

# Enforcement Plan Response

## 1. PURPOSE:

The purpose of this plan is to document a well defined, legally defensible sequence of steps to be followed when dealing with industrial users who are out of compliance with the City of Bangor's Industrial Pretreatment Program and Sewer Use Ordinance (Chapter 252 City Code). These formal enforcement actions will help to resolve any confusion between the City and its Industrial Users as to consequences of one-time, repeated or continuing non-compliance and are intended to ensure equitable treatment of Industrial Users.

EPA regulations require the City to take specific enforcement action against Industrial Users found to be in Significant Non-Compliance with the Pretreatment Ordinance. This Enforcement Response Plan defines the conditions under which the City must cite a User for Significant Non-Compliance and lists appropriate enforcement measures to remedy such situations.

EPA guidelines also require that the selected enforcement response be appropriate to the extent of the Pretreatment Program violation. While a telephone call to the Industry might be appropriate for a late submission, a more severe response is needed for a more serious violation which, for example, might result in an upset of the Wastewater Treatment Plant caused by an Industrial discharge. This EPA guideline based Enforcement Response Plan will consider the Following criteria when assessing the appropriateness of a particular response:

- A). Magnitude of the violation;
- B). Duration of the violation;
- C). Effect of the violation on the receiving water;
- D). Effect of the violation on the Treatment Plant
- E). Compliance history of the Industrial User;
- F). Good faith efforts on the part of the Industrial User; and
- G). Degree of the Industrial User's responsibility for the violation.

## 2. SIGNIFICANT NON-COMPLIANCE:

EPA required the City to identify Industrial Users that are in Significant Non-Compliance (SNC) with the requirements of the federally mandated Pretreatment Program regulations. Users found to be in SNC are subject to enforcement action by the City, and to public notification of the violation(s) once per year in the area's largest newspaper. Federal regulations define Significant Non-Compliance as violations which meet at least one of the following criteria:

### A). Violations of Industrial Wastewater Discharge Permit limits:

(1). Chronic Violations- Sixty six percent (66%) or more of the permit parameter measurements exceed the maximum limit or the average limit in a six-month period by any magnitude.

(2). Technical Review Criteria (TRC) Violations- Thirty three percent (33%) or more of the permit parameter measurements exceed the maximum limit or the average limit by more than forty percent (40%) for BOD, TSS, fats, oil or grease; or by twenty percent (20%) for all other pollutants in a six month period.

(3). Any other violations of effluent standards (maximum or average) that the Superintendent believes has caused alone, or in combination with discharges, interference with the Wastewater Treatment Plant processes; pass-through; or endangered the health of Wastewater Treatment Plant personnel or the public.

(4). Any discharge of a pollutant that caused imminent danger to human health/welfare and to the environment and has resulted in the Treatment Plant's exercise of its emergency authority to halt or prevent such a discharge.

B). Violations of any Compliance Schedule milestones contained in an Administrative Order for starting construction, completing construction, and attaining final compliance by ninety (90) days or more after the compliance date.

C). Failure to provide reports for Compliance Schedules, self-monitoring data, or Categorical Standards [Baseline Monitoring Reports, ninety (90) day compliance reports, and periodic reports] within thirty (30) days from due date.

D). Failure to accurately or expeditiously report non-compliance.

E). Any other violation or group of violations that the Superintendent considers to be significant.

### 3. SELECTION OF ENFORCEMENT RESPONSES:

Table 1 represents an Enforcement Response Guide based on EPA recommended response measures for varying degrees of permit violations. The Guide will be used by the City to determine appropriate measures in the event of a violation of the City's Pretreatment Program and/or Sewer Use Ordinance. Selection of appropriate enforcement response will be based on the following steps:

A). The City will locate the type of non-compliance in the first column (1) of the Response Guide.

B). Using column two (2), the City will identify the most accurate description of the nature of the violation.

C). The City will assess the appropriateness of the recommended responses in column three (3). First time offenders, or those demonstrating "good faith" progress may merit a more lenient response. Similarly, repeat or frequent offenders or those demonstrating negligence may require a more stringent response. Furthermore, the City will judge the violation by seven (7) additional criteria:

(1). Magnitude- Generally, an isolated instance of non-compliance can be addressed with an informal response or Notice of Violation (NOV). However, since even an isolated violation could threaten human health and/or the environment, the Treatment Plant, damage public and private property, or threaten the integrity of Bangor's Pretreatment Program (i.e., falsifying a self-monitoring report) all instances of Significant will be responded to with an Administrative Order (AO) which requires a return to compliance by a specific deadline.

(2). Duration- Violations, regardless of severity, which continue over prolonged periods of time will subject the violator to escalated enforcement actions. Minor violations which are chronic in nature are one form of Significant Non-Compliance and will be dealt with through the use of AOs.

(3). Effects to the Receiving Water- Any violation which causes environmental harm will be met at a minimum with an AO and a fine. Environmental harm will be presumed whenever an industrial discharge:

a). Passes through the Treatment Plant;

b). Is directly responsible for causing a violation of the City of Bangor's NPDES/MEPDES permit, including its' water quality standards; or

### 3. SELECTION OF ENFORCEMENT RESPONSES(continued):

(3). Effects to the Receiving Water (continued)-

c). Has a toxic effect upon the receiving waters, such as fish kill.

In addition, the response will be designed to recover any NPDES/MEPDES fines paid by the City, which are the result of the industry's discharge violation.

(4). Effects on the POTW- Any violation having a negative impact on the Treatment Plant and/or Collection System (such as increased treatment costs, harm to personnel or equipment, pipe corrosion, etc.), which hinders the operation of the Treatment Plant or Collections System; and/or which contaminates the Treatment Plant's sludge, thereby reducing sludge disposal options, will be met with a fine of civil penalty as well as the recovery of additional costs and expenses involved.

(5) Compliance History of the User- A pattern of recurring violations of any program requirements may indicate either that the user's treatment system is inadequate or that the user has taken a lackadaisical approach to operating and maintaining its' treatment system. These indications should alert the City to the likelihood of future Significant Non-Compliance. Accordingly, stronger enforcement responses should be applied against users exhibiting consistent compliance problems than against those with only an occasional problem.

(6) "Good Faith" of the User- Generally, a users' demonstrated willingness to comply should predispose the City to select one of the less stringent enforcement actions specified, provided the violation has not caused serious Treatment Plant upset or resulted in environmental damage. However, good faith does not eliminate the necessity of enforcement action, and compliance with previous enforcement orders should not necessarily be considered good faith.

(7). Responsibility of the User- Although Industrial Users should always be held accountable for their violations, some consideration should be given to whether the violation was the result of an unforeseeable accident, was preventable or was intentional on the part of the User. This will affect the enforcement response selection by the City from the range of responses provided.

### 3. SELECTION OF ENFORCEMENT RESPONSES (continued):

D). Column four (4) designates personnel responsible for the action.

E). The City will document, in writing to the User, the rationale for selecting the particular enforcement response applied.

F). The City will apply the enforcement response to the violator. The City will specify the corrective action or other response required by the User, including response time limits.

G). The City will document any Users' responses and the resolution of noncompliance.

H). The City will follow up with escalated enforcement action if a Users' response is not received within thirty (30) days or sooner if appropriate or severe violations continue.

I). The City normally will issue an NOV to the violator as a first step in enforcement proceedings. However, The City may elect to by-pass this procedure in favor of an AO when it appears that the violation requires immediate remedial action.

### DEFINITIONS

AO Administrative Order

Civil litigation Civil litigation against the User, seeking equitable relief, monetary penalties, and actual damages.

Criminal prosecution Pursuing punitive measures against an individual and/or organization through a court of law.

Fine Monetary penalty assessed by the City.

IU Industrial User of the POTW.

Meeting Informal meeting with the User to resolve non-compliance.

NOV Notice of Violation of the City of Bangor's Industrial Pretreatment Program and/or the Sewer Use Ordinance.

NPDES National Pollutant Discharge Elimination System

PC Pretreatment Coordinator for the City of Bangor.

POTW Publicly Owned Treatment Works

S Superintendent for the City of Bangor WWTP.

Show Cause Hearing Formal meeting requiring the User to attend and demonstrate why the City should not take proposed enforcement action. The meeting may also serve as a forum to discuss corrective actions and corrective actions.

SV Significant Violation of the City of Bangor's' Industrial Pretreatment Program and/or Sewer Use Ordinance.