

APPENDIX A

ENFORCEMENT RESPONSE PLAN

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ENFORCEMENT RESPONSE PLAN LEXINGTON WATER SYSTEMS

I. INTRODUCTION

The Domestic Sewage Study (DSS) amendments to the General Pretreatment Regulations (Federal Register, July 14, 1990) require all Publicly Owned Treatment Works (POTW) with approved pretreatment programs to develop and implement an Enforcement Response Plan (ERP). The regulations require that the Plan shall contain detailed procedures of how the POTW will respond to instances of industrial user noncompliance. At a minimum, the plan shall:

- (1) Describe how the POTW will investigate instances of noncompliance;
- (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;
- (3) Identify by title the official(s) responsible for implementing each type of enforcement response;
- (4) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards as provided in 40 CFR 403.8(f)(1) and (2).

When properly developed and implemented, the Enforcement Response Plan will provide the POTW with an efficient, objective, and consistent means of responding to instances of industrial user noncompliance.

The following document details the steps to be taken by the Lexington Water Systems to achieve compliance with all State and Federal regulations and requirements. The primary document utilized in preparing this Plan was the EPA publication "*Guidelines for Developing Control Authority Enforcement Response Plans.*" Federal and State regulations (40 CFR, Part 403 and Tennessee Code Annotated 69-3-101 through 129, respectively) were also used as reference documents.

The available personnel, along with the minimum responsibilities that will be required of each title needed to implement the Enforcement Response Plan, will consist of the following:

Field Inspector

Working closely with the Pretreatment Coordinator, will be responsible for coordination and collection of wastewater samples from both the industrial uses and the wastewater treatment plant (WWTP). Will assist in performing scheduled and unscheduled sampling and field inspection of IUs. Assists in compliance tracking and determination of level of noncompliance. Can make phone calls and/or issue Notice of Violation (NOV) in minor instances of noncompliance.

Pretreatment Coordinator

Person primarily responsible for day-to-day monitoring of compliance status of IUs. Will schedule sampling events for IUs and at WWTP. Will implement demand monitoring when deemed necessary. Primary responsibility for tracking IU information and for determining necessary levels of enforcement. Principle liaison between City and IUs. Will keep the Water Systems Manager apprised of all developments regarding IU compliance status and will be the primary source of reference for higher levels of enforcement. Issues NOV's for minor and moderate levels of noncompliance. Will issue Administrative Orders (AO) and/or fines after consultation with the Water Systems Manager.

Water Systems Board

Members of the Lexington Board of Aldermen as appointed by the Mayor of Lexington, as the governing body over the Lexington Water Systems. The Water Systems Board will act as an appeals board if administrative enforcement action is appealed.

Water Systems Manager (Manager)

At the request of the Pretreatment Coordinator, will institute higher degrees of enforcement (i.e. termination, criminal prosecution). Will inform Lexington Water Systems Board of the background and need for such actions. Has authority to issue cease-and-desist orders and/or emergency termination of service when necessary.

Attorney

Will assist POTW personnel and provide guidance on legality of chosen enforcement procedures against Ius. Reviews Sewer Use Ordinance (SUO) and other pertinent documents to assure conformance to State law. Represents Lexington Water Systems in any court action resulting from enforcement actions.

Consultant

At the request of the POTW, will provide guidance on all aspects of compliance tracking and monitoring of IUs. Will provide technical expertise, when necessary, to assure that enforcement actions follow generally accepted protocol.

II. ENFORCEMENT RESPONSE PLAN

The Lexington Water Systems Pretreatment Program has been approved by the State of Tennessee and is responsible for the enforcement of all Federal, State, and Local wastewater discharge regulations. The primary purpose of the Enforcement Response Plan is to assure fair, consistent, and impartial enforcement. This Section describes each type of violation and indicates a range of appropriate enforcement options.

For the purpose of this Plan, insignificant noncompliance is considered a relatively minor or infrequent violation of pretreatment standards or requirements. These will usually be responded to with a Notice of Violation (NOV). Examples of violations which may be considered insignificant noncompliance are:

Failure to file a permit renewal application but remaining in compliance with the expired permit.

A reported spill with no adverse effects.

Isolated, minor exceedance of discharge limits.

Failure to properly sign or certify reports (first instance).

Missed interim or final compliance deadline by 30 days or less (good cause).

Filing a late report (less than 5 days late)

Significant noncompliance has been defined by the Environmental Protection Agency (EPA) as violations which meet one or more of the following criteria:

- (1) Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

- (2) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (3) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW 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);
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health and welfare or to the environment and has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.
- (5) Violation by 90 days or more after the schedule date of a compliance schedule milestone contained in a permit or enforcement order for starting construction, completing construction, or attaining final compliance.
- (6) Failure to provide required reports, such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules within 30 days of the due date.
- (7) Failure to accurately report noncompliance.
- (8) Any other violation or group of violations which the Water Systems Manager considers to be significant.

In general, an isolated instance of noncompliance can be met with an informal response or with a NOV. Any significant noncompliance should be responded to with an enforceable order that requires a return to compliance by a specific deadline along with the applicable monetary penalties.

In determining the proper response to a violation, whether significant or not, the following criteria should be considered:

Magnitude of the violation
Duration of the violation

Impact of the violation on the receiving waters
 Impact of the violation on the POTW
 Compliance history of the industrial user
 Good faith of the industrial user.

Since pretreatment enforcement is a matter of strict liability, the knowledge, intent, or negligence of the user should not be taken into consideration except when deciding to pursue criminal prosecution.

An administrative penalty is a monetary penalty assessed by the Lexington Water Systems for violations of pretreatment standards and requirements. Administrative penalties should be used as an escalated enforcement action and are punitive in nature and are not to be related to a specific cost borne by the POTW. The amount of the penalty assessed should recapture any economic benefit gained by the noncompliance and/or act as a deterrent to future violations.

Determining the penalty amount which reflects the violation's significance is very important. If the penalty is too small, its deterrent value is lost and the violator may regard it as a tax or nominal charge to pollute. If the penalty is too great, it could bankrupt the user, making necessary investments in pretreatment equipment impossible and forcing unnecessary closure. In cases of extreme hardship, the Water Systems Manager may consider reducing or suspending the penalty as part of a consent decree or show cause hearing.

Each type of violation has been categorized and a range of penalties assigned to each category, thereby allowing the responsible designated official to apply an appropriate monetary assessment. All penalty assessments are to be assessed per violation per day unless otherwise noted.

Category 0	=	No penalty
Category 1	=	\$50.000 to \$500.00
Category 2	=	\$500.00 to \$1,000.00
Category 3	=	\$1,000.00 to \$5,000.00
Category 4	=	\$5,000.00 to \$10,000.00 and/or direct legal action

Enclosed as Table II.1 is the Enforcement Response Plan which will be utilized by the Lexington Water Systems to determine appropriate and objective responses to instances of noncompliance. This Plan is basically identical to the one contained in the previously cited guidance documents. Minor changes have been made in order to adapt it to conditions applicable to Lexington. A column has been added specifying the penalty category each violation falls under. Time

frames for enforcement responses are included on the final page of the Enforcement Response Plan.

The Enforcement Response Plan is used as follows:

- (1) Locate the type of noncompliance in the first column and identify the most accurate description of the violation in column 2;
- (2) Assess the appropriateness of the recommended response(s) in column 3 and 4 using the criteria of magnitude, duration, effects, compliance history, and good faith;
- (3) Apply the enforcement response to the industrial user, specifying corrective action(s) or other responses required of the IU. Column 5 indicates responsible POTW personnel;
- (4) Track IU's response and follow up with escalated enforcement action if a response is not received within the specified time frame or the violation continues.

ABBREVIATIONS USED IN ENFORCEMENT PLAN

I	-	Field Inspector
PC	-	Pretreatment Coordinator
M	-	Water Systems Manager
NOV	-	Notice of Violation
AO	-	Administrative Order
IU	-	Industrial user

Table II.1 - Enforcement Response Plan
City of Lexington Pretreatment Program

Unauthorized Discharge (no permit)				
Noncompliance	Nature of violation	Category	Enforcement Response(s)	Personnel
Unpermitted discharges	IU unaware of requirement; no harm to POTW or environment	0	Phone call; NOV with application form	I, PC
	IU unaware of requirement; harm to POTW or environment (significant noncompliance)	3	- AO and fine - Civil action, termination of service	PC D
	Failure to apply continues after notification by POTW	4	- Civil action - Criminal investigation - Terminate service	M M M
Failure to renew permit	IU has not submitted application within 10 days of due date	0	Phone call; NOV	PC
Discharge Permit Violation				
Exceedance of local, state or federal standard	Isolated, not significant	0	Phone call; NOV	I, PC
	Isolated, significant (no harm)	1	AO to develop spill prevention plan (if not previously submitted) and fine	PC
	Isolated, harm to POTW or environment	3	- Show cause order - Civil action	PC, M M

Noncompliance	Nature of violation	Category	Enforcement Response(s)	Personnel
	Recurring, no harm to POTW or environment	2	AO and fine	PC
	Recurring, significant (harm to POTW or environment)	4	- AO with fine - Show cause order - Civil action - Terminate service	PC PC, M M M
Monitoring and Reporting Violations				
Reporting violation	Report improperly signed or certified	0	Phone call; NOV	I, PC
	Report improperly signed or certified after notification by POTW	1	- AO - Show cause order	PC PC, M
	Isolated, not significant (5 days late)	0	Phone call; NOV	I, PC
	Significant (> 5 days late)	1	AO to submit with fine for each additional day	PC
	Report always late; failure to submit (significant noncompliance)	4	- AO with fine - Show cause order - Civil action	PC PC, M M
	Failure to report spill or discharge changes (no harm)	0	NOV	PC
	Failure to report spill or discharge changes (harm)	2	- AO with fine - Civil action	PC M
	Repeated failure to report spills	4	- Show cause order - Terminate service	PC, M M

Noncompliance	Nature of violation	Category	Enforcement Response(s)	Personnel
	Falsification	4	- Criminal investigation - Terminate service	M M
Failure to monitor correctly	Failure to monitor all permit required pollutants	1	NOV or AO	I, PC
	Recurring failure to monitor	2	- AO with fine - Civil action	PC M
Improper sampling	No evidence of intent	0	NOV	PC
	Evidence of intent	4	- Criminal investigation - Terminate service	M M
Failure to install monitoring equipment	Delay of less than 30 days	0	NOV	I, PC
	Delay of more than 30 days	1	AO to install with fine for each additional day	PC
	Recurring, violation of AO	4	- Civil action - Criminal investigation - Terminate service	PC M M
Permit compliance schedule	Missed milestone less than 30 days, will not affect final milestone	0	NOV	PC
	Missed milestone more than 30 days, will affect final milestone (good cause)	1	AO and fine	PC

Noncompliance	Nature of violation	Category	Enforcement Response(s)	Personnel
	Missed milestone more than 30 days, will affect final milestone (no good cause)	3	- Show cause order - Civil action - Terminate service	PC, M M M
	Recurring violation or violation of AO schedule	4	- Civil action - Criminal investigation - Terminate service	M M M
Other Permit Violations				
Wastestream diluted in lieu of pretreatment	Initial violation	1	AO and fine	PC
	Recurring	2	- Show cause order - Terminate service	PC, M M
Failure to mitigate noncompliance or halt production	Does not result in harm	2	NOV	PC
	Does result in harm	4	- AO and fine - Civil action	PC M
Failure to properly operate and maintain facility	Does not result in harm	1	NOV	I, PC
	Does result in harm	3	- AO and fine - Civil action	PC M
Violations Detected During Site Visits				
Entry denial	Entry denied or consent withdrawn; copies of records denied	1	Obtain warrant and return to IU	I, PC

Noncompliance	Nature of violation	Category	Enforcement Response(s)	Personnel
Illegal discharge (violation of general discharge prohibitions)	No harm to POTW or environment	2	AO with fine	PC
	Causes harm or evidence of intent and/or negligence	3	- Civil action - Criminal investigation	M M
	Recurring violation AO	4	Terminate service	M
Improper sampling	Unintentional sampling at incorrect location	0	NOV	I, PC
	Unintentionally using incorrect sample type	0	NOV	I, PC
	Unintentionally using incorrect sampling technique	0	NOV	I, PC
Inadequate recordkeeping. Failure to mitigate noncompliance	Files incomplete or missing (no evidence of intent)	0	NOV	I, PC
	Recurring	2	AO and fine	PC
Failure to report additional monitoring	Inspection finds additional files (unintentional)	1	NOV	I, PC
	Recurring (considered falsification)	3	AO and fine	PC

Time Frames for Enforcement Responses

- A. All violations will be identified and documented within 5 days of receiving compliance information.

- B. Initial enforcement responses involving contact with the IU and requesting information on corrective or preventative action(s) will occur within 15 days of detection of violation.
- C. Follow-up action for continuing or recurring violations will be taken within 60 days of initial enforcement response. For all continuing violations, the response will include a compliance schedule.
- D. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.
- E. All violations meeting the criteria for significant, noncompliance will be addressed with an enforceable order within 30 days of the identification of the significant noncompliance.

III. ENFORCEMENT RESPONSES

The following paragraphs describe the various types of enforcement response, procedures, and person(s) responsible for identifying and implementing each level of response, and the time frames for determining that a violation has occurred and for initiating the appropriate response action. Most of this information has already been provided in Section IV, Table IV.1 (Enforcement Response Plan) and the written formats to be used in preparing the various responses will be taken from the previously cited guidance document.

Notice of Violation

NOVs will be sent to any user found to be in violation of the SUO, IU permit, or any other applicable document. As a general rule, NOVs will be issued by the Field Inspector or the Pretreatment Coordinator for instances of minor noncompliance and will serve as an official notification to the user that a violation has occurred. Initial enforcement responses involving NOVs will occur within 15 days of violation detection. IU response to the NOV will commence with 10 days of receipt of the NOV and will include an explanation of the violation, a plan for satisfactory correction, and contingencies for prevention of future occurrences.

Consent Orders

In certain instances, the Water Systems Manager or his designee will enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the IU responsible for the noncompliance. Such orders will also serve as compliance orders and/or schedules for the IU and

failure to adhere to the conditions of the consent order will constitute significant noncompliance.

Show Cause Hearing

The Water Systems Manager, Pretreatment Coordinator, or their designee may order any IU which violates conditions of the SUO or its permit to show cause why a 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 reason(s) for such action, and a request that the user show cause why the proposed enforcement action should not be taken. Notice of the meeting shall be served personally or by registered or certified mail at least 10 days prior to the hearing. If the IU fails to appear as notified, immediate enforcement action will ensue.

Cease and Desist Order

If the POTW finds that an IU has violated or continues to violate the Sewer Use Ordinance or its permit, the Water Systems Manager may issue an order to cease and desist all such violations and direct the party in noncompliance to do one of the following:

- (1) Comply with the order
- (2) Take appropriate remedial or preventive action needed to properly address a continued or threatened violation including, but not limited to, halting operations and terminating the discharge.

Termination of Service

The Water Systems Manager may suspend the wastewater treatment service and/or revoke an industrial user permit when necessary if, in the opinion of the POTW, the discharge presents or may present potential or actual danger to persons, the environment, causes interference to the POTW, or causes the POTW to violate conditions of its NPDES permit.

Civil penalties will be assessed based on the type and severity of violation outlines in the Enforcement Response Plan found in Section IV, Table IV.1. Penalties will be assessed in an amount not to exceed \$10,000 per day for each violation. The amount of penalty will be determined using the following factors:

- (1) Whether the penalty imposed will be a substantial economic deterrent to the noncompliance;

- (2) Any damages to the POTW due to the noncompliance which also includes any penalties, costs, and attorney's fees incurred by the POTW as a result;
- (3) Cause of the discharge or violation;
- (4) The severity of the noncompliance and its effect on the POTW and upon the quality of the receiving waters;
- (5) Effectiveness of action taken by violator to rectify the problem;
- (6) The economic benefit gained by the violator.

The Water Systems Manager and Lexington Water Systems Board and, at their discretion, may establish or adopt a schedule of the amount of civil penalty which can be assessed for certain specific violations or categories of violations. The method used to determine penalty amounts has been determined and can be seen in Section IV.

Tracking of enforcement-related situations will primarily be the responsibility of the Field Inspector and the Pretreatment Coordinator. Compliance status worksheets will be updated on a monthly basis for each IU. These worksheets will provide instant updates of the compliance status of the IUs and allow personnel to flag noncompliance situations at a glance.

Currently, all IUs which are permitted are sampled semi-annually by the POTW and submit discharge self-monitoring reports to the POTW monthly. Demand monitoring is instituted when warranted. Scheduled and unscheduled IU facility inspections are performed monthly and reorganized to provide better tracking and identification of Significant IUs. It is hoped that these actions will provide an effective means of tracking compliance status of IUs quickly and instituting necessary enforcement proceedings in a timely manner. The proposed time frames for initiating enforcement proceedings can be found in the Enforcement Response Plan in Section II.