



**City of Phoenix**

# **INDUSTRIAL PRETREATMENT PROGRAM ENFORCEMENT RESPONSE PLAN**

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## 1 INTRODUCTION

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The City of Phoenix (Phoenix) Industrial Pretreatment Program (IPP) is a federally mandated pollution control program under the Clean Water Act. The IPP regulates discharges of industrial wastewater to Phoenix's sanitary sewer system.

In accordance with 40 CFR 403.8(f)(5) Phoenix has developed an Enforcement Response Plan (ERP). The ERP contains detailed procedures identifying how Phoenix will investigate and respond to instances of industrial user noncompliance. The ERP is intended to guide City personnel in the initiation and implementation of enforcement actions in response to violations of Federal and State pretreatment rules and regulations; City of Phoenix sewer use ordinances; and wastewater discharge permits. The ERP does not create any rights or obligations nor should it be used or relied upon by non-city personnel for any purpose. Phoenix reserves the right to act at variance with the ERP and to change it at any time without public notice.

Phoenix's authority to implement its IPP is codified in Phoenix City Code Chapter 28, Sewers.

The original ERP was approved by the United States Environmental Protection Agency (EPA) on December 5, 1991. This document replaces the original in its entirety.

## 2 PURPOSE

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This ERP is a tool to address instances of noncompliance. It must be used in conjunction with the Code of Federal Regulations (CFR) and the Phoenix City Code. The ERP:

- Provides guidance for developing enforcement responses that are appropriate in relation to the nature and severity of the violation and the overall degree of noncompliance;
- Establishes guidelines that encourage fair and uniform application of enforcement responses to comparable levels and types of violations; and
- Serves as a mechanism to review the appropriateness of responses.

## 3 REFERENCES

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The ERP, as revised, was developed based on the following documents:

- EPA Pretreatment Compliance Monitoring and Enforcement Guidance (July 1986)
- EPA Guidance for Developing Control Authority Enforcement Response Plans (September 1989)
- EPA Guidance Manual for POTWS to Calculate the Economic Benefit of Noncompliance (September 1990)
- Standard Operating Procedure (SOP) 23004: Industrial Pretreatment Program Enforcement, current revision
- Phoenix City Code Chapter 28, Sewers, current revision
- Phoenix Civil Penalty Policy, current revision
- EPA Streamlining Rule (October 14, 2005)
- Phoenix Enforcement Response Plan (December 1991)
- EPA Model Pretreatment Ordinance (January 2007)

## 4 DEFINITIONS

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This section provides definitions for many of the terms frequently used within ERP.

**Act or "the Act"** – The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et. seq.

**Authorized Signatory/Representative** - The appropriate signatory or representative authorized to sign permit applications, self-monitoring reports, and any other reports addressing Permit noncompliance or required by any enforcement action by the Control Authority.

**Baseline Monitoring Report (BMR)** - A report which provides information to the Control Authority to document an IUs initial compliance status with a Categorical Pretreatment Standard prior to the compliance deadline. (40 CFR 403.12). All new source industrial users subject to categorical standards must submit a BMR to the Control Authority (POTW, State or EPA), at least 90 days prior to the commencement of discharge. The purpose of the BMR is to provide initial information to the Control Authority including identifying information, description of existing environmental permits, description of operations, flow measurements (estimated), and the concentration of pollutants in the waste stream (estimated). Existing sources were required to submit BMRs within 180 days after the effective date of any applicable categorical standard.

**Best management practices(BMPs)** - The schedules of activities, pollution treatment practices or devices, prohibition of practices, general good housekeeping practices, pollution prevention, waste minimization, educational practices, maintenance procedures, and other management practices or devices to prevent or reduce the amount of pollutants entering the sanitary sewer system, surface water, air, land, or groundwater. BMPs may include a physical, chemical, structural, or managerial practice or device that helps to achieve compliance with Chapter 28 of Phoenix City Code.

**Biochemical Oxygen Demand (BOD)** - The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory conditions for 5 days at a temperature of 20 degrees centigrade, expressed in milligrams per liter.

**Bypass** - The intentional diversion of wastes from any portion of an Industrial User's pretreatment systems, devices, or facility.

**Chronic Violations** - Recurring effluent violations where the limit (*daily or monthly maximum*) is exceeded by any amount.

**City** - The City of Phoenix.

**Civil Action** - A suit filed by the City against alleged violators of applicable pretreatment standards seeking injunctive relief, compliance, civil penalties and/or damages.

**Civil Penalty** - Monetary penalties assessed against an IU. Penalty calculations are formula based on the extent and type of noncompliance. Civil penalties recover the economic benefit of IU noncompliance and are set large enough to deter future noncompliance (*maximum \$25,000 per day for each violation*).

**Clean Water Act (CWA)** - The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1251 et seq.), as amended by the Clean Water Act of 1977 (Pub. L. 95-217), and the Water Quality Act of 1987 (Pub. L. 100-4).

**Code of Federal Regulations (CFR)** – The codification of the general and permanent rules and regulations published in the Federal Register by the Executive Departments and Agencies of the Federal government of the United States.

**Compliance** – When an industrial discharger has committed no pretreatment violations during the reporting year.

**Compliance Schedule** – A timetable established by an IU for completing those actions necessary to achieve compliance with a standard.

**Compliance Sampling Point** – A manhole, petcock, valve, sampling port, open-channel flow device, or other waste plumbing device designated by the Director for monitoring wastewater flows and for collection of samples for determining compliance with effluent limits.

**Continuous pH** – Unattended pH (a conventional pollutant) monitoring at the compliance point using an electrometric pH sensor mounted at and immersed in the discharge waste stream.

**Control Authority (403.12(a))** – The term “control authority” shall refer to a City which has an approved Pretreatment Program under provision of 40 CFR 403.11.

**Daily Maximum** – The arithmetic average of all effluent samples for a pollutant collected during a sampling day. City samples may not be combined with non-city samples to determine compliance with the daily maximum.

**Director** – The Water Services Director or the Director’s authorized designee.

**Effluent** – Wastewater or other liquid raw, untreated, partially or completely treated flowing from an IU to a reservoir, basin, treatment process or treatment plant.

**Environmental Protection Agency, or EPA** – The United States Environmental Protection Agency.

**Enforcement Response Plan (ERP)** – The Enforcement Response Plan for the City of Phoenix contains detailed procedures identifying how it will investigate and respond to instances of IU noncompliance.

**Facility** – All contiguous property owned, operated, leased or under the control of the same person or entity.

**Free Access** – The ability of City personnel to promptly and freely enter user facilities under safe and non-hazardous conditions to inspect any and all parts of the user’s facility.

**Grab Sample** – An individual sample of effluent collected in 15 minutes or less, without regard to flow or time of day.

**Industrial User (IU):**

- (a) A source of industrial discharge; or
- (b) A nonresidential user of the sewer system that discharges more than the equivalent strength of 25,000 gallons per day of domestic wastes;
- (c) A significant industrial user;

- (d) Controls the disposal of a waste described in (a), (b), or (c) above; or
- (e) Possesses or controls property that produces a waste as described in (a), (b), (c), or (d) above.

**Inspection** – A visual observation/evaluation of IU equipment, operations, sampling activities and accuracy of IU performance and compliance records

**Instantaneous Limit** – The maximum pollutant concentration allowed to be discharged at any time. Compliance with the instantaneous limit is determined from an analysis of the collected discrete or composite sample independent of the industrial flow rate and duration of the sampling event.

**Interference** – A discharge that, alone or in conjunction with a discharge from other sources, both:

(a) Inhibits or disrupts the POTW, or its treatment processes, operations, sludge processes, use or disposal activities; and

(b) Causes a violation of a requirement of an environmentally related permit issued by a governmental entity (including an increase in the magnitude or duration of a violation), or prevents sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any state sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

**Limit Violation** – Pollutant concentration is above the allowable limit as defined in the pretreatment standards for a particular IU.

**Major Violation** – Violations that exceed the limits frequently and/ or by a large quantity (e.g., exceed the technical review criteria contained within the definition of Significant Non-Compliance); impede the determination of compliance status; have the potential to cause or may have actually caused adverse environmental effects, health problems, or interfered with the POTW treatment capability.

**Minor Violation** – Violations that are not major, such as an incomplete report, a date error in a report, or a report not including all data

**Monitoring** – The practice of investigating, surveying, and sampling wastewater sources in an effort to obtain information on the quality and quantity of the wastewater flow.

**Notice of Violation (NOV)** – A written enforcement action notification issued to an IU for violations of pretreatment standards or requirements.

**Notice to Show Cause** – A meeting between the City (ESD) and an IU generally held when more aggressive enforcement action is required. The IU must “show



cause” as to why the City should not initiate additional enforcement actions or progress to discontinuation of sewer service.

**NPDES or AZPDES permit** – A National Pollutant Discharge Elimination System (NPDES) permit, issued to the City by the EPA, or an Arizona Pollutant Discharge Elimination System (AZPDES) permit, issued to the City by the State of Arizona, which imposes standards governing the quality of the treated effluent discharged from the POTW into a navigable water of the United States.

**Pass-through**– A discharge from the POTW into waters of the United States in quantities or concentrations that, alone or in conjunction with discharges from other sources, violates any requirement of the POTW NPDES or AZPDES permits (including an increase in the magnitude or duration of a violation) or that causes or contributes to a violation of an applicable numeric or narrative water quality standard.

**Permit** – A written discharge control mechanism the Director issues to particular users or classes of users under the authority of Chapter 28 of Phoenix City Code.

**pH** – A measure of the acidity or alkalinity of a solution, expressed in Standard Units.

**Pollutant** – Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical waste, chemical waste, biological material, radioactive material, heat, wrecked or discharged equipment, rock, sand, cellar dirt, industrial, municipal, and agricultural wastes, and certain characteristics of wastewater (e.g. pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor). This includes any substance or effluent limit identified in Chapter 28 of Phoenix City Code.

**Publicly Owned Treatment Works (POTW)** – A treatment works and connecting sewer collection system that is owned or operated, in whole or in part, by the City and that provides the City with wastewater collection and disposal services. The POTW includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial waste of a liquid nature, and any conveyances that transport wastewater to the treatment plant.

**Pretreatment Standards** – Prohibited discharge standards, categorical pretreatment standards, and local limits.

**Pretreatment or Treatment** – The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means; except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

**Pretreatment Facility** – Industrial wastewater treatment system consisting of one or more treatment devices designed to remove sufficient pollutants from waste streams to allow an industry to comply with effluent limits (i.e. categorical standards, local limits, and federal prohibitive standards).

**Reporting Violation** – Failure of an industrial user to submit the required report to the Approval Authority or Control Authority.

**Review Meeting** – A compliance status meeting between ESD staff and an IU to review violations and allow the IU to describe the means to prevent future violations.

**Sampling** – The practice of collecting samples of wastewater discharges for analysis of wastewater characteristics.

**Sanitary Sewer** – A sewer that carries sewage and to which stormwater, surface water, and groundwater and not intentionally introduced.

**Sewer Use Ordinance** – A sewer use ordinance is a legal instrument implemented by a local government entity which sets out all the requirements for the discharge of pollutants into a publicly owned treatment works.

**Significant Noncompliance (SNC)** – One or more serious violations or a pattern of minor violations. An IU may be considered in SNC when violations are Chronic Violations (CSNC) or Technical Review Criteria Violations (TRCSNC) or late reporting.

**Slug Load or Slug Discharge** – A discharge at a flow rate or concentration that would cause a violation of the prohibited discharge standards in Chapter 28 of Phoenix City Code. A slug discharge is a discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, that has a reasonable potential to cause interference or pass-through, or in any other way violate the POTW's regulations, local limits, or permit conditions.

**Slug Control Plan (40 CFR 403.8(f)(2)(v)1)** – A plan designed to prevent the uncontrolled discharge of raw pollutants (*or materials, e.g., a dairy spill of milk may disrupt a small POTW and would have to be reported even though milk is not a "pollutant"*) into the POTW. Every Significant Industrial User is required to be evaluated at least every two years, for the necessity of instituting such a control plan.

**Technical Review Criteria Violations (TRC) (TRCSNC):**

(1) Technical Review Criteria Violations are recurring effluent violations where the limit is exceeded by a certain statistically developed percentage so as to account for the degree of variance from the pretreatment standards.

(2) For Technical Review Criteria Significant Noncompliance (TRCSNC), thirty-three (33) percent or more of all of the measurements taken during a six-month period equal or exceed the product of the daily limit or the monthly average limit multiplied by the applicable TRC (1.4 for BOD, TSS, fats, oil & grease and 1.2 for all other pollutants except pH).

**Termination of Service** – An administrative action implemented by the City to halt any actual or threatened discharge to the sewer from an IU that has failed to adequately respond to previous enforcement actions.

**Treatment** – Any method, technique, or process designed to change the physical, chemical or biological character or composition of any metal-bearing, oily, or organic waste so as to recover metal, oil, or organic content from wastes.

**Violation** – Whenever a user exceeds an applicable effluent limit; fails to meet the deadlines and conditions for reporting, monitoring or treatment; or does not comply with other Federal or City requirements.

**Waste** – Includes aqueous, non-aqueous, and solid waste, wastewater, and/or used material.

**Wastewater** – Liquid and water-carried industrial waste and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, that is introduced or contributed to the POTW.

## 5 ENFORCEMENT RESPONSIBILITIES

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Effective enforcement relies on the performance of a variety of individuals, from field personnel to Phoenix's top management. Responsibilities range from recommending preventive measures to determining the need for aggressive enforcement. The following list identifies the staff positions and their areas of responsibility.

### **5.1 INSPECTORS/FIELD PERSONNEL**

- Determine compliance status
- Inform Chief Water Quality Inspector of violations
- Recommend and develop enforcement responses
- Develop and oversee Compliance Schedules

### **5.2 CHIEF WATER QUALITY INSPECTOR**

- Review enforcement response
- Approve informal enforcement actions, as appropriate
- Inform the IPP Manager of violations and recommended enforcement response
- Develop compliance sampling schedules
- Conduct Compliance Status Review Meetings
- Supervise monitoring activities of inspectors
- Track enforcement response times
- Conduct Show Cause Proceedings
- Prepare and issue Administrative Orders and Compliance Schedules

### **5.3 IPP MANAGER**

- Approve formal enforcement actions, as appropriate
- Ensure consistency of program application
- Prepare and issue Administrative Orders and Compliance Schedules
- Attend Show Cause Proceedings
- Initiate termination of service
- Recommend that legal action be taken
- Seek monetary penalties for non-compliance.

### **5.4 CITY ATTORNEY**

- Provide assistance and counsel on program developments and changes
- Advise both technical and management staff on enforcement matters
- Manage civil litigation on behalf of Phoenix
- Manage criminal trials on behalf of Phoenix, with City Prosecutor
- Attend Show Cause Proceedings
- Assist in preparing the Administrative Orders and Compliance Schedules
- Prepare and process pretreatment settlement agreements and associated public notices.

## **6 INFORMAL AND FORMAL ENFORCEMENT ACTIONS**

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In order to achieve compliance by Industrial Users, Phoenix uses a wide range of enforcement actions, ranging from informal to formal actions, as described below. Some intentional violations may constitute criminal violations of Federal, State and City law, and under such circumstances the IPP Manager may seek the assistance of the EPA, the State, or Phoenix prosecutor.

Phoenix uses a progressive enforcement philosophy. Problems are addressed at the lowest level and with the least formality possible, when appropriate. Continued non-compliance may result in escalated enforcement. Depending upon the factual scenario presented, a formal procedure may be the appropriate initial action.

### **6.1 INFORMAL ENFORCEMENT ACTIONS**

Informal enforcement actions include:

- a) Informal notice to Industrial User (e.g., telephone call, site visit, etc. followed up in writing)
- b) Notice of Concern (NOC)
- c) Notice of Violation (NOV)
- d) Temporary increase in self-monitoring (TISM) for effluent violations
- e) Unannounced inspection and/or City sampling for effluent violations
- f) Compliance Status Review Meeting

## **6.2 FORMAL ENFORCEMENT ACTIONS**

Formal enforcement actions include:

- a) Notice to Show Cause/Show Cause Proceeding
- b) Administrative Order
- c) Pretreatment Settlement Agreement (PSA)/Compliance Schedule
- d) Civil action
- e) Criminal action
- f) Suspension or revocation of permit
- g) Termination, restriction, or denial of water and or sewer service

## **6.3 MAILING ADDRESS AND CONTACT INFORMATION**

All correspondence for IPP must be submitted to:

Environmental Services Division  
City of Phoenix Water Services Department  
2474 S. 22<sup>nd</sup> Avenue  
Building #31  
Phoenix, AZ 85009  
Phone: 602-262-1859

## **7 RESPONSE TIMES FOR ENFORCEMENT ACTIONS**

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To be effective, an enforcement action must be taken in a timely fashion once a violation has been identified. Therefore, an initial, informal enforcement action must be taken within 30 days from the date a violation is first identified and verified. In order to accomplish this, all compliance reports should be reviewed and an evaluation of compliance status made promptly upon receipt by the IPP Section. If, after the evaluation, one or more enforcement actions are deemed necessary, the following time frames for initial enforcement should apply:

- a) If the violation is derived from an Industrial User report, the 30-day time period begins from the date the report is received.
- b) If a report is not received, the 30-day time period begins on the sixth day after the report due date.
- c) If the violation is found through City monitoring of the Industrial User's effluent, the 30-day time period begins on the receipt date of quality control review documentation.

- d) If the violation is found through an inspection or some other means, the 30-day time period begins upon Phoenix's discovery of the violation.

Initial enforcement responses typically include (all within 30 calendar days):

- a) NOC or NOV sent certified mail or hand-delivered
- b) Requirement for TISM sent certified mail or hand delivered
- c) Unannounced inspection and/or sampling for parameter violated.

It is essential that follow-up action is taken to determine the effectiveness of the initial enforcement action. If the initial enforcement action brought about the desired result, then the follow-up action could be nothing more than a confirmation letter to this effect. If, however, additional enforcement is necessary, then the time frames below should be met in issuing the follow-up action.

These time frames are the outer limit of enforcement response times, and depending on the facts, a quicker response may be necessary.

Follow-up enforcement responses may include (all within 90 calendar days from the date of the initial action):

- a) Unannounced inspection and/or sampling for parameter violated
- b) Administrative Order sent certified mail or hand-delivered
- c) Compliance Schedule sent certified mail or hand-delivered
- d) Notice of Review Meeting sent certified mail or hand-delivered
- e) Notice to Show Cause sent certified mail or hand-delivered
- f) Initiate process to seek civil penalties (or criminal fines)
- g) Initiate termination or restriction of water or sewer service
- h) Initiate revocation or suspension of permit.

### **Emergency Situations**

Violations that present an imminent and substantial threat to health, property, or environmental quality are considered emergencies and will receive an immediate response from Phoenix. This may take the form of issuing Cease and Desist Orders, terminating service, or seeking court ordered injunctive relief.

## 8 FACTORS FOR SELECTING THE APPROPRIATE ENFORCEMENT RESPONSE

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Enforcement responses will be determined by the severity of the violations. Factors such as duration of the violation, compliance history, good faith of the violator, and the harm caused by the violation will be considered. A range of responses is shown for each type of violation in the Enforcement Response Guide, located in Appendix A. The Inspector should select the appropriate response after considering various factors identified below.

### 8.1 DURATION AND COMPLIANCE HISTORY

The Inspector should review the Industrial User Compliance History form and the IPP database to evaluate the duration of the violation and the compliance history of the Industrial User. A violation occurs whenever an Industrial User:

- a) Exceeds an applicable effluent limit;
- b) Fails to meet the deadlines and conditions for treatment, operation, monitoring (sampling), implementation of required Best Management Practices, recordkeeping, or reporting; or
- c) Does not comply with any other Federal, State, or City legal requirement.

The Inspector should also consider the effectiveness of the enforcement response that was used to address the previous violation.

Enforcement response should be progressive. Informal review meetings or a written notice of violation should seek specific explanations of the causes of frequent exceedances. If inadequate operating practices are found to be the cause, the Inspector should seek specific commitments and deadlines to improve operating practices. If additional treatment is required, an enforceable Compliance Schedule should be issued to the Industrial User. More aggressive enforcement responses should be imposed upon an Industrial User that frequently violates, or if a particular violation is egregious.

### 8.2 GOOD FAITH EFFORTS

If the Industrial User appears to be making a good faith effort to comply with pretreatment requirements, then enforcement actions should be on a cooperative level.

Staff should be aware that the Clean Water Act requires extraordinary efforts to comply with its requirements in a timely way. Good faith efforts must be measured against the following:

*The Act requires industry to take extraordinary efforts if the vital and ambitious goals of the Congress are to be met. This means that business-as-usual is not enough. Prompt, vigorous, and in many cases, expensive pollution control measures must be initiated and completed as promptly as possible. In assessing the good faith of a discharger, the discharger is to be judged against these criteria. Moreover, it is an established principle, which applies to this act, that administrative and judicial reviews are sought on the discharger's own time.*

Legislative History of the Clean Water Act No. 95-14, Vol. 3, p. 463

Thus, if a facility challenges a permit, contract, or applicable pretreatment standard and delays progress toward compliance, the facility assumes the risk that the permit, contract, or standard will be upheld on judicial review. If the facility begins to aggressively come into compliance only after a decision is made averse to its interests, it cannot be considered to have acted in good faith. Likewise, if a facility follows business-as-usual procedures, it cannot be considered to have acted in good faith.

If, however, measured against the high standards cited above, a facility appears to be acting in good faith to comply, Phoenix may choose an enforcement response that is not as coercive as one it would choose against a facility not acting in good faith.

### **8.3 NONCOMPLIANCE THAT CAUSES HARM, INTERFERENCE, OR PASS-THROUGH**

Industrial User noncompliance might cause harm or interference with the Publicly Owned Treatment Works (POTW) including the wastewater treatment plant (WWTP) performance or pass-through of pollutants. Such violations should be addressed through formal enforcement action and penalties to ensure that adequate pretreatment and compliance is achieved promptly. In some cases, injunctive measures will also be appropriate.



## **8.4 SIGNIFICANT NON-COMPLIANCE**

Significant Non-Compliance (SNC) is defined in 40 CFR 403.8(f)(2)(viii), and applies to Industrial Users who meet one or more of the listed criteria (see also Appendix A). Industrial Users in SNC will be addressed through formal enforcement action.

A list of Industrial Users in SNC at any time during the previous 12 months must be published annually in a general circulation newspaper. Phoenix uses the Arizona Republic for this purpose, and publishes the list annually in March.

## **9 ENFORCEMENT RESPONSE DESCRIPTIONS**

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### **9.1 INFORMAL NOTIFICATION**

Informal notification may consist of a telephone call or an e-mail to an appropriate facility representative (e.g., plant manager, environmental coordinator). These methods may be used to notify representatives of a minor violation (e.g., an incomplete report, a date error in a report, or a report not including all data) and to seek an explanation, suggest the exercise of more due care, and/or notify the Industrial User that subsequent noncompliance of the same type may result in an informal enforcement action. Such informal notification may be used to correct minor inadvertent noncompliance. Inspectors will note and follow-up on all instances of noncompliance in the Industrial User's file and in the database.

In these instances, Phoenix will specify the type of follow-up actions required of the facility. Phoenix will also establish the specific time frame in which the facility must respond. Phoenix may take additional, more formal enforcement action if required follow-up actions are not completed in good faith.

### **9.2 WAIVER FOR CONTINUOUS MONITORING PH EXCURSION**

Phoenix implements an enforcement policy allowing waivers for pH excursions similar to those that apply to direct dischargers in 40 CFR 401.17 (a)(1) and (2) for facilities (Industrial Users) that employ continuous pH monitoring within a compliance sampling point designated in a Wastewater Discharge Permit (Appendix A).

Inspectors will issue pH excursion waivers as applicable and document each waiver granted on the Compliance History Form within the Industrial User file and in the database. Details and documentation related to the pH excursion and justification for granting waivers are maintained in the Industrial User's file.

## **9.3 NOTICE OF VIOLATION (NOV)**

The NOV is a written notice to the Industrial User that a violation has occurred. The NOV will require corrective actions to prevent further violations and will require the facility to explain the causes of the violation. The text of the NOV includes a statement that additional enforcement action may be pursued if corrective actions are not achieved as required, and a statement that compliance with the requirements of the letter does not excuse prior violations nor prevent collection of penalties or damages at a later time.

The NOV will identify the specific time frame for follow-up and/or other corrective actions. The facility will be required to respond in writing within this time frame.

### **9.3.1 Notification of Violation Response Report**

The Industrial User shall respond in writing to the NOV within the specified time frame. An initial response is typically due 10 business days from the receipt of the NOV by the Industrial User, unless a written extension of the original due date has been granted. If the NOV Response Report is not received by the due date, an NOV for late reporting will be issued. The NOV Response Report must be complete; containing all information and data required in the Notification of Violation.

### **9.3.2 NOV Closure Letter**

Upon review of both the written response to an NOV and the corrective actions reported therein, the Inspector may accept the NOV Response Report as complete and satisfactory. If this is the case, the Inspector shall consider the issue regarding the NOV closed. The Inspector will notify the user in writing regarding the closure of the NOV. The closure of the NOV does not preclude further action.

### **9.3.3 Unsatisfactory or Incomplete Response to NOV**

Upon review of both the written response and corrective actions reported within the NOV Response Report, the Inspector may determine the NOV Response Report to be unsatisfactory or incomplete. In that event, the Inspector may recommend further action such as:

- a) Requiring submittal of any incomplete information in the NOV Response Report
- b) Seeking penalties and fines as they apply to the violations
- c) Ordering the Industrial User to cease discharge
- d) Suspending or revoking the Industrial User's permit

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## **9.4 TEMPORARY INCREASE IN SELF-MONITORING (TISM)**

If an Industrial User has one or more violations of any effluent limit, the Industrial User shall be notified that it is required to sample for all parameters that were violated once per day, week, or batch for four consecutive days, weeks, or batches to commence within seven days of receipt of the notice or as otherwise required. If an Industrial User has repeated pH violations, a 24-hour continuous pH study for four consecutive days may be required in lieu of four grab pH samples.

All samples must be 24-hour composites except for volatile organic compounds (VOCs), cyanide, pH, oil and grease, which should be grab samples. Increased sampling must be in addition to any sampling required under the permit and is in addition to any required 30-day resampling. The results of each sample must be received by Phoenix within five days from when the Industrial User has knowledge of the results, but in no event more than 30 days from the date the sample was taken. The notice of the automatic increase will be prepared per the IPP enforcement SOP.

There are circumstances where it is not possible for an Industrial User to increase the frequency of self-monitoring. Examples include but are not limited to— Industrial Users who are currently sampling each day or each batch, Industrial Users who perform continuous pH monitoring or have temporarily ceased discharging. In such cases, the Inspector will perform an unannounced inspection at the Industrial User's site and where possible, sample for the parameter violated within 30 days of becoming aware of the violation.

## **9.5 COMPLIANCE STATUS REVIEW MEETING**

If an informal notification or NOV does not produce compliance or an adequate explanation of the reason for the noncompliance, a Compliance Status Review Meeting between IPP staff and the Industrial User may produce the desired results. The purpose of this meeting is to stress the importance of correcting situations that may lead to other elevated enforcement actions or SNC. Compliance Status Review Meetings are appropriate for the following situations:

- a) Waste streams are diluted in lieu of treatment
- b) Failure to report additional monitoring
- c) Inadequate record keeping
- d) Improper sampling
- e) Missed milestone in an enforceable Compliance Schedule
- f) Any required report late 44 days or less

- g) Failure to comply with individual or general permit requirements
- h) Failure to report required Best Management Practices compliance information in Self-Monitoring Reports

Compliance Status Review Meetings are generally conducted by the Chief Water Quality Inspector and the Inspector assigned to monitor compliance for the Industrial User. The IPP Manager, the Principal Engineering Tech, and a representative from City Attorney's Office may also be present at the meeting. During the review meeting, the following events occur:

- a) Complete introductions of all persons present and obtain names, titles, and telephone numbers.
- b) Discuss the background and history of Phoenix's Pretreatment Program and the applicable Federal requirements.
- c) Review Phoenix's enforcement policies and practices.
- d) Explain Phoenix's authority for seeking penalties.
- e) Review the Industrial User's violations.
- f) Establish a Compliance Schedule for the Industrial User, as appropriate.

Follow-up for the Compliance Status Review Meeting includes the following:

- a) The Inspector will prepare a letter describing the discussion and results of the Compliance Status Review Meeting. The letter will be reviewed by the Chief Water Quality Inspector before forwarding to the Industrial User. A copy of the letter shall be placed in the Industrial User's file.
- b) Follow-up inspections and review meetings may be scheduled to verify compliance.
- c) If no progress is made within 30 days of the compliance dates specified during the Compliance Status Review Meeting or if compliance is not achieved when required, then escalated enforcement actions (such as a Show Cause Proceeding or Civil Action) will be necessary.
- d) The IPP staff will record all informal contacts, notices, and meetings pertaining to the Compliance Status Review Meeting in the Industrial User's file and in the division's database (e.g., iPACS, or similar).

## **9.6 NOTICE TO SHOW CAUSE**

As a result of noncompliance it may be necessary to consider issuing a Notice to Show Cause to the Industrial User prior to taking other formal enforcement action

and/or discontinuing service. The Notice to Show Cause letter issued to the Industrial User shall specify:

- a) The time and place of the Show Cause Proceeding
- b) Brief explanations of the violations
- c) Enforcement actions intended to be taken by Phoenix

A Show Cause Proceeding will be held if any of the following circumstances apply:

- a) Non-Permitted discharges:
  - i. Failure to comply; continues after notification by the POTW
  - ii. Discharge continues after expiration, termination or revocation of permit
- b) Reporting violations:
  - i. Any single report 45 days or more late
- c) Failure to start construction, complete construction, or achieve compliance within 90 days of the date specified in an enforceable order
- d) Recurring dilution of waste stream(s) in lieu of treatment
- e) Intentional diversion or bypass of regulated wastestreams from any portion of a pretreatment system or compliance sampling point(s)
- f) Recurring failure to implement Best Management Practices required in a permit
- g) Recurring failure to implement an approved Slug Control Plan or other plan required in a permit
- h) Failure to mitigate noncompliance or halt production after becoming aware of noncompliance
- i) Failure to comply with a requirement to cease discharge
- j) Recurring failure to properly operate and maintain pretreatment facility
- k) Recurring failure to provide free access to inspect the facility
- l) Recurring failure to comply with individual or general permit requirements
- m) Any instance of SNC
- n) Any other situation in which civil penalties are necessary or legal action is contemplated.

A Show Cause Proceeding may be held if any of the following circumstances apply:

- a) Two or more effluent violations have occurred within a 90-day period
- b) Two or more reports are late within a 180-day period
- c) Failure to correct a report with missing or incomplete information
- d) Failure to report a spill or changed discharge
- e) Two or more failures to report required Best Management Practices compliance information in Self-Monitoring Reports
- f) Recurring failure to monitor correctly
- g) Recurring improper sampling
- h) Missed milestone(s) specified in a Compliance Schedule
- i) Recurring failure to implement required Best Management Practices as an alternative to numeric local limits
- j) Recurring failure to keep records, as required by permit
- k) Recurring failure to report additional monitoring

During the Show Cause Proceeding the Industrial User will be presented with the facts that IPP staff believe demonstrate noncompliance and will be asked to "show cause" as to why Phoenix should not seek monetary penalties or initiate additional enforcement actions which may include additional formal actions and/or discontinuation of sewer service.

During the Show Cause Proceeding, the following events shall occur:

- a) Complete introductions of all persons present
- b) Circulate an attendance sheet to record the names, titles and telephone numbers of all persons at the Show Cause Proceeding. Copies of the attendance sheet shall be provided to all attendees
- c) Discuss the background and history of Phoenix's Pretreatment Program and the Federal requirements.
- d) Explain Phoenix's authority to seek penalties is explained
- e) Explain Phoenix's enforcement policies and practices with respect to the Industrial User's noncompliance

- f) Review the Industrial User's violations and the calculated penalties associated with them
- g) Provide the Industrial User or their representative(s) the opportunity to address the violation(s), corrective action(s), good faith effort(s), and the calculated penalties.
- h) Establish a Compliance Schedule for the Industrial User, if necessary.
- i) Attempt to reach an agreement with the Industrial User on the penalty amount and the written vehicle (Judicial Consent Decree or Pretreatment Settlement Agreement) to be pursued that finalizes the matter.

The following activities may occur after the Show Cause Proceeding:

- a) The Chief Water Quality Inspector and/or IPP Manager will work with Phoenix Attorney's office as appropriate.
- b) The Inspector will monitor, evaluate, and document completion of compliance milestones specified in the Pretreatment Settlement Agreement and/or Compliance Schedule. The inspector will follow up at prescribed intervals of compliance milestones as specified in the Compliance Schedule to verify conformance, and must document this activity. The Inspector will keep the Chief Water Quality Inspector and, the Assistant City Attorney informed of the Industrial User's compliance status.
- c) If the Industrial User fails to comply with the terms of the Pretreatment Settlement Agreement and/or Compliance Schedule, then additional enforcement actions may be necessary.
- d) City staff will record all subsequent interaction, notices, and meetings with Industrial Users.

A Show Cause Proceeding is not a prerequisite to taking other enforcement actions.

## **9.7 ADMINISTRATIVE ORDERS (AOs)**

Phoenix may issue Administrative Orders (which may contain Compliance Schedules) that require compliance with the Phoenix City Code and pretreatment standards. Administrative Orders will generally be used to place an Industrial User on an enforceable Compliance Schedule requiring the Industrial User to comply with pretreatment standards (e.g., install treatment, operate and maintain facilities, etc.). Termination or Restriction of Water and/or Sewer Service

Upon informal notification to the Industrial User, Phoenix has the authority to immediately halt any actual or threatened discharge to the POTW that may represent an endangerment to the public health, the environment, or the POTW. Additionally, Phoenix can restrict, deny, or terminate any discharge by an industrial

user if the discharge does not meet applicable pretreatment standards or will cause Phoenix to violate any of its permits.

Termination, restriction, or denial of water and or sewer service is an appropriate response to facilities which have not responded adequately to previous enforcement actions. Unlike civil and criminal proceedings, termination of water and or sewer service is an administrative response which can be implemented directly by the Water Services Department Director.

Assuming that the other enforcement responses prove unsuccessful, the types of violations warranting termination of water and or service include the following:

- a) Discharge(s) not covered under a discharge permit which results in a violation of Phoenix's NPDES or AZPDES permits or a dangerous situation threatening human health, the environment, or the POTW
- b) Discharge(s) that exceed City or categorical discharge limits and prohibitions or result in damage to the environment
- c) Slug loads resulting in interference, pass through, or damage to human health, the environment, or the POTW
- d) Recurring slug load discharges
- e) Failure of the Industrial User to notify Phoenix of effluent limit violations or slug discharges which result in environmental or POTW damage
- f) Failures of the Industrial User to sample, monitor, or report as required by an administrative action
- g) Failure of the Industrial User to install required monitoring equipment per the condition of an administrative action
- h) Major violation of a permit condition or administrative action accompanied by evidence of negligence or intent.

The process for termination or restriction of an Industrial User's water and/or sewer service is initiated and carried out as follows:

- a) The Inspector prepares the necessary documentation and Customer Service Division forms to support the need for termination.
- b) The Inspector advises the Chief Water Quality Inspector who in turn advises the IPP Manager that termination of the user's sewer service is warranted.
- c) Once termination of service is approved by the Water Services Director, the Industrial User should be given written notice of termination and an opportunity to appear before the Chief Water Quality Inspector to discuss the matter. The Industrial User is allowed ten days from receipt of the



written notice to comply before termination is affected. The above elements of termination of service are specified in the Phoenix City Code, Section 28-84(b)-(d).

- d) If the Industrial User is determined to have an actual or threatened discharge which will cause interference with the POTW or will present an imminent danger to the health or welfare of any person and/or the environment, the Water Services Department may promptly plug or disconnect any sewer service connection to the POTW. This provision for termination of service is contained in the Phoenix City Code, Section 28-46.
- e) When termination of service is to be effected, the Environmental Services Deputy Director contacts Water Customer Services to terminate service.
- f) Service will be restored only after compliance has been shown to the satisfaction of the IPP Manager and the threatened discharges are removed. The amounts imposed by Section 28-84 and Chapter 37 of the Phoenix City Code in addition to any damages that may have been incurred must be paid prior to re-connection.

## **9.8 CIVIL ACTIONS**

Phoenix has the authority to file a civil suit against alleged violators of applicable pretreatment standards. The civil suit may seek: injunctive relief, compliance with applicable regulations, civil penalties, recovery of damages, or additional available remedies.

Initiating a Civil action is an appropriate enforcement response in three general situations:

- a) Emergency situations where injunctive relief is necessary to halt or prevent discharges which pose an imminent and substantial threat to human health, the environment, or interference with the POTW.
- b) When efforts to restore compliance through cooperation with the Industrial User have failed and action is necessary to enforce pretreatment program requirements.
- c) To seek monetary penalties for violations.

In a civil suit for injunctive relief, the Inspector collects pertinent information sufficient to support the violation(s) at issue and submits it to the City Attorney, after review by the Chief Water Quality Inspector and the IPP Program Manager.

The Inspector and other staff involved in such a suit should prepare the information specified below. The City Attorney should be consulted before, during, and after completion of the information.

### **Information to Be Prepared By IPP Staff for Civil Actions**

- a) Industrial User name (including corporate name and any other names used by the Industrial User).
- b) Industrial User addresses (facility address, mailing address, electronic mail address).
- c) Permit number and issue date.\*
- d) Copy of the Industrial User Permit(s)
- e) All sample results including dates, sampling histories, and locations where samples were taken
- f) A list or table organized in a manner which clearly shows violation types: effluent, reporting, and permit conditions. The list or table shall also include dates of violations, parameters violated, applicable limits, analytical results, due dates, received dates for reports, and number of days late.
- g) Copies of all documentation (including NOVs, letters, emails, etc.) pertaining to the violations.

\*NOTE: Where the period of violations covers more than one permit, include the needed information from all permits.

## **9.9 CRIMINAL ACTIONS**

The City Attorney, through City Prosecutor's Office, is authorized to seek criminal punishment for any person who violates pretreatment standards; or any person who knowingly makes a false statement regarding any report, application, record, or other document required by the General Pretreatment Regulations or City Code. Prosecution may result in fines and/or imprisonment ordered by the court.

Several factors should be considered by the IPP Manager when determining which violations should be referred to the City Attorney for possible criminal actions. These factors include but are not limited to:

- a) The Industrial User's willfulness to violate
- b) The Industrial User's knowledge of the violation
- c) The nature and seriousness of the offense
- d) The need for deterrence

- e) The compliance history of the Industrial User or violator
- f) The adequacy of the facts
- g) Other remedies available through civil or administrative enforcement actions were found to be inadequate.

A sentence containing fines and/or imprisonment would be ordered by the court based on many considerations, which includes its perception of the harm, damage, or potential threat attributable to the violation.

Examples of violations for which criminal punishment may be appropriate include the following:

- a) History of noncompliance
- b) Falsification of data
- c) Tampering with results or equipment
- d) Failure to provide notice of slug discharges
- e) Willful violation of the discharge agreements.

Many cases of willful noncompliance (e.g., late night dumping of toxic substances into the collection system) could seriously damage the POTW and the environment. Such acts should be punished severely when adequate proof exists. In considering the development of certain criminal cases, IPP staff should work closely with the City Attorney's office and State Attorney General's office to obtain guidance.

**NOTE: The decision to prosecute is solely within the purview of City Attorney's Office or State Attorney General's office.**

## 10 OVERVIEW OF THE ENFORCEMENT RESPONSE GUIDE

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Phoenix has prepared an Enforcement Response Guide using guidance in part from the EPA Pretreatment Compliance Monitoring and Enforcement Guidance (July, 1986); Phoenix Enforcement Response Plan (December 1991); EPA Enforcement Response Plan Workshops, Milpitas, CA (August 10, 1990); Phoenix Civil Penalty Policy (1998); EPA Model Pretreatment Ordinance (January 2007); Streamlining Rule (October 14, 2005); and Guidance for Developing Control Authority Enforcement Response Plans (September 1989). See Appendix A for a copy of the Guide. The Guide is intended to serve three main purposes:

- a) To cover enforcement responses that may be appropriate in relation to the nature and severity of the violation and the overall degree of noncompliance;

- b) To provide a guide to encourage a uniform application of enforcement responses to comparable levels and types of violations; and
- c) As a mechanism to review the appropriateness of responses.

The Guide is intended as a quick, ready reference tool to address violations. It should be used in conjunction with the written material contained in the ERP as these materials further explain areas that are only highlighted in the Guide. Staff should use the Guide to determine what enforcement actions are appropriate given varying situations of noncompliance. The Guide gives differing circumstances of noncompliance and outlines the ranges of enforcement actions which should be used to respond to the noncompliance. **Instructions for Using the Enforcement Response Guide** lists the eight basic steps for using the Guide.

When making a determination on the level of the enforcement response, the IPP staff should consider the degree of variance from the pretreatment standards or legal requirements, the duration of the violation, previous enforcement actions taken against the violator, and the deterrent effect of the response on similar facilities in the regulated community. Equally important are considerations of fairness, equity and consistency of application as well as the integrity of the Pretreatment Program.

### **Levels of Response**

For all violations, staff must examine the violation and determine the appropriate response. All violations should require a written response. The Enforcement Response Guide includes a range of informal and formal responses for violations.

The terms "major" and "minor" that characterize violations are used in the Response Guide to describe violations of effluent limits, sampling, monitoring, and reporting requirements. Major violations are those that exceed the limits frequently and/ or by a large quantity (e.g., exceed the technical review criteria contained within the definition of SNC); impede the determination of compliance status; have the potential to cause or may have actually caused adverse environmental effects, health problems, or interfered with the POTW treatment capability.

## 11 APPENDIX A - ENFORCEMENT RESPONSE GUIDE

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### **Instructions for Using the Enforcement Response Guide:**

1. Locate the type of noncompliance in the first column.
2. Using column two, identify the most accurate description of the nature of the violation.
3. Assess the appropriateness of the recommended response(s) in column three. First offenders or those demonstrating good faith may merit a more lenient response. Similarly, repeat offenders or those demonstrating willful conduct may require a more stringent response. Phoenix may want to use what would normally be reserved as a follow-up response against Industrial Users unwilling to comply.
4. Document the rationale for selecting the particular enforcement response.
5. Apply the enforcement response to the Industrial User. Specify corrective action or the response required from the Industrial User.
6. Document Industrial User responses and resolution of noncompliance.
7. Follow-up with escalated enforcement action if the Industrial User's response is not received or if violations continue.
8. Document closure of the enforcement action on the field NOV, NOV closure letter, Compliance Schedule closure letter, Suspension of Administrative Order letter, or Pretreatment Settlement Agreement closure letter.

### **Timeframes for Responses**

1. Initial enforcement responses [involving contact with the industrial user and requesting information on corrective or preventative action(s)] will occur within 30 days of violation verification.
2. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge, or terminating service.
3. Unless otherwise specified, evaluation period is for one year from date of violation.

## Description of Terms

Terms and abbreviations used in the Guide are defined below. Specific enforcement responses are described in greater detail in the Enforcement Response Plan and Standard Operating Procedure, Industrial Pretreatment Program Enforcement – Document Number 23004.

AO	Administrative Order
C	Chief Water Quality Inspector
Civil Action	Civil litigation against the industrial user seeking equitable relief, monetary penalties and actual damages
ERP	Enforcement Response Plan
Guide	Enforcement Response Guide
I	Inspector, Water Quality Inspector, Senior Water Quality Inspector
IU	Industrial User
M	IPP Manager
NOC	Notice of Concern
NOV	Notice of Violation
POTW	Publicly Owned Treatment Works. Phoenix's two major POTW's are commonly referred to as the 23rd WWTP and the 91st WWTP
CSRM	Compliance Status Review Meeting. Informal meeting with IU to resolve noncompliance
Show Cause Proceeding	Formal meeting requiring the IU to appear and demonstrate why Phoenix should not take a proposed enforcement action against it.

## Appendix A – Enforcement Response Guide

	<i><b>NONCOMPLIANCE</b></i>	<i><b>NATURE OF VIOLATION</b></i>	<i><b>RANGE OF ENFORCEMENT RESPONSES</b></i>	<i><b>PERSONNEL</b></i>
<b>UNAUTHORIZED DISCHARGES (NO PERMIT)</b>				
A	Unpermitted Discharge  <i>No permit required</i>	1. IU unaware of requirements; no harm to POTW or environment	<ul style="list-style-type: none"> <li>▪ Phone call; NOV with Permit Application</li> </ul>	I
		2. IU unaware of requirement; harm to POTW or environment	<ul style="list-style-type: none"> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ AO</li> <li>▪ Civil Action</li> </ul>	C C, M C, M C, M
		3. Failure to comply; continues after notice by the POTW	<ul style="list-style-type: none"> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> </ul>	C C, M C, M C, M C, M C, M
B	Nonpermitted Discharge  <i>Permit required, but not obtained</i>	1. New process, material, production rate, or volume not included in permit	<ul style="list-style-type: none"> <li>▪ Phone call; NOV</li> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> </ul>	I C C, M C, M C, M C, M C, M
		2. Permit expired; no application submitted	<ul style="list-style-type: none"> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> </ul>	C C, M C, M

	<b><i>NONCOMPLIANCE</i></b>	<b><i>NATURE OF VIOLATION</i></b>	<b><i>RANGE OF ENFORCEMENT RESPONSES</i></b>	<b><i>PERSONNEL</i></b>
			<ul style="list-style-type: none"> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> </ul>	<p style="text-align: center;">C, M</p> <p style="text-align: center;">C, M</p> <p style="text-align: center;">C, M</p>
<b>EFFLUENT LIMIT OR PROHIBITION VIOLATIONS</b>				
A.	Exceedance of Local or Federal Standard or Prohibition	1. Isolated	<ul style="list-style-type: none"> <li>▪ NOC</li> <li>▪ Phone call; NOV &amp; TISM</li> <li>▪ Automatic IU resampling</li> <li>▪ Unannounced inspection</li> <li>▪ Unannounced City sampling</li> </ul>	<p>I</p> <p>I</p> <p>I</p> <p>I</p> <p>I</p>
		2. Recurring, 2 or more violations within a 90-day period	<ul style="list-style-type: none"> <li>▪ pH Waiver</li> <li>▪ Phone call; NOV &amp; TISM</li> <li>▪ Automatic IU resampling</li> <li>▪ Unannounced inspection</li> <li>▪ Unannounced City sampling</li> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ AO</li> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> </ul>	<p>I</p> <p>I</p> <p>I</p> <p>I</p> <p>I</p> <p>C</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p>
		3. Harm to POTW or environment	<ul style="list-style-type: none"> <li>▪ Phone call; NOV &amp; TISM</li> <li>▪ Automatic IU resampling</li> <li>▪ Unannounced inspection</li> <li>▪ Unannounced City sampling</li> <li>▪ Show Cause Proceeding</li> <li>▪ AO</li> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> </ul>	<p>I</p> <p>I</p> <p>I</p> <p>I</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p>



	<b>NONCOMPLIANCE</b>	<b>NATURE OF VIOLATION</b>	<b>RANGE OF ENFORCEMENT RESPONSES</b>	<b>PERSONNEL</b>
			<ul style="list-style-type: none"> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> </ul>	<p style="text-align: center;">C, M C, M</p>
<b>MONITORING AND REPORTING VIOLATIONS</b>				
A.	Reporting violation	1. Report is improperly signed or certified	<ul style="list-style-type: none"> <li>▪ Phone call; NOV</li> </ul>	I
		2. Report is improperly signed or certified after notice by Phoenix	<ul style="list-style-type: none"> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ AO</li> </ul>	C C, M C, M
		3. Late reporting	<ul style="list-style-type: none"> <li>▪ Phone call; NOV</li> </ul>	I
		4. Any single report late by 45 or more days	<ul style="list-style-type: none"> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> </ul>	C C, M C, M
		5. Failure to report spill - or changed discharge; IU unaware of requirement.	<ul style="list-style-type: none"> <li>▪ Phone call; NOV</li> <li>▪ NOC</li> </ul>	I I
		6. Failure to report spill - or changed discharge; IU aware of requirement.	<ul style="list-style-type: none"> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ AO</li> <li>▪ Civil Action</li> </ul>	C C, M C, M C, M
		7. Recurring failure to report spills	<ul style="list-style-type: none"> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> </ul>	C, M C, M C, M C, M C, M
		8. Falsification	<ul style="list-style-type: none"> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> </ul>	C, M C, M

	<b><i>NONCOMPLIANCE</i></b>	<b><i>NATURE OF VIOLATION</i></b>	<b><i>RANGE OF ENFORCEMENT RESPONSES</i></b>	<b><i>PERSONNEL</i></b>
			<ul style="list-style-type: none"> <li>▪ Revoke Permit</li> </ul>	C, M
		9. Missing or incomplete information	<ul style="list-style-type: none"> <li>▪ Phone call; NOV</li> <li>▪ NOC</li> </ul>	I I
		10. Failure to correct report with missing or complete information	<ul style="list-style-type: none"> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ AO</li> <li>▪ Civil Action</li> </ul>	C, M C, M C, M C, M
B.	Failure to Monitor or Implement BMPs Correctly	1. Failure to monitor all pollutants or implement BMPs in lieu of monitoring as required by permit	<ul style="list-style-type: none"> <li>▪ NOV</li> <li>▪ AO</li> <li>▪ CSRM</li> </ul>	I C, M C, M
		2. Recurring failure to monitor all pollutants or implement BMPs in lieu of monitoring as required by permit	<ul style="list-style-type: none"> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> </ul>	C, M C, M C, M
C.	Improper Sampling	1. Evidence of intent	<ul style="list-style-type: none"> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> </ul>	C, M C, M C, M C, M
D.	Enforceable Compliance Schedules	1. Missed milestone	<ul style="list-style-type: none"> <li>▪ NOV</li> <li>▪ CSRM</li> <li>▪ AO</li> </ul>	I C C, M
		2. Recurring violation or violation of Compliance Schedule or AO	<ul style="list-style-type: none"> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> </ul>	C, M C, M C, M C, M C, M

	<b><i>NONCOMPLIANCE</i></b>	<b><i>NATURE OF VIOLATION</i></b>	<b><i>RANGE OF ENFORCEMENT RESPONSES</i></b>	<b><i>PERSONNEL</i></b>
		3. Failure to start construction, complete construction, or achieve compliance within 90 days of the date specified in an enforceable order	<ul style="list-style-type: none"> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> </ul>	C, M C, M C, M C, M
<b>OTHER PERMIT VIOLATIONS</b>				
A.	Wastestreams diluted in lieu of pretreatment	1. Initial violation	<ul style="list-style-type: none"> <li>▪ NOC</li> <li>▪ NOV</li> <li>▪ CSRM</li> <li>▪ AO</li> </ul>	I I C C, M
		2. Recurring violation	<ul style="list-style-type: none"> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ AO</li> <li>▪ Civil Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> </ul>	C C, M C, M C, M C, M C, M
B.	Failure to mitigate noncompliance or halt production	1. Failure to comply with a requirement to cease discharge	<ul style="list-style-type: none"> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ AO</li> <li>▪ Civil Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> </ul>	C C, M C, M C, M C, M C, M
C.	Failure to properly operate and maintain pretreatment facility	1. Initial violation	<ul style="list-style-type: none"> <li>▪ NOC</li> <li>▪ NOV</li> <li>▪ Review Meeting</li> </ul>	I I C
		2. Recurring violation	<ul style="list-style-type: none"> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> </ul>	C C, M

	<b>NONCOMPLIANCE</b>	<b>NATURE OF VIOLATION</b>	<b>RANGE OF ENFORCEMENT RESPONSES</b>	<b>PERSONNEL</b>
			<ul style="list-style-type: none"> <li>▪ AO</li> <li>▪ Civil Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> </ul>	<p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p>
<b>VIOLATIONS DETECTED DURING SITE VISITS (INSPECTIONS)</b>				
A.	Denial of entry	1. Entry denied or consent withdrawn; copies of records denied	<ul style="list-style-type: none"> <li>▪ Obtain warrant</li> <li>▪ Civil Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> </ul>	<p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p>
B.	Failure to provide free and safe access	1. Initial violation	<ul style="list-style-type: none"> <li>▪ NOV and AO</li> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> </ul>	<p>C</p> <p>C</p> <p>C, M</p>
C.	Inadequate record keeping	1. Initial violation	<ul style="list-style-type: none"> <li>▪ NOC</li> <li>▪ Phone call; NOV</li> <li>▪ CSRM</li> </ul>	<p>I</p> <p>I</p> <p>C</p>
		2. Recurring after prior notice to remedy	<ul style="list-style-type: none"> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ AO</li> </ul>	<p>C</p> <p>C, M</p> <p>C, M</p>
D.	Failure to report additional monitoring	1. Inspector finds additional files; initial violation	<ul style="list-style-type: none"> <li>▪ NOC</li> <li>▪ Phone call; NOV</li> <li>▪ Review Meeting</li> </ul>	<p>I</p> <p>I</p> <p>C</p>
		2. Recurring after prior notice to remedy	<ul style="list-style-type: none"> <li>▪ CSRM</li> <li>▪ Show Cause Proceeding</li> <li>▪ AO</li> </ul>	<p>C</p> <p>C, M</p> <p>C, M</p>
<b>SIGNIFICANT NONCOMPLIANCE (SNC) AND MISCELLANEOUS</b>				
A.	Chronic violations of wastewater discharge limits, defined here		<ul style="list-style-type: none"> <li>▪ Show Cause Proceeding</li> </ul>	<p>C, M</p>

	<b>NONCOMPLIANCE</b>	<b>NATURE OF VIOLATION</b>	<b>RANGE OF ENFORCEMENT RESPONSES</b>	<b>PERSONNEL</b>
		as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement including instantaneous limits as defined in Phoenix City Code Section 28-1 and 28-8; the daily maximum limit for the same pollutant parameter.	<ul style="list-style-type: none"> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> <li>▪ Newspaper publication required</li> </ul>	<p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p>
B.		Technical review criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined in Section 28-1 and 28-8 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils, and grease, and 1.2 for all other pollutants except pH)	<ul style="list-style-type: none"> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> <li>▪ Newspaper publication required</li> </ul>	<p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p>
C.		Any other violation of a Pretreatment Standard or requirement (daily maximum or long-term average, instantaneous limit, or narrative standard) that the Director determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public)	<ul style="list-style-type: none"> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> <li>▪ Newspaper publication required</li> </ul>	<p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p>
D.		Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under this chapter to halt or prevent such a discharge	<ul style="list-style-type: none"> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> <li>▪ Newspaper publication required</li> </ul>	<p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p>
E.		Failure to meet, within ninety days after the schedule date, a Compliance Schedule milestone contained in an individual	<ul style="list-style-type: none"> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> </ul>	<p>C, M</p> <p>C, M</p>

	<b><i>NONCOMPLIANCE</i></b>	<b><i>NATURE OF VIOLATION</i></b>	<b><i>RANGE OF ENFORCEMENT RESPONSES</i></b>	<b><i>PERSONNEL</i></b>
		wastewater discharge permit, a general permit, or enforcement order for starting construction, completing construction, or attaining final compliance;	<ul style="list-style-type: none"> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> <li>▪ Newspaper publication required</li> </ul>	<p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p>
F.		Failure to provide, within forty-five days after the due date, required reports such as baseline monitoring reports, ninety-day compliance reports, reports on compliance with Categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with Compliance Schedules	<ul style="list-style-type: none"> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> <li>▪ Newspaper publication required</li> </ul>	<p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p>
G.		Failure to accurately report noncompliance	<ul style="list-style-type: none"> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> <li>▪ Newspaper publication required</li> </ul>	<p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p>
H.		Any other violation or group of violations, which may include a violation of Best Management Practices, which the Director determines will adversely affect the operation or implementation of the local pretreatment program	<ul style="list-style-type: none"> <li>▪ Show Cause Proceeding</li> <li>▪ Civil Action</li> <li>▪ Criminal Action</li> <li>▪ Terminate Service</li> <li>▪ Revoke Permit</li> <li>▪ Newspaper publication required</li> </ul>	<p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p> <p>C, M</p>

## 12 APPENDIX B – ERP CHANGES NARRATIVE

The following changes have been incorporated into this revision:

<b><i>Date</i></b>	<b><i>Description</i></b>
12/05/1991	This is the original version of the document.
03/01/2019	Updates reflecting current program terminology, revisions of Phoenix City Code Chapter 28, and the Federal Streamlining Rules of 2005. Additional informal enforcement options have been added to provide more flexibility. A more detailed listing of changes is attached to this Appendix.