



## ENFORCEMENT RESPONSE PLAN

### General Introduction:

The Enforcement Response Plan (ERP) as referenced in the Sioux City Municipal code, contained herein, provides a framework for determining the appropriate response for identified violations of the City of Sioux City Municipal Code, Iowa Administrative Code and/or any regulations contained or referenced in 40 CFR 403. The ERP has been developed to ensure the following:

- Identification and control of industrial discharges to comply with the Federal Pretreatment Program Regulations;
- Compliant operation of the Publicly Owned Treatment Works, furthermore referred to as the Wastewater Treatment Plant (WWTP). This includes devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other device or equipment necessary for the conveyance of wastewater to the WWTP;
- Enforcement actions issued appropriate to the nature and severity of the violation;
- Guidance to encourage uniform application of enforcement to violations, and;
- Ensure Best Management Practices are utilized by Industrial Users (IU) to meet standards and limits.

The Pretreatment Manager, as designated by the Director, has the authority to ensure that the federally required, state approved Pretreatment Program is implemented in its entirety and that enforcement is carried out in a timely and appropriate manner. The Pretreatment Manager is responsible for the following:

- Deny, approve or require additional treatment to, increased or decreased contributions of pollutants, or changes in the nature of pollutants discharged to the WWTP;
- Require compliance with applicable pretreatment standards and requirements through permit, contract, or other means to control pollutant contributions to the WWTP by each industrial user;
- Require development compliance schedules where necessary by each industrial user and the submission of all notices and self-monitoring reports as necessary to assure compliance;
- Carry out all inspection, surveillance and monitoring procedures to determine compliance independent of information supplied by the industrial user;
- Obtain remedies for noncompliance, including the ability to seek injunctive relief, civil or criminal penalties, and/or collect liquidated damages, and;
- Comply with the confidentiality requirements and limitations on data restrictions specified in 40 CFR 403.14.

This Guide is a matrix which describes violations and indicates a range of appropriate enforcement options. The Guide defines the range of appropriate enforcement actions based on the nature and severity of the violation and it promotes consistent and timely use of enforcement remedies, entitled to the City of Sioux City through the approved Pretreatment Program.

#### Identification of noncompliance:

The Pretreatment Manager shall be responsible for the issuance and compliance tracking of all discharge permits. Permits shall be issued for a duration of three years, with permit renewal applications due to the Pretreatment office 90 days prior to the expiration of the permit. Significant industrial user (SIU) compliance is determined monthly based on sample data collected and reported by the City's certified lab. If an SIU is found in non-compliance, a Notice of Violation (NOV) shall be issued. The SIU will have 10 calendar days from receipt of the NOV to submit a formal response back with a detailed explanation of the violation and a compliance plan, with timeline, for the satisfactory correction and prevention of repeat violations of the same nature. A response is mandatory and must be submitted within the allotted time to the Sioux City Pretreatment office. Failure to respond in a timely manner or failure to remediate the identified violation shall result in further enforcement actions.

Categorical industrial user (CIU) compliance is determined once every 6 months based on self-monitoring reports submitted to the Pretreatment office. Reports are due by June 30 and December 31. All self-monitoring reports must contain the analytical report from the lab for the samples collected and submitted, and a signed self-monitoring report with the appropriate certification statement(s).

- If an SIU is found in non-compliance, a Notice of Violation (NOV) shall be issued. The SIU will have 10 calendar days from receipt of the NOV to submit a formal response back with a detailed explanation of the violation and a compliance plan, with timeline, for the satisfactory correction and prevention of repeat violations of the same nature. A response is mandatory and must be submitted within the allotted time to the Sioux City Pretreatment office. Failure to respond in a timely manner or failure to remediate the identified violation shall result in further enforcement actions.
- If a CIU is found in violation of a discharge parameter, the CIU shall have 30 days to submit additional samples to demonstrate that the discharge is in compliance, failure to do so will result in the issuance of additional enforcement actions.

Please be advised that if your compliance plan is not acceptable to the City of Sioux City additional requirements may be imposed as part of your proposed compliance plan or separately as a compliance schedule.

#### Compliance Sampling:

Pretreatment staff shall be responsible for the sample collection and analysis on all wastewater samples, taken from the collection system and industrial users (IU), at least annually.

- For all permitted industrial contributors, discharging more than 25,000 gpd; discharge samples shall be collected from the discrete sampler.
- For all permitted industrial contributors discharging up to 25,000 gpd; discharge samples shall be collected from a portable sampler.
- For all categorical permitted industrial contributors discharge samples shall be collected from a portable sampler.

Based on the location of the sample and the resultant laboratory analysis, the determination shall be made on whether or not the identified contributor is in compliance with the appropriate discharge limits.

If a contributor cannot be identified, then a collection system sampling event may be necessary to track down the contributor responsible for the issue of non-compliance. For all collection system sampling, a composite sampler shall be placed at, or close to, the closest sampling location available of the suspect discharger, and then up and downstream of the suspect discharger if possible.

#### Identification of non-domestic users:

Updates to the non-domestic inventory shall be made at least annually as part of the annual Pretreatment Report to the IDNR. The inventory is also reviewed through the following mechanisms; weekly Design Review Criteria meetings for new businesses in Sioux City, monthly updates provided by the sister cities

as required by the 28E (Sewage Treatment) Agreements for treatment of wastewater discharged, monthly data review of the influent plant data, data evaluation from collection system sampling, data review from semi-annual priority pollutant evaluation of the influent and effluent samples, data review from 503 sludge analysis and Pretreatment office will also complete a sewer use survey every ten years to determine what contributors are discharging nondomestic wastewater to the WWTP. Discharge permits shall be issued when necessary and applicable.

Enforcement Procedures:

Once a discharge violation is identified it is reviewed, evaluated, and addressed by the appropriate enforcement response. The appropriate enforcement action is administered by the Pretreatment Manager. The date of the violation serves as the start date for any future actions. Sustained violations will result in escalated enforcement action up to Criminal Action Law Suit.

The following criteria are considered when determining the proper enforcement action; magnitude of the violation, duration of the violation, effect of the violation on the WWTP, effect of the violation on the receiving water, compliance history of the industrial user, and good faith of the user.

Prior to the issuance of an enforcement action, the Pretreatment Manager may decide that based on the type or nature of the violation, or based on an identified issue of concern, verbal notification, warning letters and/or an informal meeting may be appropriate. All of these instances shall be documented and placed in the industrial user's file as support for future enforcement actions of the same nature where necessary.

Enforcement Actions:

Based on the severity of the violation, the Pretreatment Manager may, at any time, escalate enforcement without following the suggested hierarchy. The enforcement actions entitled to the Pretreatment Manager include but are not limited to:

1. **General.** It shall be the duty of the Pretreatment Manager to enforce the provisions of the Municipal, Iowa Administrative and Federal Code pertaining to the management of the sanitary sewer and all discharges thereof.
2. **Notice of Violation (NOV).** Whenever the Pretreatment Manager finds that any contributor, permitted or unpermitted, has violated or is violating the provisions referenced herein the contributor shall be issued a written notice of the violation:
  - a. The contributor is required to provide, in writing, to the Pretreatment Manager within ten (10) business days of receipt of an NOV with:
    - i. An explanation of the violation,
    - ii. A plan for the satisfactory correction of the violation,
    - iii. A plan for the prevention of future similar violations, including specific required actions and specific compliance schedules.
  - b. Submission of this response in no way relieves the contributor of liability for any violations occurring before or after receipt of the notice. If the nature and cause of the violation is not corrected, and the discharge continues to violate provisions referenced herein, the Pretreatment Manager may implement a compliance schedule for corrections of the violation, which will become an addendum to the issued permit where applicable.
3. **Fines/Penalties.** Any contributor identified as violating the provisions herein shall be considered guilty of a municipal infraction and shall be subject to a fine not to exceed one thousand dollars (\$1,000.00) per violation per day, for the duration of the violation. Violations, however, can be fined for multiple discharge violations. Fines shall be issued where applicable following the penalty structure, including but not limited to:

- a. First infraction- NOV
  - b. Second infraction- \$175.00 per day per violation
  - c. Third infraction - \$350.00 per day per violation
  - d. Fourth infraction-\$500.00 per day per violation
  - e. Fifth infraction-\$750.00 per day per violation
  - f. Continued non-compliance will result in the issuance of \$1,000.00 per day per violation
    - i. If necessary, based on the magnitude or impact the Pretreatment Manager may decide that the nature of the violation is serious enough to issue \$1,000.00 per violation immediately.
    - ii. Additionally, where a monthly average permit limit is being considered for compliance, each consecutive month of a non-compliance status for any parameter shall be considered a repeat violation and escalating enforcement actions shall be taken including an escalation in fines.
4. **Significant Non-compliance (SNC).** When applicable, based on SNC criteria, a contributor shall be placed in Significant Non-compliance in accordance with 40 CFR Part 403.8(f)(2)(viii) of the Code of Federal Regulations. This requires public notice in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by City of Sioux City, and fines/penalties if applicable, if the contributor is found in SNC of any of the following:
- a. Chronic Violation, where 66% or more of the samples results for a parameter exceed the daily maximum, 4-day average, and/or monthly average limit in a six month period.
  - b. Technical Review Criteria (TRC), where 33% or more of the test results for a parameter exceed the daily maximum, 4-day average, and/or monthly average limit by more than the TRC multiplier.
    - i. Conventional Pollutants (BOD, TSS, FOG) = 1.4 x the standard/limit.
    - ii. All other pollutants (Metals, Cyanide, and all other toxics) = 1.2 x the standard/limit.
    - iii. pH shall be determined when the facility is 0.4 s.u. above or below the maximum or minimum threshold.
      - 1. For SNC determination the greatest exceedance is reported for a given calendar day when more than one pH analysis is being reported.
    - iv. Any other discharge that alone, or in combination with other dischargers has been identified to cause interference, and/or pass through of the WWTP, endangered the health of the WWTP personnel and/or the public, or has otherwise impaired or damaged the collection system and/or treatment processes, sludge quality or facilities.
    - v. Any discharge of a pollutant that causes imminent endangerment to human health, welfare or to the environment and has resulted in the WWTP's exercising its emergency authority to halt or prevent such a discharge.
    - vi. Failure to meet compliance schedule milestone dates or failure to attain final compliance within 90 days after the compliance schedule deadline.
  - c. The SNC will also require immediate action to resolve, prevent or mitigate further violations of the same nature from occurring again and if necessary a compliance schedule shall be issued.

- d. All violations of a pH limit shall be considered individually enforceable and shall be issued a \$1,000.00 fine for each individual violation.
5. **Compliance Hearing.** The Pretreatment Manager may hold such hearings with all responsible parties to address repeat issues of non-compliance. A compliance schedule if necessary will be agreed upon and implemented.
6. **Compliance Schedules.** The Pretreatment Manger is empowered to enter into Compliance Schedule, assurance of voluntary compliance, or other documents establishing an agreement with the contributor responsible for the identified violation(s). Such agreements shall include specific action(s) to be taken by the contributor to correct the violation(s) within a time period specified by the order and shall be issued as an amendment to the permit. If the contributor is not currently permitted, a permit shall be issued. Compliance schedules shall be issued for a duration of 12 months, but not to exceed 24 months, unless otherwise deemed necessary and agreed upon.
7. **Injunctive Relief/Termination of Service.** In case any contributor has violated or is violating the provisions herein, the Pretreatment Manager may make recommendation to petition the City Attorney for the issuance of a preliminary or permanent injunction or both, which restrains or compels the activities on the part of the person. The City shall have such remedies to collect all associated fees as are available to collect other sewer service charges.
8. **Civil Litigation.** It shall be the decision of the City Legal Department to determine if the information presented by the Pretreatment Manager is unlawful; the City in addition to other remedies may institute appropriate actions for legal or equitable relief.
9. **Criminal Actions.** Any contributor who willfully or negligently violates any of the provisions herein, or who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required pursuant to this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$100 per violation per day or imprisoned in the county jail for a period not to exceed thirty (30) days. Each separate provision of this chapter violated shall constitute a separate offense. The Pretreatment Manager shall reference all instances of this nature to Region 7 EPA Pretreatment, including notification to the City Attorney.

Violations:

The following table summarizes the types of instances that shall be considered non-compliance. In some instances, multiple instances of non-compliance may be issued for the same occurrence depending on the nature and magnitude of the identified violation. The listed Enforcement Action in the table, is the initial enforcement action, under most circumstances. The Pretreatment Manager, may, depending on the type and magnitude of the violation, escalate enforcement without prior notification to the contributor. The criteria used to determine the appropriate level of enforcement action are:

- Demonstrated good faith of the identified contributor,
- Compliance history of the contributor,
- Previous success of the issued enforcement actions against the user,
- Violations effect on the environment/public health,
- Violations effect on the Wastewater Treatment Plant/Facility (WWTP).

The types of non-compliance include, but are not limited to the following:

**I. Prohibited Discharge**

<u>Noncompliance Action</u>	<u>Nature of Violation</u>	<u>Under Most Circumstances-Initial Enforcement Action(s)</u>
1. Un-permitted discharge	Unintentional discharge, no harm to WWTP/Environment	Applicable fine, Permit May be Required
	Unintentional discharge, harm to WWTP/Environment	Applicable fine, Termination of discharge, Cost Recovery if applicable
	Intentional discharge without notification	SNC, Applicable fine, Termination of Service, Cost recovery if applicable
2. Permitted discharge	Unintentional discharge/bypass	NOV, Applicable fine, Termination of discharge
	Intentional discharge without notification	SNC, Applicable fine, Termination of discharge, Cost Recovery if applicable
	Failure to Comply	SNC, Applicable fine, Compliance Schedule, Termination of discharge, Cost Recovery if applicable

**II. Discharge Limit Violation**

<u>Noncompliance Action</u>	<u>Nature of Violation</u>	<u>Under Most Circumstances-Initial Enforcement Action(s)</u>
1. Exceedances of applicable regulations	Isolated, not significant	NOV with Applicable fine
	Isolated, significant, no harm to WWTP/Environment	NOV with Applicable fine
	Isolated, harm to WWTP/Environment	NOV and/or SNC with Applicable fine, Compliance Hearing, cost recovery as applicable, Termination of Service
	Recurring exceedances, no harm to WWTP/Environment	NOV and/or SNC with applicable fine, Consent Order, Termination of Service
	Recurring exceedances, significant, harm to WWTP/Environment	Hearing, Termination of Service, Civil and/or Criminal Actions as applicable

**III. Monitoring and Reporting Violations**

<u>Noncompliance Action</u>	<u>Nature of Violation</u>	<u>Under Most Circumstances-Initial Enforcement Action(s)</u>
1. Reporting	Improperly filed report	NOV with applicable fine
	Late Report (less than 30 days)	NOV with applicable fine
	Late Report (more than 30 days)	SNC with applicable fine
	Failure to submit requested/required report	SNC with applicable fine, Compliance Hearing
	Failure to report spill or discharge, no harm to WWTP/Environment	NOV with applicable fine
	Failure to report spill or discharge, harm to WWTP/Environment	SNC with applicable fine, Compliance Hearing, Termination of Service, Civil and/or Criminal Actions as applicable
	Facility shut down without notification	NOV with applicable fine
	Significant changes in production or treatment without prior notification to the Pretreatment Office	NOV with applicable fine
2. Falsification	Improper or misrepresentative information submitted.	SNC with applicable fine, Compliance Hearing, Civil and/or Criminal actions as applicable
3. Inadequate record keeping	Files are incomplete or missing or inaccessible upon request	NOV with applicable fine

4. Failure to submit monitoring report	Infrequent	NOV with applicable fine issued from date that the report was due to when the report is received.
	Recurring failure to submit reports on time	SNC with applicable fine issued from date that the report was due to when the report is received. Compliance Hearing
	Additional data not submitted (if a facility chooses to monitor any discharge parameter at a frequency more than what the regulatory requires, the facility shall report this data to the Pretreatment Office once every 6 months for categorical industries and once per month for significant users)	NOV with applicable fine issued from date that the sampling was to have been completed until the report is received, applicable revisions of sewer billing where necessary
5. Failure to monitor correctly	Failure to collect required discharge samples on the permitted frequency for compliance analysis	SNC with applicable fine issued from the date that the sampling was to be completed to when the report is received, if the analysis results demonstrate additional non-compliance than additional fines shall be issued, Compliance Hearing, applicable revisions of sewer billing where necessary
	Recurring failure to monitor correctly	SNC with applicable fine the date that the sampling was to be completed to when the report is received, Compliance Hearing, applicable revisions of sewer billing
	Failure to monitor all pollutants as required	NOV with applicable fine issued from date that the sampling was to be completed to when the report is received
6. Sample Tampering	Improper sampling location, sample type, technic, sample collection, preservation.	NOV with applicable fine
	Recurring issues with sampling location, sample type, sample collection, preservation.	SNC with applicable fine, Compliance Hearing, Civil and/or Criminal actions as applicable
	Recurring improper sampling and Evidence of intent	Immediate compliance hearing, SNC with applicable fine, Civil and/or Criminal actions as applicable
7. Failure to install required monitoring equipment	Delay of less than 10 days	NOV with applicable fine issued from the date that the equipment was to be installed until the day that it is installed
	Delay of less than 30 days	SNC with applicable fine issued from the date that the equipment was to be installed until the day that it is installed
	Delay of 30 days or more	Compliance Hearing/Compliance hearing, additional fine for each day of continued non-compliance
8. Failure to maintain sampling equipment	Day 1	Initial Communication by City Staff
	Day 7*	Refer to failure to monitor correctly
	Day 14*	Refer to failure to monitor correctly (recurring failure)

**\*In the event that an IU is not capable of rectifying the sampler issues the City will utilize a portable sampler and charge the IU \$150.00 per day rental fee for the sampler. The rental fee will be added to the monthly invoice.**

**V. Chronic Violations**

<u>Noncompliance Action</u>	<u>Nature of Violation</u>	<u>Under Most Circumstances- Initial Enforcement Action(s)</u>
1. Dilution	Isolated	NOV with Applicable fine
	Recurring	SNC with Applicable fine, Compliance Hearing, Termination of Service
	Recurring and evidence of intent	Immediate compliance hearing, SNC with applicable fine, Civil and/or Criminal actions as applicable
2. Bypass	Isolated	NOV with Applicable fine
	Recurring bypass	SNC with Applicable fine, Compliance Hearing, Termination of Service
	Recurring and evidence of intent	Immediate compliance hearing, SNC with applicable fine, Civil and/or Criminal actions as applicable

Appeal of an issued enforcement action:

Once a violation is issued, the identified recipient is expected to respond and to pay all applicable fines within the issued timeframe. The recipient may submit an appeals request within 30 days of receipt of a violation for the issued enforcement action. Under circumstances where the fine money issued can be used towards a supplemental compliance project, the Pretreatment Manager shall review and make recommendation to the Director on a case by case basis. If the recipient has defensible data for the re-evaluation of the enforcement action, this too shall be reviewed by the Pretreatment Manager and recommendation made to the Director on a case by case basis.

**Enforcement Response Plan Revisions:**

\*Revised Enforcement Response Plan effective August 1, 2012.

\*\*Revised September 9, 2016 per DM