

**CITY OF CHURCH HILL**

**INDUSTRIAL  
PRETREATMENT PROGRAM**

**ENFORCEMENT RESPONSE PLAN**

## **CITY OF CHURCH HILL** **ENFORCEMENT RESPONSE PLAN**

The City of Church Hill's Pretreatment program has been approved by the Environmental Protection Agency (EPA) and the State of Tennessee Department of Environment and Conservation. Therefore, the City is responsible for the enforcement of all Federal, State and Local wastewater discharge regulations. To streamline this effort and to comply with the requirements listed in 40 CFR 403.8 (f) (5), the City of Church Hill has developed an Enforcement Response Plan (ERP). The ERP contains detailed procedures identifying how the City of Church Hill will investigate and respond to instances of industrial user noncompliance. The ERP is intended for the use of City personnel to address enforcement actions for pretreatment violations and does not create any rights or obligations nor should it be used or relied upon by non-city personnel for any purpose. The plan describes violations and indicates a range of appropriate enforcement options. It outlines which responses are appropriate and identifies the personnel who should initiate those responses. It also outlines the time frame for taking such actions.

### **INSIGNIFICANT vs. SIGNIFICANT NONCOMPLIANCE**

#### **INSIGNIFICANT (MINOR) NONCOMPLIANCE**

Insignificant Noncompliance is defined as relatively minor or infrequent violation of pretreatment standards or requirements. Instances of Insignificant Noncompliance will be responded to with a Notice of Violation (NOV). Examples of violations that may be addressed by a NOV are:

- \* Failure to file a permit renewal application but continuing to comply with the expired permit.
- \* Isolated insignificant exceedence (not more than 1.5 times the limit) of discharge limits.
- \* Inadvertently using incorrect sample collection procedures.
- \* Failure to properly sign or certify monitoring reports (second occurrence).
- \* Missed interim or final compliance deadline by 30 days or less.
- \* Filing a late report, including compliance schedule reports (less than 30 days late).
- \* Any other violation which:
  - (a) causes no known harm to the POTW and/or environment.
  - (b) is deemed insignificant by the Director.
  - (c) is not defined as Significant Noncompliance by the Environmental Protection Agency in the General Pretreatment Regulations: 40 CFR 403.

## **SIGNIFICANT NONCOMPLIANCE OF WASTEWATER DISCHARGE LIMITS**

The City of Church Hill shall publish at least annually, in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the City of Church Hill, a list of the Industrial Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other Industrial User that violates paragraphs (C), (D), or (H) of this Section) and shall mean:

- A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits.
- B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- C. Any other violation of a Pretreatment Standard or Requirement (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the Director determines has caused, alone or in combination with other discharges, Interference or Pass-Through, including endangering the health of POTW personnel or the general public;
- D. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment, or has resulted in the Director's exercise of emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance.
- F. Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to accurately report noncompliance; or
- H. Any other violation or group of violations, which may include a violation of Best Management Practices, which the Pretreatment Coordinator determines will adversely affect the operation or implementation of the local pretreatment program.

Generally, an isolated instance of noncompliance or a Category 0 violation can be met with an informal response or a Notice of Violation (NOV). Any Category 1 to Category 4 violations should be responded to with an enforceable order that requires a return to compliance by a specific deadline.

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

Generally issued by the Pretreatment Coordinator, the Notice of Violation (NOV) is an official communication from the City to the non-compliant user that informs the user that a pretreatment violation has occurred. The NOV generally is used for relatively minor or infrequent violations of pretreatment standards and requirements and should be issued within five (5) working days of the identification of a violation. A NOV may contain assessment of penalties or cost recovery. The NOV generally provides the user with an opportunity to correct the noncompliance on its own initiative rather than according to a schedule of actions determined by the City of Church Hill. The NOV documents the initial attempts of the City of Church Hill to resolve the noncompliance. Authenticated copies of NOV's may serve as evidence in judicial proceedings.

## **SCHEDULE OF COMPLIANCE**

A Schedule of Compliance is a detailed list of the steps to be taken by a non-compliant industry whereby compliance with all pretreatment regulations will be achieved. This schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standards (e.g. hiring an engineer, completing preliminary plans, executing contracts for components, commencing construction, etc.).

## **ADMINISTRATIVE PENALTIES**

An administrative penalty is a monetary penalty assessed by the City of Church Hill for violations of pretreatment standards and requirements. Administrative penalties are to be used as an escalated enforcement action, are punitive in nature, and are not related to a specific cost born by the City. Instead, the amount of the penalty should recapture any economic benefit gained by noncompliance and/or deter future violations. An Administrative Order is to be used to assess an administrative penalty.

## **ADMINISTRATIVE ORDERS**

Administrative Orders are to be issued by the City of Church Hill. Administrative Orders are enforcement documents that direct users to undertake and/or cease specified activities. Administrative Orders are to be used as a formal response to significant non-compliance, and may incorporate compliance schedules, administrative penalties, and assessments for costs incurred during investigation and/or enforcement, attorney's fees, assessments for damages and termination of service. The City of Church Hill has adopted four (4) general types of Administrative Orders: Compliance Orders, Show Cause Orders, Cease and Desist Orders, and Consent Orders.

### **COMPLIANCE ORDER**

A Compliance Order directs the User to achieve or restore compliance by a specified date and is the primary means of assessing penalties and costs. The Compliance Order will document the noncompliance and state required actions to be accomplished by specific dates and is issued by the Pretreatment Coordinator.

### **SHOW CAUSE ORDER**

An Order to Show Cause directs the User to appear before the City of Church Hill or his designee, explain its noncompliance, and show cause why more severe enforcement action should not be pursued. The hearing is open to the public and may be formal (i.e. conducted according to the rules of evidence, with verbatim transcripts and cross-examination of witnesses) or informal. The results of all hearings, along with any data and testimony (recorded by tape machine or stenographer) submitted as evidence, are available to the public and may serve as evidentiary support for future enforcement actions.

### **CEASE AND DESIST ORDER**

A Cease and Desist Order directs a noncompliant User to cease illegal or unauthorized discharge immediately or to terminate discharge altogether. To preserve the usefulness of this order in emergency situations, penalties should not be assessed in this document. A Cease and Desist order will be used in situations where the discharge is causing interference, pass-through, environmental harm, or otherwise creating an emergency situation. The order may be issued immediately upon discovery of an emergency situation or following a hearing. In an emergency, the order to cease and desist may be given by telephone with a subsequent written order to be served by the City of Church Hill before the close of business on the next working day. If the User fails to comply with the order, the City of Church Hill may take independent action to halt the discharge.

## **ADMINISTRATIVE ORDERS (CONTINUED)**

### **CONSENT ORDER**

The Consent Order is an agreement between the City of Church Hill and the User. The Consent Order normally establishes an agreement with the User responsible for the noncompliance. The order will include specific action to be taken by the User to correct the noncompliance within a time period also specified by the order. A Consent Order shall have the same force and effect as a Compliance Order. A Consent Order is appropriate when the User assumes the responsibility for its noncompliance and is willing (in good faith) to correct the causes.

## **PENALTY ASSESSMENT**

The City of Church Hill has categorized the various types of violations, and assigned a penalty range to each category. Penalty categories are determined by using the Enforcement Response Guide (attached). All penalty assessments will be approved and signed by the Pretreatment Coordinator or his designee. Penalty amounts determined are considered to be an economic deterrent to the noncompliance being addressed. Penalty ranges have been designed to recover any economic benefit gained by the violation through noncompliance.

<b>CATEGORY</b>	<b>0</b>	<b>=</b>	<b>NO PENALTY</b>
<b>CATEGORY</b>	<b>1</b>	<b>=</b>	<b>\$200.00 TO \$500.00</b>
<b>CATEGORY</b>	<b>2</b>	<b>=</b>	<b>\$500.00 TO \$1,000.00</b>
<b>CATEGORY</b>	<b>3</b>	<b>=</b>	<b>\$1,000.00 TO \$10,000.00</b>
<b>CATEGORY</b>	<b>4</b>	<b>=</b>	<b>DIRECT LEGAL ACTION-</b>

**Any penalties and/or costs  
to be assessed at the maximum  
penalty allowable by  
applicable law and included  
as part of the legal action.**

Assessments for damages or destruction of the facilities of the POTW, and any penalties, costs, and attorney's fees incurred by the pretreatment agency as the result of the illegal activity, as well as the expenses involved in enforcement, are not part of this penalty assessment procedure.

## **USING THE ENFORCEMENT RESPONSE GUIDE**

The enforcement response guide is used as follows:

- (1) Locate the type of noncompliance in the first column and identify the most accurate description of the violation in column 2.
- (2) Assess the appropriateness of the recommended response(s) in columns 3 and 4. Any penalty amounts will be determined based on the following:
  - (a) Magnitude of the Noncompliance.
  - (b) Duration and effects of the Noncompliance.
  - (c) Effects on the Receiving Stream and the Publicly Owned Treatment Works (POTW).
  - (d) Compliance History of the User.
  - (e) Good Faith of the User.
- (3) Apply the enforcement response to the industrial user, specifying corrective actions, penalty amounts and/or other actions required of the industrial user. Column 5 identifies responsible personnel.
- (4) Track the industrial user's response and compliance status and follow-up with escalated enforcement action if a response is not received or violation continues.



## **NONCOMPLIANCE RESPONSE PROCEDURES**

- (1) The personnel identified in the enforcement response guide are responsible for determining that a violation has occurred and what type of enforcement response is required.
- (2) The time frames for responses are as follows:
  - (a) All violations will be identified and documented within five (5) days of receiving compliance information.
  - (b) Initial enforcement responses (involving contact with the industrial user and requesting information on corrective or preventative action(s)) will occur within fifteen (15) days of violation detection.
  - (c) Follow up actions for continuing or recurring violations will be taken within sixty (60) days of the initial enforcement response. For all continuing violations, the response will include a compliance schedule.
  - (d) Violations which threaten public health, property or the environment are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.
  - (e) All violations meeting the criteria for significant noncompliance will be addressed with an enforceable order within thirty (30) days of the identification of significant noncompliance.

## DISCHARGE LIMIT VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
Exceedance of Local or Federal Discharge Limit.	TYPE A – exceed one or more daily or average parameter limit(s) by less than a factor of 1.5. (Does not apply to pH).	0	NOV detailing violation and requiring correction within 30 calendar days. If exceedance occurs on IU self-monitoring report, industry must repeat sampling and analysis on parameter within 30 days of becoming aware of the exceedance and submit results to Control Authority.	Pretreatment Coordinator
	TYPE B – exceed one or more daily or average parameter limit(s) by a factor greater than 1.5, but no more than a factor of 3.0. (Does not apply to pH).	1	NOV detailing violation and requiring correction within 30 calendar days. If exceedance occurs on IU self-monitoring report, industry must repair sampling and analysis on parameter within 30 calendar days of becoming aware of the exceedance and submit results to Control Authority. Subject to assessment of penalties by Administrative Order.	Pretreatment Coordinator
	TYPE C – exceed one or more daily or average parameter limit(s) by a factor greater than 3.0, but no more than a factor of 10.0. (Does not apply to pH).	1	NOV detailing violation and requiring correction within 30 calendar days. If exceedance occurs on IU self-monitoring report, industry must repeat sampling and analysis on parameter within 30 calendar days of becoming aware of the exceedance and submit results to Control Authority. Subject to assessment of penalty by Administrative Order.	Pretreatment Coordinator

**DISCHARGE LIMIT VIOLATIONS – (CONTINUED)**

<b>NONCOMPLIANCE</b>	<b>NATURE OF THE VIOLATION</b>	<b>CATEGORY</b>	<b>ENFORCEMENT RESPONSE</b>	<b>AUTHORITY</b>
	Type D – pH which is above upper limit or below lower limit.	1*	NOV detailing violation and requiring correction within 30 calendar days. If exceedance occurs on IU self-monitoring report, industry must repeat sampling and analysis on parameter within 30 days of becoming aware of the exceedance and submit results to Control Authority. Subject to assessment of penalties by Administrative Order. Penalty to be based on severity of violation and/or if recurring violation.	Pretreatment Coordinator
	Type E – exceed one or more daily or average parameter limit(s) by a factor greater than 10.0. (Does not apply to pH).	2	NOV detailing violation and requiring correction within 30 calendar days. If exceedance occurs on IU self-monitoring report, industry must repeat sampling and analysis on parameter within 30 calendar days of becoming aware of the exceedance and submit results to Control Authority. Subject to assessment of penalties by Administrative Order.	Pretreatment Coordinator

**\*Subject to penalty if violation exceeds 15 minutes during 24 hour monitoring period and/or if a recurring violation.**

# MONITORING AND REPORTING VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
1. Reporting Violations.	Report is improperly signed or certified.	0	Return Report.	Pretreatment Coordinator
	Report is improperly signed or certified. (2 <sup>nd</sup> occurrence).	0	NOV requiring correction of report.	Pretreatment Coordinator
	Report is improperly signed or certified after issuance of NOV by POTW. (3 <sup>rd</sup> occurrence).	1	Administrative Order subject to penalties.	Pretreatment Coordinator
	Report late 30 calendar days. (includes BMR, 90-Day compliance reports, permit applications and all other required correspondence). <b>(Significant Noncompliance)</b>	1	NOV requiring report submittal within 15 calendar days of NOV receipt.	Pretreatment Coordinator
	Report late 45 calendar days. <b>(Significant Noncompliance)</b>	1	Informal meeting between the User and City.	Pretreatment Coordinator
	Report late 60 calendar days. <b>(Significant Noncompliance)</b>	2	Administrative Order subject to penalties.	Pretreatment Coordinator
	Report late 90 days. <b>(Significant Noncompliance)</b>	3	Administrative Order subject to penalties.	Pretreatment Coordinator
	Failure to report spill or changed discharge. (no harm to POTW or environment).	0	NOV requiring User to develop and implement a spill prevention plan by a specified deadline.	Pretreatment Coordinator

# MONITORING AND REPORTING VIOLATIONS (CONTINUED)

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
1. Reporting Violations (Continued)	Failure to report spill or changed discharge. (harm to POTW or environment). <b>(Significant Noncompliance)</b>	3	Cease and Desist Order requiring User to discontinue noncompliance or terminate discharge altogether. Subject to issuance of a Compliance Order assessing a penalty per day of violation and recovering costs incurred by the Department.	City of Church Hill/ Pretreatment Coordinator
	Repeated failure to report spills. <b>(Significant Noncompliance)</b>	2	Subject to Compliance Order assessing a penalty per day of violation and Civil litigation.	Pretreatment Coordinator
2. Falsification.	First occurrence. <b>(Significant Noncompliance)</b>	1	Show Cause Order requiring User to appear before the Director to show cause why further enforcement should not be pursued.	Pretreatment Coordinator
	Subsequent occurrences. <b>(Significant Noncompliance)</b>	4	Subject to Civil litigation.	Pretreatment Coordinator
3. Failure to monitor. correctly.	Failure to monitor all pollutants as required by User's permit.	0	Informal meeting with User to review required sampling and reporting.	Pretreatment Coordinator
	Failure to monitor all pollutants as required by User's permit. (Second occurrence).	1	NOV requiring complete sampling and analysis with report due no later than 30 calendar days from receipt of NOV.	Pretreatment Coordinator
	Recurring failure to monitor properly.	2	Show Cause Order requiring User to appear before the Director to show cause why further enforcement action should not be pursued.	Pretreatment Coordinator

# MONITORING AND REPORTING VIOLATIONS (CONTINUED)

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
4. Improper sampling. (incorrect location, sample type, or collection technique).	No evidence of intent.	0	NOV explaining correct procedure and requiring proper sampling for the next self-monitoring report.	Pretreatment Coordinator
	Improper sampling continues. (Second occurrence).	0	Informal meeting with User to re- view proper sampling criteria.	Pretreatment Coordinator
	Improper sampling with evidence of intent (Failure to sample properly after informal meeting is viewed as evidence of intent.) <b>(Significant Noncompliance)</b>	1	Subject to Compliance Order assessing a penalty.	Pretreatment Coordinator

# UNAUTHORIZED DISCHARGES (NO PERMIT)

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
1. Unpermitted Discharge.	User unaware of discharge requirements; no harm to POTW/ environment.	0	NOV with Permit Application form attached. Application to be completed and returned within 30 calendar days. Application deadline to be specified in the NOV.	Pretreatment Coordinator
	User unaware of discharge requirements; harm to POTW/environment. <b>(Significant Noncompliance)</b>	3	Cease and Desist Order requiring User to halt violations immediately or terminate discharge altogether. Issuance of Compliance Order subject to penalties and recovering any costs incurred by the Department.	City of Church Hill/ Pretreatment Coordinator
	User fails to submit permit application within deadline specified in NOV. <b>(Significant Noncompliance)</b>	1	Compliance Order subject to penalties and requiring application submittal within 15 calendar days.	Pretreatment Coordinator

## COMPLIANCE VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
1. Compliance Schedules (as detailed in a Permit or Order).	Missed interim milestone date by less than 30 calendar days; will <u>not</u> affect final compliance deadline.	0	NOV which restates any remaining milestone deadlines.	Pretreatment Coordinator
	Missed interim milestone date by more than 30 calendar days, but less than 90 calendar days; will delay final compliance.  <b>(Significant Noncompliance)</b>	1	Compliance Order detailing revised compliance schedule. Order may assess penalties if delay was avoid- able or may stipulate penalties for delays in final compliance.	Pretreatment Coordinator
	Missed interim milestone date by more than 90 calendar days; will not affect final compliance deadline. <b>(Significant Noncompliance)</b>	1	Compliance Order detailing revised compliance schedule. Penalties may be assessed for each day of delay.	Pretreatment Coordinator
	Missed interim milestone date by More than 90 calendar days; will affect final compliance deadline. <b>(Significant Noncompliance)</b>	2	Compliance Order subject to penalties for each day of delay and stipulating penalties for each day final compliance deadline is not met.	Pretreatment Coordinator
	Missed interim milestone date by more than 120 calendar days. <b>(Significant Noncompliance)</b>		Compliance Order subject to penalties for each day per interim deadline.	Pretreatment Coordinator
2. Missed Final Compliance Deadline.	Failure to comply with an Administrative Order. <b>(Significant Noncompliance)</b>	4	Subject to Civil Litigation.	Pretreatment Coordinator
	Failure to reduce the severity of violations and/or failure to comply with a Cease and Desist Order. <b>(Significant Noncompliance)</b>	4	Subject to Civil Litigation.	Pretreatment Coordinator



## OTHER VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
1. Wastestreams are diluted.	Dilution of regulated wastestreams with non-polluted water.	0	NOV citing regulatory prohibition against dilution and requiring correction within 30 calendar days of receipt of the NOV.	Pretreatment Coordinator
	Recurring violations of the dilution prohibitions (after NOV receipt) <b>(Significant Noncompliance)</b>	2	Compliance Order subject to penalties per day past correction deadline. Compliance Order contains a schedule of compliance for corrective actions.	Pretreatment Coordinator

## VIOLATIONS DETECTED DURING A SITE INSPECTION

NONCOMPLIANCE	NATURE OF THE VIOLATION	CATEGORY	ENFORCEMENT RESPONSE	AUTHORITY
1. Entry Denial.	Entry denied or consent with-drawn. Copies of records denied.	0	Obtain warrant and return to User site.	Pretreatment Coordinator
2. Illegal Discharge. (Violation of the E.P.A. General Prohibited Dis-charge Standards.)	No harm to POTW or environment. No Interference or Pass-Through at the POTW.	0	NOV listing the General Prohibited Discharge Standards as contained in 40 CFR 403.5, (Code of Federal Regulations)	Pretreatment Coordinator
	Discharge causes harm, pass-through and/or interference in POTW. <b>(Significant Noncompliance)</b>	3	Cease and Desist Order requiring the User to halt the discharge immediately. Issuance of a Compliance Order subject to penalties and/or recovering costs deemed appropriate by the Department.	City of Church Hill/ Pretreatment Coordinator
3. Improper sampling.	Sampling at an incorrect location, using improper technique, or wrong sample type. (Unintentional)	0	NOV explaining correct procedures or location.	Pretreatment Coordinator
4. Inadequate record keeping.	Inspector finds files incomplete or missing. (No evidence of Intent)	0	NOV explaining record keeping and documentation requirements.	Pretreatment Coordinator
	Re-occurrence of Inadequate Record Keeping. <b>(Significant Noncompliance)</b>	1	Compliance Order requiring proper maintenance of records. Subject to penalty to be based on severity of violation.	Pretreatment Coordinator
5. Failure to report additional sampling and monitoring.	Inspector finds additional sampling and monitoring data.	0	NOV requiring submittal of all sampling and monitoring data.	Pretreatment Coordinator
	Recurring report violations. (Considered Falsification of Information) <b>(Significant Noncompliance)</b>	3	Compliance Order requiring submittal of all additional sampling and monitoring data. Subject to penalty to be based on the severity of the violation.	Pretreatment Coordinator