

City of Great Falls

Enforcement Response Plan for the Industrial Pretreatment Program and Sector Control Programs

3/21/2013

I. Introduction

On July 24, 1990 the Environmental Protection Agency promulgated regulations to require all Publicly Owned Treatment Works (POTWs) to adopt an Enforcement Response Plan (ERP) as part of their approved pretreatment programs (55 Fed. Reg. 30082). The regulation as stated in 40 CFR 403.8 (f) (5) is:

The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how the POTW will investigate and respond to instances of Industrial User noncompliance. The plan shall, at a minimum:

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

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

This document is intended to map out a path through the various levels of enforcement actions listed in the City Ordinance under Title 13, Chapter 12 for the Industrial Pretreatment Program and Sector Control Programs. Pollutants subject to the Sector Control Programs shall generally be controlled using Best management Practices (BMPs) or by Permits as determined by the City.

This plan is intended to be used as a reference tool to address instances of noncompliance. It must be used in conjunction with the Code of Federal Regulations and the Official Codes of the City of Great Falls. This plan does not supersede legal requirements, but serves as guidance for applying existing laws and regulations.

II. Abbreviations

AO	Administrative Compliance Order
BMP	Best Management Practices
CA	Control Authority
EPA	U.S. Environmental Protection Agency
EPC	Environmental Program Coordinator
ERP	Enforcement Response Plan
IU	Industrial User
NOV	Notice of Violation
SIU	Significant Industrial User
POTW	Publicly Owned Treatment Works

III. Definitions

1. "Best management Practice" or "BMP" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 13.12.030 of City Ordinance. BMPs are Pretreatment Standards. BMPs may include, but are not limited to, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
2. "Categorical Industries"- EPA has identified several industrial classifications that have specific requirements for discharge limits and pollutants that need to be monitored. These industries are called Categorical Industries and EPA has developed certain minimum requirements for them. These requirements, along with any additional requirements the City deems necessary will be incorporated into the industry's permit.
3. "Control Authority" means the entity directly administering and enforcing Pretreatment Standards and requirements. The Control Authority is the City of Great Falls.
4. "Domestic Sanitary Wastes" means liquid wastes: 1. From the non-commercial preparation, cooking, handling of food, or 2. Containing only human excrement and similar matter from the sanitary conveyances of dwellings, commercial buildings, industrial facilities, and institutions.
5. "Industrial" means of, or pertaining to, Industry, manufacturing, commerce, trade or business as distinguished from domestic or residential.
6. "Industrial Discharge Permit" means the document or documents issued to an Industrial User by the City in accordance with the terms of Title 13, Chapter 12 of City Ordinance that allows limits and/or prohibits the discharge of pollutants or flow to the POTW as set forth in Section 13.12.050 of City Ordinance.
7. "Industrial Wastes" or "non-domestic wastes" mean the liquid or solid wastes from industrial manufacturing processes, trade, or business activities producing non-domestic or non-residential sewage as distinct from domestic wastewater.
8. "Publicly Owned Treatment Works" or "POTW" means a treatment works as defined by section 212 of the Clean Water Act (33 U.S.C. 1292), which is owned in this instance by the City. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the City who are by contract or agreement with the City, users of the City's POTW.

9. "Sector Control Program" means a program to control specific pollutants from Industrial Users with similar waste generation or treatment through the implementation of Pretreatment Standards and Requirements, including Best Management Practices. These Sector Control requirements may be found at Section 13.12.090 of City Ordinance.

IV. Personnel Responsibilities

Environmental Program Coordinator - The Environmental Program Coordinator (EPC) and/or Industrial Pretreatment staff will be responsible for the day to day implementation and enforcement of the Industrial Pretreatment Program and Sector Control Programs.

EPC responsibilities may include but are not limited to: Issuing Industrial Discharge Permits to industries that discharge pollutants and assist in adopting policies and procedures for carrying out the provisions of CFR Part 403, and City Ordinance under Title 13. The Environmental Program Coordinator is responsible for developing Industrial User Discharge permits.

The Environmental Program Coordinator and/or Industrial Pretreatment staff will be responsible to administer the permitting and compliance of the Trucked and Hauled Septage Program. Duties may include but are not limited to: Coordinating random collection and analysis of hauled septage discharge samples and determining if septage discharge is representative of Permittee disclosure in the Hauled Waste Manifest and Permit Application Form and determine if safety standards and sanitation responsibilities of the septage hauler discharging at the septage receiving area(s) are observed.

Industrial User Discharge Permits and Septage Hauler Permits are issued with approval of the Director of Public Works.

The enforcement responses carried out by the EPC and/or Industrial Pretreatment staff are as follows:

- Warning Notices.
- Notices of Violation.
- Informal meetings.

Director of Public Works - The Director of Public Works has the responsibility to monitor the EPC actions and to initiate the following enforcement actions at the recommendation of the EPC:

- Show cause hearings.
- Administrative Compliance Orders.
- Consent Orders.
- Administrative Fines.
- Suspension of Service.
- Referrals to the City Attorney for Judicial Enforcement Remedies.
- Referrals to the state or EPA for additional enforcement action.

City Attorney – The City Attorney will provide legal consultation as requested by the Public Works Director on enforcement actions and will take the lead on all referrals for Judicial Enforcement Remedies and POTW initiated investigations.

V. Identifying and investigating instances of noncompliance:

The Environmental Program Coordinator (EPC) and/or Industrial Pretreatment staff may prepare monitoring and inspection plans, identify and investigate instances of non compliance, track, monitor and record results from wastewater sampling events, conduct and maintain Industrial User Waste Surveys, evaluate and categorize Industrial User inventories, examine Discharge Monitoring Reports, QA/QC and analytical laboratory analysis results received from Significant Industrial Users, screen all data including compliance history, day to day operations to assess the compliance status of each Industrial User, keep logs of due dates for Discharge Monitoring Reports and receipt of these reports, evaluate Trucked and Hauled Waste Manifests and respond to any/all violations, conduct periodic inspections of industries, conduct or direct independent sampling of an Industrial Users effluent. The EPC and/or the Environmental Compliance Technician under the direction of the EPC, will perform inspections at least annually at all Significant Industrial Users. The inspection will consist of verifying existing information and compliance history and compliance patterns of the Significant Industrial User, determining if any changes have been made to the processes since the last inspection, reviewing Material Safety Data Sheets for any chemicals used in the processes, reviewing spill containment programs, chemical handling/storage practices and inspecting the physical processes, including any pretreatment processes.

The EPC and/or Industrial Pretreatment staff will prepare a formal report of the Significant Industrial User inspection and provide a copy to the Significant Industrial User. It will be the goal to provide this report to the SIU within 30 days following the inspection. If violations are discovered during the inspection appropriate actions will be initiated according to the Enforcement Response Guide section of this plan.

The EPC and/or Industrial Pretreatment staff will review business licenses periodically with the City Fire Marshal and/or City Building Official to assess the types of industries in Great Falls and to find out which of these industries may need to be regulated, conduct Industrial User Waste Surveys, perform all enforcement tasks consistent with the requirements of City Ordinances, Issue Industrial Wastewater Discharge Permits, determine which pollutants to monitor, at what frequency, and what location in the industrial process is appropriate. The EPC will require specific monitoring and reporting responsibilities of Permittees. These responsibilities will be determined by the EPC on a case by case basis. The EPC is responsible for insuring that all Significant Industrial Users are independently sampled at least once per year. A portable automatic wastewater sampler is available to the EPC for these duties. Any significant discrepancies discovered between results reported by the Industrial User and independent samples will be resolved through splitting of samples or other appropriate methods. If any

violations are discovered, appropriate actions will be initiated according to the Enforcement Response Guide section of this plan. The EPC will use EPA Pretreatment publications for general guidance in determining monitoring requirements.

VI. Description of enforcement actions

1. Warning Notice

A Warning Notice is an informal enforcement response and, as such, is not discussed in City Ordinance. Warning Notices may be verbal or written – or verbal initially, followed up with a written communication. A Warning Notice will include a description of the violation and a request for continued cooperation. The Industrial user will be notified that the violation is minor in nature and continued violations will result in more severe enforcement actions. If appropriate, the Warning Notice may require a response within five (5) working days explaining actions that the Industrial User will take to correct the violation or prevent recurrence. All Warning Notices, verbal or written will be properly documented.

Warning notices are generally used in response to a Level 1 Violation as described in the Enforcement Response Guide section of this ERP. A Warning Notice may be sent by First Class mail.

2. Notice of Violation (NOV)

An NOV is an Administrative Enforcement Action described in City Ordinance Section 13.12.100 C.1. as follows (see City Ordinance for exact requirements): When the City finds an Industrial User has violated, or continues to violate, any provision of City Ordinance Title 13, an Industrial Discharge Permit, or order issued thereunder, or any other Pretreatment Standard or Requirement, the City may serve upon the Industrial User a written Notice of Violation. Within five (5) working days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction or prevention thereof, to include specific required actions, shall be submitted by the Industrial User to the City. The Industrial User may also request a meeting with the Director to present further information and explanation. Submission of such a plan in no way relieves the Industrial User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

The issuance of an NOV is generally the initial response for any violation above Level 1 as described in the Enforcement Response Guide section of this ERP, unless emergency action is required. An NOV will include:

- A statement detailing the City legal authority under which the City issued the NOV.
- A description of the Violation(s) including the date(s) that the violation occurred.

- A requirement that the Industrial User respond within five (5) working days with an explanation of the violation and a plan including specific actions to be taken by the Industrial User to correct and prevent the recurrence of future violations.
- A statement that compliance with the requirements of the letter does not excuse the violation.
- A requirement that the response must be signed by the Authorized Representative, and include the following certification statement (the NOV may reference a section of a permit issued to the Industrial User that includes this requirement):
 - "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or the persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."

An NOV may also be used to notify the Industrial User of additional enforcement actions such as the assessment of an Administrative Fine. The NOV will be sent by Registered or Certified Mail (Return Receipt Requested) or hand delivered. The NOV may be followed up with additional enforcement actions depending on the severity of the violation and the response by the Industrial User.

3. Administrative Compliance Order

An Administrative Compliance Order is an Administrative Enforcement Action described in City Ordinance Section 13.12.100 C.3. as follows (see City Ordinance for exact requirements): When the City finds that an Industrial User has violated, or continues to violate, any provision of this Title 13 Chapter 12 of City Ordinance, an Industrial Discharge Permit, or order issued thereunder, or any other Pretreatment Standard or Requirement, the City may issue an order to the Industrial User responsible for the discharge directing that the Industrial User come into compliance within a specific time. If the Industrial User does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the Permittee of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User.

An Administrative Compliance Order would generally be issued when an Industrial User's actions or failure to take action has resulted in a discharge to the POTW in violation of City

Ordinance. An Administrative Compliance Order should be considered where the violation meets the definition of Significant Noncompliance in Section 13.12.020 of City Ordinance. The decision to proceed with an Administrative Compliance Order would normally be made by the Director of Public Works.

Administrative Compliance Orders will include:

- A statement detailing the City legal authority under which the City issued the Order.
- A description of the Violation(s) including the date(s) that the violation occurred, the specific permit conditions violated and any damages attributable to the violation.
- The activity the Industrial User is being ordered to perform such as installation of treatment technology, additional monitoring, discontinuing discharge of a certain waste stream, appearance at a formal meeting, etc.
- Compliance schedule with milestone date(s) for corrective actions as required.
- A statement that compliance with the terms and conditions of the order will not be construed to relieve the user of its obligation to comply with applicable Federal, State or local law.
- A statement that violation of the order may subject the user to all penalties available under City Ordinance.
- A statement that issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User.
- A statement that the provisions of the order shall be binding upon the user, its officers, directors, agents, employees, successors, assigns, and all persons, firms, and corporations acting under, through, or on behalf of the user.

The Administrative Compliance Order will be sent by Registered or Certified Mail (Return Receipt Requested) or hand delivered.

4. Consent Order

A Consent Order is an Administrative Enforcement Action described in City Ordinance Section 13.12.100 C.4. as follows (see City Ordinance for exact requirements): The City may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any Industrial User responsible for noncompliance. Such documents shall include specific actions to be taken by the Industrial User to correct the noncompliance within a time period specified by the document. A consent order may include penalties, supplemental environmental projects, or other conditions and requirements as agreed to by the City and the Industrial User.

Consent Orders are generally used in Level 3 and 4 violations as discussed in the Enforcement Response Guide section of this ERP where the Industrial User assumes responsibility for its noncompliance and is willing to correct its cause(s) in good faith. The terms of a Consent Order would be negotiated after the Industrial User has responded to a Notice of Violation and met with the City to explain the causes of the violation and has developed a plan for compliance. In

determining the terms to include in the Consent Order, the City may take a user's extenuating circumstances (e.g. financial difficulties, technical problems, and other impediments to necessary corrective action) into consideration. The decision to proceed with a Consent Order would normally be made by the Director of Public Works in consultation with the City Attorney.

The Consent Order will include:

- A statement detailing the City legal authority under which the City issued the Order.
- The activity the Industrial User is being ordered to perform such as installation of treatment technology, additional monitoring, discontinuing discharge of a certain waste stream, appearance at a formal meeting, etc.
- Compliance schedule with milestone date(s) for corrective actions as required.
- Penalties, supplemental environmental projects, or other conditions and requirements (optional).
- Signatures of City and Industrial User representatives.

A Consent Order is an agreement between the City and the Industrial User and as such must be approved by the City Manager and/or City Commission in accordance with the policies of the City.

5. Administrative Fine

An Administrative Fine is an Administrative Enforcement Action described in City Ordinance Section 13.12.100 C.6. as follows (see City Ordinance for exact requirements):

- a. When the City finds that an Industrial User has violated, or continues to violate, any provision of Title 13 Chapter 12 of City Ordinance, an Industrial Discharge Permit, or order issued thereunder, or any other Pretreatment Standard or requirement, the City may fine such Industrial User in an amount not to exceed \$1,000 per day per violation. Such fines shall be assessed on a per-violation, per day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.
- b. A lien against the Permittee/User's property shall be sought for unpaid charges, fines, and penalties.
- c. Industrial Users desiring to appeal such fines must file a written request for the City to reconsider the fine along with full payment of the fine amount within fifteen (15) days of being notified of the fine. Such notice of appeal shall set forth the nature of the order or determination being appealed, the date of such order or determination, the reason for the appeal, and request a hearing pursuant to procedures outlined in Section 13.12.100, (C) (5).
- d. Issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the Industrial User.

Administrative Fines are recommended as an escalated enforcement response, particularly when NOVs or Administrative Compliance Orders have not prompted a return to compliance. Whether Administrative Fines are appropriate responses to noncompliance also depends

greatly on the circumstances surrounding the violation. When considering a fine, the City will consider the following factors:

- The type and severity of the violation.
- The number of violations cited.
- The duration of the noncompliance
- The impact of the violation on the Wastewater Treatment Plant and the environment.
- Whether the violation threatened human health.
- Whether the Industrial User derived any economic benefit or savings from the noncompliance.
- The compliance history of the user.
- Whether the user is making good faith efforts to restore compliance.

Administrative Fines are particularly appropriate where the Industrial User remains in noncompliance after receiving repeated NOVs or violates the terms of an Administrative Compliance Order, including missing a compliance schedule deadline. The decision to assess an Administrative Fine would normally be made by the Director of Public Works in consultation with the City Attorney.

The amount of the proposed Administrative Fine should be based on the following guidelines:

- 1) Tier 1 Violations where the violation is administrative in nature and has not caused or contributed to a violation of the Industrial User's effluent parameters.
 - a) 1st Offense - \$50 to \$150 per violation, per day.
 - b) 2nd Offense - \$100 to \$300 per violation, per day.
 - c) 3rd Offense - \$150 to \$450 per violation, per day.
 - d) 4th Offense - \$300 to \$1,000 per violation, per day.

- 2) Tier 2 Violations where the violation has contributed or has significant potential to contribute to a violation of the Industrial User's effluent parameter, but where that violation has not caused the Industrial User to be in Significant Non-Compliance as defined by City Ordinance Section 13.12.020.
 - a) 1st Offense - \$150 per violation, per day.
 - b) 2nd Offense - \$300 per violation, per day.
 - c) 3rd Offense - \$500 per violation, per day.
 - d) 4th Offense - \$1,000 per violation, per day.

- 3) Tier 3 Violations where the violation is more severe than a Tier 2 violation, including violations that have caused sewer blockages without causing a sewer overflow, or violations that have resulted in the Industrial User being in Significant Non-Compliance as defined by City Ordinance Section 13.12.020 but where that violation has not resulted in a violation of the City's MPDES permit.
 - a) \$500 - \$1,000 per violation per day.

- 4) Tier 4 Violations where the violation has caused Interference or Pass Through or has resulted in a violation of the City's MPDES permit, or has resulted in the City using its emergency authority, where the Industrial User has failed to follow a legal order of the City, has falsified records or where any similar serious violation has occurred.
- a) \$1,000 per violation per day.

Fine amounts may be adjusted from the above guidance based on the particular circumstances including but not limited to:

- Good faith of the Permittee/User
- Compliance history of the Permittee/User
- Previous success of enforcement actions against the Permittee/User
- The effect of the violation(s) on the environment and/or public health
- The effect of the violation(s) on the POTW
- Whether the Industrial User derived any economic benefit or savings from the noncompliance

A Notice of Violation will be issued to the Industrial User notifying it that a fine has been assessed, the amount of the fine and an outline of the process for determining that amount. The NOV informing the Industrial User that a fine is being assessed will include the following:

- A statement detailing the legal authority under which the City issued the Fine.
- A description of the Violation(s) including the date(s) that the violation occurred, the specific permit conditions violated and any damages attributable to the violation(s).
- The amount of the fine and a statement outlining the methodology used to determine the amount.
- A statement informing the Industrial User that a lien against the Permittee/User's property shall be sought for unpaid charges, fines, and penalties.
- A statement outlining the appeal process in City Ordinance Section 13.12.100 C. 6. c.
- A statement that issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the Industrial User.

The City may either include the fine amount on the Industrial User's utility bill or assess the fine with an Administrative Compliance Order. The NOV will be sent by Registered or Certified Mail (Return Receipt Requested) or hand delivered.

6. Suspension of Service

Suspension of Service is an Administrative Enforcement Action described in City Ordinance Section 13.12.100 C.2. as follows (see City Ordinance for exact requirements): The City, through the Director of Public Works, may suspend water service and/or wastewater treatment service and/or revoke an Industrial Discharge Permit (Section 13.12.050, K.) when such revocation is necessary, in the opinion of the Director, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the

health or welfare of persons, to the environment, causes Pass Through or Interference or causes the City to violate any condition of its MPDES Permit.

Any person notified of a suspension of the water service and/or wastewater treatment service and/or the Industrial Discharge Permit shall immediately stop or eliminate the contribution. In the event of a failure of the Permittee to comply voluntarily with the suspension order, the City shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to individuals or the environment. The City may reinstate the Industrial Discharge Permit, water service and/or the wastewater treatment service upon proof of the elimination of the non-complying discharge.

A suspension of service order may be issued to a user to terminate its discharge or a specific discharge stream to the collection system for any of the following reasons:

- Illegal or unauthorized discharge.
- Interference or Pass Through in the collection system or at the Wastewater Treatment Plant.
- Imminent and substantial endangerment to the life or health for personnel servicing the collection system or the general public.
- Substantial endangerment to the environment.
- Causes or may cause the City to violate any condition of its MPDES Permit.
- Results of a Show Cause Hearing.

The order may be issued immediately upon discovery of the problem or following a Show Cause Hearing. It can be issued alone or in conjunction with any other notice to stop violations of a General or Specific Prohibition (See City Ordinance 13.12.030) or violation of a local limit.

Except where the City must invoke emergency powers in response to serious ongoing or imminent violations, Suspension of Service orders will be issued with an Administrative Compliance Order.

7. Show Cause Hearing

A Show Cause Hearing is an Administrative Enforcement Action described in City Ordinance Section 13.12.100 C.5. as follows (see City Ordinance for exact requirements):

- a. The City may order any Industrial User who causes or allows an unauthorized discharge to enter the POTW to show cause before an ad hoc committee appointed by the City Manager why the proposed enforcement action should not be taken. A notice shall be served on the Industrial User specifying the time and place of a hearing to be held by the ad hoc committee regarding the violation, the reasons why the proposed action is to be taken, and directing the Industrial User to show cause before the ad hoc committee why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at

least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation or other Authorized Representative of the Industrial User.

- b. At any hearing held pursuant to Title 13 Chapter 12 of City Ordinance, testimony taken must be under oath and recorded. The transcript of testimony will be made available to any member of the public and any party to the hearing upon payment of charges for the preparation thereof. The hearing may be suspended or continued at the discretion of the presiding officer, provided that all evidence is received and the hearing is closed within sixty (60) days after it is commenced.
- c. After the ad hoc committee has reviewed the evidence, it shall issue an order to the Industrial User responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed or existing treatment facilities, devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate to correct the violation may be issued.

The Show Cause Hearing is generally used in the case of Level 4 violations as described in the Enforcement Response Guidance section of this ERP where permit revocation, significant Administrative Fines, termination of service as a result of escalating enforcement (where an Industrial User has failed to respond satisfactorily to other enforcement actions), or Judicial Enforcement Remedies are being considered. The decision to proceed with a Show Cause Hearing should be made by the Director of Public Works in consultation with the City Attorney.

A Notice will be served on the discharger by personal service, certified or registered mail, return receipt requested, specifying the time and place of a hearing, the proposed action and the reasons for that action. An ad hoc committee will be appointed by the City Manager to hear the Industrial User's case and make a decision on the City's behalf. The committee's decision will be in the form of an order. If agreement cannot be reached between the Industrial User and City regarding violations, the City will terminate the user's services as outlined in City Ordinance Section 13.12.100.

Unless directed otherwise by the City Attorney, any order resulting from the Show Cause Hearing will be issued in the form of an Administrative Compliance Order under City Ordinance Section 13.12.100 C.3.

8. Judicial Enforcement Remedies

Judicial Enforcement Remedies are compliance or enforcement actions normally undertaken through a City petition to the District Court. City Ordinance Section 13.12.100 (D) discusses four alternatives (see City Code for exact requirements):

1. **Injunctive Relief:** When the City finds that an Industrial User has violated, or continues to violate, any provision of Title 13 Chapter 12 of City Ordinance, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or requirement, the City may petition the District Court for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the Industrial Discharge Permit, order, or other requirement imposed by Title 13 Chapter 12 of City Ordinance on activities of the Industrial User. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the Industrial User to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against an Industrial User.
2. **Civil Penalties:**
 - a. An Industrial User who has violated, or continues to violate, any provision of Title 13 Chapter 12 of City Ordinance, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or requirement shall be liable to the City for a maximum civil penalty not to exceed \$1,000 per day per violation. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of violation.
 - b. The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.
 - c. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the Industrial User's violation, corrective actions by the Industrial User, the compliance history of the Industrial User, and any other factor as justice requires.
 - d. Actions for civil penalties shall be civil actions brought in the name of the City. The City must prove alleged violations by a preponderance of the evidence.
 - e. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against an Industrial User.
3. **Civil Fine Pass Through:** In the event that an Industrial User discharges such pollutants which cause the City to violate any condition of its MPDES permit and the City is fined by the EPA or the State for such violation, then such Industrial User shall be fully liable for the total amount of the fine and/or supplemental environmental project that results from such action by the EPA and/or the State.
4. **Criminal Prosecution:** An Industrial User who purposely, knowingly or negligently violates any provision of Title 13 Chapter 12 of City Ordinance, or willfully or negligently introduces any substance into the POTW which causes personal injury or property damage, or knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed

or required to be maintained pursuant to an Industrial Discharge Permit or order issued hereunder, or any other Pretreatment Standard or requirement, shall, upon conviction, be guilty of a misdemeanor, punishable by a fine not to exceed \$1,000 per day per violation and be subject to imprisonment for not more than six (6) months, or both. In addition, these penalties may be sought for any person who maliciously, willfully, or negligently breaks, destroys, uncovers, defaces, tampers with, or otherwise destroys, or who prevents access to any structure, appurtenance or equipment, or any part of the POTW.

Judicial Enforcement Remedies will be implemented by the City Attorney in consultation with the Director of Public Works.

VII. Enforcement Response Guide:

When a violation is discovered during monitoring activities the Environmental Program Coordinator (EPC) will decide which enforcement action is appropriate. The available responses are divided into four escalating levels of enforcement. The appropriate level will be chosen in accordance with the following guidelines.

For assistance in choosing the appropriate enforcement response, a flowchart has been included in the Appendix to this plan.

Violations resulting in Significant Noncompliance:

First, the EPC should determine whether the violation meets the definition of Significant Noncompliance (SNC) found in City Ordinance Section 13.12.020. Any violation that meets this definition will be addressed through enforcement action described below as Level 3 or Level 4. The minimum level of enforcement used to address SNC is an Administrative Compliance Order except where the violation occurs during the term of a compliance schedule (see description of Level 3 violations below).

If the violation does not meet the definition of SNC, the enforcement response will normally be either Level 1 or Level 2 as described below.

Escalation of Enforcement Responses:

After the EPC has determined whether the violation meets the definition of SNC, a choice must be made between two levels of enforcement - between Level 1 and Level 2 for non-SNC violations or between Level 3 and Level 4 for SNC violations. In making this decision, the EPC should take the following factors into consideration:

- **Magnitude of the violation:** In choosing the proper enforcement level, the EPC should consider the degree to which a standard or limit has been exceeded and whether the magnitude is a result of carelessness, negligence or disregard of the Industrial User's responsibilities.

- **Duration of the violation:** Violations (regardless of severity) which continue over prolonged periods of time, including required reporting that is significantly overdue, should subject the industrial user to escalated enforcement actions. One of the goals of the ERP is to prevent extended periods of noncompliance from recurring.
- **Effect of the violation on the receiving water:** Violations that have greater potential to cause or allow increased pollutant loading to the river should be escalated to a higher level of enforcement. For any violation where evidence of actual damage to the receiving water exists, Level 4 enforcement action should be considered.
- **Effect of the violation on the POTW:** The degree to which the violation has a direct impact on the POTW should be considered in determining the proper enforcement level. Effects on the POTW considered should include the structures, pipes, lift stations and treatment plant, including any effect on the ability to operate the facilities and the cost of operating the facilities. Also included should be the ability of the City to efficiently and effectively perform the duties of the pretreatment program.
- **Compliance history of the industrial user:** 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 where: the same type of violation occurs on consecutive reporting periods; the violation occurs seasonally; or any other pattern of noncompliance – even if each instance involves a different program requirement - is shown.
- **Good faith of the industrial user:** The Industrial User's good faith in correcting its noncompliance is a factor in determining which enforcement response to invoke. Good faith may be defined as the user's honest intention to remedy its noncompliance coupled with actions which give support to this intention. Generally, a user's demonstrated willingness to comply should predispose the EPC to select less stringent enforcement responses. Good faith does not eliminate the necessity of an enforcement action. Good faith is typically demonstrated by cooperation and completion of corrective measures in a timely manner.

Violations Falling Under More Than One Category:

Violations that fall under more than one category in the Enforcement Response Plan will be addressed through the more severe enforcement response. All alleged violations will be included in the more severe response.

Timeframes for Enforcement Responses:

The EPC will respond to all instances of violations in a timely manner. It is recognized that there may be times where responses are delayed due to lack of sufficient information to make a final judgment, competing resource requirements or similar factors, however, the EPC will meet the following guidelines once a violation is confirmed:

- All violations will be identified and documented within five (5) working days of receiving compliance information.
- Initial enforcement responses (informal or formal) will be taken within fifteen (15) days of identifying/verifying 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 the environmental quality are considered emergencies and will receive immediate response such as halting the discharge or terminating services.
- Violations meeting the criteria for Significant Noncompliance (SNC) will be addressed through formal enforcement action within thirty (30) days of the identification of SNC.

The EPC will be responsible for performing all enforcement tasks or recommending enforcement actions to the Director of Public Works, unless that duty is specifically assigned to another individual. All enforcement actions must be consistent with the requirements of City Ordinance. City Ordinance should be consulted prior to initiating any enforcement response.

Level 1 violations:

Level 1 is characterized by minor violations requiring informal response. Violations appropriate for Level 1 enforcement action are minor in nature, short in duration and do not cause pass through or interference or directly affect POTW operations. The violation will be an isolated incident, not part of a pattern of non-compliance. The Industrial User will generally have shown good faith efforts to meet discharge requirements and have a good compliance history.

Examples of a Level 1 violation are:

- Isolated violation of an effluent discharge limit by less than the Technical Review Criteria (TRC) of 1.4 for conventional pollutants and 1.2 for other pollutants. No known effect on POTW.
- Submitting required report late, where it is within 30 days or less late and shows no violations and there is no evidence of intent or deception.
- Minor sampling, monitoring, or reporting deficiencies where compliance status can be determined (computational, typographical errors or a report improperly signed or certified) and where there is no pattern of similar events.
- Failure to monitor all pollutants as required by permit where there is no evidence of intent and/or deception. These must be isolated Incidents where the cause is reasonably beyond IU control i.e. a sample mishandled by the contract laboratory or delivery service.
- Failure to implement Best Management Practices (BMPs) where there is no indication of intent.

The response to a Level 1 violation will typically be a Warning Notice.

If the user should respond in a negative manner or refuse to cooperate with the City requests/requirements, the EPC may implement Level 2 enforcement response.

Level 2 violations:

Level 2 is characterized by relatively minor violations that need to be formally acknowledged by the Industrial User. Violations appropriate for Level 2 enforcement will be more serious than Level 1 or may be a series of Level 1 violations. This enforcement level should be used in cases of violations more serious than Level 1 where the Industrial User has generally shown good faith efforts to meet discharge requirements, or other relatively minor violations. The violations will generally be short duration and/or isolated incidents that do not cause Pass Through or Interference but may cause a noticeable effect. Examples of a Level 2 violation are:

- Isolated violation of effluent limits by more than TRC (as defined above) causing no effect or minimal effect on the POTW.
- Failure of IU to submit application within 30 days of due date where the application is substantially complete (i.e. missing non-critical information only) or the event was beyond reasonable control of the IU.
- Data is missing from the monthly monitoring report where compliance status cannot be fully determined. Enforcement action should be taken within 5 days of the due date.
- Failure to report spills or change in processes affecting discharge where there is no effect on POTW.
- Failure to report substantial change in discharge (+/- 20%) as required in City Ordinance 13.12.080 L.
- Improper sampling where compliance status cannot be fully determined or is in question (improper collection method, improper preservation, no chain of custody, failure to sample all parameters) and the cause was not beyond IUs control.
- Inadequate record keeping where compliance status cannot be fully determined (i.e. incomplete files or missing records).
- Failure to properly operate and maintain pretreatment facility.
- Failure to install monitoring or pretreatment equipment where there is no evidence of intent or deception.
- Failure to implement Best Management Practices (BMPs) where the event is not beyond IU's control.

The response to a Level 2 violation will typically be a Notice of Violation (NOV) explaining the violation and possible penalties and requiring a response within 5 working days from the Industrial User explaining actions that the Industrial User will take to correct the violation or prevent recurrence.

After considering the Industrial User's response to the NOV the City may choose additional actions such as modifying the Industrial Discharge Permit to address the cause of the violation or provide additional monitoring.

If the Industrial User does not respond adequately to the NOV, enforcement action will escalate to Level 3.

Level 3 violations:

Level 3 is characterized by serious violations that do not require emergency action. These violations may be long duration or chronic in nature. Level 3 enforcement also may be a reaction to violations that remain uncorrected after attempts are made through lower levels of enforcement action. Level 3 is the minimum enforcement level when Significant Non-Compliance (SNC), as defined by City Ordinance Section 13.12.020, is discovered. Examples of Level 3 violations are:

- Any incidence of SNC as defined by City Ordinance.
- Submitting required report late, where it is 30 days or more late (e.g. baseline monitoring reports, compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules).
- Uncorrected continuous discharge violations causing minor effects to the POTW where the discharge is not causing Inference or Pass Through and the Industrial User has not corrected the discharge after a Level 2 violation was issued.
- Discharge episode of short duration that has caused Interference or Pass Through but is no longer occurring.
- Discharging that has caused damage to the POTW or caused a MPDES permit violation where the event was beyond the reasonable control of the IU.
- Inadequate or no response to NOV issued as a Level 2 violation.
- Failure to install monitoring or pretreatment equipment where there is evidence of intent or deception.
- Entry denied or consent withdrawn or copies of records denied.
- Failure of IU to submit an application within 30 days of due date or application is substantially incomplete (i.e. missing critical information) and the violation was not beyond reasonable control of IU.
- Failure to accurately report noncompliance.

The response to a Level 3 violation will typically be issuance of an NOV and an Administrative Compliance Order requiring the Industrial User to cease the activity causing the violation. Action will be in accordance with one of the following:

- The Administrative Compliance Order will set a date for a formal meeting with a committee chosen by the Director of Public Works. A plan to correct the violation must result from the meeting. The plan will be put in the form of either an Administrative Compliance Order or a Consent Order. The order will include a compliance schedule as necessary. The committee will decide whether further action such as a fine, may be appropriate.
- Where the Industrial User has taken immediate corrective measures that are appropriate to correct the violation and are approved, or would be approved, by the City and has pursued such corrective measures with due diligence, the City shall have the option of either:
 - 1) Executing a Consent Order with the Industrial User that includes a schedule for the Industrial User to implement the corrective measures and return to compliance; or

- 2) Issuing an Administrative Compliance Order with a reasonable schedule for the Industrial User to implement the corrective measures and return to compliance.

If satisfactory compliance is achieved the City may consider modifying the Industrial User's permit to address the cause of the violation or increase monitoring or reporting requirements. Sampling frequencies, reporting requirements, check sampling or inspection activities may be increased if appropriate. The Industrial User's name will be published as required in City Ordinance Section 13.12.100 B. If satisfactory compliance is not achieved, enforcement action will increase to Level 4.

Violations that occur while a compliance order or similar enforcement action is in effect:

Violations that occur during the term of a compliance schedule contained within a compliance order or similar enforcement action for parameters that are dealt with in the compliance schedule may be addressed without an Administrative Compliance Order if all of the following are true:

- The IU is in full compliance with the terms of the compliance schedule,
- The IU is acting in good faith to limit the frequency, duration and magnitude of the violations, and
- The violations do not create Interference, Pass Through or create imminent and substantial endangerment to the POTW or general health, safety and welfare of the general public.

The IU must respond by investigating the violation and confirming the cause of the violation is being remedied through the actions prescribed in the compliance schedule. Nothing in this paragraph shall prevent the City from escalating enforcement or choosing a higher level of enforcement if appropriate.

Level 4 violations:

Level 4 is characterized by violations that are serious or require immediate response on the City's part to prevent or stop damage to the collection or treatment systems or MPDES discharge violations by the Wastewater Treatment Plant. The EPC will consult with the Director of Public Works when a situation exists that may require Level 4 action. The Director of Public Works will decide whether to proceed with enforcement action at this level. Consultation with the City Attorney may be necessary to guide the implementation of enforcement actions under this level. Violations in this category will be chronic in nature or will be damaging to the POTW or be causing, or capable of causing, MPDES discharge violations. Examples of Level 4 violations are:

- Continued Significant Non-Compliance.
- Failure to comply with an order of the City.
- A discharge that causes Interference or Pass Through at the POTW or damages the POTW where the event was not beyond the reasonable control of the IU.
- A discharge resulting in known environmental damage.

- A continuing discharge that is causing Interference to the treatment processes or Pass Through of pollutants to the Missouri River.
- Chronic violations of Industrial Discharge Permit requirements that remain uncorrected after lower level enforcement actions.

If the violation is causing immediate danger to the POTW the City will suspend the Industrial Users service through the provisions of City Ordinance Section 13.12.100 C.2.

If the violation does not require emergency action, the IU will be issued an NOV and an Administrative Compliance Order. The City will consider additional enforcement including Administrative Fine, Modification of Permit, Permit Revocation and/or Judicial Remedies.

If appropriate, a Show Cause Hearing will be scheduled.

If appropriate the City will enter into a Consent Order with the IU.

If service is terminated to a discharger the City may commence an action for appropriate legal and/or equitable relief under the terms of City Ordinance Section 13.12.100 (C) and (D).

