

**ENFORCEMENT RESPONSE PLAN FOR THE  
CITY OF DEFIANCE PRETREATMENT PROGRAM**

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## I. INTRODUCTION

To ensure that Publicly Owned Treatment Works (POTWs) develop and implement specific enforcement procedures to remedy violations of local pretreatment programs, on July 24, 1990, the United States Environmental Protection Agency (U.S. EPA) amended the General Pretreatment Regulations to require all POTWs with approved pretreatment programs to develop and implement enforcement response plans. Under newly promulgated 40 CFR 403.8(f)(5), "the plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user (IU) noncompliance. The plan shall, at a minimum:

- (i) Describe how the POTW will investigate instances of noncompliance;
- (ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
- (iii) Identify (by title) the official(s) responsible for each type of response; and
- (iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40CFR 403.8(f)(1) and (f)(2).

The City of Defiance Enforcement Response Plan is based largely upon the U.S. EPA guidance contained in the following documents: the 1986 "Pretreatment Compliance Monitoring and Enforcement Guidance" and the 1989 "Guidance for Developing Control Authority Enforcement Response Plans." The plan describes the processes for obtaining and evaluating information on IU compliance, for identifying noncompliance, for selecting an appropriate enforcement action, and for resolving noncompliance in a timely, fair, and consistent manner. The plan will be periodically reviewed for effectiveness and updated and revised as necessary.

## **II. ENFORCEMENT PRINCIPLES AND PROCEDURES**

### **A. Responsibilities, Procedures, and Timeframes**

Throughout the enforcement process, it is important for all levels of management to be able to assess the effectiveness of the pretreatment program and to identify progress or deficiencies. The enforcement procedures described in this plan give management the information needed to ensure that the program makes timely decisions and is successfully implemented. To provide for internal management control, the enforcement response plan:

1. Identifies the individuals or units responsible for each element of the plan (see Table 1, the discussions throughout the plan, and the Enforcement Response Guide)
2. Describes procedures for collecting and disseminating information including the sampling and inspection of IUs and notifying IUs of violations
3. Ensures tracking of program activities including compliance reviews and enforcement actions
4. Allows for the evaluation of specific activities in terms of their quality, timeliness (see timeframes outlined in the discussions throughout the plan and in the Enforcement Response Guide), results, and accomplishment of program objectives.

**Table 1**

**City of Defiance Pretreatment Program  
Responsible Parties**

<u>Title</u>	<u>Responsibilities</u>
Council of the City of Defiance	Legal and financial responsibility for program.
City of Defiance Law Director	Legal assistance, as required.
City of Defiance Superintendent of the Division of Water Pollution Control ("Superintendent")	Overview of program activities and responsible for initiation of formal enforcement actions with legal assistance as necessary.
City of Defiance Pretreatment Coordinator	Administration of day-to-day program activities.
City of Defiance Pretreatment Pretreatment Staff (Clerks, Sampling Crew, etc.)	Program assistance as directed by Coordinator.

**B. Definitions of Significant Industrial User and Significant Noncompliance**

On July 24, 1990, the U.S.EPA added the definitions of two key terms to the General Pretreatment Regulations. These two terms, "Significant Industrial User" (SIU) and "Significant Noncompliance" (SNC), are defined below. While the substantive requirements of the General Pretreatment Regulations are applicable to all industrial contributors to POTWs, and IUs are liable for all instances of noncompliance, the incorporation of these terms into the regulations assists in setting priorities for monitoring and enforcement and for determining self-monitoring requirements. These definitions are designed to identify those IUs and those violations which are likely to have the most significant impact on treatment plant operations and successful pretreatment program implementation. They provide a mechanism for identifying the most effective use of permitting, monitoring, and enforcement resources and are used in this respect in this enforcement response plan.

**1. Significant Industrial User:**

- All IUs subject to categorical pretreatment standards; and
  
- Any other IU that: discharges an average of 25,000 gallons per day (gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW; or is designated as such by the City of Defiance on the basis that the IU has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.\*

**2. Significant Noncompliance:**

IU violations that meet one or more of the following criteria:

- a. Chronic violations of wastewater discharge limits, defined herein as those in which 66 percent or more of all of the measurements taken during a 6-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter.
  
- b. Technical Review Criteria (TRC) violations, defined herein as those in which 33 percent or more of all of the measurements for each pollutant parameter taken during a 6-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH).

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\*Under 40 CFR 403.3(t)(2), upon a finding that an IU meeting the criteria in this paragraph has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the City of Defiance may determine, in accordance with specified procedures, that such IU is not a significant IU.

- c. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the City of Defiance 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 POTW's exercise of its emergency authority under 40 CFR 403.8(f)(1)(vi)(B) to halt or prevent such a discharge.
- e. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.
- f. Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.
- g. Failure to accurately report noncompliance.
- h. Any other violation or group of violations which the City of Defiance determines will adversely affect the operation or implementation of the local pretreatment program.

### **C. Industrial User Inventory Data**

A complete and accurate compilation of the pertinent data on all City of Defiance IUs is the foundation of a compliance tracking and enforcement system. A current inventory of IUs must be maintained under 40 CFR 403.8(f)(2)(i) and should include the following information where applicable: name, location, identification number, effluent limits, basis for the limits (such as categorical limits or local limits), volume of discharge, discharge permit status, compliance dates and other special requirements, industrial category, and whether or not the IU

is an SIU.

The original City of Defiance IU inventory for the Defiance POTW was developed using the following principle sources: City of Defiance water accounts; Defiance Area Chamber of Commerce, Manufacturers Directory; Dun and Bradstreet - EPA Qualifying SIC Code List; Defiance and Vicinity 1982 Telephone Directory; and Defiance Division of Water Pollution Control files. An industrial waste survey was then mailed to the identified industrial users.

The City of Defiance Pretreatment Coordinator and his assistants are responsible for maintaining an accurate, up-to-date IU inventory. This task is accomplished in several ways. For instance, all IUs are required to promptly notify the POTW in advance of any substantial changes in the volume or character of pollutants in their discharge. In addition, all SIUs discharging to the City of Defiance POTW must submit periodic compliance reports (at least once every 6 months) as well as an IU discharge permit renewal application at least every 5 years. As permits expire and are renewed, updated information will be obtained on the reapplication. Furthermore, IU discharge permits are not transferable to a new owner and/or operator without prior approval of the City. Thus, updated information will be obtained from the new owner and/or operator.

Inspections and sampling of targeted industries are also conducted to keep inventory information current. Information obtained from these inspections is used to update the IU inventory. All new industries are required to fill out disclosure/discharge permit applications to determine their potential impact on the City of Defiance POTW and whether or not they will require an individual discharge permit.

Under 40 CFR 403.8(f)(6), a list of SIUs is to be submitted to the Ohio Environmental Protection Agency (Ohio EPA), and any subsequent modifications thereto are to be submitted to the Ohio EPA as nonsubstantial program modifications. The annual program effectiveness report submitted to the Ohio EPA also includes an updated list of SIUs.

#### **D. Sampling and Inspection of Industrial Users**

The City of Defiance pretreatment program includes field investigations which are used to verify the compliance status determined from SIU self-monitoring activities, to collect samples, to initiate emergency or remedial action, and to gather additional information. The field investigations may be routine compliance monitoring or special monitoring in response to

violations, technical problems, or to support permit modifications. In general, all SIUs are inspected and sampled by the City at least annually. A detailed inspection form has been

developed to ensure that the results of each visit are documented. IUs are advised of any deficiencies found during an inspection. Where special on-site investigations require warrants, the warrants will be obtained with advice from legal counsel. The City of Defiance Pretreatment Coordinator is responsible for the coordination of all sampling and inspections and for ensuring that they are performed in accordance with established procedures. It is critical that proper procedures be followed during sampling and inspections, including quality assurance/ quality control and chain-of-custody procedures, so that all information collected may be used as evidence in enforcement proceedings, if necessary.

#### **E. Compliance Screening**

The compliance screening process involves the review of all available information to sort out noncomplying discharges for appropriate enforcement response. The initial review includes an assessment, as appropriate, of compliance with schedules, reporting requirements (including "slug" discharge notices), and applicable pretreatment standards. The City of Defiance Pretreatment Coordinator and his assistants are responsible for this initial review step which is designed primarily to identify apparent violations rather than to determine the appropriate enforcement response.

The screening process is to be completed by the City of Defiance Pretreatment Coordinator and his assistants within 15 calendar days after receiving various IU reports and lab results of City monitoring events. The screening process verifies that the reports are submitted on schedule, that they cover the proper time period, include all information required, and are properly signed and certified. The parameters reported, the number of measurements for each parameter, the method of analysis, the sampling procedures, the discharge concentration (or mass per day), and other information supplied by the IU are compared to the requirements in the IU's permit or order and applicable pretreatment standards. Any discrepancy is a violation that the IU will be required to correct. If a report lacks a required signature, it is incomplete. All alleged violations (including those arising from inspections and private complaints) are identified and recorded in a Violation Summary specific to each IU. This summary serves as a log for the compliance history of the IU and the enforcement responses of the City of Defiance.

## **F. Enforcement Evaluation**

The violations and discrepancies that are identified during the compliance screening process are then reviewed to evaluate the type of enforcement response needed. This review is normally conducted by the City of Defiance Pretreatment Coordinator and his assistants, although consultation with the City of Defiance Superintendent and/or the City of Defiance Law Director may be necessary in some cases. An enforcement response guide has been developed to assist in this evaluation and is included in Section III of this plan. The guide identifies types of responses that are appropriate based on factors such as the nature of the violation (such as effluent--average or maximum limit; reporting--late or deficient), the duration of the violation, the frequency of the violation (isolated or recurring), the potential impact of the violation (such as interference, pass-through, or POTW worker safety), and the compliance history and attitude of the violator. The responses available vary from informal responses such as telephone calls or written notices of violation to formal responses such as administrative orders, judicial actions, and termination of sewer service. The enforcement response selected is related to the seriousness of the violation and the enforcement response is escalated if compliance is not achieved expeditiously after taking initial action. All contact made with the IU related to enforcement is to be documented in the Violations Summary for that IU.

## **G. Enforcement Mechanisms**

A range of enforcement mechanisms is necessary in order to achieve the maximum degree of compliance by IUs. The mechanisms used in the City of Defiance Enforcement Response Guide are discussed briefly below. For further discussion on these mechanisms, including discussions of advantages and disadvantages of each mechanism, the U.S. EPA guidance documents referenced in the introduction to this plan may be referred to. Responsible officials and timeframes for implementation of the enforcement mechanisms are provided in the Enforcement Response Guide in Section III.

### **1. Informal Notices and Meetings**

Informal notice is the least coercive of the enforcement mechanisms and is generally to be conducted by the City of Defiance Pretreatment Coordinator and

his assistants. Informal notice may consist of a telephone call or "reminder" letter to notify an IU of a minor violation (such as a report submitted a few days late)

and to seek an explanation, suggest the exercise of more due care, and/or notify the "violator" that subsequent violations of the same type may be dealt with more severely.

If a telephone call does not produce compliance or an adequate explanation of the reason for noncompliance, a meeting between City of Defiance officials and the IU may be held to emphasize the importance of maintaining compliance and to inform the IU of stronger enforcement mechanisms available. All informal contacts, notices, and meetings with the IU will be documented in the Violations Summary for the IU.

## **2. Notice of Violation**

A notice of violation (NOV) is a written notice to the IU that a pretreatment violation has occurred and that the noncompliance must be explained and corrected. It may also require specific corrective actions and schedules to be adhered to and will make it clear that additional enforcement action will be pursued if compliance is not attained as scheduled and that compliance with the notice does not excuse previous violations. NOV's will be delivered by the City of Defiance Pretreatment Coordinator and his assistants personally or sent by certified or registered mail with return receipt requested. Copies will be maintained in the IU file. The return receipt will serve as proof that the IU received the notice in the event that more formal enforcement proceedings are necessary. In general, the NOV will be sent within 20 calendar days after discovery of the noncompliance and will require a response from the IU within 10 calendar days of receipt of the NOV explaining the violation and putting forth a plan for correction and prevention thereof.

## **3. Administrative Orders and Fines**

Administrative Orders (AOs) are enforcement documents which direct IUs to undertake or to cease specified activities. Four common types of AOs are consent

orders, show cause orders, compliance orders, and cease and desist orders. The City of Defiance may use more than one type of AO when responding to a particular instance of noncompliance.

A consent order combines the force of an AO with the flexibility of a negotiated settlement. The consent order is an agreement between the City of Defiance and the IU normally containing three elements: (1)compliance schedules; (2)stipulated fines or remedial actions; and (3)signatures of City of Defiance and industry representatives.

A show cause order directs the IU to appear before the City of Defiance to explain its noncompliance and to show cause as to why more severe enforcement actions against the user should not go forward. The notice of the meeting will be served personally or by registered or certified mail (return receipt requested) at least 10 days prior to the hearing. The hearing may be formal and open to the public or informal and closed to the public. It may be conducted by the City of Defiance Pretreatment Coordinator, the City of Defiance Superintendent, and/or the City of Defiance Law Director depending on the circumstances and will be carefully documented in the Violations Summary. This action is not a prerequisite for further and immediate enforcement action.

A compliance order directs the user to achieve or restore compliance by a date specified in the order. Its terms need not be discussed with the industry in advance. The compliance order will document the noncompliance and state required actions to be accomplished by specific dates, including interim and final reporting requirements. Once these milestones are set, the City of Defiance Pretreatment Coordinator and his assistants will track the user's performance against them in order that the enforcement response can be escalated, if needed.

A cease and desist order directs a noncompliant user to cease illegal or unauthorized discharges immediately or to terminate its discharge altogether. The order may be issued immediately upon discovery of the problem or following a hearing. In an emergency, the order to cease and desist may be given by telephone with a subsequent written order served on the IU, either in person or by registered mail. The cease and desist order may also be used to suspend or

permanently revoke an IU discharge permit.

An administrative fine is a monetary penalty assessed by the City for violations of pretreatment standards and requirements under the authority vested in Ohio Revised Code 6111.032(B). Administrative fines differ from civil penalties (penalties imposed through court proceedings) since fines are assessed by the City directly and do not require court intervention unless the user contests the action or refuses to pay the fine. The City of Defiance will consider the following factors when assessing administrative fines: the type and severity of the violation; the number of violations cited; the duration of the noncompliance; the impact of the violation on the POTW and the environment; whether the violation threatened human health; any economic benefit or savings that the IU derived from the noncompliance; the compliance history of the user; and "good faith" efforts of the user and other policy considerations normally involved in an enforcement action.

An administrative fine may be assessed through a variety of mechanisms including assessment on the sewer bill, through an NOV, AO, or a show cause hearing. The mechanism chosen for a particular situation will, at a minimum, specify the violations for which the penalty is being assessed, indicate the amount of the penalty, and order the IU to take corrective action to return to compliance.

#### **4. Civil Litigation**

Civil litigation is the formal process of filing lawsuits against IUs to secure court ordered action to correct violations and to secure penalties for violations including the recovery of costs to the POTW of the noncompliance. It includes enforcement measures which require involvement or approval by the courts, such as consent decrees and injunctive relief. Civil litigation requires the full cooperation of the City of Defiance Law Director and may result in court trials of IUs and assessment of penalties.

Consent decrees are agreements between the City of Defiance and the IU reached after a lawsuit has been filed. To be binding, the decree must also be signed by the judge assigned to the case.

Injunctions are court orders which direct parties to do something or refrain from doing something. Injunctions to halt or prevent discharges are usually temporary in nature (they have a fixed expiration date) and they may generally be sought without prior notice to the user. However, injunctions may be sought for permanent relief, if necessary, to protect the POTW. The IU is then given the opportunity to present arguments against the granting of the injunction.

Civil litigation may be necessary to recover costs associated with noncompliance and to impose civil penalties.

## **5. Criminal Prosecution**

Criminal prosecution is the formal process of charging individuals and/or organizations with violations of ordinance provisions that are punishable, upon conviction, by fines and/or imprisonment. The alleged criminal action is defined as willful, negligent, knowing, and/or intentional violations. Criminal prosecution requires the full cooperation of the City of Defiance Law Director and may result in court trials of the IU.

Several factors will be used to determine when violations should be addressed through criminal actions. These factors include the willfulness of the violation, knowledge of the violation, nature and seriousness of the offense, need for deterrence, compliance history of the subject, adequacy of the evidence, and the adequacy of penalties and sanctions available through civil or administrative enforcement actions.

Examples of criminal violations include falsification of data, tampering with results or equipment, and willful or negligent failure to provide notice of slug discharges. Criminal actions require additional evidence and proof beyond a reasonable doubt of knowledge and intent of the violator to conceal a violation or fact. All suspected instances of criminal violation will be evaluated. Criminal action will be used, if needed, to deter future violations by the individual or IU

community at large.

The criminal investigation/prosecution process basically involves the six steps described briefly below:

**Step One - Discovering the Crime.** In this step, the City receives information of criminal activity. This information may result from routine monitoring and inspection activities, observations by citizen groups, incriminating reports from IUs, or interviews with potential defendants and informants.

**Step Two - Gathering Evidence.** In this step, the City must gather evidence of criminal activity which will be admissible in a criminal trial. This evidence must be gathered immediately upon belief that criminal activity has or is about to be committed since such incriminating evidence may be destroyed. It must also be collected in a manner which assures its admissibility in court. For example, the Fourth Amendment protection against unreasonable searches and seizures must be observed.

**Step Three - Initiating Criminal Prosecution.** In this step, the gathered evidence is brought to the prosecutor and a decision is made to seek an indictment of the IU by a grand jury.

**Step Four - Pretrial Options.** In this step, the defendant pleads to the criminal charges in the indictment. If the defendant pleads guilty, a sentencing hearing is scheduled. If a not guilty plea is entered, a trial date is set.

**Step Five - The Criminal Trial.** At the trial, each side may present evidence, call witnesses, question the evidence, and cross-examine the witnesses of the other side. At the conclusion of the trial, a verdict is issued.

**Step Six - Sentencing and Appeal.** If the defendant is convicted, it may receive a fine, a prison sentence, or both. Defendants may appeal convictions on all counts or choose to appeal one or more counts. The prosecution's right of appeal is extremely limited in criminal cases.

**6. Termination of Service**

Termination of service is the revocation of an IU's privilege to discharge industrial wastewater into the City of Defiance's sewer system. The City of Defiance has the authority to halt immediately any actual or threatened discharge presenting or causing an imminent or substantial endangerment to the health or welfare of persons, the POTW, or the environment upon formally or informally notifying the IU of a violation. Termination may be accomplished by physical severance of the industry's connection to the collection system, by issuance of an AO which compels the user to terminate its discharge, or by a court ruling. All legal and operational implications of termination will be carefully considered by the City of Defiance prior to using this enforcement response.

**7. Publication of List of Industrial Users in Significant Noncompliance**

The City of Defiance Pretreatment Coordinator and his assistants are responsible for preparing and publishing, at least annually in the largest daily newspaper circulated in the service area, a description of those IUs found to be in significant noncompliance.

### **III. ENFORCEMENT RESPONSE GUIDE**

Once instances of noncompliance are documented by the City of Defiance Pretreatment Coordinator and his assistants, the following guide will be used to select the appropriate enforcement response. This guide identifies types of anticipated violations, indicates initial and follow-up responses, and designates personnel and timeframes for these responses. As discussed in Section II.F of this plan, when selecting an appropriate response from the list of enforcement options in the guide, a number of factors are considered including the good faith and compliance history of the IU, the previous success of enforcement actions taken against the particular IU, and the nature, duration, frequency, and potential impact of the violation. This guide will be consistently followed by the City of Defiance unless adequate justification exists to vary the response. As stated previously, all supporting documentation regarding the violation and its enforcement actions are maintained in the IU's file.

The enforcement response guide is used as follows:

1. The type of noncompliance is located in Column 1.
2. The description of the violation is located in Column 2.
3. The appropriateness of the recommended enforcement responses in Column 3 is assessed based on the factors described above. For example, first offenders or those demonstrating good faith efforts might merit a more lenient response. Repeat offenders or "negligent" activity might require a more stringent response. The appropriate response is then selected from the range of responses listed after consideration of such factors.
4. The enforcement response is initiated against the IU by the personnel identified in Column 4 in accordance with the timeframes identified in Footnote 1 of the guide.
5. If the IU's response is not received or violation continues, the enforcement action

is escalated.

**A. Unauthorized Discharges (No Permit or Approval)**

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Responses</u> <sup>1,2</sup>	<u>Personnel</u> <sup>3</sup>
1. Unpermitted discharge where discharge permit would be required (925.05(b)(3)(B))	IU unaware of requirement; no harm to POTW/personnel/environment	-Phone call/Informal notice -NOV with discharge permit application form	PC PC
	IU unaware of requirement; potential harm to POTW/personnel/environment	-AO (Show Cause, Consent, Compliance, Cease and Desist) -AO with fine -Civil Action	PC PC S
	Failure to apply continues after notice by POTW	-AO (Show Cause, Consent, Compliance, Cease and Desist) -AO with fine -Civil action -Criminal investigation/prosecution -Terminate service	PC PC S S S
2. Failure to submit renewal application for discharge permit (due date is 90 days prior to Permit expiration (925.06(e)(7))	Renewal application is late from 89 to 30 days before expiration	-Phone call/Informal notice -NOV with discharge permit application	PC PC
	IU has not submitted renewal application within 30 days of expiration date (SNC) (925.02(33)(F))	-AO (Show Cause, Consent, Compliance, Cease and Desist) -AO with fine -Civil action	PC PC S
	Failure to reapply continues after notice by POTW	-AO (Show Cause, Consent, Compliance, Cease and Desist) -AO to submit with fine -Civil Action -Criminal investigation/prosecution -Terminate service	PC PC S S S

Note: When selecting an appropriate response from the above list of enforcement options, a number of factors are considered, including the good faith and compliance history of the IU, the previous success of enforcement actions taken against the particular IU, and the nature, duration, frequency, and potential impact of the violation.

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Responses</u> <sup>1,2</sup>	<u>Personnel</u> <sup>3</sup>
3. Failure to notify prior to commencing discharge to POTW (925.06(a)(1))	IU would not be required to submit full discharge permit application	-Phone call/Informal notice -NOV	PC PC
	IU would be required to submit full discharge permit application	See item A.1. above	

### **B. Discharge Limit Violations**

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Responses</u> <sup>1,2</sup>	<u>Personnel</u> <sup>3</sup>
1. Exceedance of final limits (categorical, 925.05(b)(3), local 925.05(b)(3), or prohibited 925.05(a)(1-17))	Infrequent or isolated nonsignificant violations	-Phone call/Informal notice -NOV	PC PC
	Violation(s) that are SNC	-AO (Show Cause, Consent, Compliance, Cease and Desist) -AO with fine and possibly a requirement to develop a slugload/accidental spill control plan -Civil action -Terminate service	PC PC S S
2. Exceedance of interim limits (categorical or local)	Without known damages	-NOV -AO (Show Cause, Consent, Compliance, Cease and Desist)	PC PC
	Violation(s) that are SNC	-AO (Show Cause, Consent, Compliance, Cease and Desist) -AO with fine -Civil action -Terminate service	PC PC S S

Note: When selecting an appropriate response from the above list of enforcement options, a number of factors are considered, including the good faith and compliance history of the IU, the previous success of enforcement actions taken against the particular IU, and the nature, duration, frequency, and potential impact of the violation.

### C. Sampling, Monitoring, and Reporting Violations

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Responses</u> <sup>1,2</sup>	<u>Personnel</u> <sup>3</sup>
1. Improper sampling (925.09(a)(3)(B))	No evidence of "willful or negligent" action	-Phone call/Informal notice -NOV -AO (Show Cause, Consent, Compliance, Cease and Desist)	PC PC PC
	Evidence of "willful or negligent" action	-AO (Show Cause, Consent, Compliance, Cease and Desist) -AO with fine -Criminal investigation/prosecution -Terminate service	PC PC S S
2. Failure to monitor correctly (including resampling requirements) (925.08(c))	Failure to monitor all pollutants as required by permit or order	-Phone call/Informal notice -NOV	PC PC
	Failure to monitor correctly continues after notice by POTW	-AO (Show Cause, Consent, Compliance, Cease and Desist) -AO with fine -Civil Action	PC PC S
3. Reporting violation	Report is improperly signed or certified (925.08(d))	-Phone call/Informal notice -NOV	PC PC
	Report is improperly signed or certified after notice by POTW	-AO (Show Cause, Consent, Compliance, Cease and Desist)	PC
	Isolated, not significant (such as less than 30 days late)	-Phone call/Informal notice -NOV	PC PC

Note: When selecting an appropriate response from the above list of enforcement options, a number of

factors are considered, including the good faith and compliance history of the IU, the previous success of enforcement actions taken against the particular IU, and the nature, duration, frequency, and potential impact of the violation.

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Responses<sup>1,2</sup></u>	<u>Personnel<sup>3</sup></u>
	Significant (such as 30 or more days late) (925.02(33)(F))	-AO (Show Cause, Consent, Compliance, Cease and Desist) -AO to submit with fine	PC PC
	Reports are always late or no reports at all	-AO with fine -Civil action -Terminate service	PC S S
	Failure to report discharge limit violation, slugload, accidental spill, upset, bypass, or changed discharge (no harm) (925.07)	-NOV	PC
	Failure to report discharge limit violation, slugload, accidental spill, upset, bypass or changed discharge (results in harm)	-AO (Show Cause, Consent, Compliance, Cease and Desist) -AO with fine -Civil action	PC PC S
	Repeated failure to report discharge limit violations, slugloads, accidental spills, upsets, bypasses, or changed discharges	-AO with fine -Civil action -Terminate service	S S S
	Falsification	-AO with fine -Criminal investigation/prosecution -Terminate Service	PC S S

Note: When selecting an appropriate response from the above list of enforcement options, a number of factors are considered, including the good faith and compliance history of the IU, the previous success of enforcement actions taken against the particular IU, and the nature, duration, frequency, and potential impact of the violation.

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Responses<sup>1,2</sup></u>	<u>Personnel<sup>3</sup></u>
4. Compliance Schedules (in permit or order) (925.06(C))	Missed * milestone by less than 90 days, and will not affect final milestone	-Informal notice/phone call	PC
		-NOV	PC
*These milestone dates referenced here deal with SNC as referenced in 925.02(33) (E). The dates are: A) Starting construction; B) Completing construction; and/or C) Final compliance	Missed * milestone by more than 90 days, and will affect final milestone (good cause for delay)	-AO (revise compliance schedule) (Show cause, Consent, Compliance, Cease and Desist)	PC
		- AO with fine	PC
	Missed * milestone by more than 90 days, and will affect final milestone (no good cause for delay)	-AO (Show Cause, Consent, Compliance, Cease and Desist)	PC
		-AO with fine	PC
		-Civil action	S
Recurring violation or violation of schedule in AO	-Terminate service	S	
	-AO (Show Cause, Consent, Compliance, Cease and Desist)	PC	
	-AO with fine	PC	
	-Civil action	S	
		-Criminal investigation	S
		-Terminate service	S

**D. Other Permit, Order, or Ordinance Violations**

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Responses<sup>1,2</sup></u>	<u>Personnel<sup>3</sup></u>
1. Wastestreams are diluted in lieu of treatment (925.02(24) & 925.05(c))	Initial violation	-Informal notice/phone call	PC
		-NOV	PC
	Dilution of waste-streams in lieu of treatment continues after order by POTW	-AO (Show Cause, Consent, Compliance, Cease and Desist)	PC
		-AO with fine	S
		-Civil action	PC
		-Terminate service	S
			S

Note: When selecting an appropriate response from the above list of enforcement options, a number of factors are considered, including the good faith and compliance history of the IU, the previous success of enforcement actions taken against the particular IU, and the nature, duration, frequency, and potential impact of the violation.

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Responses<sup>1,2</sup></u>	<u>Personnel<sup>3</sup></u>
2. Failure to mitigate noncompliance or halt production (925.08(f))	Does not result in harm	-NOV	PC
	Does result in harm	-AO (Show Cause, Consent, Compliance, Cease and Desist)	PC
		-AO with fine	PC
		-Civil action	S
		-Terminate service	S
3. Failure to properly operate and maintain monitoring equipment and/or pretreatment control facilities or systems (925.08(b) & 925.08(j))	See D.2. above		

**E. Violations Detected During Site Visits**

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Responses<sup>1,2</sup></u>	<u>Personnel<sup>3</sup></u>
1. Entry denial (925.15(a))	Entry denied or consent withdrawn; copies of records denied	-Obtain warrant and return to IU	PC
2. Illegal discharge (925.05)	No harm to POTW/ personnel/environment	-NOV	PC
		-AO (Show Cause, Consent, Compliance, Cease and Desist)	PC
	Harm to POTW/personnel/ environment and/or evidence of "willful or negligent" action	-AO with fine	PC
		-Civil action	S
		-Criminal investigation/ prosecution	S
		-Terminate service	S

Note: When selecting an appropriate response from the above list of enforcement options, a number of factors are considered, including the good faith and compliance history of the IU, the previous success of enforcement actions taken against the particular IU, and the nature, duration, frequency, and potential impact of the violation.

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Responses</u> <sup>1,2</sup>	<u>Personnel</u> <sup>3</sup>
3. Improper sampling (925.09(a)(3)(B))	Unintentional sampling at incorrect location/ using incorrect sample type/using incorrect sample technique	-Phone call/Informal notice -NOV	PC PC
4. Inadequate Record-keeping (925.09(d))	Inspector finds files incomplete or missing and no evidence of "willful or negligent" action	-NOV	PC
	Inadequate recordkeeping continues after notice by POTW	-AO (Show Cause, Consent, Compliance, Cease, and Desist)	PC
		-AO with fine	PC
	Incomplete or missing files and evidence of "willful or negligent" action	-AO (Show Cause, Consent, Compliance, Cease, and Desist) -AO with fine -Civil action -Criminal investigation/prosecution -Terminate service	PC S S S
5. Failure to report additional monitoring (925.08(c)(B))	Inspection finds additional files/data	-Phone call/informal notice -NOV	PC PC
	Failure to report additional data continues after notice by POTW	-AO (Show Cause, Consent, Compliance, Cease and Desist) -AO with fine	PC PC

Note: When selecting an appropriate response from the above list of enforcement options, a number of factors are considered, including the good faith and compliance history of the IU, the previous success of enforcement actions taken against the particular IU, and the nature, duration, frequency, and potential impact of the violation.

<sup>1</sup>The timeframes for the enforcement responses are as follows:

- a. All violations will be identified and documented within 15 calendar days of receiving compliance information.
  
- b. Initial enforcement responses (involving contact with the industrial user and requesting information on corrective or protective action[s]) will occur within 20 calendar days of violation detection.
  
- c. NOVs will require a response from the IU within 10 calendar days of receipt explaining the violation and putting forth a plan for correction and prevention thereof.
  
- d. Follow-up actions for continuing or recurring violations will be taken within 60 calendar days of the initial enforcement response. For all continuing violations, the response will include a compliance schedule.
  
- e. Violations which threaten health, property, or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.
  
- F. All violations meeting the criteria for significant noncompliance (SNC) will be addressed with an enforceable order within 30 calendar days of the identification of SNC.

<u><sup>2</sup>Enforcement Response</u>	<u>Section of Sewer Use Ordinance Providing Authority</u>
NOV	925.13(c)
AOs and Fines:	
Show Cause Hearings	925.13(d)
Consent Orders	925.13(e)
Compliance Orders	925.13(f)
Cease and Desist Orders	925.13(g)
Administrative Fines	925.13(h)
Judicial Proceedings:	925.13(i)

Injunctive Relief	925.13(i)(1)
Civil Penalties	925.13(i)(2)
Criminal Prosecution	925.13(i)(3)

Terminate Service 925.13(a) and (b)

<sup>3</sup>PC = City of Defiance Pretreatment Coordinator

S = City of Defiance Superintendent of the Division of Water Pollution Control

NOTE: These are the personnel who will initiate the action; other personnel may be involved as appropriate (e.g., Superintendent, Law Director, City Council).