

CITY OF EVERETT ENFORCEMENT RESPONSE PLAN

INTRODUCTION

This document is entitled "City of Everett Industrial Pretreatment Enforcement Response Plan." Whenever reference is made to the Industrial Pretreatment Program in this document, it may be cited "City".

The purpose of this plan is to describe and outline City procedures for implementing its pretreatment "Enforcement Response Plan" (ERP). The purpose of enforcement is to bring the User into compliance with the pretreatment requirements, not to punish them for being out of compliance. The specific objectives of this Plan are:

- _ To define the range of enforcement actions based on the nature and severity of the violation and other relevant factors.
- _ To identify appropriate City personnel who may initiate various enforcement actions.
- _ To illustrate the various tools of enforcement that the City may use in response to violations of Pretreatment requirements.
- _ To establish a means of tracking violator progress (from start to finish) once the initial enforcement has been taken.
- _ To promote consistent and timely use of enforcement actions by City.
- _ To eliminate any confusion or uncertainty concerning enforcement.
- _ To provide a fair and equitable means of enforcing the City's wastewater ordinance.

The City of Everett has prepared an Enforcement Response Plan using guidance in part from the EPA Pretreatment Compliance Monitoring and Enforcement Guidance (July, 1986); Guidance for Developing Control Authority Enforcement Response Plans (September 1989); and the Pretreatment Streamlining Rule (FR Volume 70, Number 198, Pages 60133-60198). Any enforcement associated with pretreatment violations must reflect the seriousness, frequency, and persistence of each and every violation. This Enforcement Response Plan (ERP) has been developed to contain procedures as to how the Industrial Pretreatment Section will carry out enforcement actions for instances of industrial user noncompliance. The ERP is intended for the use of City personnel and does not create any rights or obligations nor should it be used or relied upon by any non-city personnel for any purpose. The City of Everett reserves the right to act at variance with the ERP and to change it at any time without public notice. Throughout this document and any attachments use of the masculine gender shall include both feminine and masculine.

ADMINISTRATIVE AND JUDICIAL ENFORCEMENT ACTIONS

In order to achieve a maximum degree of compliance by industrial users, the City needs to use a wide range of enforcement actions. The enforcement actions available to the City range from a simple reminder telephone call to termination of service and assessment of penalties. It should be recognized that some intentional violations may constitute criminal violations of Federal, State and City law, and that under such circumstances; the supervisor may seek the assistance of EPA, the State, or the City prosecutor. The purpose of this section is to describe the range of available enforcement actions. The enforcement philosophy is progressive; that is, problems are addressed at the lowest level and with the least formality possible, consistent with the specific problem. However, it should be remembered that escalated enforcement action is not contingent upon the completion of any less formal procedure and depending upon the factual scenario presented, a formal procedure may be needed for the initial action. Listed below are available enforcement actions.

Administrative Actions

- (1) Notice of violation (NOV)
- (2) Consent Order
- (3) Show Cause Hearing
- (4) Compliance Order
- (5) Cease and Desist Order
- (6) Administrative Fine
- (7) Service Suspension
- (8) Referral to Washington Department of Ecology and/or US EPA

Judicial Actions

- (1) Injunction
- (2) Civil Penalty
- (3) Criminal Prosecution

Each of these types of enforcement activity are discussed in the following sections.

Except as provided below, all written notices of enforcement actions should be sent by certified mail with return receipt requested. Copies should be maintained in the industrial user file. Certified mail will more likely bring the notice to the serious attention of appropriate officials. Moreover, the return receipt will serve as proof that the industrial user did in fact receive the notice.

At the direction of the Pretreatment Program Manager or Director, however, the enforcement action notices may be hand delivered. In such cases, the notice should contain the following information at the top of the notice:

Received by User Representative

Signature:

Date:

Printed Name:

Title:

A copy of the notice should be brought with the original when delivering the notice and the representative's signature, date, name and title should be obtained on the copy and taken back to the office and placed in the user's file. If the user representative fails or refuses to sign, the person hand-delivering the notice shall indicate on the top page of the copy of the notice the name of the user representative receiving the notice, the date and time of delivery.

RESPONSE TIMES FOR ENFORCEMENT ACTIONS

To be truly effective, an enforcement action should be taken in a timely fashion once a violation has been identified. Therefore, an initial enforcement action should be taken within thirty (30) days from the date a violation is first identified. In order to accomplish this, certain deadlines should be followed. These deadlines are set forth below. These deadlines are goals and every effort should be made to achieve them. In no event shall an initial enforcement response exceed the thirty day time period stated above.

All compliance reports should be reviewed and an evaluation of compliance status made promptly upon receipt by the Industrial Pretreatment Section. If, after the evaluation, one or more enforcement actions are deemed necessary, the following time frames for initial enforcement should apply. If the violation is derived from an industrial user report, the thirty day time period begins from the date the report is received. If a report is not received, the thirty day time period begins on the sixth (6th) business day after the report due date. If the violation is found through an inspection or some other means, the thirty day time period begins with the date of actual knowledge of the violation.

Initial actions include:

- (1) NOV sent certified mail or hand-delivered within 30 calendar days.
- (2) Requirement for automatic increase in industrial user self-monitoring sent certified mail or hand delivered within 30 calendar days.
- (3) Unannounced inspection and/or City sampling for parameter violated.
- (4) Administrative Order sent certified mail or hand-delivered within 30 calendar days.
- (5) Notices of Review Meeting sent certified mail or hand-delivered with 30 calendar days.
- (6) Notice of Show Cause Hearing sent certified mail or hand-delivered within 30 calendar days.

After the initial enforcement action has been taken, it is essential that follow-up action is taken to determine the effectiveness of the initial enforcement action. If the initial enforcement brought about the desired result, then the follow-up action could be nothing more than a confirmation letter to this effect. If, however, additional enforcement is necessary, then certain deadlines should be met in issuing the follow-up action. The response time begins from the compliance date specified in the initial action. By way of an example, if an NOV required a written response by the 10th day of the month, a follow-up action would be required within 30 calendar days following that date. Please keep in mind that these deadlines are the outer limit of enforcement response times, and depending on the facts, a quicker response may be necessary.

Follow-up actions include:

- (1) Confirmation letter sent certified mail or hand-delivered within 30 calendar days.
- (2) Administrative Order sent certified mail or hand-delivered within 30 calendar days.
- (3) Notify user of Administrative Fine via certified mail or hand-delivery within 30 calendar days.
- (4) Notice to Show Cause sent certified mail or hand-delivered within 30 calendar days.
- (5) Seek civil penalties (criminal fines) within 30 calendar days.
- (6) Contact City Attorney for possible civil lawsuit within 30 calendar days.
- (7) Contact City Prosecutor for possible criminal lawsuit within 30 calendar days.
- (8) Initiate revocation of permit within 30 calendar days.
- (9) Initiate termination of service within 30 calendar days.
- (10) Refer the enforcement case to Washington Department of Ecology or USEPA.

ENFORCEMENT RESPONSIBILITIES

Effective enforcement relies on the performance of a variety of individuals, from field personnel to the City's top management. The nature of the responsibilities range from preventative to determining the need for aggressive enforcement. The following list identifies the staff positions and their areas of responsibility.

Industrial Waste Inspectors:

- (1) Determine compliance status.
- (2) Inform Pretreatment Program Manager of violations.
- (3) Develop and recommend enforcement response.
- (4) Develop and supervise compliance monitoring schedules.
- (5) Issue Administrative Orders and Compliance Schedules.
- (6) Develop compliance sampling schedule, as appropriate.
- (7) Track enforcement response times.
- (8) Calculate Administrative Fines.

Pretreatment Program Manager:

- (1) Review enforcement response.
- (2) Approve informal enforcement actions, as appropriate.
- (3) Inform management of violations and recommended enforcement response.
- (4) Supervise compliance monitoring schedules.
- (5) Conduct Review Meetings.
- (6) Supervise monitoring activities of Inspectors.
- (7) Approve Administrative Orders and Compliance Schedules.
- (8) Review Administrative Fine calculations.

Public Works Director or designee:

- (1) Approve formal enforcement actions, as appropriate.
- (2) Provide consistency of program application.
- (3) Conduct Show Cause Hearings.
- (4) Initiate termination of service.
- (5) Recommend that legal action be taken.
- (6) Seek monetary penalties for non-compliance.

City Attorney:

- (1) Provide assistance and counsel on program developments and changes.
- (2) Advise both technical and management staff on enforcement matters.
- (3) Attend Show Cause Hearings.
- (4) Manage civil litigation and criminal trials on behalf of the City.

FACTORS IN SELECTING THE APPROPRIATE RESPONSE

Industrial user violations of monitoring, reporting, and treatment requirements may range from relatively minor violations (reports submitted a week late but having no effluent violations) to major violations. Each instance of noncompliance is a violation and as such should be reviewed and appropriately addressed. However, selection of the appropriate enforcement response will relate to whether the violation is major or minor and such other factors as duration of the violation, compliance history, good faith of the violator, and the harm caused by the violation. For each type of violation in the Enforcement Response Guide, a range of responses is shown. The Inspector should select the appropriate response after considering various factors discussed below.

(1) Duration of the Violation and Compliance History of the Industrial User

The Inspector should review the industrial user's file to evaluate the duration of the violation and the compliance history of the industrial user. Generally, the compliance history review should be for the previous 12 months. A violation occurs whenever an industrial user exceeds an applicable effluent limit; fails to meet the deadlines and conditions for reporting, monitoring, or treatment; or does not comply with any other Federal or City requirement. The Inspector should also consider the effectiveness of the enforcement response that was used for the previous violation.

More aggressive enforcement actions should normally be taken against facilities that frequently exceed numerical pretreatment standards than those that report isolated violations (unless the isolated violations are large and troublesome). Informal review meetings or a written notice of violation should seek specific explanations of the causes of frequent exceedences. If inadequate operating practices are found to be the cause, the Inspector should seek specific commitments and deadlines to improve operating practices. If additional treatment is required, an enforceable compliance schedule should be issued to the industrial facility.

(2) Apparent Good Faith of Responsible Industrial User Personnel

If industrial user personnel appear to be attempting in good faith to comply with pretreatment requirements, enforcement actions should be on a more cooperative level than if industrial user personnel do not appear to be attempting in good faith to comply.

Industrial Pretreatment staff should be aware, however, that the Clean Water Act requires extraordinary efforts to comply with its requirements in a timely way. Good faith must be measured against this standard. Congress clearly expressed the efforts that are expected:

"The Act requires industry to take extraordinary efforts if the vital and ambitious goals of the Congress are to be met. This means that business-as-usual is not enough. Prompt, vigorous, and in many cases, expensive pollution control measures must be initiated and completed as promptly as possible. In assessing the good faith of a discharger, the discharger is to be judged against these criteria. Moreover, it is an established principle, which applies to this act, that administrative and judicial review are sought on the discharger's own time." Legislative History of the Clean Water Act No. 95-14, Vol. 3 p. 463

Thus, if a facility challenges a permit, compliance schedule, or applicable pretreatment standard and delays progress toward compliance, the facility assumes the risk that the permit, compliance schedule, or standard will be upheld on judicial review. If the facility begins aggressively to come into compliance only after a decision is made adverse to its interests, it cannot be considered to have acted in good faith. Likewise, if a facility follows business-as-usual procedures, it cannot be considered to have acted in good faith.

If, however, measured against the high standards cited above, a facility appears to be acting in good faith to comply, the City may choose an enforcement response that is not as coercive as one it would choose against a facility not acting in good faith.

(3) Noncompliance That Causes Interference or Pass-Through

Industrial user noncompliance might cause interference with treatment plant performance or pass-through of pollutants. Such violations should be addressed through formal enforcement action and penalties to ensure that adequate treatment and compliance is achieved promptly. In some cases, injunctive measures will also be appropriate.

NOTICE OF VIOLATION (NOV)

The Notice of Violation (NOV) is a written notice to the industrial user that the Industrial Pretreatment section has recognized a violation of pretreatment standards or requirements and expects the noncompliance to be corrected and explained. The NOV also can require specific corrective actions and schedules to which the City expects the industrial user to adhere and a statement that additional enforcement action may be pursued if corrective actions are not accomplished as scheduled. The NOV should also make it clear that compliance with the requirements of the letter does not excuse prior violations nor prevent collection of penalties or damages at a later time.

When needed for industrial user violations, a notice of violation should be prepared.

RESPONSE TO NOTICES OF VIOLATION

The industrial user shall respond in writing to the NOV within the specified time frame. In no instance shall an initial response be due any later than seven (7) calendar days from the receipt of the notice by the user. The response shall be complete, containing all information and data required by the NOV unless the industrial user has requested, and been granted prior to the due date, permission for a delay to allow time for further study of the violation.

RESOLUTION OF NOTICES OF VIOLATION

Upon review of a response to an NOV, the Inspector may accept the response as complete and satisfactory. If this is the case, the Inspector shall consider the issue regarding the NOV closed. The Inspector will notify the user in writing regarding the closure of the NOV. The closure of the NOV does not preclude further action.

UNSATISFACTORY OR INCOMPLETE RESPONSE TO NOTIFICATION OF VIOLATION

Upon review of a response to an NOV, the Inspector may determine the response to be unsatisfactory or incomplete. In that event, the Inspector may recommend further action such as: require any incomplete information, suspend or revoke the industrial user's permit, order the industrial user to cease discharge, and/or seek penalties and fines as they apply to the violations.

COMPLIANCE STATUS REVIEW MEETING

If the Notice of Violation does not produce compliance or an adequate explanation of the reason for the noncompliance, a Compliance Status Review Meeting between Industrial Pretreatment staff and the industrial user may produce the desired results. The purpose of this meeting is to stress the importance of correcting situations that may lead to Significant Non-Compliance (SNC), or to other elevated enforcement actions. Review meetings may be appropriate for the following situations:

- (1) Waste streams are diluted in lieu of treatment, initial violation.
- (2) Failure to report additional monitoring, initial violation.
- (3) Inadequate record keeping, initial violation.
- (4) Improper sampling, initial violation.
- (5) Missed milestone in an enforceable compliance schedule, initial violation.
- (6) If any required report is late twenty-nine days or less.

At such a meeting, the industrial user shall be required to respond to and provide an explanation of the violations and describe the means to prevent future violations. In addition, the Industrial Pretreatment staff should emphasize the importance of maintaining compliance.

Review meetings are generally conducted by the Pretreatment Program Manager and the Inspector responsible for the user. The Director of Public Works or a designee and a representative from the City Attorney's Office may also be present at the meeting. If the industrial user appears with legal representation, the meeting shall be stopped until a representative of the City Attorney's office is in attendance. During the review meeting, the following events typically occur:

- (1) Complete introductions of all persons present and obtain names, titles and telephone numbers.
- (2) Discuss the background and history of the City's Pretreatment Program and the applicable Federal requirements.
- (3) Review the City's enforcement policies and practices.
- (4) Explain the City's authority for seeking penalties.
- (5) Review the user's violations.
- (6) Establish a compliance schedule for the user, as appropriate.

Follow-up to the review meeting includes the following:

- (1) Inspector prepares a letter describing the discussion and results of the review meeting. The letter should be reviewed by the Pretreatment Program Manager before forwarding to the user. A copy of the letter should be put in the user's file.
- (2) Follow-up inspections and review meetings may be scheduled after compliance was supposed to have been achieved to verify compliance.

- (3) If no progress is made within 30 days of the compliance dates specified during the meeting or if compliance is not achieved when required, then stronger enforcement actions (such as a show cause hearing or civil action) will be needed.
- (4) The Industrial Pretreatment Staff will record all informal contacts, notices, and meetings with representatives of industrial users.

ADMINISTRATIVE ORDERS (AO)

The City may issue Administrative Orders (which may contain compliance schedules) that require compliance with pretreatment standards and requirements under the Everett City Code. Administrative orders will generally be used to place an industrial user on an enforceable compliance schedule so that the user will comply with pretreatment standards (e.g., install treatment, operate and maintain facilities, etc.). AOs are generally prepared by the Industrial Pretreatment staff and approved by the Pretreatment Program Manager.

ADMINISTRATIVE FINES (AF)

The City has the authority to issue Administrative Fines which can range up to \$10,000.00 per day for each violation. Due to the fact that the Clean Water Act did not waive sovereign immunity for the military, the City will not issue any Administrative Fines to any military discharger. Any Administrative Fine associated with pretreatment violations must reflect the seriousness, frequency, and persistence of each and every violation. The penalty amount should be such that it deters the violator from making future violations while sending a general message of deterrence to the regulated community. Except under very extenuating circumstances approved by the Director, and fines for late reports, the minimum Administrative Fine shall be \$250.00. Generally, the City will seek administrative fines under the following circumstances:

- (1) Two or more effluent violations of the same constituent in a ninety (90) day period.
- (2) Unpermitted discharges:
 - Failure to comply; continues after notice by the POTW.
 - Discharge continues after expiration, termination, or revocation of permit.
- (3) Reporting violation:
 - Any late report.
 - Failure to correct report with missing or incomplete information within 30 days of being made aware of the discrepancy.
 - Failure to report spill, violation, or changed discharge.
- (4) Recurring failure to monitor correctly.
- (5) Recurring improper sampling.
- (6) Recurring missed milestones in an enforceable compliance schedule.
- (7) Failure to start construction, complete construction, or achieve compliance within 90 days of the date specified in an enforceable order.
- (8) Wastes diluted in lieu of treatment.

- (9) Failure to mitigate noncompliance or halt production, aware of noncompliance in progress.
- (10) Failure to comply with a requirement to cease discharge.
- (11) Recurring failure to properly operate and maintain pretreatment facility.
- (12) Failure to provide free access to City representative.
- (13) Recurring inadequate record keeping.
- (14) Recurring failure to report additional monitoring.
- (15) Intentional bypass of any part of a pretreatment facility.
- (16) Any other situation in which an Administrative Fine is necessary or legal action is contemplated.
- (17) Any instance of Significant Non Compliance (SNC). An AF for SNC shall be a minimum of \$1000.
- (18) Falsification of any report or data.
- (19) Failure to comply with an Administrative Order (AO).
- (20) Any slug load that causes the POTW to violate any part of its NPDES Permit.
- (21) Violation of any Pretreatment Ordinance provision that warrants an Administrative Fine.

NOTICE TO SHOW CAUSE

As a result of noncompliance it may be necessary to consider issuing a Notice to Show Cause to the industrial user prior to taking other formal enforcement action or discontinuing service. The Notice to Show Cause should be served upon the user specifying the time and place of the show cause meeting and brief explanations of the violations and enforcement actions intended to be taken by the City. A Show Cause Meeting is generally held when more aggressive enforcement action is appropriate.

A Show Cause Meeting may be held if any of the following circumstances apply:

- (1) Two or more effluent violations have occurred within a ninety (90) day period.
- (2) Discharge not covered under permit:
 - Failure to comply; continues after notice by the POTW.
 - Discharge continues after expiration, termination or revocation of permit.
- (3) Reporting violation:
 - Two or more reports are late within a 180 day period.
 - Any single report thirty days or more late.
 - Failure to correct report with missing or incomplete information.
 - Failure to report spill or changed discharge.
- (4) Failure to monitor correctly, recurring.
- (5) Improper sampling, recurring.
- (6) Missed milestone in an enforceable compliance schedule, recurring.
- (7) Failure to start construction, complete construction, or achieve compliance within 90 days of the date specified in an enforceable order.
- (8) Waste streams diluted in lieu of treatment, recurring.
- (9) Failure to mitigate noncompliance or halt production, aware of noncompliance in progress.
- (10) Failure to comply with a requirement to cease discharge.
- (11) Failure to properly operate and maintain pretreatment facility, recurring.
- (12) Failure to provide free access, recurring.
- (13) Inadequate record keeping, recurring.
- (14) Failure to report additional monitoring, recurring.
- (15) Any situation in which civil penalties are necessary or legal action is contemplated.
- (16) Any instance of SNC.
- (17) Any other reason as determined by the Director.

During the show cause meeting the industrial user will be presented with the facts that the Industrial Pretreatment staff believes demonstrate noncompliance and asked to show cause as to why the City should not seek monetary penalties or initiate additional enforcement actions which may include additional formal actions and or discontinuation of sewer service. If the industrial user appears with legal representation, the meeting shall be stopped until a representative of the City Attorney's office is in attendance.

During the show cause meeting, the following events typically occur:

- (1) Complete introductions of all persons present and obtain names, titles and telephone numbers. Copies of attendance sheet shall be provided to all attendees.
- (2) Discuss the background and history of the City's Pretreatment Program and the Federal requirements.
- (3) Review the City's enforcement policies and practices and inform the user of why they are at the meeting.
- (4) Explain the City's authority for seeking penalties.
- (5) Review the user's violations and the potential penalties associated with them.
- (6) Attempt to reach an agreement with the user on the penalty amount and the written vehicle (Consent Decree or Pretreatment Settlement Agreement) to be pursued that finalizes the matter.
- (7) Establish a compliance schedule for the user, if necessary.

The following activities may occur after the show cause meeting.

- (1) The Pretreatment Program Manager will work with the City Attorney's office as appropriate.
- (2) The Inspector will follow up at prescribed intervals of compliance milestones as specified in the compliance schedule to verify conformance, and must document this activity. The Inspector keeps the Pretreatment Program Manager and, if appropriate, the City Attorney apprised of the user's status.
- (3) If the industrial user fails to comply with the terms of the settlement documents, then additional enforcement remedies available to the City may become necessary.
- (4) The Industrial Pretreatment staff will record all informal contacts, notices, and meetings with representatives of industrial users. Letters to industrial users are the best means to do this. A simple follow-up letter could avoid future misunderstandings.

It must be remembered that a show cause hearing is not a prerequisite to taking other formal enforcement actions or to discontinuing sewer service.

TERMINATION OR RESTRICTION OF WATER AND OR SEWER SERVICE

The City has the authority to immediately halt any actual or threatened discharge to the sewerage works that may represent an endangerment to the public health, the environment, or the sewerage works, upon informal notification to the industrial user. Additionally, the City can deny or condition new or increased discharges by an industrial user or changes in the nature of pollutants discharged by the industrial user.

Termination or restriction of water and or sewer service is an appropriate response to industries which have not responded adequately to previous enforcement actions. Unlike civil and criminal proceedings, termination of water and or sewer service is an administrative response which can be implemented directly by the Industrial Pretreatment Section.

For example, use of these remedies can be effective in bringing recalcitrant users into compliance. Without sewer service, a firm may have to obtain an NPDES permit to discharge wastes directly to the waters of the United States, and thus be required to install even more treatment facilities to achieve direct discharge limitations.

Assuming that the other enforcement responses prove unsuccessful, the types of violations warranting termination of water and or service include but are not limited to the following:

- (1) Discharge(s) not covered under permit which result in a violation of the City's NPDES permit or a dangerous situation threatening human health, the environment, the collection system, or the treatment plant.
- (2) Discharge(s) that exceed City or categorical discharge limits or result in damage to the environment.
- (3) Slug loads resulting in interference, pass through or damage to human health, the environment, or the treatment plant.
- (4) Recurring slug load discharges.
- (5) Failure of the industrial user to notify the City of effluent limit violations or slug discharges which resulted in environmental or POTW damage.
- (6) Failure of the industrial user to sample, monitor, or report as required by an Administrative Order.
- (7) Failure of the industrial user to install required monitoring equipment per the condition of an Administrative Order.
- (8) Major violation of a permit condition or Administrative Order accompanied by evidence of negligence or intent.
- (9) Failure to pay Pretreatment Charges and Fees.

The termination or restriction of a user's water and or sewer service is initiated and carried out as follows:

- (1) The Inspector prepares the necessary documentation to support the need for termination.
- (2) The Inspector advises the Pretreatment Program Manager who in turn advises the Operations Superintendent that termination of the user's sewer service is needed.
- (3) Once the Operations Superintendent approves termination of service, the user should be given written notice of termination and an opportunity to appear before the Director to discuss the matter. Except in cases where the actual or threatened discharge will likely cause interference or pass-through or will present an imminent endangerment to the health or welfare of any person and/or the environment, the user is allowed ten (10) days from receipt of the written notice to comply before termination is affected.
- (4) If the user is determined to have an actual or threatened discharge which will cause interference or pass through with the POTW or will present an imminent endangerment to the health or welfare of any person and/or the environment, the Pretreatment Program Manager may promptly plug or disconnect any sewer service connection to the POTW.
- (5) When termination is to be effected, the Operations Superintendent contacts the Utilities Sewer Supervisor to terminate service.
- (6) Service will be restored only after compliance has been shown to the Pretreatment Program Manager and the threatened discharges are removed. All costs related to the disconnection incurred by the City must be paid prior to reconnection.

REFERRAL TO WASHINGTON DEPARTMENT OF ECOLOGY OR US EPA

In a situation where the User's violations are of a nature or seriousness that warrant penalties beyond the City's authority or where resources needed are beyond what the City has available, or in any other situation where City Management and the City Attorney deems it desirable, a referral to Department of Ecology or US EPA may be warranted. At any time, the Department of Ecology or US EPA may instigate or take over an investigation on their own volition.

CIVIL ACTIONS

The City has the authority to file a civil suit against alleged violators of applicable pretreatment standards seeking injunctive relief, compliance, civil penalties and/or damages.

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

- (1) Emergency situations where injunctive relief is necessary to halt or prevent discharges which threaten human health, the environment or interference with the POTW.
- (2) When efforts to restore compliance through cooperation with the industrial user have failed and action is necessary to enforce program requirements.
- (3) To seek injunctive relief or monetary penalties beyond Administrative Fines for violations.

In a civil suit for injunctive relief, the Industrial Pretreatment staff collects pertinent information sufficient to support the violations at issue and turns the information over to the City Attorney.

The City may also bring civil suit to obtain compliance, civil penalties and to recover damages. The Industrial Pretreatment staff members involved in an enforcement case requiring filing such a suit should prepare the information specified in Table 1. The City Attorney should be consulted before, during and after collection of the information.

CRIMINAL ACTIONS

The City Prosecutor is authorized to seek criminal punishment for any person who violates pretreatment standards or any person who knowingly makes a false statement regarding any report, application, record, or other document required by the General Pretreatment Regulations and City Code.

Several factors should be considered by the Pretreatment Program Manager when determining which violations should be referred to the City Prosecutor for possible criminal actions. These factors include:

- (1) The willfulness of the violation.
- (2) Knowledge of the violation.
- (3) Nature and seriousness of the offense.
- (4) Need for deterrence.
- (5) Compliance history of the violator.
- (6) Adequacy of the facts.
- (7) Other remedies available through civil or administrative enforcement actions.

A sentence containing fines or imprisonment would be assessed by the court based on many considerations, which includes the court's perception of the harm, damage, or potential threat attributable to the violation.

Examples of violations for which criminal punishment may be appropriate include the following:

- (1) Continuing history of noncompliance.
- (2) Falsification of data.
- (3) Tampering with results or equipment.
- (4) Failure to provide notice of slug discharges.
- (5) Willful violation of the discharge agreements.
- (6) Instances of Pass-Through or Interference with the POTW.

Many cases of willful noncompliance (e.g., late night dumping of toxic substances into the collection system) could seriously damage the sewerage works and the environment. Such acts should be punished severely when adequate proof exists. In considering the development of certain criminal cases, the Industrial Pretreatment staff should work closely with the State Attorney General's office and/or City Prosecutor's office to obtain guidance.

NOTE: The decision to prosecute is solely within the purview of the City Prosecutor or State Attorney General's office.

LEVELS OF RESPONSE

For all violations, the Inspector must examine the violation and determine the appropriate response. All violations require a written response. The Enforcement Response Guide includes a range of responses for violations.

The terms "major" and "minor" that characterize violations are used in the Response Guide to describe violations of effluent limits, sampling, monitoring and reporting requirements. Major violations are those that exceed the limits frequently and/or by a large quantity (e.g., exceed the technical review criteria contained within the definition of SNC); impede the determination of compliance status; have the potential to cause or have actually caused adverse environmental effects, health problems, or interfered with the POTW treatment capability.

**CITY OF EVERETT
ADMINISTRATIVE FINE POLICY**

INTRODUCTION

The purposes of the Administrative Fine Policy (AFP) are: (1) to deter potential violators, (2) to provide for fair and equitable treatment of the regulated community, (3) to facilitate swift resolution of environmental problems, (4) to deter future noncompliance by providing an incentive for users to remain in compliance, and (5) to remove the economic benefit a user gains over others by not complying. Any administrative fine associated with pretreatment violations must reflect the seriousness, frequency, and persistence of each and every violation. The penalty amount should be such that it deters the violator from making future violations while sending a general message of deterrence to the regulated community. For purposes of arriving at a settlement with a violator, the City has devised a mathematical formula for computing a penalty amount for pollutant and reporting violations. It should be noted that any cost associated with the violation(s) (such as sampling, analysis, investigation, surveillance) and any harm done to the environment or damage to the city is not taken into account in arriving at a penalty. These costs can be recovered under the authorities contained in the various sections of the Everett City Code, including the City of Everett Pretreatment Ordinance (Ord #3070-08, as amended), and must be recovered in addition to any Administrative fine.

This Administrative Fine Policy (AFP) has been developed to contain detailed procedures as to how the Industrial Pretreatment Division will calculate an administrative fine for instances of industrial user noncompliance. The AFP is intended for the use of City personnel and does not create any rights or obligations nor should it be used or relied upon by any non-City personnel for any purpose. The City of Everett Industrial Pretreatment Division reserves the right to act at variance with the AFP and to change it at any time without public notice. Due to the fact that the Clean Water Act did not waive sovereign immunity for the military, the City will not issue any Administrative Fines to any military discharger.

ADMINISTRATIVE FINES AUTHORITY

Administrative Fines are authorized in Section 9.6 of the City of Everett Pretreatment Ordinance (Ord #3070-08, as amended). The maximum amount that can be imposed is \$10,000 per day for each violation. Except under extenuating circumstances approved by the Director and fines for late reports, the minimum Administrative Fine shall be \$250.00. For continuing violations, each day may constitute a separate offense.

SEEKING ADMINISTRATIVE FINES

Pretreatment violations are not created equally. This requires a review of all surrounding facts in order to determine the appropriate enforcement response. Civil and criminal penalties can be sought for a single pretreatment violation. You do not have to wait until a specific number of pretreatment violations is reached before seeking these penalties. A single violation may be such that the imposition of administrative and/or criminal penalties is necessary. Generally the City will seek administrative fines under the following circumstances:

- 1) Two or more effluent violations of the same constituent in a ninety (90) day period.
- 2) Unpermitted discharges:
 - Failure to comply; continues after notice by the POTW
 - Discharge continues after expiration, termination, or revocation of permit.
- 3) Reporting violation
 - Any late report.
 - Failure to correct report with missing or incomplete information within 30 days of being made aware of the discrepancy.
 - Failure to report spill, violation, or changed discharge.
- 4) Recurring failure to monitor correctly.
- 5) Recurring improper sampling.
- 6) Recurring missed milestones in an enforceable compliance schedule.
- 7) Failure to start construction, complete construction, or achieve compliance within 90 days of the date specified in an enforceable order.
- 8) Wastes diluted in lieu of treatment.
- 9) Failure to mitigate noncompliance or halt production, aware of noncompliance in progress.
- 10) Failure to comply with a requirement to cease discharge.
- 11) Recurring failure to properly operate and maintain pretreatment facility.
- 12) Failure to provide free access to City representative.
- 13) Recurring inadequate record keeping.
- 14) Recurring failure to report additional monitoring.
- 15) Intentional bypass of any part of a pretreatment facility.
- 16) Any other situation in which administrative fines are necessary or legal action is contemplated.
- 17) Any instance of Significant Non Compliance (SNC). An AF for SNC shall be a minimum of \$1000.
- 18) Falsification of any report or data.
- 19) Failure to comply with an Administrative Order (AO).
- (20) Any slug load that causes the POTW to violate any part of its NPDES Permit.
- (21) Violation of any Pretreatment Ordinance provision that warrants an Administrative Fine.

CONSIDERATION FACTORS

The following factors shall be considered in assessing the administrative fines:

- The seriousness of the violation
- The economic benefit, if any, resulting from the violation
- Past violation history
- Any good faith efforts to comply with the applicable requirements
- The economic impact of the penalty on the violator
- Other factors as justice may require.

These factors may be used to either increase or decrease the amount of the administrative fine.

CALCULATION WORKSHEET

An Administrative Fine Penalty Calculation Worksheet should be prepared for each AF that is imposed. When complete, it will be reviewed by the Pretreatment Program Manager. A copy will be kept in the industrial user's file. A copy of the Worksheet is attached and may be printed from the Pretreatment shared directory.

DETERMINATION OF ADMINISTRATIVE FINE

The first step of calculating an AF is to determine the Statutory Maximum Penalty. The final amount of the fine cannot exceed this amount. This is followed by calculating the economic benefit a violator is expected to have realized by delaying the installation or improper operation of pretreatment equipment and adding this amount to the gravity component determined by the Administrative Fine Formula discussed below. Economic benefit is calculated by following the procedures of the EPA manual, dated September 5, 1990, entitled Guidance Manual for POTWs to Calculate the Economic Benefit of Noncompliance.

GRAVITY COMPONENT OF ADMINISTRATIVE FINE

1. Violations of Permit Conditions

The penalty for violation of permit conditions is not easy to calculate because it is not subject to the same sort of mathematical precision as are discharge limit violations and reporting violations. Therefore, a common sense approach focusing on the seriousness, frequency, and persistence of the problem must be used to arrive at a penalty amount somewhere between \$250.00 and \$10,000 for each violation.

2. Violations of Discharge Limits

The penalties for discharge limit violations are calculated from the formula shown below. FOR EACH VIOLATION, a separate calculation is performed. The formula represents a base amount multiplied by a sum of factors:

ALL VIOLATIONS

$$\text{\$ Penalty} = \$250 \times (1+A+B)$$

MULTIPLICATION FACTOR CALCULATIONS

A. (i) Significance of Discharge Limit Violation

<u>% Exceedance of Daily or Slug Limit</u>	<u>% Exceedance of Average Limit</u>	<u>Factor</u>
1 - 50	1 - 20	0
51 - 100	21 - 40	0.5
101 - 200	41 - 100	1
201 - 600	101 - 300	2
601 - 1000	301 - 500	3
1001 - 2000	501 - 1000	4
2001 - 3000	1001 - 1500	5.5
3001 - 4000	1501 - 2000	7
4001 - 5000	2001 - 2500	8
> 5000	> 2500	10

(ii) Significance of pH Violation

<u>Low pH Range</u>	<u>High pH Range^a</u>	<u>Factor</u>
4.5 - 4.9	11.1 -11.4	0
4.0 - 4.4	11.5 -11.9	1
3.0 - 3.9	12 -12.4	3
2.0 - 2.9		6
< 2.0	>12.50	10

a These factors apply only when the pH violation exceeds the levels set forth in the Pretreatment Ordinance relating to pH Effluent Limitations Under Continuous Monitoring.

B. Number of Violations

This factor accounts for the number of violations occurring in a given month, or the frequency of the violations. For the violations of both an average limit and a daily limit(s), the calculated factor should be applied to both.

Determine the percentage of the number of measurements that were violations and multiply this percentage by 2. Include all measurements for the penalty period in this calculation. This includes daily measurements, 4-day and monthly averages and any City compliance monitoring. Round the final total to 1 decimal place.

Example:

Four (4) violations of the daily copper limit and one (1) violation of the monthly copper limit occur in March. There were eight (8) daily measurements made and one (1) computation (measurement) of the monthly average.

$$4 \text{ daily and } 1 \text{ average violations} / 9 \text{ measurements} = 56\%$$

$$2 \times 0.56 = 1.1$$

ALL REPORTING VIOLATIONS

One of the more common types of pretreatment violations is in the area of late reporting. This occurs when a reporting deadline passes and the report is filed late or not at all. Any report required by a Discharge Permit, NOV, AO, or other required report will be subject to this section. These types of violations should not occur because compliance with reporting requirements is generally within the absolute control of the Permittee. The amount of the administrative fine for reporting violations can be derived from the following tables.

A. Reports not showing discharge limit violation

<u>No. of Days a Report is Late</u>	<u>Amount</u>
1 - 29	\$ 30.00/Day (1-29 days)
30 - 59	\$ 50.00/Day (1-59 days)
60 - 89	\$ 100.00/Day (1-89 days)
90 - 179	\$ 200.00/Day (1-179 days)
180 or more	\$ 400.00/Day (each day)

B. Reports showing discharge limit violation

<u>No. of Days a Report is Late</u>	<u>Amount</u>
1 - 29	\$ 60.00/Day (1-29 days)
30 - 59	\$ 100.00/Day (1-59 days)
60 - 89	\$ 200.00/Day (1-89 days)
90 - 179	\$ 400.00/Day (1-179 days)
180 or more	\$ 800.00/Day (each day)

REPEAT VIOLATORS

There may be instances when industries who have previously paid administrative fines for pretreatment violations or were required to perform under a compliance schedule later commit new violations for the same regulated constituent after the payment of fines or completion of the compliance schedule. Repeat violators must be addressed and handled as described in this section. If all violations occur after six (6) consecutive months in which the industry was in full compliance with pretreatment requirements, then calculate the penalty based on the formulas above.

However, if any pretreatment violation occurs prior to achieving six (6) consecutive months of full compliance, then the calculated amount of the fine is doubled. If, after the penalty amount has been calculated and the total is less than the maximum amount that could be imposed under the law, the recalcitrance adjustment factor shall be carefully analyzed to determine its applicability in this instance.

ADJUSTMENT FACTORS

After the economic benefit and gravity elements have been calculated, the next and final step is to apply certain adjustment factors that may increase or decrease the amount calculated thus far. These adjustment factors are:

- The ability of the violator to pay may be considered in order to decrease the amount of the total penalty to be paid.
- The history of the violator may be considered in order to increase or decrease the amount of the total penalty to be paid.
- Litigation considerations may be considered in order to decrease the total penalty to be paid.
- Demonstrated intent may be considered in order to increase the amount of the total penalty to be paid.
- Any other relevant factors that may need to be considered in order to increase or decrease the total penalty to be paid.

All calculations and adjustments to AF's shall be documented in the user's file.

IN SUMMARY, THE CALCULATED PENALTY EQUALS THE SUM OF THE ECONOMIC BENEFIT AND THE GRAVITY COMPONENTS PLUS OR MINUS ANY ADJUSTMENTS. THIS AMOUNT IS COMPARED TO THE STATUTORY MAXIMUM PENALTY, AND THE LOWER OF THE TWO IS IMPOSED.

EFFLUENT VIOLATIONS

DATE				
PARAMETER				
VALUE				
LIMIT				
% OVER LIMIT				
DAILY/AVERAGE/4-DAY	DA 4	DA 4	DA 4	DA 4
CITY/SELF MONITORING	CS	CS	CS	CS
DISCHARGE VOL (GAL)				
# DAILY MEASUREMENTS				
# AVE MEASUREMENTS				
A SIGNIFICANCE				
B FREQUENCY				
UNIT FACTOR	1.0	1.0	1.0	1.0
TOTAL FACTOR				
MONETARY MULTIPLIER	\$250	\$250	\$250	\$250
PENALTY AMOUNT				

SUBTOTAL PENALTY (this page)

\$ _____

REPORTING VIOLATIONS

TYPE OF REPORT				
DATE DUE				
DATE SUBMITTED				
DAYS LATE				
EFFLUENT VIOLATION?				
\$ PENALTY/DAY LATE				

PENALTY AMOUNT				
-----------------------	--	--	--	--

SUBTOTAL REPORTING PENALTIES \$ _____

OTHER PENALTIES

REASON FOR PENALTY:

PENALTY AMOUNT	
-----------------------	--

SUBTOTAL OTHER PENALTIES \$ _____

SUBTOTAL PENALTIES (this page) \$ _____

OTHER PENALTIES

REASON FOR PENALTY:

PENALTY AMOUNT

SUBTOTAL OTHER PENALTIES \$ _____

SUBTOTAL EFFLUENT VIOLATIONS \$ _____

SUBTOTAL REPORTING PENALTIES \$ _____

SUBTOTAL OTHER PENALTIES \$ _____

TOTAL GRAVITY COMPONENTS \$ _____

ADJUSTMENTS TO PENALTIES

REASONS FOR ADJUSTMENTS:

AMOUNT OF ADJUSTMENTS:

ECONOMIC BENEFIT		\$ _____
+ TOTAL GRAVITY COMPONENTS		\$ _____
- AMOUNT OF ADJUSTMENTS		\$ _____
X REPEAT VIOLATION? IF YES, THEN		X2
= TOTAL CALCULATED PENALTY		\$ _____
STATUTORY MAXIMUM PENALTY:		\$ _____

SMALLER OF CALCULATED AND MAXIMUM PENALTIES \$ _____

TABLE 1

**INFORMATION TO BE PREPARED BY
INSPECTORS FOR ADMINISTRATIVE FINES,
SHOW CAUSE HEARINGS, REFERRAL TO DoE OR US EPA,
AND CIVIL LAWSUITS**

1. User name including corporate name and any other names used by the user.
2. User address.
3. Permit issuance date and number.*
4. Copy of user permit.*
5. Period of sampling and location where samples were taken.
6. Dates of sampling which detected violations.
7. A list of all parameters violated, applicable limits, and notations of violations.
8. A list of all reporting violations.
9. Copies of all documentation (letters, NOVs, AOs, etc.) pertaining to the violations.

*NOTE: Where the period of violations covers more than one permit, include the needed information from ALL permits.

TABLE 2

INSTRUCTIONS FOR USING THE ENFORCEMENT RESPONSE GUIDE

-
1. Locate the type of noncompliance in the first column.
 2. Using the second column, identify the most accurate description of the nature of the violation.
 3. Assess the appropriateness of the recommended response(s) in the third column. First offenders or those demonstrating good faith may merit a more lenient response. Similarly, repeat offenders or those demonstrating willful conduct may require a more stringent response. The City may want to use what would normally be reserved as a follow-up response against particularly difficult or recalcitrant industrial users.
 4. Document the rationale for selecting the particular enforcement response and place a copy of this documentation in the user's file.
 5. Apply the enforcement response to the industrial user. Specify corrective action or the response required from the industrial user.
 6. Document industrial user responses and resolution of noncompliance and place a copy of this documentation in the user's file.
 7. Follow-up with escalated enforcement action if the industrial user's response is not received or if violations continue.

NOTES ON THE USE OF THE ENFORCEMENT RESPONSE GUIDE

Overview of Guide

The City of Everett has prepared an Enforcement Response Guide using guidance in part from the EPA Pretreatment Compliance Monitoring and Enforcement Guidance (July, 1986); Guidance for Developing Control Authority Enforcement Response Plans (September, 1989); and the AMSA 1992 Pretreatment coordinators Workshop (November, 1992). A copy of the Guide is included in Table 2. The Guide is intended to serve three main purposes:

- (1) To cover enforcement responses that may be appropriate in relation to the nature and severity of the violation and the overall degree of noncompliance; and
- (2) To provide a guide to encourage a uniform application of enforcement responses to comparable levels and types of violations; and
- (3) As a mechanism to review the appropriateness of responses.

The Guide is intended as a quick, ready reference tool to address violations. It should be used in conjunction with the written material contained in this Enforcement Response Plan as it further explains areas that are only highlighted in the Guide. The Industrial Pretreatment staff should use the Guide to determine what enforcement actions are appropriate given varying situations of noncompliance. The Guide gives differing circumstances of noncompliance and outlines the ranges of enforcement actions which should be used to respond to the noncompliance. Table 2 lists the seven basic steps for using the Guide.

When making a determination on the level of the enforcement response, the Inspector should consider the degree of variance from the pretreatment standards or legal requirements, the duration of the violation, previous enforcement actions taken against the violator, and the deterrent effect of the response on similar facilities in the regulated community. Equally important are considerations of fairness, equity and consistency of application as well as the integrity of the Pretreatment Program

A key element in all enforcement responses is the timeliness in which they are initiated. The initial appropriate enforcement response should be determined and any action taken within 30 days of the identification of any violation.

I. UNAUTHORIZED DISCHARGES (No Permit)

NONCOMPLIANCE	NATURE OF VIOLATION	RANGE OF ENFORCEMENT RESPONSES
A. Unpermitted Discharge	1. IU unaware of requirement; no harm to POTW/ environment.	- NOV with permit application form.
	2. IU unaware of requirement; harm to POTW/environment.	- AO - AF - Show Cause - Civil Action
	3. Failure to comply; continues after notice by City.	- AF - Show Cause - Civil Action - Criminal Action - Terminate Service
B. Nonpermitted Discharge (failure to renew)	1. Permit expired; no application submitted.	- AF - Show Cause - Civil Action - Criminal Action - Terminate Service - Revoke Permit

II. DISCHARGE LIMIT VIOLATION
NONCOMPLIANCE

NATURE OF VIOLATION

RANGE OF ENFORCEMENT RESPONSES

A. Exceedance of Local or Federal Standard (permit limit)	NATURE OF VIOLATION	RANGE OF ENFORCEMENT RESPONSES
	1. Isolated.	<ul style="list-style-type: none"> - NOV - Automatic IU Resampling - Unannounced Inspection - Unannounced City Sampling
	2. Recurring, 2 or more violations within a 90 day period.	<ul style="list-style-type: none"> - NOV - Automatic IU Resampling - Unannounced Inspection - Unannounced City Sampling - AO - AF - Show Cause - Civil Action - Terminate Service - Revoke Permit - Criminal Action
	3. Harm to POTW/environment.	<ul style="list-style-type: none"> - Automatic IU Resampling - Unannounced Inspection - Unannounced City Sampling - AO - AF - Show Cause - Civil Action - Terminate Service - Revoke Permit - Criminal Action - Refer to DoE/USEPA

III. MONITORING AND REPORTING VIOLATIONS

NONCOMPLIANCE	NATURE OF VIOLATION	RANGE OF ENFORCEMENT RESPONSES
A. Reporting Violation	1. Report is improperly signed or certified.	– NOV
	2. Report is improperly signed or certified after notice by City.	– NOV – AO – AF
	3. Late reporting; isolated.	– NOV – Compliance Review Meeting – AF
	4. Late reporting; 2 or more within 180 days; single report more than 29 days late.	– NOV – AO – AF – Show Cause Hearing
	5. Failure to report spill or changed discharge; IU unaware of requirement.	– NOV
	6. Failure to report spill or changed discharge; IU aware of requirement.	– NOV – AO – AF – Show Cause Hearing – Civil Action
	7. Repeated failure to report spills.	– AO – AF – Show Cause Hearing – Civil Action – Terminate Service – Revoke Permit – Criminal Action – Refer to DoE/USEPA
	8. Falsification.	– AF – Civil Action – Terminate Service – Revoke Permit – Criminal Action – Refer to DoE/USEPA

III. MONITORING AND REPORTING VIOLATIONS (continued)

NONCOMPLIANCE		NATURE OF VIOLATION	RANGE OF ENFORCEMENT RESPONSES
A.	Reporting Violation (continued)	9. Missing or incomplete information.	- NOV
		10. Failure to correct report with missing or incomplete information.	- AO - AF - Show Cause Hearing - Civil Action
B.	Failure to monitor correctly	1. Failure to monitor all pollutants as required by permit.	- NOV - Compliance Review Meeting - AO
		2. Recurring failure to monitor.	- AO - AF - Show Cause Hearing - Civil Action - Revoke Permit
C.	Improper sampling	1. Recurring or evidence of intent.	- AO - AF - Show Cause Hearing - Civil Action - Revoke Permit - Terminate Service - Criminal Action
D.	Enforceable compliance schedule	1. Missed milestone.	- NOV - Compliance Review Meeting - AO
		2. Recurring missed milestones.	- AF - Show Cause Hearing - Civil Action - Revoke Permit - Terminate Service - Criminal Action

IV. OTHER PERMIT VIOLATIONS

NONCOMPLIANCE	NATURE OF VIOLATION	RANGE OF ENFORCEMENT RESPONSES
A. Wastestreams are diluted in lieu of treatment	1. Initial violation.	<ul style="list-style-type: none"> - AO - Compliance Review Meeting - AF
	2. Recurring.	<ul style="list-style-type: none"> - AF - Show Cause Hearing - Civil Action - Revoke Permit - Terminate Service - Criminal Action - Refer to DoE/USEPA
B. Failure to mitigate noncompliance or halt production	1. Failure to comply with a requirement to cease discharge.	<ul style="list-style-type: none"> - AO - AF - Show Cause Hearing - Civil Action - Revoke Permit - Terminate Service - Criminal Action - Refer to DoE/USEPA
C. Failure to properly operate and maintain pretreatment facility	1. Initial violation.	<ul style="list-style-type: none"> - NOV - AO
	2. Recurring.	<ul style="list-style-type: none"> - AF - Show Cause Hearing - Civil Action - Revoke Permit - Terminate Service - Criminal Action - Refer to DoE/USEPA

V. VIOLATIONS DETECTED DURING SITE VISITS

NONCOMPLIANCE	NATURE OF VIOLATION	RANGE OF ENFORCEMENT RESPONSES
A. Entry denial	1. Entry denied or consent withdrawn. Copies of records denied. Failure to provide free access.	<ul style="list-style-type: none"> - Obtain Warrant - AO - AF - Show Cause Hearing - Civil Action - Revoke Permit - Terminate Service
B. Inadequate record keeping	1. Inspector finds files incomplete or missing. Initial violation.	<ul style="list-style-type: none"> - NOV - Compliance Review Meeting - AO
	2. Recurring.	<ul style="list-style-type: none"> - AO - AF
D. Failure to report additional monitoring	1. Inspector finds additional files. Initial violation.	<ul style="list-style-type: none"> - NOV - Compliance Review Meeting - AO
	2. Recurring.	<ul style="list-style-type: none"> - AO - AF

VI. SIGNIFICANT NON-COMPLIANCE
NONCOMPLIANCE

RANGE OF ENFORCEMENT RESPONSES

A. Chronic violation of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken during a six (6) month period exceed, by any magnitude, the daily maximum limit for the same pollutant parameter.

- AF
- Show Cause Hearing
- Civil Action
- Revoke Permit
- Terminate Service
- Newspaper Publication Required

B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all the measurements taken for a parameter during a six (6) month period equal or exceed the product of the daily or average limit multiplied by the applicable TRC (TRC = 1.4 for FOG, BOD, or TSS and 1.2 for all other pollutants except pH).

- AF
- Show Cause Hearing
- Civil Action
- Revoke Permit
- Terminate Service
- Newspaper Publication Required

C. Any other violation of a pretreatment effluent limit (daily or average) that has caused, alone or in combination with other discharges, interference or pass-through in the POTW or endangers the health of POTW personnel or the general public.

- AF
- Show Cause Hearing
- Civil Action
- Revoke Permit
- Terminate Service
- Newspaper Publication Required

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 to halt or prevent such a discharge.

- AF
- Show Cause Hearing
- Civil Action
- Revoke Permit
- Terminate Service
- Newspaper Publication Required

E. Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a permit or Administrative Order for starting construction, completing construction, or attaining final compliance.

- AF
- Show Cause Hearing
- Civil Action
- Revoke Permit
- Terminate Service
- Newspaper Publication Required

VI. SIGNIFICANT NON-COMPLIANCE (continued)
NONCOMPLIANCE

RANGE OF ENFORCEMENT RESPONSES

F. Failure to provide, within thirty (30) days after the due date required, reports such as baseline monitoring reports, 90 day compliance reports, periodic self-monitoring reports, and reports on compliance with milestones in compliance schedules.

- AF
- Show Cause Hearing
- Civil Action
- Revoke Permit
- Terminate Service
- Newspaper Publication Required

G. Failure to accurately report noncompliance.

- AF
- Show Cause Hearing
- Civil Action
- Revoke Permit
- Terminate Service
- Newspaper Publication Required

H. Any other violation or group of violations which will adversely affect the operation or implementation or the local pretreatment program.

- AF
- Show Cause Hearing
- Civil Action
- Revoke Permit
- Terminate Service
- Newspaper Publication Required

VII. TIME FRAMES FOR RESPONSES

- A. Initial enforcement responses involving contact with the industrial user and requesting information on corrective or preventative action(s) should occur within thirty (30) days of violation detection.
- B. Violations which threaten health or safety of POTW personnel or the general public or threaten property or environmental quality are considered emergencies and will receive immediate response, such as halting the discharge or terminating service.
- C. Unless otherwise specified, the evaluation period is for one (1) year from the date of violation.

VIII. DESCRIPTION OF TERMS

Terms and abbreviations used in the Enforcement Response Matrix are defined below. Specific enforcement responses are described in greater detail in the Enforcement Response Plan.

AF	Administrative Fine.
AO	Administrative Order
Civil Action	Civil litigation against the industrial user seeking equitable relief, monetary penalties, and actual damages.
Criminal Action	Criminal litigation against the industrial user to enforce the criminal provisions of the law as they relate to pretreatment.
IU	Industrial User.
NOV	Notice of violation.
POTW	Publicly Owned Treatment Works. This is comprised of the Water Pollution Control Facility, and all pipelines, manholes, pump stations and other appurtenances intended to convey wastewater.
Show Cause Hearing	Formal meeting requiring the IU to appear and demonstrate why the City should not take a proposed enforcement action against it.