

# CITY OF SAN DIEGO

## Industrial Wastewater Control Program



### **Enforcement Response Plan**

Revision -0-

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SAN DIEGO ADMINISTRATIVE CIVIL PENALTIES ORDINANCE

SAN DIEGO SEWER USE ORDINANCE

## I. PURPOSE AND SCOPE

The purpose of this plan is to describe and outline enforcement response procedures used to accomplish City of San Diego Industrial Wastewater Control Program (IWCP) goals. Specific objectives are outlined below.

*Define* the range of enforcement actions based upon the nature and severity of the violation.

*Identify* appropriate personnel who may initiate various enforcement actions.

*Illustrate* the various documents that are used to implement the Enforcement Response Plan.

*Establish* a means of tracking progress towards compliance once enforcement has been initiated.

*Promote* consistent and timely use of enforcement actions.

*Provide* a fair and equitable means of enforcing the San Diego Municipal Code.

## II. DEFINITIONS (appear in **bold face** throughout this document)

**Attachment C** - An attachment to the Industrial User (IU) Discharge Permit which requires the IU to take specific actions by a stipulated due date.

**Best Management Practice (BMP) Permit** - A permit issued to a non-**SIU** (such as a film processor or laboratory) requiring periodic certification of compliance with the BMP requirements.

**Bypass** - The intentional diversion of regulated wastestreams around an IU's **pretreatment** system.

**Dilution** - An increase in the use of process water, or any other use of water, as a partial or complete substitute for adequate treatment, to achieve compliance with **pretreatment** standards or requirements.

**Full Compliance** - No violations of any **pretreatment** standards or local limits during a six (6) month period. For the purposes of summarizing IU performance in the quarterly or annual report, **full compliance** will be based upon the data gathered during two (2) consecutive calendar quarters.

**Interference** - A discharge which, alone or in conjunction with other sources: (1) inhibits or disrupts the **POTW**, its treatment processes or operations, or its sludge processes, use or disposal; and (2) causes a violation of any requirement of the **POTW's** discharge permit (including an increase in the magnitude or duration of a violation).

**Minor Violation** - A violation incurred by a non-**SIU** for: (1) exceeding a local limit by less than twenty (20) percent; or (2) failing to submit required **BMP** certifications.

**Pass Through** - A discharge which exits the **POTW** into waters of the United States in quantities or concentrations which, alone or in conjunction with discharges from other sources, is a cause of a

violation of any requirement of the **POTW's** discharge permit (including an increase in the magnitude or duration of a violation).

**Pretreatment** - The reduction in amount or elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater, prior to or in lieu of discharge to sewer.

**Publicly Owned Treatment Works (POTW)** - A system for the storage, treatment, recycling, reclamation, and conveyance of municipal sewage and industrial wastes. **POTW** also refers to the municipality which has jurisdiction over the discharges to and the discharges from such a treatment works.

**Reportable Spill** - IUs must notify IWCP of all discharges that could cause problems to the **POTW** or endanger the health and safety of the public or the environment, immediately after becoming aware of the condition. This includes **slug loadings** that would violate any of the Specific Prohibitions in their permit or the San Diego Municipal Code. The IU must also submit a written report to IWCP within five (5) calendar days of becoming aware of the condition, which details the nature, volume, time and duration of discharge, steps taken to mitigate the discharge, and preventative measures to avoid future such occurrences.

IUs must notify IWCP of any **slug loadings** that would violate a specific limitation in the permit, but not cause problems for the **POTW** or violate any of the specific prohibitions, within twenty-four (24) hours of becoming aware of the violation. Additionally, if the violation was identified by self-monitoring, the IU must repeat the sampling and analysis for all required parameters and submit the results to IWCP within thirty (30) days of becoming aware of the violation.

**Significant Industrial User (SIU)** - An **SIU** is defined as:

- (1) All IUs subject to federal Categorical **Pretreatment** Standards; or
- (2) Any other IU that: (i) discharges twenty-five thousand (25,000) gallons per day or more of process wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater); (ii) contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the **POTW** treatment plant; or (iii) has been designated by the IWCP as having a reasonable potential for adversely affecting the **POTW's** operations or violating any **pretreatment** standard or requirement.

**Significant NonCompliance (SNC)** - An IU is in **SNC** if its violations meet one (1) or more of the following criteria:

- (1) Chronic violations defined as those in which sixty-six percent (66%) or more of all measurements taken during two (2) consecutive calendar quarters at a given sample point exceed (by any magnitude) the daily maximum limit or average limit for the same pollutant parameter;
- (2) Technical Review Criteria (TRC) violations defined as those in which thirty-three percent (33%) or more of all measurements for each pollutant parameter taken during two (2) consecutive calendar quarters at a given sample point equal or exceed the product of the daily maximum limit or average limit multiplied by the applicable TRC factor (TRC = 1.4 for oil & grease, and 1.2 for all other pollutants except pH);

- (3) Any other violation of a **pretreatment** effluent limit (daily or average) that IWCP determines has caused, alone or in combination with other discharges, **interference** or **pass through** (including endangering the health of sewage treatment personnel or the general public);
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or the environment or has resulted in the **POTW's** exercise of emergency authority, under 40 CFR 403.8(f)(1)(vi)(B), to halt or prevent such a discharge;
- (5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone for starting construction, completing construction, or attaining final compliance;
- (6) Failure to provide, within thirty (30) days after the due date, required reports including baseline monitoring reports, self-monitoring reports, and compliance reports;
- (7) Failure to accurately report noncompliance;
- (8) Any other violation that IWCP determines will adversely affect the operation or implementation of the **pretreatment** program.

Pursuant to 40 CFR 403.8(f)(2)(vii), IWCP will publish in the San Diego Union Tribune the names of all IUs who, at any time during the previous calendar year, were in **SNC** with applicable **pretreatment** requirements.

**Slug Loadings** - For purposes of reporting a spill, a slug discharge is a discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or a non-customary batch discharge.

### III. ENFORCEMENT AUTHORITY

The sewer use ordinance is Chapter 6, Article 4 of the San Diego Municipal Code (“Municipal Code”). Division 3 of this Article provides for enforcement and penalties against IUs who fail to comply with the requirements of the sewer use ordinance. Chapter 1, Article 2, Division 8, Section 12.0803 of Municipal Code, provides that any person violating any provision of the Municipal Code or applicable state code may be subject to administrative civil penalties pursuant to the administrative procedures provided in Sections 12.0804 through 12.0811 of this Division. Resolution No. 260133: Industrial Waste Permit, establishes that additional inspecting and sampling caused by discharge permit violations shall be recovered at a cost basis plus overhead.

IWCP personnel have the authority to enter and inspect every facility involved directly or indirectly with the discharge of wastewater to the San Diego **POTW**. Access shall be given at all reasonable times to all parts of the premises, for the purposes of inspection, sampling, and records examination. The procedures used to identify IUs, identify the character and volume of pollutants, and notify IUs of applicable **pretreatment** standards are described in the IWCP's *Program Structure Report* submitted to EPA and the California RWQCB in May 1994.

### IV. APPLYING THE ENFORCEMENT RESPONSE PLAN

The enforcement response plan designates several alternative enforcement options for each type (or pattern) of noncompliance. Once an event has occurred, IWCP shall select an appropriate response from those options. Selection will be based upon the following criteria:

(1) Good Faith of the Industrial User

If the IU attempts, in good faith, to comply with **pretreatment** requirements, enforcement actions should be on a more cooperative basis. The IU can demonstrate good faith with prompt responses to IWCP requests, consistent attention to permit conditions and reporting requirements, aggressive investigation and correction of violations, and a willingness to invest resources to satisfy **pretreatment** requirements.

(2) Compliance History of the IU and Prior Success of Enforcement Actions

The IU's monitoring and compliance history shall be reviewed before initiating enforcement action. A violation occurs whenever an IU exceeds an applicable effluent limit; fails to meet deadlines and conditions for reporting, monitoring, or treatment; or fails to comply with any other Federal, State, or IWCP requirement. The effectiveness of previous enforcement responses for this type of violation should also be considered. More severe enforcement actions shall be taken against IUs that frequently exceed **pretreatment** standards than those that report inconsequential, isolated violations.

(3) Aggravated Violations

Violations that cause **interference** with treatment plant performance, **pass through** of pollutants, damage to the treatment plant and its conveyances, or harm to human health or the environment shall be addressed through formal enforcement action and penalties. In some cases injunctive measures may also be appropriate. This includes any discharge which causes a violation of the **POTW's** National Pollution Discharge Elimination System (NPDES) permit.

(4) Magnitude and Duration of the Violation

Violations that meet the EPA definition of **SNC** and those (regardless of magnitude or severity) which continue over prolonged periods of time should also be addressed through an escalated response. For example, an effluent violation which occurs in two out of three samples over a six month period or a report which is more than thirty days late is considered significant, while a report which is two days late would not be deemed significant.

## V. ENFORCEMENT ACTIONS

The enforcement actions available to IWCP have been divided into two (2) main categories: informal and formal. Informal enforcement is generally less severe with administrative cost recovery fees only. Formal enforcement can involve penalties and/or suspension of service. The Enforcement Response Plan establishes the enforcement actions that are appropriate in particular circumstances. In general, IWCP will respond to an initial IU violation with an informal enforcement action: typically a Notice of Violation (NOV) and increased monitoring of the discharge. If the violation(s) persists, the informal response may escalate to a compliance inspection and/or Preliminary Conference, and/or a formal response initiated, typically a compliance order. Violations that are more severe and/or involve intent may be escalated directly to formal enforcement. All enforcement related IU correspondence is sent certified mail to the IU's business address or served by personal delivery. The enforcement actions are listed here in order of increasing severity to indicate escalating enforcement.

Informal

- Attachment C compliance schedule
- Field observation/notice
- Telephone call
- NOV and associated administrative fees
- Noncompliance sampling and associated administrative fees
- Surveillance monitoring
- Compliance inspection
- Preliminary Conference

Formal

- Compliance Order
- Administrative Notice and Order (Penalty Order)
- Civil Action
- Show Cause Hearing
- Permit Revocation
- Suspension or Termination of Service
- Criminal Action

## VI. ENFORCEMENT RESPONSIBILITIES

Effective enforcement depends on the performance of a variety of individuals. The following list identifies the staff positions and their areas of responsibility.

Permits Inspector:

- (1) Documents all incidents with potential for formal or informal enforcement action identified during the facility inspection.
- (2) Recommends specific requirements for the IU be established in an **Attachment C** of the IU Discharge Permit.
- (3) Conducts site inspections to evaluate and verify completion of **Attachment C** conditions.
- (4) Reviews IU self-monitoring reports to identify daily maximum violations and incomplete reports each month.

Permits Supervisor:

- (1) Refers the approved **Attachment C** requirements to the Compliance Supervisor who tracks IU responses.
- (2) Refers all reported incidents with potential for enforcement action to the Compliance Supervisor.

Compliance Inspector:

- (1) Conducts site inspections to verify and evaluate compliance with permit conditions or Compliance Orders.
- (2) Attends Preliminary Conferences and prepares necessary documentation including a report, a Conference summary letter and/or a Compliance Order, if required.
- (3) Identifies late IU self-monitoring reports and reviews IU self-monitoring reports to identify daily maximum violations and incomplete reports each month.

- (4) Reviews weekly, the Industrial Waste Laboratory (IWLab) analysis results data and identifies instantaneous maximum, daily maximum, periodic average limit violations.
- (5) Identifies violations of periodic average limits at the end of each calendar quarter.
- (6) Prepares a summary compliance history for each **SIU** in **SNC** after all the data has been evaluated for the year, for publication in the IWCP Annual Industrial **Pretreatment** Report.
- (7) Participates as a member of the San Diego County Hazardous Waste Task Force.

Compliance Supervisor:

- (1) Initiates and tracks informal enforcement actions, Compliance and Penalty Orders.
- (2) Reviews IU responses to informal enforcement actions, Compliance and Penalty Orders.
- (3) Coordinates compliance and surveillance monitoring with laboratory sampling personnel.
- (4) Conducts Preliminary Conferences and participates in complex compliance inspections.
- (5) Generates the quarterly and annual IU Compliance Status Report and annual list of IUs in **SNC**.
- (6) Refers all IUs with potential for civil/criminal action to the San Diego County Hazardous Waste Task Force.
- (7) Participates as a member of the San Diego County Hazardous Waste Task Force.

Program Manager:

- (1) Approves and signs Compliance Orders.
- (2) Presides at Show Cause hearings.
- (3) Publishes the names of all **SIUs** in **SNC** during the past year in the local newspaper pursuant to 40 CFR 403.8 (f) (2) (vii).

Deputy Director:

- (1) Approves formal enforcement actions and signs Penalty Orders.

City Attorney:

- (1) Participates as a member of the San Diego County Hazardous Waste Task Force.
- (2) Initiates criminal and/or civil action upon referral of the IU from IWCP or the San Diego County Hazardous Waste Task Force.

## VII. INFORMAL ENFORCEMENT PROCEDURES

Attachment C Compliance Schedules

If at any time subsequent to the issuance of a permit, new Federal, State or local standards are adopted such that the permit must be amended or renewed and the IU cannot maintain compliance with existing practices or technology, IWCP may require the IU to install additional **pretreatment** equipment and/or adopt waste minimization practices to comply with the new standards. The requirement to submit a **pretreatment** proposal, subject to IWCP approval, may be issued as an **Attachment C** requirement in a permit amendment or renewal. The proposal shall include a description of the equipment and/or procedures including: cost information; a schedule for equipment purchase, installation, testing, and final implementation; a flow process diagram; and an interim solution, if applicable.

If approved, the IU shall be required to submit progress reports on the proposal's implementation including, at a minimum, for each date in the schedule: whether or not it complied with the increment of progress to be met on such a date and, if not, the date on which it expects to comply with this increment



of progress; the reason for the delay; and the steps being taken by the IU to return to the established schedule. If rejected, an NOV may be issued requiring the IU to modify or complete the proposal.

Compliance schedules issued in response to violations of permit standards or provisions of the City ordinance shall be made by a Compliance Order. Other IU requirements which may be established in an **Attachment C** include: installation/modification of a sample point; protection of drains against spills; reduction of rainwater runoff; and submission of **pretreatment** O&M procedures and logs, slug discharge control plans, or other documents necessary for permitting the IU.

#### Field Observation/Notice

A Permits or Compliance Inspector shall issue a field observation/notice during a facility inspection when one (1) or more of the following conditions have been observed:

- (1) Facility access denied;
- (2) IWCP autosampler tampering;
- (3) **Pretreatment** system **bypass** of industrial wastewater requiring **pretreatment**;
- (4) Unauthorized alteration of a designated sampling point or diversion of wastewater from the sampling point which causes the sample to be nonrepresentative;
- (5) Process or sample point **dilution** (e.g., a water hose placed in the sample point);
- (6) Failure to operate or properly maintain the **pretreatment** system while discharging industrial wastewater requiring **pretreatment**;
- (7) Failure to disclose all industrial discharge points;
- (8) Failure to submit all self-monitoring results;
- (9) Unauthorized discharge of industrial wastewater;
- (10) Misrepresentations or false statements.

The inspector shall document the circumstances and evidence supporting the observation; forward the field observation/notice to the Compliance Supervisor for immediate review; and provide a copy to the Permits Supervisor. The Compliance Supervisor shall determine whether escalation to formal enforcement is warranted. If not, an NOV may be issued or other informal enforcement action initiated.

#### Telephone calls

For a **minor violation** only, the Compliance Inspector shall notify the IU by telephone and document the time, date, contact name, and summary of the conversation in the violation log.

#### Notice of Violation

An NOV is a written notice, issued under the signature of the Compliance Supervisor, which identifies the violation, orders the IU to abate the violation(s), and states what additional IU actions are required, if any, by a specified due date. Typical actions include: investigate the violation(s) and submit a report of causes and steps taken to prevent recurrence; resample the wastewater and submit a self-monitoring report; attend a Preliminary Conference; complete the outstanding **Attachment C** requirements, or submit other required information. The IU shall be assessed an administrative fee to recover the cost associated with issuing, tracking, and resolving the violation.

The Compliance Supervisor shall review all violation responses. Where specific actions are proposed or have been completed, the Compliance Supervisor shall issue a field referral to a Permits or Compliance Inspector, who will verify and assess performance. The inspector may amend the current permit or issue a follow-up letter with additional requirements.

### Noncompliance Sampling

The Compliance Inspector shall generate additional monitoring requests for the IWLab following the identification of pollutant violations. The IU shall be assessed administrative fees to recover the associated costs of sampling and analyses.

### Compliance Inspection

A compliance inspection of the IU's facility shall be conducted under the following circumstances:

- (1) the IU notifies IWCP that they have made **pretreatment** system upgrades or operational changes in response to an NOV;
- (2) the IU fails to respond to an NOV or submits a response which does not adequately address the violation;
- (3) the IU is or is likely to be in **SNC** status at the end of the calendar quarter.

The inspection shall be conducted by the Compliance Inspector, who may be accompanied by the Permits Inspector, the IWLab sampling team, and/or the Compliance Supervisor. The inspection report shall contain a detailed description of facility operations and wastewater controls, and a summary of findings and conclusions. Based upon the substance of the report and recommendations of the Compliance Inspector, the Compliance Supervisor may approve the issuance of a Compliance Order. Otherwise, the Compliance Supervisor may wait for additional monitoring results to determine whether the IU will return to **full compliance** status.

### Preliminary Conference

A Preliminary Conference may be scheduled in response to one (1) or more of the following:

- (1) two (2) or more reporting violations (e.g. late, incomplete or incorrect reports) within two (2) consecutive calendar quarters;
- (2) failure to report a spill or slug discharge in violation of permitted conditions;
- (3) failure to submit all self-monitoring results;
- (4) failure to provide timely access after first documented warning;
- (5) the IU's monitoring or compliance history warrants an informal meeting to discuss and establish the cause(s) of the violations and actions taken to prevent future violations;
- (6) discovery of an unauthorized discharge;
- (7) issuance of a Compliance Order.

The IU shall be notified of the Conference through an NOV, which shall specify the date, time, and location of the meeting. Any IU that fails to appear shall be contacted to reschedule the Conference. The Conference shall be conducted by the Compliance Supervisor. The Compliance Inspector shall write a report summarizing the meeting and, if necessary, a findings letter which is issued under the signature of the Compliance Supervisor. At the Conference, the IU representative(s) shall be asked to respond to and provide an explanation for the violations, and describe the actions taken or planned to prevent recurrence. The Compliance Supervisor shall explain the possible formal enforcement actions that may apply if the IU does not establish compliance. The IU shall be assessed an administrative fee to recover the cost associated with each Conference, including those at which the IU failed to appear.

## VIII. FORMAL ENFORCEMENT PROCEDURES

### Compliance Order

A Compliance Order is typically issued after the determination that the IU is in **SNC** status for the year, based on more than one (1) sampling event, and either conducting a compliance inspection or Preliminary Conference. The Compliance Order is issued under the signature of the Program Manager and states the legal authority under which the order is issued, the findings of violation, and directs the IU to take specific actions by established due dates. These typically include the following:

- (1) Within 30 days, respond to any inaccuracies of fact in the Findings of Violation;
- (2) Within 60 days, submit a preliminary engineering plan outlining the steps necessary to maintain compliance with permitted limits;
- (3) Within 90 days, either cease discharge of industrial wastewater to the City sewer system or take any necessary corrective actions to achieve consistent compliance; and
- (4) Within 90 days, submit financial information regarding **pretreatment** system costs and operation and maintenance (O&M) expenses.

### Administrative Notice and Order

Administrative penalties are authorized under Sections 64.0301 and 12.0801 through 12.0810 of the Municipal Code for violations of any provision of the sewer use ordinance. The maximum amount that can be imposed is twenty-five hundred dollars (\$2,500) per day per violation and one hundred thousand dollars (\$100,000) for any related series of violations. For continuing violations, each day constitutes a separate offense.

Use of a Penalty Order may be appropriate under the following conditions:

- (1) the IU realized economic benefit during the period of noncompliance;
- (2) the IU is in **SNC** status;
- (3) the IU violates a Compliance Order.

The Penalty Order is issued under the signature of the Environmental Monitoring and Technical Services Deputy Director and states the legal authority under which the order is issued, the findings of violation, the total civil penalties. These typically include the following:

- (1) Within 30 days, respond to any inaccuracies of fact in the Findings of Violation;
- (2) Within 60 days, pay a civil penalty;
- (3) At the end of following year, pay a civil penalty at a specified daily penalty rate for each addition day of violation incurred subsequent to the Penalty Order.

The Penalty Order shall inform the IU of its right to appeal. If the IU chooses to do so, a Settlement Conference will be suggested in an effort to achieve a stipulated agreement. If an agreement can be reached, a Stipulation for Administrative Enforcement Order is prepared and signed by representatives of the IU and IWCP in front of an Enforcement Hearing Officer. If the parties cannot agree, an Enforcement Hearing is scheduled to allow the IU and IWCP to present testimony or evidence on the issues relevant to the Findings of Violation and civil penalties set forth in the Order.

If the IU is located in a contract agency, the Program Manager shall coordinate with the contract agency representative, who shall initiate formal enforcement action under the agency's own enforcement powers.

### Civil Actions

The City has the authority to file suit against alleged violators of applicable **pretreatment** standards and seek injunctive relief, compliance, civil penalties and/or damages as provided under the Municipal Code. Generally, civil litigation is an appropriate enforcement response in two (2) situations:

- (1) emergency situations where it is necessary to halt or prevent discharges which threaten human health or the environment, or may cause **interference** at the **POTW**;
- (2) when efforts to restore compliance through cooperation with the IU have failed and action is necessary to enforce Program requirements.

Upon approval by the Deputy Director or his designee, the Compliance Supervisor shall collect any information necessary to support the violations at issue and present such information to the City Attorney.

### Show Cause Hearing

A Show Cause Hearing may be appropriate when the IU violates an ordinance provision, permit condition, or Compliance Order which warrants permit revocation. An NOV shall require the IU to attend a hearing before the Program Manager to "show cause" why IWCP should not revoke the IU Discharge Permit. The notice shall specify the time, date, and place of the hearing. The Program Manager shall review the enforcement policies and authority for permit revocation, and state the grounds for the proposed action. The IU has the burden of proof to show why permit revocation is inappropriate or unnecessary.

The Compliance Inspector shall write the hearing report which shall include: the names and titles of those present; a description of the proposed enforcement action; a summary of the grounds for such action; and a summary of the IU's position. Upon review of the evidence presented, the Program Manager may initiate permit revocation.

### Permit Revocation

Permit revocation may be appropriate under the following circumstances:

- (1) the IU fails to accurately report its wastewater pollutants and/or characteristics, changes in process operations, and/or other relevant information required to issue the permit;
- (2) the IU fails to provide reasonable access to the premises for sampling, monitoring, inspections and/or investigations by IWCP personnel;
- (3) the IU fails to install required **pretreatment** equipment, develop required O&M procedures, or install necessary controls to mitigate or prevent unauthorized discharges to the sanitary sewer;
- (4) the IU fails to provide required reports;
- (5) the IU fails to report a **reportable spill**;
- (6) the IU violates any other condition of the permit.

In general, permit revocation is appropriate when the IU has failed to "show cause" why the permit should not be revoked (see Show Cause Hearing section above). The notice shall state the permit revocation date and justification for such action, and shall be issued under the signature of the Program Manager. The notice shall also state whether termination of service shall be concurrent with, or subsequent to the permit revocation date.

Should the condition which caused permit revocation be satisfactorily resolved before the effective date, the Program Manager may postpone the revocation date to allow the IU to demonstrate **full compliance**; however, violations incurred during this period may subject the IU to administrative penalties and/or other enforcement actions in addition to permit revocation.

#### Termination of Service

A notice of termination shall state the date of and reasons for termination of sewer service, and shall be issued under the signature of the Program Manager (see Permit Revocation section above). Upon issuing this notice, IWCP may physically terminate or suspend sewer service to any property within the San Diego service area. IWCP shall coordinate with the contract agencies for termination of service within their respective areas.

Termination of service may be implemented voluntarily by the IU or on a fee basis by IWCP and/or contract agency staff. All costs for termination and reinstating sewer service shall be paid by the IU.

#### Criminal Actions

Any person who violates a provision of the sewer use ordinance, a permit, or a Compliance or Penalty Order, or is suspected of the same, may be investigated and referred for potential criminal prosecution. Such person may be subject to statutory penalties, including fines and/or imprisonment, as provided under Municipal, State, and Federal codes. The following factors should be considered when determining which violations should be investigated and referred for potential criminal prosecution:

- (1) willfulness of the violation;
- (2) knowledge of the violation;
- (3) nature and seriousness of the offense;
- (4) need for deterrence;
- (5) compliance history of the violator;
- (6) adequacy of the facts;
- (7) other remedies available through civil or administrative enforcement actions.

The Compliance Supervisor shall collect information sufficient to support the violations at issue. Upon approval by the Deputy Director or his designee, a referral shall be made to the San Diego County Hazardous Waste Task Force.

Examples of violations for which referral for criminal prosecution may be appropriate include:

- (a) **Dilution** of wastewater and/or IU self-monitoring wastewater samples;
- (b) **Bypass** of required **pretreatment** equipment unless: (i) **bypass** is unavoidable to prevent loss of life, personal injury, or severe property damage; or (ii) there were no feasible alternatives to **bypass**, such as the use of auxiliary treatment or holding tanks;
- (c) Construction and/or use of unauthorized or illegal sewer connections;
- (d) Unauthorized discharge of process tanks and/or chemical tanks to the sanitary sewer;
- (e) Discharge of prohibited material to the sanitary sewer;
- (f) Denial of reasonable access to IWCP personnel to conduct inspections, investigations, or to collect representative wastewater samples;

In addition, any person who knowingly makes any false statements, representations or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to the ordinance or IU Discharge Permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under the ordinance, may be investigated and referred for

potential criminal prosecution. Examples of these violations are as follows:

- (a) Falsifying permit application information, self-monitoring reports, compliance reports or other required documents pertinent to the IU's compliance with its permit.
- (b) Tampering with automatic sampling equipment set up at the designated sampling point.
- (c) Tampering with sample contents and/or design of the designated sampling point.
- (d) Misrepresenting discharge events or wastewater processes to an inspector investigating a **slug loading**.

## **IX. RESPONSE TIMES**

The typical response times for various enforcement actions are listed below:

### Administrative Fees

IWCP shall assess the IU an administrative cost recovery fee within ninety (60) days of issuing an NOV.

### Administrative Notice and Order

Penalty Orders shall be issued within thirty (30) days after determining that it is the appropriate response, typically within sixty (60) days of receiving the IU's financial information required by a Compliance Order. If the IU appeals the Penalty Order, a Settlement Conference will be scheduled within thirty (30) days of the request. If an agreement is reached, a meeting will be held with a Hearing Officer within thirty (30) days to sign the Stipulation for Administrative Enforcement Order. If the parties cannot agree, a hearing will be scheduled with a Hearing Officer within ninety (90) days.

### Attachment C Compliance Schedules

An NOV shall be issued within thirty (30) days of determining that an IU has failed to notify the IWCP of completion of an **Attachment C** requirement by the due date. When an IU is required to submit a proposal, the Compliance Supervisor shall issue a notice of acceptance or rejection, within sixty (60) days of receiving the proposal. An acceptance letter shall require the IU to submit progress reports at intervals not exceeding ninety (90) days. A rejection letter shall require the IU to modify or complete the proposal within thirty (30) days.

### Civil or Criminal Action

A referral for case development and possible prosecution shall be made within thirty (30) days of a determination that it is the appropriate response.

### Compliance Order

A Compliance Order shall be issued within sixty (60) days after determining that it is the appropriate response.

### Compliance Inspection

A compliance inspection shall be conducted within thirty (30) days of a determination that it is the appropriate response.

### Field Notice

A field notice shall be issued during the facility inspection after observation of a violation.

### Non-compliance sampling fees

IWCP shall bill the IU for the sampling and analytical costs associated with violation monitoring within sixty (60) days of the date the results are released by the IWLab.

### NOVs for Pollutant Violations

IWLab analysis reports are generated for results released by the IWLab Quality Assurance staff during the previous week. An NOV will be issued to the IU within fourteen (14) days of a determination that there is a violation. Additionally, the Compliance Inspector shall schedule the IWLab to resample the IU within thirty (30) days of identifying the violation. **SIUs** will typically be resampled three (3) additional times within sixty (60) days from the date that the violation was identified.

If self-monitoring by the IU indicates a pollutant violation, the IU must: (i) notify the Compliance Supervisor of the violation within twenty-four (24) hours of becoming aware of the violation; (ii) repeat the sampling and analysis for all required pollutants within thirty (30) days of becoming aware of the violation; and (iii) submit the analytical results to the Compliance Supervisor. An NOV will be issued within twenty-one (21) days of reviewing the IU self-monitoring report. The Compliance Supervisor may also schedule one (1) or more sampling events within thirty (30) days from the date that the violation is reported.

### NOVs for Reporting Violations

IU self-monitoring reports are typically due on the fifteenth (15th) of the month. IWCP staff shall enter the data and review the reports for completeness by the end of the month. Late reports will be identified as delinquent five (5) working days after the fifteenth (15th) of the month.

An NOV for a late self-monitoring, baseline monitoring, or other compliance report will be issued within fourteen (14) days of the report due date. The NOV shall require the IU to submit the report within thirty (30) days of the report due date.

An NOV for an incomplete or incorrect IU self-monitoring report will be issued within twenty-one (21) days of the determination that the report is deficient. The IU will be required to correct the error(s) on future reports.

### Permit Revocation

Notice of permit revocation will be issued within thirty (30) days of a determination that it is the called for response.

### Preliminary Conference and Show Cause Hearing

A Preliminary Conference or Show Cause Hearing shall be conducted within thirty (30) days of a determination that it is the appropriate response. An NOV scheduling the meeting will be issued at least ten (10) days before the meeting.

### Telephone Calls

A telephone call shall be made to the IU within fourteen (14) days of a determination that a **minor violation** has occurred.

Termination of Service

Disconnection of any industrial sewer connection shall be made within thirty (30) days of a determination that it is the appropriate response. Where an actual or impending discharge presents or may present an imminent or substantial endangerment to public health and safety, the **POTW**, or the environment, **IWCP** may act immediately to suspend sewer service without notice or warning to the **IU**.