



The City of Fort Wayne

City Utilities

MEMORANDUM

LAW DEPARTMENT

TO: FORT WAYNE CHAMBER OF COMMERCE
WATER QUALITY SUBCOMMITTEE

FROM: LINDA PETERSON POWELL, STAFF ATTORNEY

DATE: July 6, 1994

SUBJECT: RESOLVING COMPLIANCE DISPUTES

Following is the City's proposal for implementing a uniform policy to resolve disputes in determining an Industrial User's compliance with its permit, local, state and federal regulations. This policy applies only to metals and negates the City's application of technical review criteria for metals for surveillance sampling purposes.

An Industrial User shall have the opportunity to request a split of a sample taken by the City in performing its industrial surveillance testing under its Pretreatment program. If no split is requested, the analytical results obtained by the City shall determine that User's compliance.

By requesting a split sample, the Industrial User agrees to provide the City with written notice within five (5) days of discovery of any analytical results showing the split to contain any metals in an amount exceeding the limit for that parameter in the user's Industrial Discharge Permit. The user must also verbally notify and alert the City of any pollutant parameter exceedance, at the time of detection or within twenty-four (24) hours of notification thereof by the contract laboratory.

In the event a split is taken and either or both analysis show non-compliance, the highest result shall be considered the official value. Enforcement action, through issuance of a notice of violation or as otherwise provided for in the Sewer Utility Rules and Regulations or Chapter 51 of the Fort Wayne Code of Ordinance, shall be initiated when the results of either laboratory analysis evidence a violation, unless the Industrial User files a timely appeal. Appeals must be in writing and submitted to the City within fourteen days of notification of enforcement action.

The following steps apply only when the analytical results of the split by the two labs are dissimilar and one result shows compliance and the other shows a violation of the User's permit. In this instance, the User must file an appeal if it wishes to challenge or avoid enforcement action. The first step is to then determine whether the sample results are widely divergent. A twenty percent (20%) relative percent difference (RPD) calculation, set out in EPA SW 846, shall be applied to determine when results are widely divergent. If, according to this calculation, the results are not widely divergent, the City shall average the two laboratories' results in order to determine whether the sample shows compliance for the particular parameter involved. The numerical value obtained through the average of results shall be the official number used for this purpose.

If, according to the 20% RPD calculation, the split sample results are widely divergent a resolution must be reached as to the cause for the dissimilarity. Sample preservation, chain of custody, analytical method and quality assurance/quality control (QA/QC) for both labs shall be evaluated by the City. If this evaluation shows the QA/QC of one lab to be good and the other flawed, the results obtained by the lab evidencing appropriate analytical methodology and QA/QC shall be used to determine compliance. If the QA/QC data from both labs is faulty, both the results shall be discarded and a resample taken at the City's discretion. However, when QA/QC results from both labs are good, the digestate from each shall be exchanged and reanalyzed by the other, producing four (4) pieces of data for the parameter at issue. For the purpose of determining compliance, all valid numbers shall be averaged, and this result shall constitute the official value for that parameter. The City reserves the right to perform a methods audit on the contract laboratory at its discretion, where the results obtained for any split warrant such investigation. The City shall provide the Industrial User with a written summary of above sample evaluation and conclusions.

In any case where the Industrial User or contract laboratory cannot provide adequate documentation and digestate to satisfy the above evaluation, the City's results shall be controlling on the issue of compliance.

The original enforcement response and any enforcement action taken during the time of the appeal shall be re-evaluated in light of the above analysis and rescinded if not justified in light of the appeal resolution.

The City reserves the right to request and obtain a split from any sample taken by the Industrial User of its own effluent.