



**Fayetteville
Public Utilities**

Sewer Enforcement Response Plan



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SEWER ENFORCEMENT RESPONSE PLAN

FAYETTEVILLE PUBLIC UTILITIES

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INTRODUCTION

The Domestic Sewage Study (DSS) amendments to the General Pretreatment Regulations (Federal Register, July 14, 1990) require all Publicly Owned Treatment Works (POTW) with approved pretreatment programs to develop and implement an Enforcement Response Plan (ERP). The regulations require that the ERP contain detailed procedures of how the POTW will respond to instances of industrial user noncompliance.

At a minimum, the plan shall:

- (1) describe how the POTW will investigate instances of noncompliance;
- (2) describe the types of escalating enforcement actions the POTW will take in response to all anticipated types of industrial user violations and the time periods within which to initiate and follow up these actions;
- (3) identify by title the official(s) responsible for implementing each type of enforcement response; and
- (4) adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment standards and requirements.

In addition, the ERP should also contain:

- (1) criteria for scheduling periodic inspection and/or sampling visits to user sites (the U.S. Environmental Protection Agency (EPA) recommends that the date and location for routine inspections be established four to six months in advance);
- (2) forms and guidelines for documenting compliance data in a manner which will enable the information to be used as evidence in administrative and judicial enforcement actions;
- (3) systems to track due dates for self-monitoring reports, compliance schedule milestones, compliance status generally and pending enforcement actions (e.g. dates for show cause hearings or permit suspension/revocation proceedings); and
- (4) criteria, responsible personnel, and procedures to select and initiate an enforcement response from among those provided in the plan.

This ERP will replace the previously enacted version entitled *Sewer Enforcement Response Plan for Fayetteville, Tennessee Sewer Use Ordinance* (January 1991). The adoption of this updated ERP will alleviate many difficulties which the City of Fayetteville, Tennessee (City) through Fayetteville Public Utilities (FPU) has experienced in enforcing pretreatment programs by identifying the enforcement responsibilities of each job position involved in the pretreatment

program, enhancing FPU's reputation as a responsible public agency, and providing an opportunity to involve other public service regulatory agencies in the pretreatment program. A glossary of select terms has been included in Appendix A of this report.

An important distinction between this updated ERP and the previous version from 1991 is the allowance for the City, through FPU, to enforce the local Sewer Use Ordinance (SUO) on all users of the POTW, regardless of whether or not the user is subject to national categorical pretreatment standards or any other National, State, or Local pretreatment standards or requirements. Therefore, a user who violates or continues to violate any provision of the SUO, an individual wastewater discharge permit, or any other pretreatment standard or requirement shall be subject to the enforcement responses described in this document. A copy of the proposed SUO is provided in Appendix B of this report.

The following document details in a step-by-step fashion the procedures to be followed by FPU staff to identify, document, and respond to pretreatment violations. Once adopted, the plan will provide guidance in selecting initial and follow-up enforcement actions, indicate staff responsibilities for these actions, and specify appropriate time frames in which to take them.

The primary documents utilized in preparing this ERP were the EPA publication *Guidance for Developing Local Hearing Authority Enforcement Response Plans* (September 1989) and the Tennessee Department of Environment and Conservation (TDEC) publication *Model Pretreatment Ordinance* (June 2007). In addition, the Federal Regulation *40 CFR, Part 403* and the state regulation *Tennessee Code Annotated 69-3-101 through 129* were utilized as reference documents.

This plan is intended to be used as a reference tool to address instances of noncompliance. It must be used in conjunction with State and Federal regulations and the Fayetteville City Code. This plan does not supersede legal requirements, but serves as guidance for applying existing laws and regulations. Appendix C, Sewer Enforcement Response Guide, is intended to assist in assessing fair and uniform enforcement.

Responses to violations of the FPU Fats, Oils, and Grease (FOG) control program by food service establishments (restaurants, cafeterias, etc.) are covered in a separate Food Service Establishment Enforcement Response Guide.

GENERAL RESPONSIBILITIES

The purpose of this section is to establish the minimum responsibilities for each job position needed to implement enforcement activities initiated by FPU. It is the intention of FPU to move quickly and responsibly in all enforcement actions. The following guidelines will help to ensure that issues requiring enforcement are handled fairly and uniformly for all industrial, commercial, and residential users (users).

Technical and legal assistance can be obtained by FPU as required. Depending on the increasing severity of a pretreatment program violation, enforcement actions will be initiated by the Pretreatment Coordinator or Wastewater Treatment Plant (WWTP) Superintendent and may ultimately require action by the FPU General Manager and/or the FPU Board (Board). This ERP will clarify which FPU personnel are authorized to take particular enforcement responses.

FPU Pretreatment Coordinator

The Pretreatment Coordinator is primarily responsible for the day-to-day monitoring of the compliance status of industrial users. In addition, he will schedule sampling events for users and sampling events at the WWTP. Other tasks that the Pretreatment Coordinator is responsible for include screening compliance monitoring data including his own inspection and sampling report, detecting noncompliance, and documenting violations. At the request of the General Manager, the Pretreatment Coordinator may conduct hearings and take evidence pertaining to a Show Cause Order.

FPU Wastewater Treatment Plant Superintendent

The WWTP Superintendent (Superintendent) is responsible for compliance with the terms and conditions of the POTW's National Pollutant Discharge Elimination System (NPDES) permit and for the overall operation and maintenance of the POTW, including employee safety, protection of the collection system and treatment plant, effluent quality, and sludge use and disposal. At the request of the General Manager, the Superintendent may conduct hearings and take evidence pertaining to a Show Cause Order.

FPU General Manager

The General Manager is responsible for supervising the overall operation and maintenance of the water and sewer system. Whenever the General Manager has reason to believe that a violation of any provision of the pretreatment program or orders of FPU issued pursuant thereto has occurred, is occurring, or is about to occur, he may cause a written Notice of Violation (NOV) to be served upon the alleged violator or violators. The NOV shall specify the provision or provisions of the pretreatment program or order alleged to be violated or about to be violated and the facts alleged to constitute a violation thereof. The NOV may also order that necessary corrective action be taken within a reasonable time and shall inform the violators of the opportunity for a hearing before the Board. In addition, the General Manager may issue one or more of the following administrative orders: Cease and Desist Order, Compliance Order, Consent Order, or Show Cause Order. In the case of a Show Cause Order, the General Manager may himself conduct the hearing and take evidence, or may designate the Superintendent or Pretreatment Coordinator to do so.

FPU Board

The Board advises technical and managerial personnel on enforcement matters and orchestrates the judicial responses deemed necessary by the General Manager. Consequently, the General Manager and Board should be consulted on all matters requiring the interpretation of the SUO and the ERP. The General Manager will routinely copy the Board with administrative orders and penalty assessments since further responses against the user may involve judicial action. If any person discharges sewage, industrial wastes, or other wastes into the wastewater disposal system contrary to the provisions of the SUO, the Federal or State pretreatment requirements, or any order of the City or Board, the General Manager and Board may commence an action for appropriate legal and/or equitable relief in the Chancery Court of Lincoln County. In addition, the Board shall have and exercise the power, duty, and responsibility to hear appeals from orders and penalties or damages assessed by the General Manager, or permit revocations or modifications by him; and affirm, modify, or revoke such actions or orders of the General Manager.

Consultant

At the request of the General Manager, the Consultant will provide guidance in all aspects of compliance tracking and monitoring of industrial users. The Consultant will also provide technical expertise, when necessary, to assure that enforcement actions follow generally accepted protocol.

In accordance with the NPDES permit, the City is ultimately held liable by the State of Tennessee and EPA for its discharge to any surface or subsurface waters. Since the WWTP is not designed to treat much of the waste potentially discharged from industrial users, the City must enforce its pretreatment program through FPU. If the City does not enforce its pretreatment program aggressively enough, the State may intervene and enforce civil and/or criminal penalties against the industrial user, the City, or both.

RESPONSE TIMES AND APPROPRIATE RESPONSE

After the instance of noncompliance has been investigated and determined to be valid, the appropriate member of FPU personnel will initiate action.

Response Times

Once noncompliance is determined, the enforcement action must be taken in a timely manner to ensure that it is effective and fair. By acting quickly, the instance of noncompliance is easier to address and the likelihood of future noncompliance may be lessened. All violations will be identified and documented within ten working days of receiving compliance information. Initial enforcement responses (involving contact with the user and requesting information on corrective or preventative actions) will occur within 10 working days of the violation being documented. 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. Violations which threaten health, property or environment quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service. All violations meeting the criteria for significant violation will be addressed with an enforceable administrative order within 30 days of the identification of significant violation.

Selecting the Appropriate Response

Noncompliance identified as a result of monitoring, reporting, and assessing treatment requirements may range from minor incidents to major incidents. Each instance of noncompliance must be reviewed, documented, and properly addressed. The appropriate enforcement response will relate to the severity and duration of the violation, and whether the noncompliance resulted in a discharge permit violation. The following subsections address these factors.

Duration of the Violation:

FPU must evaluate the duration of the violation to determine the possible effects that may have occurred in the collection system and POTW. The assessment of each specific violation should take into account the volume of the discharge, the strength of the discharge, and the pollutant discharged.

Compliance History:

The compliance history of the facility is one of the most important factors to review prior to selecting the appropriate level of enforcement response. More aggressive enforcement actions should be taken when a facility has frequent violations. When an isolated violation occurs, the compliance history of the facility will be taken into account. FPU must also consider the effectiveness of previous enforcement actions before establishing the level of the next response.

Apparent Good Faith:

Congress expressed what is expected of a facility attempting to establish good faith efforts:

“The Act requires industry to take extraordinary efforts if the vital and ambitious goals of the Congress are to be met. This means that business as usual is not enough. Prompt, vigorous, and in many cases, expensive pollution control measures must be initiated and completed as promptly as possible. In assessing the good faith of a discharger, the discharger is to be judged against these criteria. Moreover, it is an established principle, which applies to this act, that administrative and judicial review are sought on the discharger’s own time.” (Legislative History of the Clean Water Act No. 95-14, Vol. 3 p. 463)

Based on this guidance, FPU will interpret the actions of a facility on a case by case basis. If a facility challenges a permit, contract, or applicable pretreatment standard and delays progress towards compliance, the facility assumes the risk that the permit, contract, or standard will be upheld on judicial review. A facility which follows business procedures as usual after enforcement action has been initiated and/or comes into compliance only after a decision adverse to their interest is upheld on judicial review cannot be considered to have acted in good faith.

If a facility appears to be acting in good faith to comply, FPU may choose a lower level enforcement response than one it would choose against a facility not acting in good faith. However, good faith does not eliminate the necessity of an enforcement action.

Discharge Permit Violation:

An instance of noncompliance that causes interference or pass-through of the POTW and results in a NPDES permit violation must be addressed with formal enforcement actions and penalties. This level of response is necessary to ensure that adequate treatment and compliance is achieved promptly. Enforcement actions may include injunctive measures in appropriate cases.

Severity of Violation:

Depending on its severity, even an isolated violation could threaten public health and/or the environment, damage public and private property, or threaten the integrity of the program. Examples of such violations are factors like a pH of 2 versus 5, 100 gallons versus 100,000 gallons, 5% over the limit versus 200% over the limit, failure to accurately report a violation, or reporting a violation 2 days late versus 30 days late.

Harm Caused:

Some violations may have negative impacts on the POTW itself. For example, they may result in significant increases in treatment costs, interfere with operations, harm the POTW personnel or equipment, or cause sludge contamination resulting in increased disposal costs. These violations should be met with a civil penalty and an order to correct the violation in addition to the recovery costs. In some severe instances, criminal action and/or suspension or revocation of a facility's wastewater discharge permit may be necessary.

ENFORCEMENT RESPONSES

In order to achieve a maximum degree of compliance by all users, FPU may use a wide range of enforcement responses. As mentioned in the previous sections, there are a variety of factors that should be considered before an enforcement response is implemented. Enforcement responses range from a written NOV to assessment of monetary penalties and termination of water and/or sewer service. During the course of reviewing a specific violation, it is important to remember that some intentional violations may constitute criminal activities, and under such circumstances FPU will consult attorneys and may seek assistance from the EPA, TDEC, and/or the Tennessee Attorney General's Office.

There are two groups of enforcement responses: administrative and judicial. Administrative enforcement includes NOVs, administrative orders, civil penalties, and suspension or termination of a user's sewer discharge to the POTW. Judicial enforcement includes civil litigation and criminal prosecution.

FPU shall maintain a progressive enforcement philosophy that addresses the violation at the lowest level with the least formality possible, beginning with a NOV. The goal is to achieve compliance for the facilities in question. All actions, regardless of level of informality, must be documented in writing and submitted to the General Manager for approval. All written notices of enforcement action will be sent by certified mail with a return receipt requested. Listed below are the levels of enforcement actions available ranging from informal to formal.

Notice of Violation (NOV)

When FPU finds that a user has violated, or continues to violate, any provision of the SUO, an individual wastewater discharge permit, or any other pretreatment standard or requirement, the General Manager may serve upon that user a written NOV. As a general rule, NOV's will be issued for instances of minor noncompliance and will serve as an official notification to the user that a violation has occurred. In the case of significant noncompliance, an NOV may be issued prior to issuing an administrative order or pursuing judicial remedies. Initial enforcement responses involving NOV's will occur within 10 working days of violation detection. Within 15 days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the General Manager. Submission of such a plan in no way relieves the user of liability for any violations occurring before or after receipt of the NOV. The NOV does not contain assessment of penalties or cost recovery. The NOV provides the user with an opportunity to correct the noncompliance on its own initiative rather than according to a schedule of actions determined by FPU, thus allowing for a cooperative environment between the user and FPU. The NOV documents the initial attempts by FPU to resolve the noncompliance. If the user does not return to compliance following receipt of the NOV, the General Manager should proceed to more stringent enforcement measures. Finally, the NOV demonstrates to the regulated community the viability of FPU's enforcement program. Authenticated copies of NOV's may serve as evidence in judicial proceedings.

Administrative Order

An administrative order is a document which orders the violator to perform a specific act or to refrain from an act. Types of administrative orders commonly used by FPU include of the following: Cease and Desist Order, Compliance Order, Consent Order, and Show Cause Order. Examples of these administrative orders can be found in Appendix D, Sample Administrative Orders, of this report.

A *Cease and Desist Order* directs a noncompliant user to immediately comply with all requirements and take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. A Cease and Desist Order should be used in situations in which the discharge could cause interference or pass through, or otherwise create an emergency situation. The order may be issued immediately upon discovery of the noncompliance or following a hearing. In an emergency, the order to cease and desist may be given by telephone. However, a subsequent written order should be served on the user, whether in person or by registered mail. If necessary, FPU may order immediate cessation of any discharge to its collection system, regardless of the user's compliance status. In emergency situations, a Cease and Desist Order may be used to suspend or permanently revoke industrial wastewater discharge permits. If the user fails to comply with the order, FPU may take independent action to halt the discharge, such as terminating water service or blocking the user's connection point. The advantage of a Cease and Desist Order is that it allows for immediate cessation of unauthorized discharges, thus halting the noncompliance and removing any threat to the POTW or receiving stream. The disadvantage of a Cease and Desist Order is that it may damage municipal/industrial relationships by forcing an industry to halt production before being given an opportunity to solve the problem.

A *Compliance Order* directs the noncompliant user to achieve or restore compliance by a date specified in the order. It is issued unilaterally and its terms need not be discussed with the user in advance. The Compliance Order is usually issued when noncompliance cannot be resolved without construction, repair, or process changes. Also, Compliance Orders are frequently used to require users to develop management practices, spill prevention programs, additional self-monitoring practices, and related system pretreatment program requirements to minimize the amount of pollutants discharged to the sewer. The Compliance Order should document the noncompliance and required actions to be accomplished by specific dates, including interim and final reporting requirements. In drafting the compliance schedule, FPU should be firm but

reasonable, taking into consideration all factors relevant to an appropriate schedule duration. Once the milestones are set, FPU must track the user's performance against them and escalate its enforcement response as needed. If the user does not come into compliance within the time specified, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. A Compliance Order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does it relieve the user of liability for any violation, including any continuing violations. The advantage of a Compliance Order is that when served upon a user who has been making good faith efforts to achieve compliance, the Compliance Order is an effective means of ensuring that necessary corrections are implemented. FPU may design compliance schedules, set milestone dates, stipulate contingent penalties or remedial actions, prescribe additional or supplementary reporting requirements, or order the user to achieve compliance by a certain date. The disadvantage is that without the user's involvement, the compliance schedule designed by FPU may not be feasible. Considerable time and effort may be required to enforce milestone dates and procedures that might have been better spent on negotiating the terms of a Consent Order.

A *Consent Order* embodies a judicially enforceable agreement between FPU and the noncompliant user designed to restore the user to compliant status. It normally contains the following three elements: compliance schedules, stipulated penalties or remedial actions, and signatures of both FPU and user representatives. The General Manager may enter into Consent Orders or other similar documents establishing an agreement with any user responsible for noncompliance. Such document shall include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. A Consent Order is appropriate when the user assumes responsibility for its noncompliance and is willing (in good faith) to correct its cause(s). The user need not admit the noncompliance in the text of the order. Thus, signing the order is neither an admission of liability for purposes of civil litigation nor a plea of guilty for purposes of criminal prosecution. However, FPU must make sure that the Consent Order prohibits future violations and provides for corrective action on the part of the user. In determining the terms to include in the Consent Order, FPU may take a user's extenuating circumstances (e.g., financial difficulties, technical problems, and other impediments to necessary corrective action) into consideration. The Consent Order should address every identified (and potential) deficiency in the user's compliance status at the time of the order. The advantage of a Consent Order is that it is generally the easiest order to draft since its terms have been agreed upon by both parties. These terms may include findings of show cause hearings or outcomes of confidential settlement negotiations. In addition, although

the provisions of a Consent Order reflect a voluntary agreement, the ability to enforce it is equal to that of a Cease and Desist Order. The disadvantage of a Consent Order is that the user has influence in drafting the agreement and the final terms may compromise FPU's desire for stringent enforcement. Additional disadvantages are that FPU may delay implementing additional enforcement measures while negotiating terms of the Consent Order, and the provisions of the Consent Order, unless carefully drafted, are subject to conflicting interpretations by the parties.

A Show Cause Order requires the noncompliant user to attend a meeting at a specified time and place to demonstrate why FPU should not take a proposed enforcement action against it. The meeting may also serve as a forum to discuss corrective action and compliance schedules. The Show Cause Order is typically issued after informal contacts or NOV's have failed to resolve the noncompliance. However, the Show Cause Order/Hearing can also be used to investigate violations of previous orders. According to the City's SUO, the Show Cause Hearing may be conducted by the General Manager, or in the case of an informal meeting, he may designate the task to the Pretreatment Coordinator or Superintendent. The hearing may be formal (i.e., conducted according to the rules of evidence, with verbatim transcripts and cross-examination of witnesses) and open to the public. If a formal hearing is held, the General Manager will typically put forth evidence of noncompliance. In response, the user may admit or deny the noncompliance, explain mitigating circumstances, demonstrate its eventual compliance, and describe all other corrective measures. During the hearing, the General Manager can explore the circumstances surrounding the noncompliance and evaluate the sufficiency of the evidence for subsequent civil or criminal actions. If the user does not understand the violation's nature (that is, what constitutes a violation under the SUO), the hearing can serve to educate the user while saving FPU litigation expenses. Alternately, FPU may choose to conduct an informal meeting or close it to the public. However, findings resulting from informal meetings should also be carefully documented. The General Manager must then determine whether further action is warranted and, if so, its nature and extent. The results of a formal Show Cause Hearing, along with any data and testimony submitted as evidence, are generally available to the public and may also serve as evidentiary support for future enforcement actions. The advantages of a Show Cause Order/Hearing are as follows: unlike judicial enforcement in which FPU must affirmatively prove the noncompliance, show cause hearings place the burden of proof on the user to show why its permit should not be suspended or revoked or why it should not be penalized or sued for its noncompliance; the hearing process allows the user to present its case, explain mitigating circumstances or criticize

the quality or accuracy of FPU's compliance information; the hearing can improve municipal/industrial relationships by promoting communication about noncompliance before judicial remedies are sought; and the hearing process gives FPU an opportunity to assemble evidence of noncompliance and make it a matter of public record, thus establishing documentation for future enforcement actions. A disadvantage of a Show Cause Order/Hearing is that it involves a greater amount of time and expenditure of resources to effectuate than cease and desist or Compliance Orders. Also, the hearing may allow a user an excessive length of time to achieve compliance, thereby presenting a disadvantage not only to the pretreatment program but also to other users bearing the costs of compliance.

Civil Penalties

Any user who has violated, or continues to violate, any provision of the SUO, an individual wastewater discharge permit, or any other Pretreatment Standard or Requirement shall be liable to FPU for a maximum civil penalty of \$10,000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of violation. A Civil Penalty is a monetary penalty assessed by the General Manager or Board for violations of pretreatment standards and requirements. Civil penalties are to be used as an escalated enforcement action and are punitive and are not related to a specific cost borne by FPU. Instead, the amount of the penalty should recapture any economic benefit gained by noncompliance and/or deter future violations. An Administrative Order is to be used to assess a civil penalty. Such assessments may be added to the user's next scheduled sewer service charge, and the General Manager shall have such remedies to collect these penalties as it has to collect other service charges. Any person or user desiring to dispute such penalties may secure a review of such assessment by filing with the General Manager a written petition setting forth the grounds and reasons for his objections and asking for a hearing in the matter involved before the General Manager and Board. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final. Upon receipt of a written petition from the alleged violator pursuant to this section, the General Manager shall give the petitioner thirty (30) days written notice of the time and place of the hearing, but in no case shall such hearing be held more than sixty (60) days from the receipt of the written petition, unless the General Manager and the petitioner agree to a postponement.

Emergency Suspension of Sewer Service

In the event of an actual or threatened discharge to the POTW of any pollutant which, in the opinion of the General Manager, presents or may present an imminent or substantial endangerment to the health or welfare of persons, or cause interference with the POTW, the General Manager or in his absence the person then in charge of the treatment works shall immediately notify the Board of the nature of the emergency. The General Manager shall also attempt to notify the user or other person causing the emergency and request their assistance in abating same. Following consultation with the aforementioned officials of the Board or in their absence such officials of the Board as may be available, the General Manager shall temporarily terminate the service of such user or users as are necessary to abate the condition when such action appears reasonably necessary. Such service shall be restored by the General Manager as soon as the emergency situation has been abated or corrected. (1979 Code, § 13-234)

Any user notified of a suspension of wastewater treatment service and/or the wastewater discharge permit shall immediately stop or eliminate its contribution, but upon petition to the Board, the user shall be afforded a hearing as soon as possible. In no case shall such hearing be held later than three (3) days from the receipt of such petition by the Board.

In the event of a user's failure to immediately comply voluntarily with the suspension order, the General Manager shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, the receiving stream, or endangerment to any individuals. The General Manager shall allow the user to recommence its discharge when the endangerment has passed unless termination proceedings are initiated against the user.

A user which is responsible, in whole or in part, for imminent endangerment shall submit a detailed written statement to the General Manager describing the causes of the harmful contribution and the measures taken to prevent any future occurrence. If a Show Cause Hearing is ordered by the General Manager, the written statement shall be submitted prior to such hearing.

Civil Action and Cost Recovery

Whenever any user has violated or continues to violate any provision of the SUO, an individual wastewater discharge permit, or any other pretreatment standard or requirement, the General Manager, through counsel, may petition the Court for the issuance of a preliminary or permanent injunction or both (as may be appropriate) which restrains or compels the activities on the part of the user. FPU may recover reasonable attorney's fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses and the cost of any actual damages incurred. In determining the amount of civil liability, the Court shall take into account all relevant circumstances including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factors as justice requires. Civil litigation is an appropriate response in three general scenarios: emergency situations where injunctive relief is necessary to halt or prevent discharges which threaten human health or the environment or interfere with the POTW; when efforts to restore compliance through cooperation with the user have failed and a court supervised settlement (consent decree) is necessary to enforce program requirements; or to uphold civil penalties and recover losses incurred due to the noncompliance. Whenever any assessment has become final because of a user's failure to appeal the FPU assessment, the General Manager may apply to the Chancery Court for a judgment and seek execution of such judgement. The court in such proceedings shall treat a failure to appeal such assessment as a confession of judgement in the amount of the assessment. The FPU General Manager shall have the same remedies to collect these fees as it has to collect other sewer service charges. The civil litigation process is discussed in more detail in EPA's *Guidance for Developing Control Authority Enforcement Response Plans* (September 1989).

Criminal Action

Criminal prosecution is the formal process of charging individuals and/or organizations with violations of ordinance provisions that are punishable, upon conviction, by fines and/or imprisonment. The purpose of criminal prosecution is to punish noncompliance established through court proceedings and to deter future noncompliance. Criminal prosecution is appropriate when FPU has evidence of noncompliance which shows criminal intent or criminal negligence. In other words, the user must have either intended to break the law or was so indifferent to the nature and implications of its act that it could be deemed criminally negligent.

Unless the State Attorney General can prove these elements, criminal prosecution is not a viable option. Criminal prosecution is recommended in cases involving repeated violations or knowing and willful violations, and when less formal efforts to restore compliance have failed. Criminal prosecution can proceed prior to, concurrently with, or subsequent to civil litigation. The criminal prosecution process is discussed in more detail in EPA's *Guidance for Developing Control Authority Enforcement Response Plans* (September 1989).

Tennessee State Law provides:

A user who willfully or negligently violates any provision of the SUO, an individual wastewater discharge permit, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00 per violation, per day or imprisonment for not more than one (1) year, or both.

A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to the SUO or individual wastewater discharge permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under the SUO shall, upon conviction, be punished by a fine of not more than \$1,000.00 per violation, per day or imprisonment for not more than one (1) year, or both.

In the event of a second conviction, the user shall be punished by a fine of not more than \$3,000.00 per violation, per day or imprisonment for not more than three (3) years, or both.

Suspension or Revocation of Permit

The General Manager may suspend or revoke the facility's wastewater discharge permit when necessary if, in the opinion of FPU, the discharge presents or may present potential or actual danger to persons and/or the environment, causes interference to the POTW, or causes the POTW to violate conditions of its NPDES permit.

Any permit issued under the SUO is subject to be revoked in whole or in part during its term for cause including, but not limited to, the following:

- (1) violation of any terms or conditions of the wastewater discharge permit or other applicable federal, state, or local law or regulation;

- (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
- (3) a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
- (4) refusal of reasonable access to the user's premise for the purpose of inspection or monitoring;
- (5) failure to notify the General Manager of significant changes to the wastewater prior to changed discharge;
- (6) falsifying self-monitoring reports and certification statements;
- (7) tampering with monitoring equipment;
- (8) failure to comply with the requirements of an enforcement notice or order;
- (9) operating with an expired wastewater discharge permit (unless timely application for renewal has been submitted); or
- (10) failure to provide advance notice of the transfer of business ownership.

Noncompliant users will be notified of the proposed termination of their wastewater discharge permit and be offered an opportunity to show cause why the proposed action should not be taken.

The General Manager may modify an individual wastewater discharge permit for good cause including, but not limited to, the following:

- (1) to incorporate any new or revised Federal, State, or local pretreatment standards or requirements, including changes in the POTW's pass-through limits or NPDES permit limitations;
- (2) to address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of the individual wastewater discharge permit issuance;
- (3) a change in the POTW that requires either a temporary or a permanent reduction of the authorized discharge;
- (4) information indicating that the permitted discharge poses a threat to the POTW, FPU personnel, or the receiving waters;
- (5) violation of the terms or conditions of the wastewater discharge permit;
- (6) misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in required reporting;

- (8) to correct typographical or other errors in the wastewater discharge permit; or
- (9) to reflect transfer of facility ownership or operation to a new owner or operator.

Annual Publication of Significant Violations

A list of significant violators during the previous 12 months shall be published annually by FPU in a newspaper of general circulation within the jurisdictions served by the POTW. The General Manager must authorize such publication. Such publication also may summarize any enforcement action taken against each entity listed during the 12-month period.

INSIGNIFICANT (MINOR) NONCOMPLIANCE

Insignificant Noncompliance is defined as relatively minor or infrequent violations of pretreatment standards or requirements. Instances of Insignificant Noncompliance will be responded to with a NOV. Examples of violations that may be addressed by a NOV are:

- (1) failure to file a permit renewal application but continuing to comply with the expired permit;
- (2) a reported spill with no known adverse affects;
- (3) isolated (once per six month period and not in consecutive sampling events), insignificant excessiveness (not more than 1.5 times the limit) of discharge limits;
- (4) inadvertently using incorrect sampling collection procedures;
- (5) failure to properly sign or certify monitoring reports (first instance within two year period);
- (6) failure to notify of slug load, which has no known adverse effects;
- (7) missing interim or final compliance deadline by 30 days or less;
- (8) filing a late report, including compliance schedule reports (less than 30 days late); or
- (9) any other violation which:
 - (a) causes no known adverse conditions in the POTW,
 - (b) is deemed insignificant by the Water and Sewer Department Manager, and
 - (c) is not defined as Significant Noncompliance by the Environmental Protection Agency in the General Pretreatment Regulations 40 CFR 403.

SIGNIFICANT NONCOMPLIANCE (SNC)

Significant Noncompliance (SNC) is determined at the beginning of each quarter based on the data of the previous six (6) months. For the purpose of this provision, a significant industrial user is in SNC if its violations meet one or more of the following criteria:

- (1) chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six month period exceed (by any magnitude) the pretreatment standard or requirement (including instantaneous limits) for the same pollutant parameter;
- (2) technical review criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements taken during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement (including instantaneous limits) times the applicable TRC for the same pollutant parameter (TRC = 1.4, or 40% over the limit, for BOD, TSS, fats, oil and grease; and 1.2, or 20% over the limit, for all other pollutants, except pH). TRC calculations for pH are not required;
- (3) any other violation of a pretreatment standard or requirement (instantaneous, daily maximum or longer-term average or narrative standard) that FPU believes has caused, along or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- (4) any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment and has resulted in FPU's exercise of its emergency authority to halt or prevent such a discharge;
- (5) failure to meet, by ninety days or more after the schedule date, of a compliance schedule milestone contained in a local control mechanism or enforcement order, for starting construction, completing construction, or attaining final compliance;
- (6) failure to provide, within forty-five days of the scheduled due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules,
- (7) failure to accurately report noncompliance; or
- (8) any other violation or group of violations (which may include violation of a BMP) which FPU determines may adversely affect the operation or implementation of the local pretreatment program. (1979 Code, § 13-239)

Generally, an isolated instance of noncompliance can be met with an informal response or a NOV. Any SNC violations should be responded to with an enforceable administrative order that requires a return to compliance by a specified deadline.

GUIDE TO APPENDIX C

The centerpiece of this ERP is the Sewer Enforcement Response Guide. This guide is a matrix which describes violations and indicates a range of appropriate enforcement options. EPA first introduced the concept of an enforcement response guide in its Pretreatment Compliance Monitoring and Enforcement (PCME) Guidance document. According to that guidance, an enforcement response guide serves two main functions:

- (1) Defines the range of appropriate enforcement actions based on the nature and severity of the violation and other relevant factors, and
- (2) Promotes consistent and timely use of enforcement remedies. In addition to eliminating uncertainty and confusion concerning enforcement, this consistency lessens the likelihood of a successful legal challenge based on charges of “selective enforcement” or harassment.

The purpose of the enforcement response guide is to anticipate the types of noncompliance that are likely to be encountered. It should anticipate as many types and patterns of violations as possible since the more violations it anticipates, the more useful the guide will be. Once these situations are identified, the officials within the system can proceed to the second step, identifying enforcement responses appropriate for each violation. However, it should be noted that any enforcement response is always limited to that authorized under State law and implemented in its SUO.

The enforcement response guide identifies types of violations, indicates initial and follow-up responses, and designates personnel and time frames for these responses. It should be used as follows:

- (1) locate the type of noncompliance in the first column and identify the most accurate description of the violation in column 2;
- (2) assess the appropriateness of the recommended response(s) in column 3;
- (3) use the following criteria to determine the appropriate penalty which falls within the recommended range noted in column 5 of the guide:
 - (a) duration and Severity of the Noncompliance,
 - (b) effects on the receiving stream and the POTW,
 - (c) compliance History of the user, and

- (d) apparent good faith of the user;
- (4) Apply the enforcement response to the user, specifying corrective actions, penalty amounts, and/or other actions required for the user. Column 4 identifies the responsible department personnel; and
- (5) Track the user's response and compliance status and follow-up with escalated enforcement action if a response is not received or violation continues.

All supporting documentation regarding violations and their enforcement actions should be maintained in each user's file. In addition, a list of industries exhibiting Significant Violations should be kept in a specified file and published annually in the local newspaper. The knowledge, intent, and/or negligence of the user should NOT be taken into consideration except when deciding to pursue criminal prosecution.

APPENDIX A

GLOSSARY

APPENDIX A

GLOSSARY

- ACT - The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.
- ADMINISTRATIVE ORDER - A document which orders the violator to perform a specific act or refrain from an act. For example, the order may require users to attend a show cause meeting, cease and desist discharging, or undertake activities pursuant to a compliance schedule.
- BOARD - The Fayetteville Public Utilities (FPU) Board as appointed by and working in conjunction with the City of Fayetteville.
- BURDEN OF PROOF - The duty of proving a disputed assertion or charge in court.
- CEASE AND DESIST ORDER - An administrative order directing a user to immediately halt illegal or unauthorized discharges.
- CITY - The City of Fayetteville, Tennessee; the Board of Mayor and Aldermen for the City of Fayetteville, Tennessee; and/or FPU acting as an agent of the City of Fayetteville.
- CIVIL LITIGATION - A lawsuit filed in a civil court. If the court rules that the defendant user violated the law, the court may uphold civil penalties or impose injunctions.
- CIVIL PENALTY - A punitive monetary charge unrelated to actual treatment costs which is assessed by the General Manager rather than a court.
- COMPLIANCE ORDER - An administrative order directing a noncompliant user to achieve or restore compliance by a date specified in the order.
- COMPLIANCE SCHEDULE - A schedule of required activities (also called milestones) necessary for compliance with all pretreatment program requirements.
- CONSENT DECREE - A court supervised settlement agreement, the violation of which may be considered contempt of court.
- CONSENT ORDER - An administrative order embodying a legally enforceable agreement between FPU and the noncompliant user designed to restore the user to compliance status.
- CRIMINAL INTENT - A state of mind which is a necessary element of all crimes. Criminal Intent may be general (intent to perform an act) or specific (intent to break a law).
- CRIMINAL NEGLIGENCE - Negligence of such a character, or occurring under such circumstances, as to be punishable as a crime (such as a flagrant and reckless disregard of the safety of others or willful indifference to the injury likely to follow).
- CRIMINAL PROSECUTION - A criminal charge brought by FPU against an accused violator. The alleged criminal action may be a misdemeanor or a felony and is defined as

willful, negligent, knowing, and/or intentional violations. A court trial-by-jury is generally required and upon conviction, punishment may include a monetary penalty, imprisonment, or both.

- **DIRECT DISCHARGE** - The discharge of treated or untreated wastewater directly to the waters of the State of Tennessee.
- **DISCOVERY** - A variety of pretrial devices used by one party to obtain relevant facts and information about the case from the other party.
- **DOMESTIC WASTEWATER** - Wastewater that is generated by a single family, apartment or other dwelling unit or dwelling unit equivalent containing sanitary facilities for the disposal of wastewater and used for residential purposes only.
- **FEES** - A schedule of charges imposed to recover treatment costs (not punitive in nature).
- **FINE** - A punitive monetary charge for a violation of the law. Often used synonymously with "penalty," although the term "fine" generally implies the use of judicial rather than administrative procedures.
- **GARBAGE** - Shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.
- **GENERAL MANAGER** - The person appointed by the FPU Board to supervise all departments of FPU.
- **GOOD FAITH EFFORT OR PROGRESS** - Prompt and vigorous pollution control measures undertaken by the discharger which shows that extraordinary efforts (not a "business-as-usual" approach) have been made to achieve compliance.
- **INDIRECT DISCHARGE** - The discharge or the introduction of nondomestic pollutants from any source regulated under Section 307(b) or (c) of the Act (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).
- **INDUSTRIAL USER** - A source of indirect discharge which does not constitute a "discharge of pollutants" under regulations issued pursuant to Section 402 of the Act (33 U.S.C. 1342).
- **INJUNCTION, INJUNCTIVE RELIEF** - A court order which restrains or compels action by the industrial user.
- **INTERFERENCE** - A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal, or exceeds the design capacity of the POTW or the collection system.
- **ISOLATED** - Frequency not exceeding once per six-month period, and not in consecutive sampling events.
- **JUDICIAL ACTION OR CASE** - An enforcement action that involves a court. (The action may either be civil or criminal in nature).

- JURISDICTION - The extent of authority of a governmental entity's power to make and enforce laws.
- LITIGATION - An enforcement action brought in a judicial (court) forum.
- LOCAL LIMIT - Specific discharge limits developed and enforced by FPU upon industrial users to implement the general and specific discharge prohibitions listed in Tennessee Rule 1200-4-14.05(1)(a) and (2).
- MISDEMEANOR - A crime punishable by imprisonment of less than one year (depending on State law).
- NOTICE OF VIOLATION - A FPU document notifying an industrial user that it has violated pretreatment standards and requirements. Generally used when the violation is relatively minor and FPU expects the violation to be corrected within a short period of time.
- NATIONAL POLLUTANT DISCHARGE ELIMINATIONS SYSTEM (NPDES) - The program for issuing, conditioning, and denying permits for the discharge of pollutants from point sources into navigable waters, the contiguous zone, and the oceans pursuant to Section 402 of the Federal Water Pollution Control Act as amended.
- PENALTY - A monetary or other punitive measure, usually associated with a court action. For purposes of this manual, the term is used synonymously with fine.
- PERSON - Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other assigns. The masculine gender shall include the feminine; the singular shall include the plural where indicated by the context.
- pH - The logarithm (Base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- POLLUTION - The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.
- POLLUTANT - Any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, municipal, agricultural, and industrial waste, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).
- PRETREATMENT OR TREATMENT - The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to, or in lieu of introducing such pollutants into a POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment Standard.
- PRETREATMENT REQUIREMENTS - Any substantive or procedural requirement related to pretreatment imposed on an industrial user, other than a pretreatment standard.

- **PRETREATMENT STANDARD OR STANDARDS** - Prohibited discharge standards, categorical pretreatment standards, and local limits.
- **PUBLICLY OWNED TREATMENT WORKS OR POTW** - A system of conveyances and treatment for sewage and industrial wastes. Also refers to the government officials responsible for operation and maintenance of the collection system or treatment plant and the administration of the pretreatment program.
- **RECURRING** - Frequency other than isolated.
- **“SHALL” OR “WILL”** is mandatory; “May is permissive.
- **SHOW CAUSE ORDER** - An administrative order directing a noncompliant user to appear before the Control Authority, explain its noncompliance, and show cause why more severe enforcement actions against the user should not go forward.
- **SIGNIFICANT VIOLATION** - Criteria used by FPU to identify important violations and/or patterns of noncompliance. This criteria is used to establish enforcement priorities and comply with special reporting requirements.
- **STATE** - State of Tennessee.
- **TERMINATION OF SERVICE** - A physical blockage of the sewer connection to a noncompliant user or issuance of a formal notice of termination to the industrial user.
- **TESTIMONY** - A solemn declaration made by a witness under oath in response to interrogation by a lawyer or public official which is used as evidence.
- **USER** - Any person who contributes, causes or permits the contribution of wastewater into the city's POTW.
- **WASTEWATER** - The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, and institutions, whether treated or untreated, which is contributed into or permitted to enter the POTW.

APPENDIX B
PROPOSED SEWER USE ORDINANCE

APPENDIX C
SEWER ENFORCEMENT RESPONSE GUIDE

ABBREVIATIONS

B	Fayetteville Public Utilities (FPU) Board
GM	Fayetteville Public Utilities (FPU) General Manager
NOV	Notice of Violation
POTW	Publically Owned Treatment Works
PC	FPU Pretreatment Coordinator
WWS	FPU Wastewater Treatment Plant Superintendent

UNAUTHORIZED DISCHARGE (NO PERMIT)

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personnel</u>	<u>Penalty (\$)</u>
1. Unpermitted Discharge	User unaware of discharge requirements; No harm to the POTW or environment	<ul style="list-style-type: none"> ▶ NOV with Permit Application ▶ Administrative Order with Penalty 	PC, WWS GM	100
	User unaware of discharge requirements; Harm to the POTW or environment (Significant Noncompliance)	<ul style="list-style-type: none"> ▶ Emergency Suspension of Service ▶ NOV with Permit Application ▶ Administrative Order with Penalty ▶ Civil Action 	GM, B PC, WWS GM GM, B	0 - 10,000
	User fails to submit permit application within deadline specified in the NOV (Significant Noncompliance)	<ul style="list-style-type: none"> ▶ Administrative Order with Penalty ▶ Criminal Investigation ▶ Terminate Service 	GM GM, B GM, B	500 - 1,000
2. Failure to Renew Permit	User has not submitted renewal application within 10 days of due date	<ul style="list-style-type: none"> ▶ Phone Call and NOV ▶ Administrative Order with Penalty ▶ Terminate Service 	PC, WWS GM GM, B	500 - 1,000

DISCHARGE LIMIT VIOLATION

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personnel</u>	<u>Penalty (\$)</u>
1. Exceeds local, state, or federal standard (permit limit) or Prohibited Discharge Violations	Isolated, not significant	<ul style="list-style-type: none"> ▶ Phone Call and NOV 	PC,WWS	
	Isolated and Significant; No harm to POTW or environment; Exceed the limits or TRC of a single effluent limit	<ul style="list-style-type: none"> ▶ Administrative Order to develop spill prevention plan with Penalty 	GM	100 - 500
	Isolated and Significant; Harm to POTW or environment	<ul style="list-style-type: none"> ▶ Emergency Suspension of Service ▶ Administrative Order with Penalty ▶ Civil Action 	GM, B GM GM, B	1,000 - 5,000
	Recurring; No harm to POTW or environment	<ul style="list-style-type: none"> ▶ Administrative Order with Penalty 	GM	500 - 1,000

DISCHARGE LIMIT VIOLATION (Continued)

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personnel</u>	<u>Penalty (\$)</u>
	Recurring and Significant; Harm to the POTW or environment	<ul style="list-style-type: none"> ▶ Emergency Suspension of Service ▶ Administrative Order with Penalty ▶ Civil Action ▶ Criminal Investigation ▶ Terminate Service 	GM, B GM GM, B GM, B GM, B	1,000 - 5,000
2. Exceeds interim limits (categorical or local).	Without known damages	<ul style="list-style-type: none"> ▶ NOV ▶ Administrative Order 	PC, WWS GM	
	Results in known damages to POTW or environment (Significant Noncompliance)	<ul style="list-style-type: none"> ▶ Emergency Suspension of Service ▶ Administrative Order with Penalty ▶ Civil Action ▶ Criminal Investigation ▶ Terminate Service 	GM, B GM GM, B GM, B GM, B	500 - 1,000
3. Reported Slug load	Isolated without known damage	<ul style="list-style-type: none"> ▶ NOV ▶ Administrative Order with Penalty 	PC, WWS GM	100 - 500
	Isolated with known interference, pass through, or damage (Significant Noncompliance)	<ul style="list-style-type: none"> ▶ Emergency Suspension of Service ▶ Administrative Order with Penalty ▶ Civil Action ▶ Criminal Investigation ▶ Terminate Service 	GM, B GM GM, B GM, B GM, B	500 - 1,000
	Recurring (Significant Noncompliance)	<ul style="list-style-type: none"> ▶ Administrative Order with Penalty ▶ Criminal Investigation ▶ Terminate Service 	GM GM, B GM, B	1,000 - 5,000

MONITORING AND REPORTING VIOLATIONS				
<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personnel</u>	<u>Penalty (\$)</u>
1. Reporting Violation	Report is improperly signed or certified	▶ Phone Call and NOV	PC, WWS	
	Report is improperly signed or certified after notice by the POTW	▶ Administrative Order	GM	
	Isolated, not significant (e.g., 5 days late)	Phone call and/or informative letter	PC, WWS	
	(Not significant) report 15 to 30 days late	Phone call and NOV	PC, WWS	
	(Not significant) incomplete report 15 days late	Phone call and/or informative letter	PC, WWS	
	(Not significant) incomplete report 15 to 45 days late	Phone call and NOV	PC, WWS	
	(Significant) incomplete report over 45 days late	Administrative order with escalated penalty per additional day	GM	100-500
	Significant (e.g., report 30 days or more late)	▶ Administrative Order with escalated penalty per additional day	GM	100 - 500
	Reports are consistently late or no reports are submitted at all	▶ NOV and Meeting ▶ Administrative Order with Penalty ▶ Criminal Investigation	PC, WWS GM GM, B	500 - 1,000
	Failure to report spill or changed discharge (no harm)	▶ NOV ▶ Administrative Order with Penalty	PC, WWS GM	100 - 500
	Failure to report spill or changed discharge (harm caused)	▶ Administrative Order with Penalty ▶ Civil Action ▶ Criminal Investigation	GM GM, B GM, B	500 - 1,000
	Repeated failure to report spills	▶ Administrative Order with Penalty ▶ Terminate Service	GM GM, B	1,000 - 5,000

MONITORING AND REPORTING VIOLATIONS (Continued)

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personnel</u>	<u>Penalty (\$)</u>
	Frequent or continued violation (Significant Noncompliance)	<ul style="list-style-type: none"> ▶ Administrative Order with Penalty ▶ Criminal Investigation 	GM GM, B	500 - 1,000
	Known environmental or POTW damage results (Significant Violation)	<ul style="list-style-type: none"> ▶ Administrative Order with Penalty ▶ Civil Action ▶ Terminate Service ▶ Criminal Investigation 	GM GM, B GM, B GM, B	1,000 - 5,000
	Minor sampling, monitoring, or reporting deficiencies (computation or typo-graphical errors); Isolated or infrequent	▶ Phone call and NOV; Corrections to PC,WWS be made on the next submittal		
	Major or gross sampling, monitoring, or reporting, deficiencies (missing information); Isolated or infrequent	▶ NOV or Administrative Order; Corrections to be made on the next submittal	PC, WWS, GM	
	Major or gross reporting deficiencies continued; Remains uncorrected 30 days or more (Significant Noncompliance)	<ul style="list-style-type: none"> ▶ Administrative Order with Penalty ▶ Civil Action ▶ Criminal Investigation 	GM GM, B GM, B	500 - 2,500
2. Failure to monitor	Failure to monitor all pollutants as required by permit	<ul style="list-style-type: none"> ▶ NOV ▶ Administrative Order 	PC, WWS GM	
	Recurring failure to monitor	<ul style="list-style-type: none"> ▶ Administrative Order with Penalty ▶ Criminal Investigation 	GM GM, B	500 - 2,500
3. Improper Sampling	Evidence of intent	<ul style="list-style-type: none"> ▶ Criminal investigation ▶ Administrative Order with Penalty ▶ Terminate service 	GM, B GM GM, B	100 - 500

MONITORING AND REPORTING VIOLATIONS (Continued)

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personnel</u>	<u>Penalty (\$)</u>
4. Failure to install monitoring equipment	Delay of less than 30 days	▶ NOV	PC, WWS	
	Delay of 30 days or more	▶ Administrative Order to install; Penalty for each additional day	GM	500 - 2,500
	Recurring; Violation of Administrative Order	▶ Civil Action ▶ Criminal investigation ▶ Terminate service	GM, B GM, B GM, B	
5. Compliance Schedules	Missed milestone by less than 30 days; Will not affect final milestone	▶ NOV ▶ Administrative Order with Penalty	PC, WWS GM	100 - 500
	Missed milestone by more than 30 days; Will affect final milestone (no good cause for delay)	▶ Administrative Order with Penalty ▶ Terminate service	GM GM, B	500 - 1,000
	Recurring violation or violation of schedule in Administrative Order	▶ Civil Action ▶ Criminal investigation ▶ Terminate service	GM, B GM, B GM, B	

VIOLATIONS DETECTED DURING SITE VISITS				
<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personnel</u>	<u>Penalty (\$)</u>
1. Entry Denial	Entry denied or consent withdrawn. Copies of records denied.	▶ Obtain warrant and return to IU	GM, B	
2. Illegal Discharge	No harm to POTW or environment	▶ NOV ▶ Administrative Order with Penalty	PC, WWS GM	500 - 1,000
	Discharge causes harm or evidence of intent/negligence	▶ Emergency Suspension of Service ▶ Administrative Order with Penalty ▶ Civil Action ▶ Criminal investigation	GM, B GM GM, B GM, B	1,000 - 5,000
	Recurring, violation of Administrative Order	▶ Terminate service	GM, B	
3. Improper Sampling	Unintentionally sampling at incorrect location	▶ NOV ▶ Administrative Order	PC, WWS GM	
	Unintentionally using incorrect sample type	▶ NOV ▶ Administrative Order	PC, WWS GM	
	Unintentionally using incorrect sample collection techniques	▶ NOV ▶ Administrative Order	PC, WWS GM	
	Recurring	▶ Administrative Order with Penalty	GM	500 - 1,000
4. Inadequate recordkeeping	Inspector finds files incomplete or missing (no evidence of intent)	▶ NOV	PC, WWS	
	Recurring	▶ Administrative Order with Penalty	GM	500 - 1,000
5. Failure to report additional monitoring	Inspection finds additional files	▶ NOV	PC, WWS	

APPENDIX D
SAMPLE ADMINISTRATIVE ORDERS

EXAMPLE NOV
FAYETTEVILLE PUBLIC UTILITIES
CITY OF FAYETTEVILLE

IN THE MATTER OF)
)
NAME OF INDUSTRY) **NOTICE OF VIOLATION**
ADDRESS)
)
)
)
)

LEGAL AUTHORITY

The following findings are made and notice issued pursuant to the authority vested in the General Manager, under Section ___ of the City's Sewer Use Ordinance. This order is based on findings of violation of the conditions of the wastewater discharge permit issued under Section of the City's Sewer Use Ordinance.

FINDINGS

1. City of Fayetteville through Fayetteville Public Utilities is charged with construction, maintenance, and control of the sewer system and treatment works.
2. To protect the sewer system and treatment works. City of Fayetteville through Fayetteville Public Utilities administers a pretreatment program.
3. Under this pretreatment program. **[Name of Industry]** was issued a discharge permit.
4. The discharge permit issued to **[Name of Industry]** contained numerical limits on the quality of pollutants which **[Name of Industry]** could discharge and self monitoring requirements.
5. On **[Date]** pollutant analysis revealed that the quantity of **[pollutant]** exceeded the permit limitation.

NOTICE

THEREFORE, BASED ON THE ABOVE FINDINGS, [NAME OF INDUSTRY] IS HEREBY NOTIFIED THAT:

1. It is in violation of its discharge permit and the sewer use ordinance of the City of Fayetteville.

Signed: _____

[Name]
General Manager
[Address]

EXAMPLE CEASE AND DESIST ORDER

FAYETTEVILLE PUBLIC UTILITIES

CITY OF FAYETTEVILLE

IN THE MATTER OF

**NAME OF INDUSTRY
ADDRESS**

)
)
)
)
)
)
)

CEASE AND DESIST ORDER

LEGAL AUTHORITY

The following findings are made and order issued pursuant to the authority vested in the General Manager, under Section ___ of the City’s Sewer Use Ordinance. This order is based on findings of violation of the conditions of the wastewater discharge permit issued under Section of the City’s Sewer Use Ordinance.

FINDINGS

1. **[Industry]** discharges nondomestic wastewater containing pollutants into the sanitary sewer system of the City of _____.
2. **[Industry]** is a “significant industrial user” as defined by Section ___ of the City’s Sewer Use Ordinance.
3. **[Industry]** was issued a wastewater discharge permit on January 1, 1988 which contains prohibitions, restrictions, and other limitations on the quality of the wastewater it discharges to the sanitary sewer.
4. Pursuant to the ordinance and the above-referenced permit, data is routinely collected or submitted on the compliance status of **[Industry]**.
5. This data shows that **[Industry]** has violated the Sewer Use Ordinance in the following manner:
 - a. **[Industry]** has continuously violated its permit limits for copper and zinc in each sample collected between January 1986 and January 1989.
 - b. **[Industry]** has also failed to comply with an administrative compliance order requiring the installation of a pretreatment system and the achievement of compliance with its permit limits by July 1, 1989.
 - c. **[Industry]** has failed to appear at a show cause hearing pursuant to an order requiring said attendance.

ORDER

THEREFORE, BASED ON THE ABOVE FINDINGS, [INDUSTRY] IS HEREBY ORDERED TO:

1. Within 24 hours of receiving this order, cease all nondomestic discharges into the City's sanitary sewer. Such discharges shall not recommence until such time as **[Industry]** is able to demonstrate that it will comply with its current permit limits.
2. Failure to comply with this order may subject **[Industry]** to having its connection to the sanitary sewer sealed by the City, and assessed the costs therefore.
3. Failure to comply with this order shall also constitute a further violation of the sewer use ordinance and may subject **[Industry]** to civil or criminal penalties or such other enforcement response as may be appropriate.
4. This order, entered this 12th day of August, 1989, shall be effective upon receipt by **[Industry]**.

Signed: _____

[Name]
General Manager
[City] Municipal Building
[Address]

EXAMPLE COMPLIANCE ORDER
FAYETTEVILLE PUBLIC UTILITIES
CITY OF FAYETTEVILLE

IN THE MATTER OF)	
)	ADMINISTRATIVE
NAME OF INDUSTRY)	
ADDRESS)	COMPLIANCE ORDER
)	
)	
)	

LEGAL AUTHORITY

The following findings are made and order issued pursuant to the authority vested in the General Manager, under Section ___ of the City’s Sewer Use Ordinance. This order is based on findings of violation of the conditions of the wastewater discharge permit issued under Section of the City’s Sewer Use Ordinance.

FINDINGS

1. **[Industry]** discharges nondomestic wastewater containing pollutants into the sanitary sewer system of the City of _____ (thereafter “city”).
2. **[Industry]** is a “significant industrial user” as defined by Section ___ of the City’s Sewer Use Ordinance.
3. **[Industry]** was issued a wastewater discharge permit on January 1, 1988 which contains prohibitions, restrictions, and other limitations on the quality of the wastewater it discharges to the sanitary sewer.
4. Pursuant to the ordinance and the above-referenced permit, data is routinely collected or submitted on the compliance status of **[Industry]**.
5. This data shows that **[Industry]** has violated its wastewater discharge permit in the following manner:
 - a. **[Industry]** has violated its permit limits for copper and zinc in each sample collected between January 1988 and January 1989 for a total of 24 separate violations of the permit.
 - b. **[Industry]** has failed to submit all periodic compliance reports due since March 31, 1989.
 - c. All of these violations satisfy the City’s definition of significant violation.

ORDER

THEREFORE, BASED ON THE ABOVE FINDINGS, [INDUSTRY] IS HEREBY ORDERED TO:

1. Within 180 days, install pretreatment technology which will adequately treat **[Industry]**'s wastewater to a level which will comply with its wastewater discharge permit.
2. Within 5 days, submit all periodic compliance reports due since March 31, 1989.
3. Within 10 days, pay to the cashier's office of Fayetteville Public Utilities, a fine of \$2,000.00 for the above-described violations in accordance with Section ___ of the Sewer use Ordinance.
4. Report, on a monthly basis, the wastewater quality and the corresponding flow and production information as described on page 9 of the wastewater discharge permit for a period of one year from the effective date of this order.
5. All reports and notices required by this order shall be sent, in writing, to the following address:

General Manager
[Address]

6. This order does not constitute a waiver of the wastewater discharge permit which remains in full force and effect. The City of _____ reserves the right to seek any and all remedies available to it under Section _____ of the Sewer Use Ordinance for any violation cited by this order.
7. Failure to comply with the requirements of this order shall constitute a further violation of the sewer use ordinance and may subject **[Industry]** to civil or criminal penalties or such other appropriate enforcement response as may be appropriate.
8. This order, entered this 19th day of May, 1989, shall be effective upon receipt by **[Industry]**.

Signed: _____

[Name]
General Manager
[Address]

EXAMPLE CONSENT ORDER
FAYETTEVILLE PUBLIC UTILITIES
CITY OF FAYETTEVILLE

IN THE MATTER OF)	
)	GENERAL MANAGER
NAME OF INDUSTRY)	ADDRESS
ADDRESS)	
)	
)	
)	

CONSENT ORDER

WHEREAS, the City of Fayetteville through Fayetteville Public Utilities, pursuant to the powers, duties and responsibilities vested in and imposed upon the General Manager by provisions of the City's Sewer Use Ordinance, have conducted an ongoing investigation of **[Industry]**, and have determined that:

1. The City owns and operates a wastewater treatment plant which is adversely impacted by discharges from industrial users, including **[Industry]**, and has implemented a pretreatment program to control such discharges.
2. **[Industry]** has consistently violated the pollutant limits in its wastewater discharge permit as set forth in Exhibit 1, attached hereto.
3. Therefore, to ensure that **[Industry]** is brought into compliance with its permit limits at the earliest possible date, **IT IS HEREBY AGREED AND ORDERED, BETWEEN [Industry] AND THE GENERAL MANAGER FOR FAYETTEVILLE PUBLIC UTILITIES, that [Industry] shall:**
 - a. By July 15, 1989, obtain the services of a licensed professional engineer specializing in wastewater treatment for the purpose of designing a pretreatment system which will bring **[Industry]** into compliance with its wastewater discharge permit.
 - b. By September 30, 1989, submit plans and specifications for the proposed pretreatment system to the City for review.
 - c. By December 31, 1989, install the pretreatment system in accordance with the plans and specifications submitted in item b above.
 - d. By January 15, 1990, achieve compliance with the limits set forth in Exhibit 1.
 - e. **[Industry]** shall pay \$1,000 per day for each and every day it fails to comply with the schedule set out in items a-d above. The \$1,000 per day penalty shall be paid to the cashier of the Division of Sewer Services within 5 days of being demanded by the City.

4. In the event **[Industry]** fails to comply with any of the deadlines set forth, **[Industry]** shall, within one (1) working day after expiration of the deadline, notify the City in writing. This notice shall describe the reasons for **[Industry]**'s failure to comply, the additional amount of time needed to complete the remaining work, and the steps to be taken to avoid future delays. This notification in no way excuses **[Industry]** from its responsibility to meet any later milestones required by this Consent Order.
5. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve **[Industry]** of its obligation to comply with its wastewater discharge permit which remains in full force and effect. The City reserves the right to seek any and all remedies available to it under Section ____ of the City's Sewer Use Ordinance for any violation cited by this order.
6. Violation of this Consent Order shall constitute a further violation of the City's Sewer Use Ordinance and subjects **[Industry]** to all penalties described by Section ____ of the Sewer Use Ordinance.
7. Nothing in this Consent Order shall be construed to limit any authority of the City to issue any other orders or take any other action which it deems necessary to protect the wastewater treatment plant, the environment or the public health and safety.

SIGNATORIES

FOR [INDUSTRY]

Date

Name
[Industry]

FOR FAYETTEVILLE PUBLIC UTILITIES

Date

Name
General Manager
Address

EXAMPLE SHOW CAUSE ORDER
FAYETTEVILLE PUBLIC UTILITIES
CITY OF FAYETTEVILLE

IN THE MATTER OF)	
)	ADMINISTRATIVE
[NAME OF INDUSTRY])	
ADDRESS)	SHOW CAUSE ORDER
)	
)	
)	

LEGAL AUTHORITY

The following findings are made and order issued pursuant to the authority vested in the General Manager, under Section ___ of the City's Sewer Use Ordinance. This order is based on findings of violation of the conditions of the wastewater discharge permit issued under Section of the City's Sewer Use Ordinance.

FINDINGS

1. **[Industry]** discharges nondomestic wastewater containing pollutants into the sanitary sewer system of the City of _____ (thereafter "city").
2. **[Industry]** is a "significant industrial user" as defined by Section ___ of the City's Sewer Use Ordinance.
3. **[Industry]** was issued a wastewater discharge permit on January 1, 1988 which contains prohibitions, restrictions, and other limitations on the quality of the wastewater it discharges to the sanitary sewer.
4. Pursuant to the ordinance and the above-referenced permit, data is routinely collected or submitted on the compliance status of **[Industry]**.
5. This data shows that **[Industry]** has violated its wastewater discharge permit in the following manner:
 - a. **[Industry]** has violated its permit limits for copper and zinc in each sample collected between January 1988 and January 1989 for a total of 24 separate violations of the permit.
 - b. **[Industry]** has failed to submit a periodic compliance report due March 31, 1989.
 - c. All of these violations satisfy the City's definition of significant violation.

ORDER

THEREFORE, BASED ON THE ABOVE FINDINGS, [INDUSTRY] IS HEREBY ORDERED TO:

1. Appear at a meeting with the Superintendent of Sewer Services to be held on June 21, 1989, at 2:00 p.m., in room 211 of the Municipal Building.
2. At this meeting, **[Industry]** must demonstrate why the City should not pursue a judicial enforcement action against **[Industry]** at this time.
3. This meeting will be closed to the public.
4. Representatives of **[Industry]** may be accompanied by legal counsel if they so choose.
5. Failure to comply with this order shall also constitute a further violation of the Sewer Use Ordinance and may subject **[Industry]** to civil or criminal penalties or such other appropriate enforcement response as may be appropriate.
6. This order, entered this 19th day of May, 1989, shall be effective upon receipt by **[Industry]**.

Signed: _____

[Name]
General Manager
[Address]

Falsification	▶ Criminal Investigation	GM, B
	▶ Terminate Service	GM, B
Failure to notify of effluent limit violation; Isolated or infrequent with no known adverse effects	▶ Phone Call and NOV	PC, WWS
	▶ Administrative Order if no response within 10 days	GM

VIOLATIONS DETECTED DURING SITE VISITS (Continued)

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personnel</u>	<u>Penalty (\$)</u>
6. Minor violation of analytical procedures	Any instance	▶ NOV	PC, WWS	
7. Major violation of analytical procedures	No evidence of intent	▶ NOV ▶ Administrative Order	PC, WWS GM	
	Evidence of negligence or intent (Significant Noncompliance)	▶ Administrative Order with Penalty ▶ Criminal Investigation	GM GM, B	500 - 5,000
8. Minor violation of permit condition	No evidence of negligence or intent	▶ NOV; Immediate correction required	PC, WWS	
		▶ Administrative Order	GM	

OTHER PERMIT VIOLATIONS

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personnel</u>	<u>Penalty (\$)</u>
1. Waste streams are diluted in lieu of treatment	Initial violation	▶ Administrative Order ▶ Administrative Order with Penalty	GM GM	500 - 1,000
	Recurring	▶ Administrative Order; Increased Penalties ▶ Terminate service	GM GM	1,000 - 5,000
2. Failure to mitigate noncompliance or halt production	Does not result in harm	▶ NOV ▶ Administrative Order	PC, WWS GM	
	Does result in harm	▶ Administrative Order with Penalty ▶ Civil Action ▶ Criminal Investigation	GM GM, B GM, B	1,000 - 5,000

OTHER PERIMT VIOATIONS (Continued)				
<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personnel</u>	<u>Penalty (\$)</u>
3. Failure to properly operate and maintain pretreatment facility	(See No. 2 on previous page)	▶ Administrative Order	GM	
		▶ Administrative Order with Penalty	GM	500 - 1,000
	Recurring; Does result in harm in harm to POTW or environment	▶ Terminate service	GM, B	
		▶ Administrative Order with Penalty	GM	5,000 - 10,000
		▶ Civil Action	GM, B	

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personnel</u>	<u>Penalty (\$)</u>
3. Failure to properly operate and maintain pretreatment facility	(See No. 2 on previous page)	▶ Administrative Order	GM	
		▶ Administrative Order with Penalty	GM	500 - 1,000
	Recurring; Does result in harm in harm to POTW or environment	▶ Terminate service	GM, B	
		▶ Administrative Order with Penalty	GM	5,000 - 10,000
		▶ Civil Action	GM, B	