



ENFORCEMENT RESPONSE PLAN:

**BUTLER COUNTY DEPARTMENT OF
ENVIRONMENTAL SERVICES (BCDES)
PRETREATMENT PROGRAM**

Approved October 26, 2006

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I. INTRODUCTION

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

- (i) Describe how the POTW will investigate instances of noncompliance;
- (ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
- (iii) Identify (by title) the official(s) responsible for each type of response; and
- (iv) Reflect adequately 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 Butler County Enforcement Response Plan is based largely upon the U.S. EPA guidance contained in the following documents: the 1986 “Pretreatment Compliance Monitoring and Enforcement Guidance” and the 1989 “Guidance for Developing Control Authority Enforcement Response Plans”. The plan describes the processes for obtaining and evaluating information on IU compliance, for identifying noncompliance, for selecting an appropriate enforcement action, and for resolving noncompliance in a timely, fair, and consistent manner. The plan will be periodically reviewed for effectiveness and updated and revised as necessary.

II. ENFORCEMENT PRINCIPLES AND PROCEDURES

A. Responsibilities, Procedures, and Time frames

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

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

Table I
Butler County Pretreatment Program
Responsible Parties

Butler County Commissioners	Legal and financial responsibility
Butler County Prosecuting Attorney	Legal Assistance
Director, Butler County Department of Environmental Services	Responsibility for initiation of formal legal enforcement actions
Division Head – Environmental, Butler County Department of Environmental Services	Overview of program activities, management over regulatory compliance, laboratory and Industrial Services personnel and activities
Butler County Regulatory Compliance Manager	Direct supervision of Industrial services personnel and responsible for tracking new pretreatment regulations to ensure county program remains compliant with all regulations
Butler County Industrial Services Staff	Daily program implementation- inspections, monitoring, investigations, recordkeeping, etc

B. Definitions of Significant Industrial User and Significant Noncompliance

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

1. Significant Industrial User:

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

2. Significant Noncompliance:

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

- (a.) Chronic violations of wastewater discharge limits, defined herein as those in which 66 percent or more of all of the measurements taken during a 6-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter.
- (b.) Technical Review Criteria (TRC) violations, defined herein as those in which 33 percent or more of all of the measurements for each pollutant parameter taken during a 6-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC-1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH.)
- (c.) Any other violation of a pretreatment effluent limit (daily Maximum or longer-term average) that Butler County determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public)

- (d.) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment, or has resulted in the POTW's exercise of its emergency authority under 40 CFR403.8(f)(1)(vi)(B) to halt or prevent such a discharge
- (e.) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance
- (f.) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90 day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules
- (g.) Failure to accurately report noncompliance
- (h.) Any other violation or group of violations which Butler County determines will adversely affect the operation or implementation of the local pretreatment program

C. Industrial User Inventory Data

A complete and accurate compilation of the pertinent data on all Butler County IUs is the foundation of a compliance tracking and enforcement system. A current inventory of IUs must be maintained under 40 CFR 403.8(f)(2)(I) and includes name, location, identification number, effluent limits, basis for the limits (such as categorical limits or local limits), volume of discharge, pretreatment permit status, compliance dates and other special requirements, industrial category, and whether or not the IU is an SIU.

The original Butler County IU inventory for the Upper Mill Creek and LeSourdsville Regional POTW was developed using the following principle sources: water and sewer billing records; the 1980 Ohio Industrial Directory; the Butler County Telephone Directory 1981-82; and a physical surveillance of the area. An industrial waste survey was then mailed to the identified nonresidential users.

The Butler County Industrial Services Manager and program assistants are responsible for maintaining an up-to-date, accurate IU inventory. This task is accomplished through review of building permits, sewer tap permits and water tap permits. The Permit Section notifies the Industrial Services Section when a new industrial or commercial customer makes application for a sewer connection. The applicant is then required to fill out an "Industrial User Questionnaire" and submit it along with a set of plans for the proposed facility. This information is then reviewed to determine whether a complete IU pretreatment permit application (and issuance of such permit) and/or pretreatment facilities will be required.

Inspections and sampling of targeted industries are also conducted to keep inventory information current. In addition to the sampling of individual industries, predetermined manholes are inspected and sampled for changes in the waste stream from different sections of the sewer system. This allows for the detection of new industries, or major changes in existing discharges. In the event a noticeable change is detected, that portion of the system can be surveyed to find the source. Furthermore, all IUs are required to promptly notify the POTW in advance of any substantial changes in the volume

or character of pollutants in their discharge. All SIU's discharging to the Upper Mill Creek and LeSoudeville Regional POTW are monitored by BCDES Industrial Services Staff per the approved monitoring plan, and all IU are required to submit pretreatment permit renewal application at least every 5 years.

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

D. Sampling and Inspection of Industrial Users

The Butler County pretreatment program includes field investigations, which are used to verify compliance status, to collect samples, to initiate emergency or remedial action, and to gather additional information. The field investigations may be routine compliance monitoring or special monitoring in response to violations, technical problems, or to support permit modifications. A table establishing minimum monitoring frequencies for monitoring and inspections of IUs conducted by Butler County and reporting has been developed for defined classes of IUs (such as SIUs and other general IUs). This table specifies inspection and sampling of SIUs no less often than annually by the County. A detailed inspection form has been developed to ensure that the results of each visit are documented. IUs are advised of any deficiencies found during an inspection. Where special on-site investigations require warrants, the warrants will be obtained with advice from legal counsel.

The Butler County Industrial Services Staff are responsible for the coordination of all sampling and inspections and for ensuring that they are performed in accordance with established procedures. It is critical that proper procedures be followed during sampling and inspections, including quality assurance/quality control and chain-of-custody procedures, so that all information collected may be used as evidence in enforcement proceedings, if necessary.

E. Compliance Screening

Butler County Industrial Services staff uses Linko pretreatment software to track industrial compliance with all terms and conditions of the industrial users' permits and the Sewer Use Rule. As sampling data become available from the contract laboratory, the data is imported into Linko, which then compares the data with applicable limits, and flags any violations of pertinent discharge limits or reporting requirements. In addition to sampling data, Industrial Services personnel enter any required reports submitted by an industry into Linko to track industry compliance with reporting deadlines. Industrial Services personnel then review any violations thus identified and follow the enforcement evaluation described below. Linko tracks compliance history for all industries in the Butler County pretreatment program.

F. Enforcement Evaluation

The violations and discrepancies that are identified during the compliance screening process are reviewed to evaluate the type of enforcement response needed. This review is normally conducted by Butler County Industrial Services Staff and Regulatory Compliance Manager along with consultation with the Butler County Department of Environmental Services Environmental Division Head. The Butler County Department of Environmental Services Director and the Butler County Prosecuting Attorney may be necessary in some cases.

An enforcement response guide has been developed to assist in this evaluation and is included in Section III of this plan. The guide identifies types of responses that are appropriate based on factors such as the nature of the violation (such as effluent-average or maximum limit; reporting-late or deficient), the duration of the violation, the frequency of the violation (isolated or recurring), the potential impact of the violation (such as interference, pass-through, or POTW employee safety), and the compliance history and attitude of the violator.

The responses available vary from informal responses such as telephone calls or written notices of violation to formal responses such as administrative orders, judicial actions, and termination of sewer service. The enforcement response selected is related to the seriousness of the violation and the enforcement response is escalated if compliance is not achieved expeditiously after taking initial action. All contact made with the IU related to enforcement is to be documented in Linko and/or in BCDES' IU file.

G. Enforcement Mechanisms

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

1. Informal Notices and Meetings

Informal notice is the least coercive of the enforcement mechanisms and is generally to be conducted by the Butler County Industrial Services Staff. Informal notice may consist of a telephone call or "reminder" letter to notify an IU of a minor violation (such as a report submitted a few days late) and to seek an explanation, suggest the exercise of more due care, and/or notify the violator that subsequent violations of the same type may be dealt with more severely. If a telephone call does not produce compliance or an adequate explanation of the reason for noncompliance, a meeting between Butler County officials and the IU may be held to emphasize the importance of maintaining compliance and to inform the IU of stronger enforcement mechanisms available. All informal contacts, notices, and meetings with the IU will be documented in Linko and/or in BCDES' IU file.

2. Notice of Violation

A notice of violation (NOV) is a written notice to the IU that a pretreatment violation has occurred and that the noncompliance must be explained and corrected. It may also require specific corrective actions and schedules to be adhered to and will make it clear that additional enforcement action will be pursued if compliance is not attained as scheduled and that compliance with the notice does not excuse previous violation. NOV's will be sent by the Butler County Industrial Services Staff personally or by certified mail with return receipt requested. Copies will be maintained in the IU file. The return receipt will serve as proof that the IU received the notice in the event that more formal enforcement proceedings are necessary. In general, the NOV will be sent within 15 days after discovery of the noncompliance and will require a response from the IU within 15 days from the date of mailing the NOV. The response to the NOV must include an explanation of the violation

and put forth a plan for correction and prevention thereof.

3. Administrative Orders

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

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

Butler County may use more than one type of AO when responding to a particular instance of noncompliance.

A. Consent Orders

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

B. Show Cause Order

A show cause order directs the IU to appear before Butler County to explain its noncompliance and to show cause as to why more severe enforcement actions against the user should not go forward. The notice of the meeting will be served personally or by registered or certified mail (return receipt requested) at least 10 days prior to the Show Cause hearing. The Show Cause hearing may be formal and open to the public, or informal and closed to the public. It may be conducted by the Butler County Regulatory Compliance Manager, the Butler County Department of Environmental Services Environmental Division Head, the Butler County Department of Environmental Services Director, the Butler County Prosecuting Attorney, or the Butler County Board of Commissioners depending on the circumstances and will be carefully documented in Linko and the industrial user's file. This action is not prerequisite for further and immediate enforcement action.

C. Compliance Schedule

A compliance schedule directs the user to achieve or restore compliance by a date specified in the orders. Its terms need not be discussed with the industry in advance. The compliance schedule will document the noncompliance and state required actions to be accomplished by specific dates, including interim and final reporting requirements. Industrial users are responsible for communicating to BCDES its progress towards meeting compliance schedule milestones. Once these milestones are established, the Butler County Industrial Services Staff will track the user's performance against them so that the enforcement response can be escalated, if needed.

D. Cease and Desist Order

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

permit.

4. Administrative Fines

An administrative fine is a monetary penalty assessed by the County for violations of pretreatment standards and requirements under the authority vested in Ohio Revised Code 6111.032(B). Administrative fines differ from civil penalties (penalties imposed through court proceedings) since fines are assessed by the County directly and do not require court intervention unless the user contests the action or refuses to pay the fine.

Butler County will consider the following factors when assessing administrative fines:

- the type and severity of the violation;
- the number of violations cited;
- the duration of the noncompliance;
- the impact of the violation on the POTW and the environment;
- whether the violation threatened human health;
- any economic benefit or savings that the IU derived from the noncompliance;
- the compliance history of the user; and,
- “good faith” efforts of the user and other policy considerations normally involved in an enforcement action.

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

5. Civil Litigation

Civil litigation is the formal process of filing lawsuits against IUs to secure court ordered action to correct violations and to secure penalties for violations including the recovery of cost to the POTW of the noncompliance. It includes enforcement measures, which require involvement or approval by the courts, such as consent decrees and injunctive relief. Civil litigation requires the full cooperation of the Butler County Prosecuting Attorney and may result in court trials of IUs and assessment of penalties. Consent decrees are agreements between Butler County and the IU reached after a lawsuit has been filed. To be binding, the decree must also be signed by the judge assigned to the case.

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

6. Criminal Prosecution

Criminal prosecution is the formal process of charging individuals and/or organizations with violations of Sewer Use Rules provisions that are punishable, upon conviction, by fines and/or imprisonment. The alleged criminal action is defined as willful, negligent, knowing,

and/or intentional violations.

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

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

7. Termination of Service

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

8. Publication of List of Industrial Users in Significant Noncompliance

The Butler County Industrial Services Staff are responsible for preparing and publishing, at least annually in the largest daily newspaper circulated in the service area, a description of those IUs found to be in significant noncompliance.

9. Prohibited Wastewater Surcharge

In addition to all the enforcement mechanisms discussed above, any IU found to be in noncompliance will be subject to charges for the handling, treatment, removal, and disposal of all identified, prohibited materials or conditions that are discharged to the public sewer system prior to correction in accordance with the surcharge schedule in Appendix B to the Butler County Department of Environmental Services Sewer Use Rules. Such surcharges do not relieve the IU of their obligation to take prompt action in achieving compliance.

III. ENFORCEMENT RESPONSE GUIDE

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

The enforcement response guide is used as follows:

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

A. UNAUTHORIZED DISCHARGES (No permit or approval)

NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSES ¹	PERSONNEL ²
Unpermitted discharge where permit would be required	IU unaware of requirement; no harm to POTW, environment or personnel	Phone call NOV with pretreatment application form	I, RCM I, RCM
	IU unaware of requirement; potential for harm to POTW, environment or personnel	Administrative Order Administrative Fine Civil Action	D D D
	Failure to submit application continues after notification by BCDES	Administrative Order & Fine Civil Action Criminal Investigation Terminate Service	D D D D
Failure to submit renewal application	IU is less than 30 days late for renewal application	Phone call NOV	I, RCM I, RCM
	IU is more than 30 days late for renewal application	NOV, SNC publication	I, RCM
	IU fails to reapply after notification from BCDES	Administrative Order & Fine Civil Action Criminal Investigation Terminate Service	D D D D
Failure to notify prior to commencing discharge to POTW	IU not required to provide full application (BMR)	Phone call NOV	I, RCM I, RCM
	IU required to provide full application (BMR)	Phone call NOV	I, RCM I, RCM

B. DISCHARGE LIMIT VIOLATIONS

NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSES ¹	PERSONNEL ²
Exceedance of final limits (categorical, local or prohibited)	Infrequent or isolated nonsignificant violations	Phone call NOV	I, RCM I, RCM
	Repeated nonsignificant violations	NOV SNC publication Compliance Schedule Show Cause Hearing Administrative Order w/ Fine	I, RCM I, RCM I, RCM RCM, D D
	Repeated Violation(s) that are SNC	NOV SNC publication Administrative Order Administrative Fine Civil Action Criminal Investigation Terminate service	I, RCM I, RCM D D D D D
Exceedance of interim limits (categorical or local)	Without known damages	NOV Administrative Order	I, RCM D
	Repeated without known damages	NOV SNC publication Compliance Schedule Show Cause Hearing Consent Order Administrative Fine	I, RCM I, RCM I, RCM I, RCM D D
	<i>CONTINUED</i>		

	Harm to POTW, environment or personnel	AO with fine Civil Action Criminal Investigation Terminate Service	D D D D
	IU required to provide full application (BMR)	Phone call NOV	I, RCM I, RCM

C. SAMPLING, MONITORING and REPORTING VIOLATIONS

NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSES ¹	PERSONNEL ²
Improper Sampling	No evidence of “willful or negligent” action	Phone call NOV AO	I, RCM I, RCM D
	Evidence of “willful or negligent” action	Criminal Investigation Terminate Service	D D
Failure to install monitoring equipment	Delay of less than 30 days	Phone call NOV	I, RCM I, RCM
	Delay of over 30 days	Show Cause Hearing & SNC publication Compliance Schedule AO to install with fine & SNC publication	I, RCM I, RCM D
Failure to install monitoring equipment Reporting Violation	Recurring violation of AO	Civil Action Criminal Investigation Terminate Service	D D D
	Report is improperly signed or certified	Phone call NOV	I, RCM I, RCM
	Report is improperly signed or certified after notice by BCDES	Show Cause Order AO	I, RCM, D D
Reporting Violation Compliance schedules (in permit or order)	Isolated, late report, less than 30 days delinquent	Phone call NOV	I, RCM I, RCM
	Isolated late report greater than 30 days delinquent	NOV with SNC publication AO to submit with fine	I, RCM D
	Recurring late reports, greater than 30 days delinquent	Show Cause Order AO with fine Civil Action Terminate Service	I, RCM, D D D D
	Failure to report discharge limit violation, spill, upset, bypass or changed discharge (no harm)	NOV	I, RCC
	Failure to report discharge limit violation, spill, upset, bypass or changed discharge (results in harm)	Show Cause Order AO with fine Civil Action	I, RCM, D D D
	Repeated failure to report discharge limit violation, spill, upset, bypass or changed discharge	Civil Action Terminate Service	D D
	<i>CONTINUED</i>		

	Falsification	Criminal Investigation Terminate Service	D D
	Missed milestone by less than 90 days	NOV AO with fine	I, RCM D
	Missed milestone by 90 days or more (SNC)	Show Cause order, SNC publication AO with fine (SNC Pub) Civil Action/Terminate Service	I, RCM D D
Compliance schedules (in permit or order)	Recurring violation of an AO	Civil Action Criminal Investigation Terminate Service	D D D

D. OTHER PERMIT, ORDER, OR SEWER USE RULE VIOLATIONS

NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSES ¹	PERSONNEL ²
Wastestreams are diluted in lieu of treatment	Initial violation	AO with fine	D
	Dilution continues in lieu of treatment after notification by BCDES	Show Cause Order Civil Action Terminate Service	I, RCM, D D D
Failure to mitigate noncompliance or halt production	No harm	NOV	I, RCM
	Results in harm	Show Cause Hearing AO with fine Civil Action Terminate Service	I, RCM D D D
	Harm to POTW, environment or personnel	AO with fine Civil Action Criminal Investigation Terminate Service	D D D D
Failure to properly operate and maintain pretreatment facility	No harm	NOV Compliance Order	I, RCM I, RCM
	Results in harm	Show Cause Hearing AO with fine Civil Action Terminate Service	I, RCM D D D
	Harm to POTW, environment or personnel	AO with fine Civil Action Criminal Investigation Terminate Service	D D D D

E. VIOLATION DETECTED DURING SITE VISITS

NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSES ¹	PERSONNEL ²
Entry Denial	Entry denied or consent withdrawn; copies of records denied	Obtain warrant and return to IU	I, RCM, D
Illegal discharge	No harm	NOV AO with fine	I, RCM D
	Results in harm to POTW, environment or personnel	Show Cause Hearing AO with fine Civil Action Terminate Service	I, RCM D D D
	Harm to POTW, environment or personnel and evidence of “willful or negligent” action	Civil Action Criminal Investigation Terminate Service	D D D
Improper sampling	Unintentional; incorrect location, Incorrect sample type, Incorrect sample technique/preservation	Phone call/correct at site NOV	I, RCM I, RCM
Inadequate recordkeeping	Inspector finds files incomplete or missing, and no evidence of “willful or negligent” action	NOV	I, RCM
	Inadequate recordkeeping continues after notice by BCDES	AO with fine	D
	Incomplete or missing files and evidence of “willful or negligent” action	Criminal Investigation Criminal Action Terminate Service	D D D
	Inspector finds additional files/data	NOV	I, RCM
Failure to report additional monitoring	No harm to POTW, et al	NOV	I, RCM
	Failure to report additional data after notice from BCDES	AO with fine	D

NOTES:

¹The time frames for the enforcement responses are as follows:

- a. All violations will be identified and documented within five (5) working days of receiving compliance information.
- b. Initial enforcement responses (involving contact with the industrial user and requesting information on corrective or protective actions) will occur within fifteen (15) days of violation detection.
- c. Notice of Violations (NOVs) will require a response from the IU within fifteen (15) days of the date of the NOV, explaining the violation and putting forth a plan for correction and prevention thereof.
- d. Follow-up actions for continuing or recurring violations will be taken within 60 days of the initial enforcement response. For all continuing violations, the response will include a compliance schedule.
- e. Violations which threaten health, property, or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.
- f. All violations meeting the criteria for significant noncompliance (SNC) will be addressed with an enforceable order within 30 days of the identification of SNC.

²PERSONNEL

I=Industrial Services Staff/Manager

RCM=Regulatory Compliance Manager

D=Department of Environmental Services Environmental Division Head or Director

These are the personnel who will initiate the action; other personnel may be involved as

appropriate (e.g., deputy director, prosecuting attorney, board of commissioners).

IV. APPENDIX A

ENFORCEMENT PROVISIONS OF SEWER USE RULES

SECTION 9 - ADMINISTRATIVE ENFORCEMENT REMEDIES

9.1 Notification of Violation

When the Director finds that a user has violated, or continues to violate, any provision of this rule, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may serve upon that user a written Notice of Violation. Within 10 days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Director to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

9.2 Consent Orders

The Director may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 10.4 and 10.5 of this rule and shall be judicially enforceable.

9.3 Show Cause Hearing

The Director may order a user which has violated, or continues to violate, any provision of this rule, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least 10 days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

9.4 Compliance Orders

When the Director finds that a user has violated, or continues to violate, any provision of this rule, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated.

Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

9.5 Cease and Desist Orders

When the Director finds that a user has violated, or continues to violate, any provision of this rule, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Director may issue an order to the user directing it to cease and desist all such violations and directing the user to:

- A. Immediately comply with all requirements; and
- B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

9.6 Administrative Fines

- A. When the Director finds that a user has violated, or continues to violate, any provision of this rule, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may fine such user in an amount not to exceed \$10,000, pursuant to R.C. 6111.07. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation.
- B. Unpaid charges, fines, and penalties shall, after 30 calendar days, be considered delinquent, and a lien against the user's property will be sought for unpaid charges, fines, and penalties.
- C. Users desiring to dispute such fines must file a written request for the Director to reconsider the fine along with full payment of the fine amount within 10 days of being notified of the fine. Where a request has merit, the Director may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The Director may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

- D. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

9.7 Emergency Suspensions

The Director may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Director may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

- A. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Director may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Director may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless the termination proceedings in Section 9.8 of this rule are initiated against the user.
- B. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Director prior to the date of any show cause or termination hearing under Sections 9.3 or 9.8 of this rule.

Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

9.8 Termination of Discharge

In addition to the provisions in Section 5.7 of this rule, any user who violates the following conditions is subject to discharge termination:

- A. Violation of wastewater discharge permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or
- E. Violation of the pretreatment standards in Section 2 of this rule.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 9.3 of this rule why the proposed action should not be taken. Exercise of this option by the Director shall not be a bar to, or a prerequisite for, taking any other action against the user.

SECTION 10 - JUDICIAL ENFORCEMENT REMEDIES

10.1 Injunctive Relief

When the Director finds that a user has violated, or continues to violate, any provision of this rule, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Director may petition the Court through Butler County's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this rule on activities of the user. The Director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

10.2 Civil Penalties

- A. A user who has violated, or continues to violate, any provision of this rule, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to Butler County for a maximum civil penalty of \$10,000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
- A. The Director may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by Butler County.
- B. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.
- C. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

10.3 Criminal Prosecution

- A. A user who willfully or negligently violates any provision of this rule, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be punished according to applicable state and federal law.
- B. A user who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be punished according to applicable state and federal law.
- C. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this rule, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, method, or sample required under this rule shall, upon conviction, be punished by applicable state and federal law.

10.4 Remedies Nonexclusive

The remedies provided for in this rule are not exclusive. The Director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with Butler County's enforcement response plan. However, the Director may take other action against any user when the circumstances warrant. Further, the Director is empowered to take more than one enforcement action against any noncompliant user.

SECTION 11 - SUPPLEMENTAL ENFORCEMENT ACTION

11.1 Performance Bonds

The Director may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this rule, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless such user first files a satisfactory bond, payable to Butler County, in a sum determined by the Director to be necessary to achieve consistent compliance.

11.2 Liability Insurance

The Director may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this rule, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

11.3 Water Supply Severance

Whenever a user has violated or continues to violate any provision of this rule, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply. Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 9.3 of this rule why the proposed action should not be taken.

11.4 Public Nuisances

A violation of any provision of this rule, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the Director. Any person(s) creating a public nuisance shall be subject to the provisions of R.C. 6111.04 governing such nuisances, including reimbursing Butler County for any costs incurred in removing, abating, or remedying said nuisance.

11.5 Contractor Listing

Users which have not achieved compliance with applicable pretreatment standards and requirements may not be eligible to receive a contractual award for the sale of goods or services to Butler County. Existing contracts for the sale of goods or services to Butler County held by a user found to be in significant noncompliance with pretreatment standards or requirements may be terminated at the discretion of the Director.

11.6 Annual Publication of Significant Non-Compliance

The Director shall publish, at least annually in the largest daily newspaper circulated in the service area, a description of those industrial users which are found to be in significant noncompliance as defined in Section 1.4 of this rule.

11.7 Penalties for Prohibited Wastewater Discharges

In addition to all the enforcement mechanisms in this section, each industrial user found to be in noncompliance will be subject to charges for the handling, treatment, removal, and disposal of all identified, prohibited materials or conditions that are discharged to the public sewer system prior to the corrections being made in accordance with the scheduled in Appendix B. Such penalties do not relieve the industrial users of their obligation to take prompt action in achieving compliance.

SECTION 12 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

12.1 Upset

- A. For the purposes of this section, “upset” shall be as defined in Section 1.4.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with pretreatment standards if the requirements of paragraph (C), below, are met.
- C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and the user can identify the cause(s) of the upset;
 - (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
 - (3) The user immediately notified the Director of the upset condition and has submitted a written report containing the following information to the Director within five (5) days of the immediate notification:
 - a. A description of the indirect discharge and cause of noncompliance;
 - b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with pretreatment standards.

- D. Users shall control production of all discharges to the extent necessary to maintain compliance with pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

12.2 Prohibited Discharge Standards

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2.1(A) of this rule or the specific prohibitions in Sections 2.1(B)(3) through 2.1 (B)(22) of this rule if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- A. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- E. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when Butler County was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

12.3 Bypass

- A. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (B) and (C) of this section.
- B.
 - (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the Director, at least ten (10) days before the date of the bypass, if possible.
 - (2) A user shall immediately submit oral notice to the Director of an unanticipated bypass that exceeds applicable pretreatment standards when it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Director may waive the written report on a case-by-case basis if notification has been received immediately upon the bypass being discovered.
- C.
 - (1) Bypass is prohibited, and the Director may take an enforcement action against a user for a bypass, unless
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or

severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c. The user submitted notices as required under paragraph (B) of this section.

(2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in paragraph (C)(1) of this section.

SECTION 13 - WASTEWATER TREATMENT RATES

Wastewater Treatment Rates, extra strength surcharge rates and prohibited penalty calculation procedures are amended from time to time, and shall be attached herewith as an Appendix B.

13.1 Extra Strength Surcharges

In addition to the fixed costs and the volumetric charges, any user discharging wastewater containing wastes in higher concentrations than are considered normal for domestic wastewater shall pay additional charges, as outlined in Appendix B of the Sewer Use Rule.