

## HEART OF THE VALLEY METROPOLITAN SEWERAGE DISTRICT

### ENFORCEMENT RESPONSE PLAN

#### INTRODUCTION:

Heart of the Valley Metropolitan sewerage district in accordance with 40 CFR 403.8 and NR 211.23 (1g) to develop and implement an Enforcement Response Plan (ERP). Through the ERP, Heart of the Valley MSD, as the control Authority, establishes enforcement procedures to assure Industrial User pollution control, monitoring, reporting, and incorporations of appropriate requirements into control mechanisms. Pollution control requirements reflect Federal Categorical Standards, General Pretreatment Standards, and Local Limits. Each control mechanism enables the Control Authority to monitor and control discharges to the sewerage system, implement the Pretreatment Program, and meet the goals of the General Pretreatment Regulations. To meet these goals the WDNR requires the Control Authority to define our compliance monitoring procedures and escalation of various enforcement responses, as well as time frames and responsibilities.

The Control Authority's legal authority to implement and enforce the Industrial Pretreatment Program is detailed in the SUO ( Sewer Use Ordinance). Control Authority enforcement responses are limited to those authorized under state law and Heart of the Valley's SUO.

Enforcement responses must be sufficient to address the degree of violation. For example, while in some instances telephone calls may be appropriate responses for late reports, treatment plant upsets merit more immediate and severe response. In Tailoring the Enforcement Response of the violation, Heart of the Valley MSD will take into consideration the following factors in determining with its discretion how to proceed in the case of a violation:

1. Magnitude of the Violation
2. Duration of the Violation
3. Effect of the Violation on the receiving water
4. Compliance history of the Industrial User
5. Good Faith of the Industrial User
6. Possibility of harm to the public or public facilities

The purpose of this Enforcement Response Plan is to provide guidance to the Industrial User of the Heart of the Valley Metropolitan Sewerage District. Nothing in this document shall in any way inhibit Heart of the Valley MSD discretion to take enforcement actions as it deems appropriate, regardless of whether such enforcement responses are in the conformity with the general outline of this plan.

## MONITORING AND ANALYSIS

Self-Monitoring requirements contained in Heart of the Valley Metropolitan Sewerage District Sewer Use Ordinance, if the industrial Users' sampling indicates a violation, mandates the user to notify the Control Authority within (24) hours of becoming aware of such violation(s). The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within (30 days not longer than 45 days) after becoming aware of the violation(s). If the control authority performs sampling at a frequency of at least once a month, or if the Control Authority performs sampling at the Industrial Users' facility between the time when the Industrial Users initial sampling and the time when the user receives the results of the sampling, the Industrial user is not required to resample.

The frequency of monitoring shall be prescribed in the Industrial Users' Pretreatment Permit and shall not be less frequent unless a new permit is issued and is prescribed therefor. Sampling and analysis shall be performed in accordance with procedures and techniques contained in 40 CFR Part 136 and amendments thereto, or with any other test procedures approved by the WDNR.

The Control Authority shall inspect Industrial Users facilities to determine their compliance with Pretreatment Standards contained in Heart of the Valleys SUO. Persons or occupants of the Industrial Users premises are required to permit Control Authority representatives ready access, at all inspections, sampling, records examination and pretreatment related activity. Control Authority representatives shall have the right to set up on the Industrial Users property such devices as are necessary to conduct sampling, inspection, compliance monitoring, metering operations, and records copying. Control authority representatives shall gather sufficient volume of sample, to test at Heart of the Valleys laboratory and to send out to a commercial laboratory. It is mandatory that in order for the Control Authority to insure that Industrial Users are meeting their compliance responsibilities, inspections are to be done not less than yearly and collections of wastewater samples be collected not less than quarterly as scheduled in their Pretreatment permits.

## COMPLIANCE SCREENING

Compliance screening involves Control Authority review of all available information to ascertain discharger noncompliance in order to develop an appropriate enforcement response. The initial review should assess, as appropriate, compliance with schedules, reporting requirements and applicable Pretreatment Standards.

The screening process shall verify that required reports are submitted of schedule, cover the proper time periods, include all pertinent information, and contain proper signature(s). The person performing the screening process shall review the parameters reported, the sampling procedures, the

discharger concentration (or mass per day), and any other information supplied by the Industrial User, mandated by the SUO. Any discrepancy is a violation that the Industrial User shall be required to correct.

All alleged violation(s) including those arising from inspections and private complaints shall be identified by the Control Authority and recorded in a violation summary specific to each Industrial User. This summary will serve as a log for the compliance history of the Industrial User and the enforcement responses of the Control Authority.

The compliance screening process shall also include notifying an Industrial User when certain types of obvious noncompliance are found. For example, establishment of procedures for routinely notifying the Industrial User when a report is not received. This notification shall include a deadline by which the Industrial User must respond. Although all violations must be identified and responded to, significant noncompliance requires swift and appropriate enforcement action.

#### ENFORCEMENT RESPONSE

Violations and discrepancies identified during compliance screening will be reviewed to evaluate the type of enforcement response required. An Enforcement Response Guide is included to assist in the evaluation and reflects the following basis concepts;

1. All violations of requirements must be reviewed and responded to by the CA.
2. The CA will notify the IU when a violation is found.
3. For most violations, the CA will require an explanation and, as appropriate, a plan from the IU to correct the violation within specified time period.
4. If the violation(s) persist or the explanation and the plan are not adequate, the CA response will become more formal and commitments (or schedules) for compliance will be established in an enforceable document.
5. The enforcement response selected will be related to the seriousness of the violation. Enforcement responses will be escalated if compliance is not achieved after taking initial action. The enforcement responses are divided into informal responses and formal responses.

Informal actions can include:

1. Informal notice to the industrial User ( i.e. Phone call)
2. Informal meeting
3. Notice of Noncompliance Letter (NON)

Formal actions can include:

1. Notice of Violation (NOV)
2. Consent agreement
3. Emergency Situations
4. Administrative Fines
5. Civil Suit for injunctive relief and / or civil penalties and damages
6. Termination of service
7. Publication of Significant Non Compliance ( SNC)

All of these categories of enforcement activity are promulgated in the Heart of the Valley Metropolitan's Sewerage District's Sewer Use ordinance.

## HEART OF THE VALLEY METROPOILTAN SEWERAGE DISTRICT ENFORCMENT RESPONSE GUIDE

### KEY TO ACRONYMS AND ABBREVIATIONS

#### Control Authority (CA)

Heart of the Valley Metropolitan Sewerage District is responsible for and enforcement of the Pretreatment Standards and Requirements against Industrial Users.

#### District Manager (DM)

District manager is responsible for program administration, including operation and maintenance of the POTW, employee safety, protection of the collection system, and treatment facilities.

#### Regulatory Compliance Manager (RCM)

Person authorized by the Control Authority to conduct inspection of a User's Facilities, collect samples, review and copy records, screen compliance monitoring data, including inspection reports, detect noncompliance, and inform the District Manager of violations.

#### Administrative Order (AO)

Fine: Is monetary penalty assessed by the Control Authority. Fines should be assessed by the RCM or the DM.

IU is an Industrial User

NON is notice of noncompliance

NOV is notice of violation

SNC is significant non-compliance

Meeting: Is Informal compliance meeting with the IU to resolve recurring noncompliance.

Civil Action: Civil litigation against the Industrial User seeking equitable Relief, monetary and actual damages.

Criminal Prosecution: Pursuing punitive measures against an individual and /or organization through State or Federal Enforcement Agencies

POTW: Publicly Owned Treatment Works

**MONITORING AND REPORTING VIOLATIONS**

<u>NONCOMPLIANCE</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personal</u>
1. Reporting violation	Report is improperly signed	Phone Call or NON	RCM
	Isolated, not significant ( i.e. , 5 days late)	Phone Call or NON	RCM,DM
	Significant ( i.e ,report 30 days late)	NON,NOV,AO	RCM,DM
	Report always Late or no report	NOV, AO with fine Civil Action	RCM,DM
	Failure to report a spill (no harm)	NOV	RCM
	Failure to report a spill (results in harm)	NOV with Fine Civil Action	RCM,DM
	Falsification	Criminal Investigation Terminate Permit	DM
2. Failure to monitor correctly	Failure to monitor all pollutants as required by permit	NOV or AO	RCM, DM
3. Improper Sampling	Evidence of Intent	Criminal investigation Terminate Permit	DM
4. Failure to install monitoring equipment	Delay less than 30 days Delay more than 30 days	NOV AO with fine for each day	RCM,DM RCM,DM
5. Compliance Schedules	Missed Milestone by less than 30 days Missed Milestone by more than 30 days Recurring violation of schedule	NON,NOV NOV,AO with fines Civil Action, Terminate permit	RCM RCM,DM DM

**UNAUTHORIZED DISCHARGES**

<u>NONCOMPLIANCE</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personal</u>
1. Unpermitted discharge	IU unaware of requirement; no harm to POTW/environment	Phone Call,NON,	RCM
	IU unaware of requirement; harm to POTW	AO with fine Civil action	DM,RCM
	Failure to apply continues after notice by the POTW	Civil Action Terminate Permit	DM

**UNAUTHORIZED DISCHARGES cont.**

<u>NONCOMPLIANCE</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personal</u>
2. Nonpermitted Discharge	IU has not submitted application within 10 days of due date	Phone Call, NON, NOV	RCM

**DISCHARGE LIMIT VIOLATION**

<u>NONCOMPLIANCE</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personal</u>
1. Exceedance of Local or Federal Standard (permit limit)	Isolated, not significant Isolated, significant ( no harm) Isolated, harm to POTW or environment Recurring, no harm to POTW Recurring, significant (harm)	Phone Call, NON NOV ,AO with fine Show cause order, Civil Action AO with fine AO with fine Show Cause Order Civil Action Terminate Permit	RCM RCM,DM DM DM

**OTHER PERMIT VIOLATIONS**

<u>NONCOMPLIANCE</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personal</u>
1. Waste streams are diluted in lieu of treatment	Initial violation recurring	AO with fine, Terminate permit	DM
2. Failure to mitigate noncompliance or halt production.	Does not result in harm Does result in harm	NOV AO with fine Civil action	DM DM
3. Failure to properly operate and maintain pretreatment facility	See No. 2 above		DM

**VIOLATIONS DETECTED DURING SITE VISITS**

<u>NONCOMPLIANCE</u>	<u>Nature of the Violation</u>	<u>Enforcement Response</u>	<u>Personal</u>
1. Entry Denial	Entry Denied or consent withdrawn Copies of Records denied	Obtain warrant and return IU	RCM, DM
2. Illegal Discharge	No harm to POTW	NOV ,AO with fine	RCM
	Discharge causes harm to POTW	Civil Action Criminal Investigation	RCM, DM
	Recurring Violation of AO	Terminate Permit	RCM, DM
3. Improper Sampling	Unintentional sampling at incorrect location	NOV	RCM
	Unintentionally using incorrect sampling type	NOV	RCM
	Unintentionally using incorrect collection technique	NOV	RCM
4. Inadequate record keeping	Inspection finds files incomplete to missing.	NOV	RCM

**TIME FRAMES FOR RESPONSES**

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

B. Initial enforcement responses (involving contact with the Industrial User and requesting information on corrective action will occur with 15 days of violation detected.

C. Follow up actions for continuing or recurring violations will be taken within 60 days of the initial enforcement response.

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.



HEART OF THE VALLEY METROPOLITAN SEWERAGE  
DISTRICT

ENFORCEMENT RESPONSE PLAN

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(1) Administrative Fines. Notwithstanding any other section of this Ordinance, any User who is found to have violated any provision of this Ordinance, or its Wastewater Discharge Permit or administrative action taken or issued hereunder, may be fined by the Director in the exercise of his reasonable discretion, in the following amounts, but not to exceed a maximum of \$1,000 per day for all violations, in the aggregate. Each day on which a violation occurs or continues to occur, shall be deemed a separate and distinct violation. Unpaid charges, fines and penalties shall constitute a lien against the User's property. Such fines are in addition to all other fines or forfeitures that may be imposed pursuant to other Sections of this Ordinance. The Director may impose the following administrative fines not to exceed the amounts indicated:

- (a) Failure to give notification to the District as required by a Wastewater Discharge Permit or this Ordinance - \$100/day
- (b) Lack of necessary details on plans and specifications for new discharges - \$100/day
- (c) Accidental discharges, or slug discharges, if reported within 2 hours - \$500/dischARGE
- (d) Accidental discharges, or slug discharges, if not reported within 2 hours - \$1000/dischARGE
- (e) Reporting violations, failure to respond to a Notice of Violation, and failure to file a report or response required by the District, including incomplete or unsigned reports:

Report or Response received after Due Date \_\_\_\_\_ FINE

1 – 14 DAYS LATE	\$100.00
15 - 30 DAYS LATE	\$300.00
31 – 60 DAYS LATE	\$500.00
More than 60 days LATE	\$500.00 + \$100/day
(f) Failure to report batch discharges - \$100/day	
(g) Any prohibitive discharge	
✖ 1. That does not cause violation of the District's WPDES Permit - \$500/dischARGE/day	
2. That causes a violation of the District's WPDES Permit - \$1000/dischARGE/day.	
(h) ✖ Discharge limit violations of nonconventional pollutants in Article IV - \$100/pollutant/day. In addition, permittees with average daily mass limits will be assessed a surcharge on the pounds of individual pollutants over and above the average daily mass limits/day.	
1/Conc. Limit x \$500 per pound per day	
(i) pH violations – '\$500 x pH s.u. above/below limit x duration in hundredths of an hour. For example, a discharge of pH 3.5 pH wastewater for 30 minutes would result in the following fine:	
\$500 x 1.5 x .50 = \$375	
✖ For pH spikes as defined in Article IV the max/minimum pH will be used plus the total time of all exceedences.	
(j) Denial of access or interference with pretreatment inspector in the performance of his duties - \$500. If a search warrant is required - \$500 plus costs.	
(k) Failure to install, maintain, or adequately service a Grease Trap/or Sand Trap - \$50/day.	

The above administrative fines may be adjusted annually by resolution duly adopted by the Commission, but shall never be less than the dollar amounts set forth above.

(2) Nature of Actions. Nothing contained in subsections (a) through (d) hereof, or elsewhere in this Section, shall be deemed to provide exclusive remedies for violations of this Ordinance or any Wastewater Discharge Permit issued hereunder, and all remedies contained in this Ordinance or as provided for by law are distinct, separate and cumulative. Further, all such remedies may be pursued individually, collectively or concurrently.

**SEC. 15.05 [INTENTIONALLY LEFT BLANK]**

**SEC. 15.06 REVOCATION OF PERMIT.** In lieu of any administrative enforcement under Section 15.04 hereof or in addition thereto, any User who violates the conditions of its Wastewater Discharge Permit issued hereunder, may have its Permit summarily revoked by the Commission of the District as provided for in Section 200.45(3), Wisconsin Statutes. A holder of any such Permit does not acquire any vested right or privilege by being issued such a Permit. Industrial Users shall be notified of the termination of their Wastewater Discharge Permit.

**SEC. 15.07 SPECIAL ORDERS BY THE DIRECTOR AND OTHER AUTHORITIES.** As an alternative to or in addition to any enforcement provisions contained in this Ordinance, the Commission of the District may issue Special Orders in the name of the District, directing compliance with this Ordinance and/or any Wastewater Discharge Permit or Wastewater Hauler Discharge Permit issued hereunder, within a specified

Commission of the District does hereby designate the Director, or his designee, to issue Special Orders in the name of the District in an emergency to prevent damage to the District's sewerage system from misuse, injury to employees, interference with the process of sewerage treatment or disposal or substantial risk to the public health and welfare. In addition to all other remedies provided for therein, the Commission of the District may initiate an action for the remedies provided for in Section 283.91(2) through (5), Wisconsin Statutes, including a forfeiture of not more than \$10,000 for each day of violation of any Special Order so issued hereunder, which sum shall be in addition to all Administrative Fines that may be levied pursuant to Sec. 15.04 (4) hereof.

**SEC. 15.08 JUDICIAL REMEDIES.** If any person discharges sewage, industrial wastes, hazardous wastes, or other wastes into the District's sewerage system contrary to the provisions of this Ordinance or any Wastewater Discharge Permit or any other permit or order issued hereunder, the Commission, on behalf of the District, may commence an action for appropriate legal and/or equitable relief in the Circuit Court of Outagamie County, Wisconsin, or in any other court of competent jurisdiction, which action may include the following requested relief:

(1) Injunctive Relief. Whenever an Industrial User has violated or continues to violate the provisions of this Ordinance, its Wastewater Discharge Permit, or order issued hereunder, such violation creates a public nuisance under Section 823.02, Wisconsin Statutes, and the District may obtain an injunction restraining or compelling activities of the Industrial User.

(2) Civil Penalties.

- (a) Any person using the District's sewerage system without a Wastewater Discharge Permit for a use for which such a permit may be issued hereunder, or continuing to use the District's sewerage system after notice of termination or revocation of such permit, shall forfeit to the District the sum of \$500.00 for each violation, in addition to all other penalties provided for herein. Each day or any part thereof during which such violation continues, shall be considered as a separate violation for purposes hereof.
- (b) Any Industrial User who has violated or continues to violate this Ordinance or its Wastewater Discharge Permit issued hereunder, shall forfeit not less than \$1000 nor more than \$10,000 for each day of violation, which sum shall include all administrative fines that may be levied pursuant to Section 15.04 (4) hereof. In addition, there shall be assessed as an additional penalty all of the total costs incurred by the District relative to the investigation, including monitoring, which led to the establishment of the violation.
- (c) Any Industrial User who violates or continues to violate this Ordinance or its Wastewater Discharge Permit issued hereunder shall reimburse the District for all damages sustained by the District as a result of such violation, including, but not limited to, damages to District facilities, in addition to all other penalties imposed hereunder. Further, the District shall be entitled to receive from any Industrial User who violates this Ordinance or its Wastewater Discharge Permit issued hereunder, the District's reasonable attorney's fees, court costs, and any other applicable expenses associated with its enforcement activities.