

ENFORCEMENT RESPONSE PROCEDURES

TOWN OF YORKTOWN, INDIANA

ABBREVIATIONS

AO – ADMINISTRATIVE ORDER
EPA – ENVIRONMENTAL PROTECTION AGENCY
ERG – ENFORCEMENT RESPONSE GUIDE
ERP – ENFORCEMENT RESPONSE PLAN
IDEM – INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
IU – INDUSTRIAL USER
IPC – INDUSTRIAL PRETREATMENT COORDINATOR
NOV – NOTICE OF VIOLATION
POTW – PUBLICLY OWNED TREATMENT WORKS

PERSONNEL RESPONSIBILITIES

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

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

Superintendent - The Superintendent has the responsibility to monitor the IPC's actions and to initiate these additional enforcement actions at the recommendation of the IPC:

- administrative orders
- compliance schedule
- show cause hearings
- termination of service
- administrative fines
- cost recovery
- referrals to the Town attorney for judicial action
- referrals to the state or EPA for criminal action

POTW Attorney - The POTW Attorney will provide legal consultation as requested by the Superintendent on compliance schedules, administrative fines, administrative orders and cost recovery and will take the lead on all referrals for judicial action and POTW initiated criminal investigations.

DESCRIPTION OF ENFORCEMENT ACTIONS

Following are the types of Enforcement Action that may be undertaken by the POTW:

- **Informal Notice** - An informal notice may be either a documented phone call, written warning, or a meeting notifying the IU of minor incidences that have occurred and that need to be corrected. Repeat performance of the same incidence, or escalation of the incidence will result in escalated enforcement action.
- **Notice of Violation (NOV)** - A NOV is the initial formal enforcement action for a violation. The certified letter notifies the IU signatory authority of the violation and requires the following:
 1. Immediate corrective action or steps being taken to correct the problem;
 2. Increased sampling of the parameter in violation within thirty (30) days;
 3. Written response within ten business days of receipt of NOV.
- **Administrative Order (AO)** - An Administrative Order is notification to the IU to undertake or to cease specified activities by a specified deadline. It is the first formal response to significant noncompliance (unless factors necessitate escalated enforcement actions). It may contain compliance schedules, administrative fines, termination of service and show cause orders. In addition, it specifies the name of the parties involved, statement of the facts, the requirement to ensure compliance and the enforcement associated with any future non-compliance.
- **Compliance Schedule** - A Compliance Schedule is a formal time and management schedule contained in an enforcement order, established for the non-compliant IU to achieve compliance. It is established for existing IUs to meet the categorical pretreatment standards or local standards. It contains increments of progress in the form of dates for the commencement and completion of major events leading to compliance. In addition, all compliance schedules shall contain the following:
 1. Monitoring requirements with the location for monitoring;
 2. How the data will be used for evaluating compliance;
 3. Enforcement associated with non-compliance;
 4. Closure date after which IU will be considered either non-compliant with the established compliance schedule, or evaluated for compliance.
- **Show Cause Hearing** - A Show Cause Hearing is when the IU and the POTW meet to discuss the cause and effect of the violation, as well as the enforcement action the IU will be subjected to. The IU may present its case as to why the violation occurred and why further enforcement should not be applied. Corrective actions to be undertaken by the IU can also be a part of this meeting.
- **Termination of Service** - Termination of service is the revocation of an IU's privilege to discharge non-domestic wastewater into the sewer system. Termination of service is used when the discharge from an industrial user presents imminent endangerment to the health or welfare of persons, or the environment; or threatens to interfere with the POTW's operations; or as an escalating enforcement action to a significant violation when a noncompliant industrial user fails to respond adequately to previous enforcement actions. Termination of service may be accomplished by physical severance of the IU's connection to the collection system, issuance of an AO (cease and desist order) which compels the IU to immediately terminate its discharge, revocation of the IUs discharge permit, or a court ruling.

- **Administrative Fines** - An administrative fine is a punitive monetary charge assessed by the Town rather than a court. The purpose of the fine is to recover the economic benefit of noncompliance and to deter future violations. When assessing an administrative fine the following factors are considered:
 1. Type and severity of the violation;
 2. Number of violations cited;
 3. Duration of noncompliance;
 4. Impact of the violation on the receiving water, sludge quality, and POTW operation;
 5. Whether the violation threatened public health;
 6. The economic benefit or savings the industrial user gained from the noncompliance;
 7. Compliance history of the industrial user; and
 8. Whether the industrial user is making a good faith effort to comply
- **Cost Recovery** - In addition to administrative fines imposed by the Superintendent, the IU shall be responsible for paying the following (but not limited to) costs incurred by the Town for the IU's failure to comply:
 1. Cost of mileage and labor incurred in detecting and correcting the violation;
 2. Laboratory analysis costs associated with detecting and correcting the violation;
 3. Additional treatment costs caused by the violation or associated with detecting and correcting the violation;
 4. Costs of any additional equipment acquired or expended by Town for detecting or correcting the violation;
 5. Repair and/or replacement of any part of the sewerage system damaged by the violation;
 6. Any liability, damages, fines or penalties incurred by Town as a result of the violation;
 7. Any and all expenses of outside professionals to include, but not limited to, engineers, scientists, and/or legal counsel;
 8. Other costs associated with the detection and correction of the violations.
- **Judicial Action** - Judicial Action will be taken when it is deemed necessary to force the IU to correct the violation and comply with the permit. Judicial action may consist of civil prosecution; criminal prosecution; or an action for injunction, at the discretion of the POTW and its counsel. As an alternative to judicial action, the POTW and IU may agree to a voluntary zero discharge of industrial waste by the IU pending correction of the violation.
- **Referral to EPA or the State** - Where a POTW does not rely on criminal prosecution for its enforcement authority, referral to the State or EPA may be made. For violations that may warrant criminal prosecution, the POTW will refer the case to EPA or the State for further action. Circumstances that trigger EPA or State referrals include (but not limited too) evidence of willfulness, evidence of negligence, and/or bad faith shown by the Industrial User.

Violations that threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.

ENFORCEMENT RESPONSE GUIDE

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

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

Violations Resulting in Significant Noncompliance – Any violation that results in Significant Noncompliance (SNC) will be addressed through formal enforcement action regardless of the enforcement response otherwise required by the enforcement response guide. The minimum level of enforcement used to address SNC is an AO.

The following categories of SNC of IUs shall be subject to enforcement actions initiated by the Town of Yorktown, Indiana:

- (1) Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent (66%) or more of all of the measurements taken during a six (6) month period exceed, by any magnitude, a numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR 403.3(l).
- (2) Technical review criteria (TRC) violations, defined as those in which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter taken during a six (6) month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC equals one and four-tenths (1.4) for biochemical oxygen demand, total suspended solids, fats, oil, and grease and one and two-tenths (1.2) for all other pollutants except pH).
- (3) Any other violation of a pretreatment standard or requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the POTW determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public.
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the POTW's exercise of its emergency authority under 327 IAC 5-19-3(1)(G) to halt or prevent such a discharge.
- (5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or administrative order for starting construction, completing construction, or attaining final compliance.
- (6) Failure to provide, within thirty (30) days after the due date, required reports such as:
 - (A) baseline monitoring reports;
 - (B) ninety (90) day compliance reports;
 - (C) periodic self-monitoring reports; and

(D) reports on compliance with compliance schedules.

(7) Failure to accurately report noncompliance.

(8) Any other violation or group of violations (which may include a violation of best management practices) that the POTW determines will adversely affect the operation or implementation of the approved POTW pretreatment program.

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

Violations Falling Under More Than One Category – Violations that fall under more than one category in the enforcement response guide will be addressed through the more severe enforcement response. All alleged violations will be included in the more severe response.

DEFINITIONS OF VIOLATIONS

Minor Sampling, Monitoring, or Reporting Deficiencies -

- Reports/Correspondence submitted up to 10 business days late
- Incomplete reports and/or chain-of-custody - first offense
- Transcription error
- Improper sampling or analytical procedure - first offense
- Late notification of violation to POTW - first offense
- Failure to report any operational changes which affects the discharge flow rate but does not impact the permit - first offense
- Any other violation categorized as minor sampling, monitoring or reporting deficiencies by the POTW.

Major Sampling, Monitoring, or Reporting Deficiencies -

- Reports/Correspondence late by 10-30 business days
- Sampling point not accessible to the POTW
- Reports not certified
- Failure to report any operational changes which affects the discharge flow rate and impacts the permit
- Incomplete report or chain-of-custody information - repeat offense
- Failure to submit all the information that leads to the determination of a category of an IU
- Failure to use appropriate analytical methods (40 CFR 136)
- Failure to sample for a parameter
- Failure to report slug load discharge, illegal discharges or spills with no damage to POTW
- Unacceptable explanation for violation
- Improper sampling or analytical procedure - repeat offense
- Any other violation categorized as “Major sampling, monitoring or reporting deficiencies” by the POTW

Critical Sampling, Monitoring, or Reporting Deficiencies -

- Reports greater than thirty (30) days late (SNC)
- Complete failure to sample, monitor, or report per the requirements found in the IUs permit.
- Any deficiency of sampling, monitoring, or reporting procedure which places IU in SNC
- Failure to respond to a Show Cause or Administrative Order

- Illegal or unauthorized discharge that results in damage to the POTW
- Any violation of sampling, monitoring, or reporting procedures which directly or indirectly contributes to or is responsible for violation of POTW's NPDES Permit.
- Any other violation categorized as critical sampling, monitoring or reporting deficiencies by the POTW

Unauthorized Discharge - Discharge of any pollutant(s) from a location, process, source or categorical operation that has not been previously approved, identified or permitted.

Damages to the POTW - Occurs when the discharge from an IU causes:

- Harm to the collection system, its accessories and wastewater treatment plant
- Interference with the biological operations of the plant
- Deterioration of sludge quality
- The POTW to violate its NPDES permit

TIMEFRAMES FOR ENFORCEMENT RESPONSES

- All violations will be identified and documented within five (5) days of receiving compliance information.
- Initial enforcement responses (informal or formal) will occur within fifteen (15) days of identifying a violation.
- Follow up actions for continuing or recurring violations will be taken within sixty (60) days of the initial enforcement response.
- Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate response such as halting the discharge or terminating service.
- All violations meeting the criteria for significant noncompliance will be addressed through formal enforcement action within thirty (30) days of the identification of SNC.

ENFORCEMENT RESPONSE GUIDE TABLE

A. Discharge Parameter Violation

Violation	Nature or Frequency of Violation	Status	Range of Responses
Exceedance of discharge limits.	Isolated, non-significant.	Non-compliance	NOV
	Frequent, repeat offense, non-significant (exceeding one/quarter or four/calendar year).	Non-compliance	NOV with increased sampling frequency
	Exceedance of TRC value by a frequency of 33% or more in six month and/or exceedance of permit limit by a frequency of 66% or more in six month span or as stated in 40 CFR 403.	Significant non-compliance	I. AO II. Administrative fine III. Cost recovery IV. Judicial action/ terminate services.
	Any instance with POTW damage or direct cause for violation of POTW's NPDES permit - SNC.	Significant non-compliance	I. AO II. Administrative fine III. Cost recovery IV. Judicial action/ terminate services.
Waste stream dilution in lieu of treatment as described in the SUO for Industrial Waste Discharge	Isolated, non-significant.	Non-compliance	I. Informal notice II. NOV
	Frequent, repeat offense, non-significant (exceeding one/quarter or four/calendar year).	Non-compliance	I. NOV II. AO
Slug load discharge	Isolated- with no damage to POTW.	Non-compliance	NOV
	Frequent - more than one/calendar year with no damage to POTW.	Significant non-compliance	AO and upgrading slug discharge control plan
	Any instance with POTW damage or direct cause for violation of POTW's NPDES permit - SNC.	Significant non-compliance	I. AO II. Administrative fine III. Cost recovery IV. Judicial action/ terminate services.

Violation	Nature or Frequency of Violation	Status	Range of Responses
Unauthorized/non-permitted discharge	Any instance with no damage to POTW.	Non-compliance	NOV
	Any instance with POTW damage or direct cause for violation of POTW's NPDES permit - SNC.	Significant non-compliance	I. AO II. Administrative fine III. Cost recovery IV. Judicial action/ terminate services.
Illegal/RCRA hazardous waste discharge	Any instance.	Significant non-compliance	I. AO II. Administrative fine III. Cost recovery IV. Judicial action/ terminate services.

B. Sampling, Monitoring and Reporting Violations

Violation	Nature or Frequency of Violation	Status	Range of Responses
Minor sampling, monitoring, or reporting deficiencies	Isolated or infrequent.	Non-compliance	I. Informal notice II. NOV
	Frequent, repeat offense, non-significant (exceeding one/quarter or four/calendar year).	Non-compliance	NOV
Major sampling, monitoring, or reporting deficiencies	Isolated or infrequent.	Non-compliance	I. NOV II. NOV with increased sampling frequency
	Frequent, repeat offense (exceeding one/quarter or four/calendar year).	Non-compliance	I. NOV with increased sampling frequency II. AO
Critical sampling, monitoring, or reporting deficiencies	Any instance.	Significant non-compliance	I. AO II. Administrative fine III. Judicial action IV. Terminate services
Falsification of sampling, monitoring, or reporting requirements	Any instance.	Significant non-compliance	I. Administrative fine II. Judicial action – criminal prosecution III. Terminate services
Failure to report changed discharge	Any instance with no impact on the permit.	Non-compliance	Informal notice
	Any instance with impact on the permit.	Non-compliance	NOV with show cause
Failure to obtain permit before discharge	Any instance.	Non-compliance	NOV with show cause
Failure to inform POTW of the ownership change	Any instance.	Non-compliance	NOV
Failure to install monitoring equipment including a monitoring manhole as required	Any instance.	Non-compliance	NOV with the requirement to immediately initiate the installation of equipment
Tampering with monitoring equipment	Any Instance.	Significant non-compliance	I. AO with fines II. Judicial action

C. Other Types of Violations

Violation	Nature or Frequency of Violation	Status	Range of Responses
Entry denial	Entry denied or consent withdrawn. Copies of records denied.	Non-compliance	Obtain search warrant and return to IU.
Inadequate record keeping	Incomplete or missing records.	Non-compliance	I. Informal Notice II. NOV
	Repeat offense.	Non-compliance	I. NOV II. AO with fine
Failure to properly operate and maintain pretreatment facility	Any instance.	Non-compliance	I. Informal notice II. NOV III. AO and immediate corrective action

D. Compliance Schedule Violation

Violation	Nature or Frequency of Violation	Status	Range of Responses
Missed milestone date	Will not affect other milestone dates on compliance schedule. No valid cause for missing the deadline.	Non-compliance	I. Informal notice II. NOV
	Will disrupt compliance schedule timetable - Violation for valid cause.	Non-compliance	I. NOV with show cause hearing II. AO to re-establish timetable
	Will disrupt compliance schedule timetable - Violation <u>not</u> for valid cause.	Significant non-compliance	I. AO with fines II. Re-establish the compliance schedule
Missed final date of achieving compliance for which the schedule was established - the parameter was in violation at least once	Violation after milestone final date due to strike, act of God, national crises, etc.	Non-compliance	I. Informal response II. AO to re-establish timetable
	Sampling or monitoring within thirty days of milestone final date yielded more than one violation for the compliance schedule parameter.	Significant non-compliance	NOV with show cause
	Sampling or monitoring after thirty days and before the closure date yielded more than one violation for the compliance schedule parameter.	Significant non-compliance	I. AO with fines II. Show cause III. Administrative fine/cost recovery IV. Judicial Action/ zero discharge V. Terminate services
Failure to meet reporting requirements	Did not submit report but did complete milestone.	Non-compliance	NOV
	Did not submit report, did not complete milestone.	Significant non-compliance	AO with fine.
Reporting false information	Any instance.	Significant non-compliance	I. Terminate services II. Judicial action/ criminal prosecution