

City of Waukesha, Wisconsin



Clean Water Plant

Enforcement Response Guidance Plan

2022

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ENFORCEMENT RESPONSE GUIDANCE PLAN

City of Waukesha Sewer Utility

I. Introduction

The City of Waukesha Sewer Utility (Sewer Utility) regulates discharges to the sewerage system to prevent harm to the Sewer Utility's collection system and treatment plant and to ensure that the Sewer Utility's biosolids, discharges to receiving waters, and air emissions meet all applicable requirements. The Sewer Utility's regulatory activity is called the "Pretreatment Program." Both the U.S. Environmental Protection Agency (EPA) and the Wisconsin Department of Natural Resources (WDNR) require that the Sewer Utility have a Pretreatment Program.¹ As part of the Pretreatment Program, the Sewer Utility enforces local, state, and federal regulations, including general pretreatment requirements and categorical pretreatment standards.² The Sewer Utility's regulations are set forth in Chapter 29 of the City of Waukesha Municipal Code (WMC).

According to state and federal requirements, the Sewer Utility must develop and implement an *Enforcement Response Guidance Plan* (ERGP).³ This document discusses how the Sewer Utility identifies violations, how the Sewer Utility will respond, and the titles of the persons responsible for the various responses. Goals for the ERGP include:

1. Facilitating the enforcement of pretreatment standards and requirements,
2. Reacting to noncompliance in a timely manner,
3. Increasing consistency among enforcement actions,
4. Providing notice to the regulated community of what it can expect when pretreatment standards or requirements are violated, and
5. Identifying the resources required for enforcement.

This ERGP provides only explanatory material and is merely informational in nature. It does not create legal rights or obligations and does not limit the enforcement discretion of the Director of Public Works or the Sewer Utility.

II. Enforcement Response Personnel

The Pretreatment Program is administered by the Clean Water Plant ('Plant') division of the Department of Public Works. The Waukesha City Attorney provides legal counsel.

¹ 40 CFR 403.8(a) and §NR 211.30, Wis. Adm. Code

² 40 CFR 403 and 405 to 471 and §NR 211 and 221 to 297, Wis. Adm. Code

³ 40 CFR 403.8(f)(5) and §NR 211.23(1)(g), Wis. Adm. Code

A. Director of Public Works (Director)

This person has overall responsibility for the Plant and supervises the administrative staff of the Plant, including the Pretreatment Coordinator. The Director may perform an administrative or advisory role in certain escalated enforcement responses such as administrative fines. In the WMC, the term Control Authority is used to indicate the Department of Public Works. Therefore, in order to clearly differentiate enforcement roles and responsibilities, the title of Control Authority is not used in this plan.

B. Pretreatment Coordinator

This person has routine, direct contact with the various users of the sewerage system that discharge non-domestic wastes. This person provides information regarding regulatory requirements; reviews plans, specifications, and operating procedures; drafts permits and permit modifications; inspects facilities; ensures that reports are timely and complete; reviews monitoring data submitted to or collected by the Sewer Utility; and ensures that the Sewer Utility's database of user information is current. If the Pretreatment Coordinator identifies the need for escalated enforcement action, this person recommends a response to the Director.

This person also supervises the employees of the Sewer Utility that sample discharges to the sewerage system. This person oversees sampling schedules, evaluates monitoring facilities, and ensures that the sampling staff has the appropriate knowledge, skills, and equipment to properly collect samples.

C. City Attorney

This person provides legal counsel and representation. The Attorney maintains a knowledge of the various statutes, regulations, and judicial opinions that are relevant to the Pretreatment Program. In addition, the Attorney provides drafting advice regarding the Sewer Use Ordinance (SUO) as well as various documents necessary for operation of the Pretreatment Program, such as notices, permits, and orders. Finally, the Attorney represents City staff in judicial proceedings, formal administrative proceedings, and related matters.

III. Compliance Monitoring

A. Inventory of Users

One of the primary tasks of the Pretreatment Program is identifying all the users of the sewerage system who may discharge industrial process wastewater. To identify these users, the Pretreatment Coordinator obtains information from municipal permits for building, plumbing, and water supply, Plan Commission agendas, press releases, websites, inspections of industrial and commercial areas, and the Sewer Utility's *Application for Industrial Wastewater Discharge Permit* form.

After identifying sources of industrial process wastewater, a second step is designating Significant Industrial Users (SIU)⁴. All users regulated by categorical pretreatment standards are classified as SIU's. The Pretreatment Coordinator may also designate other users as SIU's. To make this designation, the Pretreatment Coordinator considers the flow rate of the user's discharge, the concentration or mass of pollutants in the discharge, and other characteristics related to the user's potential to adversely affect the sewerage system or the Plant.

B. Sewer Utility Monitoring of Users

1. User Reports

Users that discharge industrial process wastewater must submit a variety of reports to the Sewer Utility. Before such a user commences a new discharge or significantly changes an existing discharge, the user must submit a discharge permit application to the Pretreatment Coordinator.⁵ All such users must also submit a Baseline Monitoring Report (BMR), a Compliance Date Report, and Periodic Compliance Reports.⁶ For these reports, users must measure pollutant concentrations and flow rates, and may be required to submit other data such as production rates. Permitted users must also submit reports for non-routine events, such as spills or treatment plant upsets, changed circumstances such as significant changes in production levels, and special discharges.⁷

User reports are one of the Sewer Utility's primary sources of user information and may be a basis for enforcement actions. The Pretreatment Coordinator determines whether a facility has satisfied all applicable reporting requirements and whether the reported information indicates a violation.

2. Sampling by the Sewer Utility

The Sewer Utility periodically samples discharges to the sewerage system from permitted users.⁸ The routine sampling rate is two times per year, but this sampling rate may vary according to the user's circumstances. For example, more frequent sampling may occur for users that have a history of violations or have highly variable discharges. Alternatively, for a user who discharges rarely, the Sewer Utility will sample according to the timing of the discharge.

Samples are analyzed in the Sewer Utility's laboratory or by a Wisconsin-certified contract laboratory. The laboratory provides the results of the analyses to the Pretreatment Coordinator.

The Sewer Utility will increase its sampling frequency for a user when the Pretreatment Coordinator identifies a violation. The amount and timing of additional sampling depends

⁴ As defined in WMC §29.01(b)(126)(D)

⁵ WMC §29.10(a)(2)

⁶ WMC §29.10(b)

⁷ WMC §29.08(f) and WMC §29.10(a)(3), (6), (7)

⁸ Sewer Utility monitoring of users is required by 40 CFR 403.8(f)(2)(v) and (vi) and §NR 211.23(1)(c), (f), and (h), Wis. Adm. Code

upon the severity of the violation, regulatory requirements, and other circumstances. If the violation is isolated and not severe, then a sampling frequency of once per month for at least the following two months will be common. If the violation is severe or is part of continuing problems, then the Pretreatment Coordinator may increase the sampling frequency to biweekly, weekly, or daily.

When the Sewer Utility samples a user, the user must pay fees for sample collection and analysis.⁹ The Pretreatment Coordinator imposes these fees for routine sampling and for sampling in response to a violation.

In many cases, the appropriate sample point is located on the user's property. If a user denies access to this sample point, then the sampling technician will ask to discuss the situation with the person responsible for overall management of the facility. If the user continues to deny access, the Sewer Utility may collect upstream and downstream samples from the nearest accessible manholes. In the case of denied access, the Pretreatment Coordinator will contact the Director and/or City Attorney, who will confer with the highest accessible manager of the facility. If the user continues to deny access, then the Director will seek a special inspection warrant¹⁰.

C. Identifying and Counting Violations

In general, a "violation" is non-compliance with any federal, state, or local limit, pretreatment standard or requirement. The following rules apply to counting violations:

1. A separate violation occurs for each pollutant that exceeds an applicable pretreatment standard.
2. Each day on which a violation occurs is a separate violation.
3. If a user is in noncompliance with any pretreatment standard that is a monthly average or 4-day average, then the user has one violation for each monthly or 4-day averaging period that is in noncompliance.
4. One violation occurs on:
 - a. Each day that a report is greater than 45 days late; and
 - b. Each day after an action required to be completed is not completed.

Accurate and representative sample results are essential for the enforcement of the numerical local limits and categorical pretreatment standards. To obtain these results, flow proportioned composite sampling is used where appropriate and feasible. However, for some pollutants, this type of sample is inappropriate because a pollutant requires special equipment or handling. Furthermore, in some cases, flow proportioned sampling is not feasible because physical circumstances do not allow the use of preferred sampling equipment. In circumstances when flow proportioned sampling is not feasible or is inappropriate, other sampling techniques are used, such as time

⁹ WMC §29.12(f)(6)

¹⁰ WMC §29.06(m)(2), and §66.0119 and 196.171, Wis. Stats.

proportioned composite sampling, a composite sample made from manually or mechanically collected grab samples, averaging the separate analytical results of several grab samples, or one grab sample.

The Sewer Utility may use any sampling location from which samples will either directly or indirectly represent a user's discharge. If a sampling location includes dilution such as domestic wastewater, and if samples at this location violate an applicable limit, then the Sewer Utility may conclude that process wastewater discharged at an upstream location was the cause of the violation. The Sewer Utility may use sample collection techniques or analytical methods that bias sample results low as a basis for enforcement action, such as composite samples for pollutants for which grab samples are normally used. The Sewer Utility may use sampling locations, sample collection techniques, or analytical methods other than those specified in the user's permit, provided that those locations, techniques, or methods comply with applicable state and federal regulations.

In some cases, the user and the Sewer Utility may have contemporaneous sample results (including split sample results). In this case, both results will be counted, averaged, and the average used to determine compliance, provided both results meet all sampling and analytical requirements. Contemporaneous sample results that are widely divergent (at the discretion of the Pretreatment Coordinator) generally indicate that a problem exists with the laboratory analysis. Where the user's results are different from the Sewer Utility's results, the burden is on the user to show that all preservation, chain-of-custody, and analytical and QA/QC methods were followed. If the user cannot make this showing, then the analytical results of the user will be discarded by the Sewer Utility when determining the compliance status of the user. The Sewer Utility is not required to split its samples with a user.

IV. Enforcement Options

Various factors (Section VI) are considered by the Sewer Utility when planning an appropriate enforcement response. The general sequence of pretreatment data management and enforcement response is as follows:

1. Specification of reports required from users
2. Notify users of untimely submittals
3. Review reports received
4. Notify users, within specified timeframes, of deficiencies in reports and any noncompliance issues
5. Schedule user responses
6. Track user responses
7. Escalate enforcement

A. Informal Responses

1. Facilities Routinely Monitored

If a problem is isolated and does not involve a suspicion that the user is violating an applicable limit, then the Pretreatment Coordinator may respond informally.

Circumstances that would lead to an informal response include a monitoring result that approaches but does not exceed a permit limit, an isolated failure to properly sign or certify a report, an isolated failure to collect the correct type of sample, or an isolated failure to analyze a sample for all of the regulated pollutants. Informal responses include a telephone call or email, a facility visit, or a letter from the Pretreatment Coordinator. Conversations during a telephone call or during a facility visit will be summarized in writing to ensure that Sewer Utility records include a discussion of the problem and the Pretreatment Coordinator's recommendations.

2. Compliance at Facilities Not Routinely Monitored

While the routine activities of the pretreatment program focus on industrial users, the Sewer Utility recognizes that other users have a potential to discharge materials that can cause problems in the system. For example, the Pretreatment Coordinator may be made aware of grease deposits downstream of restaurants as the City's sewer cleaning crews make observations.

The Pretreatment Coordinator's response in these situations will be very case-specific. Critical factors include the volume of material discharged, the potential harm, whether the discharge has the potential to be repetitious, and the other demands on enforcement resources at the time of the case. A common response will be a visit to the site to investigate the case. If the Pretreatment Coordinator suspects that a violation occurred, then the Pretreatment Coordinator will educate the discharger of the applicable rules and the proper disposal or control methods. If harm is potentially significant or repetitious, then the Pretreatment Coordinator may issue a Notice of Violation or may undertake monitoring or other surveillance. To address generic, widely-distributed problems such as non-dispersible wipes in the system, the Pretreatment Coordinator will, from time to time, participate in educational programs, distribute literature, make public service announcements, publish newsletter articles, or present displays at public events.

B. Formal Responses

1. Warning

The Sewer Utility's first formal response to most cases where the user is not aware of reporting requirements, or a sampling result approaches a limit, is a letter of warning. The Pretreatment Coordinator prepares and issues the warning. The warning discusses the circumstances initiating the warning, and the consequences if a violation occurs. The warning may specify a date by which the user must take corrective action to prevent escalated enforcement action.

2. Notice of Violation

The Sewer Utility will issue a *Notice of Violation* (NOV) if:

1. A user has violated a numerical limit,
2. A user has failed to respond to a warning (if a reply was requested),
3. A user has failed to achieve compliance before a deadline set forth in a warning or other enforcement document, or
4. A user caused or threatened to cause immediate significant harm to the environment or the sewerage system.

The Pretreatment Coordinator prepares and issues the NOV. In certain cases, the NOV will be issued after approval by the Director and, if necessary, consultation with the City Attorney.

Every NOV will:

1. Be written,
2. Be delivered by hand, email, or by certified mail,
3. State the nature of the violation,
4. Indicate the date by which the user must respond, and
5. Discuss the essential elements of the user's response.

As part of a user's response to a NOV, the Pretreatment Coordinator may require the user to submit a written remedial action plan and schedule, require the user to attend an enforcement conference with Sewer Utility staff at the Sewer Utility's offices to discuss attaining compliance, or require other actions by the user. If the user satisfies a criterion for Significant Noncompliance¹¹ set forth in the WMC, the user will be notified by email or letter that the user's name will be published in the Sewer Utility's annual public notice of users in Significant Noncompliance.

3. Citations

If a User fails to take appropriate, timely corrective action in response to a NOV, and the violation continues past the date stated in the NOV, a citation is issued to the User. Citations may be issued by the Sewer Utility or agents designated by the Director in accordance with WMC §25.08(2)(d).

4. Penalties (Administrative Fines)

A penalty is an administrative fine assessed discretionarily by the Pretreatment Coordinator for violations of pretreatment standards and requirements. Penalties will generally be assessed when an NOV or administrative order have not prompted a

¹¹ WMC §29.01(b)(108)

return to compliance. Legal authority to assess penalties and the amount of each penalty are set forth in the WMC. Various methods may be used to assess penalties, including direct billing or inclusion within an NOV, administrative order or show cause order. The assessment will specify the violation(s) for which the penalty is being assessed, the amount of the penalty, and the corrective action(s) required for the user to return to compliance.

5. Orders

The Pretreatment Coordinator uses orders to direct users to perform certain activities before a specified time. The Pretreatment Coordinator will issue these written orders, which are reviewed by the City Attorney, and may issue more than one type of order concurrently. Orders will generally contain the following elements:

1. Title section
2. Legal authority
3. Finding of noncompliance
4. Ordered activity
5. Milestone dates for corrective action
6. Standard clauses
7. A description of the administrative procedures that are available to review the Sewer Utility's determination

Orders will be hand delivered or delivered by certified mail, return receipt requested.

a. Cease and Desist Orders

Cease and desist orders will be used to direct a user to cease discharges immediately, or to suspend or terminate discharges altogether. These orders will be used in situations where it appears to the Pretreatment Coordinator that an actual or threatened discharge presents or threatens an imminent or substantial danger to the health or welfare of persons or to the environment; or if an actual or threatened discharge may interfere with the operations of the wastewater treatment plant, cause pass-through, or violate any pretreatment standards or requirements imposed by the WMC.¹² The order may be issued immediately upon discovery of a problem, or following a hearing. In emergency situations a verbal order may be given to the user, but a subsequent written order will be served on the user in person or by certified mail.

b. Consent Orders

A consent order will be set up as an agreement between the Pretreatment Coordinator and the user. It will normally contain three elements: (1) compliance schedules; (2) stipulated fines or remedial actions; and (3) signatures of the Pretreatment Coordinator

¹² WMC §29.08(a) and §29.13

and the user or user's representative(s). A consent order is appropriate when the user assumes responsibility for noncompliance and is willing in good faith to correct the cause(s) of noncompliance. The order prohibits continuing violations and provides corrective action on the part of the user and is equal in enforceability to a cease and desist or compliance order. After a consent order is drafted and signed by all parties, a signed original will be provided to the user.

c. Show Cause Orders

When the Pretreatment Coordinator is considering escalating enforcement steps or revoking a user's wastewater discharge permit, the Pretreatment Coordinator may order the user to show cause before the Pretreatment Coordinator as to why the permit should not be revoked. A show cause order serves notice to the user that a hearing has been scheduled for this purpose.

Notice of the show cause hearing will:

1. Be written;
2. Be served no less than 10 days before the hearing;
3. Be served on any authorized representative of the user;
4. Be hand delivered or delivered by certified mail, return receipt requested;
5. Specify the time and place of the hearing;
6. State what enforcement action is proposed and the reasons for the proposed action;
7. Direct the user to show cause before the Pretreatment Coordinator why the proposed action should not be taken.

The show cause hearing may be formal or informal. The proceedings at the hearing will be considered by the Pretreatment Coordinator in determining the appropriate enforcement action.

d. Compliance Orders

A compliance order directs the user to achieve or restore compliance by a date specified in the order. Compliance orders are appropriate when noncompliance cannot be resolved without construction, repair, or process changes. These orders are frequently used to require a user to develop management practices, spill prevention programs, and related pretreatment program requirements. Compliance orders will document the noncompliance and state required actions to be accomplished by specific dates and may include interim and final reporting requirements.

6. Civil Litigation

The Pretreatment Coordinator may initiate civil proceedings in response to any violation of the WMC, a wastewater discharge permit, any other applicable local, state, or federal

law, or a notice of violation or order issued by the Sewer Utility. In general, the Pretreatment Coordinator will utilize civil litigation to respond to gross or persistent violations, deliberate violations, or violations that cause acute harm to the sewerage system or the environment. The vast majority of violations will be resolved before the initiation of civil proceedings for penalties or other relief.

The City Attorney will represent the Sewer Utility in these proceedings. To develop the Sewer Utility's case, the City Attorney may consult with the Director and the Pretreatment Coordinator.

The Pretreatment Coordinator may seek injunctive relief. For example, the Pretreatment Coordinator may seek an order to halt or prevent any discharge that would be a public nuisance, would endanger public health, welfare, or the environment, or would interfere with the operation of the sewerage system.

If the Pretreatment Coordinator suspects that the user is discharging pollutants that may imminently endanger public health, the environment, or the structures or employees of the Sewer Utility, then the Pretreatment Coordinator will immediately summon law enforcement officials, such as police officers or fire fighters, to facilitate entry. Simultaneously, the City Attorney will seek from an appropriate court a temporary restraining order.

Under state law, the Sewer Utility may seek civil penalties up to \$10,000 per day for each violation of a pretreatment standard or requirement.¹³ Under federal law, the Sewer Utility may seek penalties up to \$25,000 per day for each violation.¹⁴ The law under which the Sewer Utility will act depends upon the circumstances of the case. Considerations will include the size of the desired penalty, the type of violations, and whether violations are continuing.

The Sewer Utility does not expect to seek civil penalties in every case. Penalties are most appropriate in cases involving egregious violations or deliberate wrongdoing, such as falsified reports and non-representative sampling. For example, the Sewer Utility will seek penalties if the Pretreatment Coordinator has evidence of deliberate dilution, process modification during sampling, discharges timed to avoid sampling by Sewer Utility employees, or falsified reports.

In general, the EPA's Civil Penalty Policy will provide the basis for calculating the amount sought. Parameters include:

1. The number of violations,
2. The seriousness of the violations, including whether the violations harmed the environment or the sewerage system,
3. Any economic benefits resulting from the violations,

¹³ Sec. 283.91(2), Wis. Stats.

¹⁴ 33 USC secs. 1319 and 1365

4. The deterrent effect of the penalty,
5. The user's compliance history,
6. The user's good faith efforts to comply or the user's recalcitrance to compliance,
7. The economic impact of the penalty on the user, and
8. Any other factors that justice may require.

In any civil action, the Pretreatment Coordinator will seek to recover the costs incurred by the Sewer Utility that are related to the violation. For example, if a user's discharge caused damage, an obstruction, or an impairment in the sewerage system, then the user is liable to the Sewer Utility for the costs of cleaning, repairing, or replacing the affected components. The Pretreatment Coordinator will also seek to recover the administrative costs of the enforcement action, such as sampling costs, analytical costs, and the costs of the Sewer Utility's engineering, legal, and support staff.

When investigating a case, the Pretreatment Coordinator may identify evidence of violations of air quality or hazardous waste disposal requirements, along with wastewater violations. To facilitate a comprehensive remedy, the Pretreatment Coordinator will refer these cases to the Wisconsin Department of Natural Resources.

When the Sewer Utility has decided to commence civil litigation, the Pretreatment Coordinator may issue a press release and otherwise inform the public of the impending action. The Pretreatment Coordinator may issue a general announcement of the action, including a summary of the circumstances and directions for obtaining further information. At the conclusion of the case, the Pretreatment Coordinator may announce the results of the litigation.

The governing body of the Sewer Utility, the Common Council, will discuss civil litigation in closed session to the extent necessary to maintain privileged communications with legal counsel. Documents related to litigation that are not subject to a privilege recognized under law will be public records and will be available for public review and copying according to the public records laws of the State of Wisconsin.

7. Criminal Prosecution

If any person willfully or negligently violates any pretreatment standard or requirement or knowingly makes a false statement or certification in any application, record, report, plan, or other document or knowingly falsifies, tampers with, or renders inaccurate any monitoring device or analytical method, then that person may be punished under the criminal laws of the State of Wisconsin or the United States.¹⁵ If the City Attorney, after consultation with the Director and the Pretreatment Coordinator, determines that criminal prosecution is appropriate in a particular case, then the City Attorney will refer the case to the proper authorities for prosecution. Depending upon the case, the proper

¹⁵ WMC §29.13(d)(2)

authority may be a county District Attorney, the Department of Justice of the State of Wisconsin, or the Federal Bureau of Investigation and the U.S. Attorney's office.

8. Suspension of Service

The Pretreatment Coordinator may order a user to immediately suspend wastewater discharges¹⁶, and may suspend the user's wastewater discharge permit when it appears to the Pretreatment Coordinator that an actual or threatened discharge presents or threatens an imminent or substantial danger to the health or welfare of persons or to the environment, or if an actual or threatened discharge may interfere with the operations of the wastewater treatment plant, cause pass-through, or violate any pretreatment standards or requirements imposed by the WMC.¹⁷ A cease and desist order is the mechanism used to suspend a user's discharge and/or permit.

Any user ordered to suspend wastewater discharge shall, within a reasonable period of time as determined by the Pretreatment Coordinator, cease all discharges. If the user fails to comply voluntarily with the order within the specified time, the Pretreatment Coordinator will take additional action to compel the user's compliance. Such action may include a bulkhead order or legal action to seek a temporary restraining order or a permanent injunction.

The Pretreatment Coordinator will reinstate wastewater treatment service and may adjust enforcement responses when the user provides proof of the elimination of the non-complying discharge or conditions creating the threat of imminent or substantial danger. The Pretreatment Coordinator may modify the wastewater discharge permit of the user before reinstating wastewater treatment service if he believes that additional or changed requirements are needed to prevent a recurrence of the non-complying discharge.

9. Permit Revocation

The Pretreatment Coordinator may revoke a user's wastewater discharge permit¹⁸ for violations that are significant, dangerous to the public or to the System, repeated, unmitigated, intentional, flagrant, or otherwise show similar levels of severity justifying revocation of the User's Permit.¹⁹ The user must cease all discharges of non-domestic wastewater immediately after the Pretreatment Coordinator has notified the user of the permit revocation.

Permit revocation is one of the last steps in the enforcement hierarchy. The mere administrative act of revoking a permit does not guarantee an end to discharges. Therefore, permit revocation may occur in conjunction with other actions, such as a bulkhead order or legal action to seek a temporary restraining order or a permanent injunction. In order to avoid these additional actions, the user must demonstrate that it is not producing any wastewater or produce copies of manifests at an interval determined

¹⁶ WMC §29.10(a)(8)

¹⁷ WMC §29.13(d)(3)

¹⁸ WMC §29.10(a)(8)

¹⁹ WMC §29.13(d)(4)

by the Pretreatment Coordinator which verify that all wastewater produced during that interval was hauled and disposed at licensed facility.

The Pretreatment Coordinator prepares the permit revocation letter and issues it after approval by the Director and the City Attorney. The letter will be hand delivered or delivered by certified mail, return receipt requested.

10. Termination of Sewer Service

Termination of service may be employed by the Pretreatment Coordinator for users who have not responded adequately to previous enforcement actions. It may also be used when the Pretreatment Coordinator must act immediately to halt or prevent a discharge that presents imminent or substantial danger or threat to human health, the environment, or the treatment plant. Service termination will usually be preceded by issuance of a cease-and-desist order and may be employed in conjunction with other enforcement responses.

Following unsuccessful responses to other enforcement actions, the types of violations warranting termination of service are:

1. Unpermitted discharges which cause the treatment plant to violate its discharge permit or a WDNR or EPA order or directive
2. Discharge(s) that exceed local or categorical discharge limits and result in damage to the environment
3. Slug loads causing interference, pass through, or damage to human health, the environment, or the treatment plant
4. Failure of the user to notify the Pretreatment Coordinator of effluent limit violations or slug discharge(s) which resulted in environmental or treatment plant damage
5. Complete failure of the user to sample, monitor, or report as required by an administrative order
6. Failure of the user to install required monitoring equipment per the condition of an administrative order
7. Major violation of a permit condition or administrative order accompanied by evidence of negligence or intent

The Pretreatment Coordinator may order the installation of a bulkhead in the outfall of any user if the Pretreatment Coordinator has found that the user has not responded adequately to a previous enforcement action.²⁰ Before inserting a bulkhead, the Pretreatment Coordinator will deliver to the user or user's representative a written notice describing the reason(s) for the bulkhead order. The notice will:

²⁰ WMC §29.13(d)(3)

1. Identify the nature of the violation
2. Cite the legal authority to terminate sewer service
3. Describe the method of terminating service
4. Specify the date and time when service will be terminated
5. Specify a hearing date to determine whether service may be restored

In cases where the Pretreatment Coordinator becomes aware of a discharge that presents an imminent or substantial danger or threat as described above, a bulkhead may be installed prior to issuing a written notice.

11. Supplemental Responses

a. Publication of the Names of Users in Significant Noncompliance

At least once per year, the Pretreatment Coordinator will publish the names of the users that were in Significant Noncompliance since the period covered by the previously published list.²¹ The criteria for Significant Noncompliance are based upon corresponding federal and state regulations. The Sewer Utility will publish the list in the newspaper with the largest circulation in the Sewer Utility service area. Currently, this newspaper is the *Waukesha Freeman*.

b. Performance Bonds/Liability Insurance

The Pretreatment Coordinator may require a noncompliant user to post a performance bond covering expenses which the Sewer Utility might incur in the event of future violations. Similarly, the Pretreatment Coordinator may require a user responsible for a treatment plant upset to obtain sufficient liability insurance to cover the cost of restoring the plant in the event a second upset occurs. These requirements may be placed in an administrative order or as part of a consent agreement and, thereafter, may be included as a condition of the user's permit.

V. Waste Disposer Enforcement

Waste disposers are required to follow the current *City of Waukesha Hauled Waste Procedures* manual and the requirements of the WMC²². These requirements include various rules and regulations for permitting, truck registration, discharge times and locations, sampling and reporting, spill cleanup, and disposal charges. Some enforcement activities are specialized for waste disposers. General categories of violations applicable to waste disposers include incomplete paperwork, improper sampling, failure to maintain the septage receiving station, and truck washing. The degree of an enforcement response will depend on the nature of the infraction. Procedural violations such as incomplete paperwork will generally incur a lesser

²¹ WMC §29.01(b)(108)

²² WMC §29.09

response than more severe violations such as falsification of records or flagrant violations. Most waste disposer enforcement will be carried out at the informal response, warning, or NOV levels (see Appendix). For severe or recurrent violations, the Pretreatment Coordinator may suspend discharge privileges for a period of time specified by the Pretreatment Coordinator or may revoke the waste disposer's permit and discharge privileges permanently²³.

VI. Enforcement Responses

The Pretreatment Coordinator will consider each violation's unique context to determine how the Sewer Utility should respond. In general, the Pretreatment Coordinator will consider seven factors when identifying the proper response to a violation:

1. The magnitude of the violation,
2. The duration of the violation,
3. The effect on the receiving water,
4. The effect on the sewerage system,
5. The user's compliance history,
6. The user's good faith in preventing or resolving the violation, and
7. Consistent treatment of similarly situated users.

The Pretreatment Coordinator has considered these seven factors, the personnel described above, and the response options described in this plan to develop general guidelines for enforcement responses. Recommended responses are listed in the Appendix, and include:

1. The types of violations expected by the Sewer Utility,
2. The characteristics of the violation that affect the Sewer Utility's response,
3. A recommended response to the violation, and
4. The responsible Sewer Utility staff.

The responses listed in the Appendix are only recommendations. The Pretreatment Coordinator may find different responses appropriate after considering the factors listed above and other germane information. The Appendix does not create legal rights or obligations, nor does it limit the enforcement discretion of the Pretreatment Coordinator.

In the Appendix, responsible staff are designated using the following abbreviations:

²³ WMC §29.09(k)

Abbreviation	Position
PC	Pretreatment Coordinator
DIR	Director (Director of Public Works)
ATT	City Attorney

Appendix – Enforcement Responses Waukesha Sewer Utility

Violation	Characteristics	Response	Responsible Personnel
Discharge before receiving a letter of approval or a wastewater discharge permit	New user, user not aware of requirements	Obtain information, write permit if necessary	PC
	New user, user aware of requirements	Order, fine, and/or civil litigation	ATT and DIR
	Existing user subject to categorical standards; user not aware of requirements	Write permit	PC
	Existing user subject to categorical standards; user aware of requirements	Order, fine, and/or civil litigation	ATT and DIR
Discharge of a prohibited pollutant; discharge which causes interference or pass-through; discharge with potential to cause violation of Plant's WPDES permit; discharge of a substance in excess of an applicable limit	Isolated; no harm	NOV; additional sampling required	PC
	Isolated; harm to the sewerage system or the environment	NOV, publication, order, fine, and/or civil litigation	PC and/or ATT and DIR
	Continuing or multiple separate incidents; no harm to the sewerage system or the environment	NOV, order, and/or fine	PC and/or ATT and DIR
	Continuing or multiple separate incidents; harm to the sewerage system or the environment	Show cause hearing, order, fine, civil litigation, criminal prosecution, and/or permit revocation	ATT and DIR
Failure to clean or maintain grease interceptor or grease trap	Allowing grease to accumulate in violation of the 25% rule; failure to repair or replace broken or missing interceptor or trap components	NOV, order, fine	PC
Improper application or reporting	Report or application is incomplete, improperly signed or certified; user unaware of requirements	Informal	PC
	Report or application is incomplete, improperly signed or certified after notice from Sewer Utility of requirements	Warning	PC
	Report or application is late by less than 15 days	Informal	PC

	Report or application is late by 15 days or more	NOV, publication	PC
	Pattern of late reports	NOV and order	PC plus ATT and DIR
	Failure to report violation, slug, upset, or bypass; no harm to the sewerage system or the environment	NOV and fine	PC and DIR
	Failure to report violation, slug, upset or bypass; harm to the sewerage system or the environment	NOV, order, fine, and/or civil litigation	PC plus ATT and DIR
	Failure to report a significant change in production or flow	Warning or NOV	PC
	Results of all samples not reported	Warning	PC
	Falsification	Civil litigation and/or criminal prosecution and/or permit revocation	ATT and DIR
Improper sampling or analysis	Isolated failure to take the required type of sample	Informal	PC
	Isolated failure to analyze for all of the regulated pollutants	Informal	PC
	Failure to re-sample after self-monitoring identifies a violation	Warning	PC
	Recurring failure to take the required type of sample	Warning or NOV	PC
	Knowingly taking a Warning-representative sample	Civil litigation or criminal prosecution	ATT and DIR
	Tampering with monitoring equipment	Civil litigation or criminal prosecution	ATT and DIR
	Intentionally improper analysis	Civil litigation or criminal prosecution	ATT and DIR
Improper record keeping	Records are incomplete or missing; no evidence of intent	Warning or NOV	PC
	Records are incomplete or missing; evidence of intent	NOV or civil litigation	PC plus ATT and DIR
Uncooperative (waste disposers)	Failure to allow City staff to sample discharge, view log book, or otherwise uncooperative	Warning or NOV	PC

	Continuing denial; circumstances cause suspicion that user is trying to hide wrongful acts	Permit suspension or revocation	ATT and DIR
Failure to respond to informal or formal notices	Inadequate response to informal contact	Warning	PC
	Inadequate response to Warning	NOV	PC
	Inadequate response to NOV	Enforcement conference	PC and DIR
Failure to meet a compliance schedule milestone, complete an activity required by an enforcement order, or attain final compliance	Missed deadline by 90 days or less; final compliance date not affected	Warning	PC
	Missed deadline by more than 90 days, or final compliance date affected; good cause for delay	NOV, publication	PC
	Missed deadline by more than 90 days, or final compliance date affected; no good cause for delay	NOV, publication, and civil litigation	PC plus ATT and DIR
	Recurring missed deadlines	Civil litigation	ATT and DIR
	Missed deadline in a consent decree or settlement	Liquidated penalties as set forth in the decree or settlement	ATT and DIR
Denial of entry	Entry allowed after consultation; misunderstanding of access requirements	Informal	PC
	Continuing denial; circumstances cause suspicion that user is trying to hide wrongful acts	One or more of the following: warrant, order, civil litigation, or permit revocation	ATT and DIR

Glossary of Terms Relevant to Enforcement

- **ABSOLVE** – To excuse; to free from an obligation or the consequences of guilt or liability.
- **ACCIDENTAL DISCHARGE** – Unintentional discharges resulting from spills, mechanical malfunctions, human error, and other unplanned discharges which are not part of the normal operating procedures.
- **ADMINISTRATIVE ACTION** (a fine or order) – An enforcement action authorized by the Control Authority's legal authority which is taken without the involvement of a court.
- **ADMINISTRATIVE FINE** – A punitive monetary charge unrelated to actual treatment costs which is assessed by the Control Authority rather than a court.
- **ADMINISTRATIVE ORDER** – A document which orders the violator to perform a specific act or refrain from an act. For example, the order may require users to attend a show cause meeting, cease and desist discharging, or undertake activities pursuant to a compliance schedule.
- **ADMISSIBLE EVIDENCE** – Evidence which can be presented in court.
- **AFFIDAVIT** – A sworn statement in writing under oath before an authorized magistrate or officer.
- **APPROVAL AUTHORITY** – EPA or States with an EPA-approved pretreatment program (e.g., the Wisconsin Department of Natural Resources). The Approval Authority is responsible for approval and oversight of Control Authority pretreatment programs, including an evaluation of the effectiveness of local enforcement.
- **ARBITRARY OR CAPRICIOUS ALLEGATION** – An assertion that a decision or action taken by the Control Authority was unreasonable or not founded upon sound judgment.
- **BEST MANAGEMENT PRACTICES (BMP)** – Written procedures, schedules of activities, prohibitions of practices, maintenance procedures, or other management practices to comply with the Municipal Code.
- **BURDEN OF PROOF** – The duty of proving a disputed assertion or charge in court.
- **BYPASS** – The intentional diversion of a wastewater stream from any portion of an industrial user's treatment facility.
- **CATEGORICAL** – A wastewater stream or user that is subject to a Federal Categorical Pretreatment Standard.

- **CEASE AND DESIST ORDER** – An administrative order directing an industrial user to immediately halt illegal or unauthorized discharges.
- **CHAIN-OF-CUSTODY** – A written record of sample possession for all persons who handle (collect, transport, analyze, dispose of) a sample, including names, dates, times, and procedures followed.
- **CIVIL LITIGATION** – A lawsuit filed in a civil court. If the court rules that the defendant industrial user violated the law the court may impose civil penalties, injunctions, or other equitable remedies and/or cost recovery.
- **CIVIL PENALTY** – A punitive monetary award granted by a court to the Control Authority against a noncompliant industrial user.
- **COMPLIANCE ORDER** – An administrative order directing a noncompliant industry to achieve or restore compliance by a date specified in the order.
- **COMPLIANCE SCHEDULE** – A schedule of required activities (also called milestones) necessary for an industrial user to achieve compliance with all pretreatment program requirements.
- **CONSENT DECREE** – A court supervised settlement agreement, the violation of which may be considered contempt of court.
- **CONSENT ORDER** – An administrative order embodying a legally enforceable agreement between the Control Authority and the noncompliant industrial user designed to restore the user to compliance status.
- **CONTROL AUTHORITY** – The entity directly administering and enforcing pretreatment standards and requirements against industrial users. For purposes of this plan, the Control Authority is the Director of Public Works or the Director's duly-authorized representative.
- **CRIMINAL INTENT** – A state of mind which is a necessary element of all crimes. Criminal intent may be general (intent to perform an act) or specific (intent to break a law).
- **CRIMINAL NEGLIGENCE** – Negligence of such a character, or occurring under such circumstances, as to be punishable as a crime (such as a flagrant and reckless disregard of the safety of others or willful indifference to the injury likely to follow).
- **CRIMINAL PROSECUTION** – A criminal charge brought by the Control Authority against an accused violator. The alleged criminal action may be a misdemeanor or a felony and is defined as willful, negligent, knowing, and/or intentional violations. A court trial-by-jury is generally required and upon conviction, punishment may include a monetary penalty, imprisonment, or both.
- **DEFENDANT** – The party against whom relief or recovery is sought.

- **DEPOSITION** – A discovery device by which one party addresses verbal questions to the other party or to a witness for the other party. Depositions are conducted under oath outside the courtroom, usually in the office of an attorney. A transcript is made of the deposition which may be used as evidence at trial.
- **DETERRENT VALUE** – A threat of reprisal that is sufficient to discourage the industrial user from future violations.
- **DISCHARGE** – The intentional or accidental depositing of any solid, liquid, or gaseous substance into the collection system or treatment plant (indirect discharge) or into a natural outlet (direct discharge).
- **DISCOVERY** – A variety of pretrial devices used by one party to obtain relevant facts and information about the case from the other party.
- **DOUBLE JEOPARDY** – The prohibition against a second prosecution after a trial for the same offense.
- **ENABLING LEGISLATION** – A state law or charter which creates and empowers a Control Authority.
- **ENFORCEMENT RESPONSE GUIDANCE PLAN** – The City of Waukesha Enforcement Response Guidance Plan in its most current version per resolution.
- **FELONY** – A crime punishable by imprisonment for greater than one year (depending on State law).
- **FEES** – A schedule of charges imposed to recover treatment costs (not punitive in nature).
- **FINE** – A punitive monetary charge for a violation of the law. Implies the use of administrative rather than civil (judicial) procedures.
- **GOOD FAITH EFFORT OR PROGRESS** – Prompt and vigorous pollution control measures undertaken by the discharger which show that extraordinary efforts (not a “business-as-usual” approach) have been made to achieve compliance.
- **GRAND JURY** – A body of citizens whose duties consist of determining whether probable cause exists that a crime has been committed, and whether an indictment should be returned against a named defendant.
- **ILLICIT CONNECTION** – Any connection of an unpolluted water source to the sanitary sewer system, including but not limited to the following drains: artesian wells, cistern overflow, door well, roof, subsoil, unroofed basement excavation, window well, yard, foundation, or other drains from areas exposed to rain, melting snow, surface water, or groundwater, regardless of whether said drain or connection had been allowed, permitted, or approved by a government agency prior to the adoption of the Municipal Code.
- **INADMISSIBLE** – Evidence not allowed to be presented in court.

- **INDICTMENT** – A written accusation of criminal conduct by a grand jury.
- **INJUNCTION, INJUNCTIVE RELIEF** – A court order which restrains or compels action by the industrial user.
- **INJURE THE SYSTEM** – To damage or destroy structures, equipment, processes, or any appurtenances thereof which are part of the system; to cause an upset; to obstruct or interfere with the flow of wastewater anywhere in the system; or to cause a violation of the POTW's WPDES permit.
- **INTENTIONAL DISCHARGE** – A willful discharge, irrespective of whether or not the consequences of such discharge were known or anticipated by the discharger.
- **INTERFERENCE** – The inhibition or disruption of the POTW's collection system, treatment process or operations by an indirect discharge, including a discharge which, alone or in conjunction with the discharge or discharges from other sources, causes or may cause a violation or increases the magnitude or duration of a violation of any requirement of the POTW's WPDES permit, including the impairment of the use or disposal of the treatment plant's sludge or biosolids under Ch. NR 204, Wis. Adm. Code.
- **INTERROGATORIES** – A discovery device consisting of written questions submitted by one party to the other party or witness.
- **JUDICIAL ACTION OR CASE** – An enforcement action that involves a court (the action may either be civil or criminal in nature).
- **JURISDICTION** – The extent of authority of a governmental entity's power to make and enforce laws.
- **LAWFUL** – In compliance with federal, state, and municipal laws, rules, regulations, and orders promulgated under the authority thereof.
- **LEGAL AUTHORITY** – The source of a Control Authority's jurisdiction and regulatory powers.
- **LIBEL SUIT** – A suit against a person who is responsible for a written statement that allegedly conveys an unjustly unfavorable impression of another person.
- **LITIGATION** – An enforcement action brought in a judicial (court) forum.
- **MISDEMEANOR** – A crime punishable by imprisonment of less than one year (depending on State law).
- **NOTICE OF VIOLATION** – A Control Authority document notifying an industrial user that it has violated pretreatment standards and requirements. Generally used when the violation is relatively minor and the Control Authority expects the violation to be corrected within a short period of time.

- NPDES (NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM) – A permit system for the direct discharge of pollutants into U.S. waterways.
- PASS THROUGH – A discharge which exits the Plant into the waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's WPDES permit (including an increase in the magnitude or duration of the violation) or causes or contributes to water quality problems in the receiving stream.
- PENALTY – A monetary or other punitive measure, usually associated with a court action.
- PLAINTIFF – A person or organization seeking remedy from a court. For purposes of this plan, the plaintiff is the Control Authority.
- PLEA BARGAIN – An agreement between a prosecuting attorney and a criminal defendant whereby the defendant pleads guilty to a lesser charge and/or a reduction of sentence in exchange for cooperation in investigating or prosecuting the crime (e.g., waiving a trial).
- PRETREATMENT EFFLUENT STANDARDS OR STANDARDS – Prohibited discharge standards, federal categorical pretreatment standards and local limits.
- PRETREATMENT REQUIREMENT – Any substantive or procedural requirement related to pretreatment, other than a pretreatment effluent standard, imposed on an industrial user.
- PRIORITY POLLUTANTS – A list of 126 pollutants established by EPA and considered hazardous to the environment and to humans.
- PROHIBITED DISCHARGE – Wastewater which shall not be discharged into the wastewater collection system or treatment plant unless and until authorized under the terms of a permit for wastewater discharge issued by the Control Authority.
- PROPRIETARY INFORMATION – Information about a commercial chemical, product, or process which is considered to be confidential business information or a trade secret by an industrial user because if divulged, the information could put the industrial user at an unfair competitive disadvantage with competitors in the same industry.
- PUBLICLY OWNED TREATMENT WORKS OR POTW – A system of conveyances and treatment for sewage and industrial wastes. Also refers to the government officials responsible for operation and maintenance of the collection system or treatment plant and the administration of the pretreatment program.

- **REPORTABLE NONCOMPLIANCE** – Criteria for identifying when a Control Authority should be reported in the NPDES Quarterly Noncompliance Report for failure to implement its approved pretreatment program.
- **REQUEST FOR ADMISSION** – A discovery device where a written statement of fact concerning the case is submitted to the adverse party and which that party is required to affirm or deny. Those statements that are admitted will be treated by the court as having been established and need not be proved at trial.
- **REQUEST FOR PRODUCTION** – A discovery device which requests the opposing party to produce a document or thing which may tend to resolve an issue in dispute in the case.
- **SEARCH WARRANT** – A document issued by a magistrate or judge which authorizes government entry into private premises to either observe compliance with applicable laws or collect evidence of noncompliance.
- **SELF MONITORING** – Sampling and analysis of wastewater performed by the industrial user.
- **SHOW CAUSE ORDER** – An administrative order directing a noncompliant user to appear before the Control Authority, explain its noncompliance, and show cause why more severe enforcement actions against the user should not go forward.
- **SIGNIFICANT LOAD** – A discharge of high strength wastewater, or toxic or incompatible pollutants in such volume or concentration as to cause a treatment plant upset or to cause the plant to exceed effluent discharge limitations.
- **SIGNIFICANT NONCOMPLIANCE** – Criteria used by Control and Approval Authorities to identify important violations and/or patterns of noncompliance. These criteria are used to establish enforcement priorities and comply with special reporting requirements.
- **SLUG** – Any nonroutine, episodic discharge, such as a discharge resulting from a spill or a noncustomary batch discharge.
- **SPILL** – A type of accidental discharge.
- **STANDARD OF STRICT LIABILITY** – Liability which attaches without regard to the user's "negligence" or "intent" to violate. Noncompliant industrial users will be found liable for pretreatment violations if the Control Authority proves that a violation occurred.
- **STATUTE OF LIMITATIONS** – A law which prescribes the period within which an enforcement action may be pursued by the Control Authority.
- **STIPULATION** – A voluntary agreement between opposing parties as to facts or issues in controversy.

- **SURCHARGE** – The charge for treating excessive pollutant loadings.
- **SYSTEM** - Either jointly or severally, the City of Waukesha wastewater collection system and the Wastewater Treatment Plant and all appurtenances thereof. The structures, equipment, and processes required to collect, carry away, and treat wastewater and dispose of the effluent.
- **TERMINATION OF SERVICE** – A physical blockage of the sewer connection to a noncompliant user or issuance of a formal notice of termination to the industrial user.
- **TESTIMONY** – A solemn declaration made by a witness under oath in response to interrogation by a lawyer or public official which is used as evidence.
- **UNAUTHORIZED CONNECTION** – A connection made without approval from the City of Waukesha Plumbing Inspector.
- **UPSET** – The destruction of, disruption of, or a decrease in the effectiveness and efficiency of the operation of POTW processes.
- **UPSET (PERMITTED USER)** – An exceptional incident in which there is unintentional and temporary noncompliance with pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- **WPDES (WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM)** – A permit system for the direct discharge of pollutants into Wisconsin waterways.