

CITY OF BETHLEHEM
MUNICIPAL INDUSTRIAL PRETREATMENT PROGRAM
ENFORCEMENT RESPONSE PLAN
(REVISED February 2008)

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SECTION 1.0 - GENERAL PROVISIONS

1.1 Definitions

All abbreviations, acronyms, words, terms and phrases when used in this document shall have the meaning ascribed to them in the City of Bethlehem's (City's) Codified Ordinances, Article 923 - Disposal and Discharge of Industrial Waste Regulations, Section 923.01, unless the context clearly indicates a different meaning. In addition, certain terms and acronyms, which are specific to an Enforcement Response Plan (ERP), are defined throughout this document.

1.2 Purpose

The City, as part of its mandated Municipal Industrial Pretreatment Program (MIPP) for its POTW (Publicly Owned Treatment Works), has the responsibility to enforce all MIPP Rules and Regulations set by the United States Environmental Protection Agency's (USEPA) General Pretreatment Regulations described in Title 40 of the Code of Federal Regulations (40 CFR) Part 403 Article 923 of the City's Codified Ordinances (Disposal and Discharge of Industrial Waste Regulations), and the City's Industrial Waste Discharge Permits (IWDP). The purpose of this ERP is to provide guidance to ensure that the City's responses to instances of Industrial User noncompliance are implemented in accordance with Federal and State requirements and, in a consistent, systematic, and timely fashion. In addition, provisions have been included in this ERP to implement enforcement actions upon Users (who are not Industrial Users) who do not comply with Article 923 - Disposal and Discharge of Industrial Waste Regulations.

1.3 Federal Requirements

40 CFR Part 403.8(f)(5) requires the City to develop an ERP which contains detailed procedures indicating how the POTW will investigate and respond to instances of Industrial User noncompliance. The ERP shall, at a minimum:

- (1) Describe how the POTW will investigate instances of noncompliance;
- (2) 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;
- (3) Identify (by title) the official(s) responsible for each type of response;
- (4) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards.

The subsequent sections of this ERP address each of these items.

1.4 State Requirements

Assessment of civil penalties against Industrial Users as part of the City's MIPP are subject to the requirements of the State of Pennsylvania's Publicly Owned Treatment Works Penalty Law (PA Act 9 of 1992). This Act requires the City to adopt a formal written civil penalty assessment policy and make it publicly available. Each Industrial User participating in the MIPP must be given written notice of the policy. Development of the policy must consider damage to air, water, land or other natural resources of the Commonwealth and their uses; cost of restoration and abatement; savings resulted to the person in consequence of violations; history of past violations; deterrence of future violations; and other relevant factors. This ERP also serves as the City's formal written civil penalty assessment policy and will be available to the public upon written request and will be provided to all Industrial Users in the City's MIPP in accordance with the requirements of PA Act 9 of 1992.

SECTION 2.0 - IDENTIFYING NONCOMPLIANCE

2.1 General

The first component of the ERP is to identify procedures for determining whether or not Industrial Users are complying with pretreatment standards and requirements which includes all conditions in the Industrial User's IWDP.

2.2 Compliance Screening

Compliance screening involves reviewing all available information to identify violations. This review assesses compliance with schedules, reporting requirements, discharge limits and all other pretreatment standards and requirements. The compliance screening process verifies that reports are submitted on schedule, that they cover the proper time period, include all information required, and are properly signed. Also screened are the parameters reported, the number of measurements for each parameter, sampling procedures, the discharge concentration and/or mass loading and completeness of other information contained in the monitoring reports.

Specifically, the MIPP Coordinator will identify instances of Industrial User noncompliance through the following methods:

- Review of Baseline Monitoring Reports (BMR), 90-Day Compliance Reports, Self-Monitoring Reports, Spill or Slug Discharges Reports, Responses to Notices of Violation, Schedule of Compliance Reports, and any other reporting obligation;
- Independent sampling of all Industrial Users at least twice per year. More sampling may be completed to insure compliance;
- Scheduled facilities inspections of all permitted Industrial Users. Unscheduled inspections may performed to insure compliance; and
- Formalized screening process for identifying new Industrial Users through water consumption records, industrial directories, tax records and any other available information.

2.3 Compliance Evaluation

When a violation of pretreatment standards or requirements is identified during compliance screening, it will be evaluated to determine whether it is a nonsignificant, recurring or significant violation.

Nonsignificant violations are generally isolated violations of pretreatment standards or requirements that do not cause interference or pass through at the POTW, endanger the health of sewage treatment personnel or the public, or damage the environment.

Recurring violations are multiple or continuous violations of pretreatment standards or requirements within a specific time frame which may result in Significant Noncompliance (SNC) as defined in Section 3.3 but do not cause interference or pass through at the POTW, endanger the health of sewage treatment personnel or the public, or damage the environment. They indicate that a problem is occurring repeatedly and a solution must be found to correct the problem. A corrective plan of action is generally required to resolve the problem. A violation will be considered recurring if it is the third violation of the same parameter within a 12 consecutive month time period.

Significant violations can be isolated or continuous violations of pretreatment standards or requirements that cause interference or pass through at the POTW, endanger the health of sewage treatment personnel or the public, damage the POTW or the environment or potentially damage the environment (if impacts can not be immediately determined).

In addition to identifying the type of violation, the compliance history of the violator/violation will also be determined.

SECTION 3.0 - ENFORCEMENT GUIDELINES

3.1 General

Violations and discrepancies identified during compliance screening and compliance evaluation will be reviewed to determine the type of enforcement response needed.

3.2 Enforcement Responses

In accordance with Article 923 of the City's Codified Ordinances, Disposal and Discharge of Industrial Waste Regulations, the enforcement responses listed below are available to the City, the State or Federal Government, to remedy instances of Industrial User noncompliance. The remedies provided for in this document are not exclusive. The City may take any, all, or any combination of these actions against a non-compliant Industrial User.

1. Noncompliance Letter

A Noncompliance Letter is an official correspondence from the City to an Industrial User documenting that a pretreatment violation has occurred. This is the first response to a nonsignificant violation. The Noncompliance Letter lists the violation and identifies the regulation violated. It is generally issued by the City within thirty (30) days of becoming aware of the violation and also requires, within thirty (30) days of receipt, submission of a response stating the cause of the violation as well as corrective actions which will be implemented to eliminate and prevent recurrence of the violation. In addition, it indicates that continued noncompliance will result in escalated enforcement actions.

2. Notice of Violation

A Notice of Violation (NOV) is an official enforcement document from the City to an Industrial User documenting that a recurring or significant pretreatment violation has occurred. The NOV is used to transmit an Administrative Fine, Civil Penalty, Administrative Order, Compliance Schedule and/or other Enforcement Remedies and requires specific responses within allowed time frames. Typically, when the City issues a NOV it contains a fine and Compliance Order.

3. Administrative Order

An Administrative Order is an official enforcement document from the City to an Industrial User in response to a recurring or significant pretreatment violation. The Administrative Order may be a Consent Order, Compliance Order or a Cease and Desist Order and will require specific responses within allowed time frames. The most common order issued by the City is a Compliance Order (which is also referred to as an Order for Compliance) and sometimes contains a Compliance Schedule.

4. Compliance Schedule

A Compliance Schedule is an official enforcement document issued by the City to an Industrial User requiring implementation of a list of planned activities in accordance with a schedule to assist an Industrial User in achieving compliance with all pretreatment requirements or standards or terminate its discharge. A Compliance Schedule is issued in conjunction with some type of Administrative Order. If the City issues a Compliance Schedule, it is included as part of a Compliance Order. It generally requires establishment of compliance dates for investigative studies, concept design/feasibility studies, detailed pretreatment facility design, construction, start-up and operation and a final date for compliance with effluent limitations. It requires, no later than fourteen (14) days following each compliance date, a progress report, which certifies compliance or noncompliance with each specific schedule requirement.

5. Administrative Fines

An administrative fine is a monetary penalty assessed by the City for violations of pretreatment standards or requirements and are issued along with a NOV (it is also referred to as an administrative penalty). Administrative fines differ from civil penalties (penalties imposed through court proceedings) since they do not require court intervention unless the Industrial User contests the action or refuses to pay the fine. Administrative fines are to recapture the full or partial economic benefit of noncompliance, and to deter future violations. Administrative fines may also be used to recover costs born by the City associated with a noncompliance incident (equitable relief) and may, based upon the sole discretion of the City, be waived if all or a portion of the fine amount is applied toward a feasibility study, pretreatment facility design and/or pretreatment facility construction which will assist the Industrial User in achieving compliance. Administrative fine amounts will be assessed following the guidelines provided in Section 3.3 of this document and the attached Table 1 - Enforcement Response Guidelines and will not exceed the maximum limitation of \$1,000 per violation plus costs as set by the State of Pennsylvania's Third Class City Code. In the case of weekly, monthly or other long-term average discharge limit violations, administrative fines shall be assessed for each day during the period of violation.

Industrial Users desiring to dispute such fines shall file a written appeal request for the Industrial Pretreatment Coordinator to reconsider the fine along with the full payment of the fine amount within thirty (30) days of being notified of the fine. Failure to appeal within this period shall result in a waiver of all legal rights to contest the violation or the amount of the fine. Where a request has merit, the City may convene the Hearing Board to deliberate on the matter. In the event the appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the Industrial User. The Industrial Pretreatment Coordinator may add the costs of preparing administrative enforcement actions, such as notices and orders to the fine when the fine and or a portion of same, is substantiated.

A lien against the Industrial User's property will be sought along with other enforcement collection action for unpaid fines, said actions may include seeking a judgment for up to 90 days imprisonment.

6. Show Cause Hearing

A Show Cause Hearing is an official meeting between the City and an Industrial User to resolve conditions of continued violations. The City may order any Industrial User who causes or allows an unauthorized discharge to enter the POTW to show cause before the Hearing Board why the proposed enforcement action should not be taken. A notice shall be served on the Industrial User specifying the time and place of a hearing to be held by the Hearing Board regarding the violation, the reasons why the action is to be taken, the proposed enforcement action, and directing the Industrial User to show cause before the Hearing Board why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation. Failure to respond to a show cause hearing will result in judicial action being taken.

7. Injunctive Relief

Judicial proceedings for injunctive relief may be initiated in the Court of Common Pleas of Northampton County, Pennsylvania when the Industrial User does not execute steps necessary to achieve or maintain compliance, when the violation is of such seriousness to warrant court action to deter future violations or when the danger does not permit lengthy negotiation of a settlement. If necessary, the court may be requested to issue a temporary restraining order or preliminary injunction restraining the Industrial User from violating pretreatment standards or requirements if the Industrial User's discharge presents an imminent danger or substantial harm to the POTW, the public or the environment or it causes the POTW to violate any condition of its NPDES permit or if the Industrial User has shown a lack of ability or intention to comply with pretreatment standards or requirements.

8. Civil Penalties

Judicial proceedings may be initiated in the Court of Common Pleas of Northampton County, Pennsylvania to assess a civil penalty (also referred to as a judicial penalty) upon an Industrial User for a violation of pretreatment standards or requirements in accordance with PA Act 9 of 1992. In determining the amount of the civil penalty, the City shall take into account all relevant circumstances, including, but not limited to the nature of violation, damage to air, water, land or other natural resources of the Commonwealth and their uses or damage to the POTW arising from the Industrial User's discharge, cost of restoration and abatement, savings resulted to the person in consequence of violations, history of past violations and deterrence of future violations.

The maximum civil penalty amount is \$25,000 per day per violation. Each day on which a violation occurred shall be deemed a separate and distinct offense. In the case of a weekly, monthly or other long-term average discharge limits, penalties shall be considered for each day during the period of the violation. Specific civil penalties will be calculated in accordance with the guidelines provided in Section 3.3 of this document and the attached Table 1 - Enforcement Response Guidelines and may include reasonable costs for any loss, damage, cleaning, repair, or replacement work caused by the violation; as well as administrative, legal, engineering, court costs, court reporters' fees and other expenses of litigation by appropriate suit at law against the Industrial User for the violation (equitable relief).

In the event any Industrial User violation results in the imposition of a fine or other penalty on the City by EPA, the State, or any other agency, such violation shall be punishable by a civil penalty at least equal to the dollar amount imposed upon the City plus its administrative, legal, engineering costs, and expenses, but not more than \$25,000, per day, per violation.

Industrial Users charged with a civil penalty shall have thirty (30) days to pay the penalty in full, or, if the Industrial User wishes to contest either the amount of the penalty or the fact of the violation, the Industrial User must file an appeal of the action (along with full payment of the penalty) pursuant to the applicable municipal law. Failure to appeal within this period shall result in a waiver of all legal rights to contest the violation or the amount of the fine. The notice of an assessment of civil penalty will include a description of the applicable appeals process to be followed including the name, address and telephone number of the party responsible for accepting such appeal. In the event the appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the Industrial User.

Civil penalties collected pursuant to PA Act 9 of 1992 will be placed in a restricted account and shall only be used by the City for the repair of damage and any additional maintenance needed or any additional costs imposed as a result of the violation for which the penalty was imposed, to pay any penalties imposed on the City by the Federal or State Government associated with the violation, for costs incurred by the City to investigate and take the enforcement action that resulted in a penalty being imposed, for the monitoring of discharges as part of the MIPP and for capital improvements to the POTW, which may be required by the MIPP. Any remaining funds may be used for general capital improvements to the POTW.

9. Criminal Prosecution

Section 309 (c) of the Clean Water Act authorizes the Federal Government to seek criminal punishment for any person who willfully or negligently violates pretreatment standards or requirements, knowingly makes false statements regarding any report, application, record, or any other document required by General Pretreatment Regulations. There may also be criminal prosecution under applicable provisions of the Pennsylvania Criminal Code. The

determination to pursue violations through criminal action will take into consideration the willfulness of the violation, knowledge of the violation, nature and seriousness of the offense, need for deterrence, compliance history of the Industrial User, adequacy of the evidence and adequacy of penalties and sanctions available through civil and administrative enforcement action.

10. Suspension and Termination of Services

The City may suspend the wastewater treatment service and/or an IWDP without prior notice when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent and substantial endangerment to the health or welfare of persons, to the environment, causes interference to the POTW or causes the City to violate any condition of its NPDES Permit. In the event of a failure of the Industrial User to comply voluntarily with the suspension order, the City shall take steps as deemed necessary including immediate termination of water service and/or severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The service and/or IWDP shall be restored within five working days after, in the opinion of the City, the actual or threatened cause for the suspension has been removed.

In the event that the City decides it is necessary to suspend its wastewater treatment service for reasons other than as described above, the Industrial User shall be given a fifteen (15) day notice of such suspension. Any Industrial User notified of a suspension of the wastewater treatment service and/or IWDP shall stop or eliminate the contribution as required in the suspension notice. Between the time of the notice of suspension of services and the date services are terminated, the Industrial User shall have the right to have a show cause hearing regarding the cause of the suspension. The City shall reinstate the IWDP and/or wastewater treatment service within five working days upon proof of the elimination of the non-complying discharge or in compliance with instruction of the Hearing Board. A detailed written statement submitted by the Industrial User describing the cause of the harmful contributions and the measures taken to prevent any future occurrence shall be submitted to the City within 5 days of the date of occurrence. In the event of a failure of the Industrial User to comply with the suspension notice, the City may take such steps as deemed necessary to terminate the service.

The City may revoke an IWDP for good cause, including, but not limited to, the following reasons:

- ⇒ Failure to notify the Industrial Pretreatment Coordinator of significant changes to the wastewater prior to the changed discharge;
- ⇒ Misrepresentation or failure to fully disclose all relevant facts in the IWDP application;
- ⇒ Falsifying self-monitoring reports;

- ⇒ Tampering with monitoring equipment;
- ⇒ Refusing to allow the Industrial Pretreatment Coordinator timely access to the facility premises and records;
- ⇒ Failure to meet effluent limitations;
- ⇒ Failure to pay fines;
- ⇒ Failure to pay sewer charges or purchase sufficient sewer capacity;
- ⇒ Failure to meet compliance schedules;
- ⇒ Failure to complete a wastewater survey or the wastewater Discharge Permit application;
- ⇒ Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
- ⇒ Violation of any pretreatment standard or requirement, or any terms of the IWDP Permit or Article 923.

All documents described in this section will be issued in a format, which is similar to those described in EPA's Guidance for Developing Control Authority Enforcement Response Plans (September 1989). All enforcement responses by the City shall be documented. All enforcement correspondence will be sent by Certified Mail, return receipt requested.

3.3 Enforcement Response Selection for Industrial Users

Any violation of pretreatment standards or requirements (i.e., limits, sampling, analysis, reporting, meeting compliance schedules, regulatory deadlines) is an instance of noncompliance for which the Industrial User is liable for enforcement. The enforcement response shall be appropriate to the type and severity of the violation and enforcement responses shall be applied uniformly.

In general, enforcement is considered for each violation or group of violations. The decision to pursue formal action is developed on the basis of nature of violation, pattern of repetition, Industrial User's response to a Noncompliance Letter, and its efforts to achieve compliance. The City may require a Show Cause Hearing associated with a Civil Penalty if the violations resulted in harm to personnel, facilities, or violated any Federal, State, or local Regulations. The first step of formal enforcement is typically a Noncompliance Letter. The enforcement may escalate to a NOV which includes a fine and an Order for Compliance detailing milestones required to achieve compliance and may also include a Compliance

Schedule. The NOV may also include some other type of Administrative Order other than or in addition to the Compliance Order. The Administrative Order shall also include all records of violation and duration of its occurrence. All records are reviewed to assure that proper procedures were used to collect information and that all contacts with the Industrial User were recorded. If the Industrial User has received conflicting information regarding its compliance status, that status is clarified in writing. A special on site review or inspection may be conducted to verify available data and review analytical test results to confirm the accuracy of the information contained in periodic reports.

The most common and frequent type of noncompliance is a violation of IWDP limits. Thus, the City's enforcement response to this type of violation has been specifically described below.

- (1) If the Industrial User is in violation of its IWDP limits, the Industrial User shall notify the Industrial Pretreatment Coordinator within twenty-four (24) hours of becoming aware of the violation. The User shall repeat the sampling within ninety-six (96) hours and copies of laboratory analysis results shall be forwarded to the User and the Industrial Pretreatment Coordinator simultaneously but not more than thirty (30) days after becoming aware of the violation.
- (2) Where the Industrial User believes the first reported result(s) indicating a violation maybe in error, the Industrial User may submit additional data to support its position with the repeat sampling results. If supported, no further action shall be required.
- (3) Where the repeat sampling results show a return to compliance and no further violation is identified during the 30-day period, no further action on the initial violation may be necessary.
- (4) Where the Industrial User believes its facility continues in violation of its IWDP limits after repeat sampling, the Industrial User shall again repeat the sampling within ninety-six (96) hours and copies of laboratory analysis results shall be forwarded to the User and the Industrial Pretreatment Coordinator simultaneously but not more than thirty (30) days after becoming aware of the violation. The Industrial User shall also contact the Industrial Pretreatment Coordinator to determine if a schedule for additional monitoring is required or if the City will initiate additional monitoring at the facility.
- (5) The Industrial User will be issued a Noncompliance Letter to document the IWDP violations.
- (6) If the IWDP violation or violations are recurring or significant, were deliberate, or the explanation of the violation or the plan of corrective action is inadequate, enforcement action may be escalated. Enforcement includes Consent Orders, Show Cause Hearings, Compliance Orders, Cease and Desist Orders and/or

Administrative Fine(s) which may escalate to Civil Penalties. There may also be emergency suspensions of sewer service, termination of discharges, as well as Judicial Remedies by way of Injunctive Relief, Civil Penalties and/or criminal prosecution.

The attached Table 1 - Enforcement Response Guidelines provides the framework, which the City will follow to:

- (1) Describe how it will investigate all instances of noncompliance(in addition to those described above);
- (2) Describe the types of escalating enforcement responses the City will take in response to all anticipated types of Industrial User violations and the time periods within which responses will take place;
- (3) Identify (by title) the official(s) responsible for each type of response. Note that in the event that a staff member is not available to perform their specified task, it will be completed by the next higher official in the City's chain-of-command for the Department of Water and Sewer Resources.

These guidelines cover enforcement responses that will be used based upon the nature and severity of the violation and the overall degree of noncompliance. The guidelines provide for uniform application of enforcement responses to ensure fairness, equity, consistency and the integrity of the City's MIPP.

Terms and abbreviations used in attached Table 1 - Enforcement Response Guidelines are defined below:

Enforcement Response Actions

Abbreviation	Action
AO	Administrative Order
CO	Compliance Order
NA	Not Applicable
NC	Noncompliance Letter
NOV	Notice of Violation
TRC	Technical Review Criteria Violation
SNC	Significant Noncompliance Violation

Enforcement Response Personnel

<u>Abbreviation</u>	<u>Personnel</u>
D	Director of Water and Sewer Resources
PC	Pretreatment Coordinator
Sol	City Solicitor
WQ	Water Quality Manager

The City shall use the following criteria to select the appropriate enforcement response from the attached Table 1 - Enforcement Response Guidelines:

1. Magnitude of the Violation

Generally, an isolated instance of noncompliance or nonsignificant violation can be met with an informal response (e.g., telephone call) or a Noncompliance Letter. However, even an isolated violation could threaten public health and the environment, damage public and private property, or threaten the integrity of the City's MIPP (e.g., falsifying a self-monitoring report). The City shall respond to any significant or recurring violations with a NOV which contains an administrative fine and an Administrative Order that requires a return to compliance by a specific date (Order for Compliance possibly with a Compliance Schedule). Sometimes recurring violations result in SNC. An Industrial User or User is in significant noncompliance if its violation meets one or more of the specific criteria set forth in the General Pretreatment Regulations, 40CFR403.8(f)(2)(viii). These criteria are described below:

- Chronic violations of wastewater discharge limits, defined as those in which 66 percent or more of all the measurements taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(1);
- Technical Review Criteria (TRC) violations, defined as those violations in which 33 percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(1) times the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH).
- Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the City determines has caused, alone or in combination with other discharges, an interference, pass-through, or upset at the treatment plant (including endangering the health of City personnel or the general public);
- Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the City's exercise of its emergency authority under 40CFR403.8(f)(1)(vi)(B) to halt or prevent such a discharge;

- Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule date, or a compliance schedule milestone contained in a local control mechanism or enforcement action for starting construction, completing construction, or attaining final compliance;
- Failure to provide within forty-five (45) 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;
- Failure to accurately report incidents of noncompliance; or
- Any other violations, which may include violations of Best Management Practices [or group of violations] that the City determines will adversely affect the overall implementation of its industrial pretreatment program.

For any Industrial User in SNC, the City shall: (1) report information to the Approval Authority as part of the City's Pretreatment Program Annual Report; (2) list the Industrial User in a newspaper of general circulation that provides meaningful Public Notice within the jurisdictions served by the POTW that the user is in SNC as defined in 40CFR403.8(f)(2)(viii) of the General Pretreatment Regulations (described further in Section 4.0); and (3) address SNC through appropriate enforcement actions.

2. Duration of the Noncompliance

Noncompliances (regardless of severity) which continue over prolonged periods of time (recurring) shall subject the Industrial User to escalated enforcement actions. For recurring violations, the City shall issue a NOV which contains an administrative fine along with a Compliance Order (possibly with a Compliance Schedule) obtaining a court order (injunctive relief) to halt further violations as well as to recover the costs of repairing the damage, civil penalties, terminating sewer service or initiating a criminal investigation.

3. Effect on the Receiving Water (Pass Through)

In USEPA's General Pretreatment Regulations, 40CFR403.3(n), "Pass Through" is defined as a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES Permit (including an increase in the magnitude or duration of a violation).

One of the primary objectives of the City's MIPP is to prevent pollutants from "passing through" the POTW and entering the receiving stream (Lehigh River or Saucon Creek). Consequently, any violation which results in environmental harm shall be met with a severe enforcement response. Environmental harm or potential environmental harm will be presumed whenever an Industrial User discharges a pollutant which:

- Passes through the POTW;
- Causes a violation of the POTW's NPDES permit (including water quality standards);
- Has a toxic effect on the receiving waters (e.g. fish kill).

At a minimum, responses to these circumstances shall include a NOV, which contains an administrative fine along with a Compliance Order (possibly with a Compliance Schedule). In addition, a civil penalty shall be assessed to ensure the recovery from the noncompliant Industrial User of any fines or penalties paid by the City and may also be used to recover damages for the destruction, harm or potential harm to local natural resources. If the discharge causes repeated harmful effects, the City shall consider terminating sewer service or initiating a criminal investigation.

4. Effect on the POTW (Interference)

In USEPA's General Pretreatment Regulations, 40CFR403.3(i), "Interference" is defined as a discharge which, alone or in conjunction with a discharge or discharges from other sources, both inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal and therefore is a cause of a violation of any requirement of the POTW's NPDES Permit (including an increase in the magnitude or duration of the violation) or of the prevention of sewage sludge use or disposal in accordance with applicable federal, state and local laws.

Some violations may have negative impacts on the POTW itself. For example, they may result in significant increases in treatment costs, interfere or harm POTW personnel, equipment, processes, operations, or cause sludge contamination resulting in increased disposal costs. These violations shall be met with a NOV which contains an administrative fine along with a Compliance Order (possibly with a Compliance Schedule) to correct the violation. In addition, the response shall ensure the recovery from the noncompliant Industrial User of any fines or penalties paid by the City. In addition, a civil penalty shall be assessed to ensure the recovery from the noncompliant Industrial User of any fines or penalties paid by the City, to recover damages for the destruction or harm to the POTW and to reimburse the City for repairs. In addition to recovery of all additional costs and expenses to repair the POTW (Equitable Relief).

5. Compliance History of the Industrial User

A pattern of recurring violations (even of different MIPP requirements) may indicate either that the Industrial User's treatment system is inadequate or that the Industrial User has taken a casual approach to operating and maintaining its treatment system. These indications shall alert the City to the likelihood of future significant violations. Accordingly, Industrial Users exhibiting recurring compliance problems shall be strongly dealt with to ensure that consistent compliance is achieved. Compliance history is an important factor for deciding which of the designated appropriate remedies to apply to a

particular violator. If the violator has a good compliance history, the City may decide to use less severe options.

6. Good Faith of the Industrial User

The Industrial User's "good faith" in correcting its noncompliance is a factor in determining which enforcement response to invoke. "Good faith" is defined as the Industrial User's honest intention to remedy its noncompliance coupled with actions, which give support to this intention. Generally, an Industrial User's demonstrated willingness to comply shall predispose the City to select less stringent enforcement responses. However, good faith does not eliminate the necessity of an enforcement action. For example, if the POTW experiences a treatment upset, it shall recover its costs regardless of prior good faith. Good faith is typically demonstrated by cooperation and completion of corrective measures in a timely manner (although compliance with previous enforcement orders is not necessarily good faith).

3.4 Enforcement Response Selection for Non Industrial Users

Any person or User, who is not an Industrial User, who is found to be in noncompliance with Article 923 of the City's Codified Ordinances, Disposal and Discharge of Industrial Waste Regulations shall be subject to all of the enforcement remedies described in this document with the exception of initiation of judicial proceedings in the Court of Common Pleas of Northampton County, Pennsylvania to assess a civil penalty in accordance with PA Act 9 of 1992. This Act only applies to Users who meet the definition of an Industrial User. However, this does not preclude the City from initiating a judicial action to collect monetary damages from a person or User for payment of administrative fines, reimbursement of costs for any loss, damage, cleaning, repair, replacement work or any related costs caused by the noncompliance; as well as administrative, legal, engineering, court costs, court reporters' fees and other expenses of litigation by appropriate suit at law against the User for the noncompliance.

SECTION 4.0 - PUBLIC NOTIFICATION AND REPORTING OF
SIGNIFICANT NONCOMPLIANCE

In accordance with 40 CFR 403.8(f)(2)(viii), the City shall annually publish, in a newspaper of general circulation that provides meaningful Public Notice within the jurisdictions served by the POTW, all Industrial Users which at any time during the previous twelve months were in significant non-compliance with applicable pretreatment standards or requirements. For the purpose of this provision, an Industrial User is in significant non-compliance if its violation meets one or more of the criteria described in 40 CFR 403.8(f)(2)(vii) A through H. These criteria are also described in Section 3.3 of this document.

TABLE 1
CITY OF BETHLEHEM
INDUSTRIAL PRETREATMENT PROGRAM
ENFORCEMENT RESPONSE GUIDELINES

NONCOMPLIANCE	NATURE OF NONCOMPLIANCE	ENFORCEMENT RESPONSE	PERSONNEL	Administrative Fine Schedule (See Note G for Civil Penalty Calculations)					
				COOPERATIVE WITH CITY "GOOD FAITH"			UNCOOPERATIVE WITH CITY NOT IN "GOOD FAITH"		
				1ST VIOL	2ND VIOL	3RD VIOL	1ST VIOL	2ND VIOL	3RD VIOL
<u>UNAUTHORIZED DISCHARGES</u>									
Unpermitted Discharge	Unaware of requirement; No harm to POTW/environment	Phone call; NC with permit application form	PC, D	NA			NA		
	Unaware of requirement: Potential harm to POTW/environment	NOV with fine & CO; AO; Civil Penalty	PC, D, SOL	NA			1000	1000	1000
	Failure to apply; Continues after notice by POTW	NOV with fine & CO; AO; Injunctive Relief; Criminal Prosecution; Terminate Service	PC, D, SOL	NA			1000	1000	1000
Nonpermitted Discharge (Failure to Renew)	Has not submitted application within 10 days of due date	Phone call, request written explanation	PC	NA			NA		
	Failure to apply; Continues after notice by the POTW	NOV with fine & CO; AO; Injunctive Relief; Criminal Prosecution; Terminate Service	PC, D, SOL	NA			1000	1000	1000
<u>DISCHARGE LIMIT NONCOMPLIANCES</u>									
Discharge Standard Violations	Isolated; No harm to POTW/environment	Phone call; NC; Resampling	PC, D	NA			NA		
	Recurring; No harm to POTW/environment	NOV with fine & CO	PC, D	200	500	1000	400	1000	1000
	Isolated; Potential Harm to POTW/environment	NOV with fine & CO; AO; Civil Penalty	PC, D, SOL	NA			1000	1000	1000
	Recurring; Potential Harm to POTW/environment	NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution; Revoke Permit; Terminate Service	PC, D, SOL	NA			1000	1000	1000

TABLE 1
CITY OF BETHLEHEM
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ENFORCEMENT RESPONSE GUIDELINES

NONCOMPLIANCE	NATURE OF NONCOMPLIANCE	ENFORCEMENT RESPONSE	PERSONNEL	Administrative Fine Schedule						
				(See Note G for Civil Penalty Calculations)						
				COOPERATIVE WITH CITY "GOOD FAITH"			UNCOOPERATIVE WITH CITY NOT IN "GOOD FAITH"			
				1ST VIOL	2ND VIOL	3RD VIOL	1ST VIOL	2ND VIOL	3RD VIOL	
BMP Violations	Isolated; No harm to POTW/environment	Phone call; NC; Resampling	PC, D		NA			NA		
	Recurring; No harm to POTW/environment	NOV with fine & CO	PC, D	200	500	1000	400	1000	1000	
	Isolated; Potential Harm to POTW/environment	NOV with fine & CO; AO; Civil Penalty	PC, D, SOL		NA			1000	1000	1000
	Recurring; Potential Harm to POTW/environment	NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution Revoke Permit; Terminate Service	PC, D, SOL		NA			1000	1000	1000

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NONCOMPLIANCE	NATURE OF NONCOMPLIANCE	ENFORCEMENT RESPONSE	PERSONNEL	Administrative Fine Schedule (See Note G for Civil Penalty Calculations)					
				COOPERATIVE WITH CITY "GOOD FAITH"			UNCOOPERATIVE WITH CITY NOT IN "GOOD FAITH"		
				1ST VIOL	2ND VIOL	3RD VIOL	1ST VIOL	2ND VIOL	3RD VIOL
<u>MONITORING AND REPORTING NONCOMPLIANCES</u>									
Reporting Violation	Report is improperly signed or certified	Phone call, request written explanation	PC		NA			NA	
	Report is improperly signed or certified; 30 days after notice by POTW	NC	PC, D		NA			NA	
	Failure to submit report within 15 days	Phone call, request written explanation	PC		NA			NA	
	Failure to submit report within 30 days	NC	PC, D		NA			NA	
	Failure to submit report; Report always late	NOV with fine & CO	PC, D		NA		400	1000	1000
	Failure to report spill or changed discharge; No harm to POTW/ environment	NC	PC, D		NA			NA	
	Failure to report spill or changed discharge; Potential harm to POTW/ environment	NOV with fine & CO; AO; Civil Penalty	PC, D, SOL	1000	1000	1000	1000	1000	1000
	Repeated failure to report spills	NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution Revoke Permit; Terminate Service	PC, D, SOL		NA		1000	1000	1000
	Incorrect information; isolated	NC	PC, D		NA			NA	
	Incorrect information; recurring	NOV with fine & CO; AO; Civil Penalty	PC, D, SOL	200	500	1000	400	1000	1000

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NONCOMPLIANCE	NATURE OF NONCOMPLIANCE	ENFORCEMENT RESPONSE	PERSONNEL	Administrative Fine Schedule (See Note G for Civil Penalty Calculations)					
				COOPERATIVE WITH CITY "GOOD FAITH"			UNCOOPERATIVE WITH CITY NOT IN "GOOD FAITH"		
				1ST VIOL	2ND VIOL	3RD VIOL	1ST VIOL	2ND VIOL	3RD VIOL
Reporting Violation	Falsification of information; isolated	NOV with fine & CO; AO; Civil Penalty	PC, D, SOL		NA		1000	1000	1000
	Falsification of information; recurring	NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution Revoke Permit; Terminate Service	PC, D, SOL		NA		1000	1000	1000
Failure to monitor correctly; Including sample location, sample type, sample collection techniques	Isolated failure to monitor correctly, or all pollutants as required by permit	NC	PC, D		NA			NA	
	Recurring failure to monitor correctly, or all pollutants	NOV with fine & CO	PC, D, SOL		NA		400	1000	1000
	Evidence of intent	NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution Revoke Permit; Terminate Service	PC, D, SOL		NA		1000	1000	1000
Failure to install monitoring equipment	Unavoidable delay	Phone call, request written explanation	PC		NA			NA	
	Intentional or avoidable delay	NOV with fine & CO	PC, D	200	500	1000	400	1000	1000
	Recurring delays	NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution Revoke Permit; Terminate Service	PC, D, SOL		NA		1000	1000	1000
Compliance Schedule Violations	Missed milestone by less than 30 days; No effect on final compliance date	Phone call, request written explanation	PC		NA			NA	
	Missed milestone by more than 30 days; No effect on final compliance date	Phone call, request written explanation	PC		NA			NA	
	Missed milestone by more than 30 days; Will affect final compliance date (good cause for delay)	NC; Revised CS	PC, D		NA			NA	

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NONCOMPLIANCE	NATURE OF NONCOMPLIANCE	ENFORCEMENT RESPONSE	PERSONNEL	Administrative Fine Schedule (See Note G for Civil Penalty Calculations)						
				COOPERATIVE WITH CITY "GOOD FAITH"			UNCOOPERATIVE WITH CITY NOT IN "GOOD FAITH"			
				1ST VIOL	2ND VIOL	3RD VIOL	1ST VIOL	2ND VIOL	3RD VIOL	
Compliance Schedule Violations	Missed milestone by more than 30 days; Will affect final compliance date (no good cause for delay)	NOV with fine & CO; Revised CS	PC, D		NA			400	1000	1000
	Recurring violation of Compliance Schedule	NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution Revoke Permit; Terminate Service	PC, D, SOL		NA			1000	1000	1000
Wastestreams are diluted in lieu of treatment	Initial Noncompliance	NC	PC, D		NA				NA	
	Recurring; Continues after notice by POTW	NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution Revoke Permit; Terminate Service	PC, D, SOL		NA			1000	1000	1000
Failure to mitigate noncompliance or halt production; Failure to properly operate and maintain pretreatment facility, where required	No harm to POTW/environment	NC	PC, D		NA				NA	
	Potential harm to POTW/environment	NOV with fine; AO; Civil Penalty	PC, D, SOL		NA			1000	1000	1000
	Intent or gross negligence	NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution Revoke Permit; Terminate Service	PC, D, SOL		NA			1000	1000	1000
NONCOMPLIANCES DETECTED DURING SITE VISITS										
Entry Delay	Entry or sampling access delayed (isolated)	NOV with fine & CO; AO; Civil Penalty	PC, D, SOL		NA			1000	1000	1000
Entry Denial	Recurring entry/sampling access delays; Entry denied or consent withdrawn; Sampling access or copies of records denied	NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution Revoke Permit; Terminate Service	PC, D, SOL		NA			1000	1000	1000

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NONCOMPLIANCE	NATURE OF NONCOMPLIANCE	ENFORCEMENT RESPONSE	PERSONNEL	Administrative Fine Schedule (See Note G for Civil Penalty Calculations)					
				COOPERATIVE WITH CITY "GOOD FAITH"			UNCOOPERATIVE WITH CITY NOT IN "GOOD FAITH"		
				1ST VIOL	2ND VIOL	3RD VIOL	1ST VIOL	2ND VIOL	3RD VIOL
Improper Sampling; Including sample location sample type, sample collection techniques	Isolated - Unintentional	NC	PC, D	NA			NA		
	Recurring - Unintentional	NOV with fine & CO	PC, D	200	500	1000	400	1000	1000
	Recurring or isolated with evidence of intent	NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution Revoke Permit; Terminate Service	PC, D, SOL	NA			1000	1000	1000
Inadequate Recordkeeping	Files incomplete or missing - Unintentional	NC	PC, D	NA			NA		
	Recurring - Unintentional	NOV with fine & CO	PC, D	200	500	1000	400	1000	1000
	Recurring or isolated with evidence of intent	NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution Revoke Permit; Terminate Service	PC, D, SOL	NA			1000	1000	1000
Failure to report additional monitoring	Results not reported - Unintentional	NC	PC, D	NA			NA		
	Recurring - Unintentional	NOV with fine & CO	PC, D	200	500	1000	400	1000	1000
	Recurring or isolated with evidence of intent	NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution Revoke Permit; Terminate Service	PC, D, SOL	NA			1000	1000	1000
<u>OTHER NONCOMPLIANCES</u>									
	Any miscellaneous violations of an IWDP condition or Article 923 not previously or specifically identified	NC; NOV with fine & CO; AO; Injunctive Relief; Civil Penalty; Criminal Prosecution Revoke Permit; Terminate Service	PC, D, SOL	200	500	1000	400	1000	1000

NOTES ASSOCIATED WITH TABLE 1

- A. All noncompliances will be identified and initial enforcement responses involving contact with the Industrial User and requesting information on preventative actions(s) will occur within 30 days of noncompliance detection.
- B. Noncompliances which threaten health, property or environmental quality are considered emergencies and will receive immediate responses.
- C. Escalating enforcement options are provided and will be used at the City's discretion depending upon the magnitude, duration, damage, cost of investigation and restoration associated with the violation along with savings which may have resulted to the Industrial User, history of past violations, deterrence of future violations and any other relevant factors.
- D. Noncompliances beyond the third violation will remain at the \$1,000.00 level. In the case of violations of multi-day average IWDP or local limits, administrative fines or civil penalties will consider each day of the averaging period a separate and distinct violation. In the case of pH, each recorded limit exceedance shall be considered a separate and distinct violation.
- E. After 12 consecutive months of zero violations of an IWDP or local limit, the City shall revert to the minimum administrative fine level.
- F. A noncompliance shall be considered "recurring" if it is the third violation of the same IWDP condition or Article 923 requirement within a 12 consecutive month period.
- G. In addition to cost recovery, civil penalties for violations of an IWDP or local limit, shall be calculated in accordance with the following schedule:

<u>Exceedance</u>	<u>Fine</u>
Exceedance is up to 2.0 times greater than IWDP or local limit	\$1,000.00/violation
Exceedance is up to 3.0 times greater than IWDP or local limit	\$2,000.00/violation
Exceedance is up to 4.0 times greater than IWDP or local limit	\$3,000.00/violation
Exceedance is up to 5.0 times greater than IWDP or local limit	\$4,000.00/violation
Exceedance is more than 5.0 times greater than IWDP or local limit	\$5,000.00/violation

- H. In addition to cost recovery, civil penalties for pH violations shall be calculated using \$2,000.00/violation/day or \$200.00/each instantaneous violation, whichever is greater.