



APPENDIX A ENFORCEMENT RESPONSE GUIDE (ERG)

1.0 Purpose

The purpose of this guide is to provide guidance to the administration of the Industrial Pretreatment Program, in accordance with Section 18-407 of the City of Morristown Water Pollution Control Ordinance, and the MUC Industrial Pretreatment Policy.

2.0 Description

The guide consists of a simple point system described in two tables. In Table 1, typical point values have been assigned to a variety of Industrial User (I.U.) problems. Not all possible violations are listed. Prior to use of the guide, the history of the I.U. should be reviewed for evidence that the noted problems have occurred in the past two years (730 days from date of current violation).

On the guide, three columns are associated with each violation, the "Initial Point Value" column, the "Repeat Value", and "Cumulative with Other Violations" column. If no history of the current violation is noted, the Initial Point Value column recommendation may be used to assess a typical response to the problem.

If the I.U. has a history of similar violations, the sum of the initial point value and the product of the repeat value times the number of occurrences within the last two years should be used.

Should more than one violation be noted at a time, the cumulative columns should be consulted for each violation. If violations are cumulative in nature, the sum of the individual point values should be used to judge the response. If not, the greatest individual values should be used to judge response, with the documentation for that response, however, noting all violation.

Once a point value has been determined, Table 2 of the Violation Response Guide should be consulted for recommended responses.

Example Application

Example 1:

Industry 'A' exceeds limits on waste water constituent X. This violation is considered significant. Investigation reveals industry A has been cited twice in the last 16 months for the same problem.

$$\text{Point Value} \quad 3 + (2 \times 1) = 5$$



Where 3 = Isolated, but significant discharge limit violation

2 = Number of previous occurrences

1= Repeat value

Options: Civil Injunction or A.O. with \$500 penalty.

Example 2:

Jan. 1, 2015 – Industry notified of requirement to enter pretreatment system.

Response: (2 points) – Letter written

July 1, 2015 – Industry does not voluntarily enter system.

Response: (4 points) – Notice of Violation (NOV) issued

August 1, 2015 – Industry continues to ignore Order.

Response: (4 + 2 = 6 points) - A. O. with \$750 penalty.

September 15, 2015 – Industry continues to ignore Order.

Response: (4 + 2 + 2 = 8 points) - A.O. with \$3,000 penalty

Situation Resolved.



TABLE 1
 Response Guide for Violation

<u>DESCRIPTION OF VIOLATION</u>	<u>INITIAL POINTS</u>	<u>REPEAT VALUE</u>	<u>CUMULATIVE</u>
A. Unpermitted discharge			
I.U. unaware of requirement; no harm to POTW/environment	2	N/A	NO
I.U. unaware of requirement; harm to POTW	4	N/A	NO
Failure to apply continues after notice by the POTW	4	2	NO
B. Non-permitted discharge (failure to renew)			
I.U. has not submitted application within 10 days of due date	1	2	YES
I.U. has not submitted application within 31 days of due date	2	2	YES
C. Exceeding Local or Federal Standard (permit limit)			
Isolated, not significant (<2x permit limit)	2	1	YES
Isolated, significant (no harm) (>2X permit limit)	3	1	YES
Isolated, harm to POTW or environment	4	2	YES
Multiple-Parameter, no harm to POTW/environment	4	1	YES
Multiple-Parameter, significant (harm)	5	2	YES



<u>DESCRIPTION OF VIOLATION</u>	<u>INITIAL POINTS</u>	<u>REPEAT VALUE</u>	<u>CUMULATIVE</u>
D. Reporting violation			
Report is improperly signed or certified	1	N/A	NO
Report is improperly signed or certified after notice by POTW	2	1	NO
Isolated, not significant	1	1	NO
Significant (e.g., report 45 days or more late	2	1	NO
Reports are always late or no reports at all	3	1	YES
Failure to report spill or changed discharge (no harm)	3	2	YES
Failure to report spill or changed discharge (results in harm)	4	2	YES
Falsification of self-monitoring reports and certification statements	7	2	YES
E. Failure to install monitoring equipment			
Delay of less than 30 days	3	N/A	NO
Delay of 30 days or more	6	N/A	NO
F. Compliance Schedules (in permit)			
Missed milestone by less than 30 days, or will not affect final milestone	2	N/A	NO
Missed milestone by more than 30 days, or will affect final milestone (good cause for delay)	2	N/A	NO



<u>DESCRIPTION OF VIOLATION</u>	<u>INITIAL POINTS</u>	<u>REPEAT VALUE</u>	<u>CUMULATIVE</u>
Missed milestone by more than 30 days, or will affect final milestone (no good cause for delay)	5	2	NO
Recurring violation or violation of schedule in Consent or Compliance Order	5	2	NO
Recurring, violation of Administrative Order	7	2	NO
G. Other Permit Violations			
Waste streams are diluted in lieu of treatment	3	2	YES
Failure to mitigate noncompliance or halt production:			
• Does not result in harm	6	1	NO
• Does result in harm	8	1	NO
Failure to properly operate and maintain pretreatment facility			
• See Failure to mitigate, above			
H. Violations detected during site visits			
Entry denied or consent withdrawn/ copies of records denied	1	3	YES
Illegal Discharge			
• No harm to POTW or environment	3	1	NO
• Discharges cause harm or evidence of intent/negligence	4	2	YES
• Recurring, violation of Consent or Compliance	5	2	YES



<u>DESCRIPTION OF VIOLATION</u>	<u>INITIAL POINTS</u>	<u>REPEAT VALUE</u>	<u>CUMULATIVE</u>
Inadequate recordkeeping			
• Inspector finds files incomplete or missing (no evidence of intent)	2	2	NO
• Recurring	4	2	NO
Failure to report additional monitoring/ inspector finds additional files	2	2	NO

I. Criminal intent

Whenever criminal intent is evident and sufficient evidence exists, such information shall be forwarded to the County District Attorney for his review and possible action. Such shall be in addition to other actions as described in this document.



RESPONSE GUIDELINE FOR VIOLATION Table 2

<u>TOTAL POINTS CHARGED</u>	<u>POTW ACTION</u>	<u>RESPONSIBLE PARTY</u>
1	Documented Phone Call/Meeting	I
2	Informative Letter Explaining Rules	I
3 or 4	Notice of Violation	PC
5	Consent Order	PC
5	Compliance Order with \$500 Penalty	MWO
6	Compliance Order with \$750 Penalty	MWO
7	Compliance Order with \$1,000 Penalty	MWO
8	Compliance Order with \$3,000 Penalty	MWO
9	Compliance Order with \$8,000 Penalty	MWO
>10	Civil Injunction with up to \$10,000 Penalty	GM/UA
>10	Service Termination	GM/UA

- I = Inspector
- PC = Pretreatment Coordinator
- MWO = Manager of Water Operations
- GM = General Manager
- UA = Utility Attorney



3.0 Enforcement Responses

This section is intended to define the various enforcement responses as outlined in this guide.

The order of precedence is generally outlined in this document, however, nothing in this document shall prevent the POTW from moving to more severe actions before following all of the other actions. The remedies provided in this ERG are not exclusive. Morristown Utility Commission may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will be in conformance with the ERG, however, MUC may take other action(s) against any noncompliant user when conditions warrant. MUC may also take more than one simultaneous action against any noncompliant user. MUC may also consider mitigating circumstances and/or immediate action and full cooperation before taking action against a noncompliant user.

Ordinarily, a show cause hearing will be held prior to any enforcement action except a phone call, information letter, or Notice of Violation. The purpose of the show cause hearing is to provide a forum for the I.U. to present a defense to charges as outlined. Show cause hearings are not absolutely required and should not be held when the nature of the violation requires immediate action.

3.1 Documented Phone Call or Meeting

In the case of the most minor violation of an I. U.'s permit or MUC Policy, a phone call or informal meeting may be sufficient to obtain the desired compliance.

Such phone calls are to be documented in writing. A copy of the notes shall be placed in the I.U.'s master file.

Likewise, when an informal meeting is required, written notes shall be kept summarizing the meeting. A formal summary of the notes should be distributed to all major participants of the meeting and both the notes and the summary placed in the I.U.'s master file.

Persons wishing to take exception to the notes should be asked to respond in writing.

The MUC Pretreatment Coordinator will endeavor to complete these steps within one (1) working day of first knowledge of the violation.

3.2 Information Letter

An information letter (IL) is distinguished from a notice of violation (NOV) only in emphasis.



The primary objective of the IL is to communicate requirements or commentary to parties requiring information. The letter may or may not reference violations of IU Permits or MUC Policy, but if said violations are referenced, the purpose is to provide the required information to ensure voluntary future compliance by the I.U.

The MUC Pretreatment Coordinator will endeavor to complete these steps within three (3) working days of first knowledge of the violation.

3.3 Notice of Violation

A notice of violation (NOV) is an official communication from Morristown Utilities Commission (MUC) to a noncompliant industrial user, informing the user that a permit, or MUC Industrial Pretreatment Policy violation has occurred.

An NOV may require the Industrial User to submit a written explanation of the violation or a plan for correction and prevention thereof. The NOV should, however, provide the I.U. with an opportunity to correct noncompliance on its own initiative rather than according to a strict schedule of actions determined by MUC.

An NOV may contain a date by or on which MUC will inspect or sample the industrial user to verify that compliance with the policy and permit has been reestablished.

An NOV will also be used as the transmittal document for orders to meet with MUC representatives to arrange for the development of a Consent Order or further, to appear at a show cause hearing prior to issuance of a Compliance Order.

The MUC Pretreatment Coordinator will endeavor to complete these steps within 14 calendar days of first knowledge of the violation

3.4 Enforcement Remedies

Consent and Compliance Orders are enforcement documents which direct users to undertake or cease specific activities.

- a) Consent Orders are enforcement documents establishing an agreement with the user responsible for the noncompliance, with their consent.

Such orders will include specific actions the user agrees to take to correct the noncompliance with an agreed time frame for completion specified.

No monetary penalties will accompany a Consent Order.

Failure of a user to enter into a Consent Order will result in issuance of a Compliance Order as outlined below.



Consent Orders will typically be executed within 30 days of the first knowledge of the violation.

- b) Compliance Orders are enforcement documents issued to the user without their consent. Such orders shall direct specific corrective measures with specific timeframes for completion and penalties. Failure to comply with the terms and timelines of the compliance order may result in issuance of additional penalties and/or termination of utility service to the user.

Compliance Orders are intended to assure compliance with an agreement and specific action to be taken by the user to correct the noncompliance within a time period specified by the order. Compliance Orders will be issued whenever a noncompliance is severe enough to warrant that action per Table 2 of this Guide or the user has failed to enter into a Consent Order as outlined in 4.4 (a) above.

The order shall require that the user: (a) Comply forthwith; and (b) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.

Monetary penalties will accompany a Compliance Order per Table 2 of this policy

Compliance Orders will generally contain the following components:

- A. Title – The title will specify the type of order being issued (see above), to whom it is being issued, summarize the purpose of the order, contain an identification number and be printed on the MUC letterhead.
- B. Legal Authority – The authority under which the order is issued (the MUC Industrial Pretreatment Policy and the City of Morristown Water Pollution Control Ordinance).
- C. The Finding of Noncompliance – All violations will be described including the dates, the specific permit condition/policy/ordinance provisions violated, and any damages known and attributable to the violation.
- D. Ordered Activity – All orders should be clearly set out including installation of treatment technology, additional monitoring, appearance at show cause hearings, etc. Ordered penalties will generally be identified in this section.
- E. Milestone Dates for Corrective Actions – Where compliance schedules are used, all progress or “milestone” dates must be clearly established, including due dates for any required written reports.



- F. Standard Clauses – The document will contain clauses which provide that:
- (i) Compliance with the terms and conditions of the AO will not be construed to relieve the user of its obligation to comply with applicable state, federal, or local law;
 - (ii) Violation of the Compliance Order itself may subject the user to all penalties available under the MUC Policy and City Water Pollution Control Ordinance;
 - (iii) No provision of the order will be construed to limit MUC's authority to issue supplementary or additional orders or to take action deemed necessary to implement its pretreatment program or ordinance;
 - (iv) Provision of the order shall be binding upon the user, its offices, directors, agents, employees, successors, assigned, and all persons, firms incorporations acting under, through, or on behalf of the user.

Compliance Orders will typically be executed within 30 days of the first knowledge of the violation.

3.5 Judicial Remedies

As outlined in Section 18-407(9) of the ordinance, MUC may petition the appropriate court(s) for the issuance of preliminary or permanent injunctions or both (as may be appropriate) to restrain or compel the activities on the part of a user.

Such action shall be taken through the MUC General Manager and the Utility Attorney.

Due to the gravity of this situation, the Utility Attorney will typically be notified within 10 calendar days of the violation and the need for action.

3.6 Penalties, Administrative or Civil

The City Water Pollution Control Ordinance grants authority to the Morristown Utilities Commission to assess penalties not to exceed \$10,000 per violation. Each day on which the noncompliance occurs can be deemed a separate and distinct violation. Additionally, Section 6(b)(ii) of the Policy authorizes MUC to seek a civil penalty for actual damages incurred by the POTW.

Before assessment of an administrative penalty, a show cause hearing should be held with the noncompliant industry.

The mechanism for leveling an administrative penalty shall be the Compliance Order. Upon receipt of a Compliance Order instructing it do so, the industrial user will submit payment to Morristown Utility Commission in the amount



specified. Likewise, civil penalties will be made payable to Morristown Utility Commission in the amount specified.

In the event that the violation has resulted in conditions requiring the expenditure of utility funds for mitigation of damages, the actual cost of the mitigation shall be paid separately from any penalty. This is intended in no way to reduce or offset the liability of the user with respect to damages incurred.

Penalties will generally be identified in the issued Compliance Orders.

3.7 Service Termination

Service termination, whether water or sewer, should always be considered the last step with a recalcitrant user.

Service termination should never be initiated without a show cause hearing unless it can be clearly demonstrated that the continued action or inaction of the user is endangering the POTW or the environment.

Service termination should be attempted by requiring the user to disconnect from the POTW. Where noncompliance with a disconnect order is evident, MUC shall physically disconnect and/or block all connections between the user and the POTW. Alternately, MUC may, at its discretion, discontinue water service, which shall be considered equivalent to service discontinuation.

This action will be taken within 45 calendar days of MUC's first knowledge of the violation, except in emergencies.

3.8 Criminal Action

In cases where criminal action is thought appropriate by MUC, information is to be gathered and turned over to the District Attorney for the appropriate county for this action. Criminal prosecution, if pursued, shall be in addition to other actions as defined in this document.