

ENFORCEMENT RESPONSE PLAN MT. STERLING, KENTUCKY

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PREPARED FOR:

THE MT. STERLING WATER AND SEWER COMMISSION

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SECTION I

INTRODUCTION: PRINCIPLES OF AN ENFORCEMENT RESPONSE PLAN

A. REGULATIONS

Final regulatory changes to the National Pretreatment Program as reflected in 40 CFR 403 were published in July 1990. These new regulations require all Publicly Owned Treatment Works (POTW) with existing pretreatment programs to develop an Enforcement Response Plan (ERP).

The Enforcement Response Plan developed by the Mt. Sterling Water and Sewer Commission (MSWSC) establishes requirements for industrial user discharge control, reporting and monitoring of mechanisms. Discharge control requirements must reflect Federal categorical standards, general pretreatment standards and local limitations. Each control mechanism will enable the MSWSC to monitor and control discharges to its POTW, to implement the pretreatment limits program, and to satisfy the goals of the General Pretreatment Regulations. The ERP was developed to determine if industrial users are complying with pretreatment local limits and requirements regulated by the control mechanisms. The ERP also determines how and when to respond to noncompliance by industrial users (IU).

The ERP is based on principles of management and internal controls that have been used successfully in the USEPA NPDES program. These principles describe a process for obtaining and evaluating information on industrial user compliance; identifying noncompliance; selection of appropriate enforcement action, and resolving noncompliance in a timely, fair and consistent manner. These principles also establish a framework for managing an enforcement process, while providing the flexibility to develop management procedures that best suit the MSWSC's resources and operations.

B. ERP PERSONNEL

The Mt. Sterling Water and Sewer Commission will have primary responsibility for implementing the ERP. The Industrial Waste Coordinator (IWC) and the Wastewater Superintendent (WWS) will have responsibility for tracking and investigating industrial users. The MSWSC Superintendent(s) and the MSWSC Attorney will also be involved in enforcement procedures.

C. ERP PRINCIPLES

The following list contains the ERP principles adopted by the MSWSC. A more detailed description of these principles is presented in the following sections.

1. Establish responsibilities, procedures, and time frames to provide information to the MSWSC.

2. Maintain an industrial user inventory that is complete and accurate.
3. Collect and dispense information.
4. Conduct inspection and sampling of industrial users discharge on a routine basis.
5. Ensure compliance screening of all relevant data.
6. Perform enforcement evaluations when appropriate.
7. Institute formal enforcement action and follow-up when appropriate.

SECTION II

PROVISIONS FOR ENFORCEMENT IN EXISTING SEWER USE ORDINANCES

The Mt. Sterling Sewer Use Ordinance is included in Appendix A. The existing ordinance contains most of the enforcement tools necessary to implement the Enforcement Response Plan. The proposed revisions to the sewer use ordinance which will further enable the MSWSC to enforce pre-treatment program requirements are outlined in Section III.

SECTION III

PROPOSED PROVISIONS FOR ENFORCEMENT IN THE MT. STERLING SEWER USE ORDINANCE

Provisions for enforcement will be proposed as additions or replacements to the existing Mt. Sterling Sewer Use Ordinance (SUO). The new regulations published in 40 CFR 403 on July 24, 1990, require the incorporation of provisions which allow the POTW methods of enforcing their existing pretreatment program.

An outline is located in Appendix B which contains specific references to the existing Mt. Sterling SUO and the proposed additions or replacements to portions of the text.

SECTION IV

ENFORCEMENT RESPONSE GUIDE

A. Establishment of Responsibilities, Procedures, and Time Frames.

Throughout the enforcement process, it is important for all levels of management to be able to assess the effectiveness of the program and identify deficiencies. The enforcement response guide shall give the MSWSC the information it needs to ensure that timely decisions are made to help successfully implement and enforce the local pretreatment program. For internal management control, an enforcement response plan should provide for:

- Identification of individuals (by title) responsible for each element of the system.
- Procedures for collecting and disseminating information including standardized report forms and notifying industrial users of violations.
- Method of tracking program activities at any given time including issuance of control mechanisms, compliance reviews, and enforcement actions.
- System of evaluating specific activities in terms of their quality, timeliness, results and accomplishments of program objectives.

B. Industrial User Inventory

The foundation of an enforcement response plan is the complete and accurate compilation of the pertinent data on all industrial discharges to the POTW. For this plan the MSWSC must maintain a current inventory of industrial users. The inventory shall consist of the industrial user's name, location, identification number, effluent limits, basis for the limit (categorical standards or local limits), volume of discharge, control mechanism status, compliance dates, industrial category, significant industrial user classification for each industrial user and current wastewater contribution permits.

A routine schedule and identified process for updating the inventory of industrial users should be implemented, including the specific data available concerning each user. Sources of information that might be used in the process include data developed through inspections of the facility, a review of water use records and/or building permit applications, and information on changes reported by the industrial user. Responsibility for maintenance of the inventory would be assigned to the industrial waste coordinator.

C. Collect and Dispense Information

In order to ensure that its system has the needed information and that this information is current, the MSWSC must actively manage the flow of information into its ERP. For each industrial user, the MSWSC must determine from the wastewater contribution permit what data is legally required or needed. The results of the routine MSWSC industrial monitoring checks indicating noncompliance or the actual self reporting requirements of the industrial user are usually sufficient evidence of a violation.

The MSWSC must specify in the industrial user's wastewater contribution permit the minimum monitoring requirements. The MSWSC has issued wastewater contribution permits to the significant industrial users and has adopted a policy of conducting frequent and routine monitoring of all industrial users. The scheduling of monitoring checks should comply with the permit conditions and be appropriate to monitor compliance. Industrial users also are required to perform self monitoring to gauge the performance of individual treatment facilities and quality discharge.

Other sources of information should be consulted routinely to update or add information. The MSWSC may monitor other water and sewer useage, issuance of building permits, violation of local ordinances, and local news outlets to identify changes that have occurred or are planned for an industrial user and may affect its wastewater contribution to the POTW.

The MSWSC must plan the receipt, processing, and retaining of routine and nonroutine data to ensure that they are informed and capable of making decisions on compliance activities. The maintenance of data should be conducted in a manner cognizant that at some time it may be needed as evidence in enforcement procedures.

Under all circumstances the MSWSC must retain baseline monitoring reports, 90-day compliance reports, compliance schedule reports and semi-annual compliance reports that it has received for at least three years.

In addition to collection of data, the MSWSC must also disperse certain information. Industrial users must be notified of applicable pretreatment standards and hazardous waste disposal requirements under the Solid Waste Disposal Act. Feedback should be provided to the industrial user on its compliance status, changes in pretreatment requirements, results of inspections, and any other pertinent information or guidance. This feedback must also include information relative to these ERP principles and the general responses to noncompliance.

D. Inspection and Sampling

The MSWSC has an inspection plan for scheduling field investigations, which may include site visits, sample collection, facility inspections, and flow monitoring. The MSWSC also uses field investigations to verify compliance status determined from industrial user self-monitoring activities, collects samples, initiates emergency or remedial actions, and gathers information. Field investigations may be routine compliance monitoring or special monitoring in response to violations, technical problems, or support for permit applications. The MSWSC has developed checklists and procedures for these routine visits and ensures that the results of each visit are documented and that industrial users are advised of any deficiencies found during an inspection. The field investigations are conducted by the IWC.

E. Compliance Screening and Enforcement Action

The compliance screening process involves reviewing all available information to sort out noncompliance discharges for appropriate enforcement action. This initial review shall assess, as appropriate, compliance schedules, reporting requirements (including "slug" discharge notices), and applicable pretreatment standards. The Industrial Waste Coordinator and the Wastewater Superintendent are responsible for conducting the reviews.

The screening process should verify that all monitoring reports are received on schedule, that they cover the proper time period, and include all information required to properly gauge compliance. The reviewers shall check the reports to determine that parameters reported, the number of measurements for each parameter, the method of analysis, the sampling procedures, the discharge concentration, and any other applicable information are in compliance with permit conditions. Any discrepancy is a violation that the industrial user shall be required to correct. All alleged violations shall be identified by the MSWSC and recorded in a violation summary specific to each industrial user. This summary will serve as a log for the compliance history of the industrial user and will be used for the enforcement response of the MSWSC.

F. Enforcement Evaluation

The violations which were identified during the compliance screening process shall be reviewed to evaluate the type of enforcement response needed. This review shall be conducted for or by the MSWSC with consideration given to legal consultation if necessary.

An Enforcement Response Guide has been developed and is included in Appendix B. The responses available to the MSWSC will vary but may include informal responses such as telephone contacts or written notices of violation to formal responses such as Administrative Orders (AO) with or without penalties, judicial actions, and/or termination of water or sewer service.

The criteria used to evaluate each violation and determine which enforcement response is necessary should include an examination of the magnitude of the violation, the duration of the violation, the effect on the receiving water, the effect on the POTW, the compliance history of the user and the industrial user's willingness to comply.

The Enforcement Response Guide entails the following concepts:

- MSWSC shall review and document all violations of program requirements within 5 days of receiving compliance information.
- MSWSC shall notify industrial user of violation within 15 days of violation detection.
- If an industrial user repeats analysis for an effluent violation and no further noncompliance is identified MSWSC response is not necessary, unless the POTW experiences treatment upset.
- MSWSC shall receive an explanation, as appropriate, of the reason for violation and a plan from the industrial user to correct the violation within a specific time period.
- The enforcement response selected shall be related to the seriousness of the violation. Enforcement responses shall escalate if compliance is not achieved expeditiously after the initial action.
- MSWSC shall set deadlines for the industrial user to respond to notification of violations and record unfulfilled due dates in the industrial user violation summaries. Any contacts or commitments between the parties shall be recorded to document a permanent record necessary to enforce the commitment.
- If violations persist or the explanation or corrective plan are not adequate, the MSWSC shall respond in a formal enforceable document within 60 days of the initial enforcement response.
- Any significant noncompliance violations, as defined in the Mt. Sterling SUO, will be addressed within 30 days with an enforceable order.

The above mentioned Enforcement Response Guide may be superseded by the MSWSC Wastewater Superintendent (WWS) or MSWSC Superintendent (S) should, in his opinion, the violation be too serious to the proper operation of the POTW or protection of the existing stream. In this case, the WWS or S may eliminate certain enforcement actions if a more critical enforcement measure is merited to prevent the violation.

A decision to seek, formal enforcement is generally triggered by a failure on behalf of the industrial user to achieve compliance in a specified time period through less formal control mechanisms, a review of the violation records, and the advice of counsel based on the incriminating information available. Formal enforcement shall be considered for each violation or group of violations which meet the EPA definition of a significant noncompliance violator as published in the Mt. Sterling Sewer Use Ordinance.

The decision to pursue formal action shall be supported by a well documented record of violations by the industrial user and any prior efforts to obtain compliance on the part of the MSWSC. The MSWSC shall review all records to assure that proper procedures were used to collect the information and that all contacts with the industrial user are documented. If the industrial user has received conflicting information regarding its compliance status, the status shall be clarified in writing. The MSWSC shall conduct a special on-site review or inspection to verify data available, including a review of original analysis records to confirm the accuracy of information contained in periodic reports, or a "show cause" meeting with the industrial user, before commencing formal enforcement action. This verification shall be completed in one week. The MSWSC shall specifically designate responsibility for preparing a formal enforcement action to legal counsel with information on the violation provided by the Superintendent.

SECTION V

ENFORCEMENT RESPONSES

The MSWSC shall utilize a range of enforcement mechanisms in order to achieve a maximum degree of compliance by industrial users. These mechanisms shall range from a simple reminder by way of a telephone call, to imposing significant criminal penalties. The following is a list of informal and formal mechanisms that are available:

INFORMAL ACTIONS

1. Informal notice to industrial user.
2. Informal meetings with industrial representatives.
3. Notice of violation.

FORMAL ACTIONS

1. Administrative orders and compliance schedules.
2. Civil suit for injunctive relief and/or civil penalties.
3. Criminal suit.
4. Termination of service.
5. Monetary penalties.
6. Additional Enforcement Responses

A description of each enforcement response as well as procedures for implementation follows:

A. INFORMAL ACTIONS

1. Informal Notice to Industrial User

Informal notice is the least coercive of the enforcement mechanisms and rarely requires specific authority. This action may entail a telephone call or "reminder" letter by the Industrial Waste Coordinator (IWC) or the Wastewater Superintendent (WWS) to an appropriate official of the industrial user. Such a call or letter may be used to notify officials of a minor violation and to seek an explanation, to suggest the exercise of more due care, and or to notify the "violation" that subsequent violations of the same type may be dealt with more severely. Such informal notice may be used to correct minor inadvertent noncompliance but more importantly, to demonstrate that the MSWSC will note and followup on all instances of non-compliance. The informal notice should be issued immediately upon detection of the violation.

2. Informal Meetings with Industrial representatives

If a telephone call does not produce compliance or an adequate explanation of the reason for the noncompliance, a meeting between the MSWSC and the industrial user at the industrial site may produce desired results.

3. Notice of Violation

The Notice of Violation (NOV) is a written notice to the industrial user that the MSWSC has observed a violation of pretreatment standards or requirements which has posed an impact on the treatment plant efficiency or the receiving stream quality and expects noncompliance to be corrected and explained. The NOV shall require specific corrective actions and schedules to which the industrial user shall adhere and that additional enforcement action will be pursued if corrective actions are not accomplished as scheduled. Notice of Violations shall be issued by the IWC and sent certified mail, on the POTW's letterhead, with return receipt requested, with documentation of this action.

B. FORMAL ACTIONS

1. Administrative Orders

Section 403.8(f)(1)(iii) of the General Pretreatment Regulations allows the MSWSC to issue Administrative Orders without notice or opportunity for prior hearing, requiring compliance with standards or other requirements developed under the authority of the regulations. If the IU fails to correct a violation within 15 days of receiving NOV, the MSWSC shall issue an AO for correction of this violation, provided that the IU is not relieved of any responsibility for unauthorized discharges which occur within the 15 day interval.

There are four common types of administrative orders.

- Cease and Desist Orders
- Consent Orders
- Show Cause Orders
- Compliance Orders

a. Cease and Desist Orders

A cease and desist order is issued by the WWS and directs an IU to immediately cease illegal or unauthorized discharges or to cease all discharge. The cease and desist order may be issued immediately if necessary to remove any threat to the POTW or receiving stream.

b. Consent Orders

The Consent Order is a negotiated order issued by the WWS and contains compliance schedules, fines or actions and signatures of both the MSWSC and the IU. The Consent Order must be carefully drafted and contain specific time allotments for all tasks along with fines for non-compliance.

c. Show Cause Orders

The MSWSC may issue a Show Cause Order after informal contacts or NOV's have failed and prior to taking more stringent enforcement action and/or the discontinuing of service. This order would be issued by the WWS and the meeting would be conducted by the MSWSC. All relevant facts that demonstrate noncompliance by the industrial user would be presented. The industrial user would then have the opportunity to show cause as to why the MSWSC should not initiate more stringent action or discontinue service. This action is a service to the industrial user but is not a prerequisite to taking more stringent enforcement action.

d. Compliance Orders

A Compliance Order directs an IU in noncompliance to achieve or restore compliance by a specific date. The order should be issued by the WWS and need not be discussed with the IU in advance. Penalties for noncompliance with specific milestones should be outlined.

2. Civil Suit for Injunctive Relief and/or Civil Penalties

In order to serve a civil suit for injunctive relief, the MSWSC must collect all pertinent information sufficient to prove the violations at issue. The Commission would then turn the information over to legal counsel for case filing. The MSWSC would ask the court to order an industrial user to take specific action or refrain from specific action. The civil suit is used when the industrial user is unlikely to execute successfully the steps that the MSWSC believes are necessary to achieve or maintain compliance, when the violation is serious enough to warrant court action to deter future similar violations, when efforts to restore compliance through negotiations with the IU have failed, or when the danger presented by the industrial user's noncompliance does not permit lengthy negotiation of a settlement.

Once a civil suit has been filed the MSWSC and the IU may sign a consent decree. A consent decree would be used if the IU was willing to admit and correct the noncompliance and a penalty is agreed upon.

If the MSWSC is able to show irreparable harm to the POTW operation, its workers, or its receiving stream as a result of an ongoing industrial user violation, the court may issue a temporary restraining order or preliminary injunction restraining the industrial user from violating standards pending the outcome of the suit.

A civil suit may be necessary to impose civil penalties on an IU in order to recover costs associated with the IU's noncompliance. The costs associated with noncompliance could include expenses related to damage to the treatment plant or collection system, personal injury to MSWSC personnel, special monitoring needed to trace noncompliance, or fines assessed to the MSWSC for NPDES permit violations.

3. Criminal Suit

The MSWSC may decide to seek criminal punishment through their legal counsel for any person who willfully or negligently violates pretreatment standards or for any person who knowingly makes a false statement regarding any report, application, record, or other document required by the General Pretreatment Regulations.

Factors which shall be considered before a criminal suit is filed include but are not limited to: the willfulness of the violation, knowledge of the violation, nature and seriousness of offense, need for deterrence, compliance history, adequacy of the evidence, and the adequacy of penalties and sanctions available through the civil or administrative enforcement actions.

For criminal cases, the United States must provide proof beyond a reasonable doubt that the violation occurred through "willful or negligent action" of the discharger.

Examples of criminal violations include but are not limited to, falsification of data, tampering with results or equipment, willful negligent failure to provide notice of "slug" discharges, or willful violation of the discharge agreements. All suspected instances of criminal violation should be evaluated. Criminal action may be used, if needed, to deter future violations by the individual or the industrial user community at large. Parallel criminal and civil actions are possible for a set of violations, especially where immediate injunctive relief is needed.

An industrial user who exhibits willful or negligent noncompliance which has caused serious damage to the POTW, should be punished severely if adequate proof exists. Such criminal action may be needed to recover the cost of the damages to the POTW.

4. Service Termination

The MSWSC shall have the authority to immediately halt an actual or threatened discharge to the POTW system that may represent an endangerment to the public health or the environment. Service termination may also be necessary if all other efforts by the MSWSC to correct the IU's noncompliance have failed.

The MSWSC will issue a notice of intent for service termination to the IU. The service termination may be immediate in severe cases or may be for a predetermined date in order to allow the IU to take corrective actions.

The MSWSC shall have the authority to physically plug the IU's connection to the POTW's collection, revoke the IU's permit, or issue a cease and desist order to the IU.

MSWSC can deny or condition new or increased discharges by an IU or changes in the nature of pollutants discharged to the POTW by the industrial user if the discharge does not meet applicable pretreatment standards or will cause the POTW to violate its NPDES discharge permit. Without service, an industry may have to obtain an NPDES permit to discharge wastes directly into the waters of the United States, thus be required to install treatment facilities to achieve direct discharge limitations. For many industries this would not be economically feasible.

5. Monetary Penalties or Fines

Penalties and fines are tools the MSWSC shall use to enforce the local limits of the pretreatment program.

Fines shall be used in conjunction with billing procedures for minor violations that are detected during inspections or compliance review of self-monitoring data.

Surcharges shall generally cover the POTW cost of treatment, but shall not be used to allow discharges of toxic pollutants that cause interference or pass through.

The MSWSC has the authority under the General Pretreatment regulations to be able to assess civil or criminal penalties of at least \$1000.00 per day for each violation.

6. Additional Enforcement Responses

The MSWSC has the authority to publish annually or more frequently a list of industrial users which were significantly violating pretreatment requirements.

The MSWSC also has the authority to increase monitoring and reporting requirements for industries consistently in noncompliance, provide incentives for informants of industries which are concealing noncompliance, or issue short term permits for industries consistently in noncompliance.