

CITY OF BLOOMINGTON, INDIANA  
UTILITIES DEPARTMENT

PRETREATMENT PROGRAM

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ENFORCEMENT RESPONSE PLAN

Approved by the City of Bloomington, Indiana  
Utilities Service Board

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## Statement of Authority

This document is the City of Bloomington, Indiana's Enforcement Response Plan (ERP) for ~~its~~ Pretreatment Program. Federal regulation (40 CFR 403.8(f)(5)) requires the Utilities Department to formulate and distribute a formal ERP to industries that operate under Industrial Pretreatment Permits. Where applicable, this ~~plan~~ will be consulted in the event enforcement action against ~~Industrial Users~~ becomes necessary.

The regulation as stated in 40 CFR 403.8(f)(5) is as follows:

The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of Industrial User 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;
- (iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8(f)(1) and (f)(2).

The Pretreatment Program was developed as required by 40 CFR 403.8(a). The Director has the legal authority to:

- i) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit;
- ii) Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;
- iii) Control through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under 403.3(v), this control shall be achieved through individual permits.

This plan is tailored as recommended by the United States Environmental Protection Agency (USEPA) to include a range of enforcement responses available to the City of Bloomington in the event ~~Industrial Users~~ violate its rules and regulations. This ERP ~~complies~~ with federal and state regulations governing ~~Industrial User~~ discharges as set forth in the federal **Clean Water Act** and the **General Pretreatment Regulations (40 CFR Part 403)**. Additionally, this plan is to be consulted in the enforcement of local ~~laws~~ and regulations governing discharges to the POTW and collection systems. Local

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laws and regulations are found in Title 10 of the “Bloomington Municipal Code” and in the CBU’s “Rules, Regulations, and Standards of Service.”

The City of Bloomington Utilities (CBU) intends to adhere to these guidelines when appropriate; however, enforcement responses may differ from those specified in this plan when unusual or extenuating circumstances exist. Variance from these guidelines may depend upon considerations such as degree of variance from Pretreatment Standards, duration of violations and the enforcement history of the violator. In no case shall this ERP be construed as to limit the enforcement discretion of the CBU.

**Right of Appeal:** Any person or entity aggrieved by any enforcement action taken by the Director of CBU may appeal to the Utilities Service Board for relief. The appellant must file a written request outlining the nature of the grievance within 45 days of being notified of the CBU enforcement action. The appeal shall be directed to the President of the Utilities Service Board and mailed to PO Box 1216, Bloomington, Indiana, 47402-1216. Appeals may also be delivered to the Office of the Director, City of Bloomington Utilities, 600 E. Miller Drive, Bloomington, Indiana (see Title 10, Chapter 10.16 of the “Bloomington Municipal Code”).

**Other Governmental Enforcement Authority:** The Indiana Department of Environmental Management (IDEM) and the USEPA have separate and distinct authority to pursue entities that violate federal and state regulations and local pretreatment program rules. Nothing in this ERP shall be construed as to limit or diminish the enforcement authority of IDEM or USEPA. Both federal and state governments may pursue penalties against CBU in the event CBU fails to take appropriate enforcement action against violators.

CBU will notify and consult with the IDEM Office of Water Management regarding an enforcement action taken against any violator determined to be in Significant Noncompliance status.

## THE ENFORCEMENT PROCESS

Title 10 of the “Bloomington Municipal Code” and CBU’s “Rules, Regulations, and Standards of Service”, state that the Director of CBU, or his/her designee, is responsible for enforcement of CBU rules and regulations. The CBU Director (hereafter the Director) shall carry out informal enforcement actions such as site visits, administrative orders, compliance schedules, violation notices and administrative fines. In most cases, the Director relies upon the Pretreatment Coordinator and program staff to fulfill this obligation. The Utilities Service Board (USB), upon the recommendation of the Director, directs enforcement actions that require legal action.

In responding to violations, the Director shall evaluate the response required by this ERP. In most instances, the ERP will provide uniform and equitable treatment to all violators. In special circumstances, the Director may vary from the ERP requirements.

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This ERP outlines the type of noncompliance and the range of responses available to the Director. In promulgating the ERP, the CBU intends to accomplish four primary objectives:

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1. The ERP shall recommend enforcement responses that are appropriate to the nature, severity and impact of the violation.
2. The ERP shall promote uniform responses to violations.
3. The ERP shall serve as advance notice to CBU customers that enforcement action is contemplated in the event federal, state or local rules are violated.
4. The ERP shall communicate the importance of adherence to federal, state and local regulations.

### Violation Categories

This ERP groups violations into four categories:

1. Sampling, monitoring or reporting violations.
2. Discharge violations.
3. Compliance Schedule violations.
4. Violations detected through inspections.

### Enforcement Response Actions

Typical enforcement response actions include telephone notices (TXN), site visits (SV), notice of violation letters (NOV), administrative orders (AO), issuing formal compliance schedules (CS), assessing administrative fines (AF) and taking legal action (LA) against chronic violators. These actions are more fully discussed below. All enforcement response actions may require a response from the violator.

**Telephone Notices (TXN)** are utilized for very minor violations such as unintentional late reporting. The TXN is used in situations when documentation is not necessary because no further action is expected.

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**Site Visits (SV)** may be conducted in conjunction with a TXN or NOV. The purpose of a SV is to view the problem and to directly communicate the severity of the problem to the customer. A SV report is placed on file in the Pretreatment Coordinator's office.

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**Notice of Deficiency (NOD)** letters are issued to Food Service Establishments (FSEs) when a violation is first observed. The NOD must clearly outline the nature of the violation and require a time-certain response from the FSE.

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**Notice of Violation (NOV)** letters are the most common enforcement response. A NOV must clearly outline the nature of the violation and require a time-certain response from the violator. Response time requirements may vary from twenty-four hours to thirty days. The Director may grant extensions of time to the required response period if the violator shows good cause and good faith effort to respond to and rectify a violation.

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**Notice of Continuing Noncompliance (NCNC)** letters are issued to FSEs when a violation is not corrected and continues to occur. The NCNC must clearly outline the nature and history of the violation and require a time-certain response from the FSE.

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**Revocation of Permit (RP).** The Director may revoke the permit of any Industrial User for causes listed in Title 10 of the "Bloomington Municipal Code" (10.16.100).

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**Show Cause Hearing for Termination of Service (SC)** is issued to Industrial Users or FSEs for continued major and/or minor violations. Industrial Users or FSEs are provided a hearing by the Utility Service Board prior to termination of utility services if warranted.

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**Press Release (PR)** is issued to the local paper providing information regarding the violation(s) and/or spills at an FSE. This information is also included in the annual wastewater performance report to IDEM.

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The **Administrative Order (AO)** response is used to outline minor compliance schedules intended to bring a violator back into compliance in a short period of time. The AO time frame may require violators to respond within a period ranging from twenty-four hours to sixty days. The Director may grant short time extensions (not to exceed ninety days) after the original response time has elapsed. Violators requesting an extension of time to respond must clearly demonstrate good cause and good faith effort in correcting a violation.

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The Director may issue a **Compliance Schedule (CS)** to Industrial Users who commit serious or on-going long-term violations. The typical CS will contain a formal schedule with progressive or simultaneous steps toward full compliance. The CS will normally be implemented over a 6 -12 month period. The Utilities Service Board must approve Compliance Schedules for industries in Significant Noncompliance status (SNC).

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The Director may levy an **Administrative Fine (AF)** when he/she finds that lesser enforcement response techniques have failed to bring violators into compliance. Administrative fines may range between \$1 and \$2500 dollars per violation. Each day of noncompliance shall be considered a separate violation. The Director shall notify and consult with the IDEM Office of Water Management if an AF exceeds \$1000. An AF may be levied in conjunction with an AO or a CS.

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**Legal Action (LA)** shall be initiated against **Users** who violate the terms of any lower enforcement response requirement. LA is most often associated with violations of the terms of an AO or CS enforcement action. However, the CBU reserves the right to utilize LA in any case deemed appropriate by the Utilities Service Board. LA may be used for several purposes including suits for injunctive relief, criminal or civil suits, terminations of service, etc. IDEM and USEPA Enforcement Divisions will be notified in instances where the USB initiates LA.

## SIGNIFICANT NONCOMPLIANCE

Significant Industrial Users (SIUs) and Industrial Users who commit violations that meet one or more of the criteria below are in Significant Noncompliance (SNC) status:

1. Chronic violations of discharge limits where 66 percent or more of all measurements taken for the same pollutant parameter 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);
2. Technical Review Criteria violations where 33 percent or more of all measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(1) multiplied by the applicable TRC (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
3. Any other discharge violation that the Director believes has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;
4. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Director's exercise of its emergency authority to halt or prevent such a discharge;
5. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
6. Failure to provide, within 45 days after the due date, any required reports including baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
7. Failure to accurately report noncompliance;

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8. Any other violation or group of violations, which may include a violation of Best Management Practices, which the Director determines will adversely affect the operation or implementation of the local Pretreatment program.

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SIUs and Industrial Users found to be in Significant Noncompliance status (SNC) are required to submit a draft compliance schedule for review and approval by the Director, within 45 days of the date of receipt of notification of SNC status. The Director may order emergency suspension of service in any circumstance where the SNC status may create damage to human health, the environment or the POTW.

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In addition to conventional penalties required in this ERP, the Director is required to publish a legal notice of the SNC status in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of all SIUs and Industrial Users in SNC status for the reasons listed above. This notice shall include a definition of SNC status, the reason for being designated as significantly noncompliant, and the time period required for the correction of the problem. The Director shall approve this notice prior to publication.

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In some cases, the Director may require Industrial Dischargers in SNC status to submit a formal pollution prevention audit prepared by a qualified consultant or employee. In-house personnel may perform this audit if they are deemed qualified by the Director.

City of Bloomington Utilities Department  
Enforcement Response Plan for

**Sampling, Reporting, and Monitoring Violations**

TYPE OF VIOLATION	CIRCUMSTANCES	RANGE OF RESPONSE
Failure to sample, monitor or report; failure to submit baseline monitoring report	Isolated or infrequent	TXN, SV, or NOV requiring compliance report within 1-45 days
Failures to sample, report or notify of violation	IU does not respond to notices of deficiency, does not honor verbal or written commitments, violates limits frequently, SNC status	AO, CS, AF, LA
<u>Failure to document and report compliance with Best Management Practices</u>	<u>Isolated or infrequent</u>	<u>TXN, SV, or NOV requiring compliance report within 1-45 days</u>
	<u>Recurring</u>	<u>AO, CS, AF, LA</u>
Failure to notify an effluent limit violation or slug discharge	Isolated or infrequent with no known effect	TXN, SV, NOV. If no response within ten working days AO
Failure to notify an effluent limit violation or slug discharge	Frequent or continuing violation, SNC	AO, AF, LA, monetary penalties, suspension of service; <b>RP</b>
Failure to notify an effluent limit violation or slug discharge	Known environmental or POTW damage, SNC	AF, LA, monetary penalties, suspension of service; <b>RP</b>
Minor sampling, monitoring or reporting deficiencies (incomplete reports, <u>failure to submit chain-of-custody forms with analytical results; computational error, improperly signed or certified reports</u> )	Isolated or infrequent	TXN, SV or NOV. Corrections to be made on next submittal. AO if continued
Major sampling, monitoring or reporting deficiencies (missing information, late reports)	Isolated or infrequent	NOV, SV, AO. Corrections to be made on next submittal
Major sampling, monitoring or reporting deficiencies (missing information, late reports)	Continued noncompliance, Remains uncorrected over 30 days—SNC status	AO, AF, or LA
<u>Falsification of information or data; tampering with monitoring equipment</u>	<u>Any instance</u>	<u>Criminal Investigation; Terminate Service; RP</u>
<u>Failure to comply with monitoring waiver requirements</u>	<u>Isolated or infrequent</u>	<u>TXN, SV, or NOV requiring compliance report within 1-45 days</u>
	<u>Recurring</u>	<u>AO; Revocation of Monitoring Waiver</u>

AF-Administrative Fine  
AO-Administrative Order  
CS-Compliance Schedule  
**RP – Revocation of Permit**

LA-Legal Action  
NOV-Notice of Violation letter  
SNC-Significant Noncompliance

SV-Site Visit  
TRC-Technical Review Criteria  
TXN-Telephone Notice

If an Industrial User fails to timely respond to a NOV, the next level of enforcement will be taken.

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City of Bloomington Utilities Department  
Enforcement Response Plan for

**Discharge Limitations Violations**

TYPE OF VIOLATION	CIRCUMSTANCES	RANGE OF RESPONSE
Exceeding Final Limits	Infrequent or isolated minor violations	SV or NOV
Exceeding Final Limits	Infrequent or isolated major violations exceed the limits by TRC of a single effluent limit	NOV, AO, AF or LA if environmental harm has resulted
Exceeding Final Limits	Violations which are SNC	AO, CS, AF or LA with monetary penalties
Exceeding Interim Limits	No known damages	NOV or AO
Exceeding Interim Limits	Known environmental damage or POTW damage- SNC status	AO, CS, AF, LA
Reported Slug Load	No known damage-isolated	Show cause hearing or AO
Reported Slug Load	Isolated but with known interference, pass through or damage—SNC status	AO, CS, LA
Reported Slug Load	Recurring - SNC status	LA, RP, penalties
Discharge without permit or approval	One time with no known environmental or POTW damage	AO
Discharge without permit or approval	One time with environmental or POTW damage, or if a continuing violation	AO, AF, or LA and penalty. Request for criminal investigation
Discharge without a permit or approval	Continuing violation with known environmental or POTW damage- SNC status	LA and penalty, request for criminal investigation, suspension of service
Discharge that causes the POTW to violate its NPDES permit	No harm to POTW or environment	NOV; AO; AO with fine; Legal Action; Criminal Investigation
	Harm to POTW or environment	AO with fine; Legal Action; Criminal Investigation; RP
	Recurring	Criminal Investigation; RP
Unauthorized discharge through manhole, septic only receiving station, car wash etc.	No harm to POTW or environment	NOV; AO; AO with fine; Legal Action; Criminal Investigation
	Harm to POTW or environment	AO with fine; Legal Action; Criminal Investigation
	Recurring	Criminal Investigation

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LA-Legal Action  
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City of Bloomington Utilities Department  
Enforcement Response Plan for

**Violations Discovered As a Result of Field Investigations**

TYPE OF VIOLATION	CIRCUMSTANCES	RANGE OF RESPONSE
Minor violations of analytical procedures	Any instance	NOV
Major violation of analytical procedures	No evidence of intent	NOV or AO
Major violation of analytical procedures	Evidence of negligence or intent	AO, AF, Possible LA for intent
Minor violation of permit condition	No evidence of negligence or intent	TXN, SV or NOV. Short time frame for correction
Minor violation of permit condition	Evidence of negligence or intent—SNC status	AO, AF, LA and penalty, refer for criminal investigation
Major violation of permit condition	Evidence of negligence or intent—SNC status	AO, AF, LA and monetary penalty, refer for criminal investigation, possible suspension of service
<u>Files incomplete or missing; less than three of years of required reports (No evidence of intent)</u>	<u>Isolated</u>	<u>NOV</u>
	<u>Recurring</u>	<u>AO; AO with fine</u>
<u>Entry denied or consent withdrawn</u>	<u>Any Instance</u>	<u>Obtain warrant and return to IU</u>

AF-Administrative Fine  
AO-Administrative Order  
CS-Compliance Schedule

LA-Legal Action  
NOV-Notice of Violation letter  
SNC-Significant Noncompliance

SV-Site Visit  
TRC-Technical Review Criteria  
TXN-Telephone Notice

If an Industrial User fails to timely respond to a NOV, the next level of enforcement will be taken.

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City of Bloomington Utilities Department  
Enforcement Response Plan for

**Violations of Compliance Schedules**

TYPE OF VIOLATION	CIRCUMSTANCES	RANGE OF RESPONSE
Reporting false information	Any instance - SNC status	AF, LA, monetary penalties, possible suspension of service
Missed Interim Date	No effect on final or other interim compliance dates	NOV, SV
Missed Interim Date	Results in other missed or interim deadlines or final deadline-Valid cause	NOV, SV or AO
Missed Interim Date	Results in other missed or interim deadlines or final deadline—No valid cause	NOV, AO, AF, or LA
Missed Final Date	Violation due to strike or other circumstances clearly beyond the control of the discharger	Documentation of cause required, show cause hearing
Missed Final Date	Violation outstanding 90 days or more. Failure or refusal to comply without good cause	AO, AF, LA with monetary penalties
Failure to install monitoring equipment	Continued-SNC status	AO, AF, begin immediate monitoring with outside contractor if needed and install equipment in short time frame

AF-Administrative Fine  
AO-Administrative Order  
CS-Compliance Schedule

LA-Legal Action  
NOV-Notice of Violation letter  
SNC-Significant Noncompliance

SV-Site Visit  
TRC-Technical Review Criteria  
TXN-Telephone Notice

If an Industrial User fails to timely respond to a NOV, the next level of enforcement will be taken.

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City of Bloomington Utilities Department  
 Enforcement Response Plan for  
**Food Service Establishments**

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	1 <sup>st</sup> Occurrence	2 <sup>nd</sup> Occurrence	3 <sup>rd</sup> Occurrence	4 <sup>th</sup> Occurrence	5 <sup>th</sup> and Subsequent Occurrences
<b>Minor Violation</b> For example: failure to install a grease trap or grease interceptor; failure to comply with Best Management Practices such as <u>maintenance</u> records not available or accessible; violation of grease trap or grease interceptor maintenance requirements; inspection hindrance (equipment-related)	Tier I	Tier II	Tier III	Tier IV	Tier V
<b>Major Violation</b> For example: inspection hindrance (willful intent); falsification of self-monitoring or maintenance information; <u>unauthorized</u> discharge into sanitary sewer or grease interceptor; failure to meet stipulated conditions of compliance directive	Tier III	Tier IV	Tier V	Tier VI	Tier VI
<b>Sanitary Sewer Overflows</b> Creating conditions resulting in failure of collection system, causing sewer overflow	Tier VII				
<b>Illegal Disposal of Liquid Wastes</b> Unpermitted discharge of liquid wastes from FSE operations by FSE owner, manager or contract service provider	Per articles detailed in Sewer Use Ordinance				

<b>Enforcement Tier Levels</b>
Tier I - no civil penalty; NOD
Tier II - \$100, NOV
Tier III - \$250, NOV, NCNC
Tier IV - \$500, NOV, NCNC
Tier V - \$1,000, NOV, PR, SC
Tier VI - \$2,500 NOV, PR, SC
Tier VII Civil Penalty.
<ul style="list-style-type: none"> <li>• <b>Penalty to be increased</b> in relation to degree and extent of harm to environment, public health, private property, or sewer systems as warranted;</li> <li>• <b>Site remediation and cost recovery for Sanitary Sewer Overflow;</b></li> <li>• <b>SC</b> is followed by termination of service if warranted;</li> <li>• <b>Press release information</b> regarding the violation(s) and/or spill; <b>and/or</b></li> <li>• <b>Inclusion</b> in annual <b>Pretreatment Program</b> performance report to IDEM.</li> </ul>

<b>NOD - Notice of Deficiency</b>
<b>NOV - Notice of Violation</b>
<b>NCNC - Notice of Continuing Noncompliance</b>
<b>SC – Show Cause Hearing for Termination of Service</b>
<b>PR - Press release/Annual Wastewater Report</b>

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industrial or commercial customers

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There are two groups of TRCs:

Group I for conventional pollutants such as BOD, TSS, fats, oil and grease: TRC = 1.4

Group II for all other pollutants except pH: TRC = 1.2

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violation of a Pretreatment Standard or Requirement

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as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused,

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such as

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such as baseline monitoring reports

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