

## **10. PRETREATMENT ENFORCEMENT MANAGEMENT SYSTEM**

### **10.1 INTRODUCTION**

The purpose of the Pretreatment Enforcement Management System (PEMS) is to document the Metro District's policies and procedures to be followed in identifying, documenting, and responding to Pretreatment Program violations. These policies and procedures are developed with four primary objectives in mind:

- Ensuring that violators return to compliance as quickly as possible.
- Deterring future noncompliance.
- Penalizing noncompliant industrial users for pretreatment violations.
- Recovering any expenses incurred by the Metro District or its connectors because of the noncompliance.

The Metro District's Pretreatment Program encompasses almost 60 separate jurisdictions that have delegated responsibility for enforcement activities in their jurisdictions to the Metro District. A cohesive enforcement management system is necessary to ensure that enforcement is applied equitably to all of the Metro District's Industrial Users (IUs) and/or connecting municipalities.

#### **10.1.1 Description of the Pretreatment Enforcement Management System**

This section provides a detailed description of the PEMS. It is divided into four general sections which include: the violation review process; general enforcement policies; descriptions of informal, formal (administrative), civil and criminal enforcement processes; and lists of supporting documents, abbreviations, and definitions.

The original PEMS was approved by EPA on July 20, 1990, and was distributed to all connectors for inclusion in their copies of the *Procedures for Implementing the Pretreatment/Industrial Waste Control Program of the Metro District* (Procedures Manual). The Metro District and any of its connectors resuming administration of the Metro District's pretreatment program are required to follow the guidelines outlined in this section.

### **10.2 VIOLATION REVIEW PROCESS**

This section contains the Enforcement Response Guide which provides assistance in selecting initial and follow-up enforcement actions. It provides Metro District personnel (and connecting municipality personnel where applicable) with guidance on appropriate remedies for industrial user noncompliance. In addition, this section contains a description of the Metro District's authority to directly impose penalties on violating IUs and connectors.

#### **10.2.1 Enforcement Response Guide**

Table 10.1a (the User Enforcement Response Guide) lists recommended enforcement responses for users (including municipal facilities that perform industrial/commercial processes and are deemed industrial users) to guide the Metro District's enforcement activities. Table 10.1b (the Municipalities Enforcement Response Guide) lists

recommended enforcement responses for municipalities that fail to perform their pretreatment duties (if not delegated to the Metro District) or comply with the *Rules and Regulations*. These guides are intended to serve three purposes:

- Establish appropriate enforcement responses for different levels and types of Pretreatment Program violations.
- Ensure a uniform enforcement response for comparable violations.
- Provide a quick reference for Pretreatment Program enforcement personnel.

If any connecting municipality seeks to resume enforcement responsibilities of the Metro District's pretreatment program they will be required to comply with the requirements established in the Metro District's *Rules and Regulations* and coordinate closely with Metro District pretreatment personnel. The Metro District must be informed of all enforcement actions taken against IUs and notified prior to a connecting municipality's taking formal administrative or judicial action. The Metro District has the authority to enforce pretreatment regulations where the connecting municipality is unable or unwilling to do so, and may exercise more severe action if it believes a connecting municipality is being too lenient with an IU or if the IU is not showing good faith in resolving its compliance problems. The Metro District also has the authority to overfile on a connecting municipality's enforcement action in the event the connecting municipality fails to take appropriate action, or to escalate enforcement in cases where the IU fails to comply with initial actions. Sections 10.4.5 and 10.5.1 contain a more detailed explanation of the Metro District's overfiling authority.

Tables 10.1a and 10.1b encompass three types of enforcement responses: informal, formal, and judicial. These responses are discussed in more detail in later Sections.

The Enforcement Response Guide lists several alternative enforcement responses for each type of violation. These alternatives are separated by semicolons. Determination of the appropriate alternative must include consideration of the criteria described below. The reasons for choosing a particular response should be documented. The response guide must be followed in all cases. Not to do so may jeopardize future enforcement due to allegations of arbitrary decision making.

The Enforcement Response Guide also contains a range of penalty amounts for different types of violations. The Metro District established the penalty ranges based on the penalty amounts available to its connecting municipalities in their legal authorities and on information obtained from EPA enforcement guidance documents. Many connecting municipalities have a \$1000/violation/day maximum penalty amount in their legal authorities, so each of the penalty amount ranges listed in the Guide reflect what the Metro District believes are reasonable allocations of the maximum penalty amount. For example, a frequent nonsignificant discharge violation calls for a \$100-\$500 per violation penalty, while a frequent significant violation calls for a \$300-\$1000 per violation penalty. Discharge violations causing known damage to the Metro District or the environment require the assessment of the maximum penalty amount available. The criteria used to select a penalty amount from the specified ranges are discussed in more detail in Section 10.5.2.

Determination of appropriate enforcement response is, in large part, based on common sense. For example, revocation of an IU's permit would not be an appropriate response to a late report. On the other hand, a verbal warning would not be appropriate if an IU

failed to notify the Metro District of a spill that caused a treatment plant upset and subsequent CDPS permit violations. The following criteria should be kept in mind when using the Enforcement Response Guide to determine an appropriate enforcement response:

- Magnitude of the violation
- Frequency of the violation
- Effect of the violation on the environment
- Effect of the violation on the Metro District (including the collection system).
  - Compliance history
  - Good faith effort
  - Occurrence of Significant Noncompliance (SNC)

Violations should be evaluated both individually and in light of other violations. For example, if a minor violation recurs, or if several minor violations occur together, a more serious response would be indicated than if the violations were looked at individually. It should also be noted that pretreatment enforcement is a matter of strict liability; i.e., the regulations were either violated or they weren't. Violations of pretreatment regulations must always be acknowledged and some type of enforcement action taken, even if it is only a verbal warning. The knowledge and intent of the IU and/or connector is only considered when determining the severity of the enforcement action to be taken.

The criteria used in determining appropriate enforcement action are discussed in more detail below.

### **10.2.2 Magnitude of the Violation**

In general, the response to isolated, infrequent instances of noncompliance is an informal response such as a telephone call or Notice of Violation. Some isolated violations can, however, be quite serious and require more extreme enforcement measures. For example, a spill that causes damage to the sewer system may occur only one time, but that one time is a serious violation and calls for serious enforcement action. Table 10.1a and 10.1b is written to provide a variety of enforcement options based on the magnitude of the violation.

The Enforcement Response Guide requires an evaluation to determine if a violation is significant or nonsignificant. The Metro District considers a discharge violation to be significant if the concentration (or mass, in the case of production-based standards) of pollutant discharged is more than 1.2 times the effluent limitation for metals and organics, and 1.4 times the limitation for oil and grease. In the case of pH, violations are considered significant if the pH value is more than 1.0 pH unit above the upper pH limit or below the lower pH limit.

Other examples of significant violations are: discharges of a pollutant(s) that cause, alone or in combination with other discharges, Interference or Pass Through, or cause imminent endangerment to human health/welfare or to the environment; criminal convictions for Clean Water Act violations; violations of compliance schedule milestones

by 90 days or more after the schedule date; failure to provide required reports within 30 days after their due dates; and failure to accurately report noncompliance.

### **10.2.3 Frequency of the Violation**

Regardless of severity, violations which continue over prolonged periods of time subject the industrial user and/or connecting municipality to escalated enforcement action. For example, if an effluent violation occurs monthly for six months, or if reports are frequently submitted after the date, escalated enforcement action is indicated. Chronic violations that result in harm to the sewer system or environmental damage will require even more serious action, including suspension of sewer service and recovery of costs. Table 10.1a and 10.1b is written to provide a variety of enforcement options based on the frequency of the violation.

The Enforcement Response Guide requires an evaluation to determine if a violation is frequent or isolated. The Metro District considers discharge violations to be frequent if the violations occur at a rate equal to or greater than 33% of all monitoring events within a 6 calendar month period per parameter. A discharge violation is considered isolated if it occurs at a rate of less than 33% of all monitoring events within a 6 calendar month period per parameter. The Metro District considers reporting violations to be frequent if the reporting violations occur at a frequency of 33% or greater of submitted reports are late within a six month period with required reporting due dates. A reporting violation is considered isolated if it occurs at a rate of less than 33% frequency considering all required reporting due dates in a six month period.

### **10.2.4 Effect on the Environment**

One of the primary goals of the National Pretreatment Program is to prevent pollutants discharged from industrial sources from "passing through" the treatment plant into the receiving waters. Evidence of Pass Through includes violations of numerical or toxicity limits of the Metro District's CDPS permit. At a minimum, discharges which cause CDPS violations require issuance of an Administrative Order and assessment of penalties. The Metro District may also recover costs incurred due to CDPS violations. If the violations continue, revocation of the permit or suspension of sewer service may be in order. In addition, causing (or contributing to causing) exceedances of Colorado Water Quality Standards for Segment 15 of the South Platte River will also subject the IU to enforcement action.

### **10.2.5 Effect on the POTW**

Another goal of the National Pretreatment Program is to prevent "interference" with the POTW caused by industrial discharges. Interference includes upsets to the treatment system, damage to the collection system caused by corrosion, blockages or explosions, increased treatment costs, or biosolids contamination. Violations of this type call for penalties as well as cost recovery. If the violations continue, revocation of the permit or suspension of sewer service may be in order.

### **10.2.6 Compliance History**

Chronic violations of permit limitations may indicate that an IU needs to install a pretreatment system or, if a system already exists, that it is inadequate for the waste treated or is not being properly operated or maintained. IUs that have other chronic

compliance problems, such as frequently submitting reports late or failing to achieve Compliance Schedule deadlines, may have a lackadaisical or even contemptuous attitude towards Pretreatment compliance. Either case must be dealt with more severely than the IU who only has an occasional violation or submits a report two or three days late once every three years. Compliance history is an important consideration when determining which of several appropriate enforcement actions should apply to a particular violation.

### **10.2.7 Good Faith Effort**

The IU's good faith in correcting its noncompliance may also be a factor in determining which enforcement action to take. Good faith is typically demonstrated by cooperation and completion of corrective measures in a timely manner. However, compliance with previous enforcement orders is not necessarily good faith if violations continue to occur. A willingness to comply generally results in the less stringent of the appropriate enforcement actions being taken. Good faith, however, does not eliminate the necessity to take enforcement action. As mentioned previously, pretreatment enforcement is based on strict liability, and a user's good faith must not be used as an excuse to avoid taking some kind of enforcement action.

### **10.2.8 Significant Noncompliance**

An SIU whose discharge and/or other violations meet certain criteria set forth in the Federal Pretreatment Regulations [40 CFR 403.8(f)(2)(viii)] (or any Industrial User which violates paragraphs 403.8(f)(2)(viii)(C)(D) or (H) or bullets 3,4,8, and 9 below) may be found to be in Significant Noncompliance (SNC) with Pretreatment Standards and Requirements. These criteria include:

- Chronic violations of wastewater discharge limits, in which 66% or more of all the measurements taken during a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l);
- Technical Review Criteria (TRC) violations, in which 33% or more of all the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, Oil and Grease, and 1.2 for all other pollutants, except pH);
- Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l), daily maximum, long-term average, instantaneous limit, or narrative standard, that the Metro District determines has caused, alone or in combination with other discharges, Interference or Pass Through (including endangering the health of Metro District personnel or the general public);
- Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment, or has resulted in the Metro District's or its connectors' exercise of their emergency authority to halt or prevent such a discharge;
- Failure to submit required reports within 30 days of their due dates;

- Failure to meet, within 90 days after the schedule date, a Compliance Schedule milestone;
- Failure to accurately report noncompliance.
- Criminal convictions for violation(s) of the Clean Water Act;
- Any other violation or group of violations which may include a violation of BMPs, which the Metro District determines will adversely affect the operation or implementation of the local Pretreatment Program.

In addition to requiring enforcement actions against IUs in SNC as described below, the Metro District annually publishes the names of these IUs in the newspaper. This publication is described in more detail in Sections 8.1.3 and 10.5.3 of this document. An example of this publication appears in Appendix DD.

Metro District Pretreatment staff make determinations each calendar quarter of those IUs in SNC. The procedure for making this determination is as prescribed by EPA and is shown in Appendix FF.

Regardless of the range of enforcement options shown in the Enforcement Response Guides for various types of violations, a finding of SNC requires, at a minimum, the specific enforcement actions described below. If an IU is in SNC only because of violations of discharge limitations that are in the process of being amended, and the amendments will eliminate the SNC, the following enforcement actions need not be taken.

An IU found to be in SNC for the first time must be notified of the finding of SNC and issued one of the following:

- An Administrative Order requiring that the IU come into immediate compliance and remain in compliance with all permit requirements, and participate in an enforcement meeting; or
- If appropriate, given the compliance history of the IU and other factors, an Administrative Order placing the IU on a Compliance Schedule as described in Section 10.7.2 of this document and requiring that the IU participate in an enforcement meeting; or
- If appropriate, given the seriousness of the violations or the potential for environmental or other damage, an Administrative Order requiring the immediate cessation of discharge.

Any of the above Orders may include additional monitoring requirements and/or an assessment of penalties for the specific violations, as determined from the Enforcement Response Guide. If the Metro District performs additional monitoring, all sampling and analytical costs may be passed on to the violator.

Enforcement meetings are held to stress the importance of correcting situations that may lead to another finding of SNC, to emphasize the necessity of maintaining consistent compliance, and to advise the IU of additional elevated enforcement actions that may be taken for failure to comply.

Because the method used to determine SNC for each calendar quarter actually includes an evaluation of two quarters' data, an IU may be found to be in SNC for two successive quarters because of the same violation(s). Where this is the case, the second finding of SNC "doesn't count" for the purpose of accelerating enforcement actions as described below.

An IU found to be in SNC a second (or subsequent) time, where such SNC is a result of violations occurring after the date of the Administrative Order described above, must be assessed penalties for all accumulated violations as determined from the Enforcement Response Guide, except in the following instances:

- If the violations resulting in the second (or subsequent) SNC determination occurred more than two years after the last AO notification of SNC, the new SNC may, at the Metro District's discretion, be considered another "first occurrence" of SNC.
- If the violations resulting in the second (or subsequent) SNC determination were discharge-only violations for an IU currently on an Administrative Order Compliance Schedule, the IU must be notified of its second (or subsequent) SNC determination and ordered to complete the schedule. In this case, any determination of SNC for the IU within two years after the completion of the Compliance Schedule must result in the assessment of penalties for all accumulated violations.
- If the Metro District determines the second (or subsequent) SNC determination resulted from conditions reasonably beyond the control of the IU, the new SNC may, at the Metro District's discretion, be considered another "first" occurrence of SNC. The Metro District will document the circumstances and determine the appropriate enforcement action.

An IU who remains or reappears in SNC, even after the assessment of penalties and the completion of Compliance Schedules as appropriate, must have service terminated until and unless the IU is able to satisfactorily demonstrate that a resumption of discharge will no longer result in findings of SNC.

At the end of the Enforcement Response Guides is a section entitled "Time Control Goals" which indicates the amount of time in which the Metro District (or non-delegated connectors) should initiate enforcement action after detection of violation(s). The time control goals are not meant to indicate the amount of time required to finalize the enforcement, however, particularly in the case of civil or judicial actions which may require considerable time to resolve. While the multi-jurisdictional organization of the Metro District's Pretreatment Program makes it difficult to establish rigid deadlines, the Metro District and its connecting municipalities must make every effort to conform to the time control goals in this section.

**TABLE 10.1a  
USER  
ENFORCEMENT RESPONSE GUIDE**

**ILLEGAL DISCHARGES**

<b>Noncompliance</b>	<b>Circumstances</b>	<b>Response<sup>1</sup></b>
Unpermitted discharge (no permit or permit not transferred or amended) of nonprohibited wastes.	Discharger unaware of permit requirement.	Administrative Order (AO) requiring permit application and BMR (if categorical).
	Discharger aware of permit requirement.	AO requiring permit application and BMR (if categorical) and penalty of \$100-\$500/per day; cease discharge; terminate service.
	Discharger failed to notify of change in ownership.	AO to immediately halt discharge and require permit application and BMR (if categorical).
Discharge of wastes specifically prohibited in a discharge permit or as defined in the District's <i>Rules and Regulations</i> or in writing by the Metro District or without authorization.	Discharger unaware of prohibition and no known environmental or POTW damage.	AO to immediately halt discharge; penalty of \$100-\$500 per day.
	Discharger unaware of prohibition and discharge results in environmental or POTW damage or dangerous situation.	AO to immediately halt discharge and penalty of \$500-\$1000 per day and recovery of any costs and CDPS penalties; cease discharge; terminate service.
	Discharger aware of prohibition and no known environmental or POTW damage.	AO to immediately halt discharge; penalty of \$500-\$1000 per day; cease discharge.
	Discharger aware of prohibition and discharge results in environmental or POTW damage or dangerous situation.	AO to immediately halt discharge and penalty of \$1000-\$5000 (depending on approved legal authority) per day and recovery of any costs and CDPS penalties; cease discharge; terminate service.
Discharge with expired permit.	Discharger failed to apply for permit renewal.	Notice of Violation (NOV); penalty of \$100-\$500/per day.



**TABLE 10.1a  
USER**

**ILLEGAL DISCHARGES (continued)**

<b>Noncompliance</b>	<b>Circumstances</b>	<b>Response</b>
Exceedance of discharge limits (BMPs, local, site-specific or categorical) <sup>2</sup>	Isolated, nonsignificant violations.	Telephone call <sup>3</sup> ; NOV.
	Frequent, nonsignificant violations.	NOV; meeting with IU; AO to submit Compliance Schedule; Show Cause (repeat offense); penalty of \$100-\$500 per violation per day.
	Isolated, significant violations, and no known environmental or POTW damage.	NOV; penalty of \$200-\$700 per violation per day.
	Frequent, significant violations and no known environmental or POTW damage. SNC	Meeting with IU or Show Cause; AO to submit Compliance Schedule; penalty of \$300-\$1000 per violation per day; cease discharge until compliance is achieved.
	Caused known damage to environment or POTW. SNC.	AO to halt discharge and penalty of \$1000-\$5000 (depending on approved legal authority) per violation per day and recovery of any costs and CDPS penalties; cease discharge; terminate service.
Reported accidental or slug load discharge.	Isolated, no known environmental or POTW damage.	NOV; AO to develop Spill/Slug Control Plan or revise existing Plan(s) to prevent recurrence.
	Recurring discharge, no known environmental or POTW damage.	AO to develop Spill/Slug control Plan or revise existing plan(s) to prevent recurrence; penalty of \$200-\$700 per violation per day; meeting with IU.
	Isolated, known environmental or POTW damage. SNC.	Penalty of \$500-\$1000 per day of violation and recovery of CDPS penalties and damages; cease discharge; terminate service.
	Recurring discharge, known environmental or POTW damage. SNC.	Penalty of \$1000-\$5000 (depending on approved legal authority) per day of violation & recovery of CDPS penalties & damages; cease discharge; terminate service.

**TABLE 10.1a (continued)  
USER**

**REPORTING VIOLATIONS (continued)**

<b>Noncompliance</b>	<b>Circumstances</b>	<b>Response</b>
Failure to report or late reports (routine reports, discharge monitoring reports, certifications).	Isolated or infrequent and reports <30 days late.	Telephone call <sup>3</sup> or NOV requiring reports to be submitted immediately.
	Frequent failure to report or reports frequently <30 days late.	NOV; penalty of \$200-\$700 per day per violation; Show Cause.
	Reports >30 days late. SNC.	AO; meeting with IU; penalty of \$300-\$1000 per day per violation; Show Cause.
Failure to report (one-time reports, e.g., Industrial Waste Questionnaire, Baseline Monitoring Reports, 90-day reports).		Telephone call <sup>3</sup> or NOV requiring reports to be submitted immediately; penalty of \$100-\$500 per day per violation.
Failure to notify of effluent limit violation or accidental or slug discharge or facility change impacting potential for slug discharge.	Isolated incident and no known effect.	Telephone call <sup>3</sup> or NOV.
	Frequent or continuing and no known effect. SNC	AO; meeting with IU; penalty of \$200-\$700 per day per violation; Show Cause.
	Known environmental or POTW damage. SNC.	Penalty of \$1000-\$5000 (depending on approved legal authority) per day per violation and recovery of costs and CDPS penalties; cease discharge; terminate service.
Failure to accurately report noncompliance.	Isolated incident or no known effect. SNC.	AO to correct violations and reporting deficiencies.
	Frequent or continuing or known effect. SNC.	AO to correct violations; penalty of \$200-\$700 per occurrence; Show Cause; cease discharge.
Any reporting violation.	Evidence of negligence <sup>4</sup> or intent or submission of false information. SNC.	Referral to proper authority for criminal investigation; civil litigation and/or criminal prosecution seeking maximum penalties allowed by State law (at least \$1000 per day per violation); cease discharge; terminate service.

**TABLE 10.1a (continued)  
USER**

**REPORTING VIOLATIONS (continued)**

<b>Noncompliance</b>	<b>Circumstances</b>	<b>Response</b>
Minor reporting deficiencies (computational or typographical errors; missing dates, missing or unauthorized signatures).	Isolated or infrequent.	Telephone call <sup>3</sup> or NOV requiring deficiencies be corrected immediately.
	Frequent or continuous.	AO to correct deficiencies; penalty of \$100-\$500 per occurrence.
Major reporting deficiencies (missing self-monitoring data; wrong test procedures used; failure to report process changes or hazardous waste discharges or required batch discharges).	Isolated or infrequent.	NOV requiring corrections be made immediately or within specified time frame; meeting with IU.
	Frequent or continuous.	AO to correct deficiencies; penalty of \$200-\$700 per occurrence; Show Cause.
Complete failure to report.	IU does not respond to phone calls, letters, NOVs or AOs. SNC.	Penalty of \$1000-\$5000 (depending on approved legal authority) per day; cease discharge; termination of service.

**TABLE 10.1a (continued)**  
**USER**

**COMPLIANCE SCHEDULE VIOLATIONS**

<b><u>Noncompliance</u></b>	<b><u>Circumstances</u></b>	<b><u>Response</u></b>
Failure to submit Compliance Schedule.	Violation of Administrative Order.	Civil and/or criminal penalties of \$1000-\$5000 (depending on approved legal authority) per day until schedule is submitted.
Missed Compliance Schedule milestone within 90 days of deadline.	Will not cause final date or other interim dates to be missed.	Telephone call <sup>3</sup> ; NOV.
	Will cause final date or other interim dates to be missed; violation for good cause.	NOV requiring documentation of factors causing violation; meeting with IU; AO to submit new Compliance Schedule.
	Will cause final date or other interim dates to be missed; violation not for good cause.	AO and penalty of \$200-\$700 per day of violation; Show Cause hearing; cease discharge until compliance achieved.
Missed Compliance Schedule milestone by more than 90 days of deadline.	SNC.	AO requiring documentation of factors causing violation and/or new Compliance Schedule and penalty of \$300-\$1000 per day of violation; cease discharge until compliance achieved.

**TABLE 10.1a (continued)  
USER**

**OTHER PERMIT/BMP VIOLATIONS**

<b>Noncompliance</b>	<b>Circumstances</b>	<b>Response</b>
Other minor violations of permit conditions (includes inspection deficiencies; e.g., failure to maintain required records or post spill notification procedures or calibrate metering equipment, or minor plan deficiencies.	No evidence of negligence <sup>4</sup> or intent.	NOV or Notice of Deficiency; meeting with IU; AO to correct violations.
	Evidence of negligence <sup>4</sup> or intent.	AO to correct violations; penalty of \$100-500 per day per violation.
Other major violations of permit conditions (e.g., failure to perform minimum required self-monitoring, to resample, to collect representative samples, to provide information, to submit or update required plans or major plan deficiencies, to properly operate and maintain pretreatment equipment, to make timely permit reapplication, to comply with BMPs).	No evidence of negligence <sup>4</sup> or intent.	NOV; meeting with IU; AO to correct violations; penalty of \$100-\$500 per day per violation; Show Cause.
	Evidence of negligence <sup>4</sup> or intent.	AO to correct violations; penalty of \$300-\$1000 per day per violation; Show Cause; possible criminal prosecution; cease discharge; terminate service.
Failure to maintain monitoring facilities.	Isolated or no evidence of negligence <sup>4</sup> or intent.	NOV; meeting with IU; AO to correct violations and prevent recurrence.
	Recurring <sup>5</sup> or continuing <sup>4</sup> or evidence of negligence <sup>4</sup> or intent.	AO to correct violations and prevent recurrence and/or to submit Compliance Schedule and penalty of \$100-\$500 per day per violation; recover costs of failed agency monitoring events; cease discharge until compliance achieved.

**TABLE 10.1a (continued)  
USER**

**OTHER VIOLATIONS**

<b>Noncompliance</b>	<b>Circumstances</b>	<b>Response</b>
Reporting false information.	Any instance.	Referral to proper authority for criminal investigation; civil litigation and/or criminal prosecution seeking maximum penalties allowed by State law (at least \$1000 per day per violation); terminate service.
Tampering with monitoring equipment.	Isolated or no evidence of negligence <sup>4</sup> or intent.	Telephone call <sup>3</sup> ; NOV; meeting with IU.
	Recurring <sup>5</sup> or evidence of negligence <sup>4</sup> or intent.	Referral to proper authority for criminal investigation; civil litigation and/or criminal prosecution seeking maximum penalties allowed by State law (at least \$1000 per day per violation); terminate service.
Denial of access or refusal of entry.	Any instance.	Refer to proper authority to obtain and execute a search warrant; penalty of \$1000 per day of violation; terminate service.
Failure to comply with requirement to cease discharge.	Any instance.	AO to immediately halt discharge and penalty of \$1000 per day of violation; terminate service.

**TABLE 10.1b  
MUNICIPALITIES**

**ENFORCEMENT RESPONSE GUIDE**

**PROCEDURAL VIOLATIONS**

<b><u>Noncompliance</u></b>	<b><u>Circumstances</u></b>	<b><u>Response</u></b>
Failure to design and administer Pretreatment Program in accordance with Section 6 of the Metro District's <i>Rules and Regulations</i> .	Connector unaware of requirement.	Administrative Order (AO) requiring compliance with Section 6.
	Connector aware of requirement.	AO requiring compliance with Section 6 and penalty of \$100-\$500/per day.
	Connector unaware of requirement; failure cause the Metro District to violate pretreatment requirements, or CDPS permit, or sludge or air requirements.	AO requiring compliance with Section 6 and penalty of \$500-\$1000/per day and recovery of any costs and CDPS penalties.
	Connector aware of requirement; failure cause the Metro District to violate pretreatment requirements, or CDPS permit, or sludge or air requirements.	AO requiring compliance with Section 6 and penalty of \$1000-\$5000/per day and recovery of any costs and CDPS penalties.

**TABLE 10.1b (continued)  
CONNECTING MUNICIPALITIES**

**ILLEGAL DISCHARGES**

<b><u>Noncompliance</u></b>	<b><u>Circumstances</u></b>	<b><u>Response</u><sup>1</sup></b>
Discharge of wastes specifically prohibited in a discharge permit or as defined in the Metro District's <i>Rules and Regulations</i> or in writing by the Metro District or without authorization.	Connecting Municipality unaware of prohibition and no known environmental or POTW damage.	AO to immediately halt illegal discharge; penalty of \$100-\$500 per day.
	Connecting Municipality unaware of prohibition and discharge results in environmental or POTW damage or dangerous situation.	AO to immediately halt illegal discharge and penalty of \$500-\$1000 per day and recovery of any costs and CDPS penalties; cease discharge; terminate service.
	Connecting Municipality aware of prohibition and no known environmental or POTW damage.	AO to immediately halt illegal discharge; penalty of \$500-\$1000 per day; cease discharge.
	Connecting Municipality aware of prohibition and discharge results in environmental or POTW damage or dangerous situation.	AO to immediately halt illegal discharge and penalty of \$1000-\$5000 (depending on approved legal authority) per day and recovery of any costs and CDPS penalties; cease discharge; terminate service.
Exceedance of Metro District discharge limits (BMPs, local or site-specific) <sup>2</sup>	Isolated, nonsignificant violations.	Notice of Violation with a warning that future violations may result in penalties.
	Frequent, nonsignificant violations.	Penalty of \$100-\$500 per violation per day; cease illegal discharge.
	Isolated, significant violations, and no known environmental or POTW damage.	Penalty of \$200-\$700 per violation per day; cease illegal discharge.
	Frequent, significant violations and no known environmental or POTW damage.	Penalty of \$300-\$1000 per violation per day; cease illegal discharge.
	Caused known damage to environment or POTW.	AO to halt illegal discharge and penalty of \$1000-\$5000 per violation per day and recovery of any costs and CDPS.



**TABLE 10.1b (continued)  
CONNECTING MUNICIPALITIES**

**ILLEGAL DISCHARGES (CONTINUED)**

<b>Noncompliance</b>	<b>Circumstances</b>	<b>Response<sup>1</sup></b>
Reported accidental or slug load discharge.	Isolated, no known environmental or POTW damage.	Notice of Violation (NOV); report with measures to prevent recurrence; AO to develop Spill/Slug Control Plan or revise existing plan to prevent recurrence.
	Recurring <sup>5</sup> discharge, no known environmental or POTW damage.	Penalty of \$200-\$700 per violation per day; report with measures to prevent recurrence.
	Isolated, known environmental or POTW damage.	Penalty of \$500-\$1000 per day of violation and recovery of CDPS penalties and damages; cease illegal discharge; report with measures to prevent recurrence.
	Recurring <sup>5</sup> discharge, known environmental or POTW damage.	Penalty of \$1000-\$5000 per day of violation & recovery of CDPS penalties & damages; cease illegal discharge; report with measures to prevent recurrence.

**MUNICIPALITIES**

**REPORTING VIOLATIONS**

<b>Noncompliance</b>	<b>Circumstances</b>	<b>Response</b>
Failure to notify of effluent limit violation or slug discharge.	Isolated incident and no known effect.	NOV with a warning that future violations may result in penalties.
	Frequent or continuing and no known effect.	Penalty of \$200-\$700 per day per violation.
	Known environmental or POTW damage.	Penalty of \$1000-\$5000 per day per violation and recovery of costs and CDPS penalties.

**TABLE 10.1b (continued)  
CONNECTING MUNICIPALITIES**

**OTHER VIOLATIONS**

<b>Noncompliance</b>	<b>Circumstances</b>	<b>Response</b>
Tampering with monitoring equipment.	Isolated or no evidence of negligence <sup>4</sup> or intent.	Telephone call <sup>3</sup> ; meeting with municipality; NOV.
	Recurring <sup>5</sup> or evidence of negligence <sup>4</sup> or intent.	Referral to proper authority for criminal investigation; civil litigation and/or criminal prosecution seeking maximum penalties allowed by State law (at least \$1000 per day per violation); terminate service.
Failure to comply with requirement to cease discharge.	Any instance.	AO to immediately halt illegal discharge and penalty of \$1000 per day of violation.

- 1 In the event the violator has previously been assessed penalties for similar violations, or the violations have resulted in a criminal conviction under the Federal Clean Water Act, the penalty may be increased by the Metro District up to five thousand dollars (\$5,000) per day per violation, in accordance with Section 6.28.6 of the Metro District's *Rules and Regulations*.

In addition to any penalties, the Metro District may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation by appropriate suit at law against the violator. Such penalties shall be in addition to any actual damages the Metro District may incur because of such violations. Where a violation is found to have caused Interference or Pass Through the maximum penalty of \$5,000 per violation may be increased as necessary to allow the Metro District to recover any fines or penalties paid by the Metro District for CDPS Permit violations due to the Interference or Pass Through.

- 2 Exceedance of discharge limits may result in the industry being found to be in Significant Noncompliance with pretreatment standards. See Sections 8 and 10.2.8 for more information.
- 3 Telephone calls should be followed up with warning letters if information is not received within the agreed upon time frame.
- 4 Negligence is defined as violations that are ongoing despite several warnings.
- 5 Recurring is defined as violations that are repeated within a two year period.

**TABLE 10-2**  
**TIME CONTROL GOALS**

<u>ENFORCEMENT RESPONSE</u>	<u>TIME CONTROL GOAL*</u>
Informal Responses  Telephone Notification Notice of Violation Meetings	  14 days 21 days 30 days
Formal Responses  Administrative Order Compliance Schedule Order to Show Cause Monetary Penalty (Administrative) Revoke Permit/Suspend Service	  60 days 60 days 60 days 60 days 60 days
Judicial Response  Injunctive Relief Consent Decree Civil Penalties Criminal Penalties	  60 days 60 days 60 days 90 days

\* Indicates the amount of time in which the Metro District should take enforcement action after detection of the violation(s). Violations which threaten health, property or the environment are considered emergencies and will receive immediate attention.

### **10.3 VIOLATION SUMMARY FORMS**

The Metro District uses a computer-generated Industrial User Monitoring Results report to track monitoring results and a computer-generated Industrial User Violations report to track industrial user violations. The Industrial User Monitoring Results report provides a summary of all monitoring results (connector, Metro, IU) for the industrial user for the reporting period. The Industrial User Violations report lists all of the violations (instantaneous, daily, monthly, and 4-day) for the reporting period. Examples of these reports are shown in Appendix GG. These reports are reviewed regularly as described in Section 10.4.

### **10.4 INTERNAL MANAGEMENT CONTROLS**

Currently, the Metro District has entered into pretreatment delegation agreements with all of its connecting municipalities requiring the Metro District to take appropriate enforcement actions in response to industrial user violations. The Metro District has developed a set of internal management controls to ensure industrial user violations are responded to properly (Table 10-2). Any connecting municipality resuming enforcement responsibilities would have to comply with the Metro District's Pretreatment Enforcement Management System including the time control goals of Table 10-3.

#### **10.4.1 Informal Enforcement Actions – Connecting Municipality**

Currently, all connecting municipalities have delegated all pretreatment responsibilities to the Metro District. Any connecting municipality resuming enforcement responsibility for the Metro District's Pretreatment/Industrial Waste Control Program will be required to comply, at a minimum, with the Metro District's Pretreatment Enforcement Management System.

The Metro District's time goal for review of informal enforcement actions and request to the connecting municipality for further action is 21 days from the time the notice of enforcement action is received at the Metro District. The connecting municipality is normally given 21 days to inform the Metro District what action will be taken in response to the request. These time goals are summarized in Table 10-3.

#### **10.4.2 Informal Enforcement Actions – Metro District**

The Metro District is currently responsible for all enforcement responses of the Metro District's pretreatment program including informal enforcement actions. If a violation is noted by the Metro District's pretreatment staff, the appropriate enforcement response is taken in accordance with the Metro District's Pretreatment Enforcement Management System. (See examples in Appendix HH)

The Metro District's time goal for responding to violations is 14-30 days from the time the monitoring information is received by staff. These time goals are summarized in Tables 10-2.

#### **10.4.3 Formal Enforcement Actions**

The Metro District has established procedures for dealing with serious enforcement actions which include Administrative Orders, Compliance Schedules, Show Cause hearings, monetary penalties, court action, or permit revocation.

The IW Supervisor makes the preliminary determination, based on information and recommendation provided by staff, that formal enforcement action should be taken based upon the facts and data gathered. The IW Supervisor will consult with the Regulatory Compliance Officer regarding the proposed formal enforcement action within the time control goals summarized in Table 10-3.

In the case of penalty actions, upon concurrence of the Director of Environmental Services (Director), the recommendation is forwarded to the Metro District Manager for concurrence. All penalty assessments are reviewed by Metro District Counsel. The Metro District's time goal for sending the recommendation to the District Manager is 60 days from the time staff supplies the information to the Regulatory Compliance Officer.

The Metro District Manager will approve or disapprove the recommendation within 60 days. If the Metro District Manager does not approve the recommendation, Pretreatment staff will propose an alternative enforcement action. Once approved, the same procedure as described above is followed.

#### **10.4.4 Enforcement Actions – Long-Term Average Violations**

Violations of long-term average discharge limitations, particularly violations of four-day average limitations, are somewhat difficult to track because violations are not apparent from individual monitoring results, and long time frames may be required before data can be evaluated. For example, if an industry collects self-monitoring samples quarterly, and is sampled by the Metro District throughout the year, several months may go by before a four-day long-term average violation is detected. For this reason, the Metro District reviews the compliance status and monitoring data on a regular basis for the express purpose of detecting long-term average violations (including four-day average and maximum monthly average violations). Notices of Violation will be issued, or other appropriate enforcement actions will be taken, when long-term average violations are detected.

Every three months, the Metro District's Pretreatment staff reviews a computer-generated printout of the monitoring results and violations and enforcement action summaries for all permitted industries to evaluate Significant Noncompliance. This process provides an additional review of instantaneous, daily, monthly and four-day average violations, reporting violations, and patterns of noncompliance. In addition, monitoring events are reviewed to ensure that the proper amount of sampling is being performed at each industry. Enforcement action is taken for any violation that has not previously been addressed.

#### **10.4.5 Overfiling**

For connecting municipalities resuming enforcement responsibilities of the Metro District's pretreatment program, if the connecting municipality and the Metro District are unable to agree on an enforcement action, or if the connecting municipality fails to respond to the Metro District's request within 21 days, the Metro District Manager will decide how to proceed. The Metro District may issue an additional notice to the connecting municipality setting forth remedial actions to be taken and a time schedule for complying. If, after 30 days notice, the connecting municipality has not taken steps to comply, the Metro District will proceed with its own enforcement action against the industrial user. In addition, if the connecting municipality fails to take action satisfactory to the Metro District within the time goals contained in Table 10-3 the Metro District may initiate its own enforcement action against the industrial user. If the Metro District

Manager determines that the Metro District will proceed with its own enforcement action, the procedures outlined in Section 10.5.1 will be followed.

#### **10.4.6 Communication Procedures**

In the event that a connecting municipality seeks to resume enforcement responsibilities of the Metro District's pretreatment program, the connecting municipality must ensure that their legal authority complies with all federal, state, and Metro District requirements, and that the connector's local limits are at least as stringent as those developed by the Metro District. The Metro District's *Rules and Regulations* will take precedence when there is a conflict between the Metro District's *Rules and Regulations* and a connecting municipality's legal authority.

In addition, the review procedures described above depend upon an efficient exchange of information between the Metro District and its connecting municipalities. Any connecting municipality assuming enforcement responsibilities is bound by the Metro District's *Rules and Regulations* and the Metro District's Procedures Manual. The Metro District must receive copies of all compliance information received from industrial users, or generated by the connecting municipalities themselves. This information includes copies of Compliance Schedule status reports, plant and process change notifications, periodic compliance reports, accidental discharge reports, inspection and monitoring reports, relevant correspondence, and records of communication.

**TABLE 10-3**

**METRO DISTRICT INTERNAL MANAGEMENT TIME GOALS <sup>1</sup>**

(for Connecting Municipalities resuming enforcement responsibilities of the Metro District's Pretreatment Program)

<b><u>Activity</u></b>	<b>District Time Goal Days from Receipt of Activity (<u>Violation Information</u>)</b>
<p><u>Informal Enforcement Action - Connector Initiated</u></p> <p>Request to connector to take further action</p> <p>Connector response to District request</p>	<p>21 days</p> <p>21 days</p>
<p><u>Informal Enforcement Action - District Initiated</u></p> <p>Request to connector to take enforcement action</p> <p>Connector response to District request</p>	<p>21 days</p> <p>21 days</p>
<p><u>Formal Enforcement Actions</u></p> <p>Recommend proposed enforcement action to District Manager/Regulatory Compliance Officer</p> <p>District Manager/Regulatory Compliance Officer reviews and approves proposed action</p> <p>District Manager/Regulatory Compliance Officer reviews and disapproves action; Pretreatment staff resubmits recommendation; District Manager/Regulatory Compliance Officer reviews</p> <p>Request to connector for enforcement action after District Manager/Regulatory Compliance Officer approval</p> <p>Connector response to District request District Manager/Regulatory Compliance Officer decision on alternative enforcement proposal from connector</p>	<p>21 days</p> <p>21 days</p> <p>21 days</p> <p>21 days</p> <p>21 days</p>

<sup>1</sup>These time goals indicate the estimated amount of time required to complete the indicated task under normal circumstances. The time goals are to be used as guidelines, and are not considered inflexible. Unforeseen complications may delay action in some cases. The Metro District will make every effort, however, to comply with the indicated time goals.

## **10.5 GENERAL ENFORCEMENT POLICIES**

### **10.5.1 Overfiling on Connecting Municipalities**

The Metro District's pretreatment enforcement program can rely on non-delegated connecting municipalities taking enforcement actions against violating industries within their jurisdictions. Currently, all connecting municipalities with industrial users have delegated all their pretreatment responsibilities to the Metro District. Therefore, the Metro District directly regulates and takes enforcement action against all IUs for all violations.

In the event a connecting municipality resumes enforcement responsibilities of the Metro District's pretreatment program the Metro District will review monitoring reports submitted by the connecting municipality and their IUs for violations and determine if appropriate enforcement action has been taken. (The procedure used to review enforcement actions is described in Section 10.4). If the action taken is found to be inadequate, or if the connecting municipality has not taken an enforcement action, the Metro District will work with the connecting municipality to resolve the inadequacy. If the inadequacy cannot be resolved, or if the connecting municipality refuses to take what the Metro District believes is an appropriate enforcement action, the Metro District will proceed as described below.

If a connecting municipality fails to take appropriate enforcement action against one of its industries, the Metro District, under the remedy authority in Section 6.9 of its *Rules and Regulations*, can issue a notice to the connecting municipality requiring that action be taken within 10 days. If, after 10 days, the connecting municipality has failed to or refuses to comply with the notice, the Metro District may issue an additional notice setting forth remedial actions to be taken and a time schedule for complying. If, after 30 days notice, the connecting municipality has not taken steps to comply, the Metro District may assume Pretreatment/Industrial Waste Control Program responsibilities in whole or in part in lieu of the connector. The Metro District may also seek injunctive relief against both the connecting municipality and the IU (see Tables 10.1a and 10.1b, Enforcement Response Guide).

The Metro District also has the authority to directly issue Administrative Orders and assess monetary penalties up to \$5,000 against IUs and its connecting municipalities without the necessity of preempting a connecting municipality's Pretreatment Program responsibilities. Administrative Orders may be issued and penalties assessed by the Metro District in cases where a connecting municipality refuses to take action within the time control goals listed in Table 10-3, or where the Metro District believes the action taken by the connecting municipality is inadequate.

### **10.5.2 Penalty Policy**

Prior to a connecting municipality resuming enforcement responsibilities of the Metro District's pretreatment program, the Metro District will ensure the connecting municipality's industrial waste resolution or ordinance has the authority to assess monetary penalties against its industrial users for violations of Pretreatment standards and requirements. The Metro District will evaluate each assessment using the guidelines in the Enforcement Response Guide (Table 10.1a) to determine if the amount is appropriate for the violation. If the Metro District determines that an assessment is inadequate, it may request that the connecting municipality assess additional penalties. The Metro District may assess its own penalties if it determines the connecting municipality's assessment is inadequate and if the connecting municipality fails to



assess additional penalties. In addition, because all connecting municipalities have delegated all pretreatment responsibilities to the Metro District, the Metro District assesses penalties directly on all IUs in accordance with the Enforcement Response Guide.

The Enforcement Response Guide (Table 10.1a and 10.1b) contains a range of penalty amounts for different types of violations. The amounts were chosen based on EPA guidance documents and the penalty amounts available to the Metro District's connecting municipalities in their legal authorities. In most cases, the maximum penalty amount is limited to \$1,000 per day per violation. Penalties for monthly average discharge limit violations may be assessed for every day of that month or for every day of that month during which discharge occurs. Penalties for 4-day average discharge limit violations will be assessed as 4 (four) days of violation.

The Metro District does not use or require use of an economic benefit calculation to determine penalties, although it does not discourage its connecting municipalities from doing so. If a connecting municipality wishes to consider economic benefit in its penalty assessment, the Metro District will provide any assistance needed to calculate the penalty.

Penalty amounts are chosen from the ranges listed in the Enforcement Response Guide based on the following criteria:

- the severity of the violation and its impact (or potential impact) on the connecting municipality, the Metro District, and/or the environment.
- the compliance history of the industrial user.
- the relative importance of the violation in comparison with other violations.
- the impact of an enforcement action on other industrial users.
- considerations of fairness and equity.

The Metro District itself may assess penalties up to \$5,000 per day per violation, except in cases where a violation has caused Interference or Pass Through. In these cases, the maximum penalty may be increased as necessary to allow the Metro District to recover any fines or penalties paid by the District for CDPS permit violations due to the Interference or Pass Through.

In addition to penalties, the Metro District may recover reasonable attorney's fees, court costs, and other expenses of litigation. Interest may be charged for any penalty not paid immediately in full. The penalties, interest charges and legal costs recovery are in addition to any actual damages the Metro District may incur because of the violations.

### **10.5.3 Listing of Noncomplying Industries**

The Metro District annually publishes a list of industries found to be in Significant Noncompliance with Pretreatment Program requirements during the previous year. This publication is a requirement of the General Pretreatment Regulations [40 CFR 403.8(f)(2)(viii)], and is made on behalf of the Metro District's connecting municipalities who do not separately publish lists of noncomplying industries in their jurisdictions. The procedures used to publish this list are found in Section 8.1.3.

## **10.6 INFORMAL ENFORCEMENT PROCESSES**

Minor administrative or discharge violations will normally be corrected by using an informal enforcement action. Informal actions are generally less resource-intensive than formal actions and usually involve less confrontation, thereby facilitating open communication and a cooperative posture with industry. However, when it is expected that informal actions will not achieve immediate compliance by IUs, these actions will not be considered as sole responses. Informal enforcement actions include, but are not limited to:

- Telephone notification
- Meetings
- Notices of Violation/Deficiency

In general, when an informal action is the sole enforcement action taken, the industry will be allowed no more than 30 days to correct the violation. In many cases less time, such as 7 days, is adequate. If more than 30 days are required to correct the violation, formal administrative actions may be more appropriate.

If applicable, records of all enforcement communications with an IU will be forwarded to the Metro District by connecting municipalities and maintained by the District. Records include summaries of telephone calls, written notices, meetings, and compliance inspections.

### **10.6.1 Telephone Notification**

Telephone contact with the IU provides a cost-effective means of obtaining information and resolving isolated or infrequent violations. Prompt response to such violations shows the IU that the Metro District is serious about enforcing Pretreatment Program requirements. It also helps to deter future violations.

The date and time, the person contacted, and the substance of the conversation is noted. A form such as that found in Appendix HH may be used, or a "Note to File" or "Record of Communication" memo may be prepared. These notes are placed in the IU's file and serve to provide evidence if additional or escalated enforcement action becomes necessary. It is also noted if the IU cannot be contacted by telephone, or fails to return phone calls.

### **10.6.2 Meetings**

Clarification of an IU's legal responsibilities, exposure to accelerated enforcement and penalties, and agreement on necessary corrective action can often be obtained through an informal meeting. In scheduling the meeting, it should be emphasized that while the meeting will be informal it does not preclude formal enforcement proceedings.

Typically, attendance at informal meetings is limited to technical staff but the presence of the IU's responsible official may also be necessary. If the IU plans to include legal counsel at the meeting, the Metro District's legal counsel should also be included. Staff will take notes on the discussion at the meeting and record all decisions made. A copy of the notes will become a part of the District's file on the IU. Alternately, with the concurrence of all parties, the meeting may be tape recorded with only minimal written notes sent to the IU's file. The audio cassettes will be maintained by the District.

### **10.6.3 Notices of Violation/Deficiency**

Notices of Deficiency (NODs) are generally issued as a result of a compliance inspection and serve to notify the IU of minor deficiencies noted during the inspection. The NOD may suggest means for improvement or require corrective actions. An example of a NOD is included in Appendix HH.

Notices of Violation (NOVs) are considered more serious enforcement actions than telephone notification or NODs, but less serious than Administrative Orders. NOVs are primarily issued in response to inspection findings, or discharge and reporting violations. The NOV will contain the following information:

- The specific violations that have occurred.
- Specific actions required on the part of the IU (e.g., actions taken to prevent recurrence, resampling to show return to compliance, etc.) and dates for completion of the actions.
- Warning that further enforcement action may be taken for failure to comply or remain in compliance.
- Warning that issuance of the NOV does not preclude further enforcement action for the particular violation.

Examples of types of NOVs are included in HH.

## **10.7 FORMAL ENFORCEMENT ACTIONS**

Significant administrative or discharge violations, or the failure of an industry to comply with informal enforcement responses, will lead to the use of formal administrative actions. The type of administrative action that can be used depends upon the authority contained in the Metro District's *Rules and Regulations*.

Types of formal actions include:

- Administrative Orders
- Compliance Schedules
- Orders to Show Cause
- Monetary Penalties
- Revoking Discharge Permits/Suspending Service

### **10.7.1 Administrative Orders**

An Administrative Order (AO) is a formal notification directing the industrial user to comply with certain tasks by a certain date to eliminate the cause of noncompliance. Examples of Administrative Orders are found in Appendix HH. The AO may be used in conjunction with revoking an industry's discharge permit, suspending service, or assessing penalties. If the AO is not complied with, additional enforcement action will be taken.

### **10.7.2 Compliance Schedules**

If deemed necessary the Metro District may issue the violating industry a Compliance Schedule for corrective action. The Compliance Schedule is a formal plan indicating the tasks that must be completed by the industry and the dates by which the tasks must be completed to eliminate the cause of the violation. An example of a Compliance Schedule and cover letter is found in Appendix HH.

Issuing a Compliance Schedule is a corrective action less severe than revoking an industry's discharge permit or suspending service. It may be used in conjunction with a monetary penalty assessed against the industry for the violations. Issuance of a Compliance Schedule does not relieve the industry of having to meet its existing discharge limits, nor does it necessarily protect the industry from having additional fines levied against it during the Compliance Schedule period. The Compliance Schedule simply allows the industry to continue to discharge as long as it demonstrates adequate progress in providing a permanent solution to the cause of its discharge violations.

The industry's actions will be monitored to ensure that schedule deadlines are met. This is done by requiring the industry to submit Compliance Schedule progress reports, by increasing monitoring requirements and/or by site inspections. An example of a Compliance Schedule progress report is found in Appendix HH. In case of serious violations, corrective actions will be verified in person. If the Compliance Schedule is not met, additional enforcement action will be taken.

### **10.7.3 Orders to Show Cause**

Prior to taking formal enforcement action and/or discontinuing service, the IU may be issued an order to appear at a hearing to show cause as to why additional enforcement action should not be taken. An example of an Order to Show Cause is found in Appendix HH. The hearing notice is usually served personally by an authorized connecting municipality employee or sent by certified mail at least 10 days before the hearing. Upon review of the evidence at the hearing, the designated official(s) or board may order that additional formal actions be brought against the violating industry. The Show Cause hearing is not a prerequisite to taking additional formal enforcement action or discontinuing sewer service.

### **10.7.4 Monetary Penalties**

The Metro District has the authority to assess monetary penalties directly against IUs. The District's penalty policy and overfilling authority are discussed in more detail in Section 10.5. An example of an administrative penalty assessment is found in Appendix HH. Civil penalties are discussed in more detail in Section 10.8.3.

In addition to or in lieu of monetary penalties, IUs may be required to perform Supplemental Environmental Projects according to the guidance established by EPA (see Appendix HH).

As previously stated, all connecting municipalities with industrial users have delegated all pretreatment responsibilities to the Metro District. In the event a connecting municipality resumes enforcement responsibilities of the Metro District's pretreatment program, they could, consistent with their legal authorities, assess administrative penalties or civil penalties against violating industries. The particular option available to the connecting municipality would be specified in its industrial waste ordinance or

resolution as would be the range of monetary penalties that could be assessed for each violation

#### **10.7.5 Revocation of Permit/Suspension of Service**

The Metro District has the authority to revoke an IU's wastewater contribution permit or general permit, suspend wastewater treatment service, or both. Revocation and/or suspension will generally be used for significant discharge violations, especially where the discharge presents a danger to the public, the environment, the treatment system, or may cause the Metro District to violate its CDPS discharge requirements. Permit revocation and/or suspension can also be used against industries that fail to comply with previous Administrative Orders.

To suspend service, a written suspension order requiring immediate termination of the discharge will be served on the industry (an example of this type of order is found in Appendix HH). If the industry fails to voluntarily comply with the order or prevents it from being served, all necessary steps will be taken, including seeking injunctive relief or severing the sewer connection, to prevent or minimize any damage that the discharge might cause. Once service has been suspended, the industry will be required to submit a detailed written statement that describes the cause of the harmful discharge and outlines measures that will be taken to alleviate the problem and prevent recurrence. Upon verifying that the problem has been resolved, the industry's permit can be reinstated and service can be resumed.

### **10.8 CIVIL JUDICIAL ENFORCEMENT PROCEDURES**

Civil judicial enforcement is the formal process of filing lawsuits against IUs to secure court-ordered action to correct violations and to secure penalties for violations, including the recovery of costs to the connector and the Metro District. Civil action is an appropriate enforcement response in several situations:

- when injunctive relief is necessary to halt or prevent discharges which threaten human health, the environment, or the treatment plant.
- when efforts to restore compliance through less formal actions have failed and a court supervised settlement (Consent Decree) is necessary to enforce program requirements.
- when an IU fails to pay assessed penalties or the Metro District or the connecting municipality wishes to recover losses due to the IU's noncompliance.

#### **10.8.1 Injunctive Relief**

Injunctions are court orders which direct a party to do something or refrain from doing something. Injunctive relief may be sought when delays in filing a civil suit will result in irreparable harm to the sewer system. The Metro District and its connecting municipalities have authority to suspend an IU's wastewater treatment service in the event a discharge may cause imminent or substantial endangerment, and injunctive relief may not be necessary to halt or prevent the discharge. Injunctive relief may be necessary, however, if the IU refuses to comply with the suspension order. An example of an injunctive relief petition is found in Appendix HH.

### **10.8.2 Consent Decrees**

Consent Decrees are agreements between the regulatory authorities and the IU reached after a lawsuit has been filed, and prior to the suit going to trial. To be binding, the decree must be signed by the judge assigned to the case. Consent Decrees are used when the IU acknowledges and is willing to correct the violation, and agrees on penalties. An example of a Consent Decree is found in Appendix HH.

### **10.8.3 Failure to Pay Penalties/Cost Recovery**

Civil action may be necessary in cases where an IU refuses to pay assessed penalties. In addition, civil action may be pursued to recover costs incurred as a result of an IU's noncompliance, including damages to the collection system, injury to personnel, or increased monitoring and surveillance.

The civil litigation process is essentially the same for the Metro District and all of its connecting municipalities. Generally, the Metro District's Regulatory Compliance Officer or District Manager will bring the matter to the attention of the authority's attorney after discussing it with the Board of Directors or appropriate municipal officials. The attorney, in consultation with Pretreatment personnel, will determine who is to be sued and for what. The attorney will then file the suit in the court of competent jurisdiction, depending upon the penalty amount. If the amount is less than \$5,000, the suit would be filed in county court. If the amount is over \$5,000, the suit would be filed in the district court. The procedure is outlined below:

1. A decision is made to sue the IU to recover costs, seek civil penalties, and/or corrective actions.
2. The attorney files a complaint alleging the violations.
3. The IU files an answer admitting or denying allegations.
4. A trial date is set.
5. Both sides prepare their cases (discovery process).
6. Settlement negotiations may take place.
7. If negotiations are successful, parties enter into a Consent Decree.
8. If negotiations are unsuccessful, the case proceeds to trial.
9. If the IU is held liable, the court awards cost recovery and/or civil penalties. The IU may appeal the judgment.
10. If the IU is held not liable, the Metro District or the connecting municipality may appeal the findings.

In addition, the Metro District may also bring civil action against its IUs and/or connecting municipalities in cases where it is necessary to stop a discharge that appears to present an imminent endangerment to the Metro District's system, in the event a Metro District-assessed penalty is not paid, or if a connecting municipality refuses to take appropriate enforcement action against a violating IU. The civil litigation procedure would be as described above.

## **10.9 CRIMINAL ENFORCEMENT PROCEDURES**

Criminal prosecution is the formal process of charging individuals and/or organizations with criminal violations of federal, state or local laws that are punishable, upon conviction, by fines and/or imprisonment. It is an appropriate enforcement action where there is evidence of noncompliance resulting from negligently, knowingly or recklessly violating an applicable statute which shows criminal intent. It is recommended in cases involving aggravated violations (e.g., discharges which are negligently or knowingly introduced into the sanitary sewer or which places another person in imminent danger of death or serious bodily injury), and when less formal efforts to restore compliance (Notices of Violation and Administrative Orders) have failed.

The overall criminal enforcement process can be summarized in the steps outlined below:

### **10.9.1 Discovering the Crime**

The criminal enforcement process begins when the connecting municipality or the Metro District has reason to believe illegal action(s) have been or will be committed. This belief must have some foundation in fact. For example, there must be personal knowledge or trustworthy information from an informant establishing commission of the illegal action. This information or evidence may be gathered during routine inspection and/or sampling activities, reports from employees, competitors, other regulatory agencies or the public, or incriminating evidence from the industry itself.

If the connecting municipality or the Metro District suspects that criminal activity is taking place, the connecting municipality's or the Metro District's attorney should be notified as soon as possible. He or she can provide invaluable legal advice to ensure that correct procedures are followed during the criminal investigation and enforcement process.

### **10.9.2 Gathering Evidence**

Evidence gathered during this step of the process is subject to increased scrutiny and care must be exercised in the collection of any evidence intended to be admissible in a criminal trial. Therefore, the connecting municipality or the Metro District must ensure that the constitutional protection against unreasonable search and seizure is upheld, including the use of search warrants if necessary. Once admitted, the evidence must also be defensible, requiring the use of chain-of-custody procedures during sample collection and analysis. Further evidence collection activity should be reserved for the Criminal Investigations Division of EPA and/or law enforcement agencies that may be asked to proceed with a criminal investigation; the Metro District may be required to provide assistance during this step of the process.

### **10.9.3 Initiating Criminal Prosecution**

The connecting municipality or the Metro District will communicate the suspicion of criminal noncompliance to their attorney (or the prosecutor in the court of competent jurisdiction) and/or notify the Criminal Investigations Division of EPA (EPA-CID). Based on the examination of the evidence, a determination will be made whether to proceed with criminal investigation and enforcement. If sufficient evidence exists, and the prosecutor believes criminal enforcement should proceed, additional criminal investigation may be pursued to ensure each element of the offense can be proved, and to determine whom to name as defendant(s) in the indictment. From this point on, the enforcement action is essentially turned over to the criminal investigation staff and

prosecutor, although he or she will undoubtedly continue to rely on the technical expertise of the Pretreatment staff.

If the potential defendant is an individual, that individual will be named. If the potential defendant is a franchise, limited partnership, or partnership, the organization, responsible officials, or both, may be named. If the potential defendant is a corporation, individual employees, their supervisor(s), or the corporate officials responsible for compliance with environmental laws, may be named.

In some cases, plant employees, management or corporate personnel may not have personal knowledge of illegal acts. In these cases, it is nearly impossible to prove specific intent, and the prosecutor may only seek indictments and convictions based on criminal negligence.

After the defendants are named, the prosecutor will request a grand jury to determine whether enough evidence exists to try the defendants for specific crimes. If the grand jury determines that a crime has been committed and that the named defendant(s) should be put on trial, indictments are handed down against the defendant(s).

#### **10.9.4 Pretrial Options**

Once the indictment has been handed down by the grand jury, the defendant is brought before a judge (arraigned) to plead to the criminal charge. If the defendant pleads guilty to the charge(s), a sentencing hearing is scheduled. If the defendant pleads not guilty, a trial date is set. Depending upon the strength of the evidence, the prosecutor may offer the defendant(s) a plea bargain.

#### **10.9.5 Criminal Trial**

Persons accused of criminal offenses have a constitutional right to a jury trial. Defendants may waive this right and request that the judge rule on the case. At the conclusion of the trial, a verdict is issued. If the defendant is found not guilty, the defendant is granted an acquittal and the charges are dismissed. The defendant may not be tried a second time (double jeopardy) for that particular offense. However, the courts have determined federal, state and local courts to be "separate sovereigns" which may allow the Metro District or the connector to prosecute criminal offenses in federal court if the defendant was acquitted in a state court or in a state court if the defendant was acquitted in a federal court.

#### **10.9.6 Sentencing and Appeal**

If the defendant is convicted, he/she may receive a fine, a prison sentence, or both. The sentences may be suspended if the IU takes the desired corrective action(s) or agrees to make other good faith efforts to achieve compliance.

The defendant(s) may appeal the conviction on one or more counts, challenging the verdict, the sentence or both. The prosecutor may also appeal the case only if a second trial is not necessary to resolve the issue on appeal. For example, if the jury finds the defendant guilty, but the judge sets aside the verdict as a matter of law, the prosecution may appeal. The appellate court will either affirm the action of the trial judge, or overrule the judge and reinstate the jury's verdict, neither of which require a second trial.

A number of the Metro District's connecting municipalities have authority to directly assess criminal penalties against IUs for Pretreatment violations. These are the cities of



Arvada, Aurora, Denver, Edgewater, Englewood, Federal Heights, Golden, Lakewood, Thornton, Westminster, and the Town of Mountain View. Generally in these jurisdictions, no Pretreatment staff exists to assist with the evidence-gathering step of the criminal enforcement process so Metro District staff will provide the pretreatment expertise. Depending on how comfortable the connector is with conducting a criminal investigation, assistance may be requested from EPA-CID, law enforcement and/or fire departments or code enforcement personnel. Once sufficient evidence is gathered, it, along with any other necessary information, is turned over to the City Attorney. He or she will make the decision whether sufficient evidence exists to pursue criminal enforcement.

The Metro District's remaining connecting municipalities, and the Metro District itself, have no criminal enforcement authority. If criminal violations are suspected, a joint investigation will be conducted by the Metro District and an appropriate law enforcement agency (e.g., Adams County Sheriff's Department, EPA-CID, FBI) or the District Attorney's office. Technical expertise to evaluate the nature and effects of the violations will be provided by Metro District and, in some cases, connector personnel. Assistance with the actual investigation, such as obtaining search warrants and surveillance procedures, will be provided by the law enforcement agency or the District Attorney's office.

Once the evidence is gathered, it is turned over to the District Attorney, who will decide whether to pursue criminal prosecution. Depending on the type of violation, the evidence will be referred as indicated below:

- If it is a violation of federal law, it is referred to the United States Attorney's Office for prosecution.
- If it is a violation of state law, it is referred to the District Attorney's Office for the district in which the violation took place.
- If it is a violation of a local ordinance, it is referred to the County Attorney or the legal office that has jurisdiction over the matter.

In any of these cases, it is the discretion of the Attorney's Office to determine whether or not the matter will be prosecuted. The decision is based on the presence of adequate evidence to indict and convict on criminal charges. Even if sufficient evidence is available, mitigating factors may be present that would dictate the use of other enforcement tools before initiating criminal prosecution. These include prompt and complete disclosure of the violation by the industry and its good faith efforts to restore compliance.

Because criminal prosecution is resource intensive, and requires the prosecution to prove every element of the crime "beyond a reasonable doubt," it is not an enforcement action to be taken lightly. It is a strong deterrent to noncompliance, however, and sends a message to the regulated community that the connector and the Metro District are serious about Pretreatment enforcement. For that reason, the Metro District will proceed with criminal prosecution when appropriate.

## 10.10 LISTS

### 10.10.1 Supporting Documents

Metropolitan Denver Sewage Disposal District No. 1. September 30, 1985. Pretreatment/Industrial Waste Control Program.

\_\_\_\_\_. 1984. Pretreatment/Industrial Waste Control Program Sampling and Chain-of-Custody Procedures.

\_\_\_\_\_. 1984 (rev. 1985). Procedures for Implementing the Pretreatment/Industrial Waste Control Program of the Metro District.

\_\_\_\_\_. 1986 (rev. 1991). Rules and Regulations Governing the Operation, Use and Services of the System.

U.S. Environmental Protection Agency. Sept., 1989. Guidance for Developing Control Authority Enforcement Response Plans. U.S. EPA, Office of Water Enforcement and Permits, Washington, D.C.

U.S. Environmental Protection Agency. Sept., 1986. Pretreatment Compliance Monitoring and Enforcement Guidance. U.S. EPA, Office of Water Enforcement and Permits, Washington, D.C.

### Enforcement Requirements:

Federal Pretreatment Regulations (403.8(f)(1), 403.8(f)(2), and 403.8(f)(5))

State Pretreatment Regulations (63.9.E and 63.13.B)

CDPS Discharge Permit No. CO-0026638 (Part I.8.a.iv, v and ix)

*Rules and Regulations* (Sections 6.3, 6.4, 6.5.8. and 6.28)