

Enforcement Response Plan

United States Environmental
Protection Agency
Administrative Order

Order: CWA-02-2013-3058

City of Middletown
New York

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Section 1

Purpose, Administration and Jurisdiction

1.1 Background

The City of Middletown, NY (City) owns and operates an 8.5 mgd wastewater treatment plant located at 159 Dolson Avenue, Middletown, NY. The treatment plant discharges to the Wallkill River.

The City's Sewage Treatment Plant (STP) was originally constructed in 1929. The current treatment process includes preliminary treatment (screening and grit removal), primary treatment (primary clarifiers), secondary treatment (fine bubble aeration and secondary clarification) and tertiary treatment (seasonal ultraviolet (UV) disinfection).

On, September 26, 2013 the City was issued an Administrative Order by the United States Environmental Protection Agency (USEPA) related to the implementation of an pretreatment program that complies with the General Pretreatment Regulations at 40 CFR Part 403. This report has been prepared in partial fulfillment of the requirements of that Administrative Order.

1.2 Purpose

On July 24, 1990 (55 Fed. Reg. 30082), the Environmental Protection Agency promulgated regulations to require all Publicly Owned Treatment Works (POTWs) to adopt an enforcement response plan (ERP) as part of their approved pretreatment programs. The purpose of the ERP is to provide consistent enforcement responses for similar violations and circumstances. The ERP describes violations, defines a range of appropriate enforcement actions based on the nature of severity of the violation and other relevant factors, and identifies personnel responsible for finalizing enforcement responses.

1.3 Administration and Jurisdiction

All entities discharging nondomestic wastewater to the City of Middletown Sewage Treatment Plant are subject to the provisions of the ERP. The City of Middletown (City) consistently administers and implements all elements of the ERP. The ERP does not preclude the City from taking any, all, or any combination of actions against a noncompliant industrial user.

Section 2

Abbreviations, Definitions, Responsibilities

2.1 Abbreviations

AO	Administration Order
CA	Control Authority
ERG	Enforcement Response Guide
ERP	Enforcement Response Plan
IU	Industrial User
NOV	Notice of Violation
POTW	Publicly Owned Treatment Works
SNC	Significant Noncompliance
WL	Warning Letter

2.2 Definitions

Control Authority – The entity directly administering and enforcing Pretreatment Standards and requirements against industrial users. For this ERP, the Control Authority is the City of Middletown, Orange County, NY.

Domestic Wastewater – 1) wastewater from normal residential activities including, but not limited to, wastewater from kitchen, bath and laundry facilities, or 2) wastewater from the personal sanitary conveniences (toilets, showers, bathtubs, fountains, non-commercial sinks, and similar structures) of commercial, industrial or institutional buildings, provided that the wastewater exhibits characteristics which are similar to those of wastewater from normal residential activities, specifically excluded from this definition is wastewater from commercial, industrial, or institutional laundries or food preparation facilities.

Industrial User – Any source that introduces pollutants into a POTW from any non-domestic source.

Publicly Owned Treatment Works (POTW) – Devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant.

Significant Noncompliance (SNC) – Significant noncompliance generally includes chronic violations of discharge limits, technical review criteria violations, and any other violations that are determined to cause interference or pass-through at the POTW. A more detailed definition of SNC is included in §389-52.B of the City’s Sewer Use Ordinance.

2.3 Personnel Responsibilities

Commissioner Public Works – See definition in Sewer Use Ordinance §389-1. The Commissioner of Public Works has the responsibility to monitor the Deputy Commissioner's actions and to initiate the following enforcement actions at the recommendation of the Deputy Commissioner:

- Notices of violation
- Show cause hearings
- Administrative orders
- Consent agreements/orders
- Compliance orders
- Cease and desist orders
- Penalties for offenses
- Emergency Suspension
- Termination of Discharge
- Referrals to the city attorney for civil litigation
- Referrals to the state or EPA for criminal action
- Permit Issuance

Deputy Commissioner– The Deputy Commissioner is responsible for the day to day implementation and enforcement of the industrial pretreatment program. The enforcement responses carried out by the Deputy Commissioner are as follows:

- Informal notices (verbal and written)
- Informal meetings

Referrals to Commissioner for any state or EPA for criminal action

Corporation Counsel – The Corporation Counsel will provide legal consultation as requested by the Commissioner of Public Works on consent agreements and administrative orders and will take the lead on all referrals for civil litigation and POTW initiated criminal investigations.

Section 3

Identifying and Investigating Instances of Noncompliance

There are many activities associated with the identification and investigation of noncompliance. A brief description of these activities is provided in this ERP. The activities that facilitate the identification and investigation of noncompliance are as follows:

Industrial User Inventory –The industrial pretreatment coordinator will maintain a current inventory of all nondomestic sources of waste to the POTW. The Deputy Commissioner will monitor changes in the inventory of IUs through interaction with the City’s Planning Board and the Building Department.

Monitoring and Inspection Plan – The Industrial Pretreatment Coordinator will prepare an annual monitoring and inspection plan. The City monitors the process wastewater attributable from each Significant Industrial User (SIU) at least once per year and requires all sampling and analysis be performed in accordance with 40 CFR Part 136.

A comprehensive inspection of each SIU is conducted by the City at least once per year. The City follows relevant inspection procedures as indicated in EPA’s IU Inspection and Sampling Manual for POTWs (April 1994).

Information gathered during City’s industrial user monitoring and inspections will be used to verify industrial user compliance status and to determine if enforcement response must be initiated or continued.

Compliance Screening – All reports from Industrial Users and reports generated by the City will be carefully reviewed, on an as-received basis for timeliness, completeness and accuracy. The screening process includes an evaluation of compliance with report due dates, numerical standards, sample handling and analysis requirements, signatory/certification requirements, monitoring frequency etc.

All violations will be clearly documented and addressed in accordance with the Enforcement Response Guide.

Section 4

Description of Enforcement Actions

Informal Notice

Verbal Notification – Verbal notifications by telephone or in person provide an immediate notification of violations. In general, verbal notifications are used for minor isolated violations or as an initial step leading to an escalated enforcement response. All verbal notification related to enforcement or the investigation of suspected violations are documented in writing and placed in the respective Industrial User file.

Warning Letters – Warning letters are issued under the same circumstances as verbal notifications. They must be issued as follow-up letters to verbal notifications or in lieu of verbal notifications.

Informal Meeting – An informal meeting is used to gather information concerning noncompliance, discuss steps to alleviate noncompliance, and determine the commitment level of the industrial user. All informal meetings are documented in the City's files.

Notice of Violation – A Notice of Violation (NOV) is a written notice to the noncompliant industrial user that pretreatment violation has occurred. A NOV includes a statement detailing the legal authority under which the City issued the NOV, a description of the violation(s), and the date(s) the violation(s) occurred. The NOV requires a response from the Industrial User that details the causes of the violation(s), and the corrective actions taken to correct the violation and prevent similar violations from occurring. In general, NOVs are considered to be more stringent enforcement responses than warning letters.

Administrative Order – Administrative Orders (AOs) are enforcement documents that direct Industrial Users to undertake and/or to cease specified activities by specified deadlines. The terms of an AO may or may not be negotiated with Industrial Users. AOs may incorporate compliance schedules, administrative penalties, termination of service and show cause orders. An Administrative Order is the minimum level of enforcement used to address Significant Noncompliance.

Show Cause Hearing – A Show Cause Hearing is a formal meeting requiring the Industrial User to appear, explain its noncompliance, a show cause as to why more severe enforcement actions against the user should not go forward. The meeting may also serve as a forum to discuss corrective action and compliance schedules.

Termination of Service – Termination of Service is the revocation of an Industrial Users privilege to discharge nondomestic wastewater into the sewer system. Termination of service is used when the discharge from an industrial user presents imminent endangerment to the health or welfare of persons, or the environment, or threatens to interfere with the POTWs operations or as an escalating enforcement action to significant violation when a noncompliant industrial user fails to respond adequately to previous enforcement actions. Termination of service may be accomplished by physical severance of the industrial users connection to the collection system,

issuance of an AO (cease and desist order) which compels the IU to immediately terminate its discharge, revocation of the IUs discharge permit, or a court ruling.

Administrative Fines – An administrative fine is a punitive monetary charge assessed by the City rather than a court. The penalty authority must be authorized in the POTWs local legal authority. The purpose of the fine is to recover the economic benefit of noncompliance and to deter future violations. When assessing an administrative fine the following factors are considered:

- Type and severity of the violation
- Number of violations cited
- Duration of noncompliance
- Impact of the violation on the receiving water, sludge quality, and POTW operation
- Whether the violation threatened public health
- The economic benefit or savings the industrial user gained from the noncompliance
- Compliance history of the industrial user
- Whether the industrial user is making a good faith effort to comply

Civil Litigation – Civil Litigation is the formal process whereby the City files a lawsuit against the industrial user to secure court ordered action to correct violations and to secure penalties for the violations including recovery of costs to the POTW for the noncompliance. Civil Litigation also includes enforcement measures which require involvement or approval of the court, such as injunctive relief.

Referral to EPA or the State – Where a City does not rely on criminal prosecution for its enforcement authority, referral to New York State or EPA may be made. For violations that may warrant criminal prosecution, the City will refer the case to EPA or New York State for further action. Circumstances that trigger EPA or New York State referrals include evidence of willfulness, evidence of negligence, and bad faith shown by the Industrial User.

Section 5

Enforcement Response Guide

The Enforcement Response Guide (ERG) designates several enforcement options for each type (or pattern) of noncompliance. The intent of the ERG is to provide direction for appropriate enforcement response and to ensure consistent enforcement for similar violations and circumstances. Factors that will be evaluated when determining the appropriate response are as follows:

- Good faith of the user
- Compliance history of the user
- Previous success of the enforcement actions against the user (e.g. If historically NOV's have not been effective in returning the user to compliance in a reasonable period of time, an administrative order would be a more appropriate response.)
- Violations effect on the environment and/or public health
- Violations effect the POTW

Violations Resulting in Significant Noncompliance – Any violation that results in Significant Noncompliance (SNC) will be addressed through formal enforcement action regardless of the enforcement response otherwise dictated by the enforcement response guide. The minimum level of enforcement used to address SNC is an AO.

Escalating Enforcement Response – Escalating enforcement response will be used for recurring violations and failure to achieve compliance subsequent to informal or formal enforcement. A recurring violation is one in which the same type of violation occurs on consecutive reporting periods, the violation occurs seasonally, or any other patterns on noncompliance is shown.

Violations Falling Under More Than One Category – Violations that fall under more than once category in the enforcement response guide will be addressed through the more severe enforcement response. All alleged violations will be included in the more severe response.

Timeframes for Enforcement Responses

- All violations will be identified and documented within 5 days of receiving compliance information
- Initial enforcement responses (informal or formal) will occur within 15 days of identifying a violation

- Follow up actions for continuing or recurring violations will be taken within 60 days of the initial enforcement response.
- Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate response such as halting the discharge or terminating service.
- All violations meeting the criteria for significant noncompliance will be addressed through formal enforcement within 30 days of the identification of significant noncompliance.

Table 1- Enforcement Response Guide Table

TYPE	TYPE OF NONCOMPLIANCE	CIRCUMSTANCES	SUGGESTED ENFORCEMENT
UNAUTHORIZED	Discharge Without a Permit	IU unaware of requirement; no harm to POTW or environment	NOV with Application Form
	Failure to Submit Permit Application or Reapplication with Intent of Discharge	IU Has not submitted application within 10 days of due date	Phone call; Warning Letter
		IU has not submitted application after notice by the POTW	NOV;AO
		Failure to submit application	Refer to discharge without a permit
	Unauthorized Discharge Through Manhole, Septic Only Receiving Station, Car Wash etc.	No harm to POTW or environment	NOV; AO; AO with fine; Civil Action; Criminal Investigation
		Harm to POTW or Environment	AO with fine; Civil Action; Criminal Investigation
Recurring		Criminal Investigation	
Permitted User Discharging Waste not Authorized by Permit	No harm to POTW or environment	NOV; AO; AO with fine; Civil Action; Criminal Investigation	
	Harm to POTW or environment	AO with fine; Civil Action; Criminal Investigation	
	Recurring	Criminal Investigation	
DISCHARGE LIMIT	Exceedance of Discharge Limitation of Prohibition in Permit or Local Legal Authority	Results in SNC	AO; AO with fine; Civil Action; Termination of Service
	Isolated, recurring, non-SNC violations	No harm to POTW	NOV and/or Fine
Harm to POTW		Service revocation, Show Cause Hearing, Criminal Investigation	

TYPE	TYPE OF NONCOMPLIANCE	CIRCUMSTANCES	SUGGESTED ENFORCEMENT
REPORTING VIOLATIONS	Document is Improperly Signed or Certified	Isolated Incident	Phone call; WL; NOV
		Previous notice by POTW	NOV; AO; AO with fine
	Document is Incomplete or Inaccurate	Isolated Incident	Phone Call; WL; NOV
		Recurring Problem	AO; AO with fine
	Document is Late	5-days to 29-days	Phone call; WL; NOV
		30-days or more	AO; AO with fine
	Documents are repeatedly late	AO with fine; Civil Action	
REPORTING VIOLATIONS (con't)	Failure to Report Violation, Spill/Slug or Changed Discharge	No actual or potential harm to POTW of environment	NOV; AO
		Actual or potential harm to POTW	AO with fine; Civil Action
		Recurring problem	AO with fine; Civil Action; Terminate Service
	Failure to Report Additional Monitoring	Isolated Incident	Phone Call; WL; NOV
		Recurring	AO; AO with fine
Falsification on Information or Data	Any instance	Criminal Investigation; Terminate Service	
SAMPLING VIOLATIONS	Failure to Monitor for all Required Parameters	Isolated	Phone call; WL; NOV
		Recurring	AO; AO with fine; Civil Action
	Improper Sample Handling/Analytical Procedures	Isolated	Phone call; WL; NOV
		Recurring	NOV; AO; AO with fine
	Failure to resample within Required Timeframe	Isolated	Phone call; WL; NOV
		Prior Notification from CA	AO with fine
		Recurring	AO; AO with fine
	Failure to Install Monitoring Equipment/Sampling Point	Delay less than 30 days	NOV
		Delay greater than 30 days	AO with fine; Civil Action; Criminal Investigation
	Tampers with Monitoring Equipment/Sample	Any Incident	Criminal Investigation; Termination of Discharge

TYPE	TYPE OF NONCOMPLIANCE	CIRCUMSTANCES	SUGGESTED ENFORCEMENT
	Sampling at incorrect location	Isolated incident Recurring	NOV AO with fine; Civil Action; Criminal Investigation
COMPLIANCE SCHEDULES	Missed Milestone	Less than 30 days late or will not affect final compliance date	NOV; AO
	Not in Compliance as of Final Compliance Date	Less than 30 days late Greater than 30 days late; reasonable cause for delay Greater than 30 days late, no reasonable cause for delay Greater than 30 days or will affect final compliance date violations	NOV; AO AO; AO with fine Show Cause Order; Civil Action; Termination of Discharge Fine; Show Cause Order; Service Revocation; Criminal Investigation
INADEQUATE RECORDKEEPING	Files Incomplete or Missing (No Evidence of Intent)	Isolated	NOV
		Recurring	AO; AO with fine
OTHER VIOLATIONS	Entry Denied or Consent Withdrawn	Any Instance	Obtain Warrant and Return to IU
	Wastestreams are diluted in lieu of treatment	Initial violations	NOV and/or Fine
		Recurring violations	Service revocation, Show Cause Hearing, Criminal Investigation
Failure to properly maintain a pretreatment facility.	No harm to POTW	NOV and/or Fine	
	Harm to POTW	Service revocation, Show Cause Hearing, Criminal Investigation	