

ENFORCEMENT RESPONSE PLAN

City of Dayton - Industrial Pretreatment Program - *Effective July 1, 2008*

The City of Dayton's Sewer Use Ordinance (Sections 52.01-52.15) contains regulations applicable to persons discharging wastewater to the City's sanitary sewers and wastewater treatment facilities, along with specific authority to enforce those regulations. This **Enforcement Response Plan** has been developed by the City's Industrial Pretreatment Program, and is used as a guidance when implementing enforcement actions to assure that users of the City's wastewater facilities comply with the provisions of the City's Sewer Use Ordinance.

Informal enforcement actions may be undertaken by the City in response to minor compliance issues, such as improper sampling methods, inadequate maintenance of equipment, minor reporting errors, etc. These issues can generally be resolved through a telephone call, informal letter, or a site visit to a user's facility.

Formal enforcement actions must be undertaken to ensure compliance when significant violations occur. The following is a list of six formal actions that may be taken as enforcement actions for violations that are considered significant, or that meet the criteria for Significant Non-Compliance.

- 1. Notice of Violation (NOV)**
- 2. Compliance Order (may include an enforceable Compliance Schedule)**
- 3. Administrative Fees**
- 4. Civil Action**
- 5. Termination of Sewer Services**
- 6. Criminal Action.**

In addition, **Significant Non-Compliance** will result in public notification through newspaper publication of the violation(s)

The list of formal actions is described in detail below:

1. Notice of Violation (NOV):

The **Notice of Violation (NOV)** is a written notice to the industrial user that the Industrial Pretreatment Staff has recognized a significant violation of pretreatment program requirements, or violations placing the user in significant non-compliance. The user is expected to explain the violation(s) and make corrections as necessary to prevent a recurrence. The NOV can also require specific corrective actions and schedules (Compliance Schedule) to which the City expects the industrial user to adhere, and can include a statement that additional enforcement action may be pursued if the corrective actions are not accomplished as scheduled.

A **Notice of Violation** may also include a requirement for an **Increase in Self-monitoring**. A discharger in violation of pretreatment standards may be required to conduct sampling, analyses, and reporting at an increased frequency in order to demonstrate consistent compliance. For example, an industry normally required to sample monthly might be required to sample once a week for four consecutive weeks. If there are no violations in the four weeks, sampling could return to monthly. However if violations recur, continued weekly, or more frequent, sampling may be required.

2. Compliance Order/Compliance Schedule:

The City may issue an enforceable **Compliance Order** that will require an industrial user to achieve compliance with pretreatment standards and requirements under the City Sewer Use Ordinance. The Compliance Order may include an enforceable Compliance Schedule that designates a timeline for specified measures to be undertaken in order to bring a discharger into compliance (e.g. install treatment devices, operate and maintain treatment devices, develop a slug control plan, etc.). In addition to other factors, the City will consider whether a discharger is acting in good faith and meeting compliance schedules in determining whether to take escalating enforcement action.

3. Administrative Fees:

The City has the authority to issue administrative fees, which can range up to \$10,000 per day for each violation. Any administrative fee associated with pretreatment violations must reflect the seriousness, frequency, and persistence of every violation. The fee amount should be such that it deters the violator from incurring future violations while sending a message of deterrence to the regulated community. The types of violations warranting administrative fees may include but are not limited to the following:

1. Two or more violations of the same or closely related standards, limits, or requirements within any twelve month period.
2. Non-permitted discharges:
 - a. Discharge of regulated wastewater without a required permit
 - b. Failure to comply; discharge continues after notice by the City.
 - c. Discharge continues after expiration, termination, or revocation of an Industrial Wastewater Discharge Permit or other applicable discharge authorization
3. Reporting violation(s):
 - a. Failure to submit a required report
 - b. Recurring late reporting or any late report meeting SNC.
 - c. Failure to correct a report with missing or incomplete information within thirty (30) calendar days of being made aware of the discrepancy.
 - d. Failure to report a spill, violation, or change in discharge.
 - e. Failure to report additional monitoring.
4. Recurring failure to monitor properly.
5. Recurring missed milestones in an enforceable compliance schedule.
6. Failure to start construction, complete construction, or achieve compliance within ninety (90) calendar days of the date specified in the enforceable compliance order.
7. Wastes diluted in lieu of treatment.
8. Failure to mitigate non-compliance or halt production, progressing when aware of non-compliance.
9. Failure to comply with a requirement to cease discharge.
10. Recurring failure to properly operate and maintain pretreatment facility.
11. Failure to provide the City Industrial Pretreatment Inspector timely access to the facility.
12. Recurring inadequate record keeping.
13. Failure to implement additional monitoring as required.
14. Intentional bypass of any part of a pretreatment system in violation of Sewer Use Ordinance requirements.

15. Any instance of effluent violation determined to be SNC.
16. Falsification of any report or date.
17. Failure to comply with a Compliance Order.
18. Any slug load that causes the City to implement emergency procedures to preserve effluent or biosolids quality, to prevent structural damage, or to protect the health and safety of City personnel or the public.
19. Violation of Sewer Use Ordinance provisions that warrant administrative fees.
20. Any other situation in which a civil penalty is necessary or legal action is contemplated.

4. Civil Action:

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

Civil litigation is an appropriate enforcement response for the following situations:

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

The City may also bring civil suit to obtain compliance, civil penalties and recover damages.

5. Termination of Sewer Services – Revocation of Permit

The City may suspend or terminate a user's sewer service and, if applicable, revoke their Industrial Wastewater Discharge Permit in response to serious violations. The City has the authority to immediately halt any actual or threatened discharge to the sewer system that may represent an endangerment to the public health, worker safety, the environment, or the sewer works, upon notification to the industrial user. Additionally, the City can deny or condition new or increased discharges by an industrial user and/or changes in the nature of the pollutants discharged by the industrial user.

Termination of Sewer Services – Permit revocation is an appropriate response to industries which have not responded in a satisfactory manner to previous enforcement actions and can be effective in bringing recalcitrant industrial users into compliance. For example, without sewer service, an industrial user may have to obtain an NPDES permit to discharge wastewater to the waters of the State or of the United States, and thus be required to install upgraded treatment facilities to achieve direct discharge limitations. Unlike civil and criminal proceedings, termination of sewer service is an administrative response which can be implemented directly and immediately by the Director of the City of Dayton's Department of Water.

The types of violations warranting the termination of sewer service may include, but are not limited to, the following:

1. Failure to notify the City of significant changes to the wastewater prior to the changed discharge.
2. Failure to provide prior notification to the City of changed conditions.
3. Misrepresentation or failure to fully disclose all relevant facts in a permit application.

4. Falsifying self-monitoring reports.
5. Tampering with monitoring equipment.
6. Refusing to allow the City timely access to the facility premises and records.
7. Failure to meet discharge limitations
8. Failure to pay fees.
9. Failure to pay sewer charges.
10. Failure to meet compliance schedules.
11. Failure to complete an industrial waste survey or permit application.
12. Failure to provide advance notice of the ownership transfer of a permitted facility.
13. When the City has to invoke emergency provisions.
14. Violation of any pretreatment standard or requirement, or any terms of a permit or discharge authorization.

6. Criminal Action:

The City is authorized to seek criminal punishment for any person who violates certain pretreatment requirements or any person who knowingly makes a false statement regarding any report, application, record or other document required by the Federal Pretreatment Regulations and/or the Sewer Use Ordinance.

Factors to be considered when deciding which violations should be referred to the City Prosecutor for possible criminal actions include:

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

A sentence handed down containing fines or imprisonment would be assessed by the court based on many considerations, which include the court's perception of the harm, damage, or potential threat attributable to the violation. Examples of violations for which criminal punishment may be appropriate include:

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

Many cases of willful non-compliance (e.g. late night dumping of toxic substances into the sewer collection system) could seriously damage the sewer lines, treatment facilities, and the environment. Such acts would be punished severely when adequate proof exists.

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Level	Enforcement Options	Description/Examples	Fee
0	Phone Call, Site Visit, Letter	Minor issues, concerns, or problems	-
I	NOV, CO/CS	First violation in twelve months	-
II	NOV, CO/CS, Administrative Fee	Second violation in twelve months	\$250.00
III	NOV, CO/CS, Administrative Fee	Third violation in twelve months	\$500.00
IV	NOV, CO/CS, Administrative Fee	Fourth or more violation in twelve months First violation resulting in SNC	\$1000.00
V	NOV, CO/CS, Administrative Fee	Fifth or more violation in twelve months Any additional violation resulting in SNC	\$1250.00 - \$10,000.00
VI	Civil Action	Repeated and/or serious violations Falsification Tampering with sampling equipment Causing endangerment to public health Causing structural or environmental damage	Recovery of costs, damages, economic benefit of non- compliance
VII	Termination of Service	Repeated and/or serious violations Falsification Tampering with sampling equipment Causing endangerment to public health Causing structural or environmental damage	Recovery of costs, damages, economic benefit of non- compliance
VIII	Criminal Action	Falsification Tampering with sampling equipment Willful violations Causing endangerment to public health Causing environmental damage	Fines and/or imprisonment, as provided by law

NOV = Notice of Violation CO/CS = Compliance Order/Compliance Schedule SNC = Significant Non-Compliance

This guidance provides escalating measures of enforcement for various types of violations under the Industrial Pretreatment Program. Any violation may result in issuance of a written Notice of Violation. A violation may also result in issuance of an enforceable Compliance Order, which may include an enforceable Compliance Schedule for bringing a discharge into compliance. Levels II, III, and IV apply increased administrative fees for recurring violations of the same or closely related standards, limits, and requirements. Levels V, VI, and VII may be undertaken for a wide variety or combination of violations, which are serious in nature.

This guidance is not meant to be a rigid enforcement scheme. The Industrial Pretreatment Coordinator may take into account factors such as the circumstances, nature, severity, or consequences of a violation to either increase or decrease the level of enforcement action taken. The Industrial Pretreatment Coordinator may also apply any combination of enforcement actions, or take other actions not listed above, in an effort to achieve compliance.

A discharger in violation of pretreatment standards may be required to conduct sampling, analyses, and reporting at an increased frequency in order to demonstrate consistent compliance.

A discharger may be required to reimburse the City of Dayton for costs of activities the City has undertaken due to the discharger being in violation, such as additional monitoring costs, court costs, or staff time and materials.

In addition to the administrative fees outlined in this guidance, a discharger may be charged an amount equivalent to the economic benefit the discharger received in connection with the violation. For example, if a discharger dumps a tank of hazardous waste into the sewer rather than having it properly disposed, that discharger could be charged the amount that would have been required for proper disposal, in addition to any applicable fees, fines or penalties.