW or environment	Phone Call	Coordinator
		NOV	Coordinator
	Isolated, Significant No harm to POTW or environment	NOV	Coordinator
		Administrative Order	Director, Asst.
	Isolated Harm to POTW or environment (actual or potential)	Administrative Order	Director, Asst.
		Show cause hearing	Director, Asst.
		Civil action	City Attorney
		Criminal Prosecution	City Attorney
	Recurring Not significant No harm to POTW or environment	NOV; Increased monitoring	Coordinator
		Administrative Order	Director, Asst.
		Show cause hearing	Director, Asst.
	Recurring Significant No harm to POTW or environment	Administrative Order	Director, Asst.
		Show cause hearing	Director, Asst.
		Civil action	City Attorney
		Terminate service	Director
	Recurring Significant Harm to POTW or environment	Show cause hearing	Director, Asst.
		Civil action	City Attorney
		Criminal Prosecution	City Attorney
		Terminate service	Director

C. REPORTING VIOLATIONS

Type of Non-Compliance	Nature of Violation	Enforcement Response	Personnel
Reporting Violation	Report is improperly signed or certified	Phone call	Coordinator
		Informative Letter or Meeting	Coordinator
	Report is improperly signed or certified after notice by POTW	NOV	Coordinator
		Administrative Order	Director, Asst.
	Isolated or insignificant report violation (< 30 days late, etc.)	Phone call	Coordinator
		Informative Letter or Meeting	Coordinator
	Significant report violation (report more than 30 days late, etc.)	Administrative Order	Director, Asst.
		Show cause hearing	Director, Asst.
	Recurring report violation Any type (always late, not submitted, etc.)	Administrative Order	Director, Asst.
		Show cause hearing	Director, Asst.
		Civil action	City Attorney
	Failure to report slug, spill, or change in discharge; No harm	Documented Phone Call	Coordinator
		NOV	Coordinator
	Failure to report slug, spill or change in discharge, Harm caused	Administrative Order	Director, Asst.
		Show cause hearing	Director, Asst.
		Criminal Prosecution	City Attorney
		Civil action	City Attorney
	Repeated failure to report slugs, spills or changes in discharge	Administrative Order	Director, Asst.
		Show cause hearing	Director, Asst.
		Civil action	City Attorney
Terminate service		Director	
Falsification	Administrative Order	Director, Asst.	
	Show cause hearing	Director, Asst.	
	Criminal Prosecution	City Attorney	
	Terminate service	Director	
Inadequate Record keeping	Incomplete or files missing	NOV	Coordinator
	Recurring	Administrative Order	Director, Asst.
Show cause hearing		Director, Asst.	
Failure to Meet Compliance Schedules	Missed milestone by < 30 days or will not affect final milestone	Documented Phone Call	Coordinator
		NOV	Coordinator
	Missed milestone by > 30 days or affects final date; Good cause	Show Cause Hearing	Director, Asst.
		Administrative Order	Director, Asst.
	Missed milestone by > 30 days or affects final date; No good cause	Show Cause Hearing	Director, Asst.
		Administrative Order	Director, Asst.
Recurring violation	Show Cause Hearing	Director, Asst.	
	Terminate service	Director	

D. SELF-MONITORING VIOLATIONS

Failure To Monitor Correctly	Failure to monitor all pollutants as required by permit	Documented Phone Call	Coordinator
		NOV	Coordinator
	Recurring failure to monitor	NOV	Coordinator
		Show cause hearing	Director, Asst.
Improper Sampling	Incorrect procedure No evidence of intent	Phone call	Coordinator
		NOV	Coordinator
	Evidence of intent	Show Cause Hearing	Director, Asst.
		Administrative Order	Director, Asst.
		Criminal Prosecution	City Attorney
		Terminate service	Director
Failure To Install Monitoring Equipment	Delay of less than 30 days	Documented Phone Call	Coordinator
		NOV	Coordinator
	Delay of 30 days or more	NOV	Coordinator
		Show cause hearing	Director, Asst.
		Administrative Order	Director, Asst.
		Terminate service	Director
	Recurring, Violation of AO	Show Cause Hearing	Director, Asst.
		Administrative Order	Director, Asst.
Terminate service		Director	
Failure to Resample	Within 24 hours of notification	NOV	Coordinator
	Recurring	Administrative Order	Director, Asst.
		Show cause hearing	Director, Asst.
Tampering with POTW Monitoring Equipment or Altering Sample	Unintentional No evidence of intent	NOV	Coordinator
		Show Cause Hearing	Director, Asst.
		Administrative Order	Director, Asst.
	Recurring violation	Administrative Order	Director, Asst.
		Show Cause Hearing	Director, Asst.
		Criminal Prosecution	City Attorney
		Civil action	City Attorney

E. OTHER PERMIT VIOLATIONS

Type of Non-Compliance	Nature of Violation	Enforcement Response	Personnel
Wastestreams Diluted In Lieu Of Treatment	Initial violation	NOV	Coordinator
		Show Cause Hearing	Director, Asst.
	Recurring violation	Show Cause Hearing	Director, Asst.
		Administrative Order Terminate service	Director, Asst. Director
Failure To Mitigate Noncompliance or Halt Production	Does not result in harm	NOV	Coordinator
		Show Cause Hearing	Director, Asst.
	Does result in harm	Administrative Order	Director, Asst.
		Show Cause Hearing	Director, Asst.
		Criminal Prosecution	City Attorney
		Civil action	City Attorney
	Recurring violation	Administrative Order	Director, Asst.
		Show Cause Hearing	Director, Asst.
		Civil action	City Attorney
		Terminate service	Director
Improper Operation or Maintenance of Pretreatment Facility	Does not result in harm	Informative Letter/Meeting	Coordinator
		NOV	Coordinator
	Does result in harm	Administrative Order	Director, Asst.
		Show Cause Hearing	Director, Asst.
		Criminal Prosecution	City Attorney
		Civil action	City Attorney
Entry Denial	Entry denied, consent withdrawn, or monitoring records access denied	Administrative Order	Director, Asst.
		Show Cause Hearing	Director, Asst.
		Civil action	City Attorney
	Recurring violation	Show Cause Hearing	Director, Asst.
		Civil action	City Attorney
		Terminate service	Director

F. VIOLATIONS DETECTED DURING SITE VISITS

Type of Non-Compliance	Nature of Violation	Enforcement Response	Personnel
Illegal Discharge	No harm to POTW or environment	NOV	Coordinator
		Show Cause Hearing	Director, Asst.
	Harm caused or evidence of intent and/or negligence	Administrative Order	Director, Asst.
		Show Cause Hearing	Director, Asst.
		Criminal Prosecution	City Attorney
		Civil action	City Attorney
	Recurring, violation of AO	Show Cause Hearing	Director, Asst.
		Civil action	City Attorney
		Terminate service	Director
Improper Sampling	Incorrect procedure; unintentional	Informative Letter/Meeting	Coordinator
		NOV	Coordinator
	Evidence of intent and/or negligence after warning	Administrative Order	Director, Asst.
		Show Cause Hearing	Director, Asst.
		Civil action	City Attorney
Inadequate Record Keeping	Files incomplete or missing No evidence of intent	Informative Letter/Meeting	Coordinator
		NOV	Coordinator
	Recurring violation	Administrative Order	Director, Asst.
		Show Cause Hearing	Director, Asst.
Failure To Report Additional Monitoring	Inspection finds additional files	Informative Letter/Meeting	Coordinator
		NOV	Coordinator
	Recurring violation	Administrative Order	Director, Asst.
		Show Cause Hearing	Director, Asst.
Tampering with POTW Monitoring Equipment or Altering Sample	Unintentional, no harm caused No evidence of intent	NOV	Coordinator
		Show Cause Hearing	Director, Asst.
		Administrative Order	Director, Asst.
	Recurring violation or harm caused	Administrative Order	Director, Asst.
		Show Cause Hearing	Director, Asst.
		Criminal Prosecution	City Attorney
		Civil action	City Attorney