

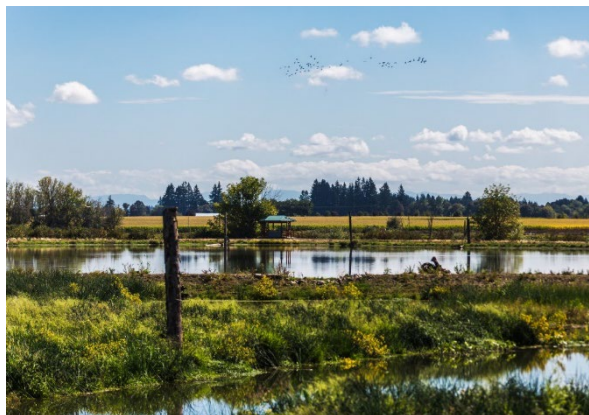


# Clean Water Services

## INDUSTRIAL PRETREATMENT PROGRAM

### Enforcement Response Plan

April 2021



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## Introduction

The pretreatment regulations at 40 CFR 403.8(f)(5) require Clean Water Services (District) to develop and implement an enforcement response plan (ERP). The ERP must contain procedures for investigating and responding to instances of Industrial User noncompliance. The ERP must, at a minimum:

1. Describe how the District will investigate instances of noncompliance.
2. Describe the types of escalating enforcement responses the District will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place.
3. Identify by title the officials responsible for each type of response.
4. Adequately reflect the District's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f)(1) and (f)(2).

The ERP details how the District will determine noncompliance, describes the specific enforcement response for each instance of noncompliance and how enforcement is escalated, and lays out the administrative penalty structure for violations. The District intends to consistently use the ERP to reduce and eliminate instances of noncompliance. The primary purpose of all District enforcement action is permit compliance; it is not strictly for punitive measures.

## 1. Description of Noncompliance Investigation

### Purpose

The pretreatment regulations at 40 CFR 403.8(f)(5)(i) require the District to describe how it will investigate noncompliance.

### Procedures

The District will use inspections and sampling and analysis events conducted by District staff to identify and investigate noncompliance. Additionally, the District will evaluate industrial user self-monitoring and compliance reports for compliance and track these data in a data management system. The District intends to evaluate all reports for accuracy and completeness and will attempt to obtain complete information from the industrial user. Incomplete or inaccurate reports may lead to enforcement actions. The District may also use sampling data from the District's treatment facilities to detect possible industrial noncompliance and will investigate further if needed. The District may use water quality sensors installed throughout the collection system or at the industrial user's permitted monitoring point to track and identify noncompliance. Additional sources of information may include reports from personnel working in the sanitary conveyance system and complaints from the public. Environmental Services (ES) staff will review and evaluate all data, reports, and notifications for industrial user noncompliance in a timely manner and will recommend enforcement actions (see Appendix A. Enforcement Response Matrix). Copies of final enforcement actions will be placed in the industrial user's file. The District intends to respond to industrial user noncompliance within 45 days. ES staff are

responsible for tracking and verifying industrial user compliance with requirements and timelines. The District may use inspections and/or sampling to verify compliance. ES staff will recommend escalating enforcement actions as needed.

The District is authorized to carry out all inspections, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with any provision of the District's Nondomestic Waste Ordinance 42 (NDWO), a permit, District Order, or any Pretreatment Standard or Pretreatment Requirement. The District is authorized to enter any premises of any industrial user in which a discharge source, treatment system, or production area is located or in which records are required to be kept to ensure compliance with the NDWO, a permit, District Order, or any Pretreatment Standard or Pretreatment Requirement. The District may, at reasonable times, have access to and copy any records, inspect any monitoring equipment or method required by the NDWO, a permit, District Order, or any Pretreatment Standard or Pretreatment Requirement, and sample any effluents that the owner or operator of a source of discharge is required to sample.

Inspections may include visual observation of the premises; collection of ambient data; collection of samples; taking photographs; inspection and copying documents; and interviewing employees, contractors and other witnesses.

The District is authorized to seek administrative search warrants from the proper court and to execute duly issued administrative search warrants. Administrative search warrants may be issued to aid the District in determining noncompliance and to collect evidence of noncompliance. An administrative search warrant can be issued based on an existing regulatory scheme (such as periodic inspections) or on a reasonable suspicion of noncompliance. Except under emergency circumstances, the District will seek consent to enter and search the premises from an authorized person before pursuing a search warrant. Under current law, refusal to provide consent is not a violation; if consent is denied, the District will seek a search warrant. In addition, the District may pursue enforcing the NDWO and conditions in the permit requiring access.

## **2. Description of Enforcement Types**

### **Purpose**

The pretreatment regulations at 40 CFR 403.8(f)(5)(ii) require the District to describe the types of escalating enforcement responses the District will take in response to all anticipated types of industrial user violations.

### **Procedures**

The District will initially respond to industrial user noncompliance by choosing the appropriate enforcement action, guided by the Enforcement Response Matrix (see Appendix A). If the action fails to return the industrial user to compliance in a timely manner, the District is required to escalate enforcement actions as appropriate until compliance is achieved.

## 2.1 Warning Letter

The District may issue a Warning Letter, a form of informal enforcement, to an industrial user when the District determines that a minor violation of any provision of the NDWO, a permit, District Order, or any Pretreatment Standard or Pretreatment Requirement occurred. The District may use Warning Letters to request that the industrial user promptly respond to the District and to provide, among other things, an explanation of the cause(s) of the violation and a plan to satisfactorily correct and prevent future violations. Submission of the response by an industrial user does not relieve the industrial user of liability for any violations occurring before or after receipt of the Warning Letter. Issuance of a Warning Letter does not limit the authority of the District to take any action, including emergency actions or any other enforcement action. Issuance of a Warning Letter is not a precondition to formal enforcement.

## 2.2 Notice of Violation

The District may issue a Notice of Violation (NOV) to an industrial user when the District determines that the industrial user violated, or continues to violate, any provision of the NDWO, a permit, District Order, or any Pretreatment Standard or Pretreatment Requirement. The issuance of an NOV initiates the formal enforcement process. The NOV may include an assessment of monetary administrative penalty, one or more Orders and a Notice of Permit Suspension or Revocation. Issuance of an NOV does not limit the authority of the District to take any action, including emergency actions, or any other enforcement action.

## 2.3 Order

The District may issue one or more Orders, as described below, in conjunction with an NOV when the District determines that an industrial user violated, or continues to violate, any provision of the NDWO, a permit, or District Order, or any Pretreatment Standard or Pretreatment Requirement. A permit or District Order may be modified by consent of both parties by issuing a Consent Order.

1. Upon a determination of violation of any District Rule, the District is authorized to issue Orders requiring any or all of the following. Reimbursements to the District and costs of corrective actions provided for here are remedial in nature and are not penalties and are not subject to any limitation on penalty amounts.
  - A. Compliance with District Rules, including collection of data and submittal of documents necessary to determine compliance;
  - B. Corrective actions to prevent continued or future violation, including development of a compliance schedule;
  - C. Cessation of specified actions related to the violation;
  - D. Corrective actions to address the impacts of the violation, including environmental cleanup and remediation;
  - E. Reimbursement of costs incurred in responding to the violation, including costs of emergency response, investigation, maintenance, operations, remediation, and

enforcement, along with payment for damages to District and City property or operations and harm to District or City employees caused by the violation.

F. Reimbursement to the District of any payments avoided through the violation.

G. Payment of monetary penalties as provided in District Rules.

2. The District is authorized to enter into negotiated agreements resolving violations or potential violations of District Rules by issuing Consent Orders. Consent Orders must include a waiver of appeal rights by the Respondent.
3. Decisions of a District Hearing Officer or the Chief Executive Officer or designee regarding appeals of formal enforcement actions will be issued in the form of District Orders containing findings of fact and conclusions of law, along with the imposition of penalties and affirmation of Orders contained in the formal enforcement action.
4. Final Orders on Default. In the event a Respondent fails to timely appeal a formal enforcement action or fails to appear at a scheduled hearing without good cause, the District is authorized to issue Final Orders on Default.

Failure of an industrial user to comply with any condition or requirement in an Order is a violation of the NDWO, and each day of a violation is independently enforceable. Reimbursement and costs of compliance or remediation imposed by an Order are remedial, not punitive, so are not subject to the \$5,000 per day penalty limit.

## 2.4 Publication

The District must publish at least annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the District, a list of the industrial users that, at any time during the evaluation period, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term “Significant Noncompliance” applies to all Significant Industrial Users (or any industrial user that violates C, D or H below) and means:

- A. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements taken for the same pollutant parameter 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 33 percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, multiplied by the applicable criteria (1.4 for BOD; TSS; fats, oils 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 District determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of District or City personnel or the general public;



- D. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the District's exercise of its emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction or attaining final compliance;
- F. Failure to provide within 45 days after the due date, any required reports, reports on compliance deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to accurately report noncompliance; or
- H. Any other violation(s), which may include a violation of Best Management Practices, that the District determines will adversely affect the operation or implementation of the local pretreatment program.

## 2.5 Notice of Permit Suspension or Revocation

For good cause, including violation of the NDWO, a permit, District Order, or any Pretreatment Standard or Pretreatment Requirement, the District may suspend or revoke any nondomestic waste discharge permit issued to an industrial user by the District. If the permit suspension or revocation is based on a violation of the NDWO, a permit, District Order, or any Pretreatment Standard or Pretreatment Requirement, the suspension or revocation will be sought as a remedy through a Notice of Violation. If the permit suspension or revocation is based on good cause other than a violation of the NDWO, a permit, District Order, or any Pretreatment Standard or Pretreatment Requirement, the District will initiate the permit suspension or revocation by issuing a Notice of Permit Suspension or Revocation to the industrial user. Good cause is further defined in Section 8.d.3 of the NDWO.

## 2.6 Notice of Emergency Permit Suspension; Notice of Emergency Suspension of Sewer Service

The District may suspend any District-issued industrial wastewater discharge permit, and may suspend sewer service to any industrial user by physically blocking the sewer connection, upon a determination by the District that an actual or threatened discharge from the property to the Publicly Owned Treatment Works (POTW) or surface waters of the State either:

- A. Presents an imminent or substantial danger to the health or welfare of persons or the environment;
- B. Interferes with the operation of the POTW or stormwater conveyance system; or
- C. Violates any pretreatment limit, any provision of the NDWO, a permit, or District Order, or any Pretreatment Standard or Pretreatment Requirement, or any other applicable law.

Emergency permit suspension is initiated by the District serving upon the permittee a Notice of Emergency Permit Suspension. The Notice of Emergency Permit Suspension is effective immediately upon service and is not stayed by appeal. Service of the Notice of Emergency Permit

Suspension may be by any means reasonably calculated to provide notice, or by providing actual notice, to the permittee. The District will provide Notice of Emergency Suspension of Sewer Service to the owner or operator of the subject property as soon as practicable, by any means reasonably calculated to provide notice, or by providing actual notice.

## 2.7 Civil Judicial Enforcement

The District is authorized to take any action provided by law to enforce the NDWO, a permit, District Order, or any Pretreatment Standard or Pretreatment Requirement or collect any moneys owed to the District as a result of enforcement actions taken under the NDWO.

## 2.8 Injunctive Relief

Whenever an industrial user has violated or continues to violate provisions of the District's NDWO, permit, or District Order, or any Pretreatment Standard or Pretreatment Requirement, the District may petition the proper 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 industrial user. Injunctive relief will be used at the discretion of the District, and generally will be used for egregious and/or recurring violations.

## 2.9 Criminal Enforcement

Although violation of the District's NDWO, a permit, or District Order, or any Pretreatment Standard or Pretreatment Requirement, may constitute state or federal crimes, the District is not authorized to prosecute crimes. If the District's investigation of noncompliance by an industrial user indicates that the violations constitute crimes under state or federal law, the District will refer the matter to the appropriate authority for further investigation and prosecution.

# 3. Right to Appeal

## Purpose

The NDWO gives legal authority for appeals and provides all industrial users the right and opportunity to appeal formal enforcement actions.

## Procedures

Industries may appeal decisions regarding enforcement actions and penalties. For enforcement action appeals, the District will follow Section 8 of the NDWO, which is summarized below.

### 3.1 Appeal of Emergency Permit Suspension and Emergency Suspension of Sewer Service

The industrial user to whom a Notice of Emergency Permit Suspension or Notice of Emergency Suspension of Sewer Service (Notice) is directed has the right to appeal the Notice at a hearing conducted as provided in the NDWO by filing a written request for hearing within three days of service of the Notice. Upon receipt by the District of a written request for a hearing on a Notice of Emergency Permit Suspension or a Notice of Emergency Suspension of Sewer Service, the District will set a time and place for a hearing, which will be no more than five days from the date of filing of the request for hearing, and will so notify the person requesting the hearing. The hearing will be conducted by the District Chief Executive Officer (or designee). Based on

evidence presented at the hearing, the District will issue an Order containing findings on the validity of the Notice of Emergency Permit Suspension or Notice of Emergency Suspension of Sewer Service. The Order may require the industrial user to cease discharges or other activities allowed under the permit, or may require the District to withdraw the Notice if it is determined to be invalid. The District Order is the Final Decision of the District. The District will lift the permit suspension or service suspension upon confirmation that the circumstances necessitating the suspension have been corrected, or if the Notice is determined to be invalid.

### 3.2 Appeal of Nonemergency Formal Enforcement

Any industrial user issued an NOV or Notice of Permit Suspension or Revocation has the right to an initial appeal. In order to be timely, the appeal must be written and must be received by the District no later than 10 days after service of the Notice of Violation or Notice of Permit Suspension or Revocation. The initial appeal must contain a reference to the matter being appealed, a statement of the interest of the appellant, a short and plain description of the basis of the appeal, and notice of whether the appellant will be represented by legal counsel in the appeal.

The District will then schedule a conference with the appellant to resolve the initial appeal. The date of the conference will be no later than 20 days following receipt of the initial appeal. The appellant may submit additional documentary information to the District and may have other persons present at the conference to provide additional information. An appellant who intends to bring legal counsel to the conference must notify the District in the initial appeal.

After considering all relevant and reliable information available, the District will issue the decision on the initial appeal in the form of a Findings and Order. The District may affirm, modify, or dismiss the Notice of Violation or Notice of Permit Suspension or Revocation and any portion thereof.

Any appellant dissatisfied with the Findings and Order on Initial Appeal has the right to a Final District Appeal to be heard at a hearing conducted as provided in Section 8.1. of the NDWO. The Final District Appeal must be written and include a reference to the matter being appealed, a statement of the interest of the appellant, and a short and plain description of the basis of the appeal. The Final District Appeal must be received by the District no later than 10 days after the date of receipt of the Findings and Order on Initial Appeal. Decisions of the Hearing Officer are in the form of a District Order setting forth findings of fact and conclusions of law, imposing monetary penalties, and affirming or reversing Orders and the suspension or revocation of permits. Decisions of the Hearing Officer are the District's Final Decision on a matter.

## 4. Administrative Civil Penalty Structures

### Purpose

The federal pretreatment regulations at 40 CFR 403.8(f)(1)(vi)(A) require the District to operate pursuant to the legal authority to assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by industrial users of pretreatment standards and requirements. While the District's NDWO provides the legal authority to assess administrative civil penalties, the District is a special district and therefore is not authorized under state law to prosecute criminal matters.

## Procedures

The District is authorized to assess monetary administrative penalties for violation of the NDWO, a permit, District Order, or any Pretreatment Standard or Pretreatment Requirement, up to \$5,000 per day per violation. The economic benefit portion of a penalty is not subject to the \$5,000 per day limit. Penalties may be assessed for each day of each violation found to have been committed, without limitation of the total amount assessed against the industrial user. The District will determine the amount of any monetary administrative penalty based on the magnitude of the violation, the extent of any environmental damage or other injury caused by the violation, whether the violation resulted from an accident or negligent or intentional acts or omissions, the compliance history of the Respondent including any efforts made by the Respondent to correct prior or current violations, any economic benefit gained by the Respondent in committing the violation, and other relevant factors.

In determining the amount of an administrative penalty, the District will first apply the formula in the following paragraph. If in the judgment of the District, the resulting penalty does not reflect the circumstances of the violation or is unjust (either too high or too low), the District may calculate the administrative monetary penalty by any method that reaches an appropriate penalty under the circumstances by applying the factors described in the preceding paragraph. The District may use tables of penalties contained in this ERP if the formula gives an unjust result. The enforcement penalty is a deterrent to place the violating Industrial User in a worse position than if they had complied.

Administrative penalty =  $\$100 \times (M+I+F+H) + EB$ , where

- M: Magnitude. Reflects the extent of noncompliance with standards, including numeric and time factors. Assigned a value of 1 to 15.
- I: Impact. Reflects any impact on the environment, human health, or District or City property or operations. Assigned a value of 0 to 10.
- F: Fault. Reflects whether the violation resulted from an accidental, negligent, or intentional act or omission. Assigned a value of 0, 5 or 15, respectively.
- H: History. Reflects the compliance history of the industrial user, including prior violations and efforts taken to correct them. Assigned a value of 0 to 10.
- EB: Economic Benefit. The value of any economic benefit the industrial user gained from the violation by avoiding or delaying costs of compliance.

#### 4.1 Administrative Penalty Guidance

The District will review each violation to determine an appropriate score for each category.

##### Magnitude (1 to 15)

1 – Minor: 1.5 times or less than the permit limit or seven days late or less.

5 – Moderate: 2 times greater than the permit limit or up to 15 days late.

10 – Excessive: 3 times greater than the permit limit or up to 30 days late.

15 – Egregious: 4 times or more than the permit limit or 45 days late or more.

Any deviation from the minimum or maximum pH limit (less than 2.0 standard units (S.U.) or greater than or equal to 12.5 standard units) will be considered an egregious magnitude (15) violation.

**Table 1: Range of Deviation**

| Range of deviation (S.U.)                          | Magnitude     |
|--|---------------|
| 4.7 - 4.9 and/or 11.1 - 11.3                       | Minor, 1      |
| 4.0 – 4.6 and/or 11.4 – 12.0                       | Moderate, 5   |
| 2.1 – 3.9 and/or 12.1 – 12.4                       | Excessive, 10 |
| Less than 2.0 and/or greater than or equal to 12.5 | Egregious, 15 |

The following table applies to discharges that are continuously monitored for pH. The table describes the magnitude of severity depending on the length of discharge time outside of pH limits (daily pH measured from 12:00 a.m. to 11:59 p.m.). A continuously monitored pH violation which lasts cumulatively >66% of minutes in a day (950 minutes) may be considered Significant Noncompliance (SNC).

**Table 2: Time of Deviation**

| Time of deviation in excess of 60 minute (6-11 S.U.) | Magnitude     |
|--|---------------|
| Greater than 60 - 89                                 | Minor, 1      |
| 90 - 179   | Moderate, 5   |
| 180 - 239  | Excessive, 10 |
| 240 minutes or more                                  | Egregious, 15 |

##### Impact (0 to 10)

0 to 3 – No to minimal impact to POTW or environment.

3 to 6 – Mild to moderate impact to POTW or environment. Any damage that may have occurred was minor.

7 to 10 – Moderate to excessive impact to the POTW or environment. Damage occurred such as corrosive structural damage, caused Pass Through/inhibition/disruption, caused NPDES permit violations, impacted the receiving streams or end uses.

### Fault (0, 5, 15)

0 – Accidental: The violation did not result from failure to use reasonable care, or to follow established practices or from intentional acts; it occurred through no fault of the industrial user, the industry acted in good faith.

5 – Negligent: The violation resulted from failure of the industrial user to follow established facility practices or standard industry practices or from failure to take reasonable care under the circumstances.

15 – Intentional: The violation resulted from acts or omissions that could reasonably have been predicted to lead to the outcome that resulted; the industry was irresponsible or did not act in good faith.

Note that the fault of an employee is attributed to the industrial user. For example, if the violation was due to the negligence of an employee, the violation was committed negligently, even if the industrial user was not negligent themselves.

### History (0 to 10)

To determine the history score, examine the violations committed over the previous 12 months (not counting the ones in the NOV for which the penalty is being calculated). The violations must have resulted in formal enforcement. Using the following table, determine the number of points for the number of violations committed during the previous 12 months to calculate the history score. Typically, a lower score in the range would be applied for administrative issues, and a higher score for permit limit violations or for facilities with a history longer than the previous 12 months. For example, if the industrial user corrected past violations, the violations did not continue or recur, and the current violation is not similar to the historical violations or is minor, the history score may be reduced accordingly. The District review will determine if extenuating circumstances justify deviation from the guidance.

**Table 3: History Score**

| <b>Violations in Previous 12 Months</b> | <b>History Score</b> |
|---|----------------------|
| 0                                       | 0                    |
| 1                                       | 1-2                  |
| 2                                       | 3-4                  |
| 3                                       | 5-6                  |
| 4                                       | 7-8                  |
| 5+                                      | 9-10                 |

### Economic Benefit

Economic benefit is described as the cost savings associated with noncompliance. The economic benefit amount reflects the cost of noncompliance compared to the cost incurred by those industrial users who complied in a timely fashion. The cost savings include three types of benefits: delay, avoidance and gains in competitive advantage.

An example of a cost savings related to delays would be delaying necessary maintenance in order to continue production or delaying the installation of pretreatment equipment to continue production/operations.

An example of avoidance is a facility that incorrectly classifies a waste material as nonhazardous waste and sends it to a disposal facility not permitted for hazardous waste disposal. The actual cost may be approximately \$50 per barrel for nonhazardous waste and \$700 per barrel for hazardous waste. Thus, a cost avoidance of \$650 per barrel.

An example of competitive advantage gains is a facility that manufactures and sells a product at a specific unit cost per item. By delaying or avoiding routine maintenance costs of the wastewater treatment system each year, the facility is able to reduce their unit cost per item below their competition and gain a significant competitive advantage.

#### 4.2 Example Administrative Penalty Calculations

The District's ERP standardizes the enforcement responses and administrative penalties that are assessed for violations. This section provides examples of how administrative penalties will be calculated for the described violations.

##### SCENARIO 1: pH LIMITS

**Example 1a:** An industrial user discharges wastewater that violates pH limits for 30 minutes by 0.2 standard units or less. The industrial user notifies the District within 24 hours. There is no history of discharge violations in the previous 12 months.

**Result:** Issue a Warning Letter.

**Example 1b:** An industrial user discharges wastewater that violates pH limits for 30 minutes by 0.2 standard units or less. The industrial user notifies the District within 24 hours. There is a history of one discharge violation in the previous 12 months.

**Result:** Issue a Notice of Violation.

**Example 1c:** An industrial user discharges wastewater that violates pH limits for 30 minutes by 0.2 standard units or less. The industrial user notifies the District within 24 hours. There is a history of two discharge violations in the previous 12 months.

**Result:** Issue a Notice of Violation with administrative penalty.

- Base penalty: \$100
- Score: Magnitude: 1, Impact: 0, Fault: 0, History: 1
  - Magnitude ranking: degree of deviation from standards (1 to 15): 1
  - Impact ranking: degree of impact on environment or District systems: (0-10): 0
  - Fault ranking: accidental, negligent or intentional (0, 5, 15): 0
  - History ranking: compliance history of violator (0-10): 1
- Economic benefit: \$0

- Subtotal =  $[\$100 \times (1+0+0+1)] + \$0$   
=  $[\$200] + \$0 = \$200$
- **Total administrative penalty: \$200**

**Example 1d:** An industrial user discharges wastewater that violates pH limits for 30 minutes by 0.2 standard units or less. The industrial user notifies the District within 24 hours. There is a history of three discharge violations in the previous 12 months.

**Result:** Issue a Notice of Violation with administrative penalty and Order.

- Base penalty: \$100
- Score: Magnitude: 1, Impact: 0, Fault: 0, History: 3
  - Magnitude ranking: degree of deviation from standards (1 to 15): 1
  - Impact ranking: degree of impact on environment or District systems: (0-10): 0
  - Fault ranking: accidental, negligent or intentional (0, 5, 15): 0
  - History ranking: compliance history of violator (0-10): 3
- Economic benefit: \$0
- Subtotal =  $[\$100 \times (1+0+0+3)] + \$0$   
=  $[\$400] + \$0 = \$400$
- **Total administrative penalty = \$400**

## SCENARIO 2: AUTHORIZED SIGNATORY

**Example 2a:** An industrial user provides documents signed by someone who is not an authorized signatory. There is no history of reporting violations within the previous 12 months.

**Result:** Issue a Warning Letter.

**Example 2b:** An industrial user provides documents signed by someone who is not an authorized signatory. There is a history of one reporting violation within the previous 12 months.

**Result:** Issue a Notice of Violation.

**Example 2c:** An industrial user provides documents signed by someone who is not an authorized signatory. There is a history of two reporting violations within the previous 12 months.

**Result:** Issue a Notice of Violation with administrative penalty.

- Base penalty: \$100
- Score: Magnitude: 1, Impact: 0, Fault: 0, History: 1
  - Magnitude ranking: degree of deviation from standards (1 to 15): 1
  - Impact ranking: degree of impact on environment or District systems: (0-10): 0
  - Fault ranking: accidental, negligent or intentional (0, 5, 15): 0
  - History ranking: compliance history of violator (0-10): 1



- Economic benefit: \$0
- Subtotal =  $[\$100 \times (1+0+0+1)] + \$0$   
=  $[\$200] + \$0 = \$200$
- **Total administrative penalty = \$200**

**Example 2d:** An industrial user provides documents signed by someone who is not an authorized signatory. There is a history of three reporting violations within the previous 12 months.

**Result:** Issue a Notice of Violation with administrative penalty and Order.

- Base penalty: \$100
- Score: Magnitude: 1, Impact: 0, Fault: 0, History: 3
  - Magnitude ranking: degree of deviation from standards (1 to 15): 1
  - Impact ranking: degree of impact on environment or District systems: (0-10): 0
  - Fault ranking: accidental, negligent or intentional (0, 5, 15): 0
  - History ranking: compliance history of violator (0-10): 3
- Economic benefit: \$0
- Subtotal =  $[\$100 \times (1+0+0+3)] + \$0$   
=  $[\$400] + \$0 = \$400$
- **Total administrative penalty = \$400**

### **SCENARIO 3: REPORTING**

**Example 3a:** Industry submits report due on January 10 on January 17. This is the first late report. Industry did not self-submit reports, and District sent reminders to send report.

**Result:** Issue a Notice of Violation with administrative penalty.

- Base penalty: \$100
- Score: Magnitude: 1, Impact: 3, Fault: 0, History: 0
  - Magnitude ranking: degree of deviation from standards (1 to 15): 1
  - Impact ranking: degree of impact on environment or District systems: (0-10): 3
    - Late submittal did not impact the District's administrative processing or reporting.
  - Fault ranking: accidental, negligent or intentional (0, 5, 15): 0
  - History ranking: compliance history of violator (0-10): 0
- Economic benefit: \$0
- Subtotal =  $[\$100 \times (1+3+0+0)] + \$0$   
=  $[\$400] + \$0 = \$400$
- **Total administrative penalty: \$400**

**Example 3b:** Industry submits report due on January 10 on January 25. This is the second late report in previous 12 months.

**Result:** Issue a Notice of Violation with administrative penalty.

- Base penalty: \$100
- Score: Magnitude: 2, Impact: 5, Fault: 5, History: 2
  - Magnitude ranking: degree of deviation from standards (1 to 15): 2
  - Impact ranking: degree of impact on environment or District systems: (0-10): 5
    - Late submittal impacted the District’s administrative processing or reporting.
  - Fault ranking: accidental, negligent or intentional (0, 5, 15): 5
  - History ranking: compliance history of violator (0-10): 2
- Economic benefit: \$0
- Subtotal =  $[\$100 \times (2+5+5+2)] + \$0$   
 $= [\$1,400] + \$0 = \$1,400$
- **Total administrative penalty = \$1,400**

**Example 3c:** Industry submits report due on January 10 on March 1. This is over 45 days late. This is the fourth late report in the previous 12 months.

**Result:** Issue a Notice of Violation with administrative penalty and Significant Noncompliance.

- Violation 1: Late report
  - Base penalty: \$100
  - Score: Magnitude: 15, Impact: 0, Fault: 5, History: 7
    - Magnitude ranking: degree of deviation from standards (1 to 15): 15
    - Impact ranking: degree of impact on environment or District systems: (0-10): 0
    - Fault ranking: accidental, negligent or intentional (0, 5, 15): 5
    - History ranking: compliance history of violator (0-10): 7
  - Economic benefit: \$0
  - Subtotal =  $[\$100 \times (15+0+5+7)] + \$0$   
 $= [\$2,700] + \$0 = \$2,700$
  - **Total administrative penalty = \$2,700**
- Significant Noncompliance: Report over 45 days late.
  - Send Notification of SNC evaluation.
    - District confirms SNC.
  - Include in annual publication of SNC.

#### SCENARIO 4: MONITORING

**Example 4a:** Industry failed to collect and analyze one monthly monitoring sample. This is the first offense.

**Result:** Issue a Warning Letter. It is unlikely that the District would bring a penalty action in this case.

**Example 4b:** Industry failed to collect and analyze one monthly permit required monitoring sample with associated effluent limit. This is the first offense.

**Result:** Issue a Notice of Violation with administrative penalty.

- Base penalty: \$100
- Score: Magnitude: 1, Impact: 1, Fault: 0, History: 0
  - Magnitude ranking: degree of deviation from standards (1 to 15): 1
  - Impact ranking: degree of impact on environment or District systems: (0-10): 1
  - Fault ranking: accidental, negligent or intentional (0, 5, 15): 0
  - History ranking: compliance history of violator (0-10): 0
- Economic benefit: Cost of analysis avoided (\$100)
- Subtotal = [ $\$100 \times (1+1+0+0)$ ] + \$100  
= [ $\$200$ ] + \$100 = \$300
- **Total administrative penalty: \$300**

## SCENARIO 5: ILLEGAL DUMP

**Example 5:** An industrial user knowingly illegally dumps a 50-gallon drum of highly corrosive industrial waste into the sanitary system through a manhole at its facility, causing \$5,000 in damage to a District pump station.

**Result:** Issue a Notice of Violation with administrative penalty and an Order with civil action requiring reimbursements to the District.

- Base penalty: \$100
- Score: Magnitude: 15, Impact: 9, Fault: 15, History: 0
  - Magnitude ranking: degree of deviation from standards (1 to 15): 15
  - Impact ranking: degree of impact on environment or District systems: (0-10): 9
  - Fault ranking: accidental, negligent or intentional (0, 5, 15): 15
  - History ranking: compliance history of violator (0-10): 0
- Economic benefit: \$700 hazardous waste disposal cost avoided
- Subtotal = [ $\$100 \times (15+9+15+0)$ ] + \$700  
= [ $\$3,900$ ] + \$700 = \$4,600
- **Total administration penalty = \$4,600**
- **Order:** In addition, the accompanying Order would include a civil action requiring payment of \$5,000 to compensate the District to repair the damage to its pump station.
  - **Reimbursement to District = \$5,000**

## SCENARIO 6: HISTORY OF PRIOR VIOLATIONS

**Example 6:** Industry with a history of prior violations (six in the past year) has an acid neutralization system fail, resulting in a discharge with more than two pH units below the permit limit every day for one month. Employees tamper with the pH monitoring equipment daily for one month, submitting false monthly data. The discharge moderately damaged District pipelines, which costs the District \$50,000 to repair.

**Result:** Issue a Notice of Violation with administrative penalty and an Order with a civil action requiring reimbursements to the District. This case most likely would be referred to DEQ for criminal investigation.

- Violation 1: Discharges in excess of permit limits
  - Base penalty: \$100
  - Score: Magnitude: 15, Impact: 8, Fault: 15, History: 10
    - Magnitude ranking: degree of deviation from standards (1 to 15): 15
    - Impact ranking: degree of impact on environment or District systems: (0-10): 8
    - Fault ranking: accidental, negligent or intentional (0, 5, 15): 15
    - History ranking: compliance history of violator (0-10): 10
  - Economic benefit: \$0 (Delaying repair is discussed in the next violation.)
  - Subtotal = [ $\$100 \times (15+8+15+10)$ ] + \$0  
= [ $\$4,800$ ] + \$0 = \$4,800 per day
  - Days: 30 (Due to the nature of the violation, the District would likely impose a penalty for each day of violation.)
  - $\$4,800 \times 30 \text{ days} = \$144,000$
  - **Administrative penalty for Violation 1 = \$144,000**
- Violation 2: Tampering with monitoring equipment
  - Base penalty: \$100
  - Score: Magnitude: 15, Impact: 8, Fault: 15, History: 10
    - Magnitude ranking: degree of deviation from standards (1 to 15): 15
      - Magnitude is intended to reflect the degree of deviation from standards. The discharge was more than 2.0 S.U. below 5.0 and was assigned the highest level based on the extreme deviation from permit requirements.
    - Impact ranking: degree of impact on environment or District systems: (0-10): 8
      - The Impact of tampering was to allow the violation to continue, which contributed to the damage.
    - Fault ranking: accidental, negligent or intentional (0, 5, 15): 15
    - History ranking: compliance history of violator (0-10): 10
  - Economic benefit: \$0
    - The benefit of tampering with the monitoring equipment was delaying repairs. This is a delayed, rather than avoided cost, since the violator will be required to repair their system. There are methods for calculating the value of costs delayed that essentially calculate the investment value of the money over the time the expenditure should have been made. For short-term delays, the benefit may not be significant. Here, depending on the possible rate of return, the economic benefit of delay was probably only a few hundred dollars and will be ignored. If the business is going to shut down, the cost avoided should be imposed. (The industrial user will be ordered to repair the failed neutralization system)

- Subtotal =  $[\$100 \times (15+8+15+10)] + \$0$   
 $= [\$4,800] + \$0 = \$4,800$  per day
- Days: 30 (Due to the nature of the violation, the District would likely impose a penalty for each day of violation.)
- $\$4,800 \times 30$  days = \$144,000
- **Administrative penalty for Violation 2 = \$144,000**
- Violation 3: Knowing falsification of monitoring data submitted in compliance documents.
  - Base penalty: \$100
  - Score: Magnitude: 15, Impact: 8, Fault: 15, History: 10
    - Magnitude ranking: degree of deviation from standards (1 to 15): 15
    - Impact ranking: degree of impact on environment or District systems: (0-10): 8
      - The impact of submitting false monitoring reports was allowing the violation to continue, which resulted in damage to the system.
    - Fault ranking: accidental, negligent or intentional (0, 5, 15): 15
    - History ranking: compliance history of violator (0-10): 10
  - Economic benefit: \$0 (Economic value discussed under Violation 2.)
  - Subtotal =  $[\$100 \times (15+8+15+10)] + \$0$   
 $= [\$4,800] + \$0 = \$4,800$
  - Days: 1
  - $\$4,800 \times 1$  days = \$4,800
  - **Administrative penalty for Violation 3 = \$4,800**
- **Total administrative penalty = \$292,800**  
 Violation 1 = \$144,000  
 Violation 2 = \$144,000  
 Violation 3 = \$4,800
- **Order:** The Order require the industrial user to repair the acid neutralization system. In addition, the accompanying Order would include a civil action requiring payment of \$50,000 to compensate the District for repair to its pipeline.
  - **Reimbursement to District = \$50,000**

## Appendix A. Enforcement Response Matrix

| Unauthorized Discharge (no permit)               |   |   |
|--|---|---|
| Noncompliance                                    | Nature of Violation   | Enforcement Response  |
| Failure to return industrial user survey         | Initial requirements not understood   | WL  |
|  | Delay of more than 30 days  | WL or NOV with Order  |
|  | Delay of more than 60 days  | NOV with Order and AP   |
| Unpermitted discharge                            | IU unaware of requirements; no harm to POTW or environment                      | WL or NOV with Order and application                              |
|  | IU unaware of requirement; harm to POTW or environment                          | NOV with Order and AP   |
|  | Failure to apply continues after notification                                   | EPS with AP, and/or refer to authorities for criminal prosecution |
| Failure to renew permit                          | IU has not submitted application within 15 days of due date                     | WL  |
|  | IU has not submitted application within 30 days of due date                     | NOV with Order and AP   |
|  | IU has not submitted application within 60 days of due date                     | NOV with order and AP, and/or EPS                                 |
| Discharge Permit Violations                      |   |   |
| Noncompliance                                    | Nature of Violation   | Enforcement Response  |
| Exceedance of local, state, or federal standards | Isolated, 1 within previous 12 months (no harm)                                 | WL  |
|  | Isolated, 2 within previous 12 months (no harm)                                 | NOV with Order  |
|  | Isolated, 1-2 within previous 12 months (harmful to POTW or environment)        | NOV with Order and AP   |
|  | Recurring, 3 within previous 12 months (no harm)                                | NOV with Order and higher AP                                      |
|  | Recurring, 4 within previous 12 months (no harm)                                | NOV with Order and higher AP                                      |
|  | Recurring, 5+ within previous 12 months (no harm)                               | NOV with Order and AP or PS                                       |
|  | Recurring, 6 or more within previous 12 months (no harm)                        | NOV with Order and AP or PS                                       |
|  | Recurring, 3 or more within previous 12 months (harmful to POTW or environment) | NOV with Order and AP and PS or EPS                               |
| Slug Discharge                                   | Isolated, 1 within previous 12 months (no harm)                                 | NOV with AP or Order and required to develop SDCP                 |
|  | Recurring, 2 within previous 12 months (no harm)                                | NOV with AP and required to develop SDCP                          |
|  | Harm to POTW or environment   | NOV with AP and required to develop SDCP, or PS or EPS            |

| <b>Monitoring and Reporting Violations</b>                   |  |  |
|--|--|--|
| <b>Noncompliance</b>   | <b>Nature of Violation</b>   | <b>Enforcement Response</b>  |
| Reporting violation  | Report improperly signed or certified  | WL   |
|  | Report improperly signed or certified after prior notice   | NOV with AP  |
|  | Report is incomplete   | WL or NOV with AP  |
|  | Report is incomplete after prior notice  | NOV with AP or Order   |
|  | Isolated Late Report (1 in previous 12 months)   | WL   |
|  | Isolated Late Report (2 in previous 12 months)   | NOV with AP for each day late  |
|  | Recurring Late Report (3-5 in previous 12 rolling months)  | NOV with AP for each day late  |
|  | Recurring Late Report (6 or more in the previous 12 rolling months)  | NOV with AP for each day late, or PS   |
|  | Report never submitted   | NOV with AP for each day late, or PS   |
|  | Failure to report violation, spill or discharge change, no harm  | NOV with AP  |
|  | Failure to report violation, spill or discharge change with harm   | NOV with AP  |
|  | Repeated failure to report violation, spills, or change with harm (>2 failures within a rolling 12-month period) | NOV with AP and/or PS  |
|  | Falsification of records   | NOV with AP or refer to authorities for criminal prosecution and/or PS or EPS      |
| Failure to monitor for all pollutant                         | Failure to monitor all permit required pollutants (1 per 12 months)  | NOV with Order with or without AP  |
|  | Failure to monitor all permit required pollutants (2-4 per 12 months)  | NOV with AP  |
|  | Recurring failure to monitor (more than 4 failures per 12 months)  | NOV with AP and/or PS  |
| Failure to monitor correctly or improper sampling            | Failure to monitor correctly (1 per 12 months), No evidence of intent  | NOV with AP  |
|  | Failure to monitor correctly (2-4 per 12 months), No evidence of intent  | NOV with AP  |
|  | Recurring failure to monitor (more than 4 failures per 12 months), No evidence of intent                         | NOV with AP and/or PS  |
|  | Evidence of intent   | NOV with higher AP and/or PS or EPS, refer to authorities for criminal enforcement |
| Failure to install, operate or maintain monitoring equipment | Delay of less than 30 days   | NOV with Order and/or AP   |
|  | Delay of more than 30 days   | NOV with AP  |
|  | Recurring, violation of Order  | NOV with higher AP and/or PS   |
| Compliance Schedule  | Missed milestone less than 30 days will not affect final schedule (good cause)                                   | NOV with Order and AP  |
|  | Missed milestone more than 30 days will affect final schedule (good cause)                                       | NOV with Order and AP  |
|  | Missed milestone more than 30 days will affect final schedule (no good cause)                                    | NOV with Order and AP  |
|  | Recurring Violation  | NOV with Order and higher AP and/or PS or EPS                                      |

| Other Permit Violations   |  |   |
|---|--|---|
| Noncompliance   | Nature of Violation  | Enforcement Response  |
| Waste stream dilution in lieu of pretreatment   | Initial violation  | NOV with Order and AP   |
|   | Recurring  | NOV with Order and higher AP; PS  |
| Failure to mitigate noncompliance or halt production  | Does not cause harm  | NOV with Order and AP   |
|   | Does cause harm  | NOV with Order and higher AP and/or PS or EPS                                     |
| Discharging following a terminated permit due to enforcement action that suspended/revoked permit or terminated service | Initial violation  | NOV with AP, seek judicial order or refer to authorities for criminal prosecution |
|   | Occurrence after initial violation                         | Refer to authorities for criminal prosecution                                     |
| Failure to resample following violation   | Isolated failure (1 <sup>st</sup> occurrence)              | WL  |
|   | Repeated failure after notice (2 <sup>nd</sup> occurrence) | NOV with Order with AP  |
|   | Repeated failure after notice (3 <sup>rd</sup> occurrence) | NOV with Order and higher AP  |
|   | Repeated failure after notice (4 <sup>th</sup> occurrence) | NOV with Order and higher AP  |
| Failure to properly operate and maintain pretreatment equipment   | Does not cause harm  | NOV with Order and AP, and/or PS  |
|   | Does cause harm, not recurring                             | NOV with Order and higher AP, and/or PS   |
|   | Does cause harm, or recurring                              | NOV with Order and higher AP, and/or PS or EPS                                    |



| <b>Violations Detected During Site Visit</b>                   |  |   |
|--|--|---|
| <b>Noncompliance</b>   | <b>Nature of Violation</b>   | <b>Enforcement Response</b>   |
| Entry Denial   | Entry denied or consent withdrawn: copies of records denied (1 <sup>st</sup> occurrence)                 | Obtain warrant and return   |
|  | Entry denied or consent withdrawn: copies of records denied (Additional occurrences)                     | Obtain warrant and return and/or PS or EPS                                      |
| Illegal Discharge, violation of general discharge prohibitions | No harm to POTW or environment   | NOV with Order and AP   |
|  | Caused harm or evidence of intent or negligence  | NOV with Order and higher AP, and/or PS or EPS                                  |
|  | Recurring, violation of District Order   | PS or EPS, or refer to authorities for criminal prosecution                     |
| Improper sampling  | Unintentional sampling at incorrect location (1 <sup>st</sup> occurrence)                                | WL  |
|  | Unintentionally using incorrect sample type (1 <sup>st</sup> occurrence)                                 | WL  |
|  | Unintentionally using incorrect techniques (1 <sup>st</sup> occurrence)                                  | WL  |
|  | Recurring (2 or more occurrences)  | NOV with Order and AP   |
| Inadequate record keeping                                      | Files incomplete or missing (no evidence of intent)  | WL or NOV with Order  |
|  | Recurring  | NOV with Order and AP   |
| Failure to report additional monitoring                        | Inspection finds additional files (unintentional)  | NOV with AP   |
|  | Recurring (considered falsification)   | NOV with Order and AP, refer to authorities for criminal prosecution            |
| Falsification of Records                                       | Any occurrence   | NOV with Order and AP, PS or EPS, refer to authorities for criminal prosecution |
| <b>Significant Noncompliance</b>                               |  |   |
| <b>Noncompliance</b>   | <b>Nature of Violation</b>   | <b>Enforcement Response</b>   |
| Exceedance of local, state, or federal standards               | Chronic or TRC, no harm  | NOV with Order and PUB  |
|  | Chronic or TRC, no harm (2nd occurrence)   | NOV with Order and AP and PUB   |
|  | Chronic or TRC, no harm (3rd occurrence)   | NOV with Order and AP and PUB   |
|  | Chronic or TRC, harm to POTW or environment  | NOV with Order and AP and PUB or PS or EPS                                      |
|  | Chronic or TRC, harm to POTW or environment (Recurring 2 or more times within the SNC evaluation period) | PUB and PS or EPS and NOV with AP   |
|  | Any violation that caused Interference or Pass Through, including endangering health                     | NOV with Order and PUB  |
|  | Any discharge that caused imminent endangerment, or resulted in emergency authority to halt or prevent   | NOV with Order and PUB  |
| Compliance Schedule  | Missed milestone 90 or more days   | NOV with Order and PUB  |
| Reporting violation  | Report is 45 or more days late   | NOV with Order and PUB  |
|  | Failure to accurately report noncompliance   | NOV with Order and PUB  |

|   |   |                        |
|---|---|------------------------|
| Exceedance of local, state, or federal standards  | Any violation, including to BMP, that adversely affects the operation or implementation of the pretreatment program | NOV with Order and PUB |
| <b>Time Frames and Responses</b>  |   |                        |
| 1. The District intends to identify and document all violations within seven days of receiving and evaluating compliance information.   |   |                        |
| 2. Enforcement responses involving contact with the industrial user and requesting information on corrective or preventative action(s), will occur within 30 days of receiving and evaluating compliance information. Some complex enforcement types may take additional time.  |   |                        |
| 3. Violations that threaten health, property or environmental quality are considered emergencies and will receive immediate responses, such as halting the discharge or termination of service.   |   |                        |
| 4. The District intends to inform the industrial user of all violations meeting the criteria for significant noncompliance (SNC) as soon as identified. Following quarterly evaluations, an informational letter will be issued within 30 days of identification of SNC. The issuance of a NOV with an Order determining SNC, corrective actions and possible administrative penalties will follow. The publication of SNC will occur annually.   |   |                        |
| 5. All formal enforcement actions and associate penalties and orders are issued by the District's CEO or designee. Only the District's General Counsel may bring a legal action.  |   |                        |
| <p>The District staff are as follows:</p> <ul style="list-style-type: none"> <li>Environmental Specialist in Environmental Services (ES)</li> <li>Environmental Services Supervisor (ESS)</li> <li>Regulatory Affairs Director (RAD)</li> <li>District's Chief Executive Officer (DCEO) or designee</li> <li>District's General Counsel (DGC)</li> </ul>  |   |                        |
| <p>The following District staff are responsible for each enforcement action:</p> <ul style="list-style-type: none"> <li>Warning Letter (WL): ES</li> <li>Notice of Violation (NOV): ES, ESS</li> <li>Administrative Penalty (AP): ES, ESS, RAD, DCEO, DGC</li> <li>Civil Penalty (CP): RAD, DCEO, DGC</li> <li>Publication (PUB): RAD, DCEO, DGC</li> <li>Permit Suspension or Revocation (PS): RAD, DCEO, DGC</li> <li>Emergency Permit Suspension or Emergency Suspension of Sewer Service (EPS): RAD, DCEO, DGC</li> <li>Injunctive Relief (IR): RAD, DCEO, DGC</li> </ul> |   |                        |