

Approved MetroWastewater Hearing Authority

Approved by TN Dept. of Environment of Conservation

ENFORCEMENT

RESPONSE

MANUAL

WATER AND SEWERAGE SERVICES ENFORCEMENT RESPONSE MANUAL

The Department of Water and Sewerage Services Pretreatment program has been approved by the State of Tennessee and therefore the Department is responsible for the enforcement of all Federal, State, and Local wastewater discharge regulations. To streamline this effort and help assure fair and consistent enforcement, the Department has developed this Enforcement Response Manual. This manual describes violations and indicates a range of appropriate enforcement options. It outlines which responses are appropriate and identifies the personnel who should initiate those responses. It also outlines the time frame for taking such actions.

INSIGNIFICANT vs. SIGNIFICANT NONCOMPLIANCE

INSIGNIFICANT (MINOR) NONCOMPLIANCE

Insignificant Noncompliance is defined as relatively minor or infrequent violation of pretreatment standards or requirements. Instances of Insignificant Noncompliance will be respond to with a Notice of Violation (NOV). Examples of violations that may be addressed by a NOV are:

- * Failure to file a permit renewal application but continuing to comply with the expired permit.
- * A reported spill with no known adverse effects.
- * Isolated (once per six month period and not in consecutive sampling events), insignificant excessiveness (not more than 1.5 times the limit) of discharge limits.
- * Inadvertently using incorrect sample collection procedures.
- * Failure to properly sign or certify monitoring reports (first instance within two year period).
- * Failure to notify of slug load, which has no known adverse effects.
- * Missed interim or final compliance deadline by 30 days or less.
- * Filing a late report, including compliance schedule reports (less than 30 days late).
- * Any other violation which:
 - (a) causes no known adverse conditions in the P.O.T.W.
 - (b) is deemed insignificant by the Department Head, and (c) is not defined as Significant Noncompliance by the Environmental Protection Agency in the General Pretreatment Regulations: 40 CFR 403.

SIGNIFICANT NONCOMPLIANCE OF WASTEWATER DISCHARGE LIMITS

The E.P.A. has defined "significant noncompliance" as violations that meet **one** or more of the following criteria:

- (1) Chronic **violations of wastewater discharge limits**, defined **here** as those in which sixty-six (66%) percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the **average** limit for the same pollutant parameter;
- (2) Technical Review criteria (TRC) violations, defined **here** as those in which thirty-three (33%) percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily average maximum limit, or the average limit **multiplied by** the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH). The following compatible pollutants are exempt from TRC consideration if they **exceed the surcharge level but do not exceed upper ceiling**: BOD, TSS, FOG;
- 3) Any other violations of **a pretreatment effluent limit (daily maximum or longer-term average)** that **the Control Authority determines has** caused, alone or in combination with other discharges, interference or pass-through (**including** endangered 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 to halt or prevent such a discharge.
- (5) Failure to **meet within 90 days after the schedule date a** compliance schedule milestones contained in a local control mechanism or enforcement order for starting construction, completing construction, and attaining final compliance;
- (6) Failure to provide, **within 30 days after the due date, required reports, such as baseline monitoring reports, 90-days compliance reports, periodic self monitoring reports, and reports on compliance with compliance schedules**;
- (7) Failure to accurately report noncompliance;
- (8) **Any other violation or group of violations that the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.**

Generally, an isolated instance of noncompliance **or a Category 0 violation** can be met with an informal response or a Notice of Violation (NOV). Any **Category 1 to Category 4 violations** should be responded to with an enforceable order that requires a return to compliance by a specific deadline.

NOTICE OF VIOLATION (NOV)

Generally issued by the inspector/field personnel, the Notice of Violation (NOV) is an official communication from the Department to the non-compliant user that informs the user that the pretreatment violation has occurred. The NOV is issued for relatively minor or infrequent violations of pretreatment standards and requirements and should be issued within five (5) working days of the identification of a violation. A NOV does not contain assessment of penalties or cost recovery. The NOV provides the user with an opportunity to correct the noncompliance on its own initiative rather than according to a schedule of actions determined by the Department. The NOV documents the initial attempts of the Department to resolve the noncompliance. Authenticated copies of NOV's may serve as evidence in judicial proceedings.

SCHEDULE OF COMPLIANCE

A Schedule of Compliance is a detailed list of the steps to be taken by a non-compliant industry whereby compliance with all pretreatment regulations will be achieved. This schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standards (e.g. hiring an engineer, completing preliminary plans, executing contracts for components, commencing construction, etc.).

ADMINISTRATIVE PENALTIES

An administrative penalty is a monetary penalty assessed by the Department for violations of pretreatment standards and requirements. Administrative penalties are to be used as an escalated enforcement action and are punitive in nature and are not related to a specific cost born by the Department. Instead, the amount of the penalty should recapture any economic benefit gained by noncompliance and/or deter future violations. An Administrative Order is to be used to assess an administrative penalty.

ADMINISTRATIVE ORDERS

Administrative Orders (AO) are to be issued by the Industrial Waste Coordinator, or the Director. Administrative Orders are enforcement documents that direct users to undertake and/or to cease specified activities. Administrative Orders are to be used as the first formal response to significant noncompliance, and may incorporate compliance schedules, administrative penalties, assessments for costs incurred during investigation and/or enforcement, attorney's fees, assessments for damages and termination of service. The Department has adopted four (4) general types of AOs: Compliance Orders, Show Cause Orders, Cease and Desist Orders, and Agreed Orders.

COMPLIANCE ORDER

A Compliance Order directs the User to achieve or restore compliance by a specified date and is the primary means of assessing penalties and costs. The Compliance Order will document the noncompliance and state required actions to be accomplished by specific dates and is issued by the Director.

SHOW CAUSE ORDER

An Order to Show Cause directs the User to appear before the Department, explain its noncompliance, and show cause why more severe enforcement action should not be pursued. The hearing is open to the public and may be formal (i.e. conducted according to the rules of evidence, with verbatim transcripts and cross-examination of witnesses) or informal. The results of all hearings, along with any data and testimony (recorded by tape machine or stenographer) submitted as evidence, are available to the public and may serve as evidentiary support for future enforcement actions.

CEASE and DESIST ORDER

A Cease and Desist Order directs a noncompliant User to cease illegal or unauthorized discharge immediately or to terminate discharge altogether. To preserve the usefulness of this order in emergency situations, penalties should not be assessed in this document. A Cease and Desist order will be used in situations where the discharge is causing interference, pass through, environmental harm, or otherwise creating an emergency situation. The order may be issued immediately upon discovery of an emergency situation or following a hearing. In an emergency, the order to cease and desist may be given by telephone with a subsequent written order to be served by the Department before the close of business on the next working day. If the User fails to comply with the order, the Department may take independent action to halt the discharge.

AGREED ORDER

The Agreed Order is an agreement between the Department and the User. The Agreed Order normally contains three elements: (1) compliance schedules with specific milestone dates; (2) stipulated penalties, damages, and/or remedial actions; and (3) signature by the Director and the User representative. An Agreed order is appropriate when the User assumes the responsibility for its noncompliance and is willing (in good faith) to correct the causes.

PENALTY ASSESSMENT

Determining a penalty amount that reflects the violation's significance is extremely important. If the penalty is too small, its deterrent value is lost and the User may regard the amount as a tax or nominal charge to pollute. If the penalty is too great, it could bankrupt the industry (making necessary investment in pretreatment equipment impossible or potentially forcing unnecessary closure). The Department has categorized the various types of violations, and assigned a penalty range to each category. Penalty categories are determined by using the Enforcement Response Table (attached). All penalty assessments will be approved and signed by the Director or his designee. Penalty amounts determined by following the Penalty Assessment Form are considered to be an economic deterrent to the illegal activity. Penalty ranges have been designed to recover any economic benefit gained by the violator through non-compliance.

CATEGORY 0 = NO PENALTY

CATEGORY 1 = \$1.00 to \$500.00

CATEGORY 2 = \$1.00 to \$1,000.00

CATEGORY 3 = \$1.00 to \$10,000.00

CATEGORY 4 = DIRECT LEGAL ACTION - Any penalties and/or costs to be assessed at the maximum penalty allowable by applicable law and included as part of the legal action.

Assessments for damages or destruction of the facilities of the POTW, and any penalties, costs, and attorney's fees incurred by the pretreatment agency as the result of the illegal activity, as well as the expenses involved in enforcement, are not part of this penalty assessment procedure.

USING THE ENFORCEMENT RESPONSE TABLE

The enforcement response table is used as follows:

- (1) Locate the type of noncompliance in the first column and identify the most accurate description of the violation in column 2.
- (2) Assess the appropriateness of the recommended response(s) in columns 3 and 4. Use the Penalty Assessment Form to determine any penalty amounts, using the criteria of:
 - (a) Magnitude of the Noncompliance
 - (b) Effects on the Receiving Stream and the Publicly Owned Treatment Works (POTW)
 - (c) Compliance History of the User
 - (d) Good Faith of the User
- (3) Apply the enforcement response to the User, specifying corrective actions, penalty amounts and/or other actions required of the User. Column 5 identifies the responsible department personnel.
- (4) Track the User's response and compliance status and follow-up with escalated enforcement action if a response is not received or violation continues.

The Knowledge, Intent, and/or Negligence of the user should NOT be taken into consideration except when deciding to pursue criminal prosecution.

PENALTY ASSESSMENT FORM

- (1) Locate the type of noncompliance in the Enforcement Response Table (e.g. Discharge Limit; Monitoring; Compliance; Other etc.)
- (2) Select the most accurate description of "Nature of Violation".
- (3) Identify the corresponding Penalty Category and write it in the space provided below.
- (4) Evaluate the appropriateness of the recommended response(s) using the criteria of: **Magnitude, Effects, Compliance History, and Good Faith**. Assign a numerical value from between 0.0 to 1.0 to each criterion (in increments of 0.1) and write in the appropriate space below.
- (5) Average the **four** criteria ratings to obtain an AVERAGE CRITERION RATING and enter it into the space provided.
- (6) Multiply the Average Criterion Rating by the maximum penalty amount allowed in the applicable penalty category selected in step #3.
- (7) Multiply the penalty amount by the number of violation days (e.g. monthly limit, multiply by 30).

USERS NAME: _____ PERMIT # _____

PARAMETER _____ PERMIT LIMIT _____ OBSERVED CONC. _____

LIMIT TYPE _____ (daily, monthly, etc.) DATE OF VIOLATION _____

CATEGORY OF THIS VIOLATION _____

MAGNITUDE 0.1 0.2 0.3 0.4 0.5 0.6 0.7 0.8 0.9 1.0 _____

This criterion considers the severity of the discharge. Magnitude is determined by assigning 0.1 to the lowest violation factor of the category and 1.0 to the highest violation factor of the category and then determining where the violation falls within the range.
(e.g. a category 1 violation that is 2.2 times the limit would be assigned a magnitude rating of 0.5)

EFFECTS 0.0 0.1 0.2 0.3 0.4 0.5 0.6 0.7 0.8 0.9 1.0 _____

This criteria considers the effects of the discharge upon the quality of the receiving waters as well as adverse physical and operational effects experienced by the POTW. The Effects rating is a subjective determination within the following guidelines:
(no effect = 0.0; slight effect = 0.1-0.3; moderate effect = 0.4-0.6; heavy effect = 0.7-0.9; severe effect or damage = 1.0)

COMPLIANCE HISTORY _____

This rating will generally follow the number of NOV's issued in the past 15 months (TRC and/or Chronic violations are factors in determination)
(i.e. no violations = 0.0; 1 NOV = 0.1; 5 NOV's = 0.5)

GOOD FAITH _____

"The Clean Water 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"; (Legislative History of the Clean Water Act; No.95-14, Vol3, p.463). The criteria of GOOD FAITH should consider the rapidity and effectiveness of actions taken by the violator to cease or reduce the magnitude of the violation. Prompt, vigorous response = 0.0 Reluctant, minimal response = 0.5 No response, continued violation = 1.0

SUM _____

AVERAGE CRITERIA RATING = (Sum/4) _____

PENALTY AMOUNT (A.C.R X Category Maximum) = _____ x _____ = _____

**ENFORCEMENT
RESPONSE
TABLE**

DISCHARGE LIMIT VIOLATION

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
Exceedance of Local or Federal Discharge Limit	TYPE A - exceed one or more daily or average parameter limit(s) by less than a factor of 1.5. (Does not apply to pH)	0	NOV detailing violation and requiring correction within 30 business days. If exceedance occurs on IU self-monitoring report, industry must repeat sampling and analysis on parameter within 30 days of becoming aware of the exceedance and submit results to Control Authority.	Inspector
	TYPE B - exceed one or more daily or average parameter limit(s) by a factor greater than 1.5 but no more than a factor of 3.0. (Does not apply to pH)	1	NOV detailing violation and requiring correction within 30 business days. If exceedance occurs on IU self-monitoring report, industry must repeat sampling and analysis on parameter within 30 days of becoming aware of the exceedance and submit results to Control Authority. Subject to assessment of penalties by Administrative Order.	Inspector/ Director
	TYPE C - exceed one or more daily or average parameter limit(s) by a factor greater than 3.0 but no more than a factor of 10.0. (Does not apply to pH)	2	NOV detailing the violation and requiring correction within 30 days. Subject to assessment of penalties by Administrative Order.	Inspector/ Director
	TYPE D - pH which is above upper limit or below lower limit	1	NOV detailing violation and requiring correction within 30 business days. If exceedance occurs on IU self-monitoring report, industry must repeat sampling and analysis on parameter within 30 days of becoming aware of the exceedance and submit results to Control Authority. Subject to assessment of penalties by Administrative Order.	Inspector/ Director

DISCHARGE LIMIT VIOLATION - cont.

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
	TYPE E - exceed one or more daily or average parameter limit(s) by a factor of greater than 10.0 (Does not apply to pH)	3	NOV detailing the violation and requiring correction within 30 days. Subject to assessment of penalties by Administrative Order.	Director

MONITORING AND REPORTING VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
1. Reporting Violations	Report is improperly signed or certified	0	Return Report	Inspector
	Report is improperly signed or certified (2nd occurrence within 24 months)	0	NOV requiring correction of report.	Inspector
	Report is improperly signed or certified after issuance of NOV by POTW (3rd occurrence within 24 months)	1	Administrative Order assessing \$250.00 penalty. \$500.00 penalty for 4th occurrence.	Director
	Report late 30 calendar days (includes BMR, applications and all other required correspondence) (Significant Noncompliance)	1	NOV requiring report submittal within 15 calendar days of NOV receipt and publication for significant non-compliance	Inspector
	Report late 45 calendar days (Significant Noncompliance)	1	Informal meeting between the User and Department.	Inspector
	Report late 60 calendar days (Significant Noncompliance)	2	Administrative Order assessing penalty of \$250.00.	Director
	Report late 90 calendar days. (Significant Noncompliance)	3	Administrative Order assessing penalty of \$500.00.	Director

MONITORING AND REPORTING VIOLATIONS (cont.)

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
1. Reporting Violations (cont.)	Failure to report spill or changed discharge (no harm to the POTW or environment).	0	NOV requiring User to develop and implement a spill prevention plan by a specified deadline.	Director
	Failure to report spill or changed discharge (harm to the POTW or environment). (Significant Noncompliance)	1	Cease and Desist Order requiring User to discontinue noncompliance or terminate discharge altogether. Issuance of a Compliance Order assessing a penalty per day of violation and recovering costs incurred by the Dept.	Director
	Repeated (within five year period) failure to report spills. (Significant Noncompliance)	2	Compliance Order assessing a penalty per day of violation. Civil litigation.	Director
2. Falsification	First occurrence (Significant Noncompliance)	1	Show Cause Order requiring User to appear before the Director to show cause why further enforcement action should not be pursued.	Director
	Subsequent (within five year period) occurrences (Significant Noncompliance)	4	Civil litigation.	Director
3. Failure to monitor correctly.	Failure to monitor all pollutants as required by User's permit.	0	NOV requiring correction on next report.	Inspector
	Failure to monitor all pollutants as required by User's permit. (Second occurrence within five year period)	1	NOV requiring complete sampling and analysis with report due no later than 30 calendar days from receipt of NOV.	Inspector
	Recurring failure to monitor properly. (Third occurrence within five year period)	2	Show Cause Order requiring User to appear before the Director to show cause why further enforcement action should not be pursued.	Director
4. Improper sampling. (incorrect location, sample type, or collection technique)	No evidence of intent.	0	NOV explaining correct procedure and requiring proper sampling for the next self-monitoring report.	Inspector

MONITORING AND REPORTING VIOLATIONS (cont.)

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
4. Improper sampling. (cont.)	Improper sampling continues (Second occurrence within five year period)	0	Informal meeting with User to review proper sampling criteria.	Inspector
	Improper sampling with evidence of Intent (Failure to sample properly after informal meeting is viewed as evidence of intent.) (Significant Noncompliance)	1	Compliance Order assessing a penalty.	Director

UNAUTHORIZED DISCHARGES (No Permit)

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
1. Unpermitted Discharge	User unaware of discharge requirements; no harm to the POTW/environment.	0	NOV with Permit Application form attached. Application to be completed and returned within 30 calendar days. Applicaton deadline to be specified in the NOV.	Inspector
	User unaware of discharge requirements; harm to the POTW/environment (Significant Noncompliance)	3	Cease and Desist Order requiring User to halt violations immediately or terminate discharge altogether. Issuance of Compliance Order assessing any penalties and recovering any costs incurred by the Department.	Director
	User fails to submit permit application Within deadline specified in NOV. (Significant Noncompliance)	1	Compliance Order assessing any penalties and requiring application submittal within 15 calendar days.	Director

COMPLIANCE VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
1. Compliance Schedules (as detailed in a Permit or Order)	Missed interim milestone date by less than 30 calendar days; will <u>not</u> affect final compliance deadline.	0	NOV which restates any remaining milestone deadlines.	Inspector
	Missed interim milestone date by less than 90 calendar days; will delay final compliance. (Significant Noncompliance)	1	Compliance Order detailing revised compliance schedule. Order may assess penalties if delay was avoidable or may stipulate penalties for delays in final compliance.	Director
	Missed interim milestone date by more than 90 calendar days; will <u>not</u> affect final compliance deadline. (Significant Noncompliance)	1	Compliance Order detailing revised compliance schedule. Penalties may be assessed for each day of delay and publication for significant non-compliance	Director
	Missed interim milestone date by more than 90 calendar days; will affect final compliance deadline. (Significant Noncompliance)	2	Compliance Order assessing penalties for each day of delay and stipulating penalties for each day final compliance deadline is not met and publication for significant non-compliance	Director
	Missed interim milestone date by more than 120 calendar days. (Significant Noncompliance)	3	Compliance Order assessing penalties for each day past interim deadline.	Director
2. Missed Final Compliance Deadline	Failure to comply with an Administrative Order. (Significant Noncompliance)	4	Civil Litigation	Director
	Failure to reduce the severity of violations and/or failure to comply with a Cease and Desist Order. (Significant Noncompliance)	4	Civil Litigation	Director

OTHER VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
1. Wastestreams are diluted.	Dilution of regulated wastestreams with non-polluted water.	0	NOV citing regulatory prohibition against dilution and requiring correction within 30 calendar days of receipt of the NOV.	Inspector
	Recurring (within five year period) violations of the dilution prohibitions (after NOV receipt) (Significant Noncompliance)	2	Compliance Order assessing penalties per day past correction deadline. Compliance Order contains a schedule of compliance for corrective actions.	Director

VIOLATIONS DETECTED DURING A SITE INSPECTION

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
1. Illegal Discharge (Violation of the E.P.A. General Prohibited Discharge Standards.)	No harm to POTW or environment. No Interference or Pass-Thru at the POTW.	0	NOV listing the General Prohibited Discharge Standards as contained in 40 CFR 403.5, (Code of Federal Regs)	Inspector
	Discharge causes harm, pass-thru and/or interference in POTW. (Significant Noncompliance)	3	Cease and Desist Order requiring the User to halt the discharge immediately. Issuance of a Compliance Order assessing any penalties and/or costs deemed appropriate by the Department.	Director
2. Improper sampling	Sampling at an incorrect location, using improper technique, or wrong sample type. (Unintentional)	0	NOV explaining correct procedures or location.	
3. Inadequate record keeping	Inspector finds files incomplete or missing. (No evidence of Intent)	0	NOV explaining record keeping and documentation requirements	Inspector
	Re-occurrence of Inadequate Record keeping (Significant Noncompliance)	1	Compliance Order requiring proper maintenance of records. Assessment of penalty to be based on severity of violation.	Director

VIOLATIONS DETECTED DURING A SITE INSPECTION – cont.

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
4. Failure to report additional sampling and monitoring	Inspector finds additional sampling and monitoring data.	0	NOV requiring submittal of all sampling and monitoring data.	Inspector
	Recurring (within five year period) report violations. (Considered Falsification of Information) (Significant Noncompliance)	3	Compliance Order requiring submittal of all additional sampling and monitoring data. Assessment of penalty to be based on the severity of the violation.	Director