



# ENFORCEMENT RESPONSE PLAN

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UPPER BLACKSTONE WATER POLLUTION ABATEMENT DISTRICT

2008

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**INTRODUCTION**

In accordance with the EPA's Regulation 40 CFR 403.8 (f) (5) the District has developed an enforcement response plan to remedy violations of the pretreatment program. The enforcement response plan outlines the criteria, procedures, and responsibilities to be followed by District personnel to identify, document, and respond to pretreatment violations. Forms for documenting compliance data are also included. The plan provides guidance in selecting initial and follows up enforcement actions, specifies responsibilities of District personnel, and indicates appropriate time frames for enforcement actions.

**PART I. DEFINITIONS**

Unless the context specifically indicates otherwise, the meaning of terms in this Enforcement Response Plan shall be as follows:

Average daily flow – the total volume of sewage in gallons measured at a metering station or other point during a continuous period divided by the number of days in such a period.

Categorical pretreatment standards – pollutant discharge limitations for specific industrial user categories promulgated by the U.S. Environmental Protection Agency.

Cease and desist – an administrative order directing an industrial user to immediately halt illegal or unauthorized discharges.

CFR – Code of Federal Regulations.

Chain of custody – a written record of sample possession for all persons who handle (collect, transport, analyze, dispose) a sample, including names, dates, and times.

Compliance schedule – a schedule that directs the industrial user to achieve or restore compliance by a date specified in the schedule.

Day – the term day shall be defined as one calendar day.

District – Upper Blackstone Water Pollution Abatement District.

Effluent – wastewater or other liquid flowing out of a basin, treatment plant, or industrial treatment plant, or part thereof.

Engineer Director – Engineer – Director of Upper Blackstone Water Pollution Abatement District, who is authorized to administer the affairs and direct the engineering work of the District as approved by the board.

Flow proportionate composite sample – a combination of individual samples of water or wastewater taken at selected intervals generally hourly for a specified time period, to minimize the effect of the variability of the individual sample. Individual samples are proportioned to the flow at the time of sampling.

Good Faith – the industrial user's honest intention to remedy its noncompliance coupled with actions which give support to this intention.

Grab sample – a single sample of wastewater taken at neither set time nor flow.

Industrial User – any person connected to a public sewer and discharging or has the potential to discharge industrial wastes.

Industrial waste – any liquid, gaseous, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resources as distinct from sanitary waste.

Inspector – the Pretreatment Coordinator, Pretreatment Manager, Administrative Officer and Pretreatment Assistants for the District are the Inspectors.

Interference – a discharge by an industrial user which, alone or in conjunction with discharges by other sources, inhibits or disrupts the POTW, its treatment processes or operation, or its sludge process, use or disposal and which is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or the prevention of sewage sludge use or disposal by the POTW in accordance with statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations).

Monitoring protocol – procedures used in proper sampling, inspections, and documentation.

NPDES permit (National Pollutant Discharge Elimination System) – a permit system for the direct discharge of pollutants into U.S. waterways.

Oil and Grease (OG) – composed primarily of fatty matter from animal and vegetable sources and from hydrocarbons of petroleum origin. If present in excessive amount, they may interfere with aerobic and anaerobic biological processes and lead to decreased wastewater treatment efficiency.

Pass through – a discharge which exits the POTW into waters of the United States in quantities or concentration, which alone or in conjunction with discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

pH – the logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen-ions in grams per liter of solution. Neutral water, for example, has a pH value of 7.0 in a hydrogen-ion concentration of 10 to the minus 7 power.

Pollutants – something that pollutes, especially a harmful chemical or waste material discharged into the water or atmosphere.

Pretreatment – any treatment of wastewater to make it suitable for discharge to a public sewer.

Publicly Owned Treatment Works (POTW) – any devices and systems used in the storage, treatment, recycling and reclamation of sewage or industrial waste of a liquid nature. It also includes sewers, pipes, and other conveyances if they convey wastewater to a POTW treatment plant.

Search warrant – a document issued by a magistrate or judge which authorize Government entry into private premises to perform compliance monitoring.

Self monitoring – sampling and analysis of wastewater performed by the industrial user.

Sewer system – all inclusive for waste water, collection, pumping, treatment, and disposal facilities.

SIC – Standard Industrial Classification.

Significant Industrial User (SIU) – all industrial users subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter 1 subchapter N; and any other industrial user that: discharges an average of 25,000 gallons per day or more of process water to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated by the District as defined in 40 CFR 403.12 (a) on the basis that the industrial user has reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8 (f) (6)).

Significant violation – any violation which meets the criteria for significant noncompliance in Part IV. Page 14 of this plan.

Significant violator – any person who has a violation which meets the criteria for significant noncompliance

Slug – any discharge of a non routine, episodic nature, including but not limited to an accidental spill or a non customary batch discharge.

Toxic Organic Management Plan – (TOMP) Must satisfy the District regarding the identification of the toxic organics listed in 40 CFR 413.02(i) which the IU uses; the method of disposal, such as incineration, contract hauling, or reclamation; and procedures for assuring that toxic organics do not routinely spill or leak into the wastestream.

TTO – (Total Toxic Organics) – total toxic organics, which is the summation of all quantifiable values greater than 0.01 milligram per liter for the toxic organics listed in 40 CFR 413., 40 CFR 433 and 40 CFR 469.

Wastewater – the spent water of a community. A combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any ground water, surface water, and storm water that may be present.

## **PART II. INDUSTRIAL USER INVENTORY**

The District maintains a current inventory of all industrial user discharges and potential discharges to the sewer system. The inventory includes all relevant information on each industrial user in the District. The inventory is the foundation for tracking and monitoring the characteristics and volumes of discharge from each industrial user. This information is essential to the District's Pretreatment program for the regulation and enforcement of industrial discharges. The Industrial User Inventory is routinely updated to ensure the information is current.

The inventory contains the following information for each industrial user: name, location, number of employees, SIC number, and type of product or process. The inventory indicates if a Baseline Monitoring Report (BMR) has been received by the District from the industrial user. The BMR is the basis for permit limits along with the Federal Categorical and Local Limits. It also contains information on compliance status, scheduled date of compliance, flow measurements, location and description of discharge locations, chemicals used and stored, measurement of pollutants, processes employed, whether categorical limits apply, and what spill prevention techniques are used. The Priority Pollutant Scan is required by each industrial user as the basis for permit limits (categorical standards and/or local limits). The BMR and the Priority Pollutant Scan are used to plan monitoring, enforcement, and permitting activities for the industrial users. (See Appendix A for BMR and Priority Pollutant Scan forms.)

The Industrial User Inventory is updated continuously by the Pretreatment Coordinator to ensure the information is current. Procedures employed for updating the Industrial User Inventory include: Examining the city water and sewer bills, reviewing phone books and manufacturers listings, periodic industrial user survey questionnaires, inspections of new and existing industrial/commercial parks, and reviewing state Sewer Extension Permits. The District also relies on municipal and state agencies for assistance with tracking new sewer connections. All new information is directed to the Pretreatment Coordinator.

For each industrial user on the inventory list a separate backup file exists that contains specific information on the industry. Each file contains a description of the facility, BMR, monitoring data, inspection reports, violations, enforcement actions, correspondence, and other relevant information necessary for regulation and enforcement. The backup files are continuously maintained to track compliance status, evaluate the performance of the industrial users, and evaluate the effectiveness of previous enforcement actions taken against the industrial user.

### **PART III. COMPLIANCE MONITORING PROTOCOLS**

The compliance status of industrial users is accomplished through self monitoring by the industrial users, inspections, and direct sampling by the District. All permitted industries are required to submit self monitoring data as specified in the Discharge Permit. All self monitoring data is verified by direct sampling of the industrial user by the District. Inspections are conducted to verify compliance with the District's Pretreatment Regulations.

#### **SAMPLING**

All SIUs are required to sample and analyze their effluent and submit the results to the District. This self-monitoring report must be submitted at a minimum of twice annually to demonstrate compliance with local and Federal categorical limits. The report must be submitted by the date specified in the Discharge Permit. The report must indicate the nature and concentration of pollutants in the discharge, average daily flows, and violations of applicable Pretreatment Standards and any other requirements in the discharge permit. The self-monitoring report must have a certified statement authorizing that the contents of the submittal are true and accurate. (See Appendix B for a self-monitoring report form.)

To verify the accuracy and validity of industrial user self-monitoring, District field personnel conduct compliance sampling. Sampling is performed at a representative location which coincides with the point at which the effluent limits apply and produces a sample representative of the nature and volume of the industrial user's effluent. Automatic samplers are used for obtaining composite samples for metals analysis. Grab samples are taken for the analysis of cyanide, TTO, pH, temperature, and oils and grease (OG).

Compliance sampling by the District is performed on each SIU at least once a year. Categorical industries are sampled at least twice a year. Other companies deemed necessary by Pretreatment personnel will be sampled to verify compliance with local limits. Industries found to be in noncompliance with Pretreatment Standards or have a pattern of recurring violations or potential to cause pass through or interference with the POTW, will be sampled on a more frequent basis.

The sampling activities are initiated in three ways: scheduled in advance with the industry; unscheduled with little or no prior notice to the industry; or demand, usually in response to a problem or emergency with the industry. All sampling procedures employed by the District exercise extreme care in selection representative locations, proper equipment, chain-of-custody, and appropriate sampling and analysis protocol.

#### Chain-of-Custody

The District must demonstrate that the chain-of-custody of samples and analytical test results introduced into evidence in any proceeding to enforce industrial pretreatment requirements are reliable. Chain-of-custody is a means of tracing a given sample from the point and time of collection to its introduction as evidence.



The following guidelines should be followed by District personnel when collecting samples of industrial discharges to the public sewer system:

- A minimum number of trained persons should be involved in sample collecting and handling.
- Standard guidelines should be followed for sample collection, preservation, and handling.
- Samples should be handled as little as possible.
- Sample tags or labels should be securely attached to the sample container at the time the sample is collected. The tag should contain the following items as a minimum:
  - The serial number of the Label
  - The station number or location
  - The date taken
  - The preservative used
  - The analysis required
  - The name of the collector

Labels should be completed legibly in waterproof ink and signed by the sample collector. (See Appendix C for Sample Tag)

- A chain-of-custody log sheet should be established with a standard format to minimize entries and should include:
  - The serial number of the Label
  - The date and time of survey
  - Type of samples taken
  - Volume of each sample
  - Type of analysis
  - Sampling location
  - Field measurements (such as temperature and pH)
  - Any other pertinent information or observation
  - Entries should be signed by the sample collector

(See Appendix C for Chain-of-Custody log sheets)

- The sample collector is responsible for the care and custody of the samples until the samples are

properly dispatched to the receiving laboratory. The sample collector must insure that each container is in their physical possession or in their view at all times, or stored in a locked place where no one can tamper with it.

- Photographs or digital images may be taken of the sample locations. Sign and indicate time, date, and site location on the back of each photograph to prevent alteration, handle such photographs according to the chain-of-custody procedures.

### Laboratory Procedures

If the District employs an outside laboratory for analysis of samples, the laboratory should have internal chain-of-custody procedures meeting the guidelines noted below. If the District laboratory is used, the following guidelines should be followed:

- Samples should be handled by the minimum possible number of persons.
- Immediately upon receipt, the sampler should place the samples in the walk-in cooler which will be locked at all times except when samples are removed or replaced after testing. The time, date, and signature of storage should be recorded on the chain-of-custody sheet.
- The lab analyst records on the analytical worksheet, identifies information describing the sample, the procedures performed, and the results of the testing. The notes should be dated, indicate who performed the tests and note any abnormalities that occurred during the testing procedure.
- Methods of laboratory analyses shall be used as required by the latest EPA approved methods in 40 CFR 136.
- Laboratory personnel are to be responsible for the care and custody of a sample once it is handed to them and should be prepared to testify that the sample was in their possession and viewed or secured in the laboratory at all times from the moment it was retrieved from the walk in cooler until the next test run.
- The laboratory area shall be maintained as a secured area and shall be restricted to authorized personnel.
- Once the sample analyses are completed, the unused portion of the sample, together with identifying labels and other documentation, must be returned to the walk-in cooler. The returned, tagged sample should be retained in the custody room until permission to destroy the sample is received from the Pretreatment Coordinator.

- Samples should be destroyed only upon the order of the Pretreatment Coordinator or when it is certain the information is no longer required, or that the samples have deteriorated. The same destruction procedure is true for labels and laboratory records.

## **INSPECTIONS**

Compliance inspections are performed on each SIU at least once a year. Inspections are mechanisms for maintaining current data on industrial users, determining the user's compliance status, and to evaluate the user's operation and maintenance activities of its pretreatment system. The following are the procedures for conducting an inspection of an industrial user's facility.

### Preparation:

Prior to going to the industrial facility, the inspector(s) will prepare for the inspection. This includes determining the purpose and scope of inspections, reviewing the appropriate files, reviewing previous enforcement actions which may indicate the industries compliance status, alerting the laboratory if samples will be required, and checking/calibrating the equipment to be used.

### Gaining Entrance:

Industrial inspectors from the District, bearing proper credentials and identification, shall be permitted to enter all properties connected with the public sewers. They may inquire into any industrial processes or activities that contribute waters or wastes to the public sewers.

When entering an industrial facility the inspectors will first identify themselves and present appropriate identification. These credentials indicate that the holder is a lawful representative of the District and is authorized to perform pretreatment monitoring. The inspector will then explain the purpose of the inspection.

If the inspector is refused entry into a facility for the purpose of authorized monitoring, the following procedural steps will be taken:

- Make certain that all credentials and notices have been properly presented to the facility owner or agent in charge.
- If entry is not granted, ask why. The inspector will tactfully probe the reasons for the denial to see if obstacles (such as misunderstandings) can be cleared.
- If entry is still denied, the inspector will withdraw from the premises and contact the Engineer

Director. The Engineer Director may confer with attorneys to discuss the desirability of obtaining an administrative warrant.

- All observations pertaining to the denial are to be carefully noted and documented by the inspector as soon as possible. Included will be facility name and exact address, name and title of person(s) approached, authority of person(s) who refused entry, date and time of denial, detailed reasons for denial, facility appearance, any reasonable suspicions that refusal was based on a desire to cover up regulatory violations, etc. All such information will be important should a warrant be sought.
- Under no circumstances will the inspector discuss potential penalties or do anything that may be construed as coercive or threatening.
- The inspector should use care and discretion to avoid any threats of any kind, inflammatory discussions, or deepening of misunderstandings. In the event of a threatening confrontation, the inspector will document the event and report it immediately to the Engineer Director. If feasible, statements from witnesses will be obtained and included in the documentation.

The inspector may be instructed by the District's attorney, under certain circumstances, to conduct compliance monitoring under search warrant. It is possible that a pre-inspection warrant could be obtained where there is reason to believe that entry will be denied when the inspector arrives at the facility.

After the initial interview a complete tour of the industrial facility will be taken to visually examine the facility. The following is a list of the information which should be collected and documented during the first inspection and updated as necessary thereafter.

- Industry name, address, contact person, telephone number
- Year the industry was established on site
- SIC codes
- Number of employees
- A schematic of the water flow through the industry and the location of all wastewater discharge lines that flow to the POTW system; the schematic should also include the layout of major plant features.
- A description of each discharge (including any batch discharges) to include the amount, chemical nature, frequency and destination of each discharge.

- An attempt should be made to account for all water uses and losses such as evaporation, loss to product, and discharge to sewer.
- A description and process flow diagram of each major product line and process utilized within the industrial facility particularly processes which may be subject to Federal categorical pretreatment standards.
- The size and shape of all vessels containing liquids and chemicals should be noted along with the proximity of floor drains.
- A detailed description and appropriate sketches of existing pretreatment facilities including operation data if available.
- A list of pollutants of interest at the facility.
- Identification of appropriate sampling locations.
- Availability of sampling results performed by the industry.
- A description of spill control practices the industry incorporates including information on previous spills and determination of a slug control program.
- A description of air pollution control equipment that may generate a waste stream, pollutants which are likely to be found in the waste stream, and the discharge or disposal method and location.
- A description of how solid waste residuals are handled, stored, and/or disposed.
- A description of how sludges are disposed from industrial activities.
- A description of proposed or recent changes to the industry's processes that would affect the discharge characteristics or sampling locations.
- A description of any operational problems or shutdowns of pretreatment facilities.
- Other information as may be necessary.

- Safety issues or concerns, especially related to inspection and sampling.

When direct violations are encountered, the inspector will document such violations. If the inspector does not have the authority to determine if a particular situation is, in fact, a violation, he will document what appears to be a violation and refer the matter to the Pretreatment Coordinator or Manager who will then determine the compliance status.

After the inspector returns to the office, the field notes will be used as the basis for writing an inspection report. Information is presented in a neat, organized manner. The report will be factual and contain no subjective opinions concerning the industry's representatives, employees, processes, or facilities; however, the degree of cooperation of the industry will be noted. All reports will be completed within five working days after completion of the inspection.

#### **PART IV. PROCEDURES TO SCREEN DATA**

The compliance screening process involves reviewing all available information to sort out noncomplying dischargers for an appropriate enforcement response. This initial review assesses, as appropriate, compliance with schedules, reporting requirements (including slug discharge notices), and applicable pretreatment standards. This review is designed primarily to identify apparent violations and is not to determine the appropriate enforcement response. This review is handled by the Pretreatment Coordinator. All data is reviewed on a rolling basis (as it comes in) and will be screened no later than five days after receipt.

The screening process verifies that the reports are submitted on schedule, cover the proper time period, include all information required, and are properly signed and certified. The Pretreatment Coordinator compares parameters reported, the number or measurements for each parameter, the method of analysis, the sampling procedures, the discharge concentration (or mass per day), and other information supplied by the industrial user with the requirements in the industrial user's permit. Any discrepancy is a violation that the industrial user will be required to correct. If a report lacks a required certification or signature, it is incomplete. All alleged violations (including those arising from inspections and private complaints) will be identified by pretreatment personnel and recorded in a violation summary specific to each industrial user. This summary serves as a log for the compliance history of the industrial user.

The Pretreatment Coordinator is also responsible for tracking the time frames of all data coming in and going out to the industrial user. Late reports, compliance milestones, compliance with Administrative Orders (AO)'s and other data will be tracked and documented by the Pretreatment Coordinator to ensure a timely enforcement response. The Pretreatment Coordinator will alert the Manager of all violations detected during the screening process.

The compliance screening process includes notifying an industrial user when certain types of obvious noncompliance are found such as routinely notifying the industrial user when a report is not received. This notification includes a deadline by which the industrial user must respond. The District's Pretreatment Program employs a time frame for follow-up, to ensure that the industrial user has complied.

Although all violations must be identified and responded to, District personnel which identify an industrial user in significant noncompliance are expected to react swiftly and respond to the violation(s) with an appropriate enforcement action. According to 40 CFR 403.8 (f)(2)(viii), significant noncompliance is a violation(s) which meets one or more of the following criteria:

A. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6 month period exceed (by any magnitude) a numerical Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l)

B. Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement, including instantaneous limit, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC. (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

C. Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3 (l) (daily maximum, longer-term and average, instantaneous limit, or narrative standard) ) that the District determines has caused, alone or in combination with other discharges, interference or pass through, (including endangering the health of POTW personal 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 POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;

E. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

F. Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

G. Failure to accurately report noncompliance;

H. Any other violation or group of violations, which the District determines will adversely affect the operation or implementation of the local pretreatment program.

A review for the determination of SNC of each SIU will be performed every year. The above definition will be used by the District to develop and publish annually the list of significant violators in the largest local newspaper in accordance with the requirements of 40 CFR 403.8 (f) (2) (viii).

**Part V. ENFORCEMENT RESPONSIBILITIES FOR DISTRICT PERSONNEL**

The District has established responsibilities for staff members to take enforcement actions in the Enforcement Response Guide and screening process. The following is a list of descriptions of responsibilities for District personnel.

**Lab/Pretreatment Assistants:**

The Lab/Pretreatment Assistants assist in sampling and inspecting industrial users.

**Pretreatment Coordinator:**

The Pretreatment Coordinator is thoroughly familiar with program requirements and is responsible for insuring implementation of the District's pretreatment requirements. The Coordinator conducts compliance monitoring to include sampling and inspections of industrial users and is responsible for screening compliance monitoring data and their own sampling and inspection reports of industrial users to detect noncompliance. The Coordinator offers guidance and assistance to industrial users on requirements. Responsibilities include; issuing Notice of Violations (NOVs), reviewing pretreatment general correspondence, informs Pretreatment Manager and Engineer Director on all enforcement activities, issues discharge permits to industrial users and publishes the annual list of significant violators.

**Administrative Officer:**

The Administrative Officer may carry out all duties of the Pretreatment Coordinator.

**Pretreatment Manager:**

The Pretreatment Manager may conduct compliance inspections, issue discharge permits, issue NOV's and Administrative Orders, stays current on environmental regulations and compliance status of each industrial user.

**Engineer Director:**

The Engineer Director is responsible for compliance with the terms and conditions of the POTW'S NPDES Permit and for the overall operation and maintenance of the POTW. The Engineer Director has authority to issue administrative orders, terminate service, conduct show cause hearings, asses civil penalties, and initiate judicial hearings.



### District Attorney

The District Attorney advises the Engineer Director and managerial personnel on enforcement matters. The District Attorney also orchestrates the judicial responses deemed necessary by the Engineer Director.

## **Part VI. ENFORCEMENT EVALUATION**

The violations and discrepancies that were identified during the compliance screening process will be reviewed to evaluate the type of enforcement. This review will be conducted by a pretreatment coordinator. The enforcement response selected will be based on the nature of the violation. The District will consider the following criteria when determining the enforcement response:

### 1. Magnitude of the Violation

Generally, an isolated instance of noncompliance will be met with an informal response or a NOV. However, since even an isolated violation could threaten public health and the environment, the District will respond to any "significant noncompliance" with an enforceable order that requires a return to compliance by a specific deadline.

### 2. Duration of the Violation

All violations which continue over prolonged periods of time will subject the industrial user to escalated enforcement actions. The District will issue administrative orders for chronic violations. If the industrial user fails to comply with the administrative order, the District will assess civil penalties. If the prolonged violation results in any harm to the POTW the District will also consider injunctive relief as well as recovering any costs for repairing the damage, including legal costs.

### 3. Effect of the Violation on the Receiving Water

Any violation which results in environmental harm will be met with a severe response. Environmental harm is presumed whenever an industry discharges a pollutant into the sewage system which:

- Passes through the POTW
- Causes a violation of the POTW's NPDES Permit
- Has a toxic effect on the receiving water

At a minimum, enforcement response to “Effect of the violation on the Receiving Water” will include civil penalties. In addition, the response will ensure the recovery, from the noncompliant user, of any NPDES fines and penalties paid by the District. If the industrial user’s discharge causes a repeated harmful effect on the receiving water, the District will terminate the industrial user’s service.

4. Effect of the Violation on the POTW

Any violation which has a negative impact on the POTW such as an increase in treatment costs, interfere or harm POTW personnel, equipment, processes, operations, or cause sludge contamination will be met with an administrative order and civil penalty by the District. In addition, the District will ensure the recovery of all costs to repair the POTW from the industrial user.

5. Compliance History of the Industrial User

Compliance History will be a factor in determining which enforcement response is used against the industrial user. Industrial users exhibiting recurring compliance problems will be strongly dealt with to ensure that consistent compliance is achieved. If the violator has a good compliance history the District may decide to use a less severe enforcement response.

6. Good Faith of the Industrial User

Good faith is demonstrated by cooperation and completion of corrective measures to correct noncompliance in a timely manner. Industrial user’s willingness to comply will predispose the District to select less stringent enforcement actions although good faith does not eliminate the necessity of an enforcement action.

Following the compliance screening review, all violations of requirements will be responded to by a Pretreatment Coordinator and the industrial user will be notified. For most violations the District will require a plan to correct the violation within a specified time period. If the violation persists or the plan is not adequate, the District’s enforcement response will escalate.

The enforcement response selected will be related to the seriousness of the violation. Enforcement responses will be escalated if compliance is not achieved expeditiously after taking the initial action. A serious initial violation will be met with an escalated enforcement action.

The District will set deadlines for the industrial user to respond to notification of violations. Failure to achieve compliance in a specified period of time will result in escalated enforcement actions.

**Part VII. TIME FRAMES FOR ENFORCEMENT AND FOLLOW-UP**

- A. All violations will be identified and documented in the violation summary log book within five days of receiving compliance information.
- B. Initial enforcement responses (involving contact with the IU and requesting information on corrective or preventative action(s)) will occur within 15 days of violation detected.
- C. Follow-up actions for continuing or recurring violations will be taken within 60 days of the initial enforcement response. For all continuing violations, the response will include a compliance schedule.
- D. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.
- E. All violations meeting the criteria for Significant Noncompliance will be addressed with an enforceable order within 30 days of the identification of significant noncompliance.
- F. Violations observed by District field personnel will receive immediate attention and enforcement actions.

**Part VIII. INFORMAL AND FORMAL ENFORCEMENT MECHANISMS**Informal

Informal responses to violations include a phone call or a notice of violation. Each response will be documented in the industrial user's file indicating the date, time, involved parties, and the industrial user's reactions and planned response. An informal action will be initiated by the Pretreatment Coordinator within thirty (30) days of the noted noncompliance.

**Phone Call**

A phone call may be used to notify an industrial user of a violation that may be corrected

immediately and/or notify the industrial user that additional enforcement will be initiated if the violation is not corrected in a timely manner.

### **Notice of Violation**

A Notice of Violation is issued by the District to inform the industrial user that a pretreatment violation has taken place. The notice will contain the nature and description of the violation, the time and date of the violation, and the corrective actions which must be taken by the industrial user.

The following is a list of example violations for which an informal response will be initiated: (note: any recurrence or pattern of violations listed below will be met with a formal enforcement response.)

- Failure to apply for permit renewal
- Discharge limit violations:
  - - isolated, nonsignificant (first or second violations) that exceed local or categorical limits.
- Sampling, Monitoring, Reporting Deficiencies:
  - - Isolated or infrequent minor sampling, monitoring, or reporting deficiencies.
  - - Minor violations of analytical procedures.
- Violations of Compliance Schedules:
  - - Missed milestone date that will not affect other dates in a compliance schedule.
  - -Failure to submit compliance schedule report on time (up to 15 days late)

Formal

Formal enforcement actions include; Administrative Orders and compliance schedules, Civil penalties, Injunctive relief and Termination of service. These mechanisms are consistent with the requirements of the District's Sewer and Pretreatment Regulations and Massachusetts general laws. The decision to pursue formal action will be supported by a documented record of the violations and the compliance history of the industrial user. For each formal response a designated time frame will be given to comply with the enforcement action. If compliance with the enforcement action is not achieved within the specified time frame, the District will escalate the enforcement actions.

The following is a list of examples of violations for which a formal response will be initiated:

- Any violation not adequately addressed by the industrial user subsequent to an informal response.
- Instances of significant noncompliance as defined in Part IV. Of this plan.
- Failure to apply for a permit.
- Discharge Limit Violations:
  - Frequent or recurring discharges that exceed local or categorical limits by any amount.
  - Violations of wastewater discharge limits that meet the definition of significant non-compliance.
  - Slug load discharge
- Sampling, Monitoring, Reporting Deficiencies:
  - Failures to sample, monitor, or report.
  - Failure to report spill incident.
  - Falsification of monitoring reports

- Failure to install monitoring equipment.
- Recurring or significant spill incidents.

### **Administrative Orders and Compliance Schedules**

An administrative order requires certain actions to be performed by the industrial user and/or requires the industrial user to halt any noncomplying discharges or other violations. The order may include one or all of the following: cease and desist, show cause order, and compliance order. The order will be issued by the Engineer Director.

Cease and Desist Order – to cease and desist all violations and directs the industrial user to immediately comply with all requirements by taking any actions deemed appropriate by the District. The order may be issued immediately upon discovery of the problem or following a hearing. The order to cease and desist may be given by telephone in an emergency.

Show Cause Order – the District may issue an order to the industrial user to appear before the District, to explain its noncompliance and show cause why more severe enforcement actions against the user should not go forward.

Compliance Order – the District may issue a compliance order to direct the industrial user to achieve or restore compliance by a date specified in the order. It is issued unilaterally and need not be discussed with the industry in advance. The compliance order is issued when non compliance cannot be resolved without construction, repair, or process changes. The compliance order will document the noncompliance and state the required actions to be accomplished by specific dates, including interim and final reporting requirements. The District will track the industrial users performance against the milestones set in the compliance order and escalate the enforcement response as needed.

A compliance schedule with time tables for response and actions to be taken by the industrial user may be issued with each Compliance Order. (See Appendix D for Compliance Schedule)

### **Civil Penalties**

The District's Sewer and Pretreatment Regulations provide the legal authority to assess penalties for violations of the regulations in an amount of up to \$10,000. Each day in which any violation shall continue will be deemed a separate offense. Civil penalties will be assessed by the Engineer Director in accordance with the Enforcement Response Guide (Part XI.).

### **Injunctive Relief**

In seeking injunctive relief, the District will collect pertinent information sufficient to prove the violations at issue and will turn the information over to the legal counsel for case filing. The counsel asks the court to order the discharger to take specific actions (e.g., comply with pretreatment requirements) or to refrain from specific actions (e.g., cease a prohibited discharge). The civil suit for injunctive relief may be used when the industrial user is unlikely to successfully execute the steps that the District believes are necessary to achieve or maintain compliance, when the violation is serious enough to warrant court action to deter future similar violations, or when the danger presented by an industrial user's noncompliance does not permit lengthy negotiation of a settlement. If the District is able to show irreparable harm to the POTW operation, its workers, or the receiving stream as a result of an ongoing industrial user violation and is likely to succeed on the merits of the case, a court may issue a temporary restraining order or preliminary injunction restraining the industrial user from violating standards pending the outcome of the suit. Injunctive court relief may require such actions as installation of facilities needed to come into compliance or cessation of prohibited discharges.

### **Criminal Prosecution**

Several factors are considered to determine when violations should be addressed through criminal actions. These factors include the willfulness of the violation, negligence of the industrial user, the compliance history of the industrial user, nature and seriousness of the offense, and the adequacy of penalties and sanctions available through civil or administrative enforcement actions. For criminal enforcement responses, there must be proof beyond a reasonable doubt that the violations occurred through the "willful or negligent action" of the industrial user. Examples of violations for criminal actions are falsification and intentional discharges that cause harm to the POTW. Criminal action will be initiated by the District within sixty (60) days of the determination of a criminal violation.

### **Termination of Services**

The District may immediately and effectively halt or prevent any discharge of pollutants to the District which reasonably appears to present an imminent endangerment to the health or welfare of persons. The District also has authority and procedures (which shall include notice to the affected Industrial Users and an opportunity to respond) to halt or prevent any discharge to the District which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the District, as stated above.

**Part IX. APPLICATION OF THE ENFORCEMENT RESPONSE GUIDE (ERG)**

District personnel will determine the circumstances of each violation by an industrial user. The appropriate enforcement responses will be identified by district personnel as set forth in the enforcement response guide. The enforcement response will be selected based on the criteria outlined in the enforcement evaluation (Part VI). Personnel will evaluate the previous success of enforcement action against a particular industrial user. The District will weigh each of the factors in deciding whether to use a more or less stringent response. The enforcement response will then be implemented against the non-compliant industrial user and the progress will be tracked through increased compliance monitoring. When necessary, escalated responses will be performed as set forth in the ERG.

**Part X. LIST OF ABBREVIATIONS FOR THE ERG**

AO	-	Administrative Order
BMR	-	Baseline Monitoring Report
ED	-	Engineer Director
NOV	-	Notice of Violation
PM	-	Pretreatment Manager
PC	-	Pretreatment Coordinator
AdO	-	Administrative Officer



**Part XI. ENFORCEMENT RESPONSE GUIDE**UNAUTHORIZED DISCHARGES (No permit)

Noncompliance	Nature of Violation	Enforcement Response	Personnel
Unpermitted discharge	IU unaware of requirement: no harm to POTW and/or environment	NOV BMR	PC,PM
	IU unaware of requirement: harm to POTW and/or environment	AO with Civil Penalty	ED
	Failure to apply continues after notice by the POTW	Civil penalty Injunctive relief	ED
Nonpermitted discharge (failure to renew)	IU has not submitted application within 10 days of due date	Phone call NOV AO	PC

DISCHARGE LIMIT VIOLATION

Noncompliance	Nature of Violation	Enforcement Response	Personnel
Exceedance of local or Federal Standard (permit limit)	Isolated, not significant	Phone call,NOV Civil penalty	PC
	Isolated, significant (no harm)	NOV,AO to develop spill prevention plan,	
	Isolated, harm to POTW or the environment	Show cause Civil penalty	ED
	Recurring, no harm to POTW or the environ-	AO with Civil penalty	ED
	Recurring: significant (harm)	Civil penalty Injunctive relief	ED

MONITORING AND REPORTING VIOLATIONS

Noncompliance	Nature of Violation	Enforcement Response	Personnel
Reporting violation	Reporting is improperly signed or certified	Phone call or NOV	PC
	Report is improperly signed or certified after notice by POTW	AO with Civil Penalty	ED
	Isolated, not significant (e.g., 5 days late)	Phone call NOV Civil penalty	PC
	Significant (e.g., report late)	Civil penalty	ED
	Reports are always late or no reports at all	Escalated Civil penalty Injunctive Relief	ED
	BMR late/incomplete (e.g., 5 days late)(e.g., 30 days or more late)	NOV Civil penalty	PC,PM,ED
	Failure to report spill or changed discharge (no harm)	NOV	PC,PM
	Failure to report spill or changed discharge (results in harm)	Civil penalty or Injunctive relief	ED
	Repeated failure to report spills	Show cause order Terminate service	ED
	Falsification	Civil penalty Injunctive relief Terminate service Criminal Investigation	ED

## MONITORING AND REPORTING VIOLATIONS (Continued)

Noncompliance	Nature of Violation	Enforcement Response	Personnel
Failure to monitor correctly	Failure to monitor all pollutants as required by permit	NOV	PC
	Recurring failure to monitor	AO with Civil penalty Terminate service	ED
Improper sampling	Evidence of intent	Escalated Civil penalty Injunctive relief	ED
Failure to install monitoring equipment	Delay of less than 30 days	NOV	PC
	Delay of 30 days or more	AO to install with Civil penalty for each additional day	ED
	Recurring, violation of AO	Show cause order Injunctive relief Terminate service	ED
Compliance schedules (in permit)	Missed milestones by less than 30 days, or will affect the final milestone	NOV	PC
	Missed milestone by more than 30 days, or will affect final milestone (good cause for delay)	AO	ED
	Missed milestone by more than 30 days, or will affect final milestone (no good cause for delay)	Civil penalty	ED
	Recurring violation or violation of schedule in AO	Injunctive relief	ED

OTHER PERMIT VIOLATIONS

Noncompliance	Nature of Violation	Enforcement Response	Personnel
Waste streams are diluted in lieu of treatment	Initial violation	NOV	PC
	Recurring	AO or Civil penalty	ED
Failure to mitigate non-compliance or halt production	Does not result in harm	NOV	PC
	Does result in harm	AO with Civil penalty Terminate service	ED
Failure to properly operate and maintain pre-treatment facility	Does not result in harm	NOV	PC
	Does result in harm	AO with Civil penalty Terminate service	ED

VIOLATIONS DETECTED DURING SITE VISITS

Noncompliance	Nature of Violation	Enforcement Response	Personnel
Entry Denial	Entry denied or consent withdrawn, copies of record denied	Obtain warrant, Civil penalty to recover legal fees	ED
Illegal Discharge	No harm done to POTW or the environment	AO	PC,PM
	Discharges causes harm or evidence of intent or negligence	Civil penalty Criminal Investigation	ED
	Recurring, violation of AO	Civil penalty Terminate service	ED

VIOLATIONS DETECTED DURING SITE VISITS (Continued)

Noncompliance	Nature of Violation	Enforcement Response	Personnel
Improper sampling	Unintentional sampling at incorrect location	NOV	PC,PM
	Unintentionally using incorrect sample collection type	NOV	PC,PM
	Unintentionally using incorrect sample collection techniques	NOV	PC,PM
Inadequate record-keeping	Inspector finds files incomplete or missing (no evidence of intent)	NOV	PC,PM
	Recurring	AO with Civil penalty	ED
Failure to report additional monitoring	Inspection finds additional files	NOV	PC,PM
	Recurring	AO with Civil penalty	ED

**Part XII. PERIODIC REVIEW OF ENFORCEMENT RESPONSE GUIDE (ERG)**

Once the enforcement response guide has been adopted the District will, at least annually, assess its effectiveness in accomplishing the District's pretreatment program goals. This review will be conducted by the Pretreatment Manager and Coordinator and will be conducted;

- To ensure that violators return to compliance as quickly as possible
- To penalize noncompliant users for pretreatment violations
- To deter future noncompliance

To recover any additional expenses incurred by the District attributable to the noncompliance.

When the aspects of the guide that require improvements to increase its effectiveness the Pretreatment Coordinator will coordinate suggested revisions with Pretreatment Manager and Engineer Director and will incorporate any resulting amendments to the guide

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ENFORCEMENT RESPONSE PLAN 2008

**Appendix A**

PERMIT APPLICATION (Baseline Monitoring Report)

INDUSTRIAL PRETREATMENT PROGRAM REPORT FORM FOR PRIORITY POLLUTANT SCAN

SUMMARY OF PRIORITY POLLUTANT SCAN DATA FORM

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ENFORCEMENT RESPONSE PLAN 2008



**Appendix B**

INDUSTRIAL SELF-MONITORING REPORT

UPPER BLACKSTONE WPAD SELF-MONITORING SUBMITTAL FORM

Non-Discharge CERTIFICATION Statement

SLUG OR ACCIDENTAL DISCHARGE REPORT FORM

UPPER BLACKSTONE WPAD TELEPHONE CALL-IN SLUG REPORT FORM

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ENFORCEMENT RESPONSE PLAN 2008

**Appendix C**

UPPER BLACKSTONE WPAD Industrial Pretreatment Chain of Custody Forms

Sample of Label

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ENFORCEMENT RESPONSE PLAN 2008

**Appendix D**

Compliance Schedule