

# **FORT WAYNE CITY UTILITIES INDUSTRIAL PRETREATMENT SECTION ENFORCEMENT RESPONSE PLAN**

This Enforcement Response Plan describes procedures to be used by Fort Wayne City Utilities to evaluate compliance by Industrial Users with Chapter 51 of the City's Code of Ordinances and Rules and Regulations of the City's Board of Public Works, including primarily those provisions intended to implement federal and state pretreatment program requirements. The Plan further describes procedures to be used by City Utilities to determine and apply appropriate enforcement responses to instances of noncompliance by Industrial Users concerning those pretreatment program requirements. Also, this Plan provides guidance for implementation of these compliance evaluation and enforcement procedures.

## **Compliance Evaluation Procedures**

### **1. Industrial User Inventory List**

City Utilities' Industrial Pretreatment Section ("IPS") will maintain an inventory of Industrial Users of the City's sewer system and Water Pollution Control Plant. City Utilities IPS will update the inventory annually.

### **2. Identification of Industrial Users**

IPS will strive to identify changes to the City's Industrial User base, such as the location of new Industrial Users, the closure of Industrial User facilities, or major alternations in industrial production processes, on an ongoing basis. Identification of changes to the Industrial User inventory will include determinations whether new or modified Users are Categorical Industrial Users and/or Significant Industrial Users.

- IPS reviews site plans, drawings and specifications and provides required changes to building sewer modifications in conjunction with the City Utilities Development Services prior to the issuance of a Certificate of Compliance by the Allen County Building Department.
- Observations from inspections in industrial areas of Fort Wayne and compliance monitoring of existing Industrial Users.
- Follow-up on notifications of new Commercial or Industrial Users from satellite communities that are Contract Users of the Water Pollution Control Plant.
- Follow-up on notifications of new discharges or new processes from existing Industrial Users as required by industrial pretreatment permits.

### **3. Identification of the Nature of Discharges from Industrial Users**

IPS employs the following procedures and methods to identify the character and amount of pollutants discharged by Industrial Users to the Water Pollution Control Plant:

- Evaluate Industrial User questionnaires submitted by proposed new Industrial Users.
- Evaluate industrial pretreatment permit applications submitted by new Industrial Users.
- Evaluate baseline reports submitted by Industrial Users potentially subject to new or revised categorical pretreatment standards.
- Determine whether new Industrial Users will be: (i) Categorical Industrial Users or (ii) Significant Industrial Users.
- Compare subsequent self-monitoring data or IPS surveillance monitoring data with submitted questionnaire or permit application information to confirm the latter.

#### 4. Compliance Monitoring of Industrial User Discharges

City Utilities will use the following methods to monitor Industrial User discharges to determine compliance with applicable pretreatment standards:

- Self-monitoring by Industrial Users of discharges to the City's sewer system as required by applicable categorical pretreatment standards or industrial pretreatment permits issued by City Utilities.
- IPS will perform regularly scheduled inspections, including sampling of discharges, of all Significant Industrial Users at least once each calendar year. Generally, a sampling schedule will be developed in advance for each calendar year that assigns an approximately equal number of sampling inspections for each calendar quarter based on geographical, industrial type, or other factors.
- For each Categorical Industrial User previously determined to be a non-significant Categorical Industrial User, IPS will review, once each calendar year, relevant information to determine whether the criteria of 40 CFR 403.3(v)(2) continue to be met.
- IPS will perform randomly scheduled inspections and/or sampling of discharges of all Industrial Users. As a general practice, IPS will perform such random inspections/sampling events for each Significant Industrial User once every other year and for each non-significant Industrial User at least once every five calendar years.
- At least once every two years, IPS will perform a randomly scheduled inspection and sampling of discharges of each Industrial User that has been approved for reduced reporting requirements under 40 CFR 403.12(e)(3).
- For each newly designated Significant Industrial User, the IPS will, within one year of such designation, evaluate whether such Industrial User has a significant potential for Slug Discharge, based on inspection reports, sampling data, and other pertinent information. If the evaluation indicates that a significant potential for Slug Discharges does exist, IPS will determine whether to require the Industrial User to prepare and submit a plan to prevent or control such discharges.

5. Confidentiality of Information Submitted by Industrial Users

The confidentiality of information submitted to City Utilities by Industrial Users pursuant to the requirements of Chapter 51 of the City's Code of Ordinances or the Rules and Regulations of the Board of Public Works will be governed, as a general matter, by the Indiana Public Records law, IC 5-14-3. As required by 40 CFR 403.14(b), City Utilities will not consider effluent data submitted by Industrial Users pursuant to the requirements of Chapter 51 of the City's Code of Ordinances or the Rules and Regulations of the Board of Public Works to be eligible for consideration as confidential information, even if a claim for confidentiality is included with the data submission.

**Enforcement Response Procedures**

The following enforcement response procedures may be used by Fort Wayne City Utilities to address instances of noncompliance identified through the Compliance Evaluation Procedures described above.

1. Data Collection

Site specific data is stored electronically for each Industrial User including monthly discharge monitoring reports, inspections, emails, phone call data, correspondence, permit actions, compliance dates, private complaints, plant upsets, billing data, and other miscellaneous information or documents. Additionally, sample results from the City's laboratory are exported from the laboratory's information management system to the data collection system. All data gathered shall become a part of the Industrial User's permanent record and is kept for a period of not less than three years.

2. Compliance Screening

The processes of reviewing all available information and monitoring data to sort out instances of noncompliance for appropriate enforcement response. This review will assess, as appropriate, compliance with required schedules, reporting requirements, discharge violations, etc.

3. Emergency Response

If evaluation of the data reveals that an emergency condition exists, City Utilities will take whatever means are appropriate to bring the violator into compliance.

4. Enforcement Evaluation for Noncompliance

The violations and conditions identified during the screening process are reviewed to make a determination of the type of enforcement necessary to bring the Industrial User into compliance. This process is accomplished using the criteria outlined in the attached Enforcement Response Guide.

5. Notice of Noncompliance

This process consists of notifying the Industrial User that noncompliance has been detected and that corrective action is required. City Utilities will evaluate the Industrial User's response and make a determination of whether the Industrial User has returned to compliance. If compliance is not achieved the incident is evaluated for further enforcement action.

6. Significant Noncompliance

This process consists of notifying the Industrial User that an instance of significant noncompliance, as defined in 40 CFR 403.8(f)(2)(viii), has been detected and that remedial action and response on the part of the Industrial User are required. City Utilities will then evaluate the response of the Industrial User and determine whether the Industrial User has returned to compliance. If compliance is not achieved, City Utilities will initiate formal enforcement action. In any instance of significant noncompliance, City Utilities will publish the instance as required in 40 CFR 403.8.

7. Formal Actions

a. Administrative Order (AO)

Administrative orders are enforcement documents issued to direct noncompliant Industrial Users to undertake or cease specified activities in order to return to compliance. An administrative order is the formal action taken by City Utilities and is issued when other, less formal, attempts to bring the Industrial User into compliance have failed or when the nature of the violation requires stricter enforcement.

Administrative orders can be issued in one or more of the following types:

1. Cease and Desist Order
2. Agreed Orders
3. Show Cause Order
4. Compliance Orders

b. Administrative Hearings

Such hearings may be conducted before the Board of Public Works when City Utilities seeks to obtain fines and/or to determine if a civil action is appropriate.

c. Civil Litigation

Civil litigation is the formal process of filing civil lawsuits against Industrial Users to secure court ordered action to correct violations and/or secure penalties for violations, including the recovery of costs to the POTW.

Civil litigation shall be pursued by City Utilities when the penalty to be assessed is greater than allowed administratively or when the Industrial User is recalcitrant or unwilling to cooperate.

d. Termination of Service

When all other attempts to bring an Industrial User into compliance have failed, or when the nature of the violation is such that it endangers the operations of the POTW, the health and welfare of City personnel or the citizens of the City, or adversely impacts the environment, City Utilities may terminate service to said User.

Termination of service may be accomplished in one or more of the following ways:

1. Issue an administrative order compelling Industrial User to cease discharge.
2. Terminate water service to the facility.
3. Physically sever sewer connection (plug).

The following categories of noncompliance of Industrial Users shall, in every instance, be subject to enforcement procedures by Fort Wayne City Utilities.

1. Failure to timely submit required reports (BMR, DMR, CMR, etc.).
2. Failure to meet interim or final compliance schedule dates.
3. Violations of maximum or average pollutant limitations for industry specific categories (Federal Categorical Standards).
4. Violations of prohibited discharges under National Pretreatment Standards (40 CFR 403.5).
5. Violations of local limits as outlined in Chapter 51 of the Fort Wayne Code of Ordinances and the Rules and Regulations of the Board of Public Works pertaining thereto, as amended.

6. Violations of permit conditions or limitations including Best Management Practices (BMPs).
7. Falsification of information submitted to the City.
8. Treatment plant upsets and/or interference traced to an Industrial User.
9. Violations detected during site visits and inspections.
10. Discharge of industrial wastes without prior approval, and/or a valid Industrial Wastewater Discharge Permit.

### **Responsibilities of City Utilities Personnel**

The following describes the City Utilities personnel involved in the enforcement process as well as their responsibilities.

#### 1. Industrial Pretreatment Inspector

The Industrial Pretreatment Inspector is a member of City Utilities' field team as well as a link in the enforcement chain between industry and City Utilities. The primary duties of the Inspector are as follows:

- a. Confers with industrial and commercial management and provides information pertaining to pretreatment.
- b. Conducts onsite inspections and audits of Industrial and Commercial Users subject to the pretreatment program.
- c. Evaluates information submitted by Users.
- d. Recommends modifications and revisions to wastewater discharge permits.
- e. Collects data and information required to write reports and legal notices.
- f. Collects sewage samples of industrial and commercial discharges.
- g. Investigates and writes reports on chemical and oil spills.
- h. Writes weekly sampling schedule.
- i. Maintains files, records, reports, and drawings necessary to perform duties.

2. Industrial Pretreatment Coordinator

The Industrial Pretreatment Coordinator acts as a liaison between the field team and the Supervisor of Water Quality. The primary responsibilities of the Coordinator are as follows:

- a. Confers with industrial and commercial management and provides information pertaining to pretreatment.
- b. Conducts onsite inspections and audits of Industrial and Commercial Users subject to the pretreatment program.
- c. Evaluates information and data submitted by Industrial Users.
- d. Prepares modifications and revisions to wastewater discharge permits.
- e. Assists in writing reports and legal notices.
- f. Collects sewage samples of industrial and commercial discharges.
- g. Investigates and writes reports on chemical and oil spills.
- h. Approves weekly sampling schedule.
- i. Maintains files, records, reports and drawings necessary to perform duties.
- j. Writes quarterly and annual report on noncompliance for submittal to IDEM and EPA.
- k. Recommends compliance steps for noncompliant Industrial Users.
- l. Reviews drawings and specifications submitted by applicants for new permits.

3. Supervisor of Water Quality

The Supervisor of Water Quality acts as a coordinator in implementing City Utilities pretreatment program requirements. The primary responsibilities of the Supervisor include all of those previously listed for other personnel as well as the following:

- a. Issues Notice of Violation to Industrial Users.
- b. Recommends enforcement escalation to Superintendent.
- c. Recommend changes to the sewer use ordinance.

- d. Issues permits to Industrial Users.
- e. Publishes annual listing of industries in significant noncompliance.

4. Superintendent of Water Pollution Control Plant

The Superintendent has the responsibility to ensure compliance with the City's NPDES permit as well as enforcement of the City's Sewer Use Ordinance, Rules and Regulations and the general and categorical pretreatment requirements set forth by the EPA. The responsibilities of the Superintendent include those previously listed as well as the following:

- a. Issues Administrative Orders.
- b. Represents the City Utility in Show Cause Hearings.
- c. Initiate civil proceedings.
- d. Initiate termination of service.

5. Legal Counsel

The City's Legal Counsel advises technical and managerial personnel on enforcement matters, participates in administrative proceedings and coordinates the judicial responses deemed necessary by the Superintendent.

**Range of Enforcement Response**

The following shows the range of enforcement responses, in order of severity, that may be utilized by Fort Wayne City Utilities.

- 1. Verbal Telephone Notice (VTN)
- 2. Notice of Warning (NOW)
- 3. Notice of Violation (NOV)
- 4. Administrative Fine (Fine)
- 5. Administrative Order (AO)
  - a. Cease and Desist Order

- b. Compliance Order
  - c. Agreed Order
  - d. Show Cause Order
6. Civil Litigation (Civil)
- a. Consent Decree
  - b. Injunctive Relief
  - c. Civil Penalty
7. Termination of Service

This range of responses has been developed for guidance and is not intended to create legal rights or obligations, or to limit the enforcement discretion of the City of Fort Wayne, Indiana. The level of enforcement response actually applied to an instance of non-compliance will be determined on a case by case basis as indicated above.

### **Fort Wayne City Utilities Industrial Pretreatment Section Enforcement Response Guide**

This guide has been developed for use by City Utilities personnel responsible for determining the appropriate response to a specific violation or violations of local, state and federal pretreatment requirements and related sections of the Clean Water Act. The guide is intended to serve two main purposes:

1. The guide covers enforcement responses that may be appropriate in relation to the nature and severity of the violation(s) and overall degree of noncompliance.
2. It provides a guide to encourage uniform application of enforcement responses to comparable levels and types of violations, as well as a mechanism to review the appropriateness of responses by City officials.

The guide outlines how City Utilities determines which responses are appropriate, identifies personnel who should initiate these responses, and discusses the time frames for taking such actions.

The enforcement response guide allows City Utilities to select from several initial and follow-up actions. City Utilities may initially rely on actions such as NOV's, NOW's, or VTN's where violations are minor or when the Industrial User is cooperative in resolving problems. However, when the violation is significant or when the Industrial User does not promptly undertake corrective action, City Utilities must respond with more severe enforcement action up to and

including civil proceedings and penalties. Similarly, when the User fails to return to compliance following the initial enforcement response, City Utilities must escalate its enforcement response with a more stringent action.

City Utilities officials should also evaluate appropriate enforcement responses in the context of the User's prior history of violations. For example, if a User continues its minor noncompliance despite enforcement measures (i.e., repeated issuance of NOV's) City Utilities should adopt a more stringent approach. Similarly, if the User has committed several types of violations the response should address each violation. If City Utilities seeks remedies for only the most serious violation, the less significant violations could inadvertently escape enforcement. It should also be noted that, since pretreatment compliance is a matter of strict liability, the knowledge, intent, or negligence of the User should not be taken into consideration except when deciding to refer the matter to the appropriate State or Federal official for criminal prosecution.

The enforcement response selected must also be appropriate to the violation. This determination is often a matter of common sense. For example, while telephone calls may be appropriate responses for reports that are one or two days late, treatment plant upsets merit an immediate and stringent response. The following criteria should be considered when determining a proper response:

1. Magnitude of the violation.
2. Duration of the violation.
3. Effect of the violation on receiving waters.
4. Effect of the violation on the collection system and plant.
5. Compliance history of the Industrial User.
6. "Good Faith" of the Industrial User.

These six criteria are discussed in detail below.

1. Magnitude of the Violation

Generally, an isolated instance of noncompliance can be met with an informal response or a NOV. However, since even an isolated violation could threaten public health and the environment, damage public and/or private property, or threaten the integrity of the pretreatment program (e.g., falsifying a self-monitoring report) it is recommended that the responses to any "significant noncompliance" include an enforceable order that requires a return to compliance by a specific deadline.

2. Duration of the Violation

Violations, regardless of the severity, which continue over a prolonged period, should subject the Industrial User to escalated enforcement actions. For example, an effluent violation that occurs in two out of three samples over a six-month period or a report that is more than 30 days overdue is considered significant, while a report that is two days late is not.

The response to these situations must be tailored to prevent extended periods of noncompliance from recurring, such as the issuance of administrative orders. If the Industrial User fails to comply with the AO, the assessment of administrative fines or judicial action should be pursued. If the prolonged violation results in serious harm to the POTW, termination of service should be considered as well as attempting to recover the cost of repairing any damage.

3. Effect on the Receiving Waters

One of the primary objectives of the pretreatment program is to prevent pollutants from passing through the POTW and entering the receiving stream. Consequently, any violation that results in environmental harm should be dealt with severely. Environmental harm should be presumed whenever an industry discharges a pollutant into the sewage system that passes through the POTW, causes a violation of the POTW's NPDES permit, or has a toxic effect on the receiving waters.

At a minimum, responses to these circumstances should include administrative orders or administrative fines as well as recovery of any NPDES fines incurred by the City.

4. Effect on the Collection System and WPC Plant

Some violations may have a negative impact on the POTW itself. For example, they may result in significant increases in treatment costs, harm City personnel or equipment, or cause sludgecontamination, resulting in increased disposal cost. These violations should be met with an order to correct the violation in addition to the recovery of additional costs and expenses to the POTW (e.g., damage to the collection system, tracing a spill back to the source, etc.).

5. Compliance History of the User

A pattern of recurring violations (e.g., "jumping" in and out of compliance), even of different program requirements, may indicate that the User's treatment system is inadequate or that the User has taken a "casual" approach to maintaining compliance. These indications should be a signal that future significant noncompliance may be likely. Accordingly, Users exhibiting recurring compliance problems should be dealt with more strongly to ensure consistent compliance is achieved. Compliance history is an important

factor in determining which of the range of responses would be appropriate for a particular violation. For example, if the User has a good compliance history, a less severe action should be taken.

6. "Good Faith" of the User

The Users "Good Faith" in correcting its noncompliance is a factor in determining which enforcement action to invoke. "Good Faith" may be defined as the User's honest intention to remedy its noncompliance along with actions taken which lend support to this intention. Good Faith is typically demonstrated by cooperation and completion of corrective actions in a timely fashion, although compliance with previous enforcement orders is not necessarily evidence of Good Faith in a current situation.

In order for an enforcement action to be effective, it must be timely. For an action to be timely, the violation must be detected and responded to promptly after its occurrence. Therefore, review of compliance reports for both effluent violations and timeliness are a high priority at the time of their submission. Generally, Industrial User reports should be reviewed and violations acted upon by City Utilities within five days of receipt, and violations observed by field personnel should receive even swifter attention.

No more than 30 days should be allowed to pass between the detection of a violation(s) and the initial enforcement response. For example, Reports not received by the due date should be addressed by an informal warning or NOV within one or two days, whereas actions requiring the involvement of the attorney may require more time for the filing of legal documents.

All enforcement actions undertaken by the City will be documented to the file of the User. Enforcement documentation will be maintained as required in 40 CFR 403.

## Enforcement Response Guide

### Unauthorized Discharge

Noncompliance	Nature of Violation	Responses	Personnel
Non-permitted Discharge	IU unaware of requirement; no harm to	VTN/NOV with application	SWQ
	IU unaware of requirement; harm to POTW	AO/Fine	S
		Civil	S
	Failure to apply continues	Civil	S
		Terminate	S
	Non-permitted Discharge (renewal)	IU has not submitted BMR/Permit Application within 30 days of due date	NOV
AO/Fine			S
Civil			S
Terminate			S, Board

### Discharge Limit Violation

Noncompliance	Nature of Violation	Responses	Personnel
Exceedance of Federal, State or Local Standard (permit limit)	Isolated, not	VTN/NOW	SWQ
	Isolated, significant (no harm)	NOV	SWQ
		SCH	SWQ, S
	Isolated, harm to POTW/Environment	Civil	S
		AO/Fine	S
	Recurring, no harm to POTW/Environment	AO/Fine	S
	Recurring; significant	SCH	SWQ, S
		AO/Fine	S
		Civil	S
		Terminate	S, Board

### Monitoring and Reporting Violations

<b>Noncompliance</b>	<b>Nature of Violation</b>	<b>Responses</b>	<b>Personnel</b>
Reporting Violation	Report is improperly signed/certified	VTN/NOV	SWQ
	Report is improperly signed/certified after notice	SCH	SWQ, S
		AO/Fine	S
	Late Report, not significant	VTN	I
		NOV	SWQ
	Later Report,	NOV	SWQ
	Reports consistently late/no reports	SCH	SWQ, S
		AO/Fine	S
		Civil	S
	Failure to report spill/changed discharge (no harm)	NOV	SWQ
	Failure to report spill/changed discharge (harm)	SCH	SWQ, S
AO/Fine		S	
Repeated failure to report spill/changed discharge	Civil	S	
	Terminate	S, Board	
Falsification of Data/records or	Deliberate	Criminal	Refer to IDEM/EPA
Failure to monitor correctly	Failure to monitor for all pollutants as required by permit	NOV	SWQ
	Recurring failure to monitor	SCH	SWQ, S
		Civil	S
Improper sampling	Unintentional	NOV	SWQ
	Intent Evident	SCH	SWQ, S
	Recurring	Civil	S
Equipment tampering	Unintentional	NOV	SWQ
	Intent Evident	SCH	SWQ, S
Compliance Schedule (A/O)	Failure to file required reports, not significant	NOV	SWQ
	Failure to file required reports, significant	SCH	SWQ, S

**Other Permit Violations**

<b>Noncompliance</b>	<b>Nature of Violation</b>	<b>Responses</b>	<b>Personnel</b>
Dilution in lieu of treatment	Initial violation	SCH	SWQ, S
	Recurring	AO/Fine	S
Civil		S	
Failure to mitigate noncompliance or halt production	No harm	NOV	SWQ
	Results in harm	AO/Fine	S
		Civil	S
Failure to properly operate pretreatment	No harm	NOV	SWQ
	Results in harm	AO/Fine	S
		Civil	S

**Violations Detected During Site Visits/Inspections**

<b>Noncompliance</b>	<b>Nature of Violation</b>	<b>Responses</b>	<b>Personnel</b>
Entry Denial	Entry Denied or consent withdrawn	Report	I
		Obtain Warrant and Return	SWQ, S, L
Illegal Discharge	No harm	SCH	SWQ, S
	Harmful or evidence of Intent	AO/Fine	S
		Civil	S
Recurring	Terminate	S, Board	
Improper sampling	Unintentional sampling	NOV	SWQ
	Incorrect sample type, no intent	NOV	SWQ
	Incorrect sample technique, no intent	NOV	SWQ
Inadequate record keeping	Files incomplete or missing, no intent	NOV	SWQ
	Recurring	AO/Fine	S
Failure to report additional Monitoring	Inspection finds additional Files	NOV	SWQ
	Recurring	AO/Fine	S

## **Abbreviations and Acronyms used in Enforcement Response Guide**

AO	Administrative Order
BMP	Best Management Practices
Board	Board of Public Works
Civil	Court Action
EPA	United States Environmental Protection Agency
Fine	Administrative fine
I	Industrial Pretreatment Inspector (Coordinator)
IDEM	Indiana Department of Environmental Management
L	Legal Counsel
NOV	Notice of Violation
NOW	Notice of Warning
POTW	Publicly Owned Treatment Works; the Fort Wayne Water Pollution Control Plant and collection system
S	Superintendent of the Fort Wayne Water Pollution Control Plant.
SCH	Show cause hearing
SWQ	Supervisor of Water Quality
Term	Termination of service
VTN	Verbal Telephone Notice

## **Time Frames for Responses**

All violations should be identified and documented within five days of receiving compliance information from the Industrial User.

Initial enforcement responses will occur within 15 days of violation detection.

Follow-up actions for continuing or recurring violations will be taken within 60 days of the initial enforcement response. For all continuing violations, the response may include requiring a compliance schedule.

Violations that threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as, issuance of an Administrative Order to halt the discharge or termination of service.

All violations meeting the criteria of significant noncompliance will be addressed with an enforceable order within 30 days of the identification of significant noncompliance, and shall be published on an annual basis.

This Enforcement Response Guide addresses a broad range of violations. It is not intended to cover all types of violations. The responses in this guide are suggested responses.

This guide has been developed for guidance and is not intended to create legal rights or obligations, or to limit the enforcement discretion of the City of Fort Wayne, Indiana.

## **Glossary of Certain Terms Relevant to Enforcement**

**Absolve** - To excuse; freeing from an obligation or the consequences of guilt or liability.

**Administrative Action** (a fine or order) - An enforcement action authorized by the City's legal authority which is taken without the involvement of a court.

**Administrative Fine** - A punitive monetary charge unrelated to actual treatment costs that are assessed by the Control Authority rather than a court.

**Administrative Order** (AO) - A document which orders the User 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 following 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.

**Agreed Order** - An Administrative Order embodying a legally enforceable agreement between the Control Authority and the noncompliant User designed to restore the User to compliance status.

**Approval Authority** - USEPA. 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's)** – Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403. BMP's include treatment requirements, operating procedures, and practices to control plant runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMP's also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical Pretreatment Standards and effluent limits.

**Board of Public Works (Board)** - The utilities regulatory body, responsible for approving the Utilities Rules and Regulations and the appeal body for decisions and/or AOs made or issued by the Superintendent regarding Industrial Users.

**Burden of Proof** - The duty of proving a disputed assertion or charge in court, or in an Administrative Hearing or proceeding.

**Cease and Desist Order** - An administrative order directing an Industrial User to 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 Action or 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 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.

**Control Authority** - The entity directly administering and enforcing pretreatment standards and requirements against Industrial Users. For the purposes of this guide, the Control Authority is the City of Fort Wayne through its approved pretreatment program.

**Criminal Intent** - A state of mind which is a necessary element of some 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).

**Defendant** - The party against whom relief or recovery is sought. Usually the Industrial User, for the purposes of this guide.

**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 that may be used as evidence at trial.

**Deterrent Value** - A threat of reprisal that is sufficient to discourage the Industrial User from future violations.

**Director** – The Director of Fort Wayne City Utilities or his duly authorized representative.

**Discovery** - A variety of pretrial devices used by one party to obtain relevant facts and information about the case from the other party, such as depositions and interrogatories.

**Enabling Legislation** - A State law or charter that creates and empowers a Control Authority.

**Fees** - A schedule of charges imposed to recover treatment or administrative costs (not punitive in

nature).

**Fine** - A punitive monetary charge for a violation of the law. Often used synonymously with "penalty", although the term "fine" generally implies the use of administrative rather than civil procedures.

**Good Faith Effort or Progress** - Prompt and vigorous pollution control measures undertaken by the discharger which shows that extraordinary efforts (not a business as usual approach) have been made to achieve compliance.

**Inadmissible** - Evidence not allowed to be presented in court.

**Indictment** - A written accusation of criminal conduct by a grand jury.

**Indirect Discharge (Discharge)** - The introduction of pollutants into the POTW from any non-domestic source.

**Industrial User (IU, User)** - A source of indirect discharge.

**Industrial Pretreatment Section (I)** - The group of individuals whose primary responsibility is the gathering of data and making contact with IUs that is necessary for the implementation of the City's pretreatment program.

**Injunction, Injunctive Relief** - A court order which restrains or compels action by the Industrial User.

**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 be either civil or criminal in nature.

**Jurisdiction** - The extent of authority of a governmental entity's power to make and enforce law.

**Legal Authority** - The source of a Control Authority's jurisdiction and regulatory powers.

**Litigation** - An enforcement action brought in a judicial forum.

**Notice of Violation (NOV)** - A Control Authority document notifying an Industrial User that it has violated its wastewater discharge permit requirements.

**Notice of Warning (NOW)** - a Control Authority document notifying an Industrial User that it has violated its wastewater discharge permit requirements. (Used when a parameter violation is less than the actual limit value multiplied by the appropriate TRC factor.

**National Pollutant Discharge Elimination System (NPDES)** - A permit system for the direct discharge of pollutants into U.S. waterways.

**Penalty** - A monetary or other punitive measure, usually associated with a court action. For purposes of this guide, the term is used synonymously with fine.

**Plaintiff** - A person or organization seeking remedy from a court. For purposes of this guide, the plaintiff is the Control Authority, the City of Fort Wayne.

**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.

**Priority Pollutants** - A list of 126 pollutants established by EPA and considered hazardous to the environment and to humans.

**Publicly Owned Treatment Works (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.

**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 Industrial User (SIU).** Except as provided in paragraphs (3) and (4) of this Section, a Significant Industrial User is:

- (1) An Industrial User subject to categorical Pretreatment Standards; or
- (2) An Industrial User that:
  - (a) Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
  - (b) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(c) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement.

(3) The City may determine that an Industrial User subject to categorical Pretreatment Standards is a Non-Significant Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

(a) The Industrial User, prior to the City's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;

(b) The Industrial User annually submits the certification statement required at 40 CFR 403.12(q), together with any additional information necessary to support the certification statement; and

(c) The Industrial User never discharges any untreated concentrated wastewater.

(4) Upon a finding that a User meeting the criteria in Subsection (2) of this part has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement, the City may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f) (6), determine that such User should not be considered a Significant Industrial User.

**Significant Noncompliance** - shall have the definition as set forth in 40 CFR 403.8 latest revision.

**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.

**Supervisor of Water Quality (SWQ)** - The Supervisor of the Industrial Pretreatment Section, responsible for reviewing data gathered on Industrial Users and determining what initial responses are required.

**Surcharge** - The charge for treating excessive pollutant loadings.

**Technical Review Criteria (TRC)** - Factor used to determine degree of noncompliance. TRC = 1.4 for oil and grease, B.O.D., and T.S.S. TRC = 1.2 for all other parameters except pH.

**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.

## **Enforcement Response Procedures Relating to Aqua Indiana Diversion Project**

The following supplemental enforcement response procedures apply solely to Industrial Users that discharge industrial waste into Diversion Project Sewers that are a part of the Aqua Diversion Project.

1. Special Definitions
  - A. “Aqua WWTP” refers to the Midwest Treatment Plant owned by Aqua Indiana, Inc. that is located on the west side of the City of Fort Wayne, Indiana (“City”).
  - B. “Diversion Project” refers to the diversion of a portion of the sewage flow, from time to time, from the GS Interceptor and/or the Junk Ditch Interceptor to the Aqua WWTP, pursuant to an agreement between the City and Utility Center, Inc., d/b/a Aqua Indiana, Inc.
  - C. “Diversion Project Sewers” means those portions of the GS Interceptor and the Junk Ditch Interceptor that are upstream of the respective points at which sewage is or may be diverted from such interceptors to the Aqua WWTP.
  - D. “Diversion Prohibited Discharge” means a discharge by an Industrial User to one of the Diversion Project Sewers that fails to comply with all applicable pretreatment standards established by the U.S. EPA or the Indiana Environmental Rules Board (or its predecessor agency) and applicable local limits contained in the Rules and Regulations of the Fort Wayne Water Pollution Control Utility.
2. The Superintendent or his/her designee shall immediately notify Aqua Indiana, Inc. upon obtaining actual knowledge of the occurrence of a Diversion Prohibited Discharge.
3. Upon obtaining actual knowledge of the occurrence of a Diversion Prohibited Discharge, City Utilities shall promptly take reasonable steps, consistent with other provisions of this Environmental Response Plan, to require the Industrial User responsible for the Diversion Prohibited Discharge to immediately cease such discharge and comply with all applicable discharge standards and limits.