City of North Las Vegas
Enforcement Response Plan
July 13, 2016

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The City is required under federal guidelines contained in 40 CFR Part 403 to implement and maintain an Enforcement Response Plan (ERP). The ERP provides a framework for the City to follow when responding to industrial user violations. This ERP is incorporated by reference into Section 13.28.32, A. of the City's Municipal Code.

Adopted by City Council: <u>October 5, 2016</u>

City of North Las Vegas, NV
Enforcement Response Plan

I. Background

EPA established a regulatory requirement (40 CFR Section 403.8(f)(5)) that a municipality with a pretreatment program "... shall develop and implement an Enforcement Response Plan (ERP). The ERP shall contain detailed procedures indicating how a Publicly Owned Treatment Works (POTW) will investigate and respond to instances of industrial user noncompliance." EPA requires that the plan describe how the POTW will investigate instances of noncompliance, describe the types of escalating enforcement responses and time frames for enforcement responses, identify the City staff or manager responsible for each type of response and be consistent with the approved municipal legal authority.

The City's Enforcement Response Plan (ERP) is intended to establish a clear framework for implementing an effective enforcement program and addresses Industrial User noncompliance with applicable Pretreatment Standards and Requirements and is based upon the authorities granted to the City in Title 13, Chapter 13.28 of the City of North Las Vegas Administrative Code that governs discharges by industrial users to the Publicly-Owned Treatment Works (POTW). This ERP provides the City an outline, in a step-by-step fashion, the procedures to be followed in order to identify, document, and respond to pretreatment and environmental violations. These procedures are developed with four primary objectives in mind:

- ✓ Ensuring consistency when responding to violations.
- ✓ Ensuring that violators return to compliance as quickly as possible.
- ✓ Penalizing noncompliant Industrial Users for pretreatment violations.
- ✓ Deterring future noncompliance.

The City's enforcement program operates around the following general concepts:

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

This Plan is composed of six major sections:

I. Background
II. Compliance and Enforcement Responsibilities
III. Enforcement Authorities

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IV. Enforcement Response Guide
V. Penalty and Settlement Guide
VI. Definitions

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

II. Compliance and Enforcement Responsibilities

A. Authority to Implement Enforcement Response Plan

The City of North Las Vegas (City) pursuant to regulations promulgated by the Environmental Protection Agency, 40 CFR 403.8 (f)(5), hereby establishes this ERP consistent with the City of North Las Vegas Administrative Code, as amended. The City has various oversight responsibilities and authorities that allow the identification and response to violations, including but not limited to:

1. Exercising right of entry for the purposes of inspection, sampling, records review and oversight (Section 13.28.26).

2. Requiring that the industrial user install monitoring structures and equipment (Section 12.16.600 and 12.16.605).

3. Requiring that an industrial user submit permit applications, questionnaires, and other reports as necessary (sections 13.28.10 and 13.28.28).

4. Requiring that the industrial user monitor, analyze, and report as necessary (sections 13.28.24 and 13.28.28).

5. Recovering program cost from the industrial user (Section 13.28.40).

6. Taking enforcement against industrial users for violations of the City Code (Section 13.28.32).

7. Publishing in a paper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the City all industrial users meeting the definition of Significant Noncompliance as required by Section 13.28.32, B.).

B. Compliance Inspections

Inspections are critical elements in evaluating the compliance status of industrial users and in supporting an appropriate enforcement response. This section describes the City's intent to perform inspections and provides specific guidance relating to these activities. The Senior Pretreatment Inspector is the lead for inspection duties.

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The City's pretreatment program complies with the Federal requirement to inspect and sample Significant Industrial Users (SIUs) at least once per year. The City also inspects other permitted and select non-permitted industrial users at a frequency determined to be appropriate by the City. Inspection frequencies may be increased at the sole discretion of the City. Some factors influencing the frequency of oversight include: Instances of non-compliance, unusual discharge or operational activities, lack of complete information or understanding of the processes or activities of the industrial user, on-going evaluation of pollutant loading, evaluation of BMPs or other factors.

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

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

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

1. Scheduled Inspections

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

2. Unscheduled Inspections

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

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3. On-Demand Inspection

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

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

C. Compliance Sampling

1. City Compliance Monitoring

Sampling is used to determine compliance with applicable Pretreatment Standards and to confirm data submitted by IUs in self-monitoring reports has been representative. Pretreatment personnel schedule routine, unannounced sampling of the industrial user's discharge. When a sample indicates a violation, the City may resample the IU's discharge or require the IU to do additional sampling, in addition to, responding to the violation. The City samples all Significant Industrial Users at least once per year. Alternatively, the City may order the IU to accelerate its monitoring frequency for the violating pollutant through an informal or formal enforcement action.

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

2. Industrial User Self-Monitoring

All Significant Industrial User (SIU) permits issued by the City contain a self-monitoring requirement for specific pollutants that require SIUs to monitor at least once per six months. In addition, other industrial users may have reporting requirements as required in their Authorization to Discharge, Best Management Practice (BMP) or as otherwise required by the City. The frequency with which an IU is required to self-monitor for a pollutant or report compliance with a specific BMP is set by the City and at the sole discretion of the City.

The following guidelines are used by the City in reviewing self-monitoring reports from industries to identify violations:

a. Report due and report submitted date.
b. All certification statements as required are included and signed.
c. Signatures checked to verify that the report signer is the Authorized Representative.
d. All sample and analytical data required by the permit is included.
e. Analytical methods were appropriate (40 CFR Part 136, state requirements and as required in the IU permit), holding times and MDLs and RLs are appropriate, and the Chain-of-Custody is included and complete.
f. All pollutant data is compared to permit limitations to identify violations.
g. All other pollutant data that has been analyzed by the laboratory and not specifically required to be report by the permit shall be reviewed.
h. All other reporting requirements specified in the permit are included in all reviews.

D. Staffing and Responsible Officials

Day-to-day Pretreatment Program activities will be administered by the WRF Operations Supervisor in charge of the Pretreatment Program who is accountable to the Utilities Director. The administration and enforcement of the Pretreatment Program involves several basic activities and program lead(s), including:

Type of Program Activity	Program Lead(s)	Other Program Team Members
Budgeting	WRF Operations Supervisor	Utilities Director
Identifying Industrial Users	WRF Operations Supervisor (lead on deciding how to regulate the IU)	Senior Pretreatment Inspector (lead on characterizing possible IUs for further regulation) supported by Pretreatment Inspectors.
Managing Data (includes data entry)	WRF Operations Supervisor (directs and assigns responsibility)	Senior Pretreatment Inspector, Pretreatment Inspectors, Administrative support.
Permitting IUs	WRF Operations Supervisor (signs permits). Senior Pretreatment Inspector (writes permits and reviews permits written by inspectors; concurs on permits).	Senior Pretreatment Inspector and Pretreatment Inspectors draft and route to WRF Operations Supervisor specific permit and discharge authorizations.

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Type of Program Activity	Program Lead(s)	Other Program Team Members
Inspecting IUs	WRF Operations Supervisor reviews and signs Class I – SIU inspection reports. Senior Pretreatment Inspector schedule and coordinates inspections.	Senior Pretreatment Inspector completes inspections as assigned and routes Class I-SIU inspection reports to WRF Operations Supervisor. WRF Operations Supervisor Reviews and signs non-Class I –SIU inspection reports. Identifies and briefs management on violations. Supported by Pretreatment Inspectors.
Reviewing Reports	Senior Pretreatment Inspector (performs timely review of self-monitoring reports and identifies all violations and deficiencies; briefs management).	WRF Operations Supervisor (maintains up-to-date briefings of all IU violations identified by staff). Pretreatment Inspectors provide support in reviewing reports.
Sampling IU Discharges	Senior Pretreatment Inspector (lead on scheduling and conducting sampling of IUs and provides monthly report to WRF Operations Supervisor on IUs sampled)	Pretreatment Inspectors support the Senior Pretreatment Inspector.
Enforcement	See table below. All enforcement actions go to WRF Operations Supervisor for review and signature (non-formal enforcement actions) and review and concurrence for formal actions.	See table below. Senior Pretreatment Inspector, Pretreatment Inspectors.

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

Enforcement Action	Initiating Personnel	Concurrence Required	Signature Authority
Informal Action: Phone call, email or warning letter[1] to notify IU of violations (all responses are documented and put in IU file).	Senior Pretreatment Inspector	None; Briefing to WRF Operations Supervisor required.	Senior Pretreatment Inspector. Phone calls and documentation of calls can be made by Pretreatment Inspectors as approved by Senior Pretreatment Inspector
Informal Action: Industrial User Meeting (always held at WRF).	Senior Pretreatment Inspector provides briefing prior to scheduling meeting to WRF Operations Supervisor	For SNC violations: WRF Operations Supervisor	Meeting request: Non-SNC by Senior Pretreatment Inspector; SNC related violations: WRF Operations Supervisor
Notice of Violation[2] (NOV)	WRF Operations Supervisor; Senior Pretreatment Inspector	None	WRF Operations Supervisor
Administrative Order[3]	WRF Operations Supervisor with support from Senior Pretreatment Inspector	WRF Operations Supervisor	Utilities Director (may be re-delegated)
Consent Order	WRF Operations Supervisor	Utilities Director	City Attorney (Lead)
Show Cause Hearing	WRF Operations Supervisor with support from Senior Pretreatment Inspector	WRF Operations Supervisor, City Attorney	Utilities Director
Cease and Desist Order	WRF Operations Supervisor with support from Senior Pretreatment Inspector	WRF Operations Supervisor, City Attorney	Utilities Director (may be re-delegated)

Enforcement Action	Initiating Personnel	Concurrence Required	Signature Authority
Administrative Penalty Order	WRF Operations Supervisor	WRF Operations Supervisor, City Attorney	Utilities Director
Suspension of Service, including Revocation of Permit	WRF Operations Supervisor	WRF Operations Supervisor City Attorney	Utilities Director
Injunctions/Search Warrants	WRF Operations Supervisor with support from Senior Pretreatment Inspector	WRF Operations Supervisor Utilities Director	City Attorney (Lead)
Judicial Action	WRF Operations Supervisor with support from Senior Pretreatment Inspector	WRF Operations Supervisor Utilities Director	City Attorney (Lead)

(1) A warning letter is an informal action and will generally only provide notice to the industrial user of violations and specific requirements already established in the City's legal authority.

(2) A Notice of Violation (NOV) is an action where the City uses the NOV to identify violations and establish specific actions and timeframes that are not already required in the City's legal authority. An NOV may be the final enforcement action for isolated or non-recurring violations that are not SNC.

(3) An Administrative Order (AO) is a formal action where the City uses the AO to identify violations and establish specific actions and timeframes that are not already required in the City's legal authority. An AO is the standard initial response to violation by industrial users that meet a SNC criterion.

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III. Enforcement Authorities

A. General

Once a violation is identified, the City will determine the appropriate enforcement response. If the violation is significant (serious, recurring, SNC, etc.) the City will generally take a formal enforcement action. If the violation is not significant (isolated, minor, not SNC, etc.) the City will generally take an informal enforcement action. The significance of violations is defined in Section IV, Table 1. This ERP is a general framework for how the City will respond to a violation. The City may take any enforcement action that the City determines is timely and appropriate. Tracking of enforcement actions is generally the responsibility of the Senior Pretreatment Inspector.

B. Administrative Enforcement Actions

1. Informal Violation Communication/Meetings (INF)

   The City may notify a user of a violation (minor, isolated) via an email, warning letter, meeting or phone call with the industrial user. These are informal actions. A record of communication for the phone call or copy of the email and/or meeting notes will be included in the IUs file. A warning letter is used to notify the Industrial User that a violation was identified. This letter may precede an additional enforcement response where necessary.

2. Written Notice of Violation (NOV)

   Whenever an IU is violating or has violated the City's Ordinance, permit condition or other Pretreatment Standard or Requirement, the City may issue a written NOV to the industrial user (see Section 13.28.32, C.1.). The purpose of the NOV is to notify the IU of the violation(s) and to request that the IU explain the cause(s) of the violation and what is being done to prevent a recurrence. This may be the only enforcement response necessary for some non-SNC violations and is considered an informal enforcement response. An NOV may be issued initially and routinely for any violation and that action followed up later by an escalated enforcement action.

   Administrative: The NOV is an informal enforcement response. The NOV may be hand delivered, sent via email, or by registered or certified mail and shall be provided to the Authorized Representative. The industrial user will be required to respond within ten (10) days from the receipt of the NOV unless another timeframe is established by the City. A copy of the NOV will be filed in the industrial user file. The City may perform an on-site inspection as a follow-up to the violation. A failure of a violator to respond to an NOV, as required, may result in a finding of Significant Noncompliance (SNC) and a formal enforcement action to compel compliance.

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3. Administrative Order (AO)

Administrative Orders (AO) are formal enforcement actions which direct IUs to undertake or to cease specified activities. AOs should be used as the first formal response to violations that result in an industrial user being in SNC. If continued operation of the industrial facility will not cause a significant discharge violation (e.g. Pass Through, Interference, etc.) and the industrial user cannot achieve compliance immediately, the City may issue an AO requiring the industrial user to complete specific tasks by certain dates. Issuance of an AO does not relieve the IU of the obligation to meet local limits and requirements, nor does it bar the City from undertaking additional enforcement actions, including the imposition of penalties. The AO allows the industry to continue to discharge as long as it demonstrates adequate progress in providing a permanent solution to the cause of its discharge violations. Under no circumstances will the City agree to a compliance schedule that might result in Pass Through, Interference or violation of a General or Specific Prohibition (Section 13.28.32, C.2.).

Administrative: The AO is a formal enforcement response. The AO may be hand delivered or by registered or certified mail and shall be provided to the Authorized Representative. A copy of the AO will be included in the industrial user file.

4. Administrative Fines/Administrative Penalty Order (APO)

When the City finds that an Industrial User has violated, or continues to violate, any provision of this Article, a permit, order or any other Pretreatment Standard or Requirement, the City may assess an Administrative Fine to the Industrial User (see Section 13.28.32, C.6.). Administrative fines are generally assessed through issuance of an Administrative Penalty Order. The Industrial User receiving such APO shall comply with the requirements and response requirements specified in the APO. Nothing in this Section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing an APO. Note: An APO is an informal action if it just assesses a penalty. If it requires the Industrial User to take specific actions towards compliance, it would be classified as a formal enforcement action.

The APO is generally hand delivered or sent by registered or certified mail to the Authorized Representative. A copy of the APO will be filed in the industrial user file. The City may perform an on-site inspection as a follow-up to the violation. A failure of a violator to respond to an APO, as required, may result in a finding of Significant Noncompliance (SNC) and a formal enforcement action to compel compliance.

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5. Consent Order (CO)

A Consent Order is issued by the City and reflects an agreement between the City and the IU which usually establishes a compliance schedule, stipulated penalties and/or remedial action. A Consent Order will be used when the IU assumes responsibility for its noncompliance and agrees to voluntarily correct the cause of the violation. A Consent Order is generally issued as a secondary action to a formal enforcement action. Issuance of a Consent Order does not relieve the IU of the obligation to meet local limits and requirements, nor does it bar the City from undertaking additional enforcement actions, including the imposition of penalties. The Consent Order allows the industry to continue to discharge as long as it demonstrates adequate progress in providing a permanent solution to the cause of its discharge violations. Under no circumstances will the City agree to a compliance schedule that might result in Pass Through, Interference or violation of a General or Specific Prohibition (Section 13.28.32, C.3.).

Consent orders are transmitted to the Industrial User via the City Attorney's Office. A copy of the CO will be filed in the industrial user file. A failure of a violator to comply with a CO, as required, would be reviewed and addressed by the City Attorney's office.

6. Show Cause Hearing (SCH)

Whenever a violation is not corrected after notification or a compliance schedule has not been met, the City may issue an order on the industrial user to show cause at a hearing before the City as to why the permit should not be suspended or revoked. The show cause order will specify the time and place of hearing, the proposed action, the reasons why the action is be taken, and directing the IU to explain why the action is not warranted. The show cause order will be served personally or by registered or certified mail at least ten (10) days before the hearing. The hearing will generally follow the procedures established at Section 13.28.32, C.4.

After the City has reviewed the evidence, it may issue an order discontinuing service unless the evidence shows that the violation has been corrected. Issuance of a show cause order does not relieve the IU of the obligation to meet local limits and requirements, nor does it bar the City from undertaking additional enforcement actions, including the imposition of penalties.

The administrative record related to a Show Cause Hearing would be included in the Industrial User file subsequent to conclusion of the Hearing.

7. Cease and Desist Order (CDO)

A Cease and Desist Order (see Section 13.28.32, C.5) directs the IU to immediately correct an illegal discharge or to stop a discharge altogether. A

Cease and Desist Order will be issued where a discharge could cause Pass Through, Interference, environmental damage, or threaten worker health or safety. A Cease and Desist Order may also be used when an industrial user has failed to apply for or obtain an Industrial Discharge Permit pursuant to Section 13.28.10.

Administrative: The CDO is a formal enforcement response. The CDO may be hand delivered or by registered or certified mail and shall be provided to the Authorized Representative. A copy of the CDO will be filed in the industrial user file.

8. Emergency Suspension for Noncompliance (SUS)

In situations where an actual or threatened discharge presents or may present an imminent or substantial endangerment to human health, welfare or the environment, causes Interference to the POTW or causes the City to violate its discharge permit, the City may suspend wastewater treatment service without any hearing or formal notice to the industrial user (see Section 13.28.32, C.7.). The City will take all necessary steps, including seeking injunctive relief or severance of the sewer connection, to prevent or minimize any damage to the POTW system or endangerment to persons or the environment.

Administrative: An Emergency Suspension is a formal enforcement response. The SUS may be hand delivered or by registered or certified mail or as otherwise required by the City Code and City Attorney's office. A copy of the SUS will be filed in the industrial user file.

9. Revocation of Permit (RP)

The City may revoke a permit and the authorization of an industrial user to discharge wastewater to the POTW for the reasons cited in Section 13.28.32, C.8. The industrial user may be required to demonstrate that all non-domestic wastewater is properly disposed of. Revocation of an industrial user's permit does not bar the City from undertaking additional enforcement actions, including the imposition of penalties.

Administrative: An Emergency Suspension is a formal enforcement response. The RP may be hand delivered or by registered or certified mail or as otherwise required by the City Code and City Attorney's office. A copy of the RP will be filed in the industrial user file.

C. Judicial Enforcement Actions

1. Civil judicial enforcement is the formal process of filing a lawsuit against an IU to secure court ordered action to correct violations and to assess penalties for violations, including the recovery of costs to the City. Civil action is an

appropriate enforcement response in several situations:

- ✓ When injunctive relief is necessary to halt or prevent discharges which threaten human health, the environment, or the treatment plant.
- ✓ When efforts to restore compliance through other enforcement actions have failed and a court order is necessary to enforce program requirements.
- ✓ When an IU fails to pay assessed penalties or the City wishes to recover losses due to the IU's non-compliance.
- ✓ When the IU has such serious and chronic violations, the use of other formal enforcement actions would not be appropriate.

2. Injunctive Relief (INJ)

The City may seek injunctive relief for violations of a permit, the City Ordinance, any order or violations of other Pretreatment Standards or Requirements (see Section 13.28.32, D.). The City has the authority to suspend an IU's wastewater treatment service in the event a discharge may cause imminent or substantial endangerment, and injunctive relief may not be necessary to halt or prevent the discharge. Injunctive relief may be necessary, however, if the IU refuses to comply with an order issued by the City. An Injunction does not bar the City from undertaking additional enforcement actions, including the imposition of penalties.

3. Settlement Agreement (also see Consent Agreement)

Settlement Agreements are agreements between the City and the IU reached after civil actions have been filed. To be binding, the decree must be signed by the City, city attorney and the IU. Settlement Agreements are used when the IU acknowledges and is willing to correct the violations and agrees with the City to a penalty and/or remedial actions and in some cases, costs and liquidated damages incurred by the City.

4. Criminal Enforcement Actions

The City may prosecute criminal cases as specified at Section 13.28.32, D.4. The City may also refer to and rely upon EPA and any other appropriate jurisdiction to prosecute criminal environmental violations. The City maintains the ability to independently take administrative or civil actions for any violations without regard to an on-going criminal enforcement action (e.g. parallel proceedings).

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IV. Enforcement Response Guide

The City will use the Enforcement Response Guide in Table 1 as a framework to determine the appropriate enforcement response for various types of violations. Based upon the specific situation, the City may alter its response to a violation. Should the violator fail to respond to any enforcement action initiated by the City, the City may opt to follow-up with any enforcement response that the City deems appropriate and that is authorized by the City's legal authority and shown in the table below. The City may initiate an enforcement action with something other than the lowest level of action listed. The City may opt to take an immediate and significant action (penalty action) for a first violation.

Abbreviations for Enforcement Actions [1]

INF	Email, Meeting, Phone Call, Warning Letter (all documented to IU File)
NOV	Notice of Violation
AO	Administrative Order
CO	Consent Order
SCH	Show Cause Hearing
CDO	Cease and Desist Order
AF/APO	Administrative Fine/Administrative Penalty Order
SUS	Suspension of Service
RP	Revocation of Permit
INJ	Injunctive Relief
SW	Search Warrant – This is not an enforcement response, but may be required for inspections.
CIVIL	Civil Penalty
CRIM[2]	Criminal Penalties

(1) Enforcement Responses generally escalate for recurring violations.

(2) Criminal Enforcement and referrals to EPA/State for suspected criminal violations may be made. This option is not reflected in all of the violations in the following table, but may be an option exercised by the City.

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General Administrative Fine Schedule

The following table shows the typical penalty associated with specific violations. Recurring or multiple violations would result in administrative fines that may be greater than shown below.

Violation	Typical Penalty
Late reports/notifications, Compliance schedule violation, failure to resample within 30 days	$100 per day
Incomplete reports, failure to provide appropriate signatory certification, failure to provide additional monitoring as required, failure to show up for meeting/hearing, failure to post required notices,	$100 per event
Failure to maintain records	$200 per event
Failure to report slug loads, accidental discharges reaching the POTW, upsets and bypasses	$500 per day

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Table 1 – Table of Enforcement Responses

Violation	Circumstances	Typical Range of Enforcement Responses[1]	Typical timeframe for initiating the enforcement response
General: Any violation that does not meet SNC definition	Any Instance	INF, NOV, AO, CO, SCH, CDO	Within 14 days of identifying the violation.
General: Any violation that meets SNC definition	Any Instance	AO, CO, SCH, CDO, AF/APO, SUS, RP, INJ, CIVIL, CRIM	Within 14 days of identifying the violation.
Failure to apply (or reapply) for a permit as required: New Industrial Users (SIUs/Class I). SNC violation.	Any Instance	AO, SCH, CDO, AF/APO, INJ, CIVIL	Within 14 days of identifying the violation.
Failure to apply (or reapply) for a permit as required: Existing Class I and Class II Permittees. ≤45 days late – non-SNC violation.	Any Instance	NOV, AO, SCH, CDO, RP	Within 45 days of the reapplication date
Failure to apply (or reapply) for a permit as required: Existing Class I and Class II Permittees. >45 days late – SNC violation.	Any Instance	AO, SCH, CDO, AF/APO, INJ, CIVIL	Within 14 days of identifying the violation.
Failure to submit a complete and accurate permit application. All additional updated from IUs must have signatory cert.	Any Instance	INF, NOV, AO, SCH	Within 14 days of identifying the violation.
Illegal or unpermitted discharge	Any Instance	AO, AF/APO, SCH, CDO, SUS, INJ, CIVIL, CRIM	Immediately
Permit effluent limit violation and/or BMP Violation (Pretreatment Standards)	Any Instance	Isolated, Not SNC: NOV, AO, SCH Recurring and/or SNC: AO, AF/APO, SCH, CDO, RP, SUS, INJ, CIVIL	Within 14 days of identifying the violation.

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Violation	Circumstances	Typical Range of Enforcement Responses[1]	Typical timeframe for initiating the enforcement response
Exceeds a local limit (Pretreatment Standard) that is not included as a permit limit in the existing IU permit.	No environmental or POTW impact and the pollutant was disclosed in the permit application	INF, NOV, AO, SCH	Within 14 days of identifying the violation.
	No environmental or POTW impact and the pollutant was not disclosed in the permit application (aka incomplete permit application)	NOV, AO, SCH, AF/APO	Within 14 days of identifying the violation.
	An environmental or POTW impact (evaluate affirmative defenses)	AO, AF/APO, SCH, CDO, RP, SUS, INJ, CIVIL	Immediately
Discharge that presents or may present an imminent or substantial endangerment to health, the environment, personnel, or the POTW.	Any instance	SUS, RP	Immediately
Discharge of wastes specifically prohibited in a discharge permit, authorization or the City Ordinance that violates a General or Specific Prohibition.	Any Instance	NOV, AO, AF/APO, SCH, CDO, RP, SUS, INJ, CIVIL	Within 30 days of identifying the violation.

Violation	Circumstances	Typical Range of Enforcement Responses[1]	Typical timeframe for initiating the enforcement response
Slug Load (Reported as required)	Isolated, no damage to POTW or environment.	NOV, AO, SCH, AF/APO	Within 14 days of identifying the violation.
	Recurring (>once in a 3 month period) or causing a violation of the General or Specific prohibitions.	NOV (pre-notice), AO, AF/APO, SCH, CDO, RP, SUS, INJ, CIVIL	Within 5-14 days of identifying the violation.
Failure to report (self-monitoring report/Notifications), including compliance with Best Management Practices (BMPs)	<45 days late (isolated)	INF, NOV, AO, AF/APO, SCH, CDO, RP	Within 14 days of identifying the violation.
	>45 days late	AO, SCH, CDO, AF/APO, SUS, RP, INJ, CIVIL	Within 30 days of identifying the violation.
Failure to Provide Complete Reports (other than failure to monitor), including reports on BMPs	Isolated Occurrence	NOV, AO	Within 5 days of review.
	Recurring (>1 report in 6 months)	NOV, AO, SCH, CDO, AF/APO, RP, CIVIL	Within 14 days of review.
Failure to monitor for all required permit or other required pollutants.	Any instance	NOV, AO, SCH, CDO, AF/APO, RP, CIVIL	Within 14 days of identifying the violation.
Falsification of Data/Reports	Any Instance	AO, SCH, CDO, AF/APO, RP, CIVIL, CRIM	Within 45 days of identifying the violation.
Failure to report an effluent violation within 24 hours (SNC)	Any Instance	NOV (pre-notice), AO, AF/APO, SCH, CDO	Within 14 days of identifying the violation.
Failure to resample within 30 days as required (SNC)	Any Instance (SNC)	NOV (pre-notice), AO, AF/APO, SCH, CDO	Within 14 days of identifying the violation.

Violation	Circumstances	Typical Range of Enforcement Responses[1]	Typical timeframe for initiating the enforcement response
Failure to notify of a change in discharge or changed conditions that may affect the potential for a slug discharge (SNC).	Any instance	NOV (pre-notice), AO, AF/APO, SCH, CDO, RP, INJ, CIVIL	Within 14 days of identifying the violation.
Missed compliance schedule milestone or final date within 90 days of deadline (SNC)	Any Instance	NOV (pre-notice), AO, AF/APO, SCH, CDO, RP, INJ, CIVIL	Within 14 days of identifying the violation.
Tampering with monitoring equipment or methods.	Any Instance	AO, SCH, CDO, AF/APO, RP, CIVIL, CRIM	Within 45 days of identifying the violation.
Denial of access, refusal of entry or withdrawal of access.	Any Instance	INJ, SW, RP, AO, SCH, CIVIL	Immediately
Failure to comply with an order or request for information.	Any Instance	AO, AF/APO, SCH, CDO, RP, INJ, CIVIL	Within 30 days of identifying the violation.
Bypassing treatment without authorization or notification to the POTW.	Any Instance	NOV (pre-notice), AO, AF/APO, SCH, CDO, RP, INJ, CIVIL	Immediately
Failure to properly operate or maintain a treatment system.	Any instance	AO, AF/APO, SCH, CDO, RP, INJ, CIVIL	Immediately - 14 days of identifying the violation.
Failure to install a grease interceptor or sand/oil separator as required.	Any instance	NOV, AO, AF/APO, SCH, CDO, RP, INJ, CIVIL	Within 15 days of identifying the violation.
Failure to maintain a grease interceptor or sand/oil separator as required.	Any instance	INF, NOV, AO, AF/APO, SCH, CDO	Immediately – correct within 5 days of identifying the violation.
Failure to install monitoring structures or equipment as required.	Any instance	NOV (pre-notice), AO, AF/APO, SCH, CDO, RP, INJ, CIVIL	Within 45 days of identifying the violation.

Violation	Circumstances	Typical Range of Enforcement Responses[1]	Typical timeframe for initiating the enforcement response
Failure to use appropriate analytical methods.	Any instance	NOV, AO, AF/APO	Within 14 days of identifying the violation.
Failure to sample as required, including wrong sample type, exceeding holding times, no chain of custody, etc.	Any instance	NOV, AO, AF/APO	Within 14 days of identifying the violation.
Industrial user is using dilution to meet limits.	Any instance	NOV (pre-notice), AO, AF/APO, SCH, CDO, RP, INJ, CIVIL	Within 14 days of identifying the violation.
Failure to maintain records on-site as required.	Any instance	NOV, AO, AF/APO	Within 14 days of identifying the violation.
Failure to comply with inspection required actions.	Any instance	NOV, AO, AF/APO, SCH, CDO, RP, INJ, CIVIL	Within 45 days of identifying the violation.
pH violation.	<5.0, no damage <5.0, damage to the monitoring structure, service line or POTW	NOV, AO, AF/APO NOV (pre-notice), AO, AF/APO, SCH, CDO, RP, INJ, CIVIL	Within 14 days of identifying the violation. Within 14 days of identifying the violation.
Violations determined to be knowing, willful or due to negligence not specified above.	Any instance	AO, AF/APO, SCH, CDO, SUS, RP, INJ, CIVIL, CRIM	Within 45 days of identification of the violation.

(1) The range of enforcement response incorporates three program approaches:

A. Unless otherwise specified, the POTW will generally increase or escalate its enforcement response if violations are repeated or violations in multiple categories occur.

B. The issuance of penalties will generally follow those guidelines in Section IV of this ERP and will increase for repeated violations or violations in multiple categories.

C. If an industrial user has a violation or violations that result in a determination of SNC, the City will generally issue a formal enforcement action.

D. An informal response may precede another enforcement response.

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V. Penalty and Settlement Guide

A. Penalty Assessments

The City will use the following general guidelines for determining the appropriate penalty for a violating industrial user for civil judicial cases. Administrative penalties may also be calculated based upon this Section V at the City's discretion. After review and compilation of the violation data and other data that may be developed by the City, several penalties will be calculated. These include:

Statutory Maximum Penalty

The Statutory Maximum Penalty is calculated by multiplying the maximum penalty amount in the Rules and Regulations by the total number of all violations that will be addressed in the enforcement action (violations would be no older than 5 years). A monthly average penalty would be 30 days of violation (maybe 22 if they are only generating wastewater that many days). In addition, if there are multiple daily measurements during the month and some of which are in compliance with the monthly limit, the City may consider this fact.

Penalty Assessed

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

Penalty = Economic Benefit + Gravity Component (punitive portion)

Bottom-Line Penalty

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

The City is not required to negotiate a penalty and does not intend to do so for smaller issued penalties. Once assessed, the City expects the violator to pay the assessed penalty in full.

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

Penalty = Economic Benefit + Gravity Component (punitive portion) +/- Gravity Adjustments – Litigation Considerations – Ability to Pay – Supplemental Environmental Projects

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B. The Penalty Components

1. Economic Benefit

Economic Benefit is the financial gain to the industrial user realized from not complying with applicable Pretreatment Standards and Requirements. The City's intent is to collect any financial gain (economic benefit) that a violating user may realize from noncompliance. The City may consider financial gain that is beyond five years, but as a matter of policy, the City will typically consider the financial gain realized by the violator based on the five year statute of limitations for prosecuting violations.

Delayed or avoided costs include, but are not limited to:

a. Monitoring and Reporting (including costs of the sampling and proper laboratory analysis);

b. Capital equipment improvements or repairs, including engineering design, purchase, installation, and replacement; and

c. Operation and maintenance expenses (e.g. labor, power, chemicals) and other annual expenses.

2. Gravity

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

The gravity component is assessed to achieve several purposes:

- Punish the violator for its actions.
- Deter the violator from future violations.
- Deter other industrial user from violations.

Gravity includes:

- Significance of the violation
- Health, Environment and POTW Harm
- Number of Effluent Violations
- Significance of the Non-Effluent Limit Violations

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

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

A = An adjustment factor for significance of the violation
B = An adjustment factor for health, environment and POTW harm

C = An adjustment factor for number of effluent violations
D = An adjustment factor for significance of the non-effluent limit violations

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

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

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

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

If the industrial user did not notify the City and repeat the sampling after finding the effluent violation as required by Section 13.28.28, D., then an appropriate value for gravity Factor D should be assigned for this notification or monitoring violation(s).

Table for Assigning a Value for Factor A

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

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

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

Table for Assigning a Value for Factor B

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

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

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

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

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

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

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

With regards to monitoring and reporting violations, the basic approach to environmental protection under the Clean Water Act relies on self-monitoring by the industrial user. The failure to conduct required monitoring is a serious violation. The failure to submit a report in a timely manner is generally not treated as a continuing violation past the month in which the

report was due. For example, if an industrial user fails to submit a Baseline Monitoring Report as required by 13.28.28, B., this will be counted as a violation only in the month when the report was due.

Table for Assigning a Value for Factor D

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

C. Gravity Adjustment Factors

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

Penalty = Economic Benefit + (1 + A + B + C + D) x $1000 +/- Gravity Adjustment Factors

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

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

Table for Determining a Flow Reduction Factor

Average Daily Wastewater Discharge Flow (gpd)	% Reduction of Total Gravity
Less than 5,000	50
5001 – 9,999	40
10,000 – 19,999	30
20,000 – 29,999	20
30,000 – 49,999	10
50,000 – 99,999	5
100,000 or more	0 (no reduction)

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

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

Quick Settlement Adjustment Factor (range up to 15%)

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

Environmental Auditing Adjustment Factor (up to 15%)

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

Litigation Considerations (Judicial Cases)

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

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No enforcement case is without potential litigation considerations. Some relevant factors include:

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

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

Ability to Pay (to decrease the penalty assessed)

The City typically does not request settlement penalties that are clearly beyond the financial capability of the violator. This means the City will generally not seek a penalty that would seriously jeopardize the violator's ability to continue operations and achieve compliance, unless the violator's behavior has been exceptionally culpable, recalcitrant, threatening to human health or the environment, or the violator refuses to comply.

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

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

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D. Calculating Penalties

This form is general guidance for calculating a penalty.

Case Name:	Date:
Prepared by (staff):	Reviewed by:
Settlement Penalty Calculation Worksheet	
1. Calculate the **statutory maximum** penalty: $_____ x days of violation.	$
2. Economic Benefit. Attach explanation of the dollars saved due to non-compliance.	$
3. Gravity = *(1 + A + B + C + D) * POTW Penalty Authority* A = An adjustment factor for significance of the violation B = An adjustment factor for health, environment and POTW harm C = An adjustment factor for number of effluent violations D = An adjustment factor for significance of the non-effluent limit violations	$
4. **Assessed Penalty**: Economic Benefit + Gravity (add lines 2 and 3)	$
5. Gravity Adjustments	
a. Flow Reduction Factor for Small Facilities (range 0 to 50% decrease in penalty).	%
b. History of Cooperativeness Adjustment Factor (range 0 to 150% increase in penalty).	%
c. Quick Settlement Adjustment Factor (range up to 15% decrease in penalty).	%
d. Environmental Auditing Adjustment Factor (up to 15% decrease in penalty)	%
6. Total $ for Gravity Adjustments: (Gravity * (5.b./100)) – (Gravity * (5.a. + 5.c. + 5.d./100))	$
7. Total Adjusted Gravity (line 3 + line 6).	$
8. **Preliminary Bottom-line Penalty** (line 2 + line 7)	$
9. Litigation Considerations (Judicial Cases) – Attorney defined.	$
10. Ability to Pay (to decrease the penalty assessed) – This requires accounting evaluations of company records.	$
11. Reduction for Supplemental Environmental Projects (see EPA guidance).	$
12. **Bottom-line Cash Settlement Penalty** (line 8 – line 9 – line 10 – line 11).	$

VI. **Definitions** (see 13.28.02, A for additional definitions).

"Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the General and Specific Prohibitions listed in 13.28.04 of this Chapter. BMPs may also include, but are not limited to, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs shall be considered local limits and Pretreatment Standards for the purposes of this Chapter and Section 307(d) of the Act as specified at 40 CFR Section 403.5(c)(4).

"Class I Industrial User" means a "Significant Industrial User" as defined at 13.28.02, A.50.

"Class II Industrial User" is an Industrial User that is not a Class I Industrial User and where the City has used its discretion to permit or otherwise control as specified in 13.28.10, D.

"Indirect Discharge" means the discharge or the introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c) or (d) of the Act (33 U.S.C. 1317), including holding tank waste from a non-domestic user discharged into the POTW.

"Industrial User" means a source of Indirect Discharge, a user that has the potential to discharge non-domestic wastewater to the POTW or an industrial user that has a sewer connection for domestic wastewater discharge only.

"Pretreatment Requirement" means any substantive or procedural requirement related to pretreatment, other than a Pretreatment Standard, imposed on an Industrial User.

"Pretreatment Standard", "National Pretreatment Standard" or "Standard" means any regulation containing pollutant discharge limits promulgated by EPA, in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. This term includes prohibitive discharge limits, local limits and Best Management Practices that are established by the City. In cases of differing Standards, the more stringent shall apply.

Significant Noncompliance. The City shall publish annually, in a newspaper of general circulation that provides meaningful public notice, a list of the Significant Industrial Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. In addition, any Industrial User found to be in Significant Noncompliance with paragraphs 3, 4 or 8 below shall also be published in the newspaper. The following criteria shall be used to define Significant Noncompliance:

1. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken for the same pollutant parameter during a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits.

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

3. Any other violation of a Pretreatment Standard or Requirement (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public).

4. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.

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

6. Failure to provide, within forty-five (45) days after the due date, required reports such as baseline monitoring reports, compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

7. Failure to accurately report noncompliance.

8. Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines may adversely affect the operation or implementation of the local pretreatment program.

"Slug Load" or "Slug Discharge" means any discharge at a flow rate or concentration, which could cause a violation of the Specific Prohibitions in 13.28.04. A Slug Discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, or a discharge which exceeds the hydraulic or design of an Industrial User's treatment system or any part of the treatment unit including a discharge which has a reasonable potential to cause Interference or Pass Through or in any other way violate an applicable Pretreatment Standard or Requirement or an Industrial Wastewater Discharge Permit issued by the City.