

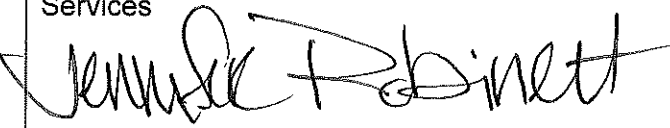


METRO WATER RECOVERY

INDUSTRIAL PRETREATMENT PROGRAM IMPLEMENTATION POLICY

PURPOSE/SCOPE:

This document defines the Industrial Pretreatment Program's approach to "becoming aware" or "becomes aware" related to effluent violations, upset conditions, or unanticipated bypasses, as well as requirements related to receipt of oral and written notifications.

Version Number	Approved By	Effective Date
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BACKGROUND

Metro Water Recovery (Metro) operates a US Environmental Protection Agency (US EPA) approved industrial pretreatment program (IPP) to prevent the introduction of unconventional pollutant loadings to its domestic wastewater treatment plant that have the potential to pass through or interfere with operations and treatment processes; cause worker and public health safety concerns; and harm infrastructure. Metro's legal authority associated with its IPP implementation resides within Sections 2, 5, 6 and 10 of the Metro Water Recovery *Rules and Regulations Governing the Operation, Use, and Services of the System* (Rules and Regulations).

This implementation policy describes how Metro interprets the information and requirements associated with "becoming aware" or "becomes aware" of effluent violations, upsets, and unanticipated bypasses that are included in Rules and Regulations and establishes expectations for Metro's staff and industrial users (IUs) within Metro's service area. The policy also describes how Metro interprets requirements related to its receipt of oral and written notifications related to effluent violations, upsets, and unanticipated bypasses.

APPLICABILITY

This implementation policy applies to all existing and new Industrial Users (IUs) within Metro's service area. The requirements of this implementation policy may supersede any past written correspondence issued by Metro to an industrial user regarding the phrase "becoming aware" or "becomes aware" given that Metro must routinely reevaluate, and course correct, when necessary, to maintain consistent implementation of its IPP. The interpretations outlined in this policy become enforceable on the effective date of the policy.

REGULATORY FRAMEWORK

Metro's Rules and Regulations

Metro's Rules and Regulations include the following statements related to "becoming aware" or "becomes aware" for effluent violations, notifications, repeat sampling, and upset conditions: [emphases added]

6.20. NOTIFICATION/REPORTING OF POTENTIAL PROBLEM DISCHARGES

6.20.3. Discharge Violation/Repeat Sampling and Reporting

If sampling performed by an Industrial User indicates a violation of these *Rules and Regulations* or any permit or any other pollutant limits established pursuant thereto, the Industrial User must notify Metro Water Recovery within twenty-four (24) hours of **becoming aware** of the violation. The Industrial User shall also repeat the sampling and analysis for any Pollutants in violation and submit the results of the repeat analysis to Metro within thirty (30) days after **becoming aware** of the violation. Resampling by the Industrial User may not be required if Metro performs sampling at the Industrial User's facility at least once a month, or if Metro performs sampling at the Industrial User's facility between the time the initial sampling was conducted and the time the Industrial User or Metro receives the results of this sampling.



Metro Water Recovery may also require additional sampling and analysis upon a finding of a discharge violation based on sampling performed by Metro, the Industrial User, or any other entity.

Unless waived by Metro Water Recovery, within five (5) working days of **becoming aware** of any violation from self-monitoring, Metro monitoring, or other agency monitoring events, the Industrial User shall submit to Metro a detailed written report describing the cause of the violation and the measures taken or to be taken by the Industrial User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the Industrial User of any fines, civil penalties, or other liability which may be imposed by these *Rules and Regulations* or other applicable laws or regulations.

6.30. AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

6.30.1. Upset

3. An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

C. The Industrial User has submitted the following information to Metro Water Recovery within twenty-four (24) hours of **becoming aware** of the Upset [if this information is provided orally, a written submission must be provided within five (5) days]:

- a. A description of the discharge and cause of noncompliance;
- b. The period of noncompliance, including exact dates and times or, if not corrected at the time of the submission, the anticipated time the noncompliance is expected to continue; and
- c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

6.30.2. Bypass

3. Bypass Notifications

B. An Industrial User shall submit oral notice to Metro Water Recovery of an unanticipated Bypass that results in an exceedance of applicable Pretreatment Standards or Requirements within twenty-four (24) hours from the time it **becomes aware** of the Bypass. A written submission shall also be provided within five (5) days of the time the Industrial User **becomes aware** of the Bypass. The written submission shall contain a description of the Bypass and its cause; the duration of the Bypass, including exact dates and times, or, if the Bypass has not been corrected at the time of the submission, the anticipated time it is expected to continue; and steps taken or planned to



reduce, eliminate, and prevent reoccurrence of the Bypass. Metro may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

40 CFR Part 403

These instances of "becoming aware" or "becomes aware" in Metro's Rules and Regulations align with the following sections of 40 CFR Part 403, General Pretreatment Regulations for Existing and New Sources of Pollution: [emphases added]

§ 403.12 Reporting requirements for POTW's and industrial users.

(g) Monitoring and analysis to demonstrate continued compliance.

(2) If sampling performed by an Industrial User indicates a violation, the User shall notify the Control Authority within 24 hours of **becoming aware** of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after **becoming aware** of the violation. Where the Control Authority has performed the sampling and analysis in lieu of the Industrial User, the Control Authority must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Resampling is not required if:

- (i) The Control Authority performs sampling at the Industrial User at a frequency of at least once per month; or
- (ii) The Control Authority performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the Control Authority receives the results of this sampling.

§ 403.16 Upset provision.

(c) Conditions necessary for a demonstration of upset. An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An Upset occurred and the Industrial User can identify the cause(s) of the Upset;
- (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;
- (3) The Industrial User has submitted the following information to the POTW and Control Authority within 24 hours of **becoming aware** of the Upset (if this information is provided orally, a written submission must be provided within five days):



- (i) A description of the Indirect Discharge and cause of noncompliance;
- (ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;
- (iii) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

§ 403.17 Bypass.

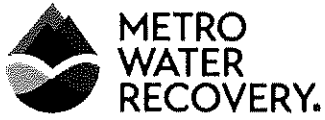
(c) Notice.

- (2) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Control Authority within 24 hours from the time the Industrial User **becomes aware** of the bypass. A written submission shall also be provided within 5 days of the time the Industrial User **becomes aware** of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

Federal Register

The Federal Register, Vol. 53, No. 200, dated Monday, October 17, 1988, Rules and Regulations, page 40597 further describes the US EPA's intention around "becoming aware" when developing updates to 40 CFR Part 403, General Pretreatment Regulations for Existing and New Sources of Pollution. This section states the following: [emphasis added]

- d. Today's rule. EPA is promulgating the rule as proposed, with the following modifications. First, under the final rule the only results of additional monitoring performed by the industrial user that must be included in the periodic reports required under § 403.12(e) are those arrived at using test procedures approved under 40 CFR Part 136 or approved alternatives. This is consistent with the comparable requirement in § 122.41(l)(4)(ii) of the NPDES regulations. Second, the time period for resampling and submitting both sets of results has been extended to 30 days to allow sufficient time for transmittal time and lab turnaround. Third, where the Control Authority monitors at least once a month, or monitors between industrial user sampling and receipt of results of the sampling, the industrial user is not required to resample. **Fourth, the final rule clearly states that the 30-day period starts to run on the industrial user's receipt of the results of its original sampling.** Finally, in addition to the resampling requirement, the final rule **also requires industrial users to notify the Control Authority within 24 hours of any violation of an applicable pretreatment standard.** This last requirement ensures that prior to its receipt of the results of the industrial user's resampling,



the Control Authority will be in a position to take whatever additional actions may be necessary or appropriate in response to the reported violation(s).

APPROACH

The phrase “becoming aware” or “becomes aware” appears in three distinct parts of the Rules and Regulations – Discharge Violations, Upsets, and Bypass. Because the phrase “becoming aware” or “becomes aware” implies the first instant that the IU gains awareness of the violation or upset, uncertainty can arise around when the IU gained the knowledge of discharge violations, upset conditions, and unintentional bypass events. Due to varied circumstances, this incident-specific uncertainty can lead to inconsistent application of the initial compliance date related to “becoming aware” or “becomes aware”. This implementation policy firms the understanding and definition of “becoming aware” or “becomes aware” for consistent implementation by Metro’s IPP for discharge violations, upset conditions, and unintentional bypass events.

In addition, to defining “becoming aware” or “becomes aware,” the Rules and Regulations and 40 CFR Part 403 use a variety of phrases to establish the requirements for notifying Metro of discharge violations, upset conditions, and unintentional bypass events. Examples of these phrases include:

- “must notify”;
- “shall submit”;
- “shall be provided”;
- “has submitted”;
- “submit the results”; and
- “provided orally”.

In a number of instances, the phrases may arguably assume two different meanings. First, a reader could interpret a phrase to mean postmarked by the due date or similar. Second, the reader could interpret the phrases to mean arrived at the Metro Industrial Pretreatment Division by the due date. This implementation policy firms the understanding and definition for consistent implementation of the various phrases by Metro’s IPP for required reports, notifications, discharge violations, upset conditions, and unintentional bypass events.

Overall, Metro finds that failing to establish a clear timeline for an IU to gain awareness of a potential violation may inadvertently authorize an IU to delay its review of sampling records or operational practices and create untenable or dangerous situations for workers, infrastructure, and treatment processes. Metro finds that early and diligent communication from IUs to Metro improves outcomes. This policy reflects this overall approach.

Discharge Violation/Repeat Sampling and Reporting

While the phrase “becoming aware” could take on various interpretations, the US EPA clarified the meaning of this phrase in the citation from the Federal Register, Vol. 53, No. 200, dated Monday, October 17, 1988, Rules and Regulations, page 40597 (Federal Register). This citation clearly documents the intent of the US EPA that links to the phrase “becoming aware”. As stated in the Federal Register, “the 30-day period starts to run on the industrial user’s receipt of the results of its original sampling” (emphasis added). The US EPA’s clarification traces back to



section 40 CFR § 403.12(g)(2) which states the following: "The User shall . . . repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation." By aligning these two statements, the US EPA equates "becoming aware of the violation" to "the industrial user's receipt of the results of its original sampling."

As clarified by the US EPA, the phrase "becoming aware" also establishes the timeline for 24-hour notification of a discharge violation. Section 40 CFR § 403.12(g)(2) states the following: "If sampling performed by an Industrial User indicates a violation, the User shall notify the Control Authority within 24 hours of becoming aware of the violation." Since "becoming aware of the violation" equates to "the industrial user's receipt of the results of its original sampling", the IU must also notify Metro within 24-hours of receiving the sampling results.

These requirements illuminate the significance of IUs notifying Metro as soon as possible so that the POTW may notify others or mitigate the impact of the pollutant, if possible. Knowing the exact time and day the IU becomes aware of the violation is not possible in all cases. When Metro can determine the date and time the IU received the results of the samples, Metro must receive the IU's notification within 24 contiguous hours of the exact date and time the IU received the samples. When Metro cannot determine the exact time the IU received the sample results but does know the day, Metro must receive the 24-hour notification before 12 am on the third day after the IU receives the results of the samples. For example, if the IU receives the results of the samples at an undetermined time on Monday, Metro must receive the notification from the IU before 12 am on Wednesday. In this example, the 24-hour notification period begins at 12 am on Tuesday. In every case, the 24-hour notification expectation does not vary based on the IU's or Metro's operating hours, holidays, weekends, or personnel vacations due to the critical importance of this information. IUs must establish plans to ensure that notifications meet the required timelines, allowable formats, and reach relevant Metro industrial pretreatment personnel.

Upset

The Rules and Regulations provide clear expectations of the IU for documenting when it becomes aware of an upset. Items 6.30.1.3. and 6.30.1.3.C. of the Rules and Regulations state that an IU who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that the IU has submitted required notification and information within 24 hours of becoming aware of the upset. Metro expects that the signed, contemporaneous logs include information that clearly indicates when the IU became aware of the upset. Metro expects that the written documentation clearly demonstrate when the upset began, when the IU became aware, when the notification occurred, who made the notification, to whom the notification was made, the format of the notification, and the information provided.

If insufficient information is available to establish when the IU becomes aware of the upset or the upset occurs for an extensive period prior to the IU becoming aware, Metro shall consider whether the IU was properly operating and maintaining the industrial processes or associated treatment. Per item 6.30.1.3.B. of the Rules and Regulations, an IU may not claim an affirmative defense for an upset unless the IU demonstrates that "[t]he facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures." Metro may make a finding that not knowing 'when an



upset began' or 'when the IU became aware' is a failure to operate a facility in a prudent and workman-like manner. In these cases, Metro shall issue a violation for the upset.

Item 6.30.1.3.C. of the Rules and Regulations also requires IUs to provide a written submission with key documentation of the upset to Metro within 5 days if the IU makes the initial notification of an upset to Metro orally. While not explicitly defined by the Rules and Regulations, Metro requires the written submission to be received within 5 days of becoming aware of the upset condition. For the written report, Metro will use the same date and time established for the 24-hour upset notification to evaluate compliance with the 5-day written submission deadline. Metro defines 5 days as 120 contiguous hours from the IU becoming aware.

For upsets, the information provided to Metro must define the date and time to the most accurate degree possible. When Metro can determine the date and time the IU became aware of the upset, Metro expects the IU to notify Metro within 24 contiguous hours of the exact date and time the IU became aware of the upset. When Metro cannot determine the exact time the IU became aware of the upset but does know the day, Metro must receive the 24-hour notification before 12 am on the third day after the IU becomes aware of the upset. For example, if the IU becomes aware of the upset at an undetermined time on Monday, Metro must receive the IU's notification before 12 am on Wednesday. In this example, the 24-hour notification period begins at 12 am on Tuesday. In every case, the 24-hour notification expectation does not vary based on the IU's or Metro's operating hours, holidays, weekends, or personnel vacations due to the critical importance of this information. IUs must establish plans to ensure that notifications meet the required timelines, allowable formats, and reach relevant Metro industrial pretreatment personnel.

Unanticipated Bypass

The Rules and Regulations provide clear expectations of the IU for documenting when it became aware of an unanticipated bypass. Item 6.30.2.3.B. of the Rules and Regulations states that Metro must receive oral notification from the IU within 24 hours of the start of the unanticipated bypass condition. Metro expects that the notification clearly indicate when the IU became aware of the unanticipated bypass. Metro expects that the written documentation clearly demonstrate when the unanticipated bypass began, when the IU became aware, when the notification occurred, who made the notification, to whom the notification was made, the format of the notification, and the information provided.

Item 6.30.2.3.B. of the Rules and Regulations also requires IUs to provide a written submission with key documentation of the unintended bypass. While not explicitly defined by the Rules and Regulations, Metro requires the written submission to be received within five (5) days of becoming aware of the unintended bypass. For the written report, Metro will use the same date and time established for the 24-hour unintended bypass notification to evaluate compliance with the 5-day written submission deadline. Metro defines 5 days as 120 contiguous hours from the IU becoming aware.

For unintended bypasses, the information provided to Metro must define the date and time to the most accurate degree possible. When Metro can determine the date and time the IU received the results of the samples, Metro expects the IU to notify Metro within 24-hours of the exact date and time the IU became aware of the unintended bypass. When Metro cannot determine the exact time the IU became aware of the unintended bypass but does know the day, Metro must receive the 24-hour notification before 12 am on the third day after the IU



becomes aware of the unintended bypass. For example, if the IU becomes aware of the bypass at an undetermined time on Monday, Metro must receive the IU's notification before 12 am on Wednesday. In this example, the 24-hour notification period begins at 12 am on Tuesday. In every case, the 24-hour notification expectation does not vary based on the IU's or Metro's operating hours, holidays, weekends, or personnel vacations due to the critical importance of this information. IUs must establish plans to ensure that notifications meet the required timelines, allowable formats, and reach relevant Metro industrial pretreatment personnel.

Receipt of Oral and Written Notifications

Discharge violations, upset conditions, and unintentional bypass events from IUs all have the potential to pass through or interfere with operations and treatment processes; cause worker and public health safety concerns; and harm infrastructure. To address, mitigate, or take appropriate actions, Metro must understand and receive data related to discharge violations, upset conditions, and unintentional bypass events as soon as possible. For this reason, Metro interprets and defines all oral and written notification deadlines associated with discharge violations, upset conditions, and unintentional bypass events to mean that a relevant Metro industrial pretreatment personnel receives the required information by the established deadline.

