



City of Elkhart

Public Works and Utilities

Elkhart Public Works and Utilities Wastewater Utility Enforcement Response Plan

This document is designed to be a guide for enforcement of the
Wastewater Utility Use Ordinance and industrial waste discharge permits

City of Elkhart
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1 INTRODUCTION

The Wastewater Utility Enforcement Response Plan should be used only in conjunction with the City of Elkhart Wastewater Use Ordinance also known as Elkhart, Indiana, Municipal Code, Chapter 52, as amended (“Use Ordinance”). All definition used in this Wastewater Utility Enforcement Response Plan are the same as those in the Use Ordinance. The Use Ordinance supercedes any information contained within the Wastewater Utility Enforcement Response Plan. While recommendations and typical procedures are given in Wastewater Utility Enforcement Response Plan, nothing in this Wastewater Utility Enforcement Response Plan is required of the POTW prior to taking any action unless required by law.

2 INDUSTRIAL USER SURVEY

The head of the Pretreatment Department (“Pretreatment Manager”) and his/ her staff (“Pretreatment Inspectors”) are responsible for updating the industrial user inventory. Industrial Users are tracked in an electronic database. The database is updated based on information from the following sources:

- Every new publicly owned treatment works (“POTW”) customer completes an application for service when signing up for service. Each non-residential application is given to the Pretreatment Manager or one of the Pretreatment Inspectors (“Pretreatment Staff”) for review. As needed, Pretreatment Staff will request additional information from customers to determine if they need to be included in the industrial user inventory and if they are required to have an industrial wastewater discharge permit.
- Pretreatment Staff coordinates with other City departments and industry to review changes to the operations at existing businesses or new business. This mainly comes about through the technical review process associated with proposed development, but it can also be an informal knowledge sharing process.
- Periodically Pretreatment Staff may send a survey to every non-residential customer to ensure that no customers are missing from the industrial user inventory and determine if any customer made previously undetected changes that would require an industrial wastewater discharge permit.

The industrial user inventory includes the character and volume of pollutants contributed to the POTW for each User on the inventory. The industrial user inventory is used to notify Users of applicable requirements under 40 CFR 403.8(f)(2)(iii).

3 CONFIRMING COMPLIANCE

The POTW shall confirm compliance through periodic inspections and monitoring. All violations require a User response. The User shall respond in writing to the notice of violation with compliance order (“NOV”) within 15 calendar days of receipt of the NOV. Lack of response shall be considered an additional violation.

Violations of multiple maximum or average limits within the same sampling event will be treated as separate violations. Violations which continue for more than one day will be separate violations for each day. Monthly average limits are considered to represent all of the business days within that month. When multiple samples are taken for a parameter, the average of the results will be the monthly average. When only one sample for a parameter is taken in a month, that result shall be the monthly average for that month. Such a result may constitute separate violations of both the monthly average limit and the daily maximum limit.

3.1 PERIODIC INSPECTION AND MONITORING

Periodic inspections and monitoring by Pretreatment Staff shall be conducted in accordance with the Use Ordinance. Inspections typically involve a walkthrough of the facility and reviewing the User’s operations for inadequacies or changes that would impact the User’s permit. Pretreatment Staff follow an inspection form and the information is documented in an inspection report. Additional inspection and monitoring may be conducted in response to known or suspected compliance issues.

3.2 COMPLIANCE MONITORING

All reports, including, but not limited to, self-monitoring reports, are evaluated by Pretreatment Inspectors as the reports are received. Typically, review starts within a few business days of receiving the report. Pretreatment Inspectors enter the data from the report into an electronic database. The electronic database will flag violations. A cover page for the report is completed and included with the report in the User’s file. The cover page serves as a record of any identified violations and provides notices to the Pretreatment Manager of the need for an enforcement response. The Pretreatment Manager also completes additional review of the report.

The following also ensures adequate compliance monitoring:

- Pretreatment Staff periodically review Users’ files to ensure all required reports have been submitted.
- Sampling must be legally defensible. This typically means it follows United States Environmental Protection Agency approved methods and adequate chain-of-custody procedures. Improper sampling will not be accepted.
- At this time, no Users have had sampling requirements waived, are classified as non-significant categorical industrial users, or are subject to reduced reporting requirements.
- Each Significant Industrial User is required to have a plan to control Slug Discharges.

4 ENFORCEMENT RESPONSE GUIDE

4.1 PROCESS

Violations are typically detected during an inspection, as a result of monitoring conducted by the POTW, or when reviewing a report. The POTW will take escalating enforcement responses to all anticipated types of violations. The process and requirements for enforcement actions are described in detail within the Use Ordinance. While recommendations and typical procedures are given in this section, nothing in this section is required of the POTW prior to taking any action unless required by law. Each step of the process is documented in the User's file.

4.1.1 Procedure for All Violations

Action	Title of Official Responsible	Time Period	Method
Violation is communicated	Pretreatment Staff	Within 5 business days of determining a violation has occurred	Phone or email
Notice of violation with compliance order issued ¹	Pretreatment Manager ²	Within 10 business days of determining a violation has occurred	Hand delivered with delivery documentation
Assessment of fine	Board	Board meeting after NOV response deadline	Board action on recommended fine

1: The NOV lists the violation, recommends a fine based on the penalty matrix for the Board to assess, requires the User to respond to the NOV and serves as a compliance order for the User to immediately cease violating the Use Ordinance. The NOV also gives the User a date and time when the Board will consider a User's request to appeal an NOV. At that date and time, the Board may also assess a fine or impose other requirements on the User. Any assessed fine will be added to the User's sewer charges when billing the User for sewer service.

2: Acting as the Director's duly authorized representative

4.2 ADDITIONAL PROCEDURES

The above procedure is generally sufficient to return a User to compliance; however, ongoing violations, repeated violation(s) within a 12-month period, violations that cause the POTW to violate any permit, or violations that damage the POTW may necessitate additional actions. Damage to the POTW includes, but is not limited to, weakening, destruction, blockage, degradation, pass through, or interference of any structure or process of the POTW including, but not limited to, pipes, tanks, pumps, biology, manholes, grates, catch basins, or monitoring devices.

Section 3.2 covers typical actions, but the POTW may take any action consistent with the Use Ordinance.

4.2.1 Repeated or Ongoing Noncompliance

Follow-up action for continuing violations will be taken within 60 days of initial issuance of an NOV. Follow-up action for reoccurring violations will be taken within 60 days after the POTW observes three to five violations in a 12-month period. The exact number of violations prior to follow-up action will be based on the nature of the violations. The below list of actions may be implemented in any order or may not be taken.

Action	Title of Official Responsible	Time Period (Circumstances)	Method
Consent order	Board	After repeated violations	Board action agreed upon with the User
Cease and desist order	Director	Continuing noncompliance	Hand delivered with delivery documentation
Termination of service	Director	Where other methods have not been sufficient to compel compliance the Director may	Hand delivered with delivery documentation; disconnection may be accomplished through discontinuing

		terminate service after providing notice to the User and giving the User sufficient time to stop production without harm to human health or the environment	water service or physical disconnection or plug of the sewer service
Show cause order	Board	Complex noncompliance issues where User explanation is needed	Board action and hand delivered with delivery documentation
Civil legal action	Corporation Counsel	Where the POTW has not otherwise been able to get legal and equitable relief	Director notifies Corporation Counsel

4.2.2 Immediate Danger

Where continued or threatened noncompliance causes or may cause damage to POTW, be harmful to human health or the environment, be otherwise harmful to property, or may cause the POTW to violate its permit, the Director or his/her duly appointed representative will immediately issue a cease and desist order by phone follow by a hand delivered copy of the notification with delivery documentation. The cease and desist order may be accompanied by termination of service as outlined above.

4.2.3 Significant Noncompliance

Significant Industrial Users are subject to annual public notification in a newspaper of general circulation that provides meaningful public notice within the jurisdiction served by the POTW of Industrial Users which, at any time during the previous 12 months, were in significant noncompliance with applicable Pretreatment requirements.

4.2.4 Criminal Prosecution

The Director may decide to refer violations to an outside entity when noncompliance shows criminal intent.

4.3 RECOMMENDED FINES

Fine amounts are recommended below. The fine assessed for any violation is determined by the Board up to and including \$2500 per violation per day. The recommended fine for any violation not mentioned in the matrix is at the discretion of the Pretreatment Manager. The number of violations shall be based upon the same violations accumulating within a rolling 12 month period. Assessing a fine does not preclude the City from also taking other actions against a User. This includes, but is not limited to, pursuing a User for liability for any and all damages, losses, and expenses sustained by the City as a result of noncompliance.

All violations are per day where the violation exists for any amount of time during that day unless otherwise noted.

Violation	First Violation	Second Violation	Third and Subsequent Violations
Discharge			
Discharging substance that causes an atmosphere that is immediately dangerous to life and health¹		\$2500	
Discharging a substance that damages the POTW or causes the POTW to violate any of its permits		\$2500	
Discharging noxious or malodorous substance that creates a public nuisance	\$250	\$1500	\$2500
Discharges that cause average concentration of hydrogen sulfide (H₂S) gas in the POTW to exceed 5 ppm or the maximum concentration of 50 ppm at any time²	\$250	\$1500	\$2500

Failure to notify the POTW prior to batch discharge	\$250	\$1500	\$2500
Discharging explosive or flammable substances ³	\$2500		
Discharging wastewater with a pH less than:			
- 5.0 (instantaneous)	\$250	\$1500	\$2500
- 2.5 (instantaneous)	\$2500		
Discharging wastewater with a pH of greater than:			
- 10.0 (more than 30 minutes)	\$250	\$1500	\$2500
- 12.5 (instantaneous)	\$2500		
Discharging wastewater containing parameters in excess of established limits ^{2,4}	\$250	\$1500	\$2500
Process			
Failure to obtain, operate, or maintain discharge flow monitoring ⁵	\$250	\$1500	\$2500
Refusal to allow Utility to inspect User's facility/premises	\$2500		
Failure to maintain pretreatment facilities in operating condition including utilizing the services of a properly certified operator ⁵	\$1500	\$2000	\$2500
Failure to report a hazardous materials spill ⁵	\$1500	\$2000	\$2500
Failure to comply with a consent order	As specified in consent order		
Providing false information	\$2500		
Tampering with samples, sampling equipment, or measuring devices	\$2500		
Submitting self-monitoring reports where samples were taken during non-representative flow ⁵	\$1500	\$2000	\$2500
Failure to meet compliance schedule in permit	\$250		
Waste streams are diluted in lieu of treatment ⁵	\$1500	\$2000	\$2500
Administrative			
Failure to appropriately notify of slug, bypass, or accidental discharge ⁵	\$250	\$500	\$1000
Failure to conduct required self-monitoring ⁴	\$100	\$500	\$2500
Failure to properly sign or certify report ⁶	\$50	\$250	\$500
Failure to respond to NOV by the due date ⁷	\$250		
Failure to report anticipated non-compliance or significant changes in operation, pretreatment facilities, wastewater constituents or characteristics ⁵	\$1500	\$2000	\$2500
Failure to submit self-monitoring report by deadline ^{6,8}	\$250		
Failure to obtain an Industrial Wastewater Discharge Permit, when required, before connecting to or discharging into the POTW	\$2500 for the first day and \$100 per subsequent day until application submitted		
Failure to submit renewal application 180 days prior to permit expiration ⁶	\$250		
Failure to maintain monitoring records ⁵	\$1000		
Failure to report additional monitoring ⁵	\$1500	\$2000	\$2500
Failure to submit report not otherwise specified ⁶	\$100	\$500	\$2500
Implementation of a consent order	\$2500		
Failure to provide requested information ⁶	\$250		

1: Immediately dangerous to life health as defined by the Occupational Safety and Health Administration. The recommended fine for hydrogen sulfide will be based on the hydrogen sulfide violation recommendation.

2: Violation more than 20% above established limits shall be assessed an additional \$250 penalty up to a maximum penalty of \$2500 per day per parameter.

3: Including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21 or exhibiting the characteristics of reactivity as described in 40 CFR 261.23.

- 4: Each limit that is violated is a separate violation; however, each limit counts as its own category of violation for the purposes of increasing violation penalties. While a violation occurs for every day that the User is out of compliance, the recommended fine shall be as stated in the table regardless of number of days the User was out of compliance.
- 5: While a violation occurs for every day that the User is out of compliance, the recommended fine shall be as stated in the table regardless of number of days the User was out of compliance. Where a User is unable to immediately return to compliance, additional penalties will be recommended if the User fails to return to compliance within a timeframe specified in the NOV.
- 6: Violations continue per day until received, but recommended fine shall not be per day until notice of violation is given to the User.
- 7: The User is required to respond to the NOV, but another NOV will not be issued for failing to respond.
- 8: This fine shall not be recommended where a self-monitoring report is submitted and it is missing results for self-monitoring where no results exist or was not properly signed or certified. All other instances of missing information from a self-monitoring report may have recommended penalty unless the missing information is supplied by the due date.