



# City of Casa Grande, Arizona Enforcement Response Plan

June 23, 2020

*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. The City may take other actions in response to violations than what is shown in this ERP based upon the actual non-compliance event.*

# **City of Casa Grande, Arizona Enforcement Response Plan**

## **I. Background**

EPA has authorized the State of Arizona authority to implement and enforce 40 CFR Part 403. The State has incorporated 40 CFR Part 403 at Title 18, Chapter 9 of the Arizona Administrative Code, Section A905 and further delineated in R18-9-A907. EPA established a regulatory requirement (40 CFR Section 403.8(f)(5)) for a municipality with a pretreatment program "... shall develop and implement an Enforcement Response Plan (ERP). The ERP shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance." EPA requires that the ERP 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. 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 ERP.

The City's Industrial Pretreatment Regulations are incorporated by reference in Chapter 13.12 of the City Code. The Enforcement Response Plan (ERP), incorporated by reference in Section 8.1 of the City Pretreatment Regulations establishes 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 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 violations. These procedures are developed with four primary objectives in mind:

- A. Ensuring consistency when responding to violations.
- B. Ensuring that violators return to compliance as quickly as possible.
- C. Penalizing noncompliant industrial users for pretreatment violations.
- D. Deterring future noncompliance.

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

- A. All violations receive an informal and/or formal enforcement response.
- B. All violations meeting the definition of Significant Non-Compliance (SNC) get a formal enforcement response.
- C. As violations continue, the enforcement response will generally escalate.
- D. 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 and Responsibilities
- IV. Enforcement Response Guide
- V. Penalty Settlement Policy
- 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.

**Abbreviations used in this ERP:**

The following abbreviations shall have the designated meanings:

BMP	Best Management Practice
CFR	Code of Federal Regulations
CIU	Categorical Industrial User
CWA	Clean Water Act
EPA	U.S. Environmental Protection Agency
IU	Industrial User
mgd	million gallons per day
mg/L	milligrams per Liter
POTW	Publicly Owned Treatment Works
SIU	Significant Industrial User
SNC	Significant Noncompliance

**II. Compliance and Enforcement Responsibilities**

**A. Authority to Implement Enforcement Response Plan**

The City of Casa Grande (City) pursuant to regulations promulgated by the Environmental Protection Agency, 40 CFR 403.8 (f)(5) and incorporated by reference by the State at Title 18, Chapter 9 of the Arizona Administrative Code, Section A905 has incorporated the Enforcement Response Plan (ERP) at Section 8.1 of the City Pretreatment Regulations". The City has various oversight responsibilities and authorities that allow the identification and response to violations as shown in the Pretreatment Regulations, including but not limited to:

1. Exercising right of entry for the purposes of inspection, sampling, records review and oversight (Section 4.12).
2. Establishing prohibitions and limits that industrial users must comply with to protect the POTW, receiving water and worker health and safety (Section 2).
3. Issuing Wastewater discharge permits (Section 4).
4. Requiring that the industrial user install treatment, monitoring structures and equipment (Section 5).
5. Requiring that an industrial user submit permit applications, questionnaires, and other reports as necessary (Sections 4 and 6.2).
6. Requiring that the industrial user monitor, analyze, and report as necessary (Section 4.5 and Section 6).

7. Taking enforcement against industrial users for violations (Section 8).
8. Publishing in a paper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the City, a listing of all industrial users meeting the definition of Significant Noncompliance as required by (Section 8.1, 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 Director of Public Works is the supervisory position that directs that industrial user inspections are completed.

The City's pretreatment program complies with the Federal requirement to inspect Significant Industrial User (SIUs) at least once per year. The City also inspects other 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 existing or new processes or activities of the industrial user, on-going evaluation of pollutant loading, evaluation of BMPs, in response to a new sewer connection from an industrial user that may meet the definition of an SIU, 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, including inspections and compliance monitoring by the City and may be directed to perform additional self-monitoring. The City will generally conduct follow-up oversight within 45 days of taking a formal enforcement action where appropriate.

There are three types of IU inspections: scheduled, unscheduled, and on-demand and the City has the authority to obtain a Search Warrant for refusing entry.

**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.

## 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.

## 4. Search Warrants

If the City has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of these Pretreatment Regulations or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with these Pretreatment Regulations or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the Director may seek issuance of a search warrant from the Casa Grande Municipal Court or another Court of competent jurisdiction.

## C. Compliance Sampling

### 1. City Compliance Monitoring

Sampling is used to determine compliance with applicable pretreatment standards and to confirm that data and other information submitted by IUs in self-monitoring reports has been representative and accurate. 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. 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 and State approved methods. The analytical laboratory is required to maintain a quality assurance/quality control program 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 generally reviewed within five (5) 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. In addition, other industrial users may have reporting requirements for other control mechanism(s) for Best Management Practices (BMP) as may be required. 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 consistent with 40 CFR Part 403 at the sole discretion of the City. City compliance monitoring reports are generally reviewed within five (5) days of receipt.

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

- a. Report due date 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 provided that has been analyzed by the laboratory and not specifically required to be reported by the permit shall be reviewed.

## D. Staffing and Responsible Officials

Day-to-day Pretreatment Program activities and priorities will be coordinated by the Director of Public Works. The Environmental Compliance Specialist and the Pretreatment Coordinator will, under the direction of the Deputy Public Works Director, implement the pretreatment program. The Director of Public Works reports to the City Manager. 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 As Assigned
Budgeting	Deputy Public Works Director	Environmental Compliance Specialist, Pretreatment Coordinator
Identifying Industrial Users	Environmental Compliance Specialist	Pretreatment Coordinator
Managing Data (includes data entry)	Environmental Compliance Specialist	Pretreatment Coordinator
Permitting IUs	Environmental Compliance Specialist (Draft Permits), Pretreatment Coordinator	Deputy Public Works Director (Sign Permits)
Inspecting IUs	Environmental Compliance Specialist	Pretreatment Coordinator
Reviewing Reports	Environmental Compliance Specialist	Pretreatment Coordinator
Sampling IU Discharges	Environmental Compliance Specialist	Pretreatment Coordinator
Enforcement	See Table Below	See Table Below

The following table establishes the official(s) responsible for initiating and completing an enforcement action. The activities shown below may be delegated to other City managers, as appropriate.

Enforcement Action	Initiating Personnel	Concurrence Required	Signature Authority
Informal Action: Phone call, email or warning letter <sup>(1)</sup> to notify IU of violations (all responses are documented and put in IU file).	Environmental Compliance Specialist, Pretreatment Coordinator	None. Periodic briefing to Deputy Public Works Director	Environmental Compliance Specialist, Pretreatment Coordinator
Informal Action: Industrial User Meeting (always held at POTW).	Environmental Compliance Specialist, Pretreatment Coordinator	Briefing to Deputy Public Works Director prior to meeting	Environmental Compliance Specialist, Pretreatment Coordinator
Informal Action: Notice of Violation <sup>(2)</sup> (NOV) Section 8.2,A.	Environmental Compliance Specialist, Pretreatment Coordinator, Deputy Public Works Director	Director of Public Works, City Attorney	Director of Public Works or designee
Administrative Order <sup>(3)</sup> Section 8.2, B.	Environmental Compliance Specialist	Deputy Public Works Director	Director of Public Works or designee

<b>Enforcement Action</b>	<b>Initiating Personnel</b>	<b>Concurrence Required</b>	<b>Signature Authority</b>
Consent Order Section 8.2, C.	Deputy Public Works Director, City Attorney	Director of Public Works, City Attorney	City Manager
Show Cause Hearing Section 8.2, D.	Environmental Compliance Specialist, Deputy Public Works Director	Director of Public Works, City Attorney, City Manager	Director of Public Works (chairs hearing)
Cease and Desist Order Section 8.2, E.	Environmental Compliance Specialist, Deputy Public Works Director	City Attorney, City Manager	Director of Public Works or designee
Administrative Fines Section 8.2, F.	Environmental Compliance Specialist, Deputy Public Works Director	City Attorney	Director of Public Works or designee
Suspension of Service Section 8.2, G.	Environmental Compliance Specialist, Deputy Public Works Director	City Attorney, City Manager	Director of Public Works or designee
Revocation of Permit or Authorization to Discharge Section 8.2, H.	Environmental Compliance Specialist, Deputy Public Works Director	City Attorney, City Manager	Director of Public Works or designee
Judicial Action Section 8.3	Deputy Public Works Director, Public Works Director	City Manager	City Attorney (Lead)
Injunctions Section 8.3, A	Environmental Compliance Specialist, Deputy Public Works Director	Public Works Director, City Manager	City Attorney (Lead)
Search Warrants Section 4.13	Environmental Compliance Specialist, Deputy Public Works Director	Public Works Director, City Manager	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 and an Industrial Waste Discharge Permit.
- (2) A Notice of Violation (NOV) is an informal action where the City uses the NOV to identify violations, establish specific actions and timeframes and provide an opportunity to correct. An NOV may be the final enforcement action for infrequent, 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 formal response to violation by industrial users that meet a SNC criterion.

### **III. Enforcement Responses**

#### **A. General**

Once a violation is identified, the City will determine the appropriate enforcement response. If the violation is significant (serious, recurring, Significant Non-Compliance (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 V, 2. 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 Environmental Compliance Specialist.

#### **B. Administrative Enforcement Actions**

##### **1. Informal Violation Communication/Meetings**

The City may notify a user of a violation (minor, isolated) via an email, 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.

##### **2. Written Notice of Violation (NOV). Section 8.2, A of the Pretreatment Regulations.**

Whenever the Director finds that an industrial user has violated or continues to violate, any provision of these Pretreatment Regulations, an Industrial Wastewater Discharge Permit, authorization or order issued hereunder, or any other Pretreatment Standard or Requirement, the Director may serve upon such industrial user a written NOV. Within five (5) working days of the receipt of such notice, an explanation of the violation and a plan for satisfactory correction and prevention of further violations shall be submitted to the Director. Submission of such a plan in no way relieves the industrial user of liability for any violations occurring before or after receipt of the NOV. An NOV may be issued initially and routinely for any violation and that action followed up later by an escalated enforcement action.

The NOV is an informal enforcement response. The NOV may be hand delivered, sent via email, by U.S. Mail or by registered or certified mail and shall be provided to the Authorized Representative of the Industrial User. 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.

##### **3. Administrative Order (AO). Section 8.2, B of the Pretreatment Regulations.**

When the City finds that an industrial user has violated, or continues to violate, any provision of these Pretreatment Regulations, an Industrial Wastewater Discharge Permit, authorization or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may issue an Administrative Order to the Industrial User responsible for the discharge directing that the industrial user come into compliance

within a specific time. If the industrial user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the POTW. An Administrative Order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the Industrial User of liability for any violation, including any continuing violation. Issuance of an Administrative Order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

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. The AO is generally hand delivered or sent by registered or certified mail to the Authorized Representative of the Industrial User. A copy of the AO will be filed in the industrial user file. The City may perform an on-site inspection as a follow-up to the violation.

4. Consent Order (CO). Section 8.2, C of the Pretreatment Regulations.

The City may enter into a Consent Order, assurances of voluntary compliance, or other similar documents establishing an agreement with any industrial user responsible for noncompliance. Such documents shall include specific actions to be taken by the industrial user to correct the noncompliance within a time period specified by the document. A Consent Order may include penalties, supplemental environmental projects, or other conditions and requirements as agreed to by the City and the industrial user, including stipulated penalties for violations that occur during the term of the Consent Order. A Consent Order shall have the same force and effect as an Administrative Order and shall be judicially enforceable.

The Consent Order allows the industry to continue to discharge if 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.

5. Show Cause Hearing (SCH). Section 8.2, D of the Pretreatment Regulations.

The Director may order an Industrial User which has violated, or continues to violate, any provision of these Pretreatment Regulations, an Industrial Wastewater Discharge Permit, authorization or order issued hereunder, or any other Pretreatment Standard or Requirement, to appear before the Director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the industrial user. A Show Cause Hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

After the Director has reviewed the evidence, the Director may issue an order to the Industrial User responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed or existing treatment facilities, devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate to correct the violation may be issued.

The Director may use the same Show Cause Hearing process to hear an appeal of an administrative fine from an industrial user.

6. Cease and Desist Order (CDO). Section 8.2, E of the Pretreatment Regulations.

When the Director finds that an industrial user has violated, or continues to violate, any provision of these Pretreatment Regulations, an Industrial Wastewater Discharge Permit, authorization or order issued hereunder, or any other Pretreatment Standard or Requirement, or that the industrial user's past violations are likely to recur, the Director may issue a Cease and Desist Order to the industrial user directing it to cease and desist all such violations and directing the industrial user to:

- a. Immediately comply with all requirements; and
- b. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a Cease and Desist Order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user. The Cease and Desist Order is generally hand delivered or sent by registered or certified mail to the Authorized Representative of the Industrial User. A copy of the Cease and Desist Order will be filed in the industrial user file. The City may perform an on-site inspection as a follow-up to the violation.

7. Administrative Fines (AF). Section 8.2, F of the Pretreatment Regulations.

When the Director finds that an industrial user has violated, or continues to violate, any provision of these Pretreatment Regulations, an Industrial Wastewater Discharge Permit, authorization or order issued hereunder, or any other Pretreatment Standard or Requirement, the Director may fine such industrial user in an amount not to exceed one thousand dollars (\$1,000.00). Such fines shall be assessed on a per-violation, per day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation. Issuance of a penalty-only is not a formal enforcement action by itself.

Industrial users desiring to appeal such fines must file a written request for a Show Cause Hearing consistent with the requirements of Section 8.2, D. of the Pretreatment Regulations. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

The AF is generally hand delivered or sent by registered or certified mail to the Authorized Representative of the Industrial User. A copy of the AF will be filed in the industrial user file. The City may perform an on-site inspection as a follow-up to the violation.

8. Suspension of Service. Section 8.2, G of the Pretreatment Regulations.

**Endangerment to Health or Welfare of the Community:** The City, through other than a formal notice to the affected industrial user, may immediately and effectively halt or prevent any discharge of pollutants into any natural waterway, surface drainage within the City, any area under jurisdiction of the City, the POTW of the City or any wastewater system tributary thereto, by any means available to them, including physical disconnection from the wastewater system, whenever it reasonably appears that such discharge presents an imminent endangerment to the health or welfare of the community.

**Endangerment to Environment or Treatment Works:** The City, after written notice to the discharger may halt or prevent any discharge of pollutants into any natural waterway, surface drainage within the City, any area under jurisdiction of the City, the POTW, wastewater system tributary thereto, by any means available to them, including physical disconnection from the wastewater system, whenever such discharge presents or may present an endangerment to the environment or threatens to interfere with the operation of the POTW.

Any person notified of a suspension of the wastewater treatment service and/or the Industrial Wastewater Discharge Permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the City shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to individuals or the environment. The City may reinstate the Industrial Wastewater Discharge Permit and/or the wastewater treatment service upon proof of the elimination of the non-complying discharge.

A detailed written statement submitted by the Industrial User describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be provided to the City within five (5) days of the date of occurrence.

Suspension of Service shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

9. Revocation of Industrial Wastewater Discharge Permit or Authorization to Discharge. Section 8.2, H of the Pretreatment Regulations.

A violation of the conditions of an Industrial Wastewater Discharge Permit, authorization, or order under these Pretreatment Regulations or of applicable State or federal regulations shall be reason for revocation of such permit or authorization to discharge by the City as provided for in Section 4.2 of the Pretreatment Regulations. Upon revocation of the permit, any wastewater discharge from the affected Industrial User shall be considered prohibited and discharge of such wastewater in violation of these Pretreatment Regulations.

Any Industrial User whose Industrial Wastewater Discharge Permit or authorization to discharge is revoked or who is served with a notice of an intended order for the revocation of the Industrial User's authorization to discharge may file with the Director a request for a hearing with respect thereto; provided, however, that the filing of such a request shall not stay the existing or proposed suspension.

If a hearing is requested with respect to an existing or proposed suspension or revocation, other than the suspension of service because of an action taken by the City under Section 8.2, G of the Pretreatment Regulations, the Director shall hold a hearing with respect to such suspension within fourteen (14) days after receipt of such request. The Director shall provide notice of the hearing to the Industrial User by hand delivery or certified mail at least five (5) days before the hearing. The Director shall conduct the hearing and the Industrial User shall be allowed to present evidence in support of its request. After considering the evidence that is presented at such hearing, the Director shall issue his order with respect to the suspension or revocation of the permit and/or authorization to discharge. The decision by the Director shall be provided to the Industrial User in writing.

10. Civil Judicial Enforcement Action. Section 8.3, B of the Pretreatment Regulations.

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:

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

An Industrial User who has violated, or continues to violate, any provision of these Pretreatment Regulations, an Industrial Wastewater Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement shall be liable to the City for a maximum civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day per violation. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of violation.

The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.

Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against an industrial user.

11. Injunctive Relief. Section 8.3, A of the Pretreatment Regulations.

When the City finds that an industrial user has violated, or continues to violate, any provision of these Pretreatment Regulations, an Industrial Wastewater Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may petition a court of competent jurisdiction for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the Industrial Wastewater Discharge Permit, order, or other requirement imposed by these Pretreatment Regulations on activities of an Industrial User. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the Industrial User to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against an Industrial User.

12. Settlement Agreement (aka 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.

13. Criminal Enforcement Actions

An Industrial User that willfully, recklessly or negligently violates any provision of these Pretreatment Regulations, including making false statements, shall, upon conviction, be guilty of a Class 1 misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars (\$2,500) for each violation and/or by imprisonment up to six months. Each day any violation of these Pretreatment Regulations occurs shall constitute a separate offense.

The City may refer violations that may warrant criminal prosecution to the U.S. Attorney General's Office, State Attorney General, EPA Criminal Investigation Division or other appropriate agency. This referral shall not preclude the City from taking a parallel administrative or civil enforcement action.

## IV. Enforcement Response Guide

The City will use the Enforcement Response Guide in Table 1 below 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 an enforcement response that the City deems appropriate and that is authorized by Pretreatment Regulations. 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.

This ERP is intended to be used as a general framework for responding to violations. Circumstances related to a specific violation and circumstances may warrant an enforcement response by the City that is different from those identified in this Enforcement Response Plan.

### General Administrative Fine Schedule

The following table shows the typical penalty associated with specific violations. Recurring or multiple violations would result in escalated enforcement responses and administrative fines that may be higher on a per day basis or result in a higher total penalty.

<b>Violation</b>	<b>Typical Penalty</b>
Late reports	\$100 per day up to 29 days and \$200 per day for day 30 and after.
Failure to sample	Cost of analyses plus \$200 per day until sample results are received for the pollutant(s) not sampled
Failure to provide required notifications as required, 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 plus any late report penalties
Failure to maintain records	\$200 per event
Failure to report slug loads, accidental discharges reaching the POTW, upsets and bypasses	\$1000 per day

### Abbreviations for Enforcement Actions <sup>(1)</sup>

EMP	Email, Meeting, Phone Call (all documented to IU File). This may be part of many enforcement actions.
NOV	Notice of Violation
AO	Administrative Order
CO	Consent Order
SCH	Show Cause Hearing
CDO	Cease and Desist Order
AF	Administrative Fine

SUS	Suspension of Service
RP	Revocation of Permit
INJ	Injunctive Relief
CIVIL	Civil Penalty
CRIM <sup>(2)</sup>	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 the violations in the following table but may be an option exercised by the City.

**Table 1 – Table of Enforcement Responses**

<b>Violation</b>	<b>Circumstances</b>	<b>Typical Range of Enforcement Responses<sup>(1)</sup></b>	<b>Typical timeframe for initiating the enforcement response</b>
General: Any violation that does not meet SNC definition	Any Instance	EMP, 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, SUS, RP, INJ, CIVIL, CRIM	Within 21 days of identifying the violation.
Failure to apply (or reapply) for a permit as required: New Industrial Users (SIUs). SNC violation.	Any Instance	AO, SCH, CDO, AF, INJ, CIVIL	Within 21 days of identifying the violation.
Failure to apply (or reapply) for a permit as required: Existing SIUs. ≤30 days late – non-SNC violation.	Any Instance	NOV, AO, SCH, CDO, RP, SUS	Within 45 days of the reapplication date
Failure to apply (or reapply) for a permit as required: Existing SIU >45 days late – SNC violation.	Any Instance	AO, SCH, CDO, AF, INJ, CIVIL	Within 21 days of identifying the violation.
Failure to submit a complete and accurate permit application. All additional updated submittals from IUs must have signatory cert.	Any Instance	EMP, NOV, AO, SCH	Within 14 days of identifying the violation.

<b>Violation</b>	<b>Circumstances</b>	<b>Typical Range of Enforcement Responses<sup>(1)</sup></b>	<b>Typical timeframe for initiating the enforcement response</b>
Illegal or unpermitted discharge	Any Instance	AO, AF, SCH, CDO, SUS, RP, INJ, CIVIL, CRIM	Immediate notification to IU. Formal enforcement action initiated within 14 days of identifying the violation.
Permit effluent limit violation and/or BMP Violation (Pretreatment Standards)	Any Instance	<u>Isolated, Not SNC:</u> NOV, AO, SCH <u>Recurring and/or SNC:</u> AO, AF, SCH, CDO, RP, SUS, INJ, CIVIL	Within 14 days of identifying the violation.
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	EMP, 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	Within 14 days of identifying the violation.
	An environmental or POTW impact (evaluate affirmative defenses)	AO, AF, SCH, CDO, RP, SUS, INJ, CIVIL	Immediate notification to IU. Formal enforcement action initiated within 14 days of identifying the violation.
Discharge that presents or may present an imminent or substantial endangerment to health, the environment, personnel, or the POTW.	Any instance	SUS, RP, CIVIL, CRIM, INJ, APO	Immediate exercise of emergency authority to halt discharge. Additional formal enforcement action initiated within 14 days of identifying the violation.
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, SCH, CDO, RP, SUS, INJ, CIVIL	Within 14 days of identifying the violation.

<b>Violation</b>	<b>Circumstances</b>	<b>Typical Range of Enforcement Responses<sup>(1)</sup></b>	<b>Typical timeframe for initiating the enforcement response</b>
Slug Load (Reported as required)	Isolated, no damage to POTW or environment.  Recurring (>once in a 3 month period) or causing a violation of the General or Specific prohibitions.	NOV, AO, SCH, AF  NOV (pre-notice), AO, AF, SCH, CDO, RP, SUS, INJ, CIVIL	Within 14 days of identifying the violation.  Within 5-14 days of identifying the violation.
Failure to report (self-monitoring report/Notifications), including compliance with Best Management Practices (BMPs)	<30 days late (isolated)  >30 days late	EMP, NOV, AO, AF, SCH, CDO, RP  AO, SCH, CDO, AF, SUS, RP, INJ, CIVIL	Within 14 days of identifying the violation.  Within 21 days of identifying the violation.
Failure to Provide Complete Reports (other than failure to monitor), including reports on BMPs	Isolated Occurrence  Recurring (>1 report in 6 months)	NOV, AO  NOV, AO, SCH, CDO, AF, RP, CIVIL	Within 5 days of review.  Within 14 days of review.
Failure to monitor for all required permit or other required pollutants.	Any instance	NOV, AO, SCH, CDO, AF, RP, CIVIL	Within 14 days of identifying the violation.
Falsification of Data/Reports	Any Instance	AF, RP, SUS, CIVIL, CRIM	Within 21 days of identifying the violation.
Failure to report an effluent violation within 24 hours (SNC)	Any Instance	NOV (pre-notice), AO, AF, 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, SCH, CDO	Within 14 days of identifying the violation.
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, SCH, CDO, RP, SUS, 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, SCH, CDO, RP, INJ, CIVIL	Within 14 days of identifying the violation.
Tampering with monitoring equipment or methods.	Any Instance	AO, SCH, CDO, AF, RP, SUS, CIVIL, CRIM	Immediate notification to IU (unless referring for Criminal enforcement). Formal enforcement action initiated within 14 days of identifying the violation.

<b>Violation</b>	<b>Circumstances</b>	<b>Typical Range of Enforcement Responses <sup>(1)</sup></b>	<b>Typical timeframe for initiating the enforcement response</b>
Denial of access, refusal of entry or withdrawal of access.	Any Instance	INJ, RP, AO, SCH, CIVIL	Immediate notification to IU and referral to City Attorney within 2 working days.
Failure to comply with an order or request for information.	Any Instance	AO, AF, SCH, CDO, SUS, RP, INJ, CIVIL	Within 14 days of identifying the violation.
Bypassing treatment without authorization or notification to the POTW.	Any Instance	NOV (pre-notice), AO, AF, SCH, CDO, RP, SUS, INJ, CIVIL	Immediate notification to IU. Formal enforcement action initiated within 14 days of identifying the violation.
Failure to properly operate or maintain a treatment system.	Any instance	AO, AF, 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, SCH, CDO, INJ, CIVIL	Within 15 days of identifying the violation.
Failure to maintain a grease interceptor or sand/oil separator as required.	Any instance	EMP, NOV, AO, AF, SCH, CDO	Immediately – correct within 5 days of identifying the violation or as other specified by the City.
Failure to install monitoring structures or equipment as required.	Any instance	NOV (pre-notice), AO, AF, SCH, CDO, RP, SUS, INJ, CIVIL	Within 21 days of identifying the violation.
Failure to use appropriate analytical methods.	Any instance	NOV, AO, AF	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	Within 14 days of identifying the violation.
Industrial user is using dilution to meet limits.	Any instance	NOV (pre-notice), AO, AF, SCH, CDO, RP, SUS, INJ, CIVIL	Immediate notification to IU. Formal enforcement action initiated within 14 days of identifying the violation.
Failure to maintain records on-site as required.	Any instance	NOV, AO, AF	Within 14 days of identifying the violation.
Failure to comply with inspection required actions.	Any instance	NOV, AO, AF, SCH, CDO, RP, INJ, CIVIL	Within 30 days of identifying the violation.

<b>Violation</b>	<b>Circumstances</b>	<b>Typical Range of Enforcement Responses<sup>(1)</sup></b>	<b>Typical timeframe for initiating the enforcement response</b>
pH violation.	<5.0, no damage	NOV, AO, AF	Within 14 days of identifying the violation.
	<5.0, damage to the monitoring structure, service line or POTW	NOV (pre-notice), AO, AF, SCH, CDO, RP, SUS, INJ, CIVIL	Within 14 days of identifying the violation.
Failure to pay surcharges, fee and other required costs (Sections 3.2 and 4.7)	Any instance	RP, SUS, CIVIL	Charges assessed through sewer bill. Initial enforcement by sewer billing office. Pretreatment Regulations allow additional enforcement remedies.
Violations determined to be knowing, willful or due to negligence not specified above.	Any instance	AO, AF, SCH, CDO, SUS, RP, INJ, CIVIL, CRIM	Within 30 days of identification of the violation.

<sup>(1)</sup> 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 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 finding of SNC, the City will generally issue a formal enforcement action.

## **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 and other significant administrative penalty cases. The City has typical predefined penalties for use in administrative citations (see Section IV). 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:

#### **1. 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.

#### **2. 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:

$$\text{Penalty} = \text{Economic Benefit} + \text{Gravity Component (punitive portion)}$$

#### **3. Bottom-Line Penalty**

This is the minimum settlement amount. There are several 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:

$$\begin{aligned} \text{Penalty} = & \text{Economic Benefit} + \text{Gravity Component (punitive portion)} +/ - \text{Gravity} \\ & \text{Adjustments} - \text{Litigation Considerations} - \text{Ability to Pay} - \text{Supplemental} \\ & \text{Environmental Projects} \end{aligned}$$

## 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.
- 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:

$$\text{Penalty} = \text{Economic Benefit} + (I + A + B + C + D) \times \$1000$$

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.

**Table for Assigning a Value for Factor A**

<b>% by Which an Effluent Limit was Exceeded</b>	<b>pH: Standard Units above or below pH Limits</b>	<b>Factor A Values (0 to 20)</b>
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

#### 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**

<b>Type of Actual or Potential Harm</b>	<b>Factor B Values (0 to 50)</b>
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 violated 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):

- a. Monitoring the effluent
- b. Reporting and required notifications
- c. Unauthorized discharges.
- d. Compliance schedules
- e. Applying for a permit
- f. 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 Section 6.1, this will be counted as a violation only in the month when the report was due.

If the industrial user did not notify the City and repeat the sampling after finding the effluent violation as required by Section 6.8, 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 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

Average Daily Wastewater Discharge Flow (gpd)	% Reduction of Total Gravity
50,000 – 99,999	5
100,000 or more	0 (no reduction)

#### 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 (ranges up to 20%)

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.

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.

#### **D. Calculating Penalties for Significant Administrative and Civil Penalties**

This form is general guidance for calculating a penalty.

Case Name:	Date:
Prepared by (staff):	Reviewed by:
<b>Settlement Penalty Calculation Worksheet</b>	
1. Calculate the <b>statutory maximum</b> penalty: \$1,000 x days of violation.	\$
2. Economic Benefit. Attach explanation of the dollars saved due to non-compliance.	\$
3. Gravity = $(I + A + B + C + D) * POTW\ Penalty\ Authority$  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. Gravity Adjustment: History of Cooperativeness Adjustment Factor (range 0 to 150% increase in penalty). Multiply Line 3 by %/100.	
5. Proposed/Assessed Penalty: Economic Benefit + Gravity (add lines 2 + 3 +4)	\$
6. Gravity Adjustments	
a. Flow Reduction Factor for Small Facilities (range 0 to 50% decrease in penalty).	%
b. Quick Settlement Adjustment Factor (range up to 20% decrease in penalty).	%
c. Environmental Auditing Adjustment Factor (up to 15% decrease in penalty)	%
<b>Total \$ for Gravity Adjustments:</b> Gravity * $((6.a + 6.b. + 6.c.)/100))$	\$
7. Preliminary Bottom-line Penalty (line 5 - line 6)	\$
8. Litigation Considerations (for Judicial Cases) – Attorney defined. Decrease in penalty.	
9. Reduction for Supplemental Environmental Projects (see EPA guidance).	\$
11. <b>Bottom-line Cash Settlement Penalty</b> (line 7 – (line 8 + line 9))	\$

**VI. Definitions** (see Section 1.3 of the Pretreatment Regulations for additional definitions).

A. Authorized Representative or Duly Authorized Representative of the Industrial User means:

1. If the Industrial User is a corporation:
  - a. The president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
  - b. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for reporting requirements established by the City; if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
2. If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.
3. If the user is a federal, state, or local government facility: A City or highest official appointed or designated to oversee the operation and performance of the activities of the governmental facility, or their designee.
4. The individuals described in paragraphs 1 through 3 above, may designate another authorized representative if the authorization is made in writing, the authorization specifies the individual or a position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

B. Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the General and Specific Prohibitions listed in Section 2.1 of the Pretreatment Regulations. 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 the Pretreatment Regulations and Section 307(d) of the Act and as specified at 40 CFR 403.5(c)(4).

C. City is the City of Casa Grande, Arizona

D. Director is the City of Casa Grande Public Works Director, who is designated by the City to supervise the operation of the Publicly Owned Treatment Works and who is charged with certain duties and responsibilities under these Pretreatment Regulations, or their duly authorized representative.

- E. Indirect Discharge or Discharge shall mean the Discharge or introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act (including holding tank waste discharged into the system).
- F. Industrial User means a source of Indirect Discharge, an industrial 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 to the POTW.
- G. Person means any individual, partnership, co-partnership, firm, company, association, joint stock company, trust, estate, society, corporation, group, government, governmental agency or other legal entity, or their legal representatives, agents or assigns. The definition includes all federal, state and local government entities.
- H. Pretreatment Requirement are any substantive or procedural requirement related to Pretreatment, other than a Pretreatment Standard, imposed on an Industrial User.
- I. 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. The term includes prohibitive discharge limits, local limits, and Best Management Practices that are or may be established by the City. In cases of differing Standards or regulations, the more stringent shall apply.
- J. Significant Noncompliance.

The City shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdiction served by the POTW, 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 and meets any of the criteria below. In addition, any Industrial User found to be in Significant Noncompliance with Subsections 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 in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter during a six (6) month period exceed by any magnitude, a numeric Pretreatment Standard or Requirement, including instantaneous limits;
2. Technical Review Criteria (TRC) violations, defined here in which thirty-three percent (33%) or more of all measurements taken for the same pollutant parameter during a six (6) month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including, instantaneous limits, multiplied by the applicable TRC (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
3. Any other violation(s) of a Pretreatment Standard or Requirement, including daily maximum, long-term average, instantaneous limit or narrative standard, that the City determines to have caused, alone or in combination with other Discharges, Pass Through and/or Interference including endangering the health of the general public or the health of POTW personnel;

4. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the City exercising its emergency authority to halt or prevent such discharge;
5. Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or compliance order for starting construction, completing construction, or attaining final compliance;
6. Failure to provide, within thirty (30) days after the due date, any required report, including a Baseline Monitoring Report, 90-Day Compliance Report, periodic self-monitoring reports, and reports on compliance with compliance schedules;
7. Failure to accurately report non-compliance; or
8. Any other violation or group of violations, which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the local Pretreatment Program.

K. Publicly Owned Treatment Works (POTW) is a treatment works as defined by Section 212 of the Act (33 U.S.C 1292), which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature and any sewers, pipes or other conveyances which convey wastewater to the treatment plant. The term also means the municipality having jurisdiction over the Indirect Discharges to and the discharges from the treatment works.

L. Significant Industrial User or SIU is:

1. A Categorical Industrial User;
2. An Industrial User that:
  - a. Discharges an average of 25,000 gpd or more of process wastewater to the POTW (excluding domestic, noncontact cooling and boiler blowdown wastewater); or
  - b. Contributes a process wastestream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
  - c. Is designated as a SIU by the City on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation; or for violating any Pretreatment Standard or Requirement (in accordance with 40 CFR Section 403.8(f)(6)).
3. Upon finding that an Industrial User meeting the criteria in paragraph 2 above has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement, the City may, at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with 40 CFR 403.8(f)(6), determine that such Industrial User is not a Significant Industrial User.

M. Slug Load or Slug Discharge means any discharge at a flow rate or concentration, which could cause a violation of the General or Specific Prohibitions in Section 2.1 of the Pretreatment Regulations. 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 violates an applicable Pretreatment Standard or Requirement or an Industrial Wastewater Discharge Permit issued by the City.