



City of Caldwell
Wastewater Treatment Plant
**Enforcement
Response Plan**

This plan is intended to establish City Policy and Procedures for the Enforcement of Chapter 4, Article 7 of the Municipal Codes.

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INTRODUCTION

The City of Caldwell has developed an *Enforcement Response Plan* for the enforcement of Chapter 4, Article 7 of the Municipal Codes implementing the provisions of 40 CFR Part 403.8(f), which describes pretreatment program requirements and their implementation by the POTW. Specifically §403.8(f)(5) lists the contents required in the POTW's Enforcement Response Plan to investigate and respond to instances of Industrial User Noncompliance. 40 CFR Part 403.8(f)(5) is as follows:

“The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

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

This ERP outlines procedures, guidance, discussion, and samples of enforcement documents establishing guidance to City staff in the investigation and enforcement of the City Industrial Pretreatment Program and the Sewer Use and Management Ordinance (City Code Chapter 4, Article 7).

Purpose

The purpose of the ERP is to provide appropriate and consistent enforcement responses for violations and circumstances. The ERP identifies the personnel involved in enforcement decisions and responses. It also describes a range of violations and circumstances and the appropriate enforcement actions to take in each case.

Administration and Jurisdiction

The ERP is applicable to all entities discharging to the POTW. The Control Authority is responsible for administering and implementing all elements of the ERP. The ERP does not preclude the Control Authority from taking any, all or any combination of actions against a noncompliant industrial user.

Abbreviations

ERP – Enforcement Response Plan

IU – Industrial User

NOV – Notice of Violation

POTW – Publicly Owned Treatment Works

Definitions

Control Authority – The entity directly administering and enforcing Pretreatment Standards and requirements against industrial users, this case, the City of Caldwell.

Domestic Wastewater – 1) Wastewater from normal residential activities including, but not limited to, wastewater from kitchen, bath and laundry facilities, or 2) wastewater from the personal sanitary conveniences (toilets, showers, bathtubs, fountains, non-commercial sinks, and similar structures) of commercial, industrial or institutional buildings, provided that the wastewater exhibits characteristics which are similar to those of wastewater from normal residential activities. Specifically excluded from this definition is wastewater from commercial, industrial, or institutional laundries or food preparation facilities.

Industrial User – Any source that introduces pollutants into a POTW from any non-domestic source.

Publicly Owned Treatment Works (POTW) – Devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant.

Personnel

Personnel involved in the City of Caldwell Pretreatment Program include:

1. Public Works Director
2. POTW Superintendent
3. Pretreatment Technician
4. City Attorney (if necessary)

Personnel Responsibilities

Public Works Director – The public works director has the responsibility to supervise the operation of the public works department and is charged with certain duties and responsibilities, including, but not limited to initiating the following enforcement actions:

- Notice of violation

- Consent Orders
- Show cause hearings
- Compliance orders
- Cease and desist orders
- Administrative fines
- Emergency suspensions
- Termination of discharge

Superintendent – The superintendent has the responsibility to monitor the Pretreatment Technician’s actions and to initiate the following enforcement actions at the recommendation of the Pretreatment Technician:

- Administrative orders
- Consent agreements
- Referrals to the city attorney for civil penalties
- Referrals to the state or EPA for criminal action

Industrial Pretreatment Technician – The Industrial Pretreatment Technician is responsible for the day-to-day implementation and enforcement of the industrial pretreatment program. The enforcement responses carried out by the Pretreatment Technician are as follows:

- Informal notices (verbal and written)
- Notices of violation
- Informal meetings
- Referrals to the state or EPA for criminal action

City Attorney – The City Attorney will provide legal consultation as requested by the Superintendent or Public Works Director on consent agreements or consent orders and administrative order, and will take the lead on all referrals for civil penalties and POTW initiated criminal prosecutions.

Identifying and Investigating Instances of Noncompliance

A brief description of the activities associated with the identification and investigation of noncompliance are as follows:

- **Industrial User Inventory** – The Industrial Pretreatment Technician maintains a current inventory of all nondomestic sources of waste to the POTW, including where they are located, and the nature of the nondomestic wastewater being discharged.
- **Inspection** – The Control Authority inspects each SIU and CIU at least once annually according to the Sewer Use and Management Ordinance. These inspections allow the Pretreatment Technician to observe any changes in the IUs process, materials or discharge which may indicate noncompliance.
- **Self-Monitoring Reports** – Each SIU’s and CIU’s Industrial Discharge Permit is to contain Self-Monitoring requirements. These reports are due a minimum of twice per year. Each SIU or CIU must perform the analyses in accordance to 40 CFR Part 136, and amendments. Self-Monitoring reports must submitted at least every six months. These reports are reviewed for any exceedances to local limits or national categorical pretreatment standards, which indicate noncompliance. The reports are also reviewed for

compliance with report due dates, numerical standards, sample handling and analysis requirements, signatory/certification requirements, and monitoring frequency.

- **Control Authority Monitoring** – The Control Authority conducts sampling at each SIU and CIU at least annually. The sample analyses are reviewed for any exceedances to local limits or national categorical pretreatment standards, which indicate noncompliance.

Any violations are clearly documented and addressed in accordance with the Enforcement Response Plan.

Description of Enforcement Actions

Multiple enforcement actions are available in instances on noncompliance, including:

- **Informal Notice**
 - **Verbal Notification** – Verbal notifications by telephone or in person provide an immediate notification of violations. In general, verbal notifications are used for minor isolated violations or as an initial step leading to an escalated enforcement response. All verbal notifications related to enforcement or the investigation of suspected violations are documented in writing and placed in the Industrial User's file.
 - **Warning Letters** – Warning letters are issued under the same circumstances as verbal notifications. They may be issued as follow-up letters to verbal notifications or in lieu of verbal notifications. A copy of the letter must be placed in the Industrial User's file.
 - **Informal Meeting** – An informal meeting is used to gather information concerning noncompliance, discuss steps to alleviate noncompliance, and determine the commitment level of the Industrial User. All informal meetings must be documented in writing and placed in the Industrial User's file.
- **Notice of Violation** – A Notice of Violation is a written notice to the noncompliant Industrial User that a pretreatment violation has occurred. A notice of violation includes a statement detailing the legal authority under which the Control Authority issued the Notice of Violation, a description of the violation(s), and the date(s) the violation(s) occurred. The NOV requires a response from the Industrial User within thirty days that details the causes of the violation(s), and the corrective actions taken to correct the violation and prevent similar violations from occurring. In general, NOVs are considered to be more stringent enforcement responses than warning letters.
- **Consent Orders** – Consent Orders or assurances of voluntary compliance establish an agreement with any User responsible for noncompliance. Such documents include a specific action to be taken by the IU to correct the noncompliance within a time period specified in the Consent Order. Consent Orders are judicially enforceable. The use of a Consent Order does not bar against taking any other action against the IU.
- **Show Cause Hearing** – A show cause hearing is a formal meeting requiring the Industrial User to appear, explain its noncompliance, and show cause as to why more severe enforcement actions against the user should not go forward. The meeting may also serve as a forum to discuss corrective action and compliance schedules. Show Cause Hearings are ordered by the Public Works Director by mail. Notice of the meeting must be received by the IU at least thirty days prior to the hearing.
- **Compliance Orders** – A Compliance Order is issued to the IU directing that the user come into compliance within a time specified in the Compliance Order. If the IU does not come into compliance within the time

specified in the Compliance Order, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance Orders may also contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharge to the sewer.

- **Cease and Desist Orders** – A Cease and Desist Order is an order to the IU directing it to cease and desist all such violations and directing the user to immediately comply with all requirements as well as take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.
- **Administrative Fines** – An Administrative fine may be charged to the IU in an amount not to exceed one thousand dollars (\$1,000.00). Such fines are assessed per violation, per day. In the case of monthly or other long term violations, fines shall be assessed for each day during the period of violation. The purpose of an Administrative Fine is to recover the economic benefit of noncompliance and to deter future violations.
- **Emergency Suspension** – An Emergency Suspension may be used whenever necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to health or welfare of persons, which may threaten to interfere with the operation of the POTW, or which presents or may present an endangerment to the environment.
- **Termination of Discharge** – Termination of Discharge may be issued, with the chance for a Show Cause Hearing, if the IU violates any of the following conditions:
 - Violation of wastewater discharge permit conditions;
 - Failure to accurately report the wastewater constituents and characteristics of discharge;
 - Failure to report significant changes in operations of wastewater volume, constituents and characteristics prior to discharge;
 - Refusal of reasonable access to the IU’s premises for the purpose of inspection, monitoring or sampling; or
 - Violation of the pretreatment standards listed in City Code 04-07-07.
- **Injunctive Relief** – The Public Works Director may petition the district court of the third judicial district in Canyon County, Idaho through the City Attorney for the issuance of a temporary or permanent injunction which restrains or compels the specific performance of the Discharge Permit, order, or other requirement imposed by the SUMO of the IU. Injunctive Relief may also be used as appropriate for legal and/or equitable relief, including a requirement for the IU to conduct environmental remediation.
- **Civil Penalties** – The Control Authority may file a lawsuit against the IU to secure court ordered action to correct violations and to secure penalties for the violations including recovery costs to the POTW for noncompliance. Civil Penalties also includes enforcement measures which require involvement or approval of the court, such as Injunctive Relief.
- **Criminal Prosecution** – An IU who willfully or negligently violates any provision of the SUMO, Discharge Permit or order issued, pretreatment standard or requirement will, if convicted, be guilty of a misdemeanor, punishable by fine and/or imprisonment. Similarly an IU who has willfully or negligently introduced any substance to the POTW which causes personal injury or property damage will, if convicted, be guilty of a misdemeanor, punishable by fine and/or imprisonment.

- **Referral to EPA or the State** – In lieu of criminal prosecution, the POTW may refer to the State or EPA for violations that may warrant criminal prosecution. Circumstances that trigger EPA or State referrals include evidence of willfulness, evidence of negligence, and bad faith shown by the Industrial User.
- **Supplemental Enforcement Action**
 - **Financial Guarantee** – If an IU fails to comply with any provision in the SUMO, a previous Discharge Permit or order, or any other pretreatment standard or requirement, the Public Works Director may decline to issue or reissue a Wastewater Discharge Permit, unless the IU first files a satisfactory financial guarantee, payable to the City.
 - **Liability Insurance** – If an IU fails to comply with any provision in the SUMO, a previous Discharge Permit or order, or any other pretreatment standard or requirement, the Public Works Director may decline to issue or reissue a Wastewater Discharge Permit, unless the IU first submits proof that it has obtained financial assurances sufficient to restore or repair any damage to the POTW caused by its discharge.
 - **Water Supply Severance** – If an IU fails to comply with any provision in the SUMO, a previous Discharge Permit or order, or any other pretreatment standard or requirement, water service to the IU may be severed, only to resume once the IU has demonstrated its ability to comply.
 - **Public Nuisance** – A violation of any provision in the SUMO, a previous Discharge Permit or order, or any other pretreatment standard or requirement, is a Public Nuisance and must be corrected or abated as directed by the Public Works Director.

Enforcement Response Guide

The Enforcement Response Guide (ERG) designates several enforcement options for each type (or pattern) of noncompliance. The intent of the ERG is to provide the guidance necessary in choosing an appropriate and effective enforcement response to a violation or circumstance. Factors that will be evaluated when determining the appropriate response are as follows:

- Good faith of the IU
- Compliance history of the IU
- Previous success of the enforcement actions against the IU
- Violations effect on the environment and/or public health
- Violations effect on the POTW

Listed below are some general rules for violations and their responses:

- **Violations resulting in Significant Noncompliance** – Any violation that results in Significant Noncompliance (SNC) will be addressed through formal enforcement action regardless of the enforcement response otherwise dictated by the enforcement response guide. The minimum level of enforcement for SNC is an Administrative Order. Administrative Orders include Consent Orders, Compliance Orders, and Cease and Desist Orders.

- **Escalating Enforcement Response** – Escalating enforcement response will be used for recurring violations and failure to achieve compliance subsequent to informal or formal enforcement. A recurring violation is one in which the same type of violation occurs on consecutive reporting periods, the violation occurs seasonally, or any other pattern of noncompliance is shown.
- **Violations Falling Under More Than One Category** – Violations that fall under more than one category in the enforcement response guide will be addressed through the more severe enforcement response. All alleged violations will be included in the more severe response.

Timeframes for enforcement responses will be as follows:

- All violations will be identified and documented within five days of receiving compliance information.
- Initial enforcement responses (informal or formal) will occur within 15 days of identifying a violation.
- Follow up actions for continuing or recurring violations will be taken within 60 days of the initial enforcement response.
- Violations which threaten health, property, or environmental quality are considered emergencies and will receive immediate response.
- All violations meeting the criteria for significant noncompliance will be addressed through formal enforcement within 30 days of the identification of significant noncompliance.

To assist in enforcement decisions, Enforcement Response Guide Tables can be seen below, and list types of noncompliance with their varying circumstances and respective suggested enforcement response.

ERG Table 1: Unauthorized Discharge

Type of Noncompliance	Circumstance of Noncompliance	Suggested Enforcement Response
Discharge without a permit	IU unaware of requirement; no harm to POTW or environment	Notice of violation with IU Permit Application Form
	IU unaware of requirement; harm to POTW or environment present	Administrative Orders with Fine; Civil Penalties
	IU aware of requirement; fails to submit application after notice from POTW	Civil Penalties; Criminal Prosecution; Injunctive Relief; Termination of Discharge
Discharge after failure to submit permit renewal application or reapplication	IU has not submitted IU Permit Renewal Application within 10 days of due date	Phone call; Warning Letter
	IU has not submitted IU Permit Renewal Application after notice from the POTW	Notice of Violation; Administrative Orders
Unauthorized Discharge through a manhole, septic-only receiving station, car wash etc.	No harm to POTW or environment	Notice of Violation; Administrative Orders; Administrative Orders with fine; Civil Penalties; Injunctive Relief; Criminal Prosecution
	Harm to POTW or environment	Administrative Orders with fine; Civil Penalties; Injunctive Relief; Criminal Prosecution
	Recurring	Criminal Prosecution
Permitted User Discharging Waste not Authorized by IU Discharge Permit	No harm to POTW or environment	Notice of Violation; Administrative Orders; Administrative Orders with fine; Civil Penalties; Injunctive Relief; Criminal Prosecution
	Harm to POTW or environment	Administrative Orders with fine; Civil Penalties; Injunctive Relief; Criminal Prosecution
	Recurring	Criminal Prosecution

ERG Table 2: Discharge Limit Violations

Type of Noncompliance	Circumstance of Noncompliance	Suggested Enforcement Response
Exceedance of local or Federal Standard	Isolated incident, not significant	Phone call; Notice of Violation
	Isolated incident, significant but without harm to POTW or environment	Administrative Orders with Fine (Administrative Orders should include the requirement to develop a Spill Prevention Plan)
	Isolated incident, with harm to the POTW or environment	Show Cause Hearing; Civil Penalties
	Recurring incident, without harm to POTW or environment	Administrative Orders with Fine
	Recurring incident, significant and with harm to POTW or environment	Administrative Orders with Fine; Show Cause Hearing; Civil Penalties; Injunctive Relief; Termination of
Dilution of Wastestream in lieu of treatment	Initial violation	Administrative Orders with Fine
	Recurring violation	Show Cause Hearing; Termination of Discharge

ERG Table 3: Reporting Violations

Type of Noncompliance	Circumstance of Noncompliance	Suggested Enforcement Response
Document is improperly signed or certified	Isolated Incident	Phone call; Warning Letter; Notice of Violation
	Recurring, previously notified by POTW	Notice of Violation; Administrative Orders; Administrative Orders with fine; Civil Penalties; Injunctive Relief
Document is incomplete or inaccurate	Isolated Incident	Phone call; Warning Letter; Notice of Violation
	Recurring problem	Administrative Orders; Administrative Orders with fine; Civil Penalties; Injunctive Relief
Document is late	5-days to 29-days	Phone call; Warning Letter; Notice of Violation
	30-days or more	Administrative Orders; Administrative Orders with fine
	Documents are repeatedly late	Administrative Orders with fine; Civil Penalties; Injunctive Relief
Failure to report violation, spill/slug load, or changed discharge	No actual or potential harm to POTW	Notice of Violation; Administrative Orders
	Actual or potential harm to POTW	Administrative Orders with fine; Civil Penalties
	Recurring problem	Administrative Orders with fine; Civil Penalties; Injunctive Relief; Termination of Discharge
Failure to report additional monitoring	Isolated incident	Phone call; Warning Letter; Notice of Violation
	Recurring	Administrative Orders; Administrative Orders with fine
Falsification of information or data	Any instance	Criminal Prosecution; Injunctive Relief; Termination of Discharge

ERG Table 4: Sampling Violations

Type of Noncompliance	Circumstance of Noncompliance	Suggested Enforcement Response
Failure to monitor for all required parameters	Isolated	Phone call; Warning Letter; Notice of Violation
	Recurring	Administrative Orders; Administrative Orders with Fine; Civil Penalties
Improper sample handling/analytical procedures	Isolated	Phone call; Warning Letter; Notice of Violation
	Recurring	Notice of violation; Administrative Orders; Administrative Orders with fine
Failure to resample within the required timeframe	Isolated	Phone call; Warning Letter; Notice of Violation
	Prior notification from POTW	Administrative Orders with fine
	Recurring	Administrative Orders with fine; Civil Penalties
Failure to install monitoring equipment/sampling point	Delay less than 30 days	Notice of Violation
	Delay more than 30 days	Administrative Orders with fine; Civil Penalties
Tampers with monitoring equipment/sample	Any Incident	Criminal Prosecution; Termination of Discharge
Sampling at incorrect location	Isolated incident	Notice of Violation
	Recurring	Administrative Orders with fine; Civil Penalties; Criminal Prosecution

ERG Table 5: Compliance Schedule Violations

Type of Noncompliance	Circumstance of Noncompliance	Suggested Enforcement Response
Missed milestone	Less than 30 days late or will not affect final compliance date	Notice of Violation; Administrative Orders
	More than 30 days or will affect final milestone	Administrative Orders with Fine
Not in compliance of final compliance date	Less than 30 days late	Notice of Violation; Administrative Orders with Fine
	Greater than 30 days late; reasonable cause for delay	Administrative Orders; Administrative Orders
	Greater than 30 days late, no reasonable cause for delay	Show Cause Hearing; Civil Action; Termination of Discharge

ERG Table 6: Inadequate Recordkeeping

Type of Noncompliance	Circumstance of Noncompliance	Suggested Enforcement Response
Files are incomplete or missing	Isolated incident	Notice of Violation
	Reoccurring Incident	Administrative Orders; Administrative Orders with Fine

ERG Table 7: Inspection Violations

Type of Noncompliance	Circumstance of Noncompliance	Suggested Enforcement Response
Entry Denied or Consent Withdrawn	Any Instance	Obtain Warrant and Return for Inspection
Illegal Discharge	No harm to POTW or environment	Administrative Orders with Fine
	Discharge causes harm or evidence of intent/negligence	Civil Penalties; Criminal Prosecution
	Recurring, violation of Administrative Orders	Termination of Discharge
Failure to properly operate and maintain pretreatment facility	Does not result in harm	Notice of Violation
	Does result in harm	Administrative Orders with Fine; Civil Penalties
Failure to mitigate noncompliance or halt production	Does not result in harm	Notice of Violation
	Does result in harm	Administrative Orders with Fine; Civil Penalties