INTRODUCTION

The City's Sewer Use Ordinance and EPA approved Industrial Pretreatment Program (IPP) provide the legal framework and manpower to control industrial wastewater discharges to the sewer system. This enforcement response plan describes how the City will ensure that these dischargers are complying with all applicable requirements.

City personnel and the industries obtain and report information on wastewater discharges and production processes. This information is then evaluated by City staff, with periodic oversight by the State of New Hampshire and the US Environmental Protection Agency (EPA), to determine whether violation of City State or Federal rules have occurred.

When violations are identified, an appropriate response by the City must be determined to correct the problem. Depending on the severity of the violation and the previous record of the discharger, the response may range from a phone call to criminal prosecution. Many intermediate responses are also available to the City.

In order to provide a fair and consistent method of investigating and responding to violations, this document has been developed to provide a written record of how the City will carry out the enforcement part of its IPP. This document is public information and is available to the regulated community. Development of this Enforcement Response Plan is also required by 40 CFR 403.8(f)(5). As such, it must contain the following.

1. Describe how the POTW will investigate instances of noncompliance; 403.8(f)(5)(i)
2. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place; 403.8(f)(5)(ii)
3. Identify (by title) the official(s) responsible for each type of response; 403.8(f)(5)(iii)
4. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8(f)(1) and (f)(2). 403.8(f)(5)(iv)

LEGAL AUTHORITY

The following items are the basis of the City's authority to administer the Enforcement Response Plan.

Sewer Use Ordinance

The City Sewer Use Ordinance provides the legal authority to implement all the requirements of the Industrial Pretreatment Program as mandated by the Clean Water Act and the General Pretreatment Regulations. Ordinance sections important for administering this enforcement plan are:

- Specific limitations on discharges – Chapter 52. Sewers, §52.026
- Permits for industrial users – Chapter 52. Sewers, §52.051 & §52.052

- Enforcement actions and penalties – Chapter 52. Sewers, §52.179 through §52.999

State law provides for City Authority for penalties. Ref. RSA 47.17 (suppl.), RSA 149-1:6, RSA 31:39 (suppl.).

Industrial Discharge Permit

The City's Industrial Wastewater Discharge Permit represents the first means of controlling the wastewater discharge by industrial users. If permit requirements are met by the permittee, no further enforcement activity should be required.

The permit itself is also a major enforcement tool, since it is revocable and this effectively bars discharge of industrial process wastewater to the City sewers.

Intermunicipal Agreements

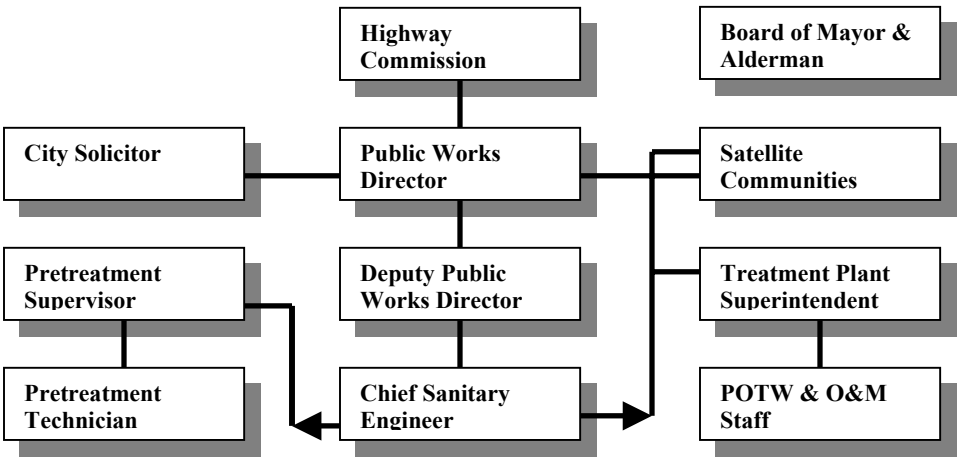
The City of Manchester has entered into agreements for wastewater treatment service to the satellite communities. These agreements state that the City and City officials are deemed the agents and representatives of the Towns for the purposes of undertaking compliance and enforcement actions, including civil and criminal proceedings, pursuant to the Industrial Pretreatment Program and Sewer Use Ordinance. The City may undertake such action only after a town has failed to take action within 10 days of being notified by the City (except in cases of emergencies). Manchester may deny additional permitted industrial discharges if the satellite communities fail to enforce the requirements of the pretreatment program and/or exceed their loading allowance as outlined in the Industrial Discharge Agreement. Copies of the Intermunicipal Agreements are included in section 24 of the approved Pretreatment Program.

ADMINISTRATION

Personnel – Responsibilities & Authorities for Enforcement Activities

This section establishes who is responsible for taking the enforcement actions as well as conducting related support activities. The delegation of specific responsibilities to the staff helps to ensure that the City's actions are consistent and are seen as well organized by industrial users, the public and the EPA.

Organizational Chain of Authority



Highway Commission
The public body with advisory authority for the operation of the Manchester Highway Department and POTW. Is informed of enforcement action against industrial users and satellite communities. Is advised by the Public Works Director in accordance with the City's Sewer Use Ordinance.

Board of Mayor & Aldermen
The Mayor is the City official legally identified as responsible for compliance with the treatment plant's NPDES permit. This includes the responsibility for implementing the Industrial Pretreatment Program. Appoints members of the Highway Commission. Approves department budgets.

Public Works Director
Administers and manages the Manchester Highway Department. Issues assessments of fines, initiates civil and/or criminal action. Authorizes Class I, Industrial Discharge Permits.

Deputy Public Works Director
Assists the Public Works Director in permitting matters. Acts on behalf of the Public Works Director in his/her absence.

Chief Sanitary Engineer
Is the overall administrator and manager of the treatment plant and collection systems. Represents the POTW before the Highway Commission and Public Works Director. Reviews and recommends enforcement responses and obtains approval from the Public Works Director for formal enforcement responses. Makes recommendations on revocation of permits and emergency disconnections from sewer service. He/she issues consent orders and oversees show cause hearings.

Treatment Plant Superintendent
The Wastewater Treatment Plant Superintendent is responsible for compliance with the terms and conditions of the POTW's NPDES permit and for the overall operation and maintenance of the wastewater treatment plant, including employee safety, protection of the treatment plant, effluent quality and sludge use and disposal. Is routinely copied on correspondence and advised of all industrial user effluent violations and enforcement responses. Advises in determination of magnitude of industrial user violations and effects on the POTW. Replaces Chief Sanitary Engineer in his absence.

City Solicitor
The City solicitor advises technical and managerial personnel on enforcement matters and orchestrates the judicial responses deemed necessary by the Public Works Director. Reviews and advises during development of enforcement response plans and the sewer use ordinance. Provides consultation on matters requiring interpretation of the sewer use ordinance and enforcement response plan

Pretreatment Supervisor
The Pretreatment Supervisor is authorized to issue verbal and written notices of violations, conduct demand inspections and sampling and modify permits. Recommends and/or issues compliance schedules. Refers chronic violation problems to the EPA and/or State. Writes newspaper publications for SNC and recommends fines, administrative orders and all other enforcement actions.

The position requires thorough familiarity with the pretreatment program requirements and 40 CFR Part 403. The Pretreatment Supervisor is generally recognized by the industries as the point that program requirements originate and is available for guidance and assistance. Responsible for keeping the industrial user inventory accurate. Conducts annual reviews of satellite community pretreatment programs and maintains routine contacts for joint pretreatment program activities.

Pretreatment Technician
Conducts compliance sampling and inspections. Screens monitoring data and conducts compliance evaluations, including inspection reports. Informs Pretreatment Supervisor of violations. Is authorized to provide informal warnings of noncompliance. Assists in keeping the industrial user master list up to date, including field surveys and computer database entry.

Reporting by Industries

Summary: Self-monitoring reports are required from Significant Industrial Users (SIUs) at least once every six months. Greater details on industrial monitoring can be found in section 11 of the IPP.

Reporting requirements for industrial users are specified in discharge permits or orders. IPP staff tracks the submission of reports for timeliness and completeness using the following form:

- Industrial Sampling, Reporting and Inspection Worksheet - (Appendix A)

City Sampling and Inspection of Industrial Users

Summary: Routine sampling is conducted for each significant industrial user at least once per reporting year. Facility inspections are done at least once per reporting year on all SIUs. Greater details on industrial procedures can be found in Section 11 of the IPP.

In addition to reports received from the industries, the City independently obtains its own monitoring (sampling and inspection) information. This creates a checks and balances system to verify and ensure the integrity of industrial reporting.

Monitoring may be routine or in response to violations or emergencies. It may also be used to obtain evidence for enforcement proceedings, to solve technical problems or for support of local limits development.

The Monitoring Section keeps a schedule available and updated for facility inspections, field investigations, sample collection and flow monitoring. Logs and checklists used to trigger and provide records of monitoring by the City include:

- Industrial Inspection Report (Tracks findings during inspections)
- Industrial Schematic with notes (Basic plant diagram with notes on findings during inspections)
- RCRA compliance checklist (Tracks compliance with RCRA requirements)
- Organic Vapor Analyzer (OVA) check sheet (determines is there are any sources of volatile organic contamination)
- Industrial Sampling, Reporting and Inspection check sheet (Helps pretreatment staff track the semi-annual industrial reporting and self-monitoring along with the IPP's required annual sampling and inspection requirement)
- Compliance Summary Sheet (tracks industrial compliance via self and City analytical data compilation)

Facility inspections are documented on Industrial Inspection Report forms with follow-up notification to the industry of deficiencies found during any inspection. Results of sampling and inspection activities are reported to the EPA and State of NH in the required "Annual Pretreatment Report" due August 1st of each year to both agencies. Joint monitoring of industries with the EPA and State may be conducted.

Identification of Violations

Using the information obtained from industrial reports and City monitoring, the monitoring staff will determine compliance with:

- Schedules in permits or other orders
- Pretreatment standards and other discharge limitations
- Timely submission of reports and sampling requirements

Also to be checked are that the reports cover the proper time periods, that all required information as specified in the permit or other order is included and that it is properly signed. This review shall be made within five working days from the time the information is received by the monitoring staff.

All violations are noted. Appropriate responses are determined with assistance from the "Summary" page of this Response Guide.

Significant Noncompliance (SNC)

Federal Regulations define certain violations or patterns of violations as significant noncompliance. These are identified to establish enforcement priorities, provided for

publication in the newspaper and for annual reporting to the US EPA. Instances of SNC are industrial user violations, which meet one or more of the following criteria:

1. SNC is defined as those chronic violations of effluent discharge limits in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter. {§403.8(f)(2)(vii)(A)}

2. SNC is also defined as Technical Review Criteria (TRC) violations, in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the 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). {§403.8(f)(2)(vii)(B)}

3. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the control Authority 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; {§403.8(f)(2)(vii)(C)}

4. 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. {§403.8(f)(2)(vii)(D)}

5. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism. {§403.8(f)(2)(vii)(E)}

6. 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. {§403.8(f)(2)(vii)(F)}

7. Failure to accurately report non-compliance. {§403.8(f)(2)(vii)(G)}

8. Any other violation or group of violations, which the Control Authority determines, will adversely affect the operation or implementation of the local pretreatment program. {§403.8(f)(2)(vii)(H)}

The industrial monitoring staff maintains a computerized system to assist with determination of SNC for effluent limitation violations. "SNC Determination" sheet is attached as Appendix B.

Enforcement Evaluation and Response Guide

The enforcement response guide (presented in Appendix C) is a matrix, which describes violations and indicates a range of appropriate enforcement responses. This guide is the centerpiece of the enforcement response plan. It serves two main functions:

- Defines the range of appropriate enforcement actions based on the nature and severity of the violation
- Promotes consistent and timely use of enforcement remedies

There are there levels of violations – minor, moderate and significant. The Enforcement Response Guide categorizes many anticipated types of violations into one of these three categories.

For any violation, the City must review the violation and determine the appropriate response. This involves referring to the Enforcement Response Guide Tables and determining the general level of a violation – minor, moderate or significant. A variety of enforcement responses exist within each of these categories. A response within the category is then selected, with the following general guidelines in mind:

- The choice of response from within a category should be proportionate to the violation's severity, promote compliance in a timely manner, and be within the City's legal authority.
- For some violations – such as a violation identified and promptly corrected by an industry – the response may be no action necessary at that this time.
- The enforcement philosophy is progressive – problems are addressed at the lowest level and with the least formality possible consistent with the specific problem.
- No enforcement procedure is contingent upon the completion of any less formal procedure. For severe violations, advanced levels of enforcement may be taken without prior informal procedures.
- Also considered is the industrial user's good faith. If an industrial user is attempting in good faith to comply with pretreatment requirements, City actions will be on a more cooperative level than if the industrial user is not attempting to comply. Failure to comply with a pretreatment requirement in a timely manner while waiting the outcome of a challenge generally voids subsequent efforts to comply from being considered good faith efforts.

The types of responses are further subdivided into informal and formal actions. Informal responses are those that are taken within the authority of the Industrial Monitoring Staff. It is expected that violations will usually be resolved at this level. Failure to resolve a compliance problem or a serious violation requires formal action and the involvement of higher levels of authority.

The City has developed a quick guide called "Enforcement Flowchart Summary" for easy reference. This is attached as Appendix D.

MINOR (Informal Enforcement Response)	* No response	Sanitary Engineer (SE), WWTP Superintendent (WS)
	* Phone calls, verbal warnings in person	Pretreatment Supervisor (PS), Pretreatment Technician (PT)
	* Letters of violation	SE, PS
	* Demand Sampling & Inspections	SE, PS, PT
	* Meetings on Compliance Issues	SE, WS, PS
MODERATE (Informal/Formal Enforcement Response)	* Permit modification(s)	SE, PS
	* Compliance schedules	SE, PS
	* Administrative Orders	SE, PS
	* Referral of violations to EPA/State	SE, PS
	* Show Cause Order	SE, PS, Director of Public Works (DPW)
	* Consent Orders	SE, PS, DPW, City Solicitor (CS)
	* Assessment of fines	DPW, CS
SIGNIFICANT (Formal Enforcement Response)	* Revocation of Permit	DPW, CS
	* Disconnection of Sewer Service	DPW, CS
	* Civil litigation	DPW, CS
	* Criminal Prosecution	DPW, CS

The "Time Frame for Responses" is a key element in all enforcement responses as is the timeliness with which they are initiated and affect compliance. Time frames are outlined in the Enforcement Response Guide.

An enforcement response log, (attached as Appendix E), is maintained by the City for the purpose of tracking all enforcement actions. The log provides for identification of the industry, a brief description of the violation, type of action taken, response due date, date of response and resolution of the violation.

By maintaining this log the City can facilitate compliance with the time intervals as stated above as well as summarize enforcement activities taken during a specific time period.

This description of enforcement responses, describes the types of enforcement responses available to the City's Industrial Pretreatment Program. Discussion includes a general description as well as who implements each type of response and how it is done.

Phone calls, Verbal Warnings in Person

Verbal communication is a frequently used form of a notice of violation from the City to the noncompliant user to inform the user that a pretreatment violation has occurred. The Verbal warning is an appropriate first response to non-significant violations. The purpose is to notify the industrial user of the violation and may be the only response necessary on cases of infrequent and generally minor violations.

The Pretreatment Supervisor, Pretreatment Technician, Sanitary Engineer and Wastewater Superintendent are authorized to take this enforcement response. Issuance of verbal notification does not preclude the City from taking more severe responses. Frequently, a letter of violation will follow up a verbal response.

Since this level of action may not resolve the noncompliance, it is important that these verbal actions be documented in the industrial user's file. Space for this is provided on the Telephone Log (Attached as Appendix F) that is placed in the Master Telephone Log binder.

In taking verbal action the response will generally include the following information.

- A description of the violation
- Proposed response by the industry
- Timeframes for any follow-up activities
- Documentation of this action in the appropriate IU file

Written Letters of Notice of Violation (NOV)

Notices of violation are official communications from the City to the noncompliant user which inform the user that a pretreatment violation has occurred. The NOV is an appropriate response to non-significant violations. The NOV's purpose is to notify the industrial user of the violation and may be the only response necessary on cases of infrequent and generally minor violations.

The Pretreatment Supervisor and the Sanitary Engineer are authorized to issue NOVs. Issuance of an NOV does not preclude the City from taking more severe responses.

If the user does not return to compliance, escalation to a more stringent enforcement response should occur rather than repeatedly issuing NOVs, which do not result in a return to compliance.

Elements that are included in a NOV are:

- Issued on the City of Manchester's official letterhead
- Include details of the violation and the section of regulation(s) violated (ordinance, 40 CFR Part 403, approved IPP document or Permit Limitations)
- Negative or potential negative impacts of the violation on the POTW, environment, etc. (if applicable)
- Corrective action requested by the City and a deadline for a written response by the industrial user
- Documentation of mailing by either proof of mailing certificate or certified mail with return receipt

Demand Sampling and Inspections

Demand monitoring means sampling and/or inspections usually conducted in response to a specific problem or emergency such as a spill or upset at the treatment plant. In these cases, where the City has a reasonable suspicion of violations, targeted monitoring will be carried out.

Demand monitoring may be initiated in response to a known or suspected violation discovered as a result of a self-monitoring report, routine sampling visit or inspection, a public complaint, or other related POTW problem(s). Demand monitoring is initiated to accomplish one or more of the following:

- Identify or verify the source of a discharge causing problems with treatment plant operations
- Determine the nature, duration and degree of hazard of the discharge
- Assist in identifying corrective actions
- Gather information (including following correct protocol for sample collection and chain-of-custody procedures) needed for follow-up enforcement actions

In emergency situations, demand sampling should be initiated immediately. Once the source is identified, the POTW personnel involved should be prepared to:

- Notify other appropriate agencies (City Hazmat team, State hazardous waste team, etc.)
- Assist in making information available to the other agencies involved in the response effort
- Maintain contact with the Treatment Plant superintendent and Chief Sanitary Engineer (spill response at the POTW, termination of service, etc.)

While demand monitoring is not specifically an enforcement response, it is a tool for attaining compliance that will be used to isolate violations and may lead directly to enforcement action. Authority for this action is granted by the sewer use ordinance provision authorizing unrestricted access to all properties discharging to public sewers for the purpose s of sampling and inspection pertinent to the discharge to public sewers. The Pretreatment Supervisor and/or Pretreatment Technician or higher authority personnel are authorized to initiate demand monitoring.

Meetings with POTW Staff

If a verbal or written NOV does not produce compliance or an adequate explanation of the reason for the non-compliance, a meeting between the City and the industrial user may produce the desired results. The compliance history of the user should be reviewed and the violations clearly identified. Actions taken by the industry should be reviewed. Meetings held at the industrial users facility could include inspections of areas related to the violations.

The general content of the meeting should be documented and placed into the industrial user's file, especially any agreed upon actions to be taken by the City or the user.

If meetings are conducted they are usually initiated and undertaken by the Pretreatment Supervisor with the knowledge of the sanitary engineer.

Permit Modifications

Remedies available to the Pretreatment Supervisor include modification of permits. Modification of the permit is appropriate when a violation(s) occurs that requires a long-term change in some aspect of the industrial user's operation. The most frequently encountered situation is the need for increased monitoring and reporting.

Generally, industrial users demonstrating a history of non-compliance should be subject to increased monitoring and reporting. Increased compliance information will aid the

City's enforcement program in several ways. First, the additional data will allow the user to better monitor the effectiveness of any corrective measures and demonstrate that consistent compliance has in fact been achieved. Second, it provides the City greater data on the extent of the user's non-compliance in the event that the problem continues.

Monitoring may consist of additional sample collection and analysis or installation of continuous metering equipment. Along with increased monitoring, the frequency of the reporting schedule may also need to be increased. This is to keep the City's available compliance information as up to date as required.

Other permit modifications made in response to violations could include incorporation of compliance schedules, as well as requirements for specific maintenance procedures or equipment calibration.

If the City implements a permit revision the page of the permit that is modified is delivered to the industrial user with a cover letter attached, explaining the reason and nature of the change. Instructions for attaching it to the existing permit and marking the old part as revised should also be included. Receipt of the modification should be verified verbally if the revision is not delivered personally or by certified mail.

Compliance Schedules

A compliance schedule is a schedule of required activities (also called milestones) necessary for an industrial user to achieve compliance with pretreatment program requirements. The schedule may include increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional facilities. These include hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction and attaining full operational status. A compliance schedule may also be issued as:

- An individual enforcement response (covered here)
- A permit revision in response to violations or new pretreatment standards
- Part of a Consent Order

A compliance schedule when used without a consent order or permit modification depends on the good faith of the industrial user for adherence. For this reason, it should only be issued on its own when the good faith of the industrial user can be demonstrated and a violation condition is not causing immediate problems and can be mitigated by short-term measures. The total time frame for attaining compliance should not exceed nine months.

When a compliance schedule is issued the Pretreatment Supervisor, working with the approval of the Sanitary Engineer, will request a proposed compliance schedule from the industry. After review and approval, the City will issue the compliance schedule in the form of a letter or permit modification to the industrial user. Adherence to the schedule will be a consideration in the administration of any additional enforcement responses.

Publication of Significant Violators in the Newspaper

As required by the EPA regulations, the City complies with the public participation requirements of 40 CFR Part 25. Among these requirements is annual publication of a list of industrial users that were significantly violating pretreatment standards or requirements (see 40CFR 403.8(f)(2)(vii)). Publication of this list is intended to deter industrial users from committing pretreatment violations and to satisfy the public's right to know of violations affecting its immediate environment and causing additional expenditures of public funds to operate and maintain the treatment system.

The public notice will be made in a manner that is as fair and equitable as possible. Required in the notice are:

- Name of industrial user
- A statement regarding the violations during the previous 12 months
- Current compliance status
- City actions taken to restore compliance
- Industry actions taken to restore compliance
- Type, severity and duration of the violation

By balancing the text with favorable information, the industry receives credit for any "good faith" effort it is making.

The notice is drafted by the Pretreatment Supervisor for review and issuance by the Sanitary Engineer with the approval of the Public Works Director. The list of significant violators is placed in the legal notices section of the area's largest daily newspaper (The Manchester Union Leader), and must be paid for by the City. This ensures publication rather than relying on a press release that may be subject to editing or not published.

Referral of Violations to EPA/State and other City Agencies

The City always has the option to take enforcement action when it deems it necessary. There may be unusual cases however when the City has difficulties obtaining compliance from an industrial user. In these circumstances, it may be appropriate for the City to refer the matter to the EPA or the State of New Hampshire. This referral may result in joint action or action by either the EPA and/or the State of New Hampshire alone.

The penalties available to EPA and the State are substantially greater than those available to the City. The Clean Water Act allows EPA to impose administrative fines of up to $125,000 per action and to seek civil penalties of up to $25,000 per day per violation and criminal penalties of up to $1 million and/or 15 years imprisonment. In such a case, the City would continue to track the industrial user's compliance and cooperate with the EPA and State action when necessary. While EPA and the State always have authority to take enforcement action against an industry, whether the City requests it or not, referral of the case to EPA for the purpose of obtaining penalties is serious and would be generated by the Sanitary Engineer with approval of the Public Works Director.

More often, referral to EPA/State would simply consist of copying them on enforcement actions taken against an industrial user. Putting the user on notice that EPA and/or the

State have been notified is intended to increase the deterrent value of the City's enforcement action. Responsibility for this rests with the Pretreatment Supervisor after obtaining approval from the Sanitary Engineer.

Joint action with agencies other than the EPA would also be a tool when overlapping problems exist for encouraging positive action by an industrial user. Examples of other Agencies are:

- City Fire Department, Hazmat Crew – for safety concerns, spills and spill potential
- OSHA – safety violations, hazardous work place conditions, dangers to EPD personnel
- NH office of Waste Management and/or EPA RCRA– improper hazardous waste handling, spills and spill potential
- NH Pollution Prevention Program (P2 Program) – long standing issues with compliance, air contamination issues, waste disposal issues
- City Building Department – building code violations, failure to obtain appropriate permits
- City Health Department – operations that are a health risk to EPD personnel, IU employees or the general public

Typically the Pretreatment Supervisor or Pretreatment Technician would make this type referral. The request may be verbal, a formal written request for joint action, or copying the agency on relevant enforcement actions. In any case, if monitoring staff is knowingly aware of violations of the requirements of any of the above agencies, referral should be made.

Show Cause Order

An order to show cause directs the user to appear before the City, explain its non-compliance, and show cause why more severe enforcement actions against the user should not go forward. The order to show cause is typically issued after informal contacts or NOVs have failed to resolve the non-compliance. However, the show cause order/hearing can also be used to investigate violations of previous orders.

The Sanitary Engineer conducts the show cause hearing with the assistance of the Pretreatment Supervisor. During the hearing, the City will put forth its evidence of non-compliance. In response, the industrial user may admit or deny noncompliance, explain mitigating circumstances, demonstrate its eventual compliance and describe all other corrective measures. Employees of the industry may be interviewed, records reviewed or installation of equipment negotiated. If the user does not understand the violation's nature, the hearing can serve to educate the user and bring about cooperation.

If the problems causing the non-compliance appear to be resolved at the hearing's conclusion, a consent order with a compliance schedule may be issued. If the meeting results in an impasse, the City may follow up the meeting with an escalated enforcement response.

The proceedings and findings resulting from the hearing should be carefully documented. This information may be submitted as evidence for future enforcement actions.

The Sanitary Engineer, acting under the authority of the Public Works Director, issues a show cause order by personally delivering or sending a certified mail (return receipt requested) notice to the industrial user at least 10 days before the hearing. The notice will specify a time and place for the meeting, the proposed enforcement action the reason for such action, and a request that the user show cause why such proposed action should not be taken.

Consent Orders

The consent order is an agreement between the City and the industrial user normally containing three elements.

1. Compliance schedules
2. Stipulated fines or remedial actions
3. Signatures of the Sanitary Engineer and industry representative

A consent order is issued under the authority of the Sanitary Engineer usually with the recommendation of the monitoring section staff.

A consent order is appropriate when the user assumes responsibility for its non-compliance and is willing (in good faith) to correct its cause(s). The user need not admit the non-compliance in the text of the order. Thus, signing the order is neither an admission of liability for the purposes of civil litigation or a plea of guilty for purposes of criminal prosecution. However, the City must make sure that the consent order prohibits future violations and provides for corrective action on the part of the industry.

The following elements must be in a consent order:

- Title: should specify "Consent Order," to whom it is being issued, summarize the purpose(s) of the order, contain an identification number and be printed on City letterhead
- Legal Authority: The authority under which the Order is issued (cite State Law and Ordinance provision(s)) should be provided
- Finding of Non-compliance: All violations must be carefully described, including the date(s), the specific permit conditions/ordinance provisions violated, and any damages attributable to the violation. The consent order should address every identified (and potential) deficiency in the user's compliance status at the time of the order.
- Ordered Activity: Clearly set out all ordered activity including installation of treatment technology, additional monitoring, appearance at a show cause hearing, etc.
- Milestone dates for corrective actions: All progress or "milestone" dates must be clearly established including due dates for any written reports.
- Standard Clauses: Clauses that provide:

1. Compliance with the terms and conditions of the Order will not be construed to relieve the user of its obligation to comply with applicable Federal, State or local law;
2. Violation of the Order itself may subject the user to all penalties available under the sewer use ordinance;
3. No provision of the Order will be construed to limit the City's authority to issue supplementary or additional orders or take other action deemed necessary to implement its pretreatment program;
4. The provisions of the order shall be binding upon the industrial user, its officers, directors, agents, employees, successors, assigns and all persons, firms and corporations acting under, through or on behalf of the user.

There are clear advantages to issuing a Consent Order and they are as follows:

- The consent order is generally easy to draft since both parties have agreed to its terms. These terms may include findings of show cause hearings or outcomes of confidential settlement negotiations.
- The consent order offers the best means to reach compliance while preserving constructive City/industrial user relationships. Because the consent order allows the user to influence approaches to corrective action, it fosters cooperation and may also be the fastest means to attain compliance.
- Although the provisions of a consent order reflect a voluntary agreement, its terms are enforceable.

Assessment of Fines

A fine is a monetary penalty assessed by the City for violations of pretreatment standards and requirements. Fines are to capture the full or partial economic benefit of non-compliance, and to deter future violations. The Public Works Director with recommendation of the Sanitary Engineer does issuance of fines.

The ordinance specifies the maximum dollar amount ($1,000 per violation) that the City may assess. The City may also assess a civil penalty of not more than $10,000 plus actual damages incurred by the POTW per violation per day for as long as the violation(s) continue. By citing maximum amounts, the City retains its discretion to assess fines in lesser amounts when appropriate. In assessing the amount of the fine, the City will consider the following items:

- The number of violations cited
- The duration of non-compliance
- The impact of the violation on the wastewater treatment plant and the environment
- Whether the violation threatened human health
- Whether the industrial user derived any economic benefit or savings from the non-compliance
- The compliance history of the user
- Whether the user is making good faith efforts to restore compliance

A notice of Civil Penalty is used to notify the industrial user of its pretreatment violation and to inform the user that a fine is being assessed. A copy of this notice is sent to the City Solicitor. The notice shall at a minimum include:

- The violation(s) for which the penalty is being assessed
- The amount of the penalty
- An order that the industrial user take corrective action to return to compliance

If the user contests the action or refuses to pay the fine, the City shall seek court intervention through civil litigation or criminal prosecution as provided in the Sewer Use Ordinance.

Revocation of Permit

Revocation of permit is the removal of the industrial user's privilege to discharge industrial wastewater into the City's sewer system. Revoking a discharge permit is easier to implement than other enforcement responses, and may be readily reversed, but relies on the industry to carry out the City directive. The Public Works Director is authorized to revoke a permit usually with the recommendation of the Sanitary Engineer. This notice should be delivered to the industry by certified mail (return receipt requested).

Termination from Sewer Service

Termination of service may be accomplished by physical severance (or plugging) of the industry's connection to the collection system. Since this action would force any industry to have their wastewater hauled away or to obtain their own NPDES permit, this provides a strong incentive to remain in compliance.

Termination of service may be used as an immediate response to an emergency situation or as an escalated response to a significant violation when other enforcement responses fail to bring the industrial user into compliance.

Since termination of service may force industries to halt production and force closure, all legal and operational implications of termination must be considered before using this enforcement response. The City's sewer use ordinance specifies that prior notice be given to the industrial user. This notice enables the user to halt production in time to avoid backflows; spills and other harm to its facility as well as time to look for alternative means of wastewater disposal.

When termination of service is used as an escalation response step the minimal contents for a notice of termination are:

- Identify violation
- Cite legal authority to terminate service
- Describe method for terminating service
- Specify date and time when service will be terminated
- A hearing date for whether or not service may be restored

A termination notice is issued by certified mail (return receipt requested) by the public works director.

When termination of service is used as a condition of an emergency response the City must act immediately to halt or prevent a discharge, which represents a threat to human health, the environment or POTW. A response like an injunction would not be adequate to address the emergency situation. Federal regulations require that the City have the authority to immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons, or to the environment, or which threatens to interfere with the POTW's operation. The City's authority to do this is clearly stated in §52.184 of the Sewer Use Ordinance.

Due to the emergency nature, the Sanitary Engineer is authorized to direct the implementation of this option at his/her discretion.

Civil Litigation

Civil litigation may result in several types of actions: Consent decrees, fines and injunctions. Responsibility for the decision to file suit rests with the Public Works Director, usually with the recommendation of the Sanitary Engineer. Monitoring section staff can be expected to present evidence in court. Civil litigation also requires the full cooperation of the City Solicitor and may result in court trials. Civil litigation requires a less stringent burden of proof than criminal action for the City to prevail.

Pursuing civil litigation requires legal advice. The following procedure may occur:

- Identify party to sue and amount to sue for
- City files complaint in court alleging pretreatment violations
- Industrial user files answer admitting or denying allegations
- Trial date set
- Discovery process – each side becomes familiar with evidence likely to be used in court
- Settlement negotiations – lead either to a consent decree or trial
- Trial
- Verdict
- Appeals

Consent Decrees

Consent decrees are agreements, similar to consent orders, except they are reached after a lawsuit has been filed. To be binding they must be signed by the judge assigned to the case. Consent decrees are used when the violator is willing to acknowledge and correct the non-compliance and the City and the violator agree on the penalty. Such an agreement can be formalized before a full hearing is required on the issues.

Injunctions

Injunctions are court orders that direct parties to do something or refrain from doing something. The City would seek an injunction when the delays of filing suit would result in irreparable harm, such as to prevent a discharge of pollutants that reasonably appear to present an imminent danger to health or welfare of persons. An injunction may be sought

without prior notice to the user. Due to the emergency nature, the Public Works Director is authorized to seek an injunction.

Civil Penalties and Cost Recovery

Going to trial may be necessary to recover costs associated with non-compliance and to impose civil penalties. Expenses that the industrial user may be forced to pay in addition to amounts assessed as fines include payment for restoration of City property, payment for medical treatment of employees, and indemnification to the City for all fines assessed against it for NPDES permit violations.

Criminal Prosecution

Criminal prosecution is the formal process of charging individuals and/or organizations with violations of ordinance provisions that are punishable, upon conviction, by fines. There are two elements that must be proven:

1. An act in violation of the law
2. The industrial user intended to break the law or was so indifferent to the nature and implications of its act that it could be deemed criminally negligent

Criminal prosecution is a strong deterrent to non-compliance. While fines may be absorbed into a corporation's costs, the prospect of having a criminal record encourages managers to develop a sense of personal responsibility for compliance. While criminal prosecution would generally be the City's last choice for enforcement action, it must remain a credible option. Cooperation with local police forces, City attorneys and the local judicial system is important. The decision to seek criminal prosecution will be made by the Public Works Director, usually with the recommendation of the Sanitary Engineer.

The methods for pursuing criminal prosecution are as follows:

- Discover the crime – informants; City monitoring data and records
- Gather evidence – police assistance; search warrants
- Bring evidence to the prosecutor; prosecutor seeks indictment; grand jury decides whether to indict industrial user
- Defendant pleads guilty or not guilty
- Criminal trial; verdict issued
- Sentencing; appeals

Outside Intervention

The city's NPDES permit requires that the City implement its approved pretreatment program. The EPA has a responsibility to ensure that the city is effectively implementing its program, including timely and appropriate enforcement of pretreatment requirements. In this role, EPA periodically reviews the overall performance of the City through audits, pretreatment compliance inspections and review of annual reports.

Based on the above reviews, the EPA may take its own enforcement action against the industrial user and/or City where the City has not taken timely action or has failed to impose adequate sanctions.

Finally, Section 505 for the Clean Water Act permits citizens to file suit against the City for failure to implement its approved pretreatment program as required by its NPDES permit. A citizen may sue the City to obtain judicial enforcement of that approved program. Thus, the City may be required to apply standards to industrial users, enforce violations of pretreatment standards, or otherwise implement its program by a court order.

Refusal of Entry

If Industrial Monitoring personnel are refused entry into a facility for the purpose of authorized sampling, inspections or other monitoring, the following procedures must be followed:

1. Make certain that all credentials and notices have been properly presented to the facility or person-in-charge.
2. If entry is not granted, ask why. Tactfully probe the reason for denial to see if obstacles (such as a misunderstanding) can be cleared. If there is still resistance, show the contact a copy of the Sewer Use Ordinance or Industrial Discharge Permit giving the authority to make an inspection. If resolution is beyond the authority of the Monitoring personnel, he or she may tactfully suggest that the official(s) seek advice from their attorneys on clarification of the scope of monitoring authority under the City's local ordinance and State Law.
3. If entry is still denied, personnel should withdraw from the premises and contact their supervisor. The supervisor may confer with attorneys to discuss the desirability of obtaining an administrative warrant. Additionally, if access to the normal effluent monitoring station is impossible, collect samples from manholes upstream and downstream from the point of the industry's discharge to the sewer.
4. All observations pertaining to the denial should be thoroughly noted by the personnel in a field notebook as soon as possible. Include facility name and exact address, name and title of person(s) approached, authority of person(s) who refused entry, date and time of denial, detailed reason for denial, facility appearance, any reasonable suspicions that refusal was based on a desire to cover up regulatory violations, etc. All such information will be important should a warrant be sought.
5. Under no circumstances should the Monitoring personnel discuss potential penalties or do anything that may be construed as coercive or threatening.
6. Monitoring staff should use discretion and avoid any situations that may be potentially threatening or inflammatory. In the event of a threatening confrontation, personnel should document the event and report it immediately to the Sanitary Engineer. If feasible, statements from witnesses should be obtained and included in the documentation.

Following would be examples of related situations:

- Withdrawal of consent during monitoring. If Monitoring personnel are requested (or told) to leave the premises after monitoring has begun, such personnel should leave as soon as possible, following the procedures above for denial of entry. All activities and evidence obtained before the time of withdrawal are valid.

Monitoring staff should ensure that all POTW personnel and equipment are removed from the facility.

- Denial of access to some areas of the facility. If, during the course of the inspection or sampling, access to some parts of the facility is denied, Monitoring personnel should make a notation if the circumstances surrounding the denial of access and of the portion of the inspection or sampling that could not be completed. Personnel should then proceed with the remainder of the monitoring. After leaving the facility, personnel should contact the Sanitary Engineer to determine whether a warrant should be obtained to complete the monitoring.