

**CITY OF LOVELAND
INDUSTRIAL PRETREATMENT PROGRAM**

ENFORCEMENT RESPONSE PLAN

September 1, 2013

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A. INTRODUCTION

In accordance with federal regulation 40 C.F.R. Part 403.8(f)(5), the City of Loveland's Publicly Owned Treatment Works (POTW) is required to develop and implement an Enforcement Response Plan (ERP). This ERP contains information on how the POTW will investigate and respond to instances of industrial user noncompliance. The ERP shall, at a minimum:

- describe how the POTW will investigate instances of noncompliance;
- 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;
- identifies the official responsible for each type of response; and
- reflect the POTW's responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 C.F.R 403.8(f)(1) and (f)(2).

B. PURPOSE

The purpose of this Enforcement Response Plan (ERP) is to meet the federal requirement and specify criteria by which the Director of the Department of Water & Power can determine the enforcement action most appropriate to instances of industrial user noncompliance. This ERP describes the process to be used to identify, document, and respond to noncompliance. This ERP also provides guidance for selecting the enforcement action most appropriate for a given violation. The procedures and guidance were developed with the following objectives in mind:

- To deter future noncompliance.
- To ensure that violators return to compliance in a timely manner.
- To recover costs incurred by the City caused by industrial user noncompliance.
- To penalize noncompliant industrial users for significant violations when appropriate.
- To prevent pollutants from passing through the POTW and causing environmental harm.

C. ADMINISTRATION AND JURISDICTION

All industrial users discharging nondomestic waste to the City of Loveland POTW are subject to the provisions of this ERP. Nothing in this ERP shall affect the Director's authority to bring enforcement actions for violations pursuant to Chapter 13.10 of the Loveland Municipal Code.

D. DEFINITIONS

All terms used herein shall have the meaning designated in Chapter 13.10 of the Loveland Municipal Code.

E. IDENTIFYING AND INVESTIGATING NONCOMPLIANCE

The activities that typically facilitate the identification and investigation of noncompliance are as follows:

Industrial User Inventory - An essential step for identifying noncompliance 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 Program uses various methods (surveys, site drive by, newspaper, sales tax, etc.) to identify and locate Industrial Users¹. When specific information is necessary the IU is sent a wastewater survey which they must return in order to determine if the IU is subject to the Pretreatment Program.

Monitoring and Inspection - The Pretreatment Program monitors the wastewater from each significant industrial user at least once per year. Wastewater from non-significant industrial users is monitored as necessary. IUs required to sample must do so in accordance with 40 C.F.R. Part 136. Inspections should be consistent, thorough, and well documented. Information gathered during any monitoring or inspection activity may be used to verify industrial user compliance.

Compliance Determination - Reports received from all industrial users are reviewed for timeliness, completeness, and accuracy. The screening process includes an evaluation of a pretreatment requirement or standard, compliance with report due dates, information required of the IU, discharge limits, sample and analysis requirements, certification requirements, monitoring frequency, etc.

¹ Industrial User (IU) - is any non-residential utility customer of the City of Loveland.

1. FUNCTIONS OF THE ENFORCEMENT RESPONSE PLAN

This ERP serves two main functions:

- To establish the appropriate enforcement action based on the nature and severity of the violation; and
- To promote consistent and timely use of enforcement remedies.

The enforcement process consists of three basic steps:

- Identify the violation;
- Determine if the violation is significant or nonsignificant; and
- Select the appropriate enforcement response.

2. CRITERIA TO DECIDE TYPE OF VIOLATION

The enforcement process begins by identifying an industrial user's violation. Once the violation is identified, it must be determined whether the violation should be considered significant or nonsignificant. To determine if a violation is significant or nonsignificant the following criteria must be considered:

2.1 Magnitude

Generally, a minor isolated instance of noncompliance can be considered nonsignificant and dealt with by an informal response, such as a telephone call or written warning. However, some isolated incidents may cause damage to the collection system or treatment system, or threaten the health and welfare of the public and/or City personnel. Situations like these are significant and require a formal enforcement action.

2.2 Duration

An industrial user will be subject to escalated enforcement actions if violations, regardless of severity, continue over prolonged periods of time. Chronic violations or repeated failure to comply with requirements or administrative orders will be considered significant violations and may result in enforcement actions including, but not limited to, increased fines, termination of service, and/or judicial enforcement.

2.3 Effect on the Environment

One objective of Chapter 13.10 is to prevent pollutants from passing through the POTW, entering the receiving stream, and causing environmental harm. Environmental harm will be presumed whenever an industrial user discharges a pollutant into the sewer system that causes a violation of the POTW's CDPS permit or damage to the environment (*i.e.*, plant life, aquatic life, property). These violations will be considered significant and may require an immediate response, which may include halting the discharge or terminating service. At a minimum, responses to these circumstances require issuance of an administrative order and possible fine.

2.4 Effect on the POTW or Personnel

Interference with operations or equipment or harm to City personnel are not acceptable. A discharge that causes interference, damage the collection system, creates a hazardous situation, or creates additional expense (*e.g.*, tracing a spill back to its source) should be met with an administrative order and fine, civil penalty, and/or cost recovery.

2.5 Compliance History of the Industrial User

The industrial user’s compliance history will be an important factor in determining the appropriate remedy to apply. The City has the authority to issue informal notices for less severe violations if the industrial user has a good compliance history. Recurring violations by an industrial user may indicate that their treatment system is inadequate or that the industrial user has taken a casual approach to operating and maintaining its treatment system. Chronic compliance problems such as late reports and missing sample collections indicate a disdainful attitude and the possibility of future significant violations.

2.6 Good Faith of the Industrial User

“Good Faith” is defined as the industrial user’s honest intention to remedy its noncompliance as evidenced by actions that give support to this intention. Good faith shall be demonstrated by cooperation and completion of corrective measures in a timely manner. Consideration may be given for the IUs actions in the community.

Compliance with a previous enforcement order is not in itself necessarily good faith. The industrial user’s good faith in correcting its noncompliance is a factor in determining which enforcement response is suitable. However, good faith does not eliminate the industrial user from enforcement action. For example, if the POTW experiences an upset, it should recover its costs, regardless of the industrial user’s good faith. If the user willfully¹ or negligently¹ caused a violation to occur then any good faith measure should not be considered.

In addition to the above criteria, mitigating or aggravating factors (such as those listed below) may be considered to assist in determining the significance of the violation and the appropriate response.

<i>Mitigating</i> (to make less serious)	<i>Aggravating</i> (to make worse; less excusable)
<ul style="list-style-type: none"> • Was the violation an accident? • Did the IU perform additional sampling? • Has the IU properly addressed previous violations? • Has the IU taken measures to prevent future violations? • Did the IU properly notify the City of the violation? • Did the IU purchasing equipment to prevent future violations? • Did the IU perform measures to limit the severity of the violation? • Did the IU return to compliance in a reasonable time. 	<ul style="list-style-type: none"> • Has the IU had other violations? • Is the IU aware of their requirements? • How does the IU respond to City? • Does the violation seem to occur frequently? • Damage/harm (potential or actual) • How long did the violation occur? • Did the IU knowingly discharge the substance? • Did the IU gain an “economic advantage” over similar IUs?

¹ Willful misconduct is a conscious or intentional disregard of the rights or safety of others. Negligence requires a conscious and voluntary disregard to a duty such as protecting a floor drain from an accidental spill.

Once the severity of the violation is determined, it will then be necessary to initiate the proper response. The individual administering an enforcement action should consider the Criteria to Decide Type of Violation of this Section, mitigating and aggravating factors, and their Best Professional Judgment in assessing a fine to prevent future violations and to protect City employees and the sewer collection and treatment system.

3. TYPES OF RESPONSES

There are three types of enforcement responses:

- Informal
- Formal
- Judicial

The enforcement response selected must be appropriate to the violation. For example, telephone calls are appropriate for late reports or a minor sample infraction, but a treatment plant upset merits a more immediate and stringent response. Knowledge and intent factors of the industrial user should be considered when determining the severity of the action to be taken.

3.1 INFORMAL

3.1.1 Telephone/Personal Notification

Telephone contact or personal contact with the industrial user may be chosen to obtain information or request corrective or preventative action occur to resolve a minor violation that is nonsignificant. The contact should take place within five (5) days of determining a violation. Prompt response will demonstrate to the industrial user that the City is serious about enforcing pretreatment program requirements. It also helps to deter future violations.

At a minimum, all communication must be documented with the following information: date/time contact was made; the person contacted; the violation; and the substance of the conversation. The document must be placed in the industrial user's record.

3.1.2 Written Warning/Field Notice of Observed Violation

This response is an official communication from the City to the noncompliant industrial user. It is issued for relatively minor, nonsignificant, violations of the ordinance standards and requirements when telephone or personal contact would not be an appropriate response. The written warning may be by letter or by field notice of observed violation form during an on-site visit. This action will provide the industrial user with an opportunity to correct noncompliance, is a prompt response to a nonsignificant violation, and documents the initial attempt of the City to resolve the noncompliance. At a minimum either response action shall state:

- (i) the specific violation that has occurred; and
- (ii) the specific action(s) required of by the industrial user to return to compliance.
- (iii) the date(s) required of by the industrial user to complete the required action.

3.1.3 Informal Meeting

An informal meeting is used to gather information concerning noncompliance, discuss steps to alleviate noncompliance, and determine the commitment level of the industrial user. The meeting may be conducted in the field if necessary.

3.2 FORMAL

3.2.1 Notice of Violation (With or Without a Penalty)

The NOV is an official communication from the City to the noncompliant industrial user that is considered to be a more stringent enforcement response than the informal responses above. It is issued for significant or recurring violations of Chapter 13.10. The NOV shall be sent via registered or certified mail (return receipt requested) or common courier with delivery confirmation.

The NOV will provide the industrial user with an opportunity to correct noncompliance on its own initiative rather than according to a schedule of actions determined by the City and may be the only response necessary to encourage the industrial user to return to compliance. If the industrial user does not comply with the NOV, an Administrative order may be necessary.

At a minimum, the NOV shall contain the following information:

- Legal authority to issue the NOV;
- Specific violation(s) and the date(s) on which they occurred;
- Specific actions required by the industrial user to return to compliance;
- Fine amount and notice that it will be posted on the industrial user's utility bill, when applicable;
- Opportunity and procedure to contest the violation and fine; and
- Warning that further enforcement action may be taken for failure to comply.

3.2.2 Administrative Order

An administrative order is a formal order issued by the City to an industrial user in noncompliance. It will direct the industrial user to undertake corrective measures or cease specified activities. An administrative order will be issued when the industrial user has significant discharge violations or has failed to comply with other enforcement responses. In some cases judicial proceedings may be more appropriate.

There are four (4) types of administrative orders:

3.2.2.1 Compliance Order

A compliance order directs the industrial user to restore compliance by a specified date. The order will document the noncompliance and state required actions to be completed by the industrial user and the dates by which the actions must be completed to eliminate the noncompliance. The City will track the industrial user's performance to ensure that the industrial user is making acceptable progress. This will be accomplished by requiring the industrial user to submit progress reports, increase monitoring requirements,

perform site inspections, etc. Issuance of a compliance schedule does not necessarily relieve the industrial user of having to meet its existing discharge limits, nor does it protect the industrial user from having additional fines levied during the compliance schedule period.

3.2.2.2 Consent Order

A consent order is a negotiated settlement between the City and the industrial user signed by both parties. The consent order will be comprised of compliance schedules, stipulated fines, or other provisions deemed necessary by the parties. The consent order will be used when the industrial user assumes responsibility for its noncompliance and is willing, in good faith, to correct its cause. The consent order should address all identified and potential deficiencies in the industrial user's compliance status. The consent order shall not be an admission of liability or a guilty plea. Additional enforcement actions may be pursued if the industrial user does not comply with all aspects of the consent order.

3.2.2.3 Cease and Desist Order

A cease and desist order shall be used in situations where the noncompliant industrial user did not obtain a permit, or the user's discharge could result in interference, pass through, or an emergency situation. A cease and desist order may be issued by telephone. A subsequent written order shall be served in person, by registered or certified mail (return receipt requested), or by commercial carrier to the industrial user. If the industrial user fails to comply with the cease and desist order, the City may pursue additional steps to halt the discharge, such as seeking injunctive relief or blocking or severing the industrial user's connection to the City wastewater collection system.

3.2.2.4 Show Cause Order

An order to show cause directs the industrial user to appear before the City and explain why more severe enforcement actions should not be taken (*e.g.*, termination of service). A notice shall be served on the industrial user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the industrial user show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served at least ten (10) calendar days prior to the hearing. The hearing shall be conducted by the Director or his designee to determine if further action is warranted and, if so, its nature and extent. The meeting may also serve as a forum to discuss corrective actions and compliance schedules.

3.2.3 Administrative Fine

An administrative fine is a monetary penalty assessed by the Director, rather than a court, to the industrial user for a violation of Chapter 13.10 and/or their control mechanism. The fine may be assessed at the City's discretion, and the amount of the fine may be determined on an individual basis in accordance with Section

13.10.1006 of city code. The fine is considered punitive in nature and is not related to any specific cost borne by the City. The amount of the fine should be proportional to the harm caused by the violation and to deter future violations. The City shall also recover damages to its POTW system as stated at Section 13.10.1402 of the Municipal Code.

When assessing an administrative fine the following factors, in addition to those listed in Section 2, should be considered:

- type and severity of the violation;
- number of violations cited;
- duration of noncompliance;
- economic benefit;
- impact of the violation on the receiving water, sludge quality, etc.;
- whether the violation threatened public health or safety; and
- the economic benefit or savings the industrial user may have gained as a result of noncompliance.

3.2.4 Termination/Suspension

The City has the authority to revoke an industrial user's wastewater discharge permit, suspend wastewater treatment service, or both. These actions may be used against industrial users that fail to comply with previous administrative orders, or to prevent or stop discharges that are considered to pose an immediate or serious hazard or significant environmental damage.

3.3 JUDICIAL

A judicial action is a formal enforcement action that involves a court. The action may be civil litigation, criminal prosecution, or both and may be referred to the EPA or state for further action. Circumstances that trigger EPA or state referrals include evidence of willfulness, evidence of negligence, or bad faith shown by the industrial user.

3.3.1 Civil Litigation

Civil litigation will be used as an appropriate enforcement response to the following situations:

- If the industrial user fails to pay assessed fines.
- If efforts to restore compliance through less formal actions have failed.
- If injunctive relief is necessary to halt or prevent a discharge that threatens human health, the environment, or the POTW.
- If the City determines it needs to recover losses due to the industrial user's noncompliance.

The following describes three types of civil litigation:

3.3.1.1 Consent Decrees are agreements between the City and the industrial user reached after a lawsuit has been filed. To be binding, the decree must also be signed by the judge assigned to the case.

3.3.1.2 Injunctions are court orders that direct parties to do something or refrain from doing something. The City may be forced to seek injunctive relief if the industrial user refuses to comply with an administrative order or if delays in filing a civil suit would result in irreparable harm to the POTW.

3.3.1.3 Civil Suits may be necessary to recover costs borne by the City in responding to the industrial user's noncompliance.

3.3.2 Criminal Prosecution

Criminal prosecution is a formal process of charging individuals and organizations with violations of ordinance provisions that are punishable, upon conviction, by fines and/or imprisonment.

Criminal prosecution is an appropriate enforcement action when there is evidence of noncompliance and when criminal negligence or intent can be proven. Some examples of these are altering or falsifying reports, tampering with samples, unauthorized discharges, and violations of administrative orders.

The criminal enforcement process begins when the City has reason to believe crimes have been or will be committed. This information may be gathered during routine inspections or monitoring/sampling activities, or in the form of reports from employees or the public. If crimes are suspected or known the City Attorney's office shall be contacted guidance.

3.4 SUPPLEMENTAL RESPONSES

In accordance with Section 13.10.901 of the Loveland Municipal Code the Pretreatment Program will publish a list of industrial users that were determined to be in significant noncompliance (SNC). Publication is intended to satisfy the public's right to know of Industrial Users which were in SNC with applicable Pretreatment requirements. An Industrial User is in significant noncompliance if its violation meets one or more of the criteria specified in Section 13.10.104 of the Municipal Code. Other types of supplemental enforcement actions that may be considered are stated in Chapter 13.10.

4. TIME FRAMES FOR ENFORCEMENT ACTIONS

Each violation must be carefully evaluated to determine the appropriate enforcement response.

Table 4.1 below lists the type of enforcement responses and the maximum number of working days that may be needed to initiate a response after finding there is significant information that a violation occurred.

Table 4.1 Enforcement response and timeline.

Response	Time Frame
Telephone/Personal notification	5 days
Written warning/ Notice of Violation, no fine	10 days
Notice of Violation w/fine	30 days
Administrative Order (Compliance, Consent, Cease & Desist, or Show Cause)	45 days
Administrative fine	45 days
Termination/Suspension	90 days
Judicial Action (Criminal or Civil)	180 days

5. ENFORCEMENT RESPONSIBILITIES

Pretreatment Specialist

The Pretreatment specialist supports the Industrial Pretreatment Coordinator. The Specialist ensures non-significant industrial users (Non-SIUs) comply with applicable code requirements and is authorized to carry out the following enforcement actions:

- Telephone/personal notification
- Written warnings/field notice of observed violation

Industrial Pretreatment Coordinator

The Industrial Pretreatment Coordinator (IPC) is responsible for the day-to-day implementation and enforcement of the industrial pretreatment program. Enforcement responsibilities include identifying and documenting the violation, conducting an investigation (including necessary sampling, monitoring, and inspection activities), and follow-up of enforcement actions.

The enforcement responses carried out by the IPC are as follows:

- Telephone/personal notifications
- Written warnings/field notice of observed violation
- Informal meeting
- Notices of violation
- Administrative fine
- Significant noncompliance publication

Enforcement responses initiated by the IPC that require consultation with the IPC's Supervisor are:

- Compliance orders
- Consent orders
- Orders to show cause
- Judicial enforcement (referrals to the state or EPA for criminal action)

The following enforcement actions require approval from the Water Utilities Manager, and may require the involvement of the Water & Power Director, City Attorney, and/or City Manager prior to moving forward:

- Cease & desist orders
- Termination/suspension of control mechanism or discharge
- Judicial enforcement

Notwithstanding anything herein to the contrary, the IPC or his supervisor shall have the authority to take necessary actions to prevent or stop discharges that are considered to pose an immediate or serious hazard or significant environmental damage.

City Attorney

The City Attorney's Office will provide legal advice as requested by the IPC or his supervisor on enforcement actions.

6. VIOLATIONS AND ACTION RANGE

Table 6.1 identifies violations and indicates the range of appropriate enforcement options. The table and the "*Worksheet to determine appropriate Enforcement Response*" (in Appendix A) is intended to assist the Director in determining the appropriate response to an industrial user's violation. In most instances the enforcement response listed should be appropriate to obtain compliance. However, an industrial user may choose to ignore an enforcement response, and the Director may need to take an enforcement action not listed for the violation.

Use of the indicated enforcement response does not limit the Director's ability to take any other response to the violation pursuant to City Code Section 13.10.1104:

“The remedies provided for in this chapter are not exclusive. The director may take any, all, or any combination of these actions against a noncompliant industrial user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the director may take other action against any industrial user when the circumstances warrant. Further, the director is empowered to take more than one enforcement action against any noncompliant industrial user.”

The “Reference” column in Table 6.1 identifies the specific section of Chapter 13.10 or requirements in the industrial user's control mechanism where one can go to review the language to determine the appropriate enforcement response. Not all violations may be listed in the category or violation column. A review of the industrial user's control mechanism may be necessary to determine if a violation of a condition or requirement occurred.

Some violations may fall under more than one category. For instance, an industrial user exceeded a discharge limit due to a new process and did not report the process or the violation. The violations for this scenario would fall under the Sample, Report, and Notification category.

Some enforcement responses may be performed on-site during a site visit or inspection. For example, during a site visit the inspector finds the industrial user does not have a record of a cleaning event for its grease removal device or the device exceeds twenty-five percent of capacity. A Field Notice of Violation could be issued in either situation.

Other examples to consider:

- If an industrial user discharged a prohibited discharge standard that “caused harm” to the POTW, workers, or environment a Notice of Violation would be more suitable than verbal communication (person to person, phone call). In addition, the City may need to recover costs associated with the violation(s).
- An industrial user that is obstinate, even though the violation was not significant, may require a more stringent enforcement response.
- Hazardous waste notification versus hazardous waste unauthorized discharge.
- Slug load reported versus not reported.

Enforcement Response Option Codes for Table 6.1

Code	Response
A	Telephone or Personal notification
B	Written warning or Field NOV
C	Informal meeting
D	Notice of Violation (NOV)
F	Administrative fine
G	Administrative Order <ul style="list-style-type: none"> - Consent - Compliance - Cease & Desist - Show Cause
O	Other actions to gain compliance: <ul style="list-style-type: none"> - Citation to Municipal Court - Judicial (Civil or Criminal) - Terminate Control Mechanism - Suspend service
P	Public Notice

Typically the sequence for violation response begins with the lowest then escalates. For example a telephone call may be appropriate for a 1st offense where the violation caused no harm or was considered an isolated incident. When there are additional violations for the same category or a series of violations the enforcement response should be elevated to the next appropriate level after considering the criteria in Section 2.

All enforcement responses have the potential to have a fine associated with the violation, even if it is not listed in Table 6.1.

Public Notice - all industrial users have the potential to be in significant non-compliance. The name of an industrial user that has a violation meeting the definition of significant noncompliance per Section 13.10.104 must be published in a newspaper of general circulation. The notice should also contain the infraction(s), the enforcement action(s), and resolution if applicable.

Table 6.1 Violations and Range of Enforcement.

Category	Violation/ Noncompliance	Reference	Nature of Violation and Enforcement Response Range	
			No harm, Isolated, or Not significant	Reoccurs, Significant, Aware of requirement
Accessibility	Delayed entry	701.A	The response range for violations that fall in this group generally will be Codes A, B, C, D	The response range for violations that fall in this group generally will be Codes D, F, G, O, P
	Denial (all or portions of facility)	701.A		
	Security clearance	701.B		
	Obstructions/Ease of access	701.D		
BMP	Fail to develop	304.A		
	Noncompliance	Cont. Mech.		
Bypass	Not essential maintenance	1302		
	No notification	1302.C		
	No written submission	13.02.C		
	Avoidable	1302.D		
Discharge	SIU Discharge without permit	402.A		
	Any IU Discharge without permit	403		
	Permit transfer	504		
	Permit renewal/reissuance	506		
	General prohibition	202.A		
	Specific prohibition	202.B		
	pH	202.B.2		
	Local Limit	205		
	Dilution	207		
	Exceeded limit	Cont. Mech.		
	Effluent data not submitted	801		
	Failure to suspend discharge	1204		

A-Verbal notification B-Written warning C-Informal meeting D-Notice of Violation F-Fine G-Administrative Order O-Other action
 Careful consideration must be given to each IU and the violation to deter a future violation(s) and/or gain compliance. P-Public Notice

APPENDIX A

Worksheet to determine appropriate Enforcement Response

Worksheet to determine appropriate Enforcement Response

IU Name: _____

Date violation(s) discovered: _____

Violation(s): _____

Provide a comment to the following criteria	
Magnitude	
Duration	
Effect on the Environment	
Effect on the POTW	
Compliance History	
Good Faith	

Check the applicable Mitigating factors	
<input type="checkbox"/>	Violation was an accident
<input type="checkbox"/>	Performed additional sampling
<input type="checkbox"/>	Properly addressed previous violations
<input type="checkbox"/>	Took measures to prevent violations (current/future)
<input type="checkbox"/>	Properly notified the City of the violation
<input type="checkbox"/>	Purchased equipment to prevent future violations
<input type="checkbox"/>	Performed measures to limit the severity of the violation
<input type="checkbox"/>	Returned to compliance in a reasonable time

Check the applicable Aggravating factors	
<input type="checkbox"/>	Other violations (current/past)
<input type="checkbox"/>	Aware of their requirement(s)
<input type="checkbox"/>	Response to City (attitude)
<input type="checkbox"/>	Frequent violations
<input type="checkbox"/>	No notification
<input type="checkbox"/>	Damage/harm (potential or actual)
<input type="checkbox"/>	Gained an "economic advantage"

Check if:	
<input type="checkbox"/>	Negligent (IU could have taken measures/precautions to prevent violation).
<input type="checkbox"/>	Willful (IU knowingly or intentionally caused the violation).

The violation(s) is considered: Non-significant Significant

Response *(check all that apply)*

- | | | | |
|--|---|-----------------------------------|--|
| <input type="checkbox"/> Informal | <input type="checkbox"/> Formal | <input type="checkbox"/> Judicial | <input type="checkbox"/> Other |
| <input type="checkbox"/> Verbal Notification | <input type="checkbox"/> Notice of Violation | <input type="checkbox"/> Civil | <input type="checkbox"/> Citation |
| <input type="checkbox"/> Written warning | <input type="checkbox"/> Administrative Order | <input type="checkbox"/> Criminal | <input type="checkbox"/> Public Notice |
| <input type="checkbox"/> Meeting | <input type="checkbox"/> Administrative Fine | | |
| | <input type="checkbox"/> Terminate/Suspend | | |

If necessary, use the back of this form to provided additional information for this enforcement decision.

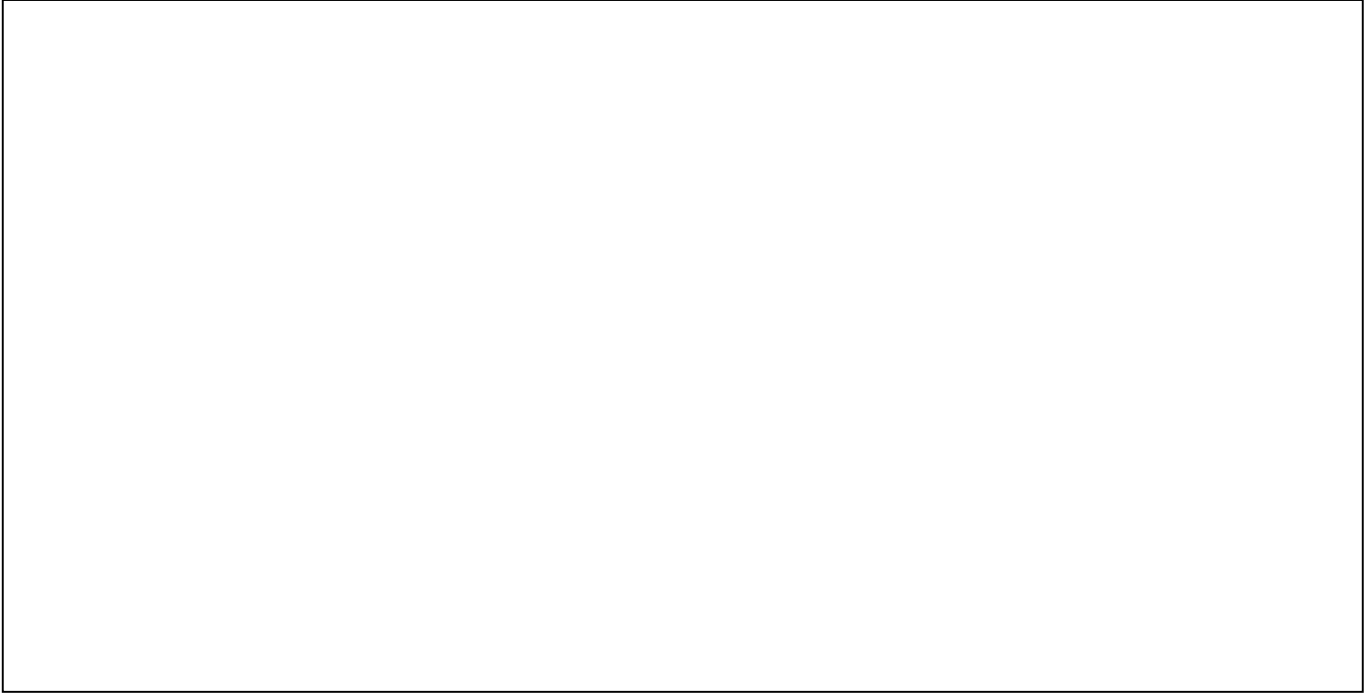
Based upon the information received, discovered, and/or observed at the time of this evaluation it is my Best Professional Judgment the above Enforcement Response is appropriate for the violation.

Completed by: _____

Date: _____

Additional information to support enforcement decision

IU name: _____

A large, empty rectangular box with a thin black border, intended for providing additional information to support an enforcement decision. The box is currently blank.

APPENDIX B

Example Notice of Violation with penalty

Example Administrative Orders

Cease & Desist

Consent Order

Show Cause

Compliance Order

NOTICE OF VIOLATION

To: IU Name LLC
Address
Loveland, CO 805xx

via: FedEx #:

LEGAL AUTHORITY

The following findings are made and notice issued pursuant to the authority vested in the Water & Power Director, under Sections 2.49.010, 13.10.201, and 13.10.1006 of the Loveland Municipal Code. This notice is based on findings of violation of the conditions of the [WW Discharge Permit #, or Authorization to Discharge) issued to IU Name LLC, Address, Loveland, Colorado, under Chapter 13.10 of the Loveland Municipal Code.

FACTS

1. The City of Loveland is charged with construction, maintenance, and control of the sewer system and treatment works. To protect the sewer system and treatment works, the City of Loveland administers a pretreatment program. Under this pretreatment program, IU Name was reissued an [WW Discharge Permit #, or Authorization to Discharge) on DATE.
2. The Authorization to Discharge requires the above business to empty its grease removal device once every ninety (90) days and report that information to the Pretreatment Coordinator.
3. On DATE the City discovered IU Name had failed to submit documentation regarding the maintenance of its grease removal device. Documentation previously provided indicated the grease removal device was last emptied on March 4, 2013. The device should have been emptied again by June 2, 2013 and documentation provided to the City by July 2, 2013.
4. IU Name was informed in a letter dated December 5, 2012 of the fine amounts for violations of the grease management provisions of Section 13.10.305 of the Loveland Municipal Code.

CONCLUSION

THEREFORE, BASED ON THE ABOVE FACTS, THE INDUSTRIAL PRETREATMENT COORDINATOR OF THE CITY OF LOVELAND CONCLUDES THAT:

1. IU Name LLC has violated Section 13.10.607 of the Loveland Municipal Code by failing to provide appropriate reports on compliance as required by the Water & Power Director.
2. IU Name LLC has violated Section 13.10.305.C.5 of the Loveland Municipal Code by failing to maintain its grease removal device in accordance with its control mechanism.

3. IU Name is assumed to have gained an economic advantage over similar food service establishments by not having their grease removal device emptied as required in the Authorization to Discharge.

IT IS FURTHER ORDERED THAT:

1. Pursuant to Loveland Municipal Code Section 13.10.1006, IU Name is hereby assessed the following fine(s):
 - \$300 for failing to pump their grease removal device, and
 - \$50 for failing to provide documentation.
2. Pursuant to Loveland Municipal Code Section 13.10.1006.B, if IU Name desires to dispute the above fines they must file a written request for the Water & Power Director to reconsider the fines within fifteen (15) days of the date of this Notice of Violation. Such request shall set forth the nature of the order or determination being appealed, the date of such order or determination, the reason for the appeal, and a request for a hearing.
3. If IU Name does not file a written request they will be deemed to have waived their request for a meeting and the total assessed fine of \$350 will be placed on IU Name's utility bill.
4. If IU Name did not have the grease removal device emptied since March 4, 2013, then they shall, within seven (7) days of receiving this Notice of Violation, have the grease removal device emptied and provide documentation to the Pretreatment Coordinator within five (5) days after the device is emptied.
5. Failure to comply with this Notice of Violation will result in additional enforcement action.

Issued: _____
NAME, TITLE

Date

xc: File
City Attorney's Office

ORDER TO CEASE AND DESIST

TO: _____

Pursuant to the authority granted to the Director of Water and Power under Loveland Municipal Code §§ 13.10.102 and 13.10.201, you are hereby ordered to cease and desist engaging in the following prohibited activity:

in violation of Loveland Municipal Code § 13.10. _____

YOU SHALL COMPLY WITH THIS ORDER NO LATER THAN

_____ P.M. ON _____, 20__.

The Director of Water and Power has determined that your violation of the above-referenced ordinance _____.
Therefore, your failure or refusal to comply with this Order will result in immediate severance of your sewer connection pursuant to Loveland Municipal Code § 13.10.121 and water service pursuant to Loveland Municipal Code § 13.10.122.

CITY OF LOVELAND, COLORADO

By: _____
Name, Title
Department of Water & Power

Date: _____

EXAMPLE CEASE AND DESIST ORDER
DIVISION OF WATER AND WASTEWATER SERVICES
[NAME OF CITY]

IN THE MATTER OF	*	
	*	
NAME OF INDUSTRY	*	CEASE AND DESIST ORDER
ADDRESS	*	
	*	
	*	
	*	

LEGAL AUTHORITY

The following findings are made and order issued pursuant to the authority vested in the Superintendent of Wastewater Services, under Section ___ of the City's Sewer Use Ordinance. This order is based on findings of violation of the conditions of the wastewater discharge permit issued under Section ___ of the City's Sewer Use Ordinance.

FINDINGS

1. *[Industry] discharges nondomestic wastewater containing pollutants into the sanitary sewer system of the City of _____.*
2. *[Industry] is a "significant industrial user" as defined by Section ___ of the City's Sewer Use Ordinance.*
3. *[Industry] was issued a wastewater discharge permit on January 1, 1988 which contains prohibitions, restrictions, and other limitations on the quality of the wastewater it discharges to the sanitary sewer.*
4. *Pursuant to the ordinance and the above-referenced permit, data is routinely collected or submitted on the compliance status of [Industry].*
5. *This data shows that [Industry] has violated the Sewer Use Ordinance in the following manner:*
 - a. *[Industry] has continuously violated its permit limits for copper and zinc in each sample collected between January, 1986 and January, 1989.*
 - b. *[Industry] has also failed to comply with an administrative compliance order requiring the installation of a pretreatment system and the achievement of compliance with its permit limits by July 1, 1989.*
 - c. *[Industry] has failed to appear at a show cause hearing pursuant to an order requiring said attendance.*

FIGURE 5-3.1

ORDER

THEREFORE, BASED ON THE ABOVE FINDINGS, [INDUSTRY] IS HEREBY ORDERED TO:

1. *Within 24 hours of receiving this order, cease all nondomestic discharges into the City's sanitary sewer. Such discharges shall not recommence until such time as [Industry] is able to demonstrate that it will comply with its current permit limits.*
2. *Failure to comply with this order may subject [Industry] to having its connection to the sanitary sewer sealed by the City, and assessed the costs therefor.*
3. *Failure to comply with this order shall also constitute a further violation of the sewer use ordinance and may subject [Industry] to civil or criminal penalties or such other enforcement response as may be appropriate.*
4. *This order, entered this 12th day of August, 1989, shall be effective upon receipt by [Industry].*

Signed: _____

[Name]
Superintendent of Sewer Services
[City] Municipal Building
[Address]

EXAMPLE CONSENT ORDER

DIVISION OF WATER AND WASTEWATER SERVICES

[NAME OF CITY]

IN THE MATTER OF

NAME OF INDUSTRY
ADDRESS

*
*
*
*
*
*
*

SUPERINTENDENT OF SEWER SERVICES
ADDRESS

CONSENT ORDER

WHEREAS, the City of _____ Division of Sewer Services pursuant to the powers, duties and responsibilities vested in and imposed upon the Superintendent by provisions of the City's Sewer Use Ordinance, have conducted an ongoing investigation of [Industry] and have determined that:

1. The City owns and operates a wastewater treatment plant which is adversely impacted by discharges from industrial users, including [Industry], and has implemented a pretreatment program to control such discharges.
2. [Industry] has consistently violated the pollutant limits in its wastewater discharge permit as set forth in Exhibit I, attached hereto.
3. Therefore, to ensure that [Industry] is brought into compliance with its permit limits at the earliest possible date, IT IS HEREBY AGREED AND ORDERED, BETWEEN [Industry] AND THE SUPERINTENDENT OF SEWER SERVICES FOR THE CITY OF _____, that [Industry] shall:
 - a. By July 15, 1989, obtain the services of a licensed professional engineer specializing in wastewater treatment for the purpose of designing a pretreatment system which will bring [Industry] into compliance with its wastewater discharge permit.
 - b. By September, 30, 1989, submit plans and specifications for the proposed pretreatment system to the City for review.
 - c. By December 31, 1989, install the pretreatment system in accordance with the plans and specifications submitted in item b above.
 - d. By January 15, 1989, achieve compliance with the limits set forth in Exhibit I.
 - e. [Industry] shall pay \$1,000 per day for each and every day it fails to comply with the schedule set out in items a-d above. The \$1,000 per day penalty shall be paid to the cashier of the Division of Sewer Services within 5 days of being demanded by the City.

FIGURE 5-3.2

4. *In the event [Industry] fails to comply with any of the deadlines set forth, [Industry] shall, within one (1) working day after expiration of the deadline, notify the City in writing. This notice shall describe the reasons for [Industry]'s failure to comply, the additional amount of time needed to complete the remaining work, and the steps to be taken to avoid future delays. This notification in no way excuses [Industry] from its responsibility to meet any later milestones required by this Consent Order.*
5. *Compliance with the terms and conditions of this Consent Order shall not be construed to relieve [Industry] of its obligation to comply with its wastewater discharge permit which remains in full force and effect. The City reserves the right to seek any and all remedies available to it under Section ___ of the City's Sewer Use Ordinance for any violation cited by this order.*
6. *Violation of this Consent Order shall constitute a further violation of the City's Sewer Use Ordinance and subjects [Industry] to all penalties described by Section ___ of the Sewer Use Ordinance.*
7. *Nothing in this Consent Order shall be construed to limit any authority of the City to issue any other orders or take any other action which it deems necessary to protect the wastewater treatment plant, the environment or the public health and safety.*

SIGNATORIES

FOR [INDUSTRY]

Date

Name
[Industry]

FOR [NAME OF CITY]

Date

Name
Superintendent of Sewer Services
Address

FIGURE 5-3.2 (Continued)

EXAMPLE SHOW CAUSE ORDER
DIVISION OF WATER AND WASTEWATER SERVICES
[NAME OF CITY]

IN THE MATTER OF	*	
	*	ADMINISTRATIVE
[NAME OF INDUSTRY]	*	
ADDRESS	*	SHOW CAUSE ORDER
	*	
	*	
	*	

LEGAL AUTHORITY

The following findings are made and order issued pursuant to the authority vested in the Superintendent of Wastewater Services, under Section ___ of the City's Sewer Use Ordinance. This order is based on findings of violation of the conditions of the wastewater discharge permit issued under Section ___ of the City's Sewer Use Ordinance.

FINDINGS

1. *[Industry] discharges nondomestic wastewater containing pollutants into the sanitary sewer system of the City of ___ (hereafter, "City").*
2. *[Industry] is a "significant industrial user" as defined by Section ___ of the City's Sewer Use Ordinance.*
3. *[Industry] was issued a wastewater discharge permit on January 1, 1988, which contains prohibitions, restrictions, and other limitations on the quality of the wastewater it discharges to the sanitary sewer.*
4. *Pursuant to the ordinance and the above-referenced permit, data is routinely collected or submitted on the compliance status of [Industry].*
5. *This data shows that [Industry] has violated its wastewater discharge permit in the following manner:*
 - a. *[Industry] has violated its permit limits for copper and zinc in each sample collected between January, 1988, and January, 1989, for a total of 24 separate violations of the permit.*
 - b. *[Industry] has failed to submit a periodic compliance report due March 31, 1989.*
 - c. *All of these violations satisfy the City's definition of significant violation.*

FIGURE 5-3.3

ORDER

THEREFORE, BASED ON THE ABOVE FINDINGS, [INDUSTRY] IS HEREBY ORDERED TO:

1. *Appear at a meeting with the Superintendent of Sewer Services to be held on June 21, 1989, at 2:00 p.m., in room 211 of the Municipal Building.*
2. *At this meeting, [Industry] must demonstrate why the City should not pursue a judicial enforcement action against [Industry] at this time.*
3. *This meeting will be closed to the public.*
4. *Representatives of [Industry] may be accompanied by legal counsel if they so choose.*
5. *Failure to comply with this order shall also constitute a further violation of the Sewer Use Ordinance and may subject [Industry] to civil or criminal penalties or such other appropriate enforcement response as may be appropriate.*
6. *This order, entered this 19th day of May, 1989, shall be effective upon receipt by [Industry].*

Signed: _____

[Name]
Superintendent of Sewer Services
[Address]

FIGURE 5-3.3 (Continued)

5-3.13

EXAMPLE COMPLIANCE ORDER
DIVISION OF WATER AND WASTEWATER SERVICES
[NAME OF CITY]

IN THE MATTER OF	*	
	*	ADMINISTRATIVE
[NAME OF INDUSTRY]	*	
[ADDRESS]	*	COMPLIANCE ORDER
	*	
	*	
	*	

LEGAL AUTHORITY

The following findings are made and order issued pursuant to the authority vested in the Superintendent of Wastewater Services, under Section ___ of the City's Sewer Use Ordinance. This order is based on findings of violation of the conditions of the wastewater discharge permit issued under Section ___ of the City's Sewer Use Ordinance.

FINDINGS

1. *[Industry] discharges nondomestic wastewater containing pollutants into the sanitary sewer system of the City of _____ (hereafter, "City").*
2. *[Industry] is a "significant industrial user" as defined by Section ___ of the City's Sewer Use Ordinance.*
3. *[Industry] was issued a wastewater discharge permit on January 1, 1988, which contains prohibitions, restrictions, and other limitations on the quality of the wastewater it discharges to the sanitary sewer.*
4. *Pursuant to the ordinance and the above-referenced permit, data is routinely collected or submitted on the compliance status of [Industry].*
5. *This data shows that [Industry] has violated its wastewater discharge permit in the following manner:*
 - a. *[Industry] has violated its permit limits for copper and zinc in each sample collected between January, 1988, and January, 1989, for a total of 24 separate violations of the permit.*
 - b. *[Industry] has failed to submit all periodic compliance reports due since March 31, 1989.*
 - c. *All of these violations satisfy the City's definition of significant violation.*

FIGURE 5-3.4

ORDER

THEREFORE, BASED ON THE ABOVE FINDINGS, [INDUSTRY] IS HEREBY ORDERED TO:

1. *Within 180 days, install pretreatment technology which will adequately treat [Industry]'s wastewater to a level which will comply with its wastewater discharge permit.*
2. *Within 5 days, submit all periodic compliance reports due since March 31, 1989.*
3. *Within 10 days, pay to the cashier's office of the Division of Sewer Services, a fine of \$2,000.00 for the above-described violations in accordance with Section ___ of the Sewer Use Ordinance.*
4. *Report, on a monthly basis, the wastewater quality and the corresponding flow and production information as described on page 9 of the wastewater discharge permit for a period of one year from the effective date of this order.*
5. *All reports and notices required by this order shall be sent, in writing, to the following address:*

*Pretreatment Coordinator
Wastewater Treatment Plant
[Address]*

6. *This order does not constitute a waiver of the wastewater discharge permit which remains in full force and effect. The City of [Industry] reserves the right to seek any and all remedies available to it under Section ___ of the Sewer Use Ordinance for any violation cited by this order.*
7. *Failure to comply with the requirements of this order shall constitute a further violation of the sewer use ordinance and may subject [Industry] to civil or criminal penalties or such other appropriate enforcement response as may be appropriate.*
8. *This order, entered this 19th day of May, 1989, shall be effective upon receipt by [Industry].*

Signed: _____

[Name]
Superintendent of Sewer Services
[Address]

FIGURE 5-3.4 (Continued)

APPENDIX C

Examples of Public Notice for SNC

**City of Loveland
Department of Water & Power
Industrial Pretreatment Program**

PUBLIC NOTICE

In accordance with the Environmental Protection Agency's General Pretreatment Regulation (40 CFR 403.8(f)(2)(vii)), the City of Loveland must annually publish a list of Industrial Users, which at any time during the reporting period, demonstrated significant noncompliance with applicable pretreatment requirements.

This public notice has been issued to meet the requirements of informing the public, and does not constitute any decisions as to the actions, if any, necessary to remedy the Industrial User noncompliance.

The period covered by this notice is January 1, 2008 to December 31, 2008.

Name of Violator	Type of Violation	Nature of Violation	Enforcement Action
IU Name	Discharge and Reporting	Exceeded discharge limit for molybdenum. Failed to resample.	Notice of Violation with a \$1,000 penalty.
IU Name	Discharge, Monitoring, and Reporting	Failed to monitor. Failed report a violation. Failed to resample discharge.	Notice of Violation with a \$5,000 penalty.

Specific questions on any of the listed violators may be submitted in writing to:

Name
Title
Department of Water & Power
200 North Wilson Avenue
Loveland, Colorado 80537
(970)-962-3719

PUBLIC NOTIFICATION
INDUSTRIAL WASTEWATER DISCHARGE VIOLATIONS

The following sewer users located in the City of Pretreatment have demonstrated a pattern of Significant Non-Compliance ("SNC") with applicable industrial pretreatment standards during the 2011 calendar year (in alphabetical order):

1. IU Name, LLC
P.O. Box 00305
Sometown, CO 80xxx

SIGNIFICANT NON-COMPLIANCE: The required self-monitoring and reporting events for BOD and TSS during the 1st semi-annual 2011 monitoring period were performed, but analyses were performed after the regulated allowable holding time. Therefore, the reported results were not considered valid.

ENFORCEMENT ACTIONS TAKEN: The City issued a Notice of Violation because of IU Name, LLC chronic SNC and their failure to provide advance notice of the transfer of business ownership as required by Section 14.11.330 of the City of Pretreatment Municipal Code. Based upon the City's Enforcement Response Guide and administrative penalty matrix, an administrative penalty of \$1300.00 was proposed. IU Name, LLC appealed the Notice of Violation. Upon appeal, the City Water & Sewer Department ruled that IU Name, LLC was required to sample and submit self-monitoring reports on a monthly basis during September through December 2011, and semi-annually thereafter, without violations of any pretreatment standards or requirements and pay the \$1300.00 penalty.

CORRECTIVE ACTIONS PERFORMED: IU Name, LLC conducted all required sampling and self-monitoring reporting without violations during September through December 2011, and paid the \$1300.00 penalty.

APPENDIX D

Letter sent to FSEs in December 2012
(Re: Maintenance, Documentation, and Fines)

December 5, 2012

Name
Address
Loveland, CO zip

Re: Important Information Regarding the Maintenance and Documentation of a Grease Removal Device

The City of Loveland's Pretreatment Program has benefited from the eighty percent of food service establishments that comply with the requirements of their Authorization to Discharge for cleaning the grease removal device and submitting the required documentation. However, there are twenty percent of food service establishments city-wide that are not in compliance with the requirements of their Authorization to Discharge. The purpose of this letter is to inform the food service establishments (FSEs) that are not in compliance of the action the Pretreatment Program will take to respond to future violations.

On September 18, 2012, the Loveland City Council approved Ordinance #5702 amending the Wastewater Pretreatment Program regulations. Section 13.10.1006 of the Ordinance provides the Water and Power Department Director the authority to issue a penalty of up to \$1,000 per day, per violation and to include the penalty on the industrial user's utility bill.

Therefore, effective January 1, 2013, the Pretreatment Program will issue a penalty for the following violations of the grease management provisions of the Pretreatment Program requirements as follows:

Violation	1 st Offense	Each Subsequent Offense
No documentation submitted as required in the Authorization to Discharge document.	\$50	Penalty doubled or citation to municipal court
Grease removal device not emptied as required in the Authorization to Discharge document.	\$200 - \$800 (depends on size)	
Other	Case-by-case determination	

If your establishment has a violation it will be notified that a penalty was placed on the utility bill and afforded the opportunity to contest it and the penalty amount in accordance with Section 13.10.1006 (see enclosure).

Page 2
Maintenance and Documentation
December 5, 2012

Enclosed is a new Authorization to Discharge document. Part II requires documentation be submitted within 30 days after each cleaning/pumping of the grease removal device. Although some establishments rely on the grease pumping company to provide documentation, please note that it is the responsibility of the establishment identified on the Authorization to Discharge to ensure documentation is submitted to the City.

We hope you understand the grease management program requirements are intended to prevent grease-related sewer backups that can cause human health hazards and environmental harm.

Should you have any question regarding this letter or the discharge requirements for your business, you may contact me at 962-3719, or at bill.thomas@cityofloveland.org.

Sincerely,



Bill Thomas
Pretreatment Coordinator

enc: Authorization to Discharge
City code Section 13.10.1006

xc: File

APPENDIX E

Letter from Michael Cook, EPA
(Application and Use of SNC definition)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 9 1991

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Application and Use of the Regulatory Definition of Significant Noncompliance for Industrial Users

FROM: Michael B. Cook, Director *Michael B. Cook*
Office of Wastewater Enforcement and Compliance

TO: Water Management Division Directors, Regions I-X
Approved Pretreatment State Coordinators

Background:

On July 24, 1990, the Agency replaced the definition of "significant violation" with the definition of "significant noncompliance" (SNC) [see 40 CFR 403.8(f)(2)(vii) and 55 Fed. Reg. 30082]. This change eliminated the inconsistencies which arose in applying the significant violation criteria and established more parity in tracking violations committed by industrial users. The definition of SNC parallels the Pretreatment Compliance Monitoring and Enforcement Guidance (PCME) definition of SNC published in 1986.

This memorandum responds to several questions from States, publicly owned treatment works (POTWs), and industry regarding the application of the SNC definition. One frequently asked question is whether the time frame for determining SNC for technical review criteria effluent violations is a static six month period (i.e., a fixed six month calendar interval) or a rolling six month time frame (i.e., the current day minus six months). POTWs and industry have also inquired whether all data must be used to calculate SNC. The following discussion is provided to promote consistency in the application of this definition. Regions, States and POTWs should determine SNC in the manner prescribed below.

Pretreatment POTWs are required to notify the public of significant industrial users which meet the definition of SNC through publication in the newspaper. The POTW should also use the SNC criteria as the basis for reporting an industrial user's compliance status to the Approval Authority in its Pretreatment Performance Report. According to 40 CFR 403.12(i)(2), the POTW must report on the compliance status of its industrial user universe at the frequency specified by the State or EPA National Pollution Discharge Elimination System (NPDES) permit, but in no case less than once per year. Finally, the definition of SNC is used to determine whether a formal enforcement action against a user is warranted in accordance with the POTW's Enforcement Response Plan (ERP).

Applying the Definition: Use of the Six Month Time Frame:

There are seven criteria set forth in §403.8(f)(2)(vii). Two of these criteria concern violations evaluated over a six month time frame. The Agency intends for Control Authorities to evaluate these criteria on a rolling basis. The EPA's long established practice in the NPDES program is to evaluate SNC for direct dischargers each quarter using data from the previous six months. Similarly, Control Authorities should determine SNC for their universe of industrial users on the same rolling quarters basis using fixed quarters established by the Control Authority to correspond to its "pretreatment year" (e.g., March 31, June 30, September 30 and December 31).

At the end of each quarter, POTWs and States are to evaluate their industrial user's compliance status using the two criteria of the SNC definition which are evaluated on a six month time frame (i.e., the "A" and "B" criteria under the regulatory definition). Under this system, each industrial user is evaluated for SNC four times during the year, and the total evaluation period covers 15 months (i.e., beginning with the last quarter of the previous pretreatment year through the end of the current year). When the POTW is required to publish, it must list in the newspaper all industrial users which have been identified as SNC during the previous year (i.e., the SNC criteria were met during any of the previous four quarters).

If a facility has been determined to be in SNC based solely on violations which occurred in the first quarter of the 15 month evaluation period (i.e., the last quarter of the previous pretreatment year) and the facility has demonstrated consistent compliance in the subsequent four quarters, then the POTW is not required to republish the Industrial User (IU) in the newspaper if the IU was published in the previous year for the same violations.

Use of Industrial User and POTW Data in Determining SNC:

Several POTWs have inquired whether all data, including Control Authority sampling and industrial user self-monitoring, must be used in determining SNC. This question arises from the concern that an industrial user may choose to conduct its sampling efforts at times in which it knows that it is in compliance (e.g., during early morning start-up or during periods in which the industrial process is down). The concern is that use of these unrepresentative data will allow the industry to craft its compliance status such that it will never be in SNC.

The regulation defining SNC clearly requires that all measurements taken in the appropriate six month period must be used to determine a facility's SNC status. Therefore, any and all samples obtained through appropriate sampling techniques which have been analyzed in accordance with the procedures established in 40 CFR Part 136 must be used to determine whether the facility is in SNC.

The General Pretreatment Regulations further state that periodic compliance reports must be based on data obtained through appropriate sampling and analysis, and the data must be representative of conditions occurring during the reporting period [403.8(f)(1)(iv)]

and 403.12(g)(3)]. The Control Authority must require that frequency and scope of industrial user self-monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

The nature and scope of the sampling undertaken by an industrial user is under the control of the Control Authority through the issuance of an industrial user permit. These permits should specify the sampling locations and sample collection method necessary to ensure that representative samples are obtained for all regulated waste streams. By requiring industrial users to obtain representative samples, the Control Authority will ensure that industrial users do not evade noncompliance through selective sampling of their industrial processes.

Conclusion:

The Control Authority is required to screen all compliance data, whether generated through industrial user self-monitoring or by the Control Authority, to identify any violations of pretreatment requirements. Whenever there is a violation, the Control Authority must take appropriate enforcement action, as defined in its ERP. After this initial enforcement response, the Control Authority should closely track the industrial user's progress toward compliance by increasing the frequency of user self-monitoring, increasing the POTW's monitoring, or both.

When follow-up activity indicates that the violations persist or that satisfactory progress toward compliance is not being made, the Control Authority is required to escalate its enforcement response in accordance with the procedures established in its ERP. **At a minimum EPA expects POTWs to address SNC with an enforceable order that requires a return to compliance by a specific deadline.** When this enforceable order involves a compliance schedule, the industrial user remains in SNC during the period of the schedule (unless the facility returns to compliance prior to the end of the schedule). For example, if the duration of the schedule is two years, the facility should be published in both years. Of course, the POTW should explain in its publication that the violations have been addressed with a formal enforcement action (similar to a "resolved pending" listing on the Quarterly Noncompliance Report).

The definition of SNC provides a benchmark against which the compliance status of an industrial user and the enforcement activities of POTWs can be measured. The concept of significant noncompliance plays a pivotal role in the implementation and enforcement of the National Pretreatment Program. In order for the definition to succeed, it is critical that each Control Authority apply it on a consistent basis. If you have any further questions on this issue, please feel free to call me at (202) 260-5850. The staff person familiar with these issues is Lee Okster at (202) 260-8329.

cc: Cynthia Dougherty
Regional Water Compliance Branch Chiefs
Regional Pretreatment Coordinators
Lead Regional Pretreatment Attorneys