

RESOLUTION NO. 2020-255

A RESOLUTION ADOPTING THE PRETREATMENT PROGRAM ENFORCEMENT RESPONSE PLAN FOR INDUSTRIAL USERS THAT DISCHARGE INTO THE CITY'S WASTEWATER COLLECTION SYSTEM

WHEREAS, the City of Franklin has several industrial users within its wastewater collection system that discharge industrial strength wastewater from its processes; and

WHEREAS, in its legislative judgment, the Board of Mayor and Aldermen has found that policies that regulate land use and guide the maintenance of the City's infrastructure and the delivery of essential services must be dynamic and modified from time to time to reflect changes in best practices, model codes, land and labor costs, and safety standards necessary to preserve and promote the private and public interest; and

WHEREAS, the Franklin Board of Mayor and Aldermen have, on behalf of the citizens of Franklin, invested in public water and sanitary sewer systems; and

WHEREAS, the Franklin Board of Mayor and Aldermen have identified that industrial users have the potential to contribute heavily to the wastewater strengths treated at the Water Reclamation Facility; and

WHEREAS, the City of Franklin collection system and the water reclamation facility is operated at an exceptionally high level of service to customers, and revisions to the Code will continue this level of service; and

WHEREAS, the City of Franklin continually strives to be good stewards of the Harpeth River by maintaining the superior quality of water that is discharged to the river.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:

SECTION I: BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Resolution 2020-255, Pretreatment Program Enforcement Response Plan shall be adopted and used in conjunction with Title 18, Chapter 2, Wastewater, for maintenance of the City's wastewater collection system.

SECTION II: BE IT FINALLY ORDAINED by the Board of Mayor and Aldermen of the City of Franklin, Tennessee, that this ~~Ordinance~~ ^{RESOLUTION} shall take effect on January 26, 2021, for the health, safety, and welfare of the citizens of Franklin, Tennessee, requiring it.

ATTEST:

By: Eric S. Stuckey
Eric S. Stuckey
City Administrator/Recorder

CITY OF FRANKLIN, TENNESSEE:

By: Dr. Ken Moore
Dr. Ken Moore
Mayor

Approved as to form by:

Shauna R. Billingsley
Shauna R. Billingsley, City Attorney



HISTORIC
FRANKLIN
TENNESSEE

City of Franklin, Tennessee

Pretreatment Program

Enforcement Response Plan

Franklin Water Management

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Appendix A- Enforcement Response Plan

I. PURPOSE OF THE ENFORCEMENT RESPONSE PLAN

The objective of the Enforcement Response Plan is to outline the procedures to be followed by representative (s) of the City of Franklin to identify, document, and respond to pretreatment violations. The Enforcement Response Plan provides guidance in selecting initial and follow-up enforcement actions, indicates individual responsibilities for those actions, and specifies appropriate time frames in which to take them. When appropriate, enforcement shall be determined by the City of Franklin Water Management Director or approved designee(s).

To ensure that owners of POTWs (Publicly Owned Treatment Works) develop and implement specific enforcement procedures, the U. S. Environmental Protection Agency (EPA) promulgated on July 24, 1990 (55 Fed. Reg. 30082) to amend the General Pretreatment Regulations to require all POTWs with approved pretreatment programs to develop and implement Enforcement Response Plans.

In accordance with that EPA regulation, the purpose of this Enforcement Response Plan is to bring the City of Franklin into compliance with applicable regulations of the EPA and the Tennessee Division of Water Resources. These applicable regulations include the "General Pretreatment Regulations for Existing and New Sources of Pollution" (40 CFR 403) at the Federal level and the "Tennessee Water Quality Control Act" (69-3-10 1 through 129) at the State level.

II. ENFORCEMENT RESPONSE PLAN

A. General

The enforcement response selected by the City in response to a violation must be appropriate to the severity of the violation and is dependent upon each user and situation. For example, while a telephone call may be an appropriate response for a late report, a POTW upset merits a more stringent response. The City should consider the following criteria when determining a proper response:

- Magnitude of the violation;
- Duration of the violation;
- Effect of the violation on the receiving water;
- Effect of the violation on the POTW;
- Compliance history of the Industrial User; and
- Good faith of the Industrial User.

Since pretreatment enforcement is a matter of strict liability, the knowledge, intent, or negligence of the User should not be taken into consideration except when deciding when to pursue criminal prosecution.

A more detailed explanation of these six criteria is discussed below.

B. Magnitude of the Violation

For the purposes of this Plan, insignificant non-compliance is considered a relatively minor or infrequent violation of pretreatment standards or requirements. These will be usually be responded to with a Notice of Violation (NOV). Examples of violations which may be considered insignificant non-compliance are outlined below. It is important to note that the continued noncompliance of a user's violations listed here may warrant additional enforcement.

- Single failure to file a permit renewal application but remaining in compliance with the expired permit.
- A reported spill with no adverse effects.
- Isolated, minor exceedance of discharge limits.
- Failure to properly sign or certify reports (first instance).
- Missed interim or final compliance deadline by 30 days or less (good cause).
- Filing a late report (less than 5 days late).

Significant non-compliance has been defined by the Environmental Protection Agency (EPA) and the City as violations which meet one or more of the following criteria:

- Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six- (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits;
- Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6) 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);
- Any other violation of a Pretreatment Standard or Requirement as defined by Section 18-211 (4 and 5) (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the Director 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;
- Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Directors exercise of its emergency authority to halt or prevent such a discharge.
- Violation by 90 days or more after the scheduled date of a compliance schedule milestone contained in a permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- Failure to accurately report non-compliance; or
- Any other violation(s), which may include Best Management Practices, which the Director determines will adversely affect the operation or implementation of the local pretreatment program.

In general, an isolated instance of non-compliance can be met with an informal response or with a NOV. Any significant non-compliance should be responded to with an enforceable order that requires a return to compliance by a specific deadline along with the applicable monetary penalties.

C. Duration of the Violation

Violations (regardless of severity) which continue over prolonged periods of time should subject the Industrial User to escalated enforcement actions. For example, an effluent violation which occurs in two out of three samples over a six-month period or a report which is more than 30 days overdue is considered significant.

The City's response to these situations must prevent extended periods of noncompliance from recurring. EPA recommends issuance of an Administrative Order for chronic violations. If the Industrial User fails to comply with the Administrative Order, the City should assess administrative penalties or initiate judicial action. If the prolonged violation results in serious harm to the POTW; the City should also consider terminating service or obtaining a court order to halt further violations as well as to recover the costs of repairing the damage.

D. Effect on the Receiving Water

One of the primary objectives of the National Pretreatment Program is to prevent pollutants from "passing through" the POTW and entering the receiving stream. Consequently, any violation which results in environmental harm should be met with a severe response. Environmental harm should be presumed whenever an industry discharges a pollutant into the collection system which:

- Passes through the POTW and/or,
- Causes a violation of the POTW's NPDES permit (including water quality standards) and/or.
- Has a toxic effect on the receiving waters (i.e., fish kill, etc.).

At a minimum, a response to any of these circumstances should include an Administrative Order and administrative penalties. In addition, the response should ensure the recovery from the non-compliant User of any NPDES fines and penalties paid by the City. Where authorized, the City may also wish to pursue damages for the destruction or harm to local natural resources. If a User's discharge causes repeated harmful effects, the City may consider terminating service to the User.

E. Effect on the POTW

Some violations may have adverse impacts on the POTW itself resulting in significant increases in treatment cost, interference or harm to POTW personnel, equipment, processes, operations, or cause biosolids contamination resulting in increased disposal costs. These violations should be met with administrative penalties and/or civil penalties and orders to correct the violations in addition to recovery of additional costs and expenses to repair the POTW. For example, if the Industrial User's discharge upsets the POTW or causes an obstruction or explosion which requires additional expenses (e.g. to trace a spill back to its source), the City's response should include cost recovery, civil penalties, and a requirement to correct the condition causing the violation. If a User's discharge causes repeated harmful effects, the City may consider terminating service to the User.

F. Compliance History of the User

A pattern of recurring violations may indicate either that a User's treatment system is inadequate or that the User has taken a casual approach to operating and maintaining its treatment system. These indications should alert the City to the likelihood of future significant violations. Accordingly, User's exhibiting recurring compliance problems should be dealt with appropriately to ensure that consistent compliance is achieved. Compliance history is an important factor for deciding an appropriate remedy to apply to a particular violator.

G. Good Faith of the User

The User's "good faith" in correcting its non-compliance is a factor in determining which enforcement response to invoke. "Good Faith" may be defined as the User's honest intention to remedy its non-compliance as quickly as possible coupled with actions which give support to this intention. Generally, a User's demonstrated willingness to comply should predispose the City to select a less stringent enforcement response. However, good faith does not eliminate the necessity of an enforcement action.

H. Responsibility of City Personnel

Personnel that will administer the Pretreatment Program and Enforcement Response Plan along with their intended role are as follows:

1. Pretreatment Coordinator:
Person primarily responsible for the day-to-day monitoring of compliance status of Industrial User's (IU's). Duties include the following:
 - Schedule sampling events for IU's and the WWTP
 - Implement demand monitoring when deemed necessary
 - Tracking IU information and recommend necessary levels of enforcement
 - Act as the principle liaison between the City and IUs
 - Keep the Director and Plant Superintendent apprised of all developments regarding IU compliance status and perform as the primary source of reference for higher levels of enforcement
 - Issues NOVs for minor and moderate levels of non-compliance.
2. Plant Superintendent:
Supervising role over Pretreatment Coordinator. Assists in determining when cases of non-compliance should be taken to the Director.
3. Director:
At the request of the Pretreatment Coordinator, will institute higher degrees of enforcement (i.e. termination, Administrative Order, civil penalty, criminal prosecution). Will inform the Board of Mayor and Aldermen (B.O.M.A.) of the background and need for such actions. Has authority to issue Cease and Desist orders and/or emergency termination of service when necessary. Presides over Show Cause Hearings.

I. Emergency Situations

In emergency situations, demand monitoring should be initiated immediately by the Pretreatment Coordinator. Demand monitoring is initiated to accomplish one or more of the following:

- Identify or verify (possibly through a sewer line monitoring and/or on-site monitoring) the source of a discharge causing problems with treatment plant operations and/or with meeting the effluent discharge limits.
- Determine the nature, duration, and degree of hazard of the discharge.

- Assist in identifying corrective actions necessary to contain or halt the discharge.
- Gather information needed to follow-up compliance or enforcement actions.
 1. Considerations in Preparing for Sampling Activities:

The wide variety of conditions existing at different Industrial Users and different sampling locations require that some judgment be used regarding the methodology and procedure for collecting representative samples of wastewater.

Some general points to be considered in preparing for a sampling visit are:

 - The inspectors should know what parameters will be sampled, what types of sample containers and preservatives are needed, and what sample volumes are needed for laboratory analyses.
 - The inspectors should know what type of samples will be taken (grab, time-proportional composite, or flow-proportional composite). Sampling and analysis shall be performed as required in the City's Sewer Use Ordinance (Title 18, Chapter 2, Section 18-211 (17)). The inspectors should be aware of process and flow variations, recent shut-downs, etc. (i.e., weekends, holidays, seasonal production).
 - Sampling equipment should be calibrated and tested to ensure that it functions properly and that the inspectors are familiar with the operation.
 - All sampling "paperwork" should be filled out and all containers properly marked including laboratory sheets, sample tags, marked containers, etc.
 - Advance of the number and type of samples expected in order to prevent extended holding times before samples are analyzed and to assist in overall laboratory planning.
 - Chain-of-custody tags, sheets, etc. must be readied.
 2. Guidelines for Approved Analytical Procedures:

Laboratory analysis required by 40 CFR Part 136 must be followed for all samples, unless otherwise designated by EPA.
 3. Considerations in Sample Collection and Analysis:

Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period. All collected samples must be of such nature that they provide a true and accurate representation of the industry's effluent quality.

Industrial Users and Control Authorities are referred to the following publication, or its most recent version, for a comprehensive discussion of wastewater sampling:

U.S. Environmental Protection Agency, Handbook for Sampling and Sample Preservation of Water and Wastewater. (EPA Publication No. 600/4-82-029. Washington, DC; U.S. Environmental Protection Agency, September 1982. (NTIS Order No. PB83-124503.

This handbook is available from:

National Technical Information Service
U. S. Department of Commerce
5285 Port Royal Road
Springfield, Virginia 22161

4. Summary:
As the foregoing paragraphs indicate, there is a definite need to obtain representative samples and analytical data that are admissible in court. Therefore, for laboratory analyses of industrial self-monitoring samples and samples collected by the Water Management Department, the Pretreatment Coordinator should verify that: (1) the most recently approved sampling techniques issued by EPA and State laboratories are also used by the City Water Management Department and (2) all individual analyses are performed according to the Federal requirements of 40 CFR 136. Outside laboratories used for analyses should be certified or should be checked by the Pretreatment Coordinator.

J. Time Frame for Enforcement Action

In order for an enforcement action to be effective, it must be timely. For an action to be timely, the violation must be detected and responded to promptly after its occurrence. Therefore, review of compliance reports should have a high priority at the time of their submission. Generally, the Pretreatment Coordinator should review Industrial User reports within five (5) days of receipt.

No more than 30 days will be allowed to elapse between the detection of the violation(s) and the initiation of an enforcement response. If the appropriate response is an informal warning or a Notice of Violation, the response time should be much shorter. For example, a Notice of Violation should be sent to the non-compliant User within a week of the violation's detection.

After the initial enforcement response, the City should closely monitor the Industrial User's progress toward compliance. One method to ensure compliance may include increasing the frequency of User self-monitoring. For instance, an Administrative Order may increase self-monitoring from once per quarter to once a month. Similarly, the City's inspections of the User's facility may be increased until consistent compliance is demonstrated. Follow-up compliance activities will begin no later than 30 to 45 days after the initial enforcement response is taken and until sufficient evidence indicates that efforts are being made. If, however, satisfactory progress is not being made, the City will escalate the enforcement response. Such follow-up enforcement actions will be taken within 60 to 90 days of the initial enforcement action.

The City shall maintain records of all supporting documentation regarding the violation and enforcement actions. Such records will be maintained in an Industrial User's file as well as a system file covering violation and enforcement action.

K. Recommended Enforcement Response Plan

Appendix A is the Enforcement Response Plan which will be utilized by the City of Franklin to determine appropriate and objective responses to instances of noncompliance. A column has been added specifying the penalty category each violation falls under. Time frames for enforcement responses are included on the final page of the Enforcement Response Plan.

The Enforcement Response Plan is used as follows:

1. Locate the type of non-compliance in the first column and identify the most accurate description of the violation in column 2;
2. Assess the appropriateness of the recommended response(s) in column 3 and 4 using the criteria of magnitude, duration, effects, compliance history, and good faith;
3. Apply the enforcement response to the Industrial User, specifying corrective action(s) or other responses required of the IU. Column 5 indicates responsible POTW personnel;
4. Track IU's response and follow up with escalated enforcement action if a response is not received within the specified time frame or if the violation continues.

Each type of violation has been categorized and a range of penalties assigned to each category. All penalty assessments are to be assessed per violation per day unless otherwise noted.

- Category 0 = No penalty
- Category 1 = \$50.00 to \$500.00
- Category 2 = \$500.00 to \$1,000.00
- Category 3 = \$1,000.00 to \$5,000.00
- Category 4 = \$5,000.00 to \$10,000.00 and/or direct legal action

Terms and abbreviations used in the Recommended Enforcement Response Plan are defined below. Specific enforcement responses that appear in this plan are described in more detail in a later section of this Document.

L. Abbreviations/Definitions

AO – Administrative Order

CA – City Attorney

Civil Action Litigation – Civil litigation against the Industrial User seeking equitable relief, monetary penalties and actual damages.

Criminal Prosecution – Pursuing punitive measures against an Industrial User and/or organization through a court of law.

D – Director

EPA – United States Environmental Protection Agency

IU – Industrial User

Meeting – Informal compliance meeting with the IU to resolve recurring non-compliance.

NOV – Notice of Violation

PC – Pretreatment Coordinator

Penalty – Monetary penalty assessed by the City using administrative procedures

SV – Significant Violation

Show Cause Hearing – Formal meeting requiring the IU to appear and demonstrate why the City should not take a proposed enforcement action against it. The meeting may also serve as a forum to discuss corrective actions and compliance schedules.

M. Recommended Time Frames for Enforcement Responses

- All violations will be identified and documented within 5 days of receiving compliance information.
- Initial enforcement responses involving contact with the IU and requesting information on corrective or preventative action(s) will occur within 15 days of detection of violation.
- Follow-up action for continuing or recurring violations will be taken within 60 days of initial enforcement response. For all continuing violations, the response will include a compliance schedule.
- Violations which threaten health, property, or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.
- All violations meeting the criteria for significant non-compliance will be addressed with an enforceable order within 30 days of the identification of the significant non-compliance.

III. ENFORCEMENT RESPONSES

A. General

An enforcement response begins when a violation is found to have occurred. Once a violation is identified, the City must determine whether the violation should be considered significant or non-significant. The previous section of this Document discussed factors in making this determination. If the violation is significant, the City must determine the most appropriate response. This response should be proportionate to the violation's severity, promote compliance in a timely manner, and be authorized under State law and the City's Sewer Use Ordinance.

This Section provides an overview of seven types of enforcement responses available to the City. Which response or combination of responses to use depends on the violation's severity, its duration, its effect on the environment and on the treatment plant, and the User's compliance history as well as its good faith in taking corrective action. The seven enforcement responses listed below are described in more detail in the following Section of this Document.

- Notice of Violation
- Administrative penalties
- Administrative Orders
- Civil litigation
- Criminal prosecution
- Termination of sewer service
- Supplemental enforcement responses

It is important to note that all corrective actions taken by the City will be reviewed by the City Attorney for applicability and completeness prior to being given to the IU.

B. Notice of Violation

The most common form of a Notice of Violation (NOV) is an official communication from the City to the non-compliant Industrial User which informs the User that a pretreatment violation has occurred. The NOV is an appropriate initial response to non-significant violations. In case of significant non-compliance, a NOV may also be issued prior to issuing an Administrative Order or pursuing judicial remedies. The NOV's purpose is to notify the Industrial User of the violation(s); it may be the only response necessary in cases of infrequent and generally minor violations. For the purpose of this discussion, the NOV is defined in its basic function: to inform Industrial Users that a pretreatment violation has taken place. If the User does not return to compliance following receipt of the NOV, the City should proceed to more stringent enforcement measures.

The NOV is issued for relatively minor or infrequent violations of pretreatment standards and requirements. The NOV will allow the Industrial User the opportunity to correct non-compliance on their own initiative. NOVs are official communications (either through email or mail) and may be followed up with more stringent actions if not resolved.

C. Administrative Penalties

An administrative penalty is a monetary penalty assessed by the City for violations of pretreatment standards and requirements. Administrative penalties differ from court determined civil penalties since administrative penalties are assessed by the City directly and do not require court intervention unless the User contests the action or refuses to pay the penalties. Administrative penalties are punitive in nature and are not related to a specific cost borne by the City. Instead, administrative penalties capture the full or partial economic benefit of non-compliance and deter future violations.

Administrative penalties are an enforcement response when a Notice of Violation or an Administrative Order has not encouraged a return to compliance. Whether an administrative penalty is an appropriate response to non-compliance also depends greatly on the circumstances surrounding the violation. When using this enforcement response, either singly or in conjunction with another response (e.g., and Administrative Order requiring the Industrial User to take steps to return to compliance), the City will consider the following factors:

- The type and severity of the violation;
- The number of violations cited;
- The impact of the violation on the POTW and the environment (e.g., whether the violation caused pass-through or interference);
- Whether the Industrial User derived any economic benefit or savings from the non-compliance;
- The compliance history of the User;
- Whether the User is making good faith efforts to restore compliance; and
- Other policy considerations normally involved in an enforcement decision.

Instances when administrative penalties are particularly appropriate include:

- When the Industrial User remains in non-compliance after receiving repeated NOVs.
- When the Industrial User violates the terms of an Administrative Order (such as failing to meet a compliance schedule deadline).

Guidance on the amount of administrative penalties is contained in Section II, K. and Appendix A-Enforcement Response Plan.

D. Administrative Orders

Administrative Orders (AOs) are enforcement documents that will direct Industrial Users to undertake or to cease specified activities. As described in the Sewer Use Ordinance, the terms of AOs may or may not be negotiated with Industrial Users. Administrative Orders are the first formal response to significant non-compliance (unless judicial proceedings are more appropriate) and may incorporate compliance schedules, administrative penalties, and termination of service orders. This Section focuses on the City's four types of Administrative Orders:

1. Cease-and-desist orders
2. Consent orders
3. Show cause orders
4. Compliance orders

The circumstances of an Industrial User's non-compliance dictate the type of order needed to achieve a return to compliance. No single type of AO is appropriate for all situations and, even when a particular order is the best choice. The City may use more than one type of order when responding to a particular instance of non-compliance. For example, an Industrial User which discharges a slug load may be issued an order which requires the Industrial User to cease and desist and to show cause (i.e., to appear before the City and explain why more severe enforcement actions should not be taken).

1. Cease-and-Desist Orders

A cease-and-desist order directs a non-compliant User to cease illegal or unauthorized discharges immediately or to terminate its discharge altogether. A cease-and-desist order shall be used where the discharge causes interference or pass-through or otherwise creates an emergency situation. The order may be issued immediately upon discovery of the problem or following a hearing. In an emergency, the order to cease and desist may be given by telephone. However, a subsequent written order will be served on the Industrial User, either in person or by certified mail. If necessary, the City may order immediate cessation of any discharge to its collection system, regardless of a User's compliance status. In non-emergency situations, the cease-and-desist order may be used to suspend or permanently revoke industrial waste-water discharge permits. If the User fails to comply with the order, the City may take independent action to halt the discharge, such as terminating water service or blocking the User's connection point.

2. Consent Orders

The consent order combines the force of an AO with the flexibility of a negotiated settlement. The consent order is an agreement between the City and the industrial User normally containing three elements:

- Compliance schedules;
- Stipulated penalties or remedial action; and
- Signatures of the City and industry representatives.

A consent order is issued when the User assumes responsibility for its non-compliance and is willing (in good faith) to correct its cause(s).

The consent order shall address every identified deficiency in the User's compliance status at the time of the order. An example of the detail needed in a consent decree is as follows:

- Obtain the services of a licensed professional engineer specializing in wastewater pretreatment to design a pretreatment system.
- Submit plans of the proposed pretreatment system to the City and to the State for review and approval.
- Install a pretreatment system.
- Achieve compliance with the limits established in the City's ordinance within a stipulated time period or by a stipulated calendar date.
- Pay a dollar amount per day for each day the User fails to comply with any of the requirements/deadlines contained in the order, or written demand of the City.
- Notify the City and State of any failure to comply with deadlines set forth in the order, within one working day after expiration of the deadline, in writing, and describe the reason(s) for failure, additional amounts of time to complete the necessary work, and steps to be taken to avoid further delays.

3. Show Cause Hearing

An order to show cause directing the User to appear before the City, explain its non-compliance, and show cause why more severe enforcement actions against the User should not go forward. The order to show cause is typically used after informal contacts or Notice of Violation have failed to resolve the non-compliance. However, the show cause hearing can be also used to investigate violations of previous orders. Such show cause hearing should be conducted by the City Administrator assisted by the City Attorney.

4. Compliance Order

A compliance order directs the User to achieve or restore compliance by a date specified in the order. It is issued unilaterally and its terms need not be discussed with the industry in advance. The compliance order is issued, when non-compliance cannot be resolved without construction, repair, or process changes. Compliance orders are used to require Industrial Users to develop management practices, spill prevention programs and the City's related pretreatment requirements.

The compliance order should document the non-compliance and state required actions to be accomplished by specific dates, including interim and final reporting requirements.

Once these milestones are set, the City will monitor the User's performance against these milestones and escalate its enforcement response as needed.

The objective of the compliance order is to set forth corrective action to be undertaken and to indicate penalties which are automatically triggered in the event that the User fails to comply with an established compliance schedule.

E. Civil Litigation

1. General Conditions

Civil litigation is a formal process of filing lawsuits against Industrial Users to secure court ordered action to correct violations and to secure penalties for violations including the recovery of costs to the POTW for the non-compliance. The term "civil litigation" also includes enforcement measures which require involvement or approval by the courts, such as injunctive relief and settlement agreements. Civil litigation is similar to criminal prosecution in that it requires full involvement and cooperation of the City Attorney and may result in court trials of Industrial Users and assessment of penalties.

Civil litigation is an appropriate enforcement response in three general situations:

- Emergency situations where injunctive relief is necessary to halt or prevent discharges which threaten human health or the environment or interfere with the POTW;
- When efforts to restore compliance through cooperation with the Industrial User have failed and a court supervised settlement (consent decree) is necessary to enforce program requirements; or
- To impose civil penalties and recover losses incurred due to the non-compliance.

As set forth below, there are several approaches that can be pursued in the civil litigation process. These approaches are provided herein to present a brief discussion of the process.

2. Consent Decrees

Consent decrees are agreements between the City and the Industrial User reached after a lawsuit has been filed. To be binding, the decree must also be signed by the judge assigned to the case. Consent decrees are used when the violator is willing to acknowledge and correct the noncompliance and the City and the violator agree on the penalty.

3. Injunctions

Injunctions are court orders which direct parties to do something or refrain from doing something. The City should seek injunctive relief if the delays involved in filing suit or taking other action would result in irreparable harm. The Federal General Pretreatment Regulations require the City to have authority and procedures to immediately and effectively halt or prevent any discharge of pollutants which reasonably appears to present an imminent danger-to the health or welfare of persons.

4. Civil Penalties and Cost Recovery

Civil litigation (via a full trial process) may be necessary to recover costs associated with non-compliance and to impose civil penalties. A successful civil suit may force the Industrial User to pay for all expenses which the City incurred in responding to the non-compliance, including restoration of the POTW, payment for medical treatment of injured employees, and indemnification of the City for all penalties

assessed against it for NPDES permit violations. Since amounts recoverable as administrative penalties by the City could be less than those imposed as civil penalties against the City, the City may be forced to sue Users to recover costs imposed by their violation of the City's NPDES permit.

F. Criminal Prosecution

1. General Conditions

Criminal prosecution is the formal process of charging individuals and/or organizations with violations of ordinance provisions that are punishable by penalties and/or imprisonment. The purposes of criminal prosecution are to punish non-compliance established through court proceedings and to deter future non-compliance.

Examples of criminal prosecution include:

- Violations of the ordinance.
- Violations of sewer connection permits or industrial wastewater discharge permits including such items as construction of unauthorized connection points, discharge in excess of permit limits, or failure to submit self-monitoring reports.
- Violations of Administrative Orders issued to implement pretreatment program requirements (such as orders to cease and desist illegal discharges of show cause orders).
- Violations of regulations which implement general grants of authority in the ordinance.
- Failure to notify the City of unauthorized discharges.
- Submittal of falsified information.
- Violations which continue for more than one day are considered separate and distinct offenses.

2. Termination of Sewer Service

Termination of service is the revocation of an Industrial User's privilege to discharge industrial wastewater into the City's sewer system. Termination may be accomplished by physical severance of the industry's connection to the collection system, by issuance of an Administrative Order which compels the User to terminate its discharge, or by a court ruling.

Termination of service is an appropriate response to industries which have not responded adequately to previous enforcement responses. When the City must act immediately to halt or prevent a discharge which presents a threat to human health; the environment or the POTW, cease-and-desist orders and termination of service are the only appropriate responses. Unlike civil and criminal proceedings, termination of sewer service is an administrative response which can be implemented directly by the City.

Assuming other enforcement responses are unsuccessful, some of the types of violations that terminate services which may be considered are:

- Unpermitted discharge(s) which violate the POTW's NPDES permit or which create a dangerous situation threatening human health, the environment, or the treatment plant;
- Discharge(s) that exceed local or categorical discharge limits and result in damage to the environment;
- Slug loads causing damage to human health;
- Failure of the Industrial User to notify the City of effluent limit violations or slug discharge which resulted in environmental or P01W damage;
- Complete failure of the Industrial User to sample monitor or report as required by an Administrative Order;
- Failure of the Industrial User to install required monitoring equipment per the condition of an Administrative Order; and
- Major violation of a permit condition or Administrative Order accompanied by evidence of negligence or intent.

G. Supplemental Enforcement Responses

1. Public Notices

According to EPA regulations, the City must comply with the public participation requirements of 40 CFR Part 25. Among these requirements is annual publication of a list of Industrial Users which were significantly violating applicable pretreatment standards or requirements [see 40 CFP 403.8(f) (2) (vii)]. Publication of this list is intended to satisfy the public's right to know of violations affecting its immediate environment and causing additional expenditures of public funds to operate and maintain the treatment system.

2. Increased Monitoring and Reporting

Generally, Industrial Users demonstrating a history of non-compliance should be subject to increased surveillance. Since recurring violations indicate that at least one chronic problem exists at the facility, the City should monitor the User closely and require additional User self-monitoring until the problem is corrected and consistent compliance is demonstrated.

3. Referral to Regulatory Agency

The City has the option to take independent enforcement action it deems necessary, however, the City may refer the matter to the Tennessee Division of Water Resources or EPA.

Appendix A – Enforcement Response Plan

City of Franklin, TN Pretreatment Program

Unauthorized Discharge (no permit)				
Non-compliance	Nature of Violation	Category	Enforcement Response(s)	Personnel
Unpermitted Discharges	IU unaware of requirement; no harm to POTW or environment	0	Phone call; NOV with application form	PC
	Harm to POTW or environment (significant non-compliance)	3	-AO and penalty -Civil action, termination of service	PC D
	Failure to apply, continues after notification by POTW	4	-Civil Action -Criminal Prosecution -Terminate Service	D D D
Failure to renew permit	IU has not submitted application within 10 days of due date	0	Phone Call; NOV	PC

Discharge Permit Violation				
Non-compliance	Nature of Violation	Category	Enforcement Response(s)	Personnel
Exceedance of local, state, or federal standard	Isolated, not significant	0	Phone call; NOV	PC
	Isolated, significant (no harm)	1	AO to develop spill prevention plan (if not previously submitted) and penalty	PC
	Isolated, harm to POTW or environment	3	-Show cause order -Civil action	PC,D D
	IU has not submitted application within 10 days of due date	0	Phone Call; NOV	PC
	Recurring, no harm to POTW or environment	2	AO and penalty	PC
	Recurring, significant (harm to POTW or environment)	4	-AO with penalty -Show Cause Hearing -Civil Action -Terminate service	PC PC,D D D

Monitoring and Reporting Violations				
Non-compliance	Nature of Violation	Category	Enforcement Response(s)	Personnel
Reporting Violation	Report improperly signed or certified	0	Phone call; NOV	PC
	Report improperly signed or certified after notification by POTW	1	-AO and penalty -Show Cause Hearing	PC PC,D
	Isolated, not significant (5 days late)	0	Phone call; NOV	PC
	Significant (> 5 days late)	1	AO to submit with penalty for each additional day	PC
	Report repeatedly late; Failure to submit (significant non-compliance)	3 or 4	-AO with penalty -Show Cause Hearing -Civil Action	PC PC,D D
	Failure to report spill or discharge changes (no harm)	0 or 1	NOV	PC
	Failure to report spill or discharge changes (harm)	2 or 3	-AO with penalty -Civil action	PC D
	Repeated failure to report spills	4	-Show Cause Hearing -Terminate service	PC,D D
	Falsification	4	-Criminal prosecution -Terminate service	D D
Failure to monitor correctly	Failure to monitor all permit required pollutants	1	NOV or AO	PC
	Recurring failure to monitor	2	-AO with penalty -Civil action	PC D
Improper sampling	No evidence of intent	0	NOV	PC
	Evidence of intent	4	-Criminal prosecution -Terminate service	D D
Failure to install monitoring equipment	Delay of less than 30 days	0	NOV	PC
	Delay of more than 30 days	2	-AO to install with penalty for each additional day -Civil action	PC D
	Recurring, violation of AO	3 or 4	-Civil action -Criminal prosecution -Terminate service	PC D D

Monitoring and Reporting Violations (contd.)				
Permit compliance schedule	Missed milestone less than 30 days, will not affect final milestone	0	NOV	PC
	Missed milestone more than 30 days, will affect final milestone (good cause)	1	AO and penalty	PC
	Missed milestone more than 30 days, will affect final milestone (no good cause)	3	-Show Cause Hearing -Civil action -Terminate service	PC,D D D
	Recurring violation or violation of AO schedule	4	-Civil action -Criminal prosecution -Terminate service	D D D

Other Permit Violations				
Non-compliance	Nature of Violation	Category	Enforcement Response(s)	Personnel
Wastestream diluted in lieu of pretreatment	Initial violation	1 or 2	AO and penalty	PC
	Recurring	3	-Show Cause Hearing -Terminate service	PC,D D
Failure to mitigate non-compliance or halt production	Does not result in harm	2	NOV	PC
	Does result in harm	4	-AO and penalty -Civil action	PC D
Failure to properly operate and maintain facility	Does not result in harm	1	NOV	PC
	Does result in harm	3	-AO and penalty -Civil action	PC D

Violations Detected During Site Visit				
Non-compliance	Nature of Violation	Category	Enforcement Response(s)	Personnel
Entry Denial	Entry delayed or denied or consent withdrawn; copies of records denied	2	Obtain warrant and return to IU -NOV and penalty	PC
Illegal discharge (violation of general discharge prohibitions)	No harm to POTW or environment	2	AO with penalty	PC
	Causes harm or evidence of intent and/or negligence	3	-Civil action -Criminal prosecution -Terminate service	D D D

	Recurring, violation of AO	4	-Terminate service -Civil action	D D
Violations Detected During Site Visit (contd.)				
Improper Sampling	Unintentional sampling at incorrect location	0	NOV	PC
	Unintentionally using incorrect sample type	0	NOV	PC
	Unintentionally using incorrect sample technique	0	NOV	PC
	Recurring (2 consecutive sample periods)	2	AO and penalty	PC
	Recurring (3 or more sample periods without corrective action)	3	-AO and penalty -Civil action	PC D
Inadequate record keeping. Failure to mitigate non-compliance	Files incomplete or missing (no evidence of intent)	0	NOV	PC
	Recurring	2	AO and penalty	PC
Failure to report additional monitoring	Inspection finds additional files (unintentional)	1	NOV	PC
	Recurring (considered falsification)	3	AO and penalty	PC