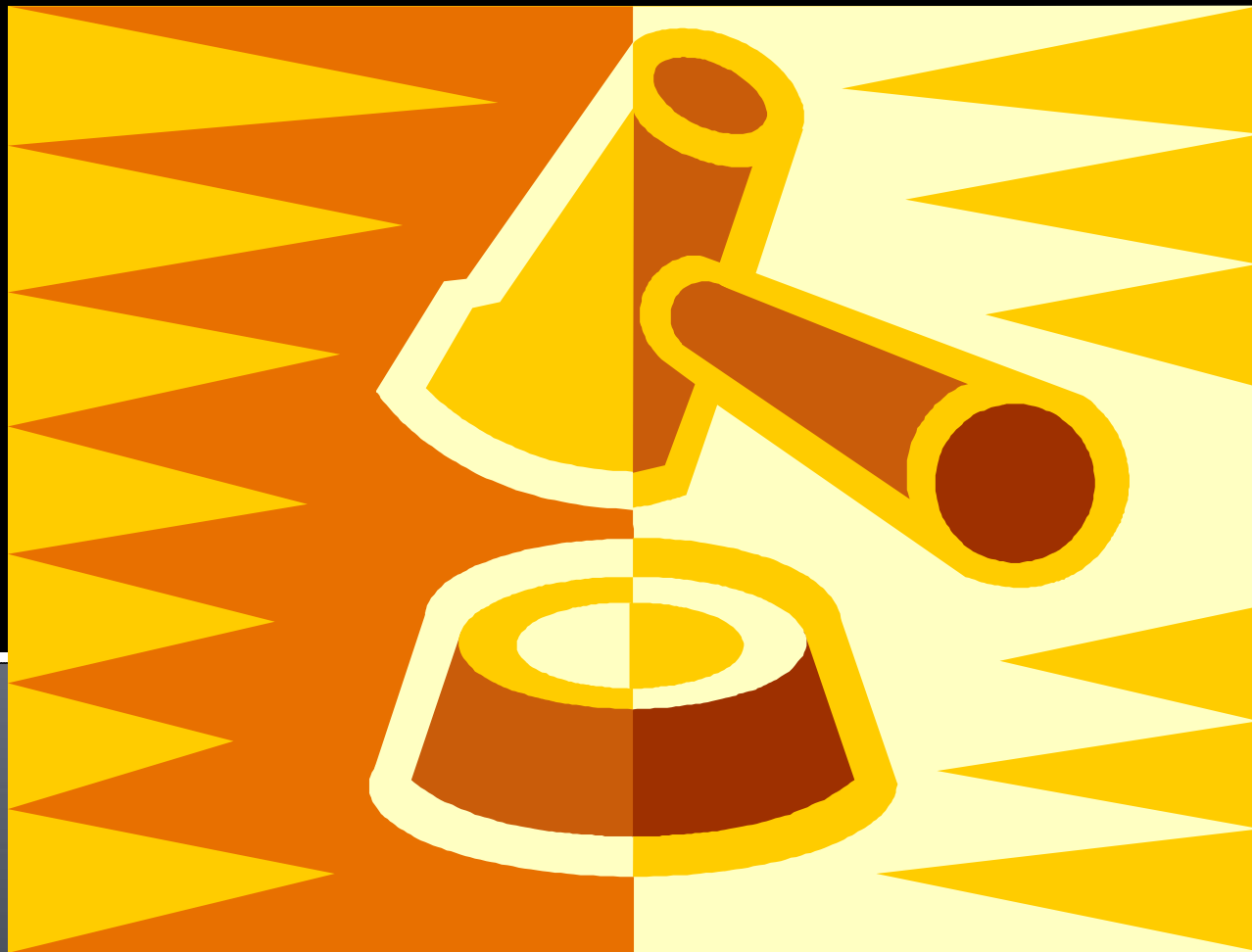


Enforcement



Legal Authority

- 40 CFR § 403.8(f)(1)(vi)(A)
- Local Regulations
 - Obtain remedies for noncompliance by any IU
 - Seek injunctive relief for noncompliance
 - Seek or assess penalties in at least \$1,000 a day for each violation

When is Enforcement Necessary

- Unauthorized discharges
 - Unpermitted discharge
 - Failure to renew permit
- Effluent limit violations
- Reporting Violations
 - Improperly signed or certified reports
 - Late or missing reports
 - Incomplete reports
 - Failure to report significant change
 - Failure to report spills or slugs
 - Falsification of information

When is Enforcement Necessary

- Monitoring Violations
 - Failure to monitor as required by permit
 - Improper sampling
 - Failure to install monitoring equipment
 - Missed milestones from compliance schedules
- Dilution in lieu of treatment
- Failure to mitigate noncompliance or halt production
- Failure to maintain pretreatment system

When is Enforcement Necessary

- Deny entry during site visit
- Illegal Discharge
- Inadequate recordkeeping
- Failure to report additional monitoring

When is Enforcement Necessary

- BMP Violations
 - Failure to install treatment
 - Failure to comply with prohibited activities, practices or discharges
 - Failure to maintain treatment units
 - Failure to comply with milestone dates
 - Failure to comply with other BMP requirements

Notice of Violation

- Initial POTW response
- Official notice
- Provides IU opportunity to correct deficiency
- Provides consistency

Types of Enforcement

- Informal Notices (must be documented)
 - Verbal warnings
 - Reminder letters
 - Telephone call
 - Informal meetings

Types of Enforcement

- **Administrative Orders**
 - Show cause orders
 - Consent orders
 - Compliance orders
 - Cease and desist

Administrative Fines

- Issued at POTW's discretion
- Punitive in nature
- Deterrent for future violations

Civil Litigation

- **Why?**
- **Remedies available:**
 - Consent decree
 - Injunctions
 - Civil penalties & cost recovery

Criminal Prosecution

- **Acted in violation of the law**
- **Criminal intent/negligence**
- **Results in fines and/or imprisonment**
- **Each violation, each day, a separate offense**

Supplemental Enforcement

- **Public notice**
- **Water service severance**
- **Termination of sewer service**
- **Performance bond/liability insurance**
- **Increased monitoring/reporting**

Why Enforce

- Return IU to compliance
- To protect POTW and collection system
- To be consistent and fair in implementing program – local and federal regulations
- To protect City and IU from State, EPA, and third party suits

Economics of noncompliance

- Economic benefit of noncompliance for violating IU
- Economic impact for POTW
- Economic disadvantage for competing industries

You and Your ERP

- **Enforcement Response Plans**

[40 CFR § 403.8(f)(5)]

- **reflect POTW's responsibility to enforce pretreatment requirements & standards**
- **identify how the POTW will investigate noncompliance**
- **specifies officials responsible for each type of enforcement**
- **specifies types of and time frames for taking escalating enforcement for anticipated types of violations**

Your ERP and Your Ordinance

- Does your ordinance authorize the City to implement and enforce program requirements?
- Does your ordinance incorporate all enforcement authorities allowable under State law?
- Does the ordinance contain any obstacles to effective enforcement?

Key Points in Enforcement

- Compliance tracking
- Keep it timely
- Keep files organized and complete
- Violation log
- Keep up with milestones and due dates
- Document, document, document

Factors to Consider for Appropriate Enforcement Response

- **Magnitude and duration of violation**
- **Nature of violation**
- **Effect on POTW**
- **Effect on receiving stream**
- **Pattern of past violations/success of previous enforcement actions**
- **Attitude of industrial user**

Factors to Consider for Appropriate Enforcement Response

- All violations require some type of response
- If IUs response is not adequate, city should become more formal
- For repeat violations – enforcement must escalate

Significant Noncompliance (SNC)

- Chronic violations
- Technical Review Criteria (TRC) violations
- Failure to meet, within 90 days, a compliance schedule milestone
- Failure to submit a report within 45 days of the due date

SNC (continued)

- **Violation that causes pass-through or interference**
- **Discharge that causes imminent endangerment**
- **Failure to accurately report noncompliance**
- **Other violations that adversely affect the POTW Pretreatment Program**

Chronic and TRC SNC Calculations

- Calculate SNC quarterly
- Evaluate daily maximums and long-term averages
- “But I only collected one sample for the month”

SNC Calculations

Metal Finishing PSES		Started Jan 2000		
Cadmium - Monthly Ave. = 0.07		TRC = 1.2(0.07) = 0.084		
Month	Self Monitoring	Second Quarter <i>Jan-Jun</i>	Third Quarter <i>Apr-Sep</i>	Fourth Quarter <i>Jul-Dec</i>
Jan	0.05	SNC (TRC)	Not SNC	SNC (Chronic)
Feb	0.06			
Mar	0.09			
Apr	0.1			
May	0.04			
Jun	0.04			
Jul	0.08	SNC (TRC)	Not SNC	SNC (Chronic)
Aug	0.04			
Sep	0.03			
Oct	0.08			
Nov	0.08			
Dec	0.08			
Jan	0.02	SNC (TRC)	Not SNC	SNC (Chronic)
Feb	0.02			
Mar	0.02			
Apr	0.12			
May	0.11			
Jun	0.02			
Jul	0.09	SNC (TRC)	Not SNC	SNC (Chronic)
Aug	0.03			
Sep	0.03			

*How about helping
with the rest?*

Chronic and TRC SNC Calculations

- Calculate SNC quarterly
- Evaluate daily maximums and long-term averages
- “But I only collected one sample for the month”

Assessing BMP violations for SNC

- Failure to meet within 90 days after the schedule data, a compliance schedule milestone [40 CFR 403.8(f)(2)(viii)(E)]
 - Installation of required treatment as part of the BMP
- Failure to provide within 45 days after the due date [40 CFR 403.8(f)(2)(viii)(F)]
 - Compliance certificates
 - Required BMR reports

Assessing BMP violations for SNC

- Failure to accurately report noncompliance
[40 CFR 403.8(f)(2)(viii)(G)]
 - Failure to report discharges of prohibited pollutants
- Any other violations that the POTW determines will adversely affect the operation or implementation of the pretreatment program
[40 CFR 403.8(f)(2)(viii)(H)]
 - Compliance certificates
 - Required BMR reports

Approval Authority Oversight

- EPA or the State WILL review your files (and will expect the files to make sense and present a clear picture of the chronology of events)
- Expect each violation (reporting and discharge) to be noted with POTW/IU response
- Anything less will complicate the review