

CITY OF PHOENIX

INDUSTRIAL

PRETREATMENT PROGRAM

ENFORCEMENT RESPONSE PLAN

DECEMBER 5, 1991

In accordance with 40 CFR 403.8(f) (5) the City has developed an Enforcement Response Plan (ERP). The ERP contains detailed procedures identifying how the City of Phoenix Water Quality Division will investigate and respond to instances of industrial user noncompliance. The ERP is intended for the use of City personnel to address enforcement actions for pretreatment violations and does not create any rights or obligations nor should it be used or relied upon by non-city personnel for any purpose. The City of Phoenix Water Quality Division reserves the right to act at variance with the ERP and to change it at any time without public notice. The ERP was taken from Chapter 10, COMPLIANCE EVALUATION AND ENFORCEMENT PROCEDURES, Industrial Waste Control Policies and Procedures Manual. Page sequence follows the format established in Chapter 10. This ERP was approved by the Environmental Protection Agency on December 5, 1991.

10.3 ENFORCEMENT RESPONSE PLAN

10.3.1 Informal and Formal Enforcement Actions

In order to achieve a maximum degree of compliance by industrial users, the City needs to use a wide range of enforcement actions. The enforcement actions available to the City range from a simple reminder telephone call to termination of service and assessment of penalties. It should be recognized that some intentional violations may constitute criminal violations of Federal, State and City law, and that under such circumstances, the supervisor may seek the assistance of EP A, the State or the City prosecutor. The purpose of this section is to describe the range of available enforcement actions. The enforcement philosophy is progressive; that is, problems are addressed at the lowest level and with the least formality possible, consistent with the specific problem. **However, it should be remembered that the enforcement action is not contingent upon the completion of any less formal procedure and depending upon the factual scenario presented, a formal procedure may be needed for the initial action. Listed below are available enforcement actions.**

Informal Actions

- (1) Informal notice to industrial user' (e.g., telephone call, site visit, etc. followed up in writing).
- (2) Notice of violation (NOV).
- (3) Automatic increase in industrial user self-monitoring for effluent violations.
- (4) Unannounced inspection and/or City sampling for effluent violations.
- (5) Review meeting.

Formal Actions

- (1) Administrative Order.
- (2) Notice to Show Cause
- (3) Civil action.
- (4) Criminal action.
- (5) Termination or restriction of service.
- (6) Suspension or revocation of permit.

Each of these types of enforcement activity are discussed in the following sections.

Except as provided below, all written notices of enforcement actions should be sent by certified mail with return receipt requested. Copies should be maintained in the industrial user file. Certified mail will more likely bring the notice to the serious attention of appropriate officials. Moreover, the return receipt will serve as proof that the industrial user did in fact receive the notice.

At the direction of the chief inspector or supervisor, however, the enforcement action notices may be hand delivered. In such cases, the notice should contain the following information at the top of the notice:

Received by User Representative

Signature: _____ Date:

Name: _____ Title:

A copy of the notice should be brought with the original when delivering the notice and the representative's signature, date, name and title should be obtained on the copy and taken back to the office and placed in the user's file.

If the user representative fails or refuses to sign, the person hand-delivering the notice shall indicate on the top page of the copy of the notice the name of the user representative receiving the notice, the date and time of delivery .

10.3.2 Response Times For Enforcement Actions

To be truly effective, an enforcement action must be taken in a timely fashion once a violation has been identified. Therefore, an initial enforcement action must be taken within thirty (30) days from the date a violation is first identified. In order to accomplish this, certain deadlines should be followed. These deadlines are set forth below. These deadlines are goals and every effort should be made to achieve them. **In no event shall an initial enforcement response exceed the thirty day time period stated above.**

All compliance reports should be reviewed and an evaluation of compliance status made promptly upon receipt by the Enforcement and Monitoring Section. If, after the evaluation, one or more enforcement actions are deemed necessary, the following time frames for initial enforcement should apply. If the violation is derived from an industrial user report, the thirty day time period begins from the date the report is received. If a report is not received, the thirty day time period begins on the sixth (6th) day after the report due date. If the violation is found through an inspection or some other means, the thirty day time period begins with the date of actual knowledge of the violation.

Initial actions include:

- (1) NOV sent certified mail or hand-delivered within 30 calendar days.
- (2) Requirement for automatic increase in industrial user self-monitoring sent certified mail or hand delivered within 30 calendar days.
- (3) Unannounced inspection and/or City sampling for parameter violated.
- (4) Administrative Order sent certified mail or hand-delivered within 30 calendar days.
- (5) Notices of Review Meeting sent certified mail or hand-delivered within 30 calendar days.
- (6) Notice of Show Cause Hearing sent certified mail or hand-delivered within 30 calendar days.

After the initial enforcement action has been taken, it is essential that follow-up action is taken to determine the effectiveness of the initial enforcement action. If, the initial enforcement brought about the desired result, then the follow-up action could be nothing more than a confirmation letter to this effect. If, however, additional enforcement is necessary, then certain deadlines should be met in issuing the follow-up action. The response time begins from the compliance date specified in the initial action. By way of an example, if an NOV required a written response by the 10th day of the month, a follow-up action would be required within 30 calendar days following that date. **Please keep in mind that these deadlines are the outer limit of enforcement response times, and depending on the facts, a quicker response may be necessary.**

Follow-up actions include:

- (1) Confirmation letter sent certified mail or hand-delivered within 30 calendar days.
- (2) Administrative Order sent certified mail or hand-delivered within 30 calendar days.
- (3) Notice of Review Meeting sent certified mail or hand-delivered within 30 calendar days.
- (4) Notice to Show Cause sent certified mail or hand-delivered within 30 calendar days.
- (5) Seek civil penalties (criminal fines) within 30 calendar days.
- (6) Contact City Attorney for possible civil lawsuit within 30 calendar days.
- (7) Contact City Prosecutor for possible criminal lawsuit within 30 days.
- (8) Initiate termination of service within 30 calendar days.
- (9) Initiate revocation of permit with 30 calendar days.

10.3.3 Enforcement Responsibilities

Effective enforcement relies on the performance of a variety of individuals, from field personnel to the City's top management. The nature of the responsibilities range from preventative to determining the need for aggressive enforcement. The following list identifies the staff positions and their areas of responsibility .

Inspectors/Field Personnel:

- (1) Determine compliance status.
- (2) Inform Chief Inspector of violations.
- (3) Recommend and develop enforcement response.
- (4) Develop and supervise compliance monitoring schedules.

Chief Inspectors:

- (1) Review enforcement response.
- (2) Approve informal enforcement actions, as appropriate.
- (3) Inform Enforcement and Monitoring Supervisor of violations and recommended enforcement response.
- (4) Supervise compliance monitoring schedules.
- (5) Conduct Review Meetings.
- (6) Supervise monitoring activities of inspectors.
- (7) Track enforcement response times.
- (8) Conduct Show Cause Hearings.
- (9) Issue Administrative Orders and Compliance Schedules.

Enforcement and Monitoring Supervisor:

- (1) Approve formal enforcement actions, as appropriate.
- (2) Develop compliance sampling schedule, as appropriate.
- (3) Provide consistency of program application.
- (4) Conduct Show Cause Hearings.
- (5) Issue Administrative Orders and Compliance Schedules.
- (6) Initiate termination of service.
- (7) Recommend that legal action be taken.
- (8) Seek monetary penalties for non-compliance.

City Attorney:

- (1) Provide assistance and counsel on program developments and changes.
- (2) Advise both technical and management staff on enforcement matters.
- (3) Manage civil litigation on behalf of the City.
- (4) Manage criminal trials on behalf of the City.
- (5) Attend Show Cause Hearings.

10.3.4 Factors in Selecting the Appropriate Response

Industrial user violations of monitoring, reporting, and treatment requirements may range from "relatively" minor violations (reports submitted a week late but having no effluent violations) to major violations described in Section 10.3.14.2. Each instance of noncompliance is a violation and as such should be reviewed and appropriately addressed. However, selection of the appropriate enforcement response will relate to whether the violation is major or minor and such other factors as duration of the violation, compliance history, good faith of the violator, and the harm caused by the violation. For each type of violation in the Response Guide, a range of responses is shown. The inspector should select the appropriate response after considering various factors discussed below.

(1) Duration of the Violation and Compliance History of the Industrial User

The inspector should review the Industrial User Compliance Log and the Violation Tracking *Form* to evaluate the duration of the violation and the compliance history of the industrial user. A violation occurs whenever an industrial user exceeds an applicable effluent limit; fails to meet the deadlines and conditions for reporting, monitoring, or treatment; or does not comply with any other Federal or City requirement. The enforcement inspector should also consider the effectiveness of the enforcement response that was used for the previous violation.

More aggressive enforcement actions should normally be taken against facilities that frequently exceed numerical pretreatment standards than those that report isolated violations (unless the isolated violations are large and troublesome). Informal review meetings or a written notice of violation should seek specific explanations of the causes of frequent exceedances. If inadequate operating practices are found to be the cause, the enforcement inspector should seek specific commitments and deadlines to improve operating practices. If additional treatment is required, an enforceable compliance schedule should be issued to the industrial facility.

(2) Apparent Good Faith of Responsible Industrial User Personnel

If industrial user personnel appear to be attempting in good faith to comply with pretreatment requirements, enforcement actions should be on a more cooperative level than if industrial user personnel do not appear to be attempting to comply in good faith.

Enforcement and Monitoring staff should be aware, however, that the Clean Water Act requires extraordinary efforts to comply with its requirements in a timely way. Good faith must be measured against this standard. Congress clearly expresses the efforts that are expected:

"The Act requires industry to take extraordinary efforts if the vital and ambitious goals of the Congress are to be met. This means that business-as-usual is not enough. Prompt, vigorous, and in many cases, expensive pollution control measures must be initiated and completed as promptly as possible. In assessing the good faith of a discharger, the discharger is to be judged against these criteria. Moreover, it is an established principle, which applies to this act, that administrative and judicial review are sought on the discharger's own time."

Legislative History of the Clean Water Act No. 95-14, Vol. 3, p. 463

Thus, if a facility challenges a permit, contract, or applicable pretreatment standard and delays progress toward compliance, the facility assumes the risk that the permit, contract, or standard will be upheld on judicial review. If the facility begins aggressively to come into compliance only after a decision is made adverse to its interests, it cannot be considered to have acted in good faith. Likewise, if a facility follows business-as-usual procedures, it cannot be considered to have acted in good faith.

If, however, measured against the high standards cited above, a facility appears to be acting in good faith to comply, the City may choose an enforcement response that is not as coercive as one it would choose against a facility not acting in good faith.

(3) Noncompliance That Causes Interference or Pass-Through

Industrial user noncompliance might cause interference with treatment plant performance or pass-through of pollutants. Such violations should be addressed through formal enforcement action and penalties to ensure that adequate treatment and compliance is achieved promptly. In some cases, injunctive measures will also be appropriate.

10.3.5 Informal Notice

Informal notice is the least aggressive of the enforcement actions. Informal notice may consist of a telephone call, a "reminder" letter to an appropriate official (e.g., plant manager, environmental coordinator) of an industrial user or a site visit. Such a call or letter may be used to notify officials of a less significant violation (e.g., a report not having any effluent violations submitted a few days late) and to seek an explanation, suggest the exercise of more due care, and/or notify the "violator" that subsequent violations of the same type will be dealt with more severely. Such informal notice may be used to correct insignificant, inconsistent compliance and to demonstrate to the user that the City will take action on all instances of noncompliance. Irrespective of the type of informal notice used, all of them will be documented by written notices of violations, and the documentation placed in the user's file.

10.3.6 Notice of Violation (NOV)

The Notice of Violation (NOV) is a written notice to the industrial user that the Enforcement and Monitoring Section has recognized a violation of pretreatment standards or requirements and expects the noncompliance to be corrected and explained. The NOV also can require specific corrective actions and schedules to which the City expects the industrial user to adhere and a statement that additional enforcement action may be pursued if corrective actions are not accomplished as scheduled. The NOV should also make it clear that compliance with the requirements of the letter does not excuse prior violations nor prevent collection of penalties or damages at a later time.

A multi-copy NOV form is provided in Exhibit 10-9. This form is only used during an inspection of a commercial user to immediately advise the user of violations.

For industrial user violations, a notice of violation should be prepared. Such a letter should generally follow the format of the sample letters given in Exhibit 10-10. Sample letters are provided for the following situations:

- (A) Violation of effluent limits in City Monitoring.
- (B) Violation of effluent limits in User Monitoring.
- (C) Violation of Reporting Requirements.

10.3.6.1 Response to Notification of Violation

The industrial user shall respond in writing to the NOV within the specified time frame. In no instance shall an initial response be due any later than 10 days from the receipt of the notice by the user. The response shall be complete, containing all information and data required by the Notification of Violation.

10.3.6.2 Resolution of Notification of Violation

Upon review of a response to an NOV, the inspector may accept the response as complete and satisfactory. If this is the case, the inspector shall consider the issue regarding the NOV closed. The inspector will notify the user in writing regarding the closure of the NOV. The closure of the NOV does not preclude further action.

10.3.6.3 Unsatisfactory or Incomplete Response to Notification of Violation

Upon review of a response to an NOV, the inspector may determine the response to be unsatisfactory or incomplete. In that event, the inspector may recommend further action such as: require any incomplete information, suspend or revoke the industrial user's permit, order the industrial user to cease discharge, and/or seek penalties and fines as they apply to the violations.

10.3.7 Automatic Increase In Industrial User Self-Monitoring For Effluent Violations

If an industrial user has one or more violations of any effluent limit that have not been included in a previous formal enforcement action, then the industrial user shall be notified that it is required to sample for all parameters that were violated once a week for four consecutive weeks to commence within 7 days of receipt of the notice. Four consecutive weeks refers to a week in which a discharge occurs. All samples shall be 24 hour composites except for cyanide, pH, oil and grease, which should be grab samples. This sampling must be separate from any sampling required under a permit and is in addition to any 30 day resampling required under a permit. The results of each sample must be received by the City within five days from when the industrial user has knowledge of the results, but in no event longer than thirty days from the date the sample was taken. Notice of the automatic increase in sampling shall be in letter form that generally follows the format in Exhibit 10-10(D), and is to be sent Certified Mail.

In the event that it is not possible for an industrial user to increase the frequency of self-monitoring, then the inspector will perform an unannounced inspection at the industrial user's site, and if possible, sample for the parameter violated, within thirty (30) days of becoming aware of the violation. The cost of this enforcement activity will then be billed to the industrial user. This would apply to those industrial users who are currently sampling every day or every batch.

10.3.8 Compliance Status Review Meeting

If Informal Notice or Notice of Violation does not produce compliance or an adequate explanation of the reason for the noncompliance, a compliance status review meeting between Enforcement and Monitoring staff and the industrial user may produce the desired results. The purpose of this meeting is to stress the importance of correcting situations that may lead to SNC, or to other elevated enforcement actions. Review meetings are appropriate for the following situations:

- (1) Waste streams are diluted in lieu of treatment, initial violation.
- (2) Failure to report additional monitoring, initial violation.
- (3) Inadequate record keeping, initial violation.
- (4) Improper sampling, initial violation.
- (5) Missed milestone in an enforceable compliance schedule, initial violation.
- (6) If any required report is late twenty-nine days or less.

At such a meeting, the industrial user should be required to respond to and provide an explanation of the violations and describe the means to prevent future violations. In addition, the Enforcement and Monitoring staff should emphasize the importance of maintaining compliance.

Review meetings are generally conducted by the chief inspector and the inspector responsible for the user. The supervisor and a representative from the City Attorney's Office may also be present at the meeting. During the review meeting, the following events occur:

- (1) Complete introductions of all persons present and obtain names, titles and telephone numbers.
- (2) Discuss the background and history of the City's Pretreatment Program and the applicable Federal requirements.
- (3) Review the City's enforcement policies and practices.
- {4) Explain the City's authority for seeking penalties.
- (5) Review the user's violations.
- (6) Establish a compliance schedule for the user, as appropriate.

Follow-up to the review meeting includes the following:

- (1) Inspector prepares a letter describing the discussion and results of the review meeting. The letter should be reviewed by the chief inspector before forwarding to the user. A copy of the letter should be put in the user's file.
- (2) Follow-up inspections and review meetings may be scheduled after compliance was supposed to have been achieved to verify compliance.

- (3) If no progress is made within 30 days of the compliance dates specified during the meeting or if compliance is not achieved when required, then stronger enforcement actions (such as a show cause hearing or civil action) will be needed.
- (4) **The Enforcement and Monitoring staff will record all informal contacts, notices, and meetings with representatives of industrial users.**

10.3.9 Notice to Show Cause

As a result of noncompliance it may be necessary to consider issuing a Notice to Show Cause to the industrial user prior to taking other formal enforcement action and/ or discontinuing service. The form to be used to issue notices to show cause is contained in Exhibit 10-11 and should be served upon the user specifying the time and place of the show cause meeting and brief explanations of the violations and enforcement actions intended to be taken by the City. A Show Cause Meeting is generally held when more aggressive enforcement action is appropriate.

A Show Cause Meeting shall be held if any of the following circumstances apply:

- (1) two or more effluent violations have occurred within a ninety (90) day period, or
- (2) Discharge not covered under permit:
 - Failure to comply; continues after notice by the POTW
 - Discharge continues after expiration, termination or revocation of permit.
- (3) Reporting violation
 - Two or more reports are late within a 180 day period.
 - Any single report thirty days or more late.
 - Failure to correct report with missing or incomplete information.
 - Failure to report spill or changed discharge.
- (4) Failure to monitor correctly, recurring.
- (5) Improper sampling, recurring.
- (6) Missed milestone in an enforceable compliance schedule, recurring.
- (7) Failure to start construction, complete construction, or achieve compliance within 90 days of the date specified in an enforceable order .
- (8) Waste streams diluted in lieu of treatment, recurring.
- (9) Failure to mitigate noncompliance or halt production, aware of noncompliance in progress.
- (10) Failure to comply with a requirement to cease discharge.
- (11) Failure to properly operate and maintain pretreatment facility, recurring.
- (12) Failure to provide free access, recurring.
- (13) Inadequate record keeping, recurring.
- (14) Failure to report additional monitoring, recurring.

- (15) Any situation in which civil penalties are necessary or legal action is contemplated, or
- (16) Any instance of SNC.

During the show cause meeting the industrial user should be presented with the facts that the Enforcement and Monitoring staff believes demonstrate noncompliance and asked to "show cause" as to why the City should not seek monetary penalties or initiate additional enforcement actions which may include additional formal actions and or discontinuation of sewer service.

During the show cause meeting, the following events occur:

- (1) Complete introductions of all persons present and obtain names, titles and telephone numbers. Copies of attendance sheet shall be provided to all attendees.
- (2) Discuss the background and history of the City's Pretreatment Program and the Federal requirements.
- (3) Review the City's enforcement policies and practices and inform the user of why they are at the meeting.
- (4) Explain the City's authority for seeking penalties.
- (5) Review the user's violations and the potential penalties associated with them.
- (6) Attempt to reach an agreement with the user on the penalty amount and the written vehicle (Consent Decree or Pretreatment Settlement Agreement) to be pursued that finalizes the matter.
- (7) Establish a compliance schedule for the user, if necessary.

The following activities may occur after the show cause meeting:

- (1) The supervisor will work with the City Attorney's office as appropriate.
- (2) The inspector will follow up at prescribed intervals of compliance milestones as specified in the compliance schedule to verify conformance, and must document this activity. The inspector keeps the chief inspector and, if appropriate, the Assistant City Attorney apprised of the user's status.
- (3) If the industrial user fails to comply with the terms of the settlement documents, then additional enforcement remedies available to the City may become necessary.
- (4) **The Enforcement and Monitoring staff will record all informal contacts, notices, and meetings with representatives of industrial users. Letters to Industrial Users are the best means to do this. A simple follow-up letter could avoid future misunderstandings.**

IT MUST BE REMEMBERED THAT A SHOW CAUSE HEARING IS NOT A PREREQUISITE TO TAKING OTHER FORMAL ENFORCEMENT ACTIONS OR TO DISCONTINUE SEWER SERVICE.

10.3.10 Administrative Orders (AO)

The City may issue administrative orders (which may contain compliance schedules) that require compliance with pretreatment standards and requirements under the Phoenix City Code. Administrative orders will generally be used to place an industrial user on an enforceable compliance schedule so that the user will comply with pretreatment standards (e.g., install treatment, operate and maintain facilities, etc.). AOs are generally prepared by the City Attorney's Office.

10.3.11 Termination or Restriction of Water and or Sewer Service

The City has the authority to immediately halt any actual or threatened discharge to the sewerage works that may represent an endangerment to the public health, the environment, or the sewerage works, upon informal notification to the industrial user. Additionally, the City can deny or condition new or increased discharges by an industrial user or changes in the nature of pollutants discharged by the industrial user if the discharge does not meet applicable pretreatment standards or will cause the City to violate its NPDES permit.

Termination or restriction of water and or sewer service is an appropriate response to industries which have not responded adequately to previous enforcement actions. Unlike civil and criminal proceedings, termination of water and or sewer service is an administrative response which can be implemented directly by the Enforcement and Monitoring Section.

For example, use of these remedies can be effective in bringing recalcitrant users into compliance. Without sewer service, a firm may have to obtain an NPDES permit to discharge wastes directly to the waters of the United States, and thus be required to install even more treatment facilities to achieve direct discharge limitations.

Assuming that the other enforcement responses prove unsuccessful, the types of violations warranting termination of water and or service include but are not limited to the following:

- (1) Discharge(s) not covered under permit which result in a violation of the City's NPDES permit or a dangerous situation threatening human health, the environment, or the treatment plant.
- (2) Discharge(s) that exceed City or categorical discharge limits or result in damage to the environment.
- (3) Slug loads resulting in interference, pass through or damage to human health, the environment, or the treatment plant.

- (4) Recurring slug load discharges.
- (5) Failure of the industrial user to notify the City of effluent limit violations or slug discharges which resulted in environmental or POTW damage.
- (6) Failure of the industrial user to sample, monitor, or report as required by an administrative action.
- (7) Failure of the industrial user to install required monitoring equipment per the condition of an administrative action.
- (8) Major violation of a permit condition or administrative action accompanied by evidence of negligence or intent.

The termination or restriction of a user's water and or sewer service is initiated and carried out as follows:

- (1) The inspector prepares the necessary documentation to support the need for termination.
- (2) The inspector advises the chief inspector who in turn advises the supervisor that termination of the user's sewer service is needed.
- (3) Once the supervisor approves termination of service, the user should be given written notice of termination and an opportunity to appear before the supervisor to discuss the matter. The user is allowed TEN (10) days from receipt of the written notice to comply before termination is effected. The above elements of termination of service are specified in the Phoenix City Code, Section 28-20 (b) - (d).
- (4) If the user is determined to have an actual or threatened discharge which will cause interference with the POTW or will present an imminent endangerment to the health or welfare of any person and/or the environment, the supervisor may promptly plug or disconnect any sewer service connection to the POTW. This provision for termination of service is contained in the Phoenix City Code, Section 28-46 (i).
- (5) When termination of service is to be effected, the chief inspector contacts the Customer Services Utilities Services Supervisor I to terminate service.
- (6) Service will be restored only after compliance has been shown to the satisfaction of the Enforcement and Monitoring Supervisor and the threatened discharges are removed. The amounts imposed by Section 28-20 and Chapter 37 of the Phoenix City Code in addition to any damages that may have been incurred must be paid prior to re- connection.

10.3.12 Civil Actions

The City has the authority to file a civil suit against alleged violators of applicable pretreatment standards seeking injunctive relief, compliance, civil penalties and/ or damages.

Civil litigation is an appropriate enforcement response in three general situations:

- (1) Emergency situations where injunctive relief is necessary to halt or prevent discharges which threaten human health, the environment or interference with the POTW .
- (2) When efforts to restore compliance through cooperation with the industrial user have failed and action is necessary to enforce program requirements.
- (3) To seek monetary penalties for violations.

In a civil suit for injunctive relief, the Enforcement and Monitoring staff collects pertinent information sufficient to support the violations at issue and turns the information over to the Assistant City Attorney.

The City may also bring civil suit to obtain compliance, civil penalties and to recover damages. The inspector and other Enforcement and Monitoring staff involved in an enforcement case requiring filing such a suit should prepare the information specified in Table 10-1. The Assistant City Attorney should be consulted before, during and after completion of the information.

10.3.13 Criminal Actions

The City Prosecutor is authorized to seek criminal punishment for any person who violates pretreatment standards or any person who knowingly makes a false statement regarding any report, application, record, or other document required by the General Pretreatment Regulations and City Code.

Several factors should be considered by the supervisor when determining which violations should be referred to the City Prosecutor for possible criminal actions. These factors include:

- (1) The willfulness of the violation.
- (2) Knowledge of the violation.
- (3) Nature and seriousness of the offense.
- (4) Need for deterrence.
- (5) Compliance history of the violator.
- (6) Adequacy of the facts.
- (7) Other remedies available through civil or administrative enforcement actions.

A sentence containing fines and/or imprisonment would be assessed by the court based on many considerations, which includes its perception of the harm, damage, or potential threat attributable to the violation.

TABLE 10-1

**INFORMATION
TO BE PREPARED BY
ENFORCEMENT AND MONITORING STAFF
FOR CIVIL LAWSUITS**

TABLE 10-1

**INFORMATION TO BE PREPARED BY ENFORCEMENT AND MONITORING
STAFF FOR CIVIL LAWSUITS**

1. User name (including corporate name and any other names used by the user).
2. User Address.
3. Permit Issuance Date and Number.
4. Copy of the User Permit.
5. Period of Sampling and Location Where Samples Were Taken.
6. Dates of Sampling Which Showed Violations.
7. Attachment of All Parameters Violated, Applicable Limits and Notations of Violations.
8. A list of all reporting violations.
9. Copies of all documentation (NOV, letters, etc.) pertaining to the violations.

NOTE: Where the period of violations cover more than one permit, include the needed information from ALL permits.

Examples of violations for which criminal punishment may be appropriate include the following:

- (1) Continuing history of noncompliance.
- (2) Falsification of data.
- (3) Tampering with results or equipment.
- (4) Failure to provide notice of slug discharges.
- (5) Willful violation of the discharge agreements.

Many cases of willful noncompliance (e.g., late night dumping of toxic substances into the collection system) could seriously damage the sewerage works and the environment. Such acts should be punished severely when adequate proof exists. In considering the development of certain criminal cases, the Enforcement and Monitoring staff should work closely with the State Attorney General's office or City Prosecutor's office to obtain guidance.

NOTE: The decision to prosecute is solely within the purview of the City Prosecutor or State Attorney General's office.

10.3.14 Procedures for Use of Enforcement Response Guide

10.3.14.1 Overview of Guide

The City of Phoenix has prepared an Enforcement Response Guide using guidance in part from the EPA Pretreatment Compliance Monitoring and Enforcement Guidance (July, 1986); U.S.E.P.A Enforcement Response Plan Workshops, Milpitas, CA (August 10, 1990); Guidance for Developing Control Authority Enforcement Response Plans (September 1989); (see Exhibit 10-12 for a copy of the Guide). The Guide is intended to serve three main purposes:

- (1) To cover enforcement responses that may be appropriate in relation to the nature and severity of the violation and the overall degree of noncompliance; and
- (2) To provide a guide to encourage a uniform application of enforcement responses to comparable levels and types of violations; and
- (3) As a mechanism to review the appropriateness of responses.

The Guide is intended as a quick, ready reference tool to address violations. It should be used in conjunction with the written material contained in Section 10.3 of this chapter as these materials further explain areas that are only highlighted in the Guide. The Enforcement and Monitoring staff should use the Guide to determine what enforcement actions are appropriate given varying situations of noncompliance. The Guide gives differing circumstances of noncompliance and outlines the ranges of enforcement actions which should be used to respond to the noncompliance. Table 10-2 lists the seven basic steps for using the Guide.

When making a determination on the level of the enforcement response, the inspector should consider the degree of variance from the pretreatment standards or legal requirements, the duration of the violation, previous enforcement actions taken against the violator, and the deterrent effect of the response on similar facilities in the regulated community. Equally important are considerations of fairness, equity and consistency of application as well as the integrity of the Pretreatment Program.

A key element in all enforcement responses is the timeliness in which they are initiated. The initial appropriate enforcement response must be determined and any action taken within 30 days of the identification of any violation.

10.3.14.2 Levels of Response

For all violations, the enforcement inspector must examine the violation and determine the appropriate response. All violations should require a written response. The Enforcement Response Guide includes a range of informal and formal responses for violations.

The informal enforcement response can be an inspection, telephone call, informal meeting, automatic resampling by Industrial Users or a notice of violation to the industrial user. The notice of violation can be limited to a notification of the violation or can require the industrial user to take required action within specific time frames. The formal enforcement response may be one of the following:

- (1) Administrative Order
- (2) Notice to Show Cause.
- (3) Civil Actions.
- (4) Criminal Actions.
- (5) Termination or restriction of service.
- (6) Suspension or revocation of permit.

The terms "major" and "minor" that characterize violations are used in the Response Guide to describe violations of effluent limits, sampling, monitoring, and reporting requirements. Major violations are those that exceed the limits frequently and/ or by a large quantity (e.g., exceed the technical review criteria contained within the definition of SNC in Section 10.1.3); impede the determination of compliance status; have the potential to cause or may have actually caused adverse environmental effects, health problems, or interfered with the POTW treatment capability.

TABLE 10-2

**INSTRUCTIONS
FOR USING THE
ENFORCEMENT RESPONSE GUIDE**

TABLE 10-2

INSTRUCTIONS FOR USING THE ENFORCEMENT RESPONSE GUIDE

1. Locate the type of noncompliance in the first column.
2. Using column two, identify the most accurate description of the nature of the violation.
3. Assess the appropriateness of the recommended response(s) in column three. First offenders or those demonstrating good faith may merit a more lenient response. Similarly, repeat offenders or those demonstrating will full conduct may require a more stringent response. The City may want to use what would normally be reserved as a follow-up response against particularly difficult industrial users.
4. Document the rationale for selecting the particular enforcement response.
5. Apply the enforcement response to the industrial user. Specify corrective action or the response required from the industrial user.
6. Document industrial user responses and resolution of noncompliance.
7. Follow-up with escalated enforcement action if the industrial user's response is not received or if violations continue.

SEE SEPARATE ENFORCEMENT RESPONSE GUIDE TABLE
