

APPENDIX

- A. CITY OF HOHENWALD ENFORCEMENT RESPONSE PLAN.
- B. CITY OF HOHENWALD CODE OF ETHICS SYNOPSIS OF LAWS.

APPENDIX A

CITY OF HOHENWALD ENFORCEMENT RESPONSE PLAN

APPENDIX A

ENFORCEMENT RESPONSE PLAN

for the

CITY OF HOHENWALD

December 2003

JRWCO 1654

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CHAPTER I

INTRODUCTION

A. Regulations

The City of Hohenwald, Tennessee has administered a state approved pretreatment program since 1996.

The purpose of the Enforcement Response Plan is to outline, in a step-by-step fashion, the procedures to be followed by the Control Authority staff to identify, document and respond to pretreatment violators. Once this plan is adopted, the plan will provide guidance in selecting initial and follow-up enforcement actions, indicate staff responsibilities for these actions, and specify appropriate time frames in which to take them.

This Enforcement Response Plan is required by the U.S. Environmental Protective Agency (EPA). Effective November 23, 1988, EPA amended the General Pretreatment Regulations to require all Publicly Owned Treatment Works (POTW) with approved pretreatment programs to develop and implement enforcement response plans.

By establishing the responsibilities of the Control Authority and their industries to comply with National Pretreatment Standards, this regulation fulfills two objectives:

1. to prevent the introduction of pollutants into the POTW which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; and
2. to prevent the introduction of pollutants into the POTW which will pass through the treatment works.

This Enforcement Response Plan is written pursuant to Code of Federal Regulations (CFR) 40, Part 403 and the State Regulations 69-3-101 through 129.

B. Personnel

The City of Hohenwald's pretreatment program is administered by the, Chief Operator at the Hohenwald Wastewater Treatment Plant.

The following list of personnel includes titles and telephone numbers:

<u>Contact</u>	<u>Telephone</u>
Mayor	931/796-2231
Wastewater Manager	931/796-6057
Pretreatment Coordinator	931/796-6059

CHAPTER II

PROVISIONS FOR ENFORCEMENT IN EXISTING
SEWER USE ORDINANCE

The Hohenwald Sewer Use Ordinance has been revised to incorporate all proposed revisions required by the Tennessee Department of Environment and Conservation Division of Water Pollution Control.

The existing enforcement provisions in "Section 6--Enforcement" of the Sewer Use Ordinance is as follows:

SECTION 6 ENFORCEMENT6.1 Harmful Contributions

The Control Authority may suspend the wastewater treatment service and/or a Wastewater Discharge Permit when such suspension is necessary, in the opinion of the Control Authority, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the POTW or causes the Control Authority to violate any condition of its NPDES Permit.

Any person notified of a suspension of the wastewater treatment service and/or the Wastewater Discharge Permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the Control Authority shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The Control Authority shall reinstate the Wastewater Discharge Permit and/or the wastewater treatment service upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the User describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the Control Authority within 5 days of the date of occurrence in accordance with Section 2.11 of this Ordinance.

6.2 Revocation of Permit

Any User who violates the following conditions of this Ordinance, or applicable State and Federal regulations, is subject to having his permit

revoked in accordance with the procedures of this Section of this Ordinance:

- (a) Failure of a User to factually report the wastewater constituents and characteristics of his discharge;
- (b) Failure of the User to report significant changes in operations, or wastewater constituents and characteristics;
- (c) Refusal of reasonable access to the User's premises for the purpose of inspection or monitoring; or
- (d) Violation of conditions of the permit.

6.3 Notification of Violation

Whenever the Control Authority finds that any User has violated or is violating this Ordinance, the Wastewater Discharge Permit, or any prohibition, limitation or requirements contained herein, the Control Authority may serve upon such person a written notice by registered mail stating the nature of the violation. Within 30 days of the date of the Notification of Violation, a plan for the satisfactory correction thereof shall be submitted to the Control Authority by the User. Submission of this plan in no way relieves the User of liability for any violation occurring before or after the notice of violation is issued.

6.4 Administrative Orders

If the User fails to correct a violation within 30 days of receiving notice of violation, the Control Authority shall issue an Administrative Order for the correction of this violation; provided however, that the User is not relieved of responsibility for unauthorized discharges which occur within the 30 day interval.

6.5 Cease and Desist Order

When the Control Authority finds that a discharge of wastewater has taken place, in violation of prohibitions or limitations of this ordinance or the provisions of a wastewater discharge permit, the Control Authority may issue an order to cease and desist, and direct the User to comply forthwith within a specified time schedule, or to take appropriate remedial or preventative action in the event of a threatened violation.

6.6 Fines and Penalties

Any User who violates or fails to comply with any of the provisions of the Sewer Use Ordinance and/or Industrial User Discharge Permit issued by

the Control Authority shall be liable for an Administrative Fine of not more than One Thousand Dollars (\$1,000.00) per day as authorized by TCA 69-3-115 for each violation. The Control Authority shall have the power to impose such fines and penalties.

6.7 Show Cause Hearing

The Control Authority may order any User who causes or allows an unauthorized discharge to enter the POTW or contributes to violation of this Ordinance or wastewater permit to show cause before the Control Authority why the proposed enforcement action should not be taken. A notice shall be served on the User specifying the time and place of a hearing to be held by the Control Authority regarding the violation, the reasons why the action is to be taken, the proposed enforcement action, and directing the User to show cause before the Control Authority why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten days before the hearing. Service may be made on any agent or officer of a corporation. Whether or not a duly notified Industrial User appears as noticed, immediate enforcement action may be pursued.

The CITY COUNCIL may itself conduct the hearing and take the evidence, or may designate any of its members or any officer or employee of the Control Authority to:

- (a) Issue in the name of the CITY COUNCIL notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;
- (b) Take the evidence; or
- (c) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the CITY COUNCIL for action thereon.

At any hearing held pursuant to this Ordinance, testimony taken shall be under oath and may, at the request of either party, be recorded stenographically. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges thereof.

After the Control Authority has reviewed the evidence, it may issue an order to the User responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate

treatment facilities, devices or other related appurtenances shall have been installed on existing treatment facilities, and/or these devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued, including the installation of pretreatment technology, additional self-monitoring, and management practices.

6.8 Legal Action

If any person discharges sewage, industrial wastes, or other wastes into the Control Authority's wastewater disposal system contrary to the provisions of this SUO, Federal or State Pretreatment Requirements, or any order of the Control Authority; or in any other way violates this SUO or the applicable IU Discharge Permit the City Attorney may commence an action for appropriate legal and/or equitable relief.

CHAPTER III

PROPOSED PROVISIONS FOR ENFORCEMENT
IN SEWER USE ORDINANCE

The City of Hohenwald proposes to modify the Hohenwald Sewer Use Ordinance. The City of Hohenwald proposes the following procedures for Tennessee Department of Environment and Conservation approval of the Ordinance modifications and ultimate adoption of the Ordinance modifications by the City of Hohenwald.

- A. Submit the draft Sewer Use Ordinance modifications to the Tennessee Department of Environment and Conservation for review as a part of this Enforcement Response Plan submittal.
- B. Upon approval of the draft modifications by the Tennessee Department of Environment and Conservation, submit the draft modification to the City Attorney.
- C. Submit any changes proposed by the City Attorney to the Tennessee Department of Environment and Conservation as a final draft for approval.
- D. Upon approval of the final draft modifications by the Tennessee Department of Environment and Conservation, submit the Ordinance modifications to the Hohenwald City Council for enactment.

The entire text of the proposed draft modifications to the Hohenwald Sewer User Ordinance is attached. Section 6 specifically addresses enforcement issues.

CHAPTER IV

ENFORCEMENT RESPONSE GUIDE

A. General

A comprehensive enforcement response guide designates several alternative enforcement actions for each type of noncompliance. This guide should also encourage a uniform application of enforcement responses to comparable levels and types of violations, and it can be used as a mechanism to review the appropriateness of responses by the City of Hohenwald when making determinations on the level of the enforcement actions for each type of noncompliance.

B. Definitions and Abbreviations

Terms and abbreviations used in this guide are defined below. Specific enforcement responses that appear in this guide are described in more detail in CHAPTER V ENFORCEMENT RESPONSES hereinafter.

AO - Administrative Order

CA - City Attorney

CC - City Council

Civil Litigation - Civil litigation against the industrial user seeking equitable relief, monetary penalties and actual damages.

Criminal Prosecution - pursuing punitive measures against an individual and/or organization through a court of law.

Fine - monetary penalty assessed by Control Authority officials. Fines should be assessed by the pretreatment coordinator or the POTW Wastewater Manager.

I - Inspector

IU - Industrial User

Meeting - informal compliance meeting with the IU to resolve recurring noncompliance.

NOV - Notice of Violation

PC - Pretreatment Coordinator

POTW - Publicly Owned Treatment Works

Prohibited Discharge - Discharge of a pollutant which may cause pass-through or interference to the POTW.

SV - Significant Violation, any violation that meets one or more of the following criteria:

- (i) Chronic violations of wastewater discharge limits, defined as those in which 66 percent or more of all of the measurements taken during a six month period exceed the daily maximum or the average limit for the same pollutant parameter.
- (ii) Technical Review Criteria (TRC) violations, defined as those in which 33 percent or more of all 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)
- (iii) 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 at the POTW, including endangering the health of POTW personnel or the general public;
- (iv) 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 to halt or prevent such a discharge;
- (v) Failure to meet, within 90 days after the scheduled date, a compliance schedule milestone contained in the discharge permit or an enforcement order for starting construction, completing construction, or attaining final compliance;
- (vi) 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;
- (vii) Failure to accurately report non-compliance;
- (viii) Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

Show Cause - formal meeting requiring the IU to appear and demonstrate why the Control Authority should not take a proposed enforcement action against it. The meeting may also serve as a forum to discuss corrective actions and compliance schedules.

WM - Wastewater Manager.

C. Enforcement Response Guide

A key element in all enforcement responses is the timelines with which they are initiated and affect compliance. Given many types of violations, applicable legal enforcement procedures, and the resources available to the City of Hohenwald, these specific time frames are presented as a guide for responses.

The Enforcement Response Guide in the chapter is used as follows:

1. Locate the type of noncompliance in the first column and identify the most accurate description of the violation.
2. Assess the appropriateness of the recommended response(s) in column 2. First offenders or Users demonstrating good faith efforts may merit a more lenient response. Similarly, repeat offenders or those who are negligent may require a more stringent response.
3. Apply the enforcement response, listed in column 3, to the IU.
4. Column 4 indicates personnel to take each response. The time frame in which the response should be taken is listed after the tables.
5. Follow-up with escalated enforcement action if the IUs response is not received or violation continues.

The Control Authority should remember to maintain all supporting documentation regarding the violation and its enforcement actions in the IU's file.

ENFORCEMENT RESPONSE GUIDE

UNAUTHORIZED DISCHARGES (No Permit)

NONCOMPLIANCE	NATURE OF THE VIOLATION	ENFORCEMENT RESPONSES	PERSONNEL
Unpermitted discharge	IU unaware of requirement; no harm to POTW/environment	Phone call; NOV with application form	PC
	IU unaware of requirement; harm to POTW	-AO with Class A fine -Civil Action	PC, WM WM, CC, CA
	Failure to apply continues after notice by the POTW	-Civil Action -Criminal investigation -Terminate service	WM, CC, CA WM, CC, CA WM, CC, CA
Nonpermitted discharge (failure to renew)	IU has not submitted application with 10 days of due date	Phone call; NOV	PC

DISCHARGE LIMIT VIOLATION

NONCOMPLIANCE	NATURE OF THE VIOLATION	ENFORCEMENT RESPONSES	PERSONNEL
Exceedance of local or Federal Standard (permit limit)	Isolated, not significant	Phone call; NOV	PC
	Isolated, significant (no harm)	AO to develop spill prevention plan and/or fine	PC
	Isolated harm to POTW or environment	-Show cause order -Civil Action	PC, WM, CC WM, CC, CA
	Recurring, no harm to POTW/environment	AO with compatible schedule	PC
	Recurring; significant (harm)	-AO with Class A fine -Show cause order -Civil Action -Terminate service	PC, WM, CC PC, WM, CC WM, CC, CA WM, CC, CA

OTHER PERMIT VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	ENFORCEMENT RESPONSES	PERSONNEL
Wastestreams are diluted in lieu of treatment	Initial Violation	AO with Class B fine	PC, WM
	Recurring	-Show Cause Order -Terminate service	PC, WM,CC WM,CC,CA
Failure to mitigate noncompliance or halt production	Does not result in harm	NOV	PC
	Does result in harm	-AO with Class A fine -Civil Action	PC, WM WM,CC,CA
Failure to properly operate and maintain pretreatment facility	Does not result in harm	NOV	PC
	Does result in harm	-AO with Class A fine -Civil Action	PC, WM WM,CC,CA

MONITORING AND REPORTING VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	ENFORCEMENT RESPONSES	PERSONNEL
Reporting Violation	Report is improperly signed or certified	Phone call or NOV	PC
	Report is improperly signed or certified after notice by POTW	-AO -Show cause order	PC PC,WM,CC
	Isolated not significant (e.g. 5 days late)	Phone call; NOV	PC
	Significant (e.g. report 30 days or more late)	NOV to submit with Class C fine per additional day in future occurrences	PC,WM
	Reports are always late or no reports at all	-AO with Class B fine -Show Cause Order -Civil Action	PC, WM PC, WM,CC WM,CC,CA
	Failure to report spill or changed discharge (no harm)	NOV	PC
	Failure to report spill or changed discharge (results in harm)	-AO with Class A fine -Civil Action	PC, WM WM,CC,CA
	Repeated failure to report spills	-Show Cause Order -Terminate Service	PC, WM,CC WM,CC,CA

NONCOMPLIANCE	NATURE OF THE VIOLATION	ENFORCEMENT RESPONSES	PERSONNEL
	Falsification	-Criminal investigation -Terminate service	WM,CC,CA WM,CC,CA
Failure to monitor correctly	Failure to monitor all pollutants as required by permit	NOV or AO	PC
Improper sampling	Recurring failure to monitor	-AO with fine -Civil Action	PC, WM, WM, CC, CA
	Evidence of intent	-Criminal investigation -Terminate service	WM,CC,CA WM,CC,CA
Failure to install monitoring equipment	Delay of less than 30 days	NOV	PC
	Delay of 30 days or more	AO to install with Class C fine for each additional day	PC,WM
	Recurring violation of AO	-Civil Action -Criminal investigation -Terminate service	PC,CC,CA WM,CC,CA WM,CC,CA
Compliance Schedules (in permit)	Missed milestone by less than 30 days or will not affect final milestone	NOV or AO with Class D fine	PC,WM
	Missed milestone by more than 30 days or will affect final milestone (good cause for delay)	AO with Class D fine	PC, WM
	Missed milestone by more than 30 days or will affect final milestone (no good cause for delay)	-Show Cause Order -Civil Action -Terminate service	PC, WM, CC WM, CC, CA WM, CC, CA
	Recurring violation or violation of schedule in AO	-Civil Action -Criminal Investigation -Terminate service	WM,CC,CA WM,CC,CA WM,CC,CA

**VIOLATIONS DETECTED DURING SITE VISITS
BY THE CONTROL AUTHORITY**

NONCOMPLIANCE	NATURE OF THE VIOLATION	ENFORCEMENT RESPONSES	PERSONNEL
Entry Denial	Entry denied or content withdrawn; Copies of records denied	Obtain warrant and return to IU	PC,CC,CA
Illegal Discharge	No harm to POTW or	AO with Class D fine	PC, WM

NONCOMPLIANCE	NATURE OF THE VIOLATION	ENFORCEMENT RESPONSES	PERSONNEL
	Discharge causes harm or evidence of intent/negligence	-Civil Action -Criminal Investigation	WM,CC,CA WM,CC,CA
	Recurring violation of AO	Terminate service	WM,CC,CA
Improper Sampling	Unintentional sampling at incorrect location	NOV	PC
	Unintentionally using incorrect sample type	NOV	PC
	Unintentionally using incorrect sample collection techniques	NOV	PC
Inadequate record keeping	Inspector finds files incomplete to missing (no evidence of intent)	NOV	PC
	Recurring	AO with Class B fine	PC, WM
Failure to report additional monitoring	Inspection finds additional files	NOV	PC
	Recurring	AO with Class B fine	PC, WM

RESPONSE TIME FRAMES

- A. All violations must be identified and documented within five days of receiving compliance information.
- B. Initial enforcement responses, involving contact with the industrial user and requesting information on corrective or preventative action(s), will occur within 15 days of violation detection.
- C. Follow up actions for continuing or reoccurring violations will be taken within 60 days of the 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 Significant Noncompliance.

FINE CLASSIFICATIONS

Class A	\$500 first offense, escalating by \$100 for each additional offense or each day offense continues up to a maximum of \$1000 per offense.
Class B	\$300 first offense, escalating by \$50 for each additional offense or each day offense continues up to a maximum of \$1000 per offense.
Class C	\$100 plus \$50 each day violation continues.
Class D	\$300

CHAPTER V

ENFORCEMENT RESPONSES

The City of Hohenwald (also referred to as the Control Authority) begins its enforcement process by identifying an industrial user's violation. This Chapter describes an overview of the types of enforcement responses available to the Control Authority. Which response to use depends on the violations severity, its duration, its effect on the environment, and the treatment plant, and the User's compliance history.

A. Notice of Violation

A Notice of Violation (NOV) is issued for relatively minor or infrequent violations of pretreatment standards and requirements. A NOV is an effective response because it provides the Industrial User the opportunity to correct noncompliance on its own, rather than according to a schedule of actions determined by the Control Authority. This helps to foster a cooperative environment between the IU and the Control Authority. A NOV also gives the Control Authority documentation of initial attempts to resolve the noncompliance with the IU. A NOV is an inexpensive way to show the IU that a response was made according to the Enforcement Response Plan, rather than reacting to the noncompliance with extreme or harsh enforcement.

A NOV should be issued within 5 days after detection on Hohenwald letterhead since it is an official notice. The contents of the NOV should include the following facts:

1. The City of Hohenwald is in charge of constructing, maintaining and regulating the use of the sewer system;
2. In order to protect the Hohenwald Sewerage System, the City of Hohenwald administers a pretreatment program;
3. Under this program, the IU was issued an Industrial User Discharge Permit on (Date);
4. The permit contains limits on the pollutants which the IU could discharge, as well as self-monitoring requirements and other duties; and

5. On (Date), analysis showed that the quantity of (Pollutant) exceeded the permit limitation, or explain the nature of the violation as shown in Chapter IV.

A NOV should be hand delivered or mailed by certified mail so that Hohenwald has record of issuing and receipt of the NOV. Copies of NOV's and receipts should be kept in the IU's file. If the IU does not return to compliance, Hohenwald should escalate to more stringent enforcement responses, rather than continuing to issue NOV's which do not result in compliance by the IU.

B. Administrative Orders

An Administrative Order (AO) is an enforcement document which directs IU's to undertake or to cease specific activities. AO's are recommended as a formal response to significant noncompliance in some cases and may include compliance schedules, administrative penalties or fines, and termination of service. There are four basic types of administrative orders:

1. Cease and Desist Orders

A Cease and Desist Order directs a noncompliant IU to cease illegal or unauthorized discharges immediately or to terminate their discharge altogether. A Cease and Desist Order is normally used when the discharge could cause interference or pass-through, or otherwise create an emergency situation. In an emergency, the Order may be given by telephone. It should promptly be followed by a certified letter in order to have a record of the Order.

In non-emergency situations, the Cease and Desist Order may be issued to suspend or permanently revoke the IU's permit. If the IU does not comply with the Order, Hohenwald should then take action to halt the discharge, such as terminating the IU's water service or blocking the IU's connection point.

A Cease and Desist Order allows for immediate cessation of unauthorized discharges, thus halting the noncompliance and removing any threat to the Hohenwald Sewerage System or receiving stream. The Cease and Desist Order may damage municipal/industrial relationships by forcing the industry to halt production before being given an opportunity to solve the problem; therefore, the Control Authority should only issue this Order when necessary for the welfare of the POTW.

2. Consent Order

The Consent Order combines the force of the AO with the flexibility of a negotiated settlement. The Consent Order is a written agreement between the City of Hohenwald and the IU which normally contains three items:

- a. Compliance Schedule,
- b. Stipulated Fines, and
- c. Signatures of Control Authority and Industry Representatives.

A Consent Order is appropriate when the IU assumes responsibility for its noncompliance and is willing to correct its cause. This Order is generally the easiest Order to draft since its terms are agreed to by both parties. The terms of the Order may be results of a Show Cause Hearing or the outcome of other negotiations with the IU. Because the Consent Order allows the IU to present approaches to corrective action, it usually gains cooperation and may also be the fastest way to attain compliance while nurturing a good Control Authority/IU relationship. A Consent Order should always be carefully drafted, so that the interpretation will be clearly and concisely understood by all parties.

3. Show Cause Order

A Show Cause Order directs the IU to appear before the Control Authority, explain its noncompliance, and show cause why more severe enforcement actions against the IU should not go forward. The hearing can be formal and open to the public, but it is suggested that the hearing be informal and closed to the public. Findings from the hearing should be carefully documented.

A hearing can be conducted by any official or agent of the City of Hohenwald (i.e. the Board of Mayor and Aldermen, the Mayor, the City Recorder, or the Pretreatment Coordinator). The Control Authority will present evidence of noncompliance. The IU may admit or deny noncompliance, explain the circumstances, demonstrate its eventual compliance, and describe any other corrective measures.

The results and decisions resulting from the Show Cause Hearing should then be incorporated into a Consent Order. If the IU must

install pretreatment equipment to achieve compliance, a reasonable schedule for construction and startup should be developed. The results of a Show Cause Hearing, along with any data and testimony (recorded by a tape recorder or stenographer) should be submitted as evidence and may also serve as support for future enforcement actions.

4. Compliance Order

A Compliance Order directs the IU to achieve or restore compliance by a date specified in the Order. This Order should document the noncompliance and state required actions to be accomplished by specific dates, including progress reporting requirements. When drafting the Compliance Schedule, the Control Authority should be firm, but reasonable. Once milestones are set in the schedule, the Control Authority should track the IU's performance and escalate enforcement, if needed.

C. Administrative Fines or Penalties

An Administrative Fine or Penalty is a very effective response to significant noncompliance because it may be assessed at Hohenwald's discretion and the amount of the fine may be determined on an individual basis. Administrative Fines differ from Civil Penalties since they are assessed by Hohenwald directly, pursuant to the Sewer Use Ordinance, and they do not require Court intervention unless the IU contests the action or refuses to pay the fine. These fines are used to regain the economic benefit of noncompliance and to deter future violations.

Administrative Fines and Penalties are recommended as an escalated enforcement response, usually used when repeated Notice of Violations or Administrative Orders have not prompted return to compliance.

The amount of the fine should be proportionate to the economic benefit enjoyed by the IU from the noncompliance and the harm caused by the violation. In some cases, a violation by an IU could cause the POTW to violate their permit limits, therefore, the State or EPA may impose fines on the POTW.

Whatever the fine or penalty selected, it should always specify the violations for which the fine is being assessed, indicate the amount of the fine or penalty, and order the IU to take corrective action to promptly return to compliance. The procedures may need to be included in an Administrative Order issued with the fine or penalty. As mentioned

before, always be sure to keep accurate and complete records on all actions taken.

D. Civil Litigations

Civil Litigation is the formal process of filing lawsuits against Industrial Users to secure Court ordered action to correct violations and to secure penalties for violations, including the recovery of costs to the POTW of the noncompliance. This response is normally pursued when the corrective action required is costly and complex, the penalty to be assessed exceeds that which the Hohenwald Sewerage System can assess, or when the Industrial User is considered to be completely unwilling to cooperate.

Civil Litigation also includes enforcement measures which require approval by the Court, such as injunctive relief and settlement agreements. It is similar to criminal prosecution in that it requires a less stringent burden of proof in order for the Control Authority to prevail than that involved in criminal prosecution.

Consent Decrees are agreements between the City of Hohenwald and the Industrial User reached after a lawsuit has been filed. The decree must be signed by the judge presiding over the case. A Consent Decree is used when the violator is willing to acknowledge and correct the noncompliance and the Control Authority and the IU agree to the penalty.

Injunctions are Court Orders which direct the IU to do something or to refrain from doing something. Injunctions are used when the Control Authority feels the delays involved in filing suit would result in irreparable harm. In most cases, a Cease and Desist Order is used instead of an Injunction when it is necessary to prevent a discharge. However, if the IU refuses to comply with the Cease and Desist Order, the Control Authority may be forced to seek injunctive relief.

Civil Penalties may be necessary to recover costs associated with noncompliance and to impose penalties. If an IU releases a slug load into the POTW, it could upset the treatment works or damage the collection system (which must be restored or repaired); it could require the Control Authority to conduct special sampling to trace the spill, (which would include extra costs for the Control Authority); or it could cause the Control Authority to violate its NPDES permit (which may result in fines assessed against the Control Authority by the State or EPA).

In order to make a decision to pursue civil litigation, the Control Authority must understand the legal procedures involved in preparing a lawsuit. These procedures include identifying parties to be named as defendants in the lawsuit and the relief to be requested from the Court. The Control Authority must be prepared to cooperate with the IU during the pretrial investigation and exchange of information between parties. The Control Authority should be sure to have complete documentation before attempting to pursue civil action and should consult the City Attorney before making this decision.

E. 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 and/or imprisonment. There are two types of criminal offenses: 1) an act in violation of the law; and 2) criminal intent. Criminal intent or negligence would have to be proven or criminal prosecution is not a viable enforcement option. The City of Hohenwald should therefore, consult its attorney regarding all legal Authority and interpretations of and local law. In the best interest of the Control Authority and the IU, it is normally better not to pursue criminal prosecution unless it is the last resort and the evidence is certain. Otherwise, this response can be very costly and time consuming.

CHAPTER VI

SUMMARY

The Enforcement Response Guide should allow the Control Authority to select from several alternative initial and follow-up actions. The Control Authority may initially rely on informal actions such as NOV's where violations are nonsignificant or when the Industrial User is cooperative in resolving its problems. However, when the violation is significant or when the Industrial User does not promptly undertake corrective action, the Control Authority must respond with more severe enforcement responses including judicial proceedings. Similarly, when the IU fails to return to compliance following the initial enforcement response, the Control Authority must "escalate" its enforcement response in a follow-up "more stringent" action.

The Control Authority should also evaluate appropriate enforcement responses in the context of the IU's prior violations. If the Control Authority seeks remedies for only the most serious violation, the less significant violators could inadvertently escape enforcement. The Control Authority should be aware that, since pretreatment enforcement is a matter of strict liability, the knowledge, intent or negligence of the IU should not be taken into consideration, except when deciding to pursue criminal prosecution.

The enforcement response selected should be appropriate to the violation. The following paragraphs should give some insight into deciding how strict the enforcement action should be. In most cases, common sense should be used to make a determination about which action to take.

A. Magnitude of a Violation

An isolated instance of noncompliance can be met with an informal response or a NOV. Sometimes an isolated violation could threaten public health and the environment, damage public property, or threaten the integrity of the POTW program (e.g. falsifying a self-monitoring report). Therefore, it is recommended that the Control Authority respond to any "significant noncompliance" with an enforceable Order that requires a return to compliance by a specific deadline. EPA has _____ significant noncompliance in the General Pretreatment Regulations (53 Fed. Reg. 47650) as violations which meet one or more of the following criteria:

1. Violation of Wastewater Discharge Limits:
 - a. Chronic Violations - Sixty-six percent or more of the measurements exceed the same daily maximum limit or the same average limit in a six-month period (any magnitude of exceedence).
 - b. Technical Review Criteria (TRC) violations - Thirty-three percent or more of the measurements exceed the same daily limit or the same average limit by more than the TRC in a six-month period. There are two groups of TRC's:

Group One for conventional pollutants (BOD, TSS, fats, oil and grease), TRC = 1.4 times the limit.

Group Two for all other pollutants except pH, TRC=1.2 times the limit.
 - c. Any other violation(s) of effluent limit (average or daily maximum) that the Control Authority believes has caused alone or in combination with other discharges, interference or pass-through, or endangered the health of the sewage treatment personnel or the public.
 - d. Any discharge of a pollutant that has caused imminent danger to human health/welfare or to the environment and has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.
2. Violations of compliance schedule milestones contained in a local control mechanism or enforcement order, for starting construction and attaining final compliance by 90 days or more after the schedule date.
3. Failure to provide reports for compliance schedules, self-monitoring data, or periodic reports within 30 days from the due date.
4. Failure to accurately report noncompliance.

5. Any other violation or group of violations that the Control Authority considers to be significant.

B. Duration of the Violation

Violations, regardless of the severity, which continue over a prolonged period of time should subject the IU to escalated enforcement actions. For example, an effluent violation which occurs in two out of three samples over a six-month period or a report which is more than 30 days late is considered significant, while a report which is two days late would not be significant.

C. Effect on Receiving Water

One of the primary objectives of the pretreatment program is to prevent pollutants from "passing through" the POTW and entering the receiving stream. Therefore, any violation which results in environmental harm or harm to the POTW should be met with a severe response. Environmental harm could be considered when an IU discharges a pollutant into the sewerage system which:

1. passes through the POTW;
2. causes a violation of the POTW's NPDES permit (including water quality standards); and
3. has a toxic effect on the receiving waters (i.e., fish kill).

At a minimum, responses to these circumstances should include an Administrative Order (AO) and an Administrative Fine. In addition, the response should insure the recovery from the noncompliant user of any NPDES fines and penalties paid by the Control Authority. If the IU's discharge causes repeated harmful effects, the Control Authority should seriously consider terminating service to the User.

D. Effect on the POTW

Some violations may have negative or harmful impacts on the POTW. For example, they may result in significant increase of treatment costs; interference or harm to POTW personnel, equipment processes, or operations; or cause sludge contamination, which results in increased sludge disposal costs. All of these violations should be met with an administrative fine or civil penalty and an order to correct the violation in addition to recovery of additional costs and expenses to repair the _____

should also include any extra monitoring required to trace a spill to the IU.

E. Compliance History of the Industrial User

A pattern of recurring violations (even of different program requirements) may indicate either that the IU's treatment system is inadequate or that the IU has taken a casual approach to operating and maintaining its treatment system. These indications should alert the Control Authority of violations; therefore, IU's exhibiting recurring compliance problems should be strongly dealt with to insure that compliance is achieved in the future.

F. Good Faith of the Industrial User

Good faith may be defined as the IU's honest intention to remedy its noncompliance, along with actions which give support to this intention. The IU's good faith in correcting its noncompliance is a factor in determining which enforcement action to use. An IU's willingness to comply should prompt the Control Authority to select less stringent enforcement responses. However, good faith does not eliminate the need for an enforcement action.

G. Time Frames and Follow-Up

In order for an enforcement action to be effective, it must be timely. Every violation must be detected and responded to promptly after it occurs. Therefore, review of IU reports should be a high priority when they are submitted. Violations should receive attention as soon as possible. After an enforcement action is taken, the Control Authority should closely track the IU's progress toward compliance. One method to insure that IU compliance is closely tracked is to increase the frequency of self-monitoring. When follow-up activities indicate that the violation continues, the Control Authority should escalate its enforcement action.

APPENDIX B

CITY OF HOHENWALD CODE OF ETHICS SYNOPSIS OF LAWS

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1. Campaign finance.

All candidates for the chief administrative office (mayor), any candidates who spend more than \$500, and candidates for other offices that pay at least \$100 a month are required to file campaign financial disclosure reports. Civil penalties of \$25 per day are authorized for late filings. Penalties up to the greater of \$10,000 or 15 percent of the amount in controversy may be levied for filings more than 35 days late. It is a Class E felony for a multicandidate political campaign committee with a prior assessment record to intentionally fail to file a required campaign financial report. Further, the treasurer of such a committee may be personally liable for any penalty levied by the Registry of Election Finance (T.C.A. § 2-10-101–118).

Contributions to political campaigns for municipal candidates are limited to:

- a. \$1,000 from any person (including corporations and other organizations);
- b. \$5,000 from a multicandidate political campaign committee;
- c. \$20,000 from the candidate;
- d. \$20,000 from a political party; and
- e. \$75,000 from multicandidate political campaign committees.

The Registry of Election Finance may impose a maximum penalty of \$10,000 or 115 percent of the amount of all contributions made or accepted in excess of these limits, whichever is greater (T.C.A. § 2-10-301–310).

Each candidate for local public office must prepare a report of contributions that includes the receipt date of each contribution and a political campaign committee's statement indicating the date of each expenditure (T.C.A. § 2-10-105, 107).

Candidates are prohibited from converting leftover campaign funds to personal use. The funds must be returned to contributors, put in the volunteer public education trust fund, or transferred to another political campaign fund, a political party, a charitable or civic organization, educational institution, or an organization described in 26 U.S.C. 170(c) (T.C.A. § 2-10-114).

2. Conflicts of Interest.

Municipal officers and employees are permitted to have an “indirect interest” in contracts with their municipality if the officers or employees publicly acknowledge their interest. An indirect interest is any interest that is not “direct,” except it includes a direct interest if the officer is the only supplier of goods or services in a municipality. A “direct interest” is any contract with the official himself or with any business of which the official is the sole proprietor, a partner, or owner of the largest number of outstanding shares held by any individual or corporation. Except as noted, direct interests are absolutely prohibited (T.C.A. § 6-2-402, T.C.A. § 6-20-205, T.C.A. § 6-54-107–108, T.C.A. § 12-4-101–102).

3. Disclosure conflict of interests.

Conflict of interest disclosure reports by any candidate or appointee to a local public office are required under T.C.A. §§ 8-50-501 *et seq.* Detailed financial information is required, including the names of corporations or organizations in which the official or one immediate family member has an investment of over \$10,000 or 5 percent of the total capital. This must be filed no later than 30 days after the last day legally allowed for qualifying as a candidate. As long as an elected official holds office, he or she must file an amended statement with the Tennessee Ethics Commission or inform that office in writing that an amended statement is not necessary because nothing has changed. The amended statement must be filed no later than January 31 of each year (T.C.A. § 8-50-504).

4. Consulting fee prohibition for elected municipal officials.

Any member or member-elect of a municipal governing body is prohibited under T.C.A. § 2-10-124 from “knowingly” receiving any form of compensation for “consulting services” other than compensation paid by the state, county, or municipality. Violations are punishable as Class C felonies if the conduct constitutes bribery under T.C.A. § 39-16-102. Other violations are prosecuted as Class A misdemeanors. A conviction under either statute disqualifies the offender from holding any office under the laws or Constitution of the State of Tennessee.

“Consulting services” under T.C.A. § 2-10-122 means “services to advise or assist a person or entity in influencing legislative or administrative action, as that term is defined in § 3-6-301, relative to the municipality or county represented by that official.” “Consulting services” also means services to advise or assist a person or entity in maintaining, applying for, soliciting or entering into a contract with the municipality represented by that official. “Consulting services”

does not mean the practice or business of law in connection with representation of clients by a licensed attorney in a contested case action, administrative proceeding or rule making procedure;

"Compensation" does not include an "honorarium" under T.C.A. § 2-10-116, or certain gifts under T.C.A. § 3-6-305(b), which are defined and prohibited under those statutes.

The attorney general construes "Consulting services" to include advertising or other informational services that directly promote specific legislation or specifically target legislators or state executive officials. Advertising aimed at the general public that does not promote or otherwise attempt to influence specific legislative or administrative action is not prohibited. Op. Atty.Gen. No. 05-096, June 17, 2005.

5. Bribery offenses.

a. A person who is convicted of bribery of a public servant, as defined in T.C.A. § 39-16-102, or a public servant who is convicted of accepting a bribe under the statute, commits a Class B felony.

b. Under T.C.A. § 39-16-103, a person convicted of bribery is disqualified from ever holding office again in the state. Conviction while in office will not end the person's term of office under this statute, but a person may be removed from office pursuant to any law providing for removal or expulsion existing prior to the conviction.

c. A public servant who requests a pecuniary benefit for performing an act the person would have had to perform without the benefit or for a lesser fee, may be convicted of a Class E felony for solicitation of unlawful compensation under T.C.A. § 39-16-104.

d. A public servant convicted of "buying and selling in regard to offices" under T.C.A. § 39-16-105, may be found guilty of a Class C felony. Offenses under this statute relevant to public officials are selling, resigning, vacating, or refusing to qualify and enter upon the duties of the office for pecuniary gain, or entering into any kind of borrowing or selling for anything of value with regard to the office.

e. Exceptions to 1, 3, and 4, above include lawful contributions to political campaigns, and a "trivial benefit" that is "incidental to personal, professional, or business contacts" in which there is no danger of undermining an official's impartiality.

6. Official misconduct, official oppression, misuse of official information.

a. Public misconduct offenses under Tennessee Code Annotated § 39-16-401 through § 39-16-404 apply to officers, elected officials, employees, candidates for nomination or election to public office, and persons performing a governmental function under claim of right even though not qualified to do so.

b. Official misconduct under Tennessee Code Annotated § 39-16-402 pertains to acts related to a public servant's office or employment committed with an intent to obtain a benefit or to harm another. Acts constituting an offense include the unauthorized exercise of official power, acts exceeding one's official power, failure to perform a duty required by law, and receiving a benefit not authorized by law. Offenses under this section constitute a Class E felony.

c. Under Tennessee Code Annotated § 39-16-403, "Official oppression," a public servant acting in an official capacity who intentionally arrests, detains, frisks, etc., or intentionally prevents another from enjoying a right or privilege commits a Class E felony.

d. Tennessee Code Annotated § 39-16-404 prohibits a public servant's use of information attained in an official capacity, to attain a benefit or aid another which has not been made public. Offenses under the section are Class B misdemeanors.

e. A public servant convicted for any of the offenses summarized in sections 2-4 above shall be removed from office or discharged from a position of employment, in addition to the criminal penalties provided for each offense. Additionally, an elected or appointed official is prohibited from holding another appointed or elected office for ten (10) years. At-will employees convicted will be discharged, but are not prohibited from working in public service for any specific period. Subsequent employment is left to the discretion of the hiring entity for those employees. Tennessee Code Annotated § 39-16-406.

7. Ouster law.

Some Tennessee city charters include ouster provisions, but the only general law procedure for removing elected officials from office is judicial ouster. Cities are entitled to use their municipal charter ouster provisions, or they may proceed under state law.

The judicial ouster procedure applies to all officers, including people holding any municipal "office of trust or profit." (Note that it must be an "office" filled by an "officer," distinguished from an "employee" holding a "position" that does not have the attributes of an "office.") The statute makes any officer subject to such

removal “who shall knowingly or willfully misconduct himself in office, or who shall knowingly or willfully neglect to perform any duty enjoined upon such officer by any of the laws of the state, or who shall in any public place be in a state of intoxication produced by strong drink voluntarily taken, or who shall engage in any form of illegal gambling, or who shall commit any act constituting a violation of any penal statute involving moral turpitude” (T.C.A. § 8-47-101).

T.C.A. § 8-47-122(b) allows the taxing of costs and attorney fees against the complainant in an ouster suit if the complaint subsequently is withdrawn or deemed meritless. Similarly, after a final judgment in an ouster suit, governments may order reimbursement of attorney fees to the officer targeted in a failed ouster attempt (T.C.A. § 8-47-121).

The local attorney general or city attorney has a legal “duty” to investigate a written allegation that an officer has been guilty of any of the mentioned offenses. If he or she finds that “there is reasonable cause for such complaint, he shall forthwith institute proceedings in the Circuit, Chancery, or Criminal Court of the proper county.” However, with respect to the city attorney, there may be an irreconcilable conflict between that duty and the city attorney’s duties to the city, the mayor, and the rules of professional responsibility governing attorneys. Also, an attorney general or city attorney may act on his or her own initiative without a formal complaint (T.C.A. § 8-47-101–102). The officer must be removed from office if found guilty (T.C.A. § 8-47-120).