

**WEST CENTRAL CONSERVANCY
DISTRICT**

PRETREATMENT PROGRAM

ENFORCEMENT RESPONSE PLAN

April 2009

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I. INTRODUCTION

In accordance with the Code of Federal Regulations (CFR) Section 403.8 f(5), the West Central Conservancy District (“the District”) is obligated to develop and implement an Enforcement Response Plan (ERP) regarding violations of any pretreatment and discharge codes, laws, or regulations. The plan shall outline how the District will investigate noncompliance, the type of escalating enforcement response, time periods for responses to occur, and the responsible personnel.

This plan includes an Enforcement Response Guide (ERG) which contains a range of enforcement responses available to the District. The ERG addresses a broad range of pretreatment violations. It is intended to cover all types of violations but if any are omitted, it is not intended to limit the enforcement discretion or action of the District.

If a facility appears to be acting in good faith to comply with pretreatment regulations, the District may choose an enforcement response that is not coercive as one it would choose against a facility not acting in good faith. It must be noted however, that when taking into account a facility’s good faith, congress clearly expressed in the Clean Water Act, that extraordinary efforts are required by the industrial community to comply with the pretreatment requirements. Therefore, the intention of good faith should be considered only if a facility is making every effort to comply with pretreatment requirements.

II. MANAGEMENT PLAN

A. INDUSTRIAL CLASSIFICATION

Classification of each Industrial User (IU) is based on information obtained through the Wastewater Discharge Permit and preliminary site visit. Each Industry is categorized into one of the following groups:

1. IUs subject to federal categorical Pretreatment standards;
2. IUs that meet the federal definition of a Significant Industrial User (SIU) by:
 - a. discharging an average of twenty-five thousand (25,000) gpd or more of process Wastewater
 - b. contributing a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the STW; or
 - c. having a reasonable potential to adversely affect the STW’s operation or for violating any Pretreatment Standard or Requirement.
3. IUs that have non-significant wastewater streams.

Any IUs falling under groups 1 and 2 are subject to Pretreatment Requirements and are issued Industrial Wastewater Pretreatment Permits by the Indiana Department of Environmental Management (IDEM), Office of Water Quality. IUs in group 3 are not subject to Pretreatment Regulations and are not issued permits.

B. COMPLIANCE MONITORING

Compliance monitoring activities are conducted by the District. These activities are necessary to identify and document violations and to verify IU self monitoring reports. The District Manager or his authorized agent collect industrial samples and completes a chain-of-custody form which accompanies each sample through the analytical process if the analysis is conducted in-house, or until it is signed off

by an authorized representative of the District's contract laboratory and replaced by the contract laboratory's chain-of-custody form.

C. INDUSTRIAL INSPECTIONS

Each facility that is permitted by IDEM must be inspected at least once annually. Scheduled inspections are conducted annually to verify compliance and to identify any potential problems or violations. Additional inspections or site visits may occur during a given year to track compliance schedules activities, verify changes in discharges or processes, maintain a regulator presence, or scrutinize facilities with discharges most likely to impact the STW.

D. COMPLIANCE DECISIONS AND ENFORCEMENT

All violations identified by the District Manager are reviewed, evaluated, and addressed according to the guidelines of the Enforcement Management Plan. When determining an appropriate response, particularly one which includes the imposition of penalties, the specific procedures outlined in the ERG shall be followed. However, additional criteria may be used in determination of the response including:

- Magnitude of the violation
- Duration of the violation
- Effect of the violation on the STW's receiving stream
- Effect of the violation on STW processes and equipment
- Compliance history of the industrial user
- Good faith of the industrial user
- Pollutants of particular importance to the STW

When a minor violation occurs, a telephone call to the IU may suffice, otherwise the majority of enforcement actions begin with the issuance of an initial Notice of Violation (NOV). The NOV describes the nature of the violation and informs the IU that any additional violations may result in escalated enforcement action.

Once the IU has been notified of a violation or has knowledge of a condition which is a violation, the IU shall be allowed up to thirty (30) calendar days to correct the noncompliance before escalation of the enforcement process occurs, unless the violations threaten health, property, or environment quality. This thirty (30) day period applies only to an initial violation.

Any violations occurring after this period will be evaluated according to the ERG.

An IU receiving self-monitoring results, or District sampling results, which show a violation shall have thirty (30) days to correct the condition that exists or existed which contributed to the violation. Thereafter, each violation is evaluated for enforcement action. In addition, if a violation occurred during the thirty (30) day correction period, the IU must demonstrate that good faith was exercised to prevent or mitigate further violations during that period.

An IU must notify the District with 24 hours of becoming aware of a discharge violation, and is required to repeat the sampling analysis, and to submit the results of the repeat analysis within thirty (30) days of becoming aware of the violation. Failure to provide 24 hour notice or the 30 day resample report will constitute sampling/reporting noncompliance.

III. ENFORCEMENT PROCEDURES

A. PURPOSE

IUs that violate federal, state, or local requirements are subject to the conditions of the District's Management Plan and ERG as contained herein. The ERG will help ensure equitable treatment of violators by providing a consistent basis for selection of appropriate responses to violations. The ERG shall be followed unless mitigating circumstances can be shown.

The ERG groups various types of violations into the following categories:

- Unauthorized Discharges (No Permit).
- Discharge Limit Violations.
- Monitoring and Reporting Violations.
- Other Permit Violations.
- Violations Detected During Site Visits.

B. DEFINITIONS OF VIOLATIONS

Minor Sampling, Monitoring, or Reporting Deficiencies:

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

Major Sampling, Monitoring, or Reporting Deficiencies:

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

Critical Sampling, Monitoring, or Reporting Deficiencies:

- Reports greater than thirty (30) days late (SNC)
- Complete failure to sample, monitor, or report per the requirements found in the IUs permit.
- Any deficiency of sampling, monitoring, or reporting procedure which places IU in SNC
- Failure to respond to a Show Cause or Administrative Order
- Illegal or unauthorized discharge that results in damage to the POTW
- Any violation of sampling, monitoring, or reporting procedures which directly or indirectly contributes to or is responsible for violation of District's NPDES Permit.
- Any other violation categorized as critical sampling, monitoring or reporting deficiencies by the District

Unauthorized Discharge –

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

Damages to the District – Occurs when the discharge from an IU causes:

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

C. TYPES OF ENFORCEMENT RESPONSES

In order to provide a concise manual in a usable format, acronyms have been used for several types of response. A definition of the acronyms is as follows:

- VTN = Verbal Telephone Notice
- SV = Site Visit
- NOV = Notice of Violation
- CO = Consent Order
- AO = Administrative Order
- ECS = Enforcement Compliance Schedule
- CDO = Cease and Desist Order
- SC = Show Cause Hearing
- AF = Administrative Fine
- LIT = Litigation
- SNC = Significant Noncompliance
- TRC = Technical Review Criteria

1. VTN - A Verbal Telephone Notice describes a response to a minor type of violation which is conveyed verbally to the IU's contact person and no further follow up on the industry's part is expected. VTN is utilized when there is a very minor infraction, such as a report being received one or two days late.
2. SV - A Site Visit is a visit to the industrial site to discuss and observe the problem. This can be a substitution for a VTN or NOV. The SV can also be made in conjunction with a NOV, indicating a reason for noncompliance and what steps are being taken to eliminate any future

violations of this nature. A SV form needs to be filled out when this action is taken for documentation.

3. NOV - A Notice of Violation is the most widely used enforcement action and is a written notification to the IU indicating the type of apparent violation and requesting a response within ten (10) days, indicating reason for the noncompliance and what steps are being taken to eliminate any future violations of this nature.
4. AO - An Administrative Order is issued to the IU by the District Manager and contains necessary corrective measures that need to be carried out by the IU to achieve compliance. An AO may contain minor compliance schedules, directive for increased monitoring and/or reporting frequencies, or other corrective actions that may be required to attain compliance.

An AO will normally contain a time frame of about six (6) months to one (1) year, and may contain one or more of the following requirements:

- a. ECS - An Enforcement Compliance Schedule is used when serious or long term violations of discharge limits occur that require the design and installation of new or additional pretreatment equipment. Usually the time frame will be six (6) month to one (1) year. Violations of the ECS can result in the next step, consisting of Administrative Fines.
 - b. CDO - A Cease and Desist Order is used when the District Manager determines that an IU is violating the Sewer Use Resolution, IWP Permit, any Order previously issued by the District, or any other pretreatment standard or requirement, and that these violations are likely to continue to occur. The CDO will direct the non-compliant IU to:
 - i. immediately stop all violations and comply with all requirements, and
 - ii. take immediate action to ensure that the violations do not continue or reoccur, including halting operations and/or terminating the discharge.
 - c. SC - A Show Cause Hearing is a meeting to show cause why a proposed enforcement action should not be taken. Notice shall be served on the IU specifying the time and place for the meeting, the proposed enforcement action, the reasons for such an action, and a request that the IU show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the IU. Whether or not the IU appears as ordered, immediate enforcement action may be pursued following the hearing date. A SC shall not be a prerequisite for taking any other action against the user. The IU may request a SC at the District's convenience.
5. AF - An Administrative Fine is a monetary penalty assessed by the District where deemed appropriate because of the nature and/or intent of the violation. The AF is an escalating response which exists to try to preclude court activity, and yet correct the problem and/or demonstrate the seriousness of the violation to the industry involved. The amount that can be imposed as an AF must be no less than \$50.00 and no more than \$1,000 per violation, with each day and/or parameter being considered a separate violation. The AF may be part of an AO, or may be instituted as the step above or below an AO.

6. LIT - Litigation is the most severe enforcement action and is utilized when an IU has not cooperated with the District or responded to the other enforcement remedies. LIT defines several courses of action including civil suits for injunctive relief and/or civil penalties, criminal suits, etc. These types of actions would all involve the Courts and the District's Attorney and would follow the procedures necessary for due process.
7. SNC - Significant Noncompliance (See Part III, D. for a complete definition) Utilizing the Enforcement Response Guide, the District Manager will initiate the appropriate response and see that the files have been updated to show the type of action being taken and the response date, if one is so indicated. The District Manager will initiate any field surveying which he/she feels appropriate to substantiate previous data received, or double check the response of an IU to the action which they have taken.
8. Termination of Service - Termination of Service is the revocation of an IU's privilege to discharge non-domestic wastewater into the sewer system. Termination of Service is used when the discharge from an IU presents imminent endangerment to the health or welfare of persons, or the environment; or threatens to interfere with the Sewage Treatment Works operations; or as an escalating enforcement action to a significant violation when a noncompliant industrial user fails to respond adequately to previous enforcement actions. Termination of Service may be accomplished by physical severance of the IU's connection to the collection system, issuance of a CDO (Cease and Desist Order) which compels the IU to immediately terminate its discharge, revocation of the IU's discharge permit, or a court ruling.

D. SIGNIFICANT NONCOMPLIANCE (SNC)

Instances of Significant Noncompliance (SNC) are IU violations which meet one or more of the following criteria:

1. Violations of Wastewater Discharge Limits.
 - a. Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent (66%) or more of all of the measurements taken during a six (6) month period exceed, by any magnitude, the daily maximum limit or the average limit for the same pollutant parameter.
 - b. Technical Review Criteria (TRC) violations, defined as those in which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter taken during a six (6) month period equal or exceed the product of the daily maximum limit, or the average limit multiplied by the applicable TRC.

TRC equals one and four-tenths (1.4) for biochemical oxygen demand, total suspended solids, fats, oil, and grease and one and two-tenths (1.2) for all other pollutants except pH.

Note: Discharge of conventional pollutants in excess of surcharge concentrations will not constitute a significant violation unless the discharge satisfies a condition in 1.c. or 1.d. below.

- c. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the District determines has caused, alone or in combination with other

discharges, interference or pass through, including endangering the health of District personnel or the general public.

- d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the District's exercise of its emergency authority under 327 IAC 5-19-3(1)(G) to halt or prevent such a discharge.
2. Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local permit or administrative order for starting construction, completing construction, or attaining final compliance.
3. Failure to provide, within thirty (30) days after the due date, required reports such as:
 - a. baseline monitoring reports;
 - b. ninety (90) day compliance reports;
 - c. periodic self-monitoring reports; and
 - d. reports on compliance with compliance schedules.
4. Failure to accurately report noncompliance.
5. Any other violation or group of violations that the District determines will adversely affect the operation or implementation of the approved District pretreatment program.

E. ESCALATING ENFORCEMENT RESPONSE

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

F. VIOLATIONS FALLING UNDER MORE THAN ONE CATEGORY

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

G. TIMEFRAMES FOR ENFORCEMENT RESPONSES

All violations will be identified and documented within five (5) days of receiving compliance information.

Initial enforcement responses (informal or formal) will occur within fifteen (15) days of identifying a violation.

Follow up actions for continuing or recurring violations will be taken within sixty (60) days of the initial enforcement response.

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

All violations meeting the criteria for significant noncompliance will be addressed through formal enforcement action within thirty (30) days of the identification of SNC.

H. PERSONNEL RESPONSIBILITIES

1. Superintendent - The Superintendent is responsible for the day to day implementation and enforcement of the industrial pretreatment program. Potential enforcement responses carried out by the Superintendent are as follows:
 - informal notices (verbal and written)
 - notices of violation
 - referrals to the state or EPA for criminal action
2. District Manager- The District Manager has the responsibility to monitor the Superintendent's actions and to initiate these additional enforcement actions at the recommendation of the Superintendent:
 - administrative orders
 - compliance schedule
 - show cause hearings
 - termination of service
 - administrative fines
 - cost recovery
 - referrals to the Conservancy District's attorney for judicial action
 - referrals to the state or EPA for criminal action
3. District's Attorney - The District's Attorney will provide legal consultation as requested by the District Manager on compliance schedules, administrative fines, administrative orders and cost recovery and will take the lead on all referrals for judicial action and District initiated criminal investigations.

IV ENFORCEMENT RESPONSE GUIDE TABLE

A. Discharge Parameter Violation

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

Violation	Nature or Frequency of Violation	Status	Range of Responses
	Any instance with STW damage or direct cause for violation of District's NPDES permit - SNC.	Significant non-compliance	I. AO II. Administrative fine III. Cost recovery IV. Judicial action/ terminate services.
Illegal/RCRA hazardous waste discharge	Any instance.	Significant non-compliance	I. AO II. Administrative fine III. Cost recovery IV. Judicial action/ terminate services.

B. Sampling, Monitoring and Reporting Violations

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

C. Other Types of Violations

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

D. Compliance Schedule Violation

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