

BOROUGH OF BALLY

**425 CHESTNUT STREET
BALLY, PA 19503**

ENFORCEMENT RESPONSE PLAN

ORDINANCE NUMBER 282

ADOPTED MAY 1, 2012

prepared by:

**SYSTEMS DESIGN ENGINEERING, INC.
1032 JAMES DRIVE
LEESPORT, PENNSYLVANIA 19533
TELEPHONE (610) 916-8500**

**BOROUGH OF BALLY
ENFORCEMENT RESPONSE PLAN**

TABLE OF CONTENTS

REPORT

I	Introduction.....	1
II	Purpose	2
III	Administration and Jurisdiction.....	3
IV	Definitions	4
V	Personnel Responsibilities	9
VI	Non-Compliance Investigations	11
VII	Description of Enforcement Actions	12
VIII	Enforcement Response Guide.....	14
IX	Legal Authority	22

APPENDICES

A	Federal Definition of Significant Non-Compliance (SNC)
B	Excerpts from Federal Regulations [40 CFR 403.8(f)(1) and (2)]

I. INTRODUCTION

The July 1, 2009 revisions to the Federal Pretreatment Regulations (40 CFR, Part 203) required that Publicly Owned Treatment Works (POTWs) develop and implement an Enforcement Response Plan. The requirement is specifically stated in 40 CFR, Part 403.8(f)(5) as follows:

(5) The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

- (i) Describe how the POTW will investigate instances of noncompliance;
- (ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
- (iii) Identify (by title) the official(s) responsible for each type of response;
- (iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f)(1) and (f)(2).

The Enforcement Response Plan (ERP) outlines the procedures that will be used to identify, document, track and respond to noncompliance. The ERP also provides guidance for selecting the enforcement action most appropriate for a given violation.

II. PURPOSE

The purpose of the Borough of Bally's ERP is to provide consistent enforcement responses for similar violations and circumstances. The ERP describes violations, defines a range of appropriate enforcement actions based on the nature and severity of the violation and other relevant factors, and identifies personnel responsible for finalizing enforcement responses.

Three of the major benefits of implementing the ERP are as follows:

- 1) The Control Authority's internal management is strengthened by improving task coordination among staff. The Enforcement Response Plan clearly establishes the enforcement responsibilities of each person involved in the Pretreatment Program: the Pretreatment Coordinator, laboratory personnel, sampling crews, attorney, and any other staff affected. Once each person involved is assigned responsibility for an enforcement task, they are fully informed about their role. POTW personnel are capable of performing these responsibilities decisively when enforcement actions are necessary.
- 2) The enhancement of the Control Authority's reputation as a responsible public agency. Adherence to the plan makes the POTW less likely to react inconsistently to similar instances of non-compliance or to arbitrarily select enforcement measures. Because the Control Authority is following documented enforcement procedures, industries will not view the Authority's enforcement actions as subjective or unreasonable; rather, the regulated community will understand that certain types of violations always bring particular enforcement responses. Thus, by adopting an Enforcement Response Plan and by consistently observing its provisions, the Control Authority alerts its industrial users to the consequences of non-compliance. To further educate the regulated community about the Enforcement Response Plan, the Control Authority may send its major provisions to industries by letter or hold meetings with industry representatives to discuss the implications of the ERP for pretreatment enforcement.
- 3) The ERP provides an opportunity to involve other public service and regulatory agencies in the pretreatment program. The Enforcement Response Plan may also help promote an information network with these agencies. For example, area hospitals may be requested to report injuries caused by industrial accidents to the Control Authority (prompting investigations to determine whether spills or illegal discharges may have also occurred). Similarly, area fire departments, labor boards, fish and wildlife agencies, and building inspectors may also be consulted for any information related to possible discharge violations. This data exchange will enable information about problems of mutual concern to be pooled.

III. ADMINISTRATION AND JURISDICTION

All entities discharging non-domestic waste to the POTW are subject to the provisions of the Enforcement Response Plan. The Control Authority consistently administers and implements all elements of the Enforcement Response Plan. The Enforcement Response Plan does not preclude the Control Authority from taking any, all, or any combination of actions against a non-compliant industrial user.

IV. DEFINITIONS

- ABSOLVE - To excuse; to free from an obligation or the consequences of guilt or liability.
- ADMINISTRATIVE ACTION (a fine or order) - An enforcement action authorized by the Control Authority's legal authority which is taken without the involvement of a court.
- ADMINISTRATIVE FINE - A punitive monetary charge, unrelated to actual treatment costs, which is assessed by the Control Authority rather than a court.
- ADMINISTRATIVE ORDER - A document which orders the violator to perform a specific act or refrain from an act with an enforceable schedule for the violator and/or require a response and return to compliance. For example, the order may require users to attend a show cause meeting, cease and desist discharging, or undertake activities pursuant to a compliance schedule.
- ADMISSIBLE EVIDENCE - Evidence which can be presented in court.
- AFFIDAVIT – A sworn statement in writing under oath before an authorized magistrate or officer.
- APPROVAL AUTHORITY - EPA or States with an EPA approved pretreatment program. The Approval Authority is responsible for approval and oversight of Control Authority pretreatment programs, including an evaluation of the effectiveness of local enforcement.
- ARBITRARY OR CAPRICIOUS ALLEGATION - An assertion that a decision or action taken by the Control Authority was unreasonable or not founded upon sound judgment.
- BURDEN OF PROOF - The duty of providing a disputed assertion or charge in court.
- CEASE AND DESIST ORDER - An administrative order directing an industrial user to immediately halt illegal or unauthorized discharges.
- CHAIN OF CUSTODY - A written record of sample possession for all persons who handle (collect, transport, analyze, dispose of) a sample, including names, dates, times, and procedures followed.
- CIVIL LITIGATION - A lawsuit filed in a civil court. If the court rules that the defendant industrial user violated the law the court may impose civil penalties, injunctions or other equitable remedies and/ or cost recovery.
- CIVIL PENALTY - A punitive monetary award granted by a court to the Control Authority against a non-compliant industrial user.
- COMPLIANCE ORDER - An administrative order directing a non-compliant industry to achieve or restore compliance by a date specified in the order.
- COMPLIANCE SCHEDULE - A schedule of required activities (also called milestones) necessary for an industrial user to achieve compliance with all pretreatment program requirements.

- **CONSENT DECREE** - A court supervised settlement agreement, the violation of which may be considered contempt of court.
- **CONSENT ORDER** - An administrative order embodying a legally enforceable agreement between the Control Authority and the non-compliant industrial user designed to restore the user to compliance status.
- **CONTROL AUTHORITY** - The entity directly administering and enforcing pretreatment standards and requirements against industrial users. For purposes of this manual the Control Authority is the Borough of Bally.
- **CRIMINAL INTENT** - A state of mind which is a necessary element of all crimes. Criminal intent may be general (intent to perform an act) or specific: (intent to break a law).
- **CRIMINAL NEGLIGENCE** - Negligence of such a character or occurring under such circumstances as to be punishable as a crime (such as the flagrant and reckless disregard for the safety of others or willful indifference to the injury likely to follow).
- **CRIMINAL PROSECUTION** - A criminal charge brought by the Control Authority against an accused violator. The alleged criminal action may be a misdemeanor or a felony and is defined as willful, negligence, knowing and/ or intentional violations. A court trial-by-jury is generally required and upon conviction, punishment may include a monetary penalty, imprisonment, or both.
- **DEFENDANT** - The party against whom relief or recovery is sought.
- **DEPOSITION** - A discovery device by which one party addresses verbal questions to the other party or to a witness for the other party. Depositions are conducted under oath outside the court room, usually in the office of an attorney. A transcript is made of the deposition which may be used as evidence at trial.
- **DETERRENT VALUE** - A threat of reprisal which is sufficient to discourage the industrial user from future violations.
- **DISCOVERY** - A variety of pretrial devices used by one party to obtain relevant facts and information about the case from the either party.
- **DOMESTIC WASTEWATER** - 1) wastewater from normal residential activities including, but not limited to, wastewater from kitchen, bath and laundry facilities, or 2) wastewater from the personal sanitary conveniences (toilets, showers, bathtubs, fountains, non-commercial sinks, and similar structures) of commercial, industrial or institutional buildings, provided that the wastewater exhibits characteristics which are similar to those of wastewater from normal residential activities. Specifically excluded from this definition is wastewater from commercial, industrial, or institutional laundries or food preparation facilities.
- **DOUBLE JEOPARDY** - The prohibition against a second prosecution after a trial for the same offense.

- ENABLING LEGISLATION - A State law or charter which creates and empowers a Control Authority.
- FELONY - A crime punishable by imprisonment for greater than one year (depending on State law).
- FEES - A schedule of charges imposed to recover treatment costs (not punitive in nature).
- FINE - A punitive monetary charge for a violation of the law. Often used synonymously with "penalty" although the term "fine" generally implies the use of administrative rather than civil (judicial) procedures.
- FREQUENT VIOLATION – Frequent violations are those continued violations that occur at least twice consecutively or three times in a one-year period.
- GOOD FAITH EFFORT OR PROGRESS - Prompt and vigorous pollution control measures undertaken by the discharger which shows that extraordinary efforts (not a "business-as-usual approach) have been made to achieve compliance.
- GRAND JURY - A body of citizens whose duties consist of determining whether probable cause exists that a crime has been committed, and whether an indictment should be returned against a named defendant.
- INADMISSIBLE - Evidence not allowed to be presented in court.
- INDICTMENT - A written accusation of criminal conduct by a grand jury.
- INDUSTRIAL USER - Any source that introduces pollutants into a POTW from any non-domestic source.
- INFREQUENT VIOLATION – Infrequent violations are those isolated violations that occur once in a one-year period.
- INJUNCTION, INJUNCTIVE RELIEF - A court order which restrains or compels action by the industrial user.
- INTERROGATORIES - A discovery device consisting of written questions submitted by one party to the other party or witness.
- JUDICIAL ACTION OR CASE - An enforcement action that involves a court. (The action may either be civil or criminal in nature).
- JURISDICTION - The extent of authority of a governmental entity's power to make and enforce laws.
- LEGAL AUTHORITY - The source of a Control Authority's jurisdiction and regulatory powers.

- LIBEL SUIT - A suit against a person who is responsible for a written statement that allegedly conveys an unjustly unfavorable impression of another person.
- LITIGATION - An enforcement action brought in a judicial (court) forum.
- MAJOR VIOLATIONS – Major violations are those that exceed the limits frequently and/or by a large quantity (e.g., the technical review criteria); impede the determination of compliance status; have the potential to cause or may have actually caused adverse environmental effects (i.e., cause "pass-through" of pollutants to the receiving waters), health problems, or interfered with the plant's treatment capability (i.e., "interference"). Any violation that meets the definition of SNC is considered a major violation.
- MINOR VIOLATIONS – Minor violations include industries submitting reports a week late, computational or typographical errors, and any other violations the Control Authority considers to be not significant.
- MISDEMEANOR - A crime punishable by imprisonment of less than one year (depending on state law).
- NOTICE OF VIOLATION - A Control Authority document notifying an industrial user that it has violated pretreatment standards and requirements. Generally used when the violation is relatively minor and the Control Authority expects the violation to be corrected within a short period of time.
- NPDES (NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM) - A permit system for the direct discharge of pollutants into U.S. waterways.
- PENALTY - A monetary or other punitive measure usually associated with a court action. For purposes of this manual the term is used synonymously with fine.
- PLAINTIFF - A person or organization seeking remedy from a court. For purposes of this manual the plaintiff is the Control Authority.
- PLEA BARGAIN - An agreement between a prosecuting attorney and a criminal defendant whereby the defendant pleads guilty to a lesser charge and/ or a reduction of sentence in exchange for cooperation in investigating or prosecuting the crime (e.g., waiving a trial).
- PRIORITY POLLUTANTS - A list of 126 pollutants established by EPA and considered hazardous to the environment and to humans.
- PROPRIETARY INFORMATION - Information about a commercial chemical product or process which is considered to be confidential business information or a trade secret by an industrial user because if divulged the information could put the industrial user at an unfair competitive disadvantage with competitors in the same industry.
- PUBLICLY OWNED TREATMENT WORKS OR POTW – 1) Devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. 2) Also refers to the government officials responsible

for operation and maintenance of the collection system or treatment plant and the administration of the pretreatment program.

- **REPORTABLE NONCOMPLIANCE** - Criteria for identifying when a Control Authority should be reported in the NPDES Quarterly Noncompliance Report for failure to implement its approved pretreatment program.
- **REQUEST FOR ADMISSION** - A discovery device where a written statement of fact concerning the case is submitted to the adverse party and which that party is required to affirm or deny. Those statements that are admitted will be treated by the court as having been established and need not be proved at trial.
- **REQUEST FOR PRODUCTION** - A discovery device which requests the opposing party to produce some document or thing which may tend to resolve an issue in dispute in the case.
- **SEARCH WARRANT** - A document issued by a magistrate or judge which authorizes government entry into private premises to either observe compliance with applicable laws or collect evidence of noncompliance.
- **SELF MONITORING** - Sampling and analysis of wastewater performed by the industrial user.
- **SHOW CAUSE ORDER/ HEARING** - An administrative order directing a non-compliant user to appear before the Control Authority, explain its non-compliance and show cause why more severe enforcement actions against the user should not go forward.
- **SIGNIFICANT NON-COMPLIANCE** - Criteria used by Control and Approval Authorities to identify important violations and/ or patterns of non-compliance. This criterion is used to establish enforcement priorities and comply with special reporting requirements.
- **STANDARD OF STRICT LIABILITY** - Liability which attaches without regard to the user's "negligence" or "intent" to violate. Non-compliant industrial users will be found liable for pretreatment violations if the Control Authority proves that a violation occurred.
- **STATUTE OF LIMITATIONS** - A law which prescribes the period within which an enforcement action may be pursued by the Control Authority.
- **STIPULATION** – A voluntary agreement between opposing parties as to facts or issues in controversy.
- **SURCHARGE** – The charge for treating excessive pollutant loadings.
- **TERMINATION OF SERVICE** – A physical blockage of the sewer connection to a non-compliant user or issuance of a formal notice of termination to the industrial user.
- **TESTIMONY** – A solemn declaration made by a witness under oath in response to interrogation by a lawyer or public official which is used as evidence.

V. PERSONNEL RESPONSIBILITIES

INDUSTRIAL PRETREATMENT COORDINATOR

The Industrial Pretreatment Coordinator (IPC) is responsible for the day to day implementation and enforcement of the industrial pretreatment program. The enforcement responses carried out by the IPC are as follows:

- informal notices (verbal and written)
- notices of violation
- informal meetings
- referrals to the state or EPA for criminal action

BOROUGH MANAGER

The Borough Manager has the responsibility to monitor the IPC's actions and to initiate the following enforcement actions at the recommendation of the IPC:

- show cause hearings
- administrative orders
- consent agreements
- referrals to the borough attorney for civil litigation
- referrals to the state or EPA for criminal action

BOROUGH SOLICITOR

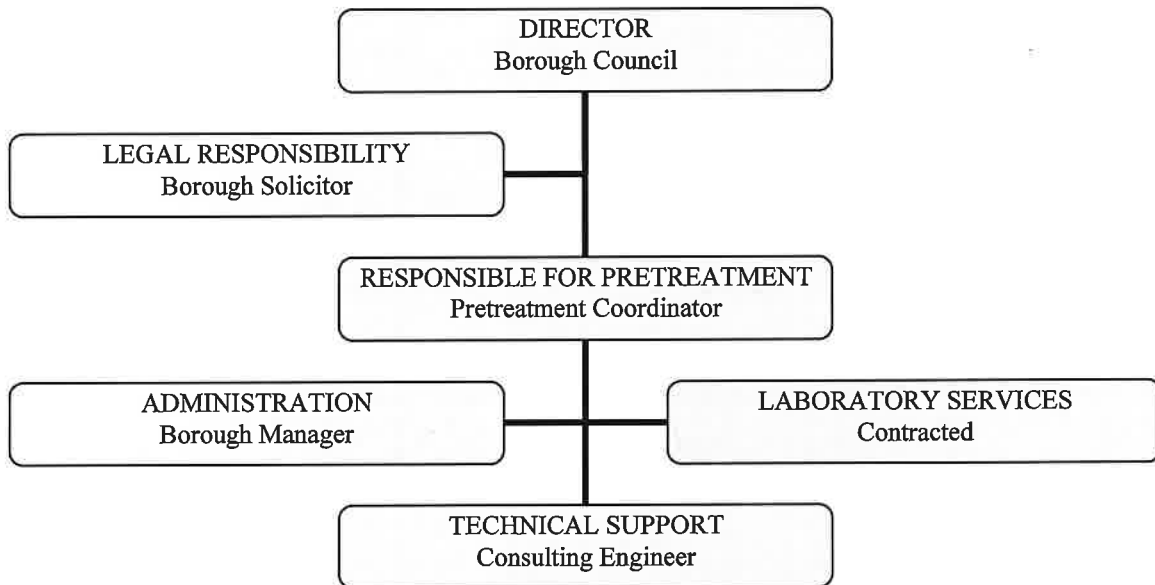
The Borough Solicitor will provide legal consultation as requested by the Superintendent on consent agreements and administrative orders and will take the lead on all referrals for civil litigation and POTW initiated criminal investigations.

CONSULTING ENGINEER

The Consulting Engineer will assist with program development, ordinance revisions, establishment of local limits, and correspondence with government agencies.

Figure I, on the following page, provides the Organizational Structure for Enforcement Response.

FIGURE 1
ORGANIZATIONAL STRUCTURE FOR ENFORCEMENT RESPONSE



VI. NON-COMPLIANCE INVESTIGATIONS

There are many activities associated with the identifications and investigation of non-compliance. A brief description of these activities is provided in this ERP. Details discussions and procedures for the activities can be found in the other relevant sections of the approved pretreatment program document. The activities that facilitate the identification and investigation of non-compliance are as follows:

INDUSTRIAL USER INVENTORY – An essential step for identifying non-compliance is knowing who is discharging nondomestic waste to the POTW, where they are located, and the nature of the nondomestic waste being discharged. The Industrial Pretreatment Coordinator maintains a current inventory of all nondomestic sources of waste to the POTW.

MONITORING AND INSPECTION PLAN – The Industrial Pretreatment Coordinator prepares an annual monitoring and inspection plan for each Significant Industrial User (SIU). The annual inspection is scheduled approximately one week in advance. The inspection provides the Control Authority an opportunity to review the industry's operation, pretreatment facilities, sample collection etc., to ensure compliance with the permit. The Control Authority requires all sampling and analysis to be performed in accordance with 40 CFR, Part 136. Control Authority sampling procedures, including Quality Assurance/ Quality Control procedures, discussed elsewhere in the approved pretreatment program document, are followed to maximize sample integrity.

A comprehensive inspection of each SIU is conducted by the Control Authority at least once per year. The Control Authority follows inspection procedures discussed elsewhere in the approved pretreatment program to ensure consistent, thorough, and well documented inspections.

Information gathered during Control Authority industrial user monitoring and inspections is used to verify industrial user compliance status and to determine if enforcement response must be initiated or continued.

COMPLIANCE SCREENING – Compliance screening is performed once per week on each industry. All reports for Industrial Users and reports generated by the Control Authority are carefully reviewed, on an as-received basis for timeliness, completeness, and accuracy. The screening process includes an evaluation of compliance with report due dates, numerical standards, EPA sampling and analytical procedures (40 CFR. Part 136), signatory/ certification requirements, monitoring frequency, etc. and would provide data admissible in enforcement procedures. Chain of custody procedures are in effect.

All violations are clearly documented and addressed in accordance with the Enforcement Response Guide, provided in Section VIII.

VII. DESCRIPTION OF ENFORCEMENT ACTIONS

INFORMAL NOTICE

VERBAL NOTIFICATION – Verbal Notifications by telephone or in person provide an immediate notification of violations. In general, verbal notifications are used for minor isolated violations or as in initial step leading to an escalated enforcement response.

All verbal notifications related to enforcement or the investigation of suspected violations are documented in writing and placed in the respective Industrial User file.

WARNING LETTERS – Warning Letters (WL) are issued under the same circumstances as verbal notifications. They may be issued as follow-up letters to verbal notifications or in lieu of verbal notifications.

INFORMAL MEETING – An Informal Meeting is used to gather information concerning non-compliance, discuss steps to alleviate non-compliance, and determine to commitment level of the industrial user. All informal meetings are documented in the Borough files.

FORMAL NOTICE

NOTICE OF VIOLATION – A Notice of Violation (NOV) is a written notice to the non-compliant industrial user that a pretreatment violation has occurred. The NOV includes a statement detailing the legal authority under which the Control Authority issued the NOV, a description of the violation(s), and the date(s) the violation(s) occurred. The NOV requires a response from the Industrial User that details the causes of the violation(s), and the corrective actions taken to correct the violation and prevent similar violations from occurring. In general, NOVs are considered to be more stringent enforcement responses than warning letters.

ADMINISTRATIVE ORDER – Administrative Orders (AO) are enforcement documents that direct Industrial Users to undertake and/or cease specified activities by specified deadlines. The terms of an AO may or may not be negotiated with Industrial Users. AOs may incorporate compliance schedules, administrative penalties, termination of service and show cause orders. An Administrative Order is the minimum level of enforcement used to address Significant Non-compliance.

SHOW CAUSE HEARING – A Show Cause Hearing is a formal meeting requiring the Industrial User to appear, explain its non-compliance, a show cause as to why more severe enforcement actions against the User should not go forward. The meeting may also serve as a forum to discuss corrective action and compliance schedules.

TERMINATION OF SERVICE – Termination of Service is the revocation of an Industrial User's privilege to discharge non-domestic wastewater into the sewer system. Termination of service is used when the discharge from an Industrial User presents imminent endangerment to the health or welfare of persons, or the environment, or threatens to interfere with the POTW's operations or as an escalating enforcement action to a significant violation when a non-compliant Industrial User fails to respond adequately to previous enforcement actions. Termination of service may be accomplished by physical severance of the Industrial User's connection to the collection system, issuance of an AO (cease and desist order) which compels the Industrial User to immediately terminate its discharge, revocation of the Industrial User's discharge permit, or a court ruling.

ADMINISTRATIVE FINES – An Administrative Fine is a punitive monetary charge assessed by the Control Authority rather than a court. The penalty authority must be authorized in the POTW's local legal authority. The purpose of the fine is to recover the economic benefit of non-compliance and to deter future violations. When assessing an administrative fine the following factors are considered:

- type and severity of the violation
- number of violations cited
- duration of non-compliance
- impact of the violation on the receiving water, sludge quality, and POTW operation
- whether the violation threatened public health
- the economic benefit or savings the Industrial User gained from the non-compliance
- compliance history of the Industrial User
- whether the Industrial User is making a good faith effort to comply

CIVIL LITIGATION – Civil Litigation is the formal process whereby the Control Authority files a lawsuit against the Industrial User to secure court ordered action to correct violations and to secure penalties for the violations including recovery of costs to the POTW for the non-compliance. Civil litigation also includes enforcement measures which require involvement or approval of the court, such as injunctive relief.

REFERRAL TO EPA or the STATE – Where a POTW does not rely on criminal prosecution for its enforcement authority, referral to the State or EPA may be made. For violation that may warrant criminal prosecution, the Control Authority will refer the case to EPA of the State for further action. Circumstances that trigger EPA or State referrals include evidence of willfulness, evidence of negligence, and bad faith shown by the Industrial User.

VIII. ENFORCEMENT RESPONSE GUIDE

The Enforcement Response Guide (ERG) designates several enforcement options for each type (or pattern) of non-compliance. The intent of the ERG is to provide direction for appropriate enforcement response and to ensure consistent enforcement for similar violations and circumstances. Factors that will be evaluated when determining the appropriate response are as follows:

- good faith of the user
- compliance history of the user
- previous success of the enforcement actions against the user (e.g. If historically NOV's have not been effective in returning the user to compliance in a reasonable period of time, an administrative order would be more appropriate response.)
- violations effect on the environment and/or public health
- violations effect on the POTW

VIOLATIONS RESULTING IN SIGNIFICANT NON-COMPLIANCE – Any violation that results in Significant Non-compliance (SNC) will be addressed through formal enforcement action regardless of the enforcement response otherwise dictated by the enforcement response guide. The minimum level of enforcement used to address SNC is an AO.

ESCALATING ENFORCEMENT RESPONSE – Escalating enforcement response will be used for recurring violations and failure to achieve compliance subsequent to informal or formal enforcement. A recurring violation is one in which the same type of violations occurs on consecutive reporting periods, the violation occur seasonally, or any other pattern of non-compliance is shown.

VIOLATIONS FALLING UNDER MORE THAN ONE CATEGORY – Violations that fall under more than one category in the enforcement response guide will be addressed through the more severe enforcement response. All alleged violations will be included in the more severe response.

TIME FRAMES FOR ENFORCEMENT RESPONSES

- All violations will be identified and documented within five days of receiving compliance information.
- Initial enforcement responses (informal and formal) will occur within 15 days of identifying a violation.
- Follow up actions for continuing or recurring violations will be taken within 60 days of the initial enforcement response
- Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate response such as halting the discharge or terminating service.
- All violations meeting the criteria for significant non-compliance will be addressed through formal enforcement within thirty (30) days of the identification of significant non-compliance.

ENFORCEMENT RESPONSE GUIDE

	TYPE OF NON-COMPLAINCE	CIRCUMSTANCES	SUGGESTED ENFORCEMENT
UNAUTHORIZED DISCHARGE	Discharge Without a Permit or Approval	IU unaware of requirement; no harm to POTW or environment	NOV with Application Form; AO
		Harm to POTW or environment	AO; AO with fine; Civil Action
		Recurring - SNC	AO with fine; Criminal Investigation; Termination of Discharge
	Failure to Submit Permit Application or Reapplication with Intent of Discharge	IU has not submitted application within 10 days of due date.	Phone call; Warning letter
		IU has not submitted application after notice by the POTW	NOV; AO
		Failure to submit application	Refer to discharge with a permit
	Unauthorized Discharge through Manhole, Septic Only Receiving Station, Car Wash, etc.	No harm to POTW or environment	NOV; AO; AO with fine; Civil Action; Criminal Investigation
		Harm to POTW or environment	AO with fine; Civil Action; Criminal Investigation
		Recurring	Criminal Investigation
DISCHARGE LIMIT	Exceeding final limits (categorical local or prohibited)	Infrequent or isolated minor violations.	NOV
		Infrequent or isolated major violations exceed the limits by TRC of an individual effluent limit	NOV; AO; AO with fine; Civil Action; Criminal Investigation
		Recurring Violation(s) that are SNC	AO; AO with fine; Civil Action; Criminal Investigation
	Exceeding interim limits	Infrequent or isolated with no harm to POTW or environment	NOV
		Frequent with no harm to POTW or environment	AO; AO with fine; Civil Action
		Harm to POTW or environment	AO; AO with fine; Civil Action
	Reporting slug load	Infrequent or isolated with no harm to POTW or environment	Show Cause Hearing within 30 days of violation; AO within 60 days of violation
		Harm to POTW or	AO; AO with fine

DISCHARGE LIMIT (continued)	Reporting slug load (continued)	environment Recurring	AO; AO with fine; Civil Action; Criminal Investigation; Termination of Discharge
REPORTING VIOLATIONS	Document is Improperly Signed or Certified	Isolated Incident	Phone call; WL; NOV
		Previous notice by POTW	NOV; AO; AO with fine
	Document is Incomplete or Inaccurate	Isolated Incident	Phone call; WL; NOV
		Previous problem	AO; AO with fine
	Document is Late	5-days to 29-days	Phone call; WL; NOV
		30-days or more	AO; AO with fine
		Documents are repeatedly late	AO with fine; Civil Action
	Failure to Report Violation, Spill/Plug or Changed Discharge	No actual or potential harm to POTW or environment	NOV; AO
		Actual or potential harm to POTW	AO with fine; Civil Action
		Recurring problem	AO with fine; Civil Action; Terminate Service
	Failure to Report Additional Monitoring	Isolated Incident	Phone call; WL; NOV
		Recurring	AO; AO with fine
	Falsification of Information or Data	Any Instance	Criminal Investigation; Terminate Service
SAMPLING VIOLATIONS	Failure to sample, monitor, submit routine reports, or notify	Isolated or infrequent	<p>Phone call requiring a report to be submitted within 10 days of call.</p> <p>If no report received within 10 days, notice of violation (NOV) sent within 10 days requiring report submission immediately</p> <p>If no response is received within 30 days of original due date, permittee is in Significant Non-Compliance (SNC).</p> <p>Within 10 days after SNC status, notify permittee of SNC status and require report submission immediately.</p> <p>Administrative Order (AO) issued within 30 days if no response is received after 60 days (from original due date) have passed.</p>
		within 15 days	
		within 25 days	
		within 30 days	
		within 40 days	
within 60 days			

<p>SAMPLING VIOLATIONS (continued)</p>	<p>Failure to sample, monitor, submit routine reports, or notify (continued)</p>	<p>IU does not respond to letters, does not follow through on verbal or written agreement, or frequent violation - SNC</p>	<p>AO within 30 days of identification of non-compliance item if no response is received. May request judicial action, including penalties, and/or criminal investigation depending on circumstances.</p>
	<p>Failure to notify of effluent limit violation or slug discharge.</p>	<p>Infrequent or isolated with no harm to POTW or environment</p> <p>within 10 days</p> <p>within 20 days</p> <p>within 50 days</p> <p>Frequent with no harm to POTW or environment</p> <p>within 10 days</p> <p>within 30 days</p> <p>Harm to POTW or environment</p>	<p>Phone call</p> <p>AO, if response is not received</p> <p>NOV, if response is not received</p> <p>Show Cause Meeting within 30 days after date of NOV, if no response received.</p> <p>Phone call</p> <p>NOV</p> <p>Show Cause Meeting; AO within 30 days of violation if no response received.</p> <p>Judicial action and penalties within 45 days of identification of violation</p>
	<p>Failure to resample due 30 days after discovery of violation</p>	<p>Infrequent</p> <p>within 15 days</p> <p>within 30 days</p> <p>Frequent</p> <p>within 15 days</p> <p>within 55 days</p>	<p>Phone call</p> <p>NOV</p> <p>AO if no response received or if violations continue. Require re-sampling.</p> <p>Phone call, WL</p> <p>NOV requesting written response due within 10 days after date of NOV</p> <p>AO within 30 days after response due date if no response received or if violations continue. Require re-sampling.</p>
	<p>Minor sampling, monitoring, or reporting deficiencies (computational or typographical errors)</p>	<p>Isolated or infrequent</p> <p>IU has not corrected deficiencies after notice by the POTW</p>	<p>Phone call, corrections to be made on next submittal</p> <p>NOV</p>

SAMPLING VIOLATIONS (continued)	Major or gross sampling, monitoring, or reporting deficiencies (missing information, late reports)	Isolated or infrequent IU has not corrected deficiencies after notice by the POTW	NOV, corrections to be made on the next submittal. AO or judicial action within 45 days of violation identification of.
	Waste Stream diluted	Isolated or infrequent Frequent or continued	NOV within 15 days of identification of violation. AO within 30 days of identification of violation.
	Failure to mitigate non-compliance or halt production	Isolated or infrequent Frequent or continued	AO within 10 days. AO within 10 days of identification of violation. Judicial action and penalties within 90 days of identification of violation.
	Failure to properly operate and maintain pretreatment facilities	Isolated or Infrequent within 45 days Frequent or continued	NOV; AO due in 15 days Show Cause Meeting; if no response received. AO with fine; Civil Action; within 90 day of identification of violation.
	Entry Denied or Consent Withdrawn	Any Instance	Obtain Warrant and Return to IU
	Failure to Monitor for all Required Parameters	Isolated Recurring	Phone call; WL; NOV AO; AO with fine; Civil Action
	Improper Sample Handling/ Analytical Procedures	Isolated Recurring	Phone call; WL; NOV NOV; AO; AO with fine
	Failure to Install Monitoring Equipment/ Sampling Point	Delay less than 15-days Delay greater than 15-days Continued problem	NOV Civil Action; AO with fine to begin monitoring (using outside contracts, if necessary) within 30 days of violation <u>and</u> install equipment within minimal time. Judicial action, including penalty, or temporary termination of discharge may be ordered depending on circumstances.
	Tampers with Monitoring Equipment/ Sample	Any Incident	Criminal Investigating; Termination of Discharge
	Sampling at Incorrect Location	Isolated Recurring	NOV AO with fine; Civil Action; Criminal Investigation

COMPLIANCE SCHEDULES	Reporting false information	Any instance	Criminal Investigation within 45 days; AO with fines; and/or Termination of Discharge may be initiated within 90 days of violation.
	Missed interim date	Will not cause late final date or other interim dates Will result in other missed interim dates. Violation for good or valid cause. Will result in other missed interim dates. No good or valid cause. 90 days or more outstanding. Failure or refusal to comply without good or valid cause.	NOV within 15 days of missed date. NOV within 15 days of missed date or AO within 45 days of missed date, depending on circumstances. NOV within 15 days of missed date; AO, or Judicial Action, including penalty within 45 days of violation, depending on circumstances. AO or Judicial Action within 90 days of missed final date, including penalty, depending on circumstances.
	Missed final date	Violation due to force majeure (strike, act of God, etc.) 90 days or more outstanding. Failure or refusal to comply without good or valid cause.	Contact permittee and require documentation of good or valid cause within 30 days of missed final date; show case meeting schedule. AO or Judicial Action within 90 days of missed final date, including penalty, depending on circumstances.
	Not in Compliance as of Final Compliance Date	Less than 30-days late Greater than 30-days late; reasonable cause for delay Greater than 30-days late; no reasonable cause for delay	NOV; AO AO; AO with fine Show Cause Order; Civil Action; Termination of Discharge
INADEQUATE RECORDKEEPING	Files Incomplete or Missing (NO Evidence of Intent)	Isolated Recurring	NOV AO: AO with fine
OTHER VIOLATIONS	Minor violation of analytical procedures	Any instance within 60 days	NOV within 15 days of identification or violation. Require correction. AO, if circumstances warrant
	Major violation of analytical procedures	No evidence of intent within 60 days	NOV within 15 days of identification of violation AO; require correction.

OTHER VIOLATIONS (continued)	Major violation of analytical procedures (continued)	Evidence of negligence or intent	AO; Judicial Action and penalty; Criminal Investigation within 4 days of identification of violation depending on circumstances. Require correction.
	Minor violation of permit condition	No evidence of negligence or intent Evidence of negligence or intent	NOV within 15 days of identification of violation. Immediate correction required. AO or Judicial Action and penalty; Criminal Investigation within 45 days of identification of violation.
	Major violation of permit condition	Evidence of negligence or intent - SNC	AO; Judicial action and penalty; Criminal Investigation within 30 days of identification of violation
	Potential violations	Chemicals stored near a floor drain with no spill prevention plan in effect. Continued problem	Warning Letter within 15 days of identification informing the industry of a potential violation. Require correction. NOV; AO if condition persists

GENERAL NOTES:

1. Whenever a notice of violation is issued that requires a response and the Industrial User fails to respond, the Control Authority will issue an Administrative Order (AO) within 30 days to require the Industrial User to respond and return to compliance immediately.
2. All telephone calls will be documented in writing for record purposes.

DEFINITIONS:

SIGNIFICANT NON-COMPLIANCE – Significant Non-Compliance (SNC) denotes that the circumstances of a particular violation are severe enough to meet the following criteria:

1. Violations of Wastewater Discharge Limits
 - a. Chronic Violations. Sixty-six percent or more of the measurements exceed the same daily maximum limit or the same average limit in a six-month period (any magnitude of exceedance).
 - b. Technical Review Criteria (TRC) Violations. Thirty-three percent or more of the measurements equal or exceed the same daily maximum limit or the same average limit by more than the following TRC in a six-month period.

Group I for conventional pollutants (BOD, TSS, fats, oil and grease): TRC = 1.4

Group II for all other pollutants except pH: TRC = 1.2

- c. Any other violation(s) of an effluent limit that the Control Authority believes has caused, alone (e.g., slug loads) or in combination with other discharges, interference or pass-through; or endangered the health of the sewage treatment personnel or the public.
 - d. Any discharge of a pollutant that has caused imminent endangerment to human health/welfare or to the environment and has resulted in the exercise of emergency authority to halt or prevent such a discharge.
2. Violations of compliance schedule interim dates contained in administrative orders as well as schedules contained in the Industrial Discharge Permits, for starting construction, completing construction, and attaining final compliance by 90 days or more after the schedule date.
3. Failure to provide reports for compliance schedules, self-monitoring data, or categorical standards (baseline monitoring reports, 90-day compliance reports, and periodic reports) within 30 days from the due date.
4. Failure to accurately report non-compliance.
5. Any other violation or group of violations that the Control Authority considers to be significant because it may adversely affect the operation or implementation of the Pretreatment Program.

IX. LEGAL AUTHORITY

The legal authority to implement the pretreatment program is found in the Control Authority's Sewer Use Ordinance. Therefore, the ability to initiate the appropriate enforcement response, as described in the guidelines, is based on the Ordinance. Certain actions, such as: monitoring, inspection, phone calls, notices of violation (NOV), and administrative orders (AO) are initiated solely by the Control Authority.

X. SEVERABILITY

If any provision(s) of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision(s) shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.

XI. EFFECTIVE DATE

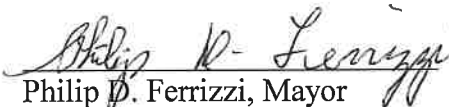
This Ordinance shall take effect immediately.

ENACTED AND ORDAINED into an Ordinance this 1st day of May, 2012.

By: 
Glenn A. Mutter, Council President

Attest: 
Andrea DeLo, Secretary

Approved:


Philip D. Ferrizzi, Mayor

APPENDICES

- A. Federal Definition of SNC**
- B. Excerpts from Federal Regulations [40 CFR 403.8(f)(1) and (2)]**

APPENDIX A.

Federal Definition of SNC

SIGNIFICANT NON-COMPLIANCE

The definition of Significant Non-Compliance as found in 40 CFR 403.8 (f) *POTW pretreatment requirements. (2) Procedures* (viii) is as follows:

“ . . . For the purposes of this provision, a Significant Industrial User (or any Industrial User which violates paragraphs (f)(2)(viii)(C), (D), or (H) of this section) is in significant noncompliance if its violation meets one or more of the following criteria:

(A) Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

(B) 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 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(C) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, 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);

(D) 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 under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;

(E) 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;

(F) Failure to provide, within 45 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;

(G) Failure to accurately report noncompliance;

(H) 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.”

APPENDIX B.

Excerpts from Federal Regulations [40 CFR 403.8(f)(1) and (2)]

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

40 CFR Ch. I (7–1–09 Edition)

(f) *POTW pretreatment requirements.* A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(1) *Legal authority.* The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307 (b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

(i) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit;

(ii) Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;

(iii) Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under § 403.3(v), this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such User except as follows.

(A)(I) At the discretion of the POTW, this control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same types of wastes;

(iii) Require the same effluent limitations;

(iv) Require the same or similar monitoring; and

(v) In the opinion of the POTW, are more appropriately controlled under a general control mechanism than under individual control mechanisms.

(2) To be covered by the general control mechanism, the Significant Industrial User must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with § 403.12(e)(2) for a monitoring waiver for a pollutant neither present nor expected to be present in the Discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the Discharge is not effective in the general control mechanism until after the POTW has provided written notice to the Significant Industrial User that such a waiver request has been granted in accordance with § 403.12(e)(2). The POTW must retain a copy of the general control mechanism, documentation to support the POTW's determination that a specific Significant Industrial User meets the criteria in paragraphs (f)(1)(iii)(A)(I) through (5) of this section, and a copy of the User's written request for coverage for 3 years after the expiration of the general control mechanism. A POTW may not control a Significant Industrial User through a general control mechanism where the facility is subject to production-based categorical Pretreatment Standards or categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for Industrial Users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations (§§ 403.6(e) and 403.15).

(B) Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:

(1) Statement of duration (in no case more than five years);

(2) Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

(3) Effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards in part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;

(4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the Discharge in accordance with § 403.12(e)(2), or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general Pretreatment Standards in part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

40 CFR Ch. I (7–1–09 Edition)

(5) Statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines;

(6) Requirements to control Slug Discharges, if determined by the POTW to be necessary.

(iv) Require (A) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (B) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in § 403.12.

(v) Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under § 403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;

(vi)(A) Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements.

(B) Pretreatment requirements which will be enforced through the remedies set forth in paragraph (f)(1)(vi)(A) of this section, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or these regulations in this part. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The Approval Authority shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the Approval Authority believes to be insufficient.

(vii) Comply with the confidentiality requirements set forth in § 403.14.

(2) *Procedures.* The POTW shall develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program. At a minimum, these procedures shall enable the POTW to:

(i) Identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Regional Administrator or Director upon request;

(ii) Identify the character and volume of pollutants contributed to the POTW by the Industrial Users identified under paragraph (f)(2)(i) of this section. This information shall be made available to the Regional Administrator or Director upon request;

(iii) Notify Industrial Users identified under paragraph (f)(2)(i) of this section, of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of the Resource Conservation and Recovery Act. Within 30 days of approval pursuant to 40 CFR 403.8(f)(6), of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

(iv) Receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in § 403.12;

(v) Randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in order to identify, independent of information supplied by Industrial Users, occasional and continuing noncompliance with Pretreatment Standards. Inspect and sample the effluent from each Significant Industrial User at least once a year, except as otherwise specified below:

(A) Where the POTW has authorized the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard in accordance with § 403.12(e)(3), the POTW must sample for the waived pollutant(s) at least once during the term of the Categorical Industrial User's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the Industrial User's wastewater based

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.
40 CFR Ch. I (7–1–09 Edition)

on changes that occur in the User's operations, the POTW must immediately begin at least annual effluent monitoring of the User's Discharge and inspection.

(B) Where the POTW has determined that an Industrial User meets the criteria for classification as a Non-Significant Categorical Industrial User, the POTW must evaluate, at least once per year, whether an Industrial User continues to meet the criteria in § 403.3(v)(2).

(C) In the case of Industrial Users subject to reduced reporting requirements under § 403.12(e)(3), the POTW must randomly sample and analyze the effluent from Industrial Users and conduct inspections at least once every two years. If the Industrial User no longer meets the conditions for reduced reporting in § 403.12(e)(3), the POTW must immediately begin sampling and inspecting the Industrial User at least once a year.

(vi) Evaluate whether each such Significant Industrial User needs a plan or other action to control Slug Discharges. For Industrial Users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2006; additional Significant Industrial Users must be evaluated within 1 year of being designated a Significant Industrial User. For purposes of this subsection, a Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, local limits or Permit conditions. The results of such activities shall be available to the Approval Authority upon request. Significant Industrial Users are required to notify the POTW immediately of any changes at its facility affecting potential for a Slug Discharge. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

(A) Description of discharge practices, including non-routine batch Discharges;

(B) Description of stored chemicals;

(C) Procedures for immediately notifying the POTW of Slug Discharges, including any Discharge that would violate a prohibition under § 403.5(b) with procedures for follow-up written notification within five days;

(D) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response;

(vii) Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under § 403.12, or indicated by analysis, inspection, and surveillance activities described in paragraph (f)(2)(v) of this section. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

(viii) Comply with the public participation requirements of 40 CFR part 25 in the enforcement of National Pretreatment Standards. These procedures shall include provision for at least annual public notification in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW of Industrial Users which, at any time during the previous 12 months, were in significant noncompliance with applicable Pretreatment requirements. For the purposes of this provision, a Significant Industrial User (or any Industrial User which violates paragraphs (f)(2)(viii)(C), (D), or (H) of this section) is in significant noncompliance if its violation meets one or more of the following criteria:

(A) Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

(B) 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 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(C) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, 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);

(D) 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 under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

40 CFR Ch. I (7–1–09 Edition)

(E) 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;

(F) Failure to provide, within 45 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;

(G) Failure to accurately report noncompliance;

(H) 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.

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 31224, Aug. 3, 1984; 51 FR 20429, 20430, June 4, 1986; 51 FR 23759, July 1, 1986; 53 FR 40612, Oct. 17, 1988; 55 FR 30129, July 24, 1990; 58 FR 18017, Apr. 7, 1993; 60 FR 33932, June 29, 1995; 62 FR 38414, July 17, 1997; 70 FR 59889, Oct. 13, 2005; 70 FR 60193, Oct. 14, 2005]