

## **ST. CLOUD PRETREATMENT PROGRAM ENFORCEMENT RESPONSE PLAN**

### I. INTRODUCTION

This Enforcement Response Plan (ERP) is intended to be used as a guidance document by the St. Cloud Public Utilities staff for enforcement procedures pertaining to the Industrial Pretreatment Program. This ERP is based on the enforcement provisions of the St. Cloud Wastewater Treatment Use Ordinance, Section 360, of the City of St. Cloud Code of Ordinances. In the event of any conflict between this ERP and the ordinance, the ordinance shall govern.

The main portion of the ERP is the Enforcement Response Guide. This Guide describes violations and indicates a range of appropriate enforcement options. The Guide serves the following functions:

1. Defines the range of appropriate enforcement actions based on the nature and severity of the violation and other relevant factors.
2. Promotes consistent and timely use of enforcement remedies, in addition to eliminating uncertainty and confusion concerning enforcement. This consistency lessens the likelihood of a successful legal challenge based on charges of "selective enforcement" or harassment.
3. Establishes an escalating enforcement response for violations in a stepped fashion, which provides for consistent and continuing enforcement procedures based on the severity of noncompliance of pretreatment requirements.

An investigation of noncompliance will be initiated when there is a lack of information to make a sound judgement of a user's compliance status with the requirements set forth in the St. Cloud Wastewater Treatment Use Code, Pretreatment Program, Discharge Permit, or control document.

Failure, by a user, to comply with an order from the City will subject the user to escalating enforcement actions, including administrative fines, termination of services, and/or civil and criminal penalties.

The outlying jurisdictions which receive wastewater conveyance and treatment services from the City of St. Cloud include; St. Joseph, Sartell, Sauk Rapids, St. Augusta and Waite Park. These cities are required to follow the St. Cloud Pretreatment Program

Enforcement Response Plan or develop their own that is as stringent as or more stringent than the City of St. Cloud's.

## II: DEFINITIONS APPLICABLE TO ENFORCEMENT RESPONSE GUIDE

### Informal Notice (IN)

A telephone call (documented), letter, email, site visit, or informal meeting notifying a discharger of a problem or noncompliance (usually not significant). This notice will be implemented by the Public Utilities Director or designee usually within 24 hours upon becoming aware of the problem. This is documented and placed in the pretreatment file.

### Notice of Violation (NOV)

An official written notice stating a violation has occurred, the type of violation, the permit or ordinance section violated, and the date or period the violation occurred. This will also include corrective action that is required to be taken. A response from the discharger is required within 10 days of issuance of an NOV explaining why the violation occurred and what steps they have taken or intend to take to correct the violation, if these are not exactly what the City has required in the NOV. This notice will be implemented by the Public Utilities Director or designee upon full understanding of the violation committed. A fine of \$100 per violation as described in the industry's permit agreement is issued at this time.

### Administrative Order (AO)

A written order requiring a discharger to take a specific action or cease a specific action. This order will always contain corrective measures and a deadline for compliance which may include a compliance schedule. This enforcement will be implemented by the Public Utilities Director or designee.

### Revocation of Permit (RP)

The termination of an existing permit of a user which failed to factually report the wastewater constituents and characteristics of its discharge or significant changes in the waste stream or refuses reasonable access for inspection and monitoring or for violation of their permit or City, State and Federal regulations. Permits may be reinstated upon demonstration of ability to correct and comply with the violation. This enforcement action can be implemented by the Public Utilities Director or City Council.

### Show Cause Hearing (SCH)

An order to a user which caused or allowed an unauthorized discharge or other form of noncompliance to show cause before the City Council why the proposed enforcement action should not be taken. The notice of the hearing shall be served by registered or certified mail at least 14 days before the hearing specifying the time and place of a hearing to be held by the City Council regarding the violation, the reason(s) why the action is to be taken, the proposed enforcement action, and directing the user to show cause before the City Council why the proposed enforcement action should not be taken. This enforcement response is implemented by the Public Utilities Director and/or City Attorney.

Administrative Fines (AF)

Fines or penalties assessed to users for permit violation orders and/or City Wastewater Treatment Use Code Ordinance violations shall not exceed \$1,000 per violation. Each day on which noncompliance occurs or continues is considered a separate distinct violation. This enforcement response will be implemented by the Public Utilities Director or designee, and/or the Mayor to recover losses and correct violations of noncompliance.

Termination of Service (TS)

Disconnection of sewer and/or water service. Any user whose water and/or sewer service is ordered terminated by the City Council or Public Utilities Director shall not reconnect without prior written approval from the Public Utilities Director. Termination of service is dependent upon orders issued by governing boards and/or severity of conditions that may warrant more immediate action.

Criminal Penalties (CP)

Any violation of the ordinance by a user who may be guilty of a misdemeanor. Upon conviction, the user may be fined not more than \$800 or by imprisonment not to exceed 90 days or both. This action will be initiated by the City Attorney.

Additional Sampling Requirements (AS)

Additional sampling shall be required including all applicable reporting in order to return to compliance after a violation, and in order to prove continued compliance with the St. Cloud Pretreatment Program. The industry is responsible for all associated costs and requirements in organizing the sampling events. It is the responsibility of the industry to complete representative sampling in the method set forth in the Industrial Discharge Permit, this Enforcement Response Plan, or stated in a Notice of Violation or Administrative Order.

III. ENFORCEMENT RESPONSE GUIDE

A. Unauthorized Discharges

<u>Noncompliance</u>	<u>Nature of Violation</u>	<u>Enforcement Response(s)</u>
1. Unpermitted Discharge	Industrial User unaware of requirement; no harm to WWTF/environment.	1. IN 2. NOV
	Industrial user unaware of requirement; harm to WWTF and/or environment.	1. NOV 2. AO 3. AS

	Failure to comply after notice by WWTF.	1. RP 2. AF 3. SCH 4. TS 5. CP
2. Permitted Discharge;	Failure to Renew Permit	
	Industrial user has not submitted renewal application by due date.	1. IN 2. NOV
	Failure to submit for renewal after WWTF notice.	1. AO 2. AF 3. SCH 4. RP

B. Discharge Limit Violation and Discharge of Prohibited Pollutants

<u>Noncompliance</u>	<u>Nature of Violation</u>	<u>Enforcement Response(s)</u>
1. Exceedance of Local, State, or Federal Standard or Prohibition (Permit Limit) – includes BMP (Best Management Practices) limitations		
	Isolated, non-significant.	1. IN 2. NOV 3. AS
	Isolated, BMP exceedance, Non-significant.	1. IN 2. AS
	Isolated, significant, no harm.	1. NOV 2. AS 3. AO
	Isolated, harm to WWTF/environment	1. AO 2. AS 3. AF 4. TS 5. SCH 6. CP
	Recurring, no harm to WWTF/environment.	1. NOV 2. AS 3. AO 4. AF 5. SCH 6. RP
	Recurring, harm to WWTF/environment.	1. AS 2. AO 3. TS

- 4. AF
- 5. SCH
- 6. CP

C. Monitoring and Reporting Violations

<u>Noncompliance</u>	<u>Nature of Violation</u>	<u>Enforcement Response(s)</u>
1. Reporting Violations	Report is improperly signed, filed late/inaccurately; isolated, unintentional.	1. IN 2. NOV
	Report submitted late/inaccurately, recurring, apparent intent, possible falsification.	1. NOV 2. AO 3. AF 4. SCH 5. TS 6. CP
	Report not submitted after WWTF notification.	1. NOV 2. AO 3. AF 4. SCH
	Failure to report spill(s) or changed discharge (no harm).	1. IN 2. NOV 3. AS
	Failure to report spill(s) or changed discharge (results in harm)	1. IN 2. NOV 3. AS 4. AO 5. AF 6. SCH 7. RP 8. TS 9. CP
	Repeated failure to report spills or violations (permit).	1. AF 2. TS 3. SCH 4. CP
	Failure to monitor all pollutants, improper sampling, handling, or analysis (unintentional).	1. IN 2. NOV 3. AS 4. AO 5. AF 6. SCH

Failure to monitor all pollutants, improper sampling, handling, or analysis (intentional or repeated).

1. NOV
2. AS
3. AO
4. AF
5. RP
6. SCH
7. CP

Recurring failure to properly monitor, sample, handle and/or analyze. Intent to conceal/harm.

1. AF
2. RP
3. TS
4. SCH
5. CP

Falsification.

1. CP
2. TS

## 1. Failure to Install Monitoring Equipment

Delay of less than 30 days.

1. IN
2. NOV

Delay of 30 days or more.

1. AO
2. AF
3. SCH

Recurring, refusal to install.

1. AF
2. CP
3. TS

## 2. Compliance Schedule Violation(s)

Missed milestone by less than 30 days, no effect on final compliance date.

1. IN
2. NOV
3. AS

Missed milestone by more than 30 days, good cause for delay, affects final compliance date.

1. NOV
2. AS
3. AO
4. AF
5. SCH

Missed milestone by more than 30 days, no good cause for delay, affects final compliance date.

1. NOV
2. AS
3. AO
4. AF
5. SCH
6. TS

Recurring type violation or violation of previous AO schedule.

1. RP
2. AF
3. TS
4. CP

D. Other Permit Violations

<u>Noncompliance</u>	<u>Nature of Violation</u>	<u>Enforcement Response(s)</u>
1. Waste Stream Diluted in Lieu of Treatment	Initial violation.	1. IN
		2. NOV 3. AS
	Recurring violation.	1. NOV
		2. AS
		3. AO
		4. AF 5. SCH 6. RP 7. TS
2. Failure to Mitigate Noncompliance or Halt Production	Results in no harm.	1. IN
		2. NOV 3. AS
	Results in harm.	1. AO
		2. AF
		3. RP
		4. TS 5. SCH 6. CP
3. Failure to Properly Operate and Maintain Pretreatment Facility.	Results in no harm.	1. IN
		2. NOV 3. AS
	Results in harm.	1. AO
		2. AF
		3. RP
		4. TS 5. SCH 6. CP

E. Violations Detected During Site Visits

<u>Noncompliance</u>	<u>Nature of Violation</u>	<u>Enforcement Response(s)</u>
1. Entry Denial	Entry denied or consent withdrawn; copies of records denied.	1. IN 2. Obtain Warrant 3. AF
2. Illegal Discharge	No harm to WWTF or environment.	1. IN 2. NOV 3. AS 4. AF
	Discharge causes harm or evidence of intent/neglect.	1. NOV 2. AS 3. AO 4. AF 5. SCH 6. RP 7. TS 8. CP
3. Improper Sampling	Sampling at incorrect location.	1. IN
	Use of incorrect sample type.	1. IN
	Use of incorrect sample technique.	1. IN
	Use of an uncertified lab for analysis.	1. IN 2. NOV 3. AS
	Sampling during non-routine operations or during shut down of process(es).	1. IN 2. NOV 3. AS
	Recurrence of prior sampling errors.	1. NOV 2. AS 3. AO 4. AF 5. SCH
4. Inadequate Record Keeping	Files incomplete or missing, no intent.	1. IN 2. NOV
	Recurring.	1. AO 2. AF



		3. SCH
		4. RP
		5. TS
		6. CP
5. Failure to Report Additional Monitoring		
	First offense, no intent.	1. IN
		2. NOV
	Recurring, evidence of intent.	1. NOV
		2. AO
		3. AF
		4. SCH
6. Nonpayment of Permit, Sampling of Surcharge Fees		
	Refusal to pay bill.	1. IN
		2. NOV
		3. AO
		4. AF
		5. SCH
		6. RP
		7. TS

#### IV. TIME FRAMES FOR IMPLEMENTATION OF ENFORCEMENT ACTIONS

##### Informal Notices (IN)

An IN is usually an immediate notice, but can take up to 24 hours depending on the violation, its severity, and/or any investigative work associated with the violation.

##### Notice of Violation (NOV)

A NOV can, and usually will, follow an IN. A NOV will be issued within 15 working days after a determination has been made that a violation has occurred. Upon notification, the violator then has 10 days in which to respond to the NOV issued.

##### Additional Sampling (AS)

Additional Sampling can, and usually will, accompany a NOV. Each case will be handled individually, but will involve at least three additional sampling results that are representative of discharge from the facility, and within permit and local limits. Sampling shall continue until three consecutive acceptable results are returned for each exceedance of permit limits.

Continued Compliance Sampling will be required if it is deemed necessary to ensure the industry stays in compliance with the Industrial User Permit and local limits. This will involve more frequent sampling than is required by the permit. Duration and frequency of sampling will be specified by the Director or designee.

##### Administrative Order (AO)

If the user fails to correct a violation or submit a plan to correct the violation within 10 days of receiving a NOV, the Director shall issue an AO for the correction of this violation. This order shall be administered by the Director of the Public Utilities or designee or by the City Council within 15 days of failure to comply with a NOV or correct the violation.

##### Show Cause Hearing (SCH)

At any time or for any violation (if desired), the Director of Public Utilities may order a SCH if the violation is not corrected by timely compliance. Once the Director determines a SCH is necessary, the Director then will issue the order within 30 days. The notice of the hearing shall be served personally or by registered or certified mail at least 14 days before the hearing.

##### Revocation of Permit (RP)

A permit may be revoked immediately for reasons stated in Section 360:80, Subd.2 of the Wastewater Treatment Use Code. Additionally, a permit may be revoked upon failure to comply with a compliance schedule or AO. Upon failure of a user to comply with an order or corrective measures implemented for a violation, the Director shall, within 15 days, revoke the user's permit.

#### Administrative Fines (AF)

Administrative Fines are assessed by the Administrative staff of the City of St. Cloud upon determination through investigative procedures, exhaustion of other enforcement actions, and/or whether the Industrial User derived any economic benefit or savings from the noncompliance. Upon determination and/or reconsideration requests by the Industrial User of the fine, the City of St. Cloud will, within 60 days, assess the fine(s) necessary to bring the user into compliance with permits, regulations, and the Wastewater Treatment Use Ordinance.

#### Termination of Service (TS)

In the case of imminent danger to the WWTF, environment, or public health by a user's discharge and failure of the user to comply voluntarily, immediate severance of the sewer service will be enforced. Otherwise, TS will occur within 7 days once all other enforcement options are exhausted.

#### Criminal Penalties (CP)

Noncompliance issues and actions are assessed and determined by the Legal Department as to whether they are criminal and require CP to be enforced. Criminal proceedings will begin within 90 days upon determination that the Ordinance has been violated, including falsification of records, and that CP are appropriate for the violation or noncompliance.

This may occur during any step of enforcement actions.

#### IV. CONCLUSION

The guidelines provided are intended as a tool to be used by the Pretreatment staff as a stepped enforcement response in situations where enforcement action may be necessary.

The City has the authority to revise this enforcement guideline at any time. The City also has the authority to take enforcement responses other than as indicated in this guidance plan where special circumstances justify a special response.

Violations which threaten health, property, or environmental quality are considered emergencies and may receive more immediate responses, such as halting the discharge or terminating service.

The City has the right to charge and assess sewer users for all costs to the City for damages from any discharge or other action in violation of the City ordinance or in violation of a discharge permit issued by the City, including reasonable attorney's fees. Administrative fines or other enforcement actions are not considered to be payment of these costs.