



**REGULAR MEETING
of the
BOARD OF DIRECTORS**

MINUTES

Thursday, 9:00 a.m.

February 17, 2011

Called to order at 9:00 a.m.

The meeting of the Boxelder Sanitation District Board of Directors was held at the Boxelder Sanitation District administrative office located at 3201 E. Mulberry, #Q, Fort Collins, CO 80524. Mr. Scott Taylor acting as the Chairman with Mr. Fred Walker acting as Secretary called the meeting to order.

Prior notice of the meeting was given in accord with §32-1-903 CRS.

1. Roll Call:

Directors Present: Mr. Scott Taylor, Chairman
Mr. Dennis Gatlin, Vice-Chairman
Mr. Steve Pink, Treasurer
Mr. Ray Piira
Mr. Gordon Woelfle

Staff Present: Mr. Fred Walker, Secretary, General Manager
Ms. Pat Mathena, Assistant Manager and Controller
Mr. Randy Siddens, District Engineer and Operations Manager

Roll was called and it was determined that a quorum was present.

2. Public comment: None
3. Mr. Woelfle moved to approve the minutes of the January 20, 2011 regular meeting as presented. Motion seconded. Minutes approved [5-0-0].
4. Mr. Gatlin moved to add Electronic Payment Option Update to the agenda. Motion seconded. Motion approved unanimously [5-0-0].
5. There was general discussion of the status of the wastewater treatment plant upgrade and design engineer contract. No action taken.
6. Mr. Pink moved to adopt the Enforcement Response Plan presented, with changes made today. (Full plan attached as an exhibit to these minutes.) Motion seconded. Motion approved unanimously [5-0-0].

7. Mr. Piira moved to replace Sections III and IV of the Personnel Manual, effective this date of adoption, with the text shown below.

Section III. WORK PERIODS

1. Work Week. Each employee's work week consists of a seven-day period beginning and ending at midnight Sunday unless otherwise specified in writing by an authorized representative of the District.
2. Hours in Work Week. The regular work week shall be forty (40) hours for all non-exempt employees, ordinarily to be worked in five (5) consecutive eight (8) hour shifts, unless otherwise specified.
3. Hours of Work. Normal business hours for the District administrative office shall be from 8:00 o'clock a.m. until 4:30 p.m. Monday through Friday. Normal business hours for the District plant and field staff shall be from 7:00 o'clock a.m. until 3:30 p.m. Monday through Friday. Work hours for employees shall be as designated and scheduled by the General Manager.
4. After-Business-Hours. After-Business-Hours are the hours an employee returns to duty not during the General Manager's designated hours of work for the employee (normal business hours) to respond to an event that needs attention.

Section IV. PAY POLICIES AND PROCEDURES

1. Paydays. Employees are paid twice each month. Payday will be the third business day after the close of the pay period. The pay periods will close on the 15th and the last day of each month. Because it must be a business day, payday will not fall on a Saturday, Sunday or holiday. Revised 02-19-2009
2. Release of Pay Checks. An employee who must be absent on payday may authorize in writing the release of his or her paycheck to a representative. The District does not assume responsibility for any paycheck after it is released to an authorized representative. Any employee who must be absent from work for a prolonged period may request in writing that his or her check be mailed to a designated address.
3. Time Sheets. Field and plant personnel time sheets must be completed and submitted to administration daily. Administration time sheets must be submitted at the close of each pay period. Revised 11-13-2003
4. Overtime. Employee(s) not exempt from the Fair Labor Standards Act shall be compensated for hours worked over forty (40) hours, except for After-Business-Hours, during any work week at one and one-half times their regular rate of pay, either monetarily or through the use of compensatory time (if offered and elected). Hours worked shall mean those actual hours worked plus employee benefit hours for vacation, sick, holiday and compensatory hours used during the work week. Compensation for After-Business-Hours Responder(s) and Emergency Coordinator duties is addressed in other paragraphs of this Section IV of the Personnel Manual.
5. Compensatory Time.
 - a. Use of compensatory time as compensation for overtime shall be at the discretion of the District.
 - b. Employees shall ordinarily elect in advance if they want overtime to be compensated with compensatory time or with monetary pay. If

compensatory time is elected, overtime actually worked by nonexempt employees may be compensated in compensatory time of one and one-half hours for each overtime hour worked.

c. Employees shall not be permitted to accumulate more than eighty (80) hours of compensatory time. Any employee may be directed to use accrued, but unused, compensatory time during a specific time period.

Revised 10-09-1995

d. Upon termination of employment, employees shall be monetarily compensated for any unused compensatory time consistent with the provisions of the Fair Labor Standards Act.

6. Holiday Pay. An employee subject to the Fair Labor Standards Act who works on the day a holiday specified in Section X is observed by the District shall be compensated for hours worked at two times his or her regular rate of pay, either monetarily or via compensatory time if previously elected by the employee in addition to his or her paid holiday compensation. Notwithstanding the foregoing, the rate of pay for After-Business-Hours Responder(s) on holidays will be one and one-half times the employee's regular rate of pay.
7. After-Business-Hours Responder is an employee who returns to duty to respond to an event that needs attention not during normal business hours of the District. The District has a designated "First Responder" who is the first (primary) employee to respond to events. The District has a designated "on-call support" employee that serves to assist the First Responder, as directed by the First Responder. In cases of emergency, other employees can become an After-Business-Hours Responder, as necessary.
8. After-Business-Hours Responder Pay. A non-exempt employee who is an After-Business-Hours Responder who responds to an event or emergency alarm will be compensated for hours actually worked at one and one-half times his or her regular rate of pay, either monetarily or via compensatory time (if employee elected) for each event/alarm response.
9. Emergency Coordinator. The Emergency Coordinator is responsible for assisting the After-Business-Hours Responders for the calendar month. This employee will receive \$100 per month "on-call pay" at the end of the month during which the Emergency Coordinator was on-call or performed emergency coordinator duties.

Motion seconded. Motion passed unanimously [5-0-0].

8. There was general discussion of alternative energy sources for plant processes.
9. Financial Information:
Presented to the board was information on financial status.
 - Cash and Cash Equivalents as of January 31, 2011;
\$4,274,801.99 Ending Cash, December 31, 2010
213,478.99 January Receipts
-223,747.72 January Cash Disbursements
\$4,264,533.26 Ending Cash, January 31, 2011
 - Details of revenues, including components of cash received monthly, monthly sewer billings and number of sewer accounts, current monthly charges, fee revenues, delinquent billings and delinquency statistics, monthly delinquent letters, hangtags, liens and service disconnections, and projected WDRs purchased vs actual purchases were presented.

- Details of outflow of funds were presented; including contract status, contingent commitments, purchase orders, cash disbursement listing, and credit card detail for the month ended January 31, 2011.
 - The DRAFT unaudited financial statements and related graphs for the twelve months ended December 31, 2010 were presented. Total net assets (graph), total current assets (graph), and financial ratios were NOT presented (chart and graphs).
10. Operations: Information on the treatment plant, industrial pretreatment program, wastewater collection system, and administration operations for the preceding month were presented.
11. Information Transfer:
- District project update:
 - Operation Projects: Included Lands Map; Collection System-I&I Reduction / Techite Lining; Boxelder Creek Cleaning
 - Development Projects: Timnath Reservoir Lift Station and Force Main; Anheuser-Busch Industrial Park Service, Cooper Slough Replacement Interceptor, North Mulberry Interceptor
 - Electronic Payment Option Update
 - Articles of Interest - None
12. Mr. Pink moved to call an Executive Session per §24-6-402(4)(b) conferences with an attorney for the public entity for the purposes of receiving legal advice on specific legal questions and/or per §24-6-402(4)(f) personnel matters. Motion seconded. Motion approved unanimously at 12:27 p.m. Mr. Zier, Ms. Mathena, and Mr. Siddens were asked to remain in the session. Ms. Mathena and Mr. Siddens left the executive session at 12:45 p.m. The executive session closed at 1:31 p.m.
- Ms. Mathena rejoined the meeting.
13. Mr. Gatlin moved to continue Mr. Fred Walker's employment with the District in the capacity as General Manager for a year, provide an additional one week (40 hour/week) of vacation time for this contract term, and increase by 40 hours the number of his vacation hours available for carryover on his anniversary date. Motion seconded. Motion passed unanimously.
14. Mr. Gatlin moved to adjourn the meeting. Motion seconded. Motion was withdrawn by the maker and the second prior to any vote on the motion.
15. Discussion was held on an open records act request.
16. Mr. Gatlin moved to adjourn the meeting. Motion seconded. Motion approved unanimously [5-0-0].

Meeting adjourned at 2:01 pm.

These minutes were approved on the 17th day of March, 2011 by an action of the Board of Directors.

/s/ Scott Taylor
Chairman of the Board

/s/ Fred E. Walker
Secretary

**Boxelder Sanitation District
Enforcement Response Plan
Adopted February 17, 2011**

I. Background

The Environmental Protection Agency (EPA) established a regulatory requirement (40 CFR Section 403.8(f)(5)) that in part states a Publicly Owned Treatment Works (POTW) with a pretreatment program "... shall develop and implement an enforcement response plan." The code goes on to state: "This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of IU noncompliance." More specifically, the EPA requires that the plan describe how the POTW will investigate instances of noncompliance, describe the types of escalating enforcement responses and time frames for enforcement responses, identify the personnel responsible for each type of response, and that it be consistent with the POTW's approved legal authority.

The Boxelder Sanitation District (District) Enforcement Response Plan (ERP) is intended to establish a clear framework that District staff and its customers can understand and follow and that implements an effective enforcement program for dealing with non-compliance with the District's Rules and Regulations (R&Rs). The ERP is empowered by the authorities granted to the District in its R&Rs that govern industrial user (IU) discharge to the POTW.

This Plan is composed of five major sections:

- I. Background
- II. Compliance and Enforcement Responsibilities
- III. Enforcement Authorities and Responsibilities
- IV. Enforcement Response Guide
- V. Penalty Settlement Policy

It provides this framework or outline, in a step-by-step fashion, of the procedures to be followed when investigating potential IU noncompliance. These procedures are developed with four primary objectives in mind:

1. Ensuring consistency when responding to violations.
2. Ensuring that violators return to compliance as quickly as possible.
3. Penalizing noncompliant IUs for pretreatment violations.
4. Deterring future noncompliance.

The District's enforcement program operates around three general concepts:

1. All violations are responded to by an informal and/or formal enforcement response.
2. All violations meeting the definition of Significant Non-Compliance (SNC) get a formal enforcement response; and
3. As violations continue, the enforcement response will generally escalate.

This ERP is meant to be used as a general blueprint for responding to violations. Circumstances on a specific violation and enforcement response may dictate a response by the District that is different from those identified in this ERP.

II. Compliance and Enforcement Responsibilities

A. Authority to Implement Enforcement Response Plan

The District pursuant to regulations promulgated by the EPA, 40 CFR 403.8 (f)(5), hereby establishes this ERP consistent with the District's R&Rs. The District has various oversight responsibilities and authorities that allow for the identification and response to violations, including but not limited to:

1. Exercising right of entry for the purposes of inspection, sampling, records review and oversight (Part 9 of the R&Rs).
2. Requiring that the IU install monitoring structures and equipment (Part 9 of the R&Rs).
3. Requiring that an IU submit permit applications, questionnaires, and other reports as necessary (Part 11 of the R&Rs).
4. Requiring that the IU monitor, analyze, and report as necessary (Part 10 of the R&Rs).
5. Recovering expenses, loss, or damage incurred by the District (Part 12 of the R&Rs).
6. Taking enforcement against IUs for violations of the District's R&Rs (Part 12 of the R&Rs).
7. Publishing in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the District all IUs meeting the definition of Significant Noncompliance (Part 12 of the R&Rs).

B. Compliance Inspections

Inspections are critical elements in evaluating the compliance status of IUs and in supporting an appropriate enforcement response. This section describes the District's intent to perform inspections and provides specific guidance relating to these activities. The pretreatment coordinator and other staff share in the inspection duties.

The District's pretreatment program complies with the State and Federal requirement to inspect Significant Industrial User (SIUs) once per year. The District also inspects other permitted and select non-permitted IUs at a frequency determined to be appropriate by the District. Inspection frequencies may be increased at the sole discretion of the District. Factors influencing the frequency of inspections include, but are not limited to:

1. Instances of non-compliance
2. Unusual discharge or operational activities
3. Lack of complete information or understanding of the processes or activities of the IU
4. On-going evaluation of POTW loading.

Inspections are used to identify changes in wastewater or processes, evaluate compliance with construction schedules and the IU's permit, follow-up on violations, verify records retention, verify production, characterize discharge practices, facilities and equipment, generally update information in the IUs file, and identify potential problem areas, including spill and slug loading potential.

IUs demonstrating noncompliance shall be subject to increased oversight and may be asked to perform additional self-monitoring.

There are three types of IU inspections: scheduled, unscheduled, and on-demand.

1. Scheduled Inspections

These inspections are typically scheduled with the IU from a week to a month in advance. Notifying the IU in advance helps to ensure that a knowledgeable employee will be available to answer questions and needed records will be readily available for inspection and review. This allows the inspector to use his or her time more effectively during the inspection. Additionally, the inspection can be scheduled for a time when the facility will be in normal operation. For these reasons, scheduled inspection will generally be used for the annual compliance inspection.

2. Unscheduled Inspections

These inspections are not pre-scheduled in advance with the IU. Little or no prior notice is given, except when minimum notice (a call as entry to the facility is made) is necessary to gain access to the facility or to ensure that the facility contact is present. This type of inspection is useful in determining the current compliance status of an IU. Unscheduled inspections can also be used as a follow up to scheduled inspection to determine if previously noted deficiencies have been corrected. This inspection may mirror the annual inspection if a more "normal" operational environment is desired. These inspections are at the sole discretion of the District. This type of inspection is also used to determine if an IU needs to be considered for permit issuance.

3. On-Demand Inspection

On-Demand inspections are conducted in response to known or suspected violations discovered through self-monitoring reports, routine inspections, sampling events, public complaints, unusual influent conditions at the POTW, emergency situations including plant upsets, sewer line blockages, fires, and explosions, or by other means.

On-demand inspections will be performed immediately with no prior notice provided to the IU. In some cases, assistance from other appropriate agencies (e.g. fire department, hazardous waste response team, EPA, state) may be requested if it does not delay the conduct of the inspection.

C. Compliance Sampling

1. District Compliance Monitoring

Sampling is used primarily to determine compliance with applicable Pretreatment Standards and to confirm data submitted by IUs in self-monitoring reports has been representative. Pretreatment personnel schedule routine, unannounced sampling of the IU's discharge. When a sample indicates a violation, the District will resample the IU's discharge in addition to responding to the violation.

All samples are collected and analyzed in accordance with EPA approved procedures published in 40 CFR Part 136 and consistent with State requirements. The contract laboratory is required to maintain a quality assurance/quality control (QA/QC) program and QA/QC data provided with each laboratory report. Blanks and duplicates, as appropriate, are sent to the laboratory to be analyzed. If any of the required QA/QC criteria are not met, the proper corrective measures are taken and the samples are recollected and/or reanalyzed as appropriate. All compliance data, whether collected by the District or generated through IU self-monitoring reports, are systematically reviewed to identify violations and evaluate sample collection, holding time, method sensitivity, and chain-of-custody problems. District compliance monitoring reports are generally reviewed within seven (7) days of receipt.

2. IU Self-Monitoring

All permits issued by the District contain a self-monitoring requirement for specific pollutants. In addition, other IUs may have reporting requirements as a part of their Best Management Practices (BMPs). The frequency with which an IU is required to self monitor for a pollutant or report compliance with a specific BMP is set by the District and at the sole discretion of the District (for monitoring frequencies that are set above the minimums).

The following guidelines are used by the District in reviewing self-monitoring

reports from industries to identify violations:

- a. Report due and report submitted date.
- b. All certification statements as required are included and signed.
- c. Signatures checked to verify that the report signer is the Authorized Representative.
- d. All sample and analytical data required by the permit are included.
- e. Analytical methods were appropriate (40 CFR Part 136, state requirements and as required in the IU permit) and holding times and Minimum Detection Limits (MDLs) are met.
- f. All pollutant data is compared to permit limitations to identify violations.

D. Staffing and Responsible Officials

Day-to-day Pretreatment Program activities will be administered by the Industrial Pretreatment Coordinator who is accountable to the Manager. Administration and enforcement of the pretreatment program involves several basic activities and program lead(s), including:

Type of Program Activity	Program Lead(s)	Other Program Team Members
Budgeting	Pretreatment Coordinator	Manager
Identifying IUs	Pretreatment Coordinator	
Managing Data (includes data entry)	Pretreatment Coordinator	
Permitting IUs	Pretreatment Coordinator	Manager (sign)
Inspecting IUs	Pretreatment Coordinator	
Reviewing Reports	Pretreatment Coordinator	
Sampling IU Discharges	Pretreatment Coordinator	
Enforcement	Pretreatment Coordinator	See Table below

The following table establishes the official(s) responsible for initiating and completing an enforcement action.

Type of Enforcement Response	Official Responsible for Initiating an Enforcement Action	Other Enforcement Team Members
Informal: phone call, email, meeting	Pretreatment Coordinator	Pretreatment Staff
Notice of Violation (NOV)	Pretreatment Coordinator	District Manager (informed only)
Administrative Order	Pretreatment Coordinator	District Manager (sign)
Consent Order	District's Attorney Pretreatment Coordinator	District Manager (sign)
Show Cause Order	District's Attorney Pretreatment Coordinator	District Manager (sign)

Cease and Desist Order	District's Attorney Pretreatment Coordinator	District Manager (sign)
Administrative Penalty Order	Pretreatment Coordinator	District's Attorney (concur) District Manager (sign)
Emergency Suspensions	District's Attorney Pretreatment Coordinator	District Manager (sign)
Permit Revocation	Pretreatment Coordinator	District's Attorney (concur) District Manager (sign)
Civil Judicial Action	District's Attorney	District Manager (concur) Pretreatment Coordinator (concur)
Injunctions	District's Attorney Pretreatment Coordinator	District Manager (concur)
Settlement Agreements	District's Attorney	Pretreatment Coordinator (concur) District Manager (sign)
Criminal Referrals	Pretreatment Coordinator	District Manager (concur)

III. Enforcement Authorities and Responsibilities

A. General

Once a violation is identified, the District will determine the appropriate enforcement response. If the violation is significant (serious, recurring, SNC, etc.) the District will generally take a formal enforcement action. If the violation is not significant (isolated, minor, not SNC, etc.) the District will generally take an informal enforcement action. The significance of violations is defined in Section IV. Tracking of enforcement actions is generally the responsibility of the official initiating the enforcement action.

B. Administrative Enforcement Actions

1. Informal Enforcement

a. Informal Violation Communication/Meetings

The District may notify an IU of a violation (minor, isolated) via a phone call or email or a meeting with the IU. A record of communication for the phone call or copy of the email and/or meeting notes will be included in the IUs file.

b. Field Notice of Observed Violation

During an inspection or a sampling of an IU, if District personnel identify a violation of the District's R&Rs or applicable requirements which has or is occurring, a Field Notice of Observed Violation that identifies the violation, the date for corrective action to be completed or other compliance actions that may be required will be generated and a copy provided to the IU.

c. Written Notice of Violation (NOV)

Whenever an IU is violating or has violated the District's R&Rs, permit

conditions or other pretreatment standards or requirements, the District may issue a written NOV to the IU. The purpose of the NOV is to notify the IU of the violation(s) and to request that the IU explain the cause(s) of the violation and what is being done to prevent a recurrence. This may be the only enforcement response necessary for some non-SNC violations and is considered an informal enforcement response. An NOV may be issued initially and routinely for any violation and the NOV may be followed up later by an escalated enforcement action. The NOV may be hand delivered, sent via email, or by registered or certified mail and shall be provided to the Authorized Representative of the IU. The IU will be required to respond within ten (10) days from the receipt of the NOV unless another timeframe is established by the District. A copy of the NOV will be filed in the IU's file. The District may perform an on-site inspection as a follow-up to the violation. A failure of a violator to respond to an NOV, as required, may result in a finding of SNC and a formal enforcement action to compel compliance.

2. Formal Enforcement

a. Administrative Order (AO)

AOs are formal enforcement actions which direct IUs to undertake or to cease specified activities. AOs should be used as the first formal response to violations that result in an IU being in SNC. If continued operation of the industrial facility will not cause a significant discharge violation (e.g. Pass Through, Interference, etc) and the IU cannot achieve compliance immediately, the District may issue an AO requiring the IU to complete specific tasks by certain dates. Issuance of an AO does not relieve the IU of the obligation to meet local limits and requirements, nor does it bar the District from undertaking additional enforcement actions, including the imposition of penalties. The AO allows the industry to continue to discharge as long as it demonstrates adequate progress in providing a permanent solution to the cause of its discharge violations. Under no circumstances will the District agree to a compliance schedule that might result in Pass Through, Interference or violation of a Specific Prohibition.

b. Consent Orders

A consent order is issued by the District and reflects an agreement between the District and the IU which usually establishes a compliance schedule, stipulated penalties and/or remedial action. A consent order will be used when the IU assumes responsibility for its noncompliance and agrees to voluntarily correct the cause of the violation. A consent order is generally issued as a second tier action to a formal enforcement action. Issuance of a consent order does not relieve the IU of the obligation to meet local limits and requirements, nor does it bar the District from undertaking additional enforcement actions, including the imposition of penalties. The consent order allows the IU to continue to discharge as long as it demonstrates adequate progress in providing a permanent solution to the cause of its discharge violations. Under no circumstances will the

District agree to a compliance schedule that might result in Pass Through, Interference or violation of a Specific Prohibition.

c. Cease and Desist

A Cease and Desist Order directs the IU to immediately correct an illegal discharge or to stop a discharge altogether. A Cease and Desist Order will be issued where a discharge could cause Pass Through, Interference, environmental damage, or threaten worker health or safety. A Cease and Desist Order may also be used when an IU has failed to apply for or obtain a wastewater discharge permit.

d. Administrative Penalty Order (APO)

An APO is used by the District to impose penalties on IUs. An APO can minimize the costs to the IU and District as compared to civil litigation. The District has the authority to issue an APO for penalties up to \$1,000 per violation per day. Penalties would be calculated according to the general guidelines provided in Section V of this Plan. Issuance of an APO does not relieve the IU of the obligation to meet all applicable Pretreatment Standards and Requirements, nor does it bar the District from undertaking additional enforcement actions, including the imposition of additional penalties for continuing or newly identified violations.

e. Emergency Suspension for Noncompliance

In situations where an actual or threatened discharge presents or may present an imminent or substantial endangerment to human health, human welfare, the environment, or the District's collections system or treatment plant, causes Interference to the POTW or causes the District to violate its discharge permit, the District may suspend wastewater treatment service without any hearing or formal notice to the IU. The District will take all necessary steps, including seeking injunctive relief or severance of the sewer connection, to prevent or minimize any damage to the POTW system or endangerment to persons or the environment.

f. Revocation of Permit

The District may revoke a permit and the authorization of an IU to discharge wastewater to the POTW for the reasons cited in Part 11 of the R&Rs. The IU may be required to demonstrate that all non-domestic wastewater is properly disposed. Revocation of an IUs permit does not bar the District from undertaking additional enforcement actions, including the imposition of penalties.

C. Judicial Enforcement Actions

1. Civil judicial enforcement is the formal process of filing a lawsuit against an IU to secure court ordered action to correct violations and to set penalties for violations, including the recovery of costs and attorney fees to the District. Civil action is an appropriate enforcement response in certain situations, including but not limited to:
 - a. When injunctive relief is necessary to halt or prevent discharges which threaten human health, human welfare, the environment, or the District's collection system or treatment plant.
 - b. When efforts to restore compliance through other enforcement actions have failed and a court order is necessary to enforce program requirements.
 - c. When an IU fails to pay assessed penalties or the District wishes to recover losses due to the IU's non-compliance.
 - d. When the IU has such serious and chronic violations that the use of other formal enforcement actions would not be appropriate.
2. Injunctive Relief

The District may seek injunctive relief for violations of a permit, the District's R&Rs, any order or violations of other Pretreatment Standards or Requirements. An Injunction does not bar the District from undertaking additional enforcement actions, including the imposition of penalties.

3. Criminal Enforcement Actions

Where necessary, the District will employ the authority and prosecutorial powers of the EPA and the State and any other appropriate jurisdiction or authority to prosecute criminal environmental violations, rather than adopt the authority to prosecute criminal cases independently. The District maintains the ability to independently take administrative or civil actions for any violations without regard to an on-going criminal enforcement action (e.g. parallel proceeding).

IV. Enforcement Response Guidelines

The District will use the Enforcement Response Guidelines in the table below as a framework to determine the appropriate enforcement response for various types of violations. Based upon the specific situation, the District may alter its response to a violation. Should the violator fail to respond to any enforcement action initiated by the District, the District may opt to follow-up with any enforcement response that the District deems appropriate and that is authorized by District's R&Rs. The District may initiate an enforcement action with something other than the lowest level of action listed. The District may opt to take an immediate and significant action (penalty action) for a first violation.

Violation	Circumstances	Typical Range of Enforcement Responses⁽³⁾	Typical timeframe for initiating the enforcement response
Failure to apply (or reapply) for a permit as required.	Any Instance	Existing permittees: NOV ⁽¹⁾ , AO, termination of permit/discharge, APO ⁽²⁾ . <u>Regulated IUs that do not currently have a permit:</u> NOV, AO, cease and desist order, injunction, APO, judicial action ⁽⁴⁾ , termination of discharge.	Within 15 days of identifying the violation.
Failure to submit a complete and accurate permit application	Any Instance	Phone call, email, NOV, AO, APO, judicial action, termination of discharge	Within 15 days of identifying the violation.
Illegal or unpermitted discharge	Any Instance	NOV (for pre-notice only), AO, show cause hearing, cease and desist order, APO, judicial action, termination of discharge.	Immediately
Permit effluent limit violation (Pretreatment Standards)	Any Instance	<u>Isolated, Not SNC:</u> NOV, AO <u>Recurring and/or SNC:</u> NOV, AO, cease and desist order, show cause hearing, APO, civil action, termination of discharge.	Within 15 days of identifying the violation.

<p>Exceeds a local limit (Pretreatment Standard) that is not included as a permit limit in the existing IU permit. This includes violation of a BMP.</p>	<p>No environmental or POTW impact and the pollutant was disclosed in the permit application</p>	<p>NOV, permit modification, AO</p>	<p>Within 15 days of identifying the violation.</p>
<p>Discharge that presents or may present an imminent or substantial endangerment to health, the environment, personnel, or the POTW.</p>	<p>No environmental or POTW impact and the pollutant was not disclosed in the permit application</p>	<p>NOV, AO, show cause hearing, APO, judicial action, termination of discharge.</p>	<p>Within 15 days of identifying the violation.</p>
<p>Discharge of wastes specifically prohibited in a discharge permit or the District R&Rs that violates a General or Specific Prohibition.</p>	<p>Any Instance</p>	<p>AO, cease and desist order, show cause hearing, APO, judicial action, injunction, emergency suspension, termination of discharge.</p>	<p>Immediately</p>
<p>Discharge that presents or may present an imminent or substantial endangerment to health, the environment, personnel, or the POTW.</p>	<p>Any Instance</p>	<p>Termination of permit and discharge (emergency suspension), injunction, cease and desist order, APO, judicial action.</p>	<p>Immediately</p>
<p>Discharge of wastes specifically prohibited in a discharge permit or the District R&Rs that violates a General or Specific Prohibition.</p>	<p>Any Instance</p>	<p>NOV, AO, show cause hearing, cease and desist order, APO, judicial action, termination of discharge.</p>	<p>Within 15 days of identifying the violation.</p>
<p>Slug Load</p>	<p>Isolated, no damage to POTW or environment.</p>	<p>NOV, AO, APO</p>	<p>Within 15 days of identifying the violation.</p>
<p>Recurring (>1/3 months) or causing a violation of the General or Specific prohibitions.</p>	<p>Isolated, no damage to POTW or environment.</p>	<p>NOV, AO, show cause hearing, APO, judicial action, termination of discharge.</p>	<p>Within 5-15 days of identifying the violation.</p>

Failure to report (self-monitoring report), including compliance with Best Management Practices (BMPs)	<30 days late (isolated) <30 days late (recurring) >30 days late	Informal, NOV AO, APO, show cause hearing AO, show cause hearing, APO, judicial action, revocation of permit.	Within 15 days of identifying the violation. Within 45 days of identifying the violation. Within 45 days of identifying the violation.
Failure to Provide Complete Reports (other than failure to monitor), including reports on BMPs	Isolated Occurrence Recurring (>1 report in 6 months)	NOV NOV, AO, APO, other formal actions as appropriate.	Within 5 days of review. Within 14 days of review.
Failure to monitor for all required permit or other required pollutants.	Any instance	NOV, AO, APO	Within 15 days of identifying the violation.
Falsification of Data/Reports	Any Instance	AO, APO, Judicial Action	Within 45 days of identifying the violation.
Failure to report an effluent violation within 24 hours	Any Instance (Note: Any failure to accurately report non-compliance is a SNC violation)	NOV (pre-notice), AO, show cause hearing, APO, judicial action, revocation of permit.	Within 15 days of identifying the violation.
Failure to resample within 30 days as required.	Any Instance (SNC)	NOV, AO, show cause hearing, APO, judicial action, revocation of permit.	Within 15 days of identifying the violation.
Failure to notify of a change in discharge or changed conditions that may affect the potential for a slug discharge.	Any instance	NOV, AO, APO, show cause hearing, judicial action, cease and desist, injunction, termination of discharge	Within 15 days of identifying the violation.

Missed compliance schedule milestone or final date within 90 days of due date (SNC).	Any Instance	AO, show cause hearing, APO, judicial action.	Within 15 days of identifying the violation.
Failure to provide a required notification or submit a required report, including submitting incomplete information, other than those reports and notifications specifically identified.	<30 days late >30 days late	NOV, AO, APO, show cause hearing NOV (pre-notice), AO, APO, show cause hearing, APO, judicial action, revocation of permit.	Within 15 days of identifying the violation. Within 15 days of identifying the violation.
Tampering with monitoring equipment or methods.	Any Instance	AO, APO, judicial Action, termination of permit/discharge	Within 45 days of identifying the violation.
Denial of access, refusal of entry or withdrawal of access.	Any Instance	Injunction, administrative search warrant, AO, show cause hearing, APO, judicial action, termination of discharge.	Immediately
Failure to comply with an order or request for information.	Any Instance	AO, show cause hearing, APO, judicial action, revocation of permit.	Within 45 days of identifying the violation.
Bypassing treatment without authorization or notification to the POTW.	Any Instance	NOV (pre-notice), AO, APO, show cause hearing, judicial action, cease and desist, injunction, termination of discharge.	Immediately
Other violations not specifically identified above.	Any Instance	Informal, FNOV, NOV, AO, show cause hearing, APO, judicial action, injunction, cease and desist, emergency suspension, termination of discharge, or any other enforcement option available to the District.	As determined to be appropriate.
Failure to manifest trucked and hauled waste or improperly completing the manifest.	Any instance	NOV, refusal of authorization to discharge, AO, show cause hearing, APO, judicial action.	Immediately

Failure to install a grease interceptor or sand/oil separator as required.	Any instance	AO, show cause hearing, APO, judicial action.	Within 15 days of identifying the violation.
Failure to maintain a grease interceptor or sand/oil separator as required.	Any instance	FNOV, NOV, AO, APO.	Immediately – 5 days of identifying the violation.
Failure to properly operate or maintain a treatment system.	Any instance	FNOV, AO, show cause hearing, APO, judicial action, injunction, cease and desist, termination of discharge.	Immediately – 14 days of identifying the violation.
Failure to install monitoring structures or equipment as required.	Any instance	AO, show cause hearing, APO, judicial action, injunction, cease and desist, termination of discharge.	Within 45 days of identifying the violation.
Failure to use appropriate analytical methods.	Any instance	NOV, AO, APO.	Within 15 days of identifying the violation.
Failure to sample as required, including wrong sample type, exceeding holding times, no chain of custody, etc.	Any instance	NOV, AO, APO.	Within 15 days of identifying the violation.
IU is using dilution to meet limits.	Any instance	NOV (pre-notice), AO, show cause hearing, APO, judicial action, injunction, cease and desist, termination of discharge.	Within 15 days of identifying the violation.
Failure to maintain records on-site as required.	Any instance	FNOV, NOV, AO, APO	Within 15 days of identifying the violation.
Failure to comply with inspection required actions.	Any instance	FNOV, NOV, AO, APO, judicial action.	Within 45 days of identifying the violation.

pH violation.	<5.0, no damage	NOV, AO, compliance schedule, APO	Within 15 days of identifying the violation.
Violations determined to be knowing, willful or due to negligence not specified above.	<5.0, damage to the monitoring structure, service line or POTW Any instance	NOV (pre-notice), AO, show cause hearing, APO, judicial action, injunction, cease and desist, termination of discharge. AO, show cause hearing, APO, judicial action, injunction, cease and desist, emergency suspension, termination of discharge, or any other enforcement option available to the District.	Within 15 days of identifying the violation. Within 45 days of identification of the violation.

FNOV: Field Notice of Violation, NOV: Notice of Violation, AO: Administrative Order, APO: Administrative Penalty Order

- (1) Where NOV is specified in the Table: NOVs may be used as the initial response to violations. For serious, chronic or SNC violations, the NOV would be followed up with a formal enforcement action.
- (2) The District may issue penalties for violations through issuance of an APO for up to \$1,000 per violation per day. The District may seek penalties in civil court for up to \$1,000 per violation per day. In addition to any administrative or civil penalties, the District may recover reasonable attorney's fees, court costs, court reporter's fees and other expenses of litigation by appropriate lawsuit against the violator. Such penalties shall be in addition to any actual damages the District may incur because of such violations. Where a violation is found to have caused Interference or Pass Through, the maximum penalty may be increased as necessary to allow the District to recover any fines or penalties paid by the District for NPDES permit violations due to the Interference or Pass Through.
- (3) The range of enforcement response incorporates three program approaches:
 - A. Unless otherwise specified, the POTW will generally increase or escalate its enforcement response if violations are repeated or violations in multiple categories occur.
 - B. The issuance of penalties will generally follow those guidelines in Section IV of this plan and will increase for repeated violations or violations in multiple categories.
 - C. If an IU has a violation or violations that result in a determination of SNC, the District will generally issue a formal enforcement action.

- (4) Judicial Action is a general term that may include civil and/or criminal court actions or other judicial action deemed appropriate by the District.

V. Penalty and Settlement Guidelines

A. Penalty Assessments

The District will use the following general guidelines to determine the appropriate penalty for a violating IU. After review and compilation of the violation data and other data that may be developed by the District, several penalties will be calculated. These include:

Statutory Maximum Penalty

The Statutory Maximum Penalty is calculated by multiplying the maximum penalty amount in the R&Rs by the total number of all violations that will be addressed in the enforcement action (violations would be no older than 5 years). A monthly average penalty would be 30 days of violation (or the number of discharge days during the month, if other than 30). In addition, if there are multiple daily measurements during the month, some of which are in compliance with the monthly limit, the District may consider this fact.

Penalty Assessed

This is the penalty amount that the District determines is appropriate to propose based upon criteria discussed below. This penalty is included in the enforcement action. The District will typically discuss the basis for this penalty amount with the violator. The penalty is calculated by the following general formula:

$$\text{Penalty} = \text{Economic Benefit} + \text{Gravity Component (punitive portion)}$$

Bottom-Line Penalty

This is the minimum settlement amount. There are a number of factors that are considered (e.g. litigation considerations, quick settlements, economic benefit realized, etc). This is not shared with the violator (attorney-client privileged and enforcement sensitive) and must have an economic benefit and a punitive penalty component.

The District is not required to negotiate a penalty and typically won't do so for smaller issued penalties. Once assessed, the District expects the violator to pay the assessed penalty in full.

The Bottom-Line Penalty is calculated by the general formula:

$$\text{Penalty} = \text{Economic Benefit} + \text{Gravity Component (punitive portion)} \pm \text{Gravity Adjustments} - \text{Litigation Considerations} - \text{Ability to Pay} - \text{Supplemental Environmental Projects}$$

B. The Penalty Components

1. Economic Benefit

Economic Benefit is the financial gain the IU realized from non-compliance with applicable Pretreatment Standards and Requirements. The District's intent is to collect any financial gain (economic benefit) that a violating IU may realize from noncompliance. The District may consider financial gain that is beyond five years, but as a matter of policy, the District will typically consider the financial gain realized by the violator within the past five years.

Delayed or avoided costs include, but are not limited to, those incurred for the following:

- a. Monitoring and Reporting (including costs of the sampling and proper laboratory analysis);
- b. Capital equipment improvements or repairs, including engineering design, purchase, installation, and replacement; and
- c. Operation and maintenance expenses (e.g. labor, power, chemicals) and other annual expenses.

2. Gravity

The POTW retains sole discretion over the punitive (gravity) portion of the penalty.

The gravity component is assessed to achieve several purposes:

- a. Punish the violator for its actions.
- b. Deter the violator from future violations.
- c. Deter other IUs from violations.

Gravity includes:

- a. Significance of the violation
- b. Health, environment and POTW harm
- c. Number of effluent violations
- d. Significance of the non-effluent limit violations

From the general penalty formula: *Penalty = Economic Benefit + Gravity Component*, a more detailed penalty calculation may be made according to the following formula:

$$Penalty = Economic Benefit + (1 + A + B + C + D) \times \$1000$$

- A = An adjustment factor for significance of the violation
B = An adjustment factor for health, environment and POTW harm
C = An adjustment factor for number of effluent violations
D = An adjustment factor for significance of the non-effluent limit violations

The four gravity factors - A, B, C, and D - may be considered for each month in which there

were one or more violations. Values are assigned to each of the four factors as described in the text and tables below. In performing the gravity calculation, the monthly gravity component is calculated from the first date of noncompliance up to when the violations ceased or the date the complaint is expected to be filed. In cases with continuing violations, the gravity calculation should be revised periodically to include additional months of violations that have occurred since the previous calculation. Each of these factors is discussed below.

Factor A: Significance of the Violation (ranges 0 to 20)

This factor is based on the magnitude of violation as compared to the permit limit in each month. Values are selected using the table below based on the effluent value which yields the highest Factor A value. Where an IU monitors monthly and if there were no effluent limit violations in a particular month, but there were other violations, then Factor A is assigned a value of zero in that month's gravity calculation.

Where the monitoring frequency is less than monthly, the gravity component is applied across the subsequent months where no monitoring was performed unless there is clear and documented evidence to indicate that the effluent in other months was different (e.g. 30 day repeat analysis indicated compliance or the District monitoring indicated compliance). The failure to collect representative samples, failure to submit a change in discharge notification or failure to repeat monitoring within 30 days would have to be considered if the IU is making a claim that its data was not representative of their operations in subsequent months and no additional data was generated. In general, the IU would have to provide effluent monitoring data to support its assertions.

If the IU did not notify the District and repeated the sampling after finding the effluent violation as required by Section 1001, H. of the R&Rs, then an appropriate value for gravity Factor D should be assigned for this notification or monitoring violation(s).

Table for Assigning a Value for Factor A

% by Which an Effluent Limit was Exceeded	pH: Standard Units above or below pH Limits	Factor A Values (0 to 20)
1-20	0.01 – 0.5	1-3
21-40	0.51 – 1.0	2-6
41-100	1.01 – 1.50	4-10
101-200	1.51 – 2.0	6-15
>200	>2.0	10-20

Factor B: Health and Environmental Harm (ranges 0 to 50)

A value for Factor B is selected for each month in which one or more violations present actual or potential harm to human health, the environment or the POTW. Values are selected using the table below based on the type of actual or potential harm that yields the highest factor value.

Table for Assigning a Value for Factor B

Type of Actual or Potential Harm	Factor B Values (0 to 50)
Impact on Human Health (toxic gases, drinking water source contamination, etc.)	30-50
Impact on the Environment (Pass Through, Sanitary Sewer Overflow, etc.)	10-50
Impact on the POTW (Interference, change in operations, etc.)	10-50

Factor C: Number of Effluent Limit Violations (ranges 0 to 5)

This factor is based on the total number of effluent limit violations each month. In order to properly quantify the gravity of the violations, all effluent limit violations are considered and evaluated. All violations for all pollutants, whether or not occurring at the same outfall, are counted separately. A Factor C value of 1 would reflect that the IU violated one or two permit effluent limits in a given month. A Factor 5 would reflect that the IU violated a majority of the permit effluent limits in a given month.

Factor D: Significance of Non-effluent Limit Violations (ranges 0 to 50)

Factor D is based on the severity and number of the six different types of non-effluent limitation requirements violated each month. The six types of non-effluent violations typically identified are (but not limited to):

1. Monitoring the effluent
2. Reporting and required notifications
3. Unauthorized discharges
4. Compliance schedules
5. Applying for a permit
6. Other types of non-effluent violations.

The value for Factor D for each month in which there is a non-effluent limit violation is selected pursuant to the table below. The Factor D value for a given month is the sum of the highest value for each type of non-effluent limit violation.

With regard to monitoring and reporting violations, the basic approach to environmental protection under the Clean Water Act relies on self monitoring by the IU. The failure to conduct required monitoring is a serious violation. The failure to submit a report in a timely manner is generally not treated as a continuing violation past the month in which the report was due. For example, if an IU fails to submit a Baseline Monitoring Report as required by the District's R&Rs, this will typically be counted as a violation only in the month when the report was due.

Table for Assigning a Value for Factor D

Type and Extent of Violation	Factor D Value (0 to 20)
Failure to monitor and report (none was done for the sampling period).	10-20
Failure to monitor and report for 1 or more pollutant parameters.	1-10
Late report (<30 days).	1- 6
Late report (>30 days).	10-20
Any other Monitoring and Reporting Violation.	1-20
Failure to provide a required notification or report (hazardous waste notification, Slug Discharge, Accidental discharge, change in discharge, etc).	10-20
Unauthorized discharge (facility covered by existing permit or BMP).	1-10
Unauthorized discharge (facility not covered by existing permit or BMP).	5-20
Violation of a milestone or final compliance date.	5-20
Failure to apply for a permit.	10 to 20
Any other type of non-effluent violation.	1 to 20

C. Gravity Adjustment Factors

The District may increase or decrease the total gravity penalty after considering three factors: flow reduction factor (to reduce gravity); history of recalcitrance (to increase gravity); and the quick settlement reduction factor (to reduce gravity).

$$Penalty = Economic Benefit + (1 + A + B + C + D) \times \$1000 \text{ +/- Gravity Adjustment Factors}$$

Flow Reduction Factor for Small Facilities (range 0 to 50%)

The total gravity amount may be reduced based on the flow of the facility. This reduction is not available if the facility or parent corporation employs more than 100 individuals. Flow reduction percentages are selected using the table below. Use of this factor is at the sole discretion of the District.

Table for Determining a Flow Reduction Factor

Average Daily Wastewater Discharge Flow (gpd)	% Reduction of Total Gravity
Less than 5,000	50
5001 – 9,999	40
10,000 – 19,999	30
20,000 – 29,999	20
30,000 – 49,999	10

50,000 – 99,999	5
100,000 or more	0 (no reduction)

History of Recalcitrance Adjustment Factor (range 0 to 150%)

The "recalcitrance" factor is used to increase the penalty based on a violator's bad faith, or unjustified delay in preventing, mitigating, or remedying the violation. Recalcitrance is also present if a violator failed to comply with a District issued administrative order or other formal request for information. This factor is applied by multiplying the total gravity component by a percentage between 0 and 150. This factor is only used in penalties sought through judicial enforcement action. A value of 5-20% may be appropriate when an IU violates an administrative order or fails to report to the District under an enforcement action as required. Violations of multiple enforcement actions would result in an increase in this percentage.

Quick Settlement Adjustment Factor (range up to 20%)

In order to provide an extra incentive for violators to negotiate quickly and reasonably, and in recognition of a violator's cooperativeness, the District may reduce the gravity amount by 20 percent if the violator agrees to settle or pay quickly and is in compliance with applicable regulations. For purposes of this reduction factor, a quick settlement is when the violator signs a consent order resolving the violations within two months of the date the penalty was assessed through an administrative action or within four months of the District filing a judicial case. If the violator is not able to sign the consent order within this time period, this adjustment does not apply.

Environmental Auditing Adjustment Factor (up to 15%)

The District may reduce the gravity portion of a penalty if the violating IU conducts a facility-wide environmental audit, discloses the results to the District, promptly corrects the violations and remedies any harm. The IU would be required to hire or employ qualified individuals with expertise appropriate to conduct an environmental audit. The District is adopting this adjustment factor because it believes that IUs who conduct environmental audits and who promptly remedy violations will have shorter histories of violations and that this automatically reduces both the economic benefit and gravity amounts.

Litigation Considerations (Judicial Cases)

The District will evaluate every penalty with a view toward litigation and attempt to ascertain the maximum civil penalty the court is likely to award if the case proceeds to trial or hearing. The District may reduce the amount of the penalty it will accept at settlement to reflect weaknesses in its case where the facts demonstrate a substantial likelihood that the District will not achieve a higher penalty at trial. The mere existence of weaknesses or limitations in a case will not result in a reduction of the bottom-line penalty amount, unless the District determines that the bottom-line penalty is more than the District is likely to obtain at trial. This evaluation is made by the District's staff and legal counsel and is approved by the District Board of Directors based upon case law, the particular court of competent jurisdiction, and other relevant factors.

No enforcement case is without potential litigation considerations. Relevant factors include but are not limited to:

- a. Known (suspected) problems with the evidence.
- b. Credibility or reliability of the witness(es).
- c. The informed, expressed opinion of the judge.
- d. The past record of the judge or hearing officer.
- e. Statements by regulators that led defendant to believe it was complying.
- f. Past penalty payments for the same violations (reduces penalty).
- g. New case law or setting of a negative precedent.

Note: The failure of the POTW to initiate a timely enforcement action, by itself, is not a litigation consideration.

Ability to Pay (to decrease the penalty assessed)

When settlement penalties are sought, the District may consider the violator's ability to pay the penalty without seriously jeopardizing the violator's ability to continue operations and achieve compliance, unless the violator's behavior has been exceptionally culpable, recalcitrant, or threatening to human health or the environment, or the violator refuses to comply.

The adjustment for ability-to-pay may be used to reduce the settlement penalty to the highest amount that the violator can reasonably pay and still comply with the applicable regulations. The violator must be in compliance with federal, State and local regulations (an IU shall not be allowed to continue to violate due to an inability to pay a penalty or pay for treatment or other required expenditures). The violator has the burden of proving the claim of inability to pay. The violator must submit the necessary information demonstrating actual inability to pay as opposed to unwillingness to pay. Further, the claim of inability to pay a penalty should not be confused with a violator's aversion to make certain adjustments in its operations in order to pay the penalty. If the violator is unwilling to cooperate in demonstrating its inability to pay the penalty, this adjustment will not be considered in the penalty calculation, because, without the cooperation of the violator, the District will generally not have adequate information to determine accurately the financial position of the violator. In some cases, the District may need to consult a financial expert to properly evaluate a violator's claim of inability to pay.

If the violator demonstrates an inability to pay the entire negotiated penalty in one lump sum (usually within 30 days of consent decree entry), a payment schedule will be considered. The District may approve payment of the penalty through scheduled installments with appropriate interest accruing on the delayed payments. The period allowed for such installment payments will typically not extend beyond three years.

D. Calculating Penalties

This form is general guidance for calculating a penalty.

Case Name:	Date:
Prepared by (staff):	Reviewed by:
Settlement Penalty Calculation Worksheet	
1. Calculate the statutory maximum penalty: \$ _____ x days of violation.	\$
2. Economic Benefit. Attach explanation of the dollars saved due to non-compliance.	\$
3. Total Gravity Calculation (A = Significance of the violation, B = Health, environment and POTW harm, C = # of effluent violations, D = Significance of the non-effluent limit violations.	\$
4. Assessed Penalty: Economic Benefit + Gravity (add lines 2 and 3)	\$
5. Gravity Adjustments	
a. Flow Reduction Factor for Small Facilities (range 0 to 50% decrease in penalty).	\$
b. History of Recalcitrance Adjustment Factor (range 0 to 150% increase in penalty).	\$
c. Quick Settlement Adjustment Factor (range up to 15% decrease in penalty).	\$
d. Environmental Auditing Adjustment Factor (up to 15% decrease in penalty)	\$
6. Total \$ gravity adjustments (5.a. + 5.c. + 5.d. – 5.b.)	\$
7. Total Adjusted Gravity (line 3 - line 6).	\$
8. Preliminary Bottom-line Penalty (line 2 + line 7)	\$
9. Litigation Considerations (Judicial Cases) – Attorney defined.	\$
10. Ability to Pay (to decrease the penalty assessed) – This requires accounting evaluations of company records.	\$
11. Reduction for Supplemental Environmental Projects (see EPA guidance).	\$
12. Bottom-line Cash Settlement Penalty (line 8 – line 9 – line 10 – line 11).	\$

VI. Definitions

Best Management Practices (BMPs): Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the General or Specific Prohibitions. BMPs may also include, but are not limited to, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs are Pretreatment Standards.

Indirect Discharge or Discharge: The introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act (including holding tank waste discharged into the system).

Industrial User (IU) or User: A source of Indirect Discharge.

Pretreatment Requirements: Any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard, imposed on an IU.

Pretreatment Standard, National Pretreatment Standard, or Standards: Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to IUs. This term includes prohibitive discharge limits established pursuant to 40 CFR Section 403.5, local limits and Best Management Practices.

Significant Noncompliance (SNC): A SIU that meets any of the following criteria or any IU that meets paragraphs C, D, or H shall be in Significant Noncompliance:

- A. 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) a numeric Pretreatment Standard or Requirement, including instantaneous limits.
- B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits 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 (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public).
- D. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.

- E. Failure to meet, within ninety (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 thirty (30) days after the due date, required reports such as baseline monitoring reports, 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 may include a violation of Best Management Practices, which the POTW determines may adversely affect the operation or implementation of the local pretreatment program.

Slug Load or Slug Discharge: Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards. A Slug Discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, including a discharge which exceeds the hydraulic or design of a IUs treatment system or any part of the treatment unit which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, local limits or Permit conditions.