

**City of Henderson, Nevada
Department of Utility Services**

Pretreatment Enforcement Response Plan



A Place To Call Home

TABLE OF CONTENTS

SECTION 1. INTRODUCTION; PURPOSE.....	1
SECTION 2. ENFORCEMENT GENERALLY	1
Informal Actions	2
Formal Actions.....	2
SECTION 3. ENFORCEMENT ACTION FLOW CHART	3
SECTION 4. RESPONSE TIMES FOR ENFORCEMENT ACTIONS	4
Initial Actions.....	4
Follow-up Actions	5
SECTION 5. ENFORCEMENT RESPONSIBILITIES	6
Pretreatment Inspector	6
Regulatory Program Manager/Supervisor	6
Utility Services Director or Designee	6
City Attorney	7
SECTION 6. FACTORS IN SELECTING THE APPROPRIATE RESPONSE.....	8
SECTION 7. INFORMAL ENFORCEMENT ACTIONS.....	11
Informal Notices	11
Notice of Violation	11
Letter of Explanation	11
Unsatisfactory, Incomplete or Failure to Submit LOE.....	11
Resampling Requirements for Effluent Violations.....	12
Increase of Sampling Requirements	12
Review Meeting.....	12
SECTION 8. FORMAL ENFORCEMENT ACTIONS	14
Notice to Show Cause.....	14
Administrative Orders.....	16
Consent Order	16
Cease and Desist Order.....	16
Discontinuance or Restriction of Water and/or Sewer Service	16
Civil Actions	19
Criminal Actions.....	19
SECTION 9. OVERVIEW OF GUIDE AND RESPONSES GENERALLY	21
Overview of the Enforcement Response Guide.....	21
Levels of Response	21
APPENDIX A (GENERAL FORM OF NOTICE TO SHOW CAUSE).....	23
APPENDIX B (ENFORCEMENT RESPONSE GUIDE)	25

SECTION 1. INTRODUCTION; PURPOSE

In accordance with 40 CFR 403.8(f)(5) and section 14.09.170.A of the Henderson Municipal Code (HMC) and to carry out the provisions of HMC Chapter 14.09, the City of Henderson (City) updated its Pretreatment Enforcement Response Plan (ERP) that was originally adopted on September 1, 1993. The ERP contains detailed procedures identifying how the City will investigate and respond to instances of industrial user noncompliance with pretreatment standards and requirements. The ERP is intended for use by City personnel to address enforcement actions for pretreatment violations. The ERP has the following additional purposes:

- To identify procedures and responsibilities to identify, document, track, and respond to noncompliance with pretreatment requirements.
- To describe the range of available enforcement actions the POTW will take in response to industrial user violations.
- To provide enforcement guidelines resulting in consistent, timely, and appropriate responses to violations.

The City reserves the right to update or revise the ERP at any time without public notice. The ERP was developed with assistance from the EPA manual *Guidance for Developing Control Authority Enforcement Response Plans* (September 1989).

Various terms and abbreviations defined in HMC Title 14 are used in the ERP and have the meanings ascribed to those terms and abbreviations whether or not initially capitalized in the ERP. This ERP has been updated and shall become effective August 9, 2018.

SECTION 2. ENFORCEMENT GENERALLY

All industrial users discharging non-domestic wastewater to the POTW are subject to the provisions of this ERP. This ERP does not preclude the City from taking any, all, or a combination of actions against a non-compliant industrial user.

In order to achieve a maximum degree of compliance by industrial users, the City uses a wide range of enforcement actions. The enforcement actions available to the City range from a telephone call to discontinuance of service and assessment of penalties. It should be recognized that intentional violations may constitute criminal violations of federal, state and/or City law, and under such circumstances, the Director may seek the assistance of EPA, the state and/or the City Attorney. Whenever the Director finds that any industrial user or significant industrial user (a) has violated or continues to violate any provision of HMC Chapter 14.09, an industrial wastewater discharge permit, or an order issued pursuant to HMC Chapter 14.09 or the ERP or (b) has violated or is violating any applicable prohibition, limitation, BMP standard or requirement in HMC Chapter 14.09, the Director or his or her designated representative, may initiate a formal or informal action, or combination thereof, as follows:

INFORMAL ACTIONS

- A Informal notice to industrial user (e.g., telephone call, site visit, followed up in writing).
- B Notice of Violation (NOV)
- C Automatic increase of industrial user self-monitoring for effluent violations.
- D Unannounced inspection and/or City sampling for effluent violations.
- E Review Meeting.

FORMAL ACTIONS

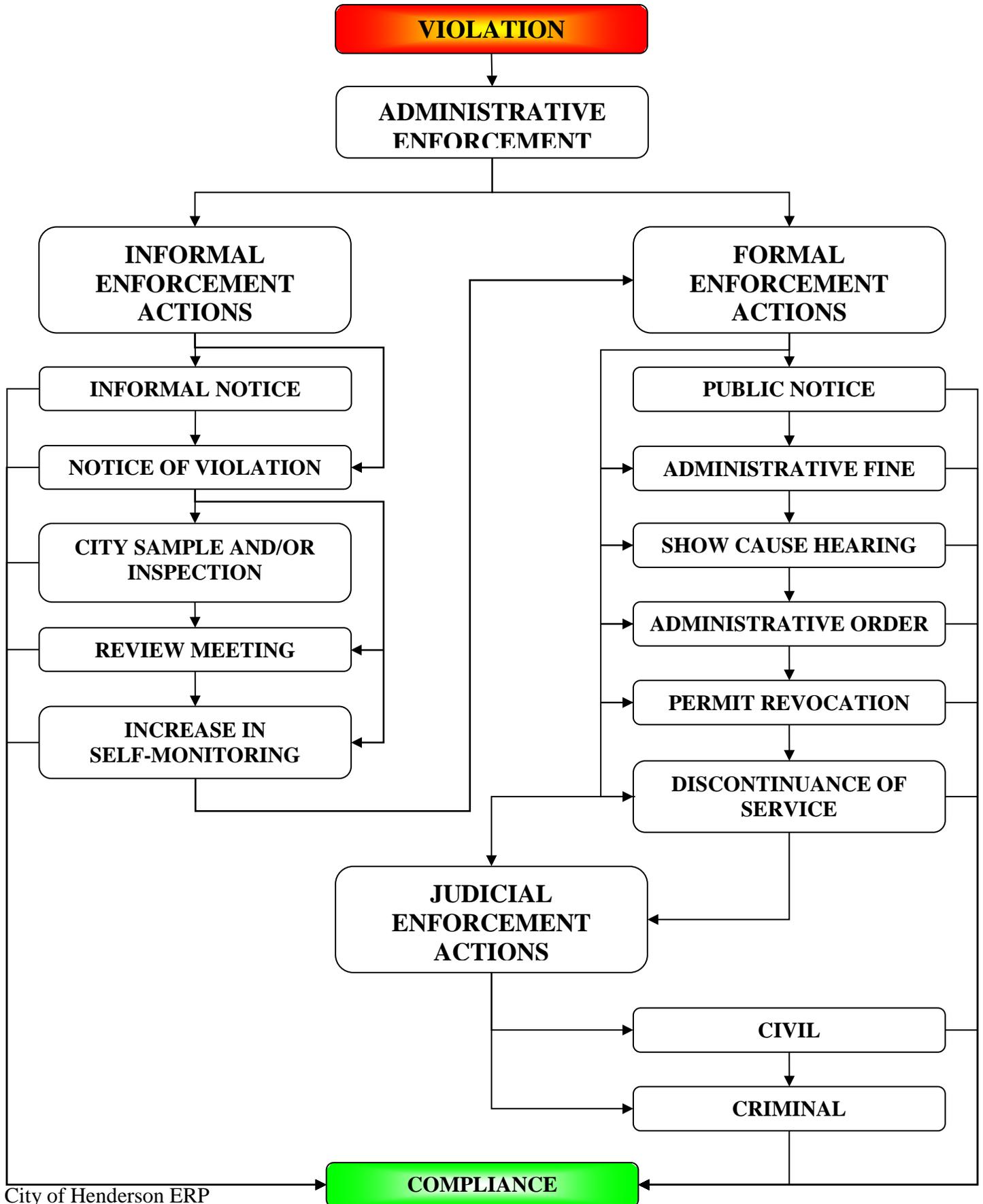
- A Notice to Show Cause.
- B Administrative Order.
- C Administrative Fine.
- D Civil action.
- E Criminal action.
- F Discontinuance or restriction of service.
- G Suspension or revocation of permit.
- H Public notice.

Each type of enforcement activity is discussed in sections 7 and 8 below. Generally, enforcement will begin with an informal action. However, depending on the severity and duration of the violation, enforcement may begin at any step.

All formal notices of enforcement actions will be sent by certified mail with return receipt requested, and copies will be maintained in the industrial user file. Certified mail will serve as proof that the industrial user received the notice.

At the direction of the Regulatory Program Manager/Supervisor, the enforcement action notices may be hand delivered in addition to or in lieu of sending the enforcement action by certified mail, return receipt requested. When a notice is hand delivered, the City will provide the industrial user with the original, and the industrial user's representative must sign, date, and identify his/her name and title on the copy which the City representative will take back to the office and place in the industrial user's file.

SECTION 3. ENFORCEMENT ACTION FLOW CHART



SECTION 4. RESPONSE TIMES FOR ENFORCEMENT ACTIONS

An enforcement action must be taken in a timely manner once a violation has been identified. Initial enforcement actions should be taken within five (5) City business days from the date a violation is first reported. In order to accomplish this, certain deadlines should be followed as set forth below. These deadlines are goals and every effort should be made to achieve them. Unless additional time is required to obtain internal City approvals, the City's initial enforcement response shall not exceed thirty (30) calendar days from the date the City has actual knowledge of the violation.

All compliance reports will be reviewed and an evaluation of compliance status made promptly upon receipt by the Pretreatment Unit. If after the evaluation one (1) or more enforcement actions are deemed necessary, the following time frames for initial enforcement should apply. If the violation is derived from an industrial user report, the five (5) City business-day time-period begins from the date the report is received. If a report is not received, the five (5) City business-day time-period begins on the seventh day after the report due date. If the violation is found through an inspection or some other means, the five (5) City-business-day-time period begins on the date of the City has actual knowledge of the violation.

INITIAL ACTIONS:

- (1) A phone call within five (5) City business days;
- (2) NOV issued within five (5) City business days;
- (3) Unannounced inspection and/or City sampling;
- (4) Requirement for automatic increase in industrial user self-monitoring sent certified mail or hand delivered within fourteen (14) calendar days;
- (5) Notices of review meeting sent certified mail or hand delivered within thirty (30) calendar days;
- (6) Industrial user required to provide report and/or perform corrective action/task; and/or
- (7) City issues industrial user an administrative fine in accordance with HMC Title 14.

After the initial enforcement action has been taken, it is essential that follow-up action is taken to determine the effectiveness of the initial enforcement action. If the initial enforcement action brought about the desired result, then the follow-up action may be nothing more than a confirmation letter. However, if additional enforcement is necessary, then certain deadlines will be met in issuing the follow-up action. The response time begins from the compliance deadline specified in the initial action. For example, if the NOV required a written response by the seventh day following the initial enforcement action, a follow-up action would be required within seven (7) calendar days following that date.

FOLLOW-UP ACTIONS:

- (1) Confirmatory email or letter sent certified mail or hand delivered within five (5) City business days;
- (2) Notice of review meeting sent certified mail or hand delivered within fourteen (14) calendar days;
- (3) Notice to Show Cause sent certified mail or hand delivered within fourteen (14) calendar days;
- (4) Administrative order sent certified mail or hand delivered within fourteen (14) calendar days;
- (5) Contact City Attorney for possible civil lawsuit within thirty (30) calendar days;
- (6) Contact City Attorney for possible criminal lawsuit within thirty (30) calendar days;
- (7) Initiate discontinuance of service within fourteen (14) calendar days to be issued by the Director;
- (8) Initiate revocation of permit within fourteen (14) calendar days to be issued by the Director;
- (9) Issue administrative fine in accordance with HMC Title 14; and/or
- (10) Public notice published in accordance with HMC section 14.09.170.

SECTION 5. ENFORCEMENT RESPONSIBILITIES

The nature of enforcement responsibilities range from requiring preventative measures to assessing whether more aggressive enforcement is appropriate. The following list identifies the areas of responsibility of City staff:

PRETREATMENT INSPECTOR (the “Inspector”):

- (1) Determine compliance status
- (2) Recommend and develop enforcement response
- (3) Inform Regulatory Program Manager/Supervisor of violations and recommended enforcement response
- (4) Develop compliance monitoring schedules
- (5) Track enforcement response times
- (6) Copy recommended formal enforcement action to the Regulatory Program Manager/Supervisor

REGULATORY PROGRAM MANAGER/SUPERVISOR:

- (1) Review enforcement response
- (2) Conduct review meetings
- (3) Approve informal enforcement actions, as appropriate
- (4) Approve compliance sampling schedules, as appropriate
- (5) Supervise monitoring activities of the Pretreatment Unit
- (6) Prepare Administrative Orders and Compliance Schedules

UTILITY SERVICES DIRECTOR OR DESIGNEE:

- (1) Approve formal enforcement actions, as appropriate
- (2) Provide consistency of program application
- (3) Conduct Show Cause Hearings
- (4) Issue Administrative Orders and Compliance Schedules
- (5) Copy proposed enforcement action to City Manager for review
- (6) Authorize discontinuance of service
- (7) Refer to City Attorney for possible legal action.
- (8) Revoke permit

CITY ATTORNEY:

- (1) Advise both technical and management staff on enforcement matter
- (2) Attend Show Cause Hearings
- (3) Manage civil litigation on behalf of the City
- (4) Manage criminal trials on behalf of the City

SECTION 6. FACTORS IN SELECTING THE APPROPRIATE RESPONSE

Industrial user violations may range from minor violations to significant violations. A violation occurs whenever an industrial user exceeds an applicable effluent limit, fails to meet the deadlines and conditions for reporting, monitoring, or treatment, or does not comply with any pretreatment requirement or pretreatment standard. Each instance of noncompliance is a violation and as such will be reviewed and separately addressed, as determined by City pretreatment staff. However, selection of the appropriate enforcement response will relate to whether the violation is significant or of less significant form and other factors such as duration of the violation, compliance history, good faith of the industrial user, and the harm caused by the violation. For each type of violation in the Guide in Appendix B, a range of responses is shown.

The Inspector should select the appropriate response after considering various factors discussed below.

Magnitude of the Violation

Generally, an isolated instance of noncompliance can be met with an enforcement response listed in the Guide. However, because even an isolated violation could threaten public health and the environment, damage public and private property, or threaten the integrity of the City's pretreatment program, the enforcement response to this type of violation might be escalated to:

- Mitigate the violation quickly;
- Prevent a reoccurrence of violation(s);
- Provide an appropriate level of response; and/or
- Provide for cost recovery as appropriate.

Duration of the Violation and Compliance History of the Industrial User

The Inspector should review the permitted facility's history. Violations (regardless of severity) that continue over prolonged periods should subject the industrial user to escalated enforcement actions. The City's response to these situations should be designed to prevent extended periods of noncompliance from recurring.

The Inspector should also consider the compliance history of the industrial user and/or the industrial user's facility at issue as well as the effectiveness of the enforcement response that was used for any previous violation. If a pattern of recurring violations for the same parameter is noted, then an escalated enforcement action may be warranted. Details for the increased enforcement action should be documented. More aggressive enforcement actions may be taken against industrial users whose facilities frequently exceed numerical pretreatment standards, as compared to those that report isolated violations (unless the magnitude of the violation requires an escalated response). Informal review meetings or a Notice of Violation should seek specific explanations of the causes of frequent exceedances. If inadequate operating practices are found to be the cause, the Inspector will seek specific commitments and deadlines to improve operating practices. If additional treatment is required, an enforceable compliance schedule shall be issued to the industrial user.

Apparent Good Faith of Responsible Industrial User Personnel

The industrial user's "good faith" in correcting its noncompliance is a factor in determining which enforcement action to take. "Good faith" is generally the industrial user's honest intention to remedy its noncompliance coupled with actions that give support to this intention. An industrial user can demonstrate good faith by responding promptly to requests from the City, consistently complying with permit conditions and reporting requirements, aggressively investigating and correcting violations, and demonstrating a willingness to invest the necessary resources to achieve compliance. However, good faith does not eliminate the necessity of an enforcement action (which documents the event and respective response and corrective actions).

If industrial user personnel are attempting in good faith to comply with pretreatment requirements, enforcement actions will be conducted on a more cooperative level than if industrial user personnel are not making good faith compliance efforts. Prompt, vigorous, and possibly costly pollution control measures must be initiated and completed by the industrial user as promptly as possible.

Effect of the Violation on the Receiving Water

One of the primary objectives of the City's pretreatment program is to prevent pollutants from "passing through" the POTW and entering the receiving waters. Consequently, any violation that results in environmental harm should be met with an escalated enforcement response.

Environmental harm will be presumed whenever an industrial user discharges a pollutant into the POTW that:

- (a) Passes through the POTW; or
- (b) Causes a violation of the POTW's NPDES permit limits; or
- (c) Interferes with the City's treatment plant processes; or
- (d) Has a toxic effect on receiving waters.

A minimum response to these types of violations would be an Administrative Order and referral to the City Attorney's Office. In addition, the City's response should ensure the recovery from the industrial user of any City corrective action and of any administrative fines and/or penalties paid by the City in connection with its NPDES permit. Termination of service may also be considered for repeat violations.

Effect of the Violation on the POTW

Industrial user noncompliance might result in negative impacts on the POTW's operations or personnel. These violations can result in increased treatment cost, upsets to treatment processes, and/or interference/harm to POTW personnel or equipment. A minimum response to these types of violations should ensure the recovery from the industrial of any costs by the City to correct the problem. Such violations will be addressed through formal enforcement action and penalties to ensure that adequate treatment and compliance is achieved promptly. In some cases, injunctive measures will also be appropriate.

pH Violations

The City may exercise enforcement discretion when pH violations are brief in duration or otherwise do not have the potential for causing harm to the POTW. All violations will be identified, documented, and recorded. These types of violations will be considered when reviewing the overall compliance history of an industrial user.

Failure to Comply with Deadlines or Milestones

In determining which enforcement action to take, the City will factor in milestones missed by the industrial user, industrial user's failure to submit a progress report(s) on time or in compliance with reporting requirements, and industrial user's failure to meet any other required deadlines. Postmark dates are accepted as meeting required reporting dates unless otherwise specified by federal, state, or City policy, regulation, City order, or other written requirement.

SECTION 7. INFORMAL ENFORCEMENT ACTIONS

An informal enforcement action is not a prerequisite to taking a formal enforcement action or to discontinuing sewer service.

INFORMAL NOTICES

Informal notices may consist of a telephone call, email, letter, automatic increase of industrial user self-monitoring for effluent violations, unannounced inspection, City sampling for effluent violations, or a review meeting. The function of informal notices is to notify the industrial user of a less significant violation (*e.g.*, a report not having any effluent violations submitted a few days late) and to seek an explanation and/or notify the “violator” that subsequent violations of the same type will cause escalated enforcement. Any type of informal notice use will be documented and placed in the industrial user’s file.

NOTICE OF VIOLATION (NOV)

The Notice of Violation (NOV) is a written notification to the industrial user that the industrial user has violated, or continues to violate, a provision in HMC chapter 14.09 (such as a pretreatment standard or pretreatment requirement) or an order issued thereunder. The NOV may require the industrial user to correct and explain the noncompliance and require specific corrective actions and schedules to which the City expects the industrial user to adhere. The City may pursue additional enforcement action if corrective actions are not accomplished satisfactorily or as scheduled. The industrial user’s compliance with the requirements of the NOV does not excuse prior violations nor prevent collection of penalties or damages at a later time. Nothing shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a NOV. Administrative fines may be assessed at this level of enforcement. If an industrial user self reports, the City has the discretion to not issue an NOV and will place that report in the industrial user’s file.

LETTER OF EXPLANATION (LOE)

In response to the NOV or after self-reporting, for all instances of noncompliance that occurred during the monitoring period, and by the date specified in the NOV or City’s written response to the industrial user regarding its self report, the industrial user shall submit to City a Letter of Explanation that describes the violation(s), explains the reasons for the violation(s), and provides a plan for the satisfactory correction of those violations and prevention of violation(s) from reoccurring, including specific actions. Submission of such a plan in no way relieves the industrial user of liability for any violations occurring before or after receipt of the NOV.

UNSATISFACTORY, INCOMPLETE OR FAILURE TO SUBMIT LOE

Upon review of an LOE, the City may determine the response to be untimely, unsatisfactory or incomplete. In that event or if the industrial user fails to submit an LOE, City pretreatment staff may recommend further action, such as requiring the industrial user to provide complete information, suspending or revoking the industrial user’s permit, ordering the industrial user to

cease discharge, and/or seeking penalties and administrative fines in accordance with HMC Title 14.

RESAMPLING REQUIREMENTS FOR EFFLUENT VIOLATIONS

If sampling performed by an industrial user indicates a violation, the industrial user shall notify the City within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City within thirty (30) days after becoming aware of the violation. The industrial user may not be required to resample if the following occurs:

1. The City performs sampling at the industrial user's facility at a frequency of at least once per month; or
2. The City performs sampling at the industrial user's facility between the time when the industrial user performs its initial sampling and the time when the industrial user receives the results of this sampling. It is the sole responsibility of the industrial user to verify if the City has performed this sampling.

INCREASE OF SAMPLING REQUIREMENTS

The City may modify an industrial user's monitoring requirement in response to a known or suspected violation discovered as a result of a self-monitoring report, routine sampling visit or inspection, a public complaint, any discharge of prohibited materials, violation of the City's NPDES permit requirements, POTW operating difficulties caused by the industrial user, unusual influent conditions observed at the POTW, or emergency situations (e.g., plant upsets, sewer line blockages, fires, explosions, etc.).

REVIEW MEETING

If a telephone call, self report, or NOV does not produce compliance or an adequate explanation for the noncompliance, a compliance status Review Meeting between City pretreatment staff and the industrial user may further compliance efforts. The purpose of this meeting is to stress the importance of correcting situations that may lead to Significant Noncompliance (SNC) or to other elevated enforcement actions. Some examples of when a Review Meeting is appropriate include:

- (1) Waste streams are diluted in lieu of treatment (first violation);
- (2) Failure to report additional monitoring (first violation);
- (3) Inadequate record keeping (first violation);
- (4) Improper sampling (first violation);
- (5) Missed milestone in an enforceable compliance schedule (first violation); or
- (6) A required report is less than thirty (30) calendar days late.

At the Review Meeting, the industrial user shall be required to respond to and provide an explanation of the violations and provide a plan for the satisfactory correction of those violations

and prevention of violation(s) from reoccurring, including specific actions. One or more of the following may also be present at the meeting: Pretreatment Inspector; Regulatory Program Manager/Supervisor; the Director or Director's designee; and/or, a representative from the City Attorney's Office.

During the Review Meeting, the following events occur:

- (1) All attendees sign an attendance sheet (with a copy of attendance sheet to be provided to industrial user);
- (2) A complete introduction (names, titles and telephone numbers) of all persons present;
- (3) Discussion of the background and history of the City's pretreatment program and the applicable federal requirements;
- (4) Review of the City's enforcement policies and practices and reason for the meeting;
- (5) Explanation of the City's authority for seeking penalties;
- (6) Review of the industrial user's violations and the potential penalties associated with them;
- (7) Review of the industrial user's corrective actions, if any; and
- (8) Development of a compliance plan and schedule for the industrial user to correct the violation(s) and prevent violations from reoccurring, as appropriate.

Follow-up to the Review Meeting includes the following:

- (1) City pretreatment staff prepares a letter describing the discussion and results of the Review Meeting;
- (2) Follow-up inspections of the industrial user's facility(ies) and review meetings may be scheduled following compliance schedule milestones to verify compliance;
- (3) If no progress is made within thirty (30) calendar days of the Review Meeting, or if compliance with each milestone in the compliance plan and schedule is not achieved in accordance with that plan and by each required deadline, then escalated enforcement actions (such as a Show Cause Hearing or civil action) may be initiated against the industrial user; and
- (4) The pretreatment staff will record all informal contacts, notices, and meetings with representatives of the industrial user.

SECTION 8. FORMAL ENFORCEMENT ACTIONS

NOTICE TO SHOW CAUSE

As a result of noncompliance it may be necessary to consider issuing a Notice to Show Cause to the industrial user prior to taking other formal enforcement action and/or discontinuing service. The form to generally be used to issue notices to show cause is contained in Appendix A and will be sent by certified mail with return receipt requested or hand delivered to the industrial user, specifying the date, time and place of the Show Cause Hearing and providing a brief explanations of the violations and enforcement actions intended to be taken by the City. A Show Cause Hearing is generally appropriate when more aggressive enforcement actions are required.

Examples of when a Show Cause Hearing may be held:

- (1) A pattern of effluent violations has occurred within a one hundred eighty (180) calendar day period;
- (2) Discharge not covered under permit:
 - a. Failure to comply continues after notice by the POTW; or
 - b. Discharge continues after expiration, discontinuance or revocation of permit;
- (3) Reporting violation:
 - a. Multiple reports not submitted by the due date within a 180-day calendar period;
 - b. Any single report thirty (30) calendar days or more late;
 - c. Failure to correct report(s) with missing or incomplete information; or
 - d. Failure to report spill or changed discharge;
- (4) Failure to monitor correctly;
- (5) Improper sampling;
- (6) Missed milestone(s) in an enforceable compliance schedule;
- (7) Failure to start construction, complete construction, or achieve compliance within ninety (90) calendar days of the date specified in an enforceable order;
- (8) Waste streams diluted in lieu of treatment;
- (9) Failure to mitigate noncompliance or halt production, aware of noncompliance in progress;
- (10) Failure to comply with a requirement to cease discharge;
- (11) Failure to properly operate and maintain pretreatment facility, recurring;
- (12) Failure to provide access to facility;
- (13) Inadequate record keeping;
- (14) Failure to report additional monitoring; or

- (15) Significant noncompliance.

During the Show Cause Hearing, the industrial user will be presented with the facts that the City pretreatment staff believes demonstrate noncompliance and asked to “show cause” as to why the City should not seek monetary penalties or initiate additional enforcement actions, which may include additional formal actions and or discontinuation of sewer service.

During the Show Cause Hearing, the following events occur:

- (9) All attendees sign an attendance sheet (with a copy of attendance sheet to be provided to industrial user);
- (1) A complete introduction (names, titles and telephone numbers) of all persons present;
- (2) Discussion of the background and history of the City’s pretreatment program and the applicable federal requirements;
- (3) Review the City’s enforcement policies and practices and reason for the meeting;
- (4) Explanation of the City’s authority for seeking penalties;
- (5) Review the industrial user’s violations and the potential penalties associated with them;
- (6) Review of the industrial user’s corrective actions, if any;
- (7) Attempt to reach an agreement with the industrial user on the penalty amount and the written vehicle (such as a Consent Decree of Pretreatment Settlement Agreement) to be pursued that finalizes the matter; and
- (8) Development of a compliance plan and schedule for the industrial user to correct the violation(s) and prevent violations from reoccurring, as appropriate.

The following activities may occur after the Show Cause Hearing:

- (1) The City pretreatment staff will follow up at prescribed intervals (milestones), as specified in the compliance schedule to verify conformance and must document the activity. If the industrial user fails to comply with the terms of the compliance plan and/or settlement documents, then the City may take additional enforcement action as determined by the City.
- (2) The City pretreatment staff will record all informal contacts, notices, and meetings with representatives of the industrial user. Letters or emails to the industrial user may be used to accomplish this.

NOTE: A SHOW CAUSE HEARING IS NOT PREREQUISITE TO TAKING OTHER FORMAL ENFORCEMENT ACTIONS OR TO DISCONTINUING SEWER SERVICE.

ADMINISTRATIVE ORDERS (AO)

The City may issue an Administrative Order (AO), which may contain compliance schedules that require compliance with requirements in HMC Title 14, such as pretreatment standards or pretreatment requirements. AOs will generally be used to place an industrial user on an enforceable compliance schedule so the user will comply with pretreatment standards (e.g., install treatment, operate and maintain facilities, etc.).

CONSENT ORDER

The City may enter into a Consent Order, assurances of voluntary compliance, or other similar documents establishing an agreement with any industrial user responsible for noncompliance. Such documents shall include specific actions to be taken by the industrial user to correct the noncompliance within a time period specified by the document. A Consent Order may include penalties, supplemental environmental projects, or other conditions and requirements as agreed to by the City and the industrial user. A Consent Order shall have the same force and effect as an administrative order and shall be judicially enforceable.

CEASE AND DESIST ORDER

When the Director finds that an industrial user has violated, or continues to violate, any provision of HMC Chapter 14.09, a permit, an order issued pursuant to HMC Chapter 14.09, or that the industrial user's past violations are likely to recur, the Director may issue a Cease and Desist Order to the industrial user directing it to cease and desist all such violations and directing the industrial user to:

- Immediately comply with all requirements; and
- Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a Cease and Desist Order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

ADMINISTRATIVE FINES

In accordance with HMC Title 14, the City has the authority to fine an industrial user that has violated, or continues to violate, any provision of HMC Chapter 14.09, an industrial wastewater discharge permit or order issued under HMC Chapter 14.09, or any other pretreatment standard or pretreatment requirement in an amount not to exceed one thousand two hundred dollars (\$1,200) on a per-violation, per day basis and may do so in accordance with HMC Chapter 14.09 and Table 14.09.170.C.6 below.

Table 14.09.170.C.6 Administrative Fines			
	First Violation	Second Violation	Third and Subsequent Violation
Severity Level: Level 1	\$100.00	\$300.00	\$500.00
Severity Level: Level 2	\$200.00	\$600.00	\$1,000.00
Severity Level: Level 3	\$300.00	\$900.00	\$1,200.00
Severity Level: Level 4	\$1,200.00		

When assessing an administrative fine for a violation of HMC Chapter 14.09, the City assigns a severity level, ranging from Level 1 for those of more than minor concern to Level 4 for the most significant, taking into account various factors such as duration of the violation, compliance history, good faith of the industrial user, and the harm caused by the violation.

DISCONTINUANCE OR RESTRICTION OF WATER AND/OR SEWER SERVICE

In accordance with HMC Title 14, the City has the authority to immediately halt any actual or threatened discharge to the POTW that may represent an endangerment to public health, the environment, or the POTW. Additionally, the City can deny or condition new or increased discharges by an industrial user or changes in the nature of pollutants discharged by the industrial user if the discharge does not meet applicable requirements in HMC Title 14 or will cause the City to violate its NPDES permit.

Discontinuance or restriction of water and/or sewer service is an appropriate response to industries which have not responded adequately to previous enforcement actions. Unlike civil and criminal proceedings, discontinuance of water and/or sewer service is an administrative response which can be implemented directly by the City in accordance with HMC Title 14.

Without sewer service, an industry may have to obtain an NPDES permit to discharge wastes directly to the waters of the United States and thus be required to install even more treatment facilities to achieve direct discharge limitations.

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

- (1) Discharge(s) not covered under permit which result in a violation of the City's NPDES permit or in a dangerous situation threatening human health, the environment, or the POTW.
- (2) Discharge(s) that exceed City or categorical discharge limits or result in damage to the environment or the POTW.
- (3) Slug load(s) resulting in interference, pass through or damage to human health, the environment, or the POTW.
- (4) Recurring slug discharge(s).
- (5) Failure of the industrial user to notify the City of effluent limit violations or slug discharges which result in human health, environmental or POTW damage.
- (6) Failure of the industrial user to sample, monitor, or report as required pursuant to an enforcement action, including any administrative order.
- (7) Failure of the industrial user to install required monitoring equipment required pursuant to an enforcement action, including any administrative order.
- (8) Violation of or failure to comply with a permit condition, violation of or failure to comply with a requirement in an administrative order, or failure to comply with a significant requirement that results from an enforcement action, accompanied by evidence of negligence or intent.

The discontinuance or restriction of the industrial user's water and/or sewer service is initiated and carried out as follows:

- (1) Once the Director approves discontinuance of service, the City will provide the industrial user written notice of discontinuance and an opportunity to appear before the Regulatory Program Manager/Supervisor to discuss the matter at the date, time, and location specified in that written notice. If the industrial user does not appear at that meeting or does appear but does not agree to a compliance plan and schedule to correct the violation(s), the City may effect discontinuance of the industrial user's water and/or sewer service the next calendar day after that meeting. If the industrial user does appear and thereafter does not comply with the compliance plan and schedule established at that meeting, the City may effect discontinuance of the industrial user's water and/or sewer service the next calendar day after the industrial user received City's written notice of the failure to so comply. Instructions for appeal of discontinuance of service are specified in HMC Chapter 14.09.
- (2) If the industrial user is determined to have an actual or threatened discharge which will cause interference with the POTW or will present an imminent endangerment to the health or welfare of any person and/or the environment, the Regulatory Program Manager/Supervisor may promptly plug or disconnect any sewer service connection to the POTW at industrial user's expense and exercise any other remedies available to the City under HMC Chapter 14.09.
- (3) Service will be restored only after compliance has been shown to the satisfaction of the Director, the threatened discharges are removed, and industrial user has

paid the City all amounts assessed against the industrial user in accordance with HMC Title 14.

CIVIL ACTIONS

The City has the authority to file a civil suit against alleged violators of HMC chapter 14.09 and seek injunctive relief, compliance, civil penalties and/or damages.

Civil litigation is an appropriate enforcement response in three (3) general situations:

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

In a civil action for injunctive relief, the City pretreatment staff collects pertinent information sufficient to support the violations at issue and turns the information over to the City Attorney's Office.

The City may also bring a civil action to obtain compliance, civil penalties and to recover damages. The Inspector and other City pretreatment staff involved in an enforcement case requiring filing such an action should prepare the information as required by the City Attorney. The City Attorney's Office shall be consulted before, during and after completion of the investigation.

CRIMINAL ACTIONS

The City Attorney is authorized to seek criminal judicial compliance in accordance with the HMC.

City pretreatment staff will consider several factors when determining which violations will be referred to the City Attorney for possible criminal actions, including:

- (1) The willfulness of the violations;
- (2) Knowledge of the violations;
- (3) Nature and seriousness of the offense;
- (4) Need for prevention;
- (5) History of noncompliance of the violator;
- (6) Falsification of data;
- (7) Tampering with results or equipment;
- (8) Failure to provide notice of slug discharges;
- (9) Willful violation of the discharge agreements or an administrative order;
- (10) Adequacy of the evidence against the violator; and/or

(11) Other remedies available through a civil action or enforcement actions.

In a criminal action, a court may assess a sentence containing fines and/or imprisonment. Many cases of willful noncompliance (e.g., late night dumping of toxic substances into the collection system) could seriously damage the sewerage works and the environment. Such acts shall be pursued aggressively when adequate evidence of such violations is found. In considering the development of criminal cases, the City pretreatment staff should work closely with the City Attorney's Office to obtain guidance.

NOTE: THE DECISION TO PROSECUTE IS SOLELY WITHIN THE DISCRETION OF THE CITY ATTORNEY OR STATE ATTORNEY GENERAL'S OFFICE.

SECTION 9. OVERVIEW OF GUIDE AND RESPONSES GENERALLY

OVERVIEW OF THE ENFORCEMENT RESPONSE GUIDE (GUIDE)

The City of Henderson has prepared an Enforcement Response Guide using guidance in part from the *EPA Pretreatment Compliance Monitoring and Enforcement Guidance* (July, 1986); *U.S.E.P.A. Enforcement Response Plan Workshops, Milpitas, CA* (August 10, 1990); *Guidance for Developing Control Authority Enforcement Response Plans* (September 1989). The Guide in Appendix B to the ERP is intended to serve three (3) main purposes:

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

The Guide is also a quick ready-reference tool to address violations. The City pretreatment staff shall use the Guide to determine what enforcement actions are appropriate given varying elements of noncompliance. The Guide provides circumstances of noncompliance and outlines the ranges of enforcement actions appropriate to the noncompliance response. The basic steps for using the Guide are:

- (1) Assess the appropriateness of the recommended response(s). Offenders or those demonstrating good faith may merit a more lenient response; repeat offenders or those demonstrating willful misconduct require a more stringent response.
- (2) Document the rationale for selecting the particular enforcement response.
- (3) Apply the enforcement response to the industrial user.
- (4) Specify corrective action or the response required from the industrial user.
- (5) Document industrial user responses and resolution of noncompliance.
- (6) Follow-up with escalated enforcement action if the industrial user's response is not received or if violations continue.

When making a determination of the level of the enforcement response, City pretreatment staff will consider the degree of variance from the requirements in HMC chapter 14.09, the duration of the violation(s), previous enforcement actions taken against the violator, and the deterrent effect of the response on similar facilities in the regulated community.

LEVELS OF RESPONSE

For all violations, the Inspector must examine the violation and determine the appropriate response. As appropriate, the City will require the industrial user to explain what actions it has taken to correct the violation(s) and prevent violation(s) from reoccurring. The ERP includes a range of informal and formal responses for violations.

The informal enforcement response can be an inspection, telephone call, informal meeting, automatic resampling by industrial users, notice of violation, or can require the industrial user to

take required action within specific time frames. The formal enforcement response may consist of the following:

- (1) Administrative Order
- (2) Notice to Show Cause
- (3) Administrative Fines
- (4) Consent Order
- (5) Cease & Desist Order
- (6) Civil Action.
- (7) Criminal Actions.
- (8) Discontinuance or restriction of service.
- (9) Suspension or revocation of permit.

The terms “significant” and “insignificant” that characterize violations are used in the Guide to describe violations of effluent limits, sampling, monitoring, and reporting requirements. Significant violations are those that exceed the limits frequently and/or by a large quantity (e.g., exceed the technical review criteria contained within 40 CFR 403.8(f) (2) (vii) (B)); impede the determination of compliance status; have the potential to cause or may have actually caused adverse environmental effects, health problems, or interfered with the POTW.

APPENDIX A

GENERAL FORM OF NOTICE TO SHOW CAUSE

Via <<insert Certified Mail, Return Receipt Requested OR Hand Delivery>> and Email

XXXXXXX, 20XX

<<insert name>>
<<insert title>>
<<insert company name>>
<<insert address>>
<<insert email address>>

Subject: Notice to Show Cause: <<insert user's full legal name>>
<<insert address of user's facility>>
Waste Discharge Permit No. <<insert number>>

Dear <<insert name>>:

<<insert narrative of what happened, including date(s), how occurrence violated parameter and/or permit>>.

Pursuant to Henderson Municipal Code (HMC) 14.09, the City has the right to initiate enforcement actions for any and all violations of <<insert>>. Enforcement action(s) will be consistent with the City's Pretreatment enforcement response plan (ERP). As a result of <<insert>>, the City is issuing this Notice to Show Cause to <<insert user's full legal name OR shortened version of that name defined above>> before taking further enforcement action.

The City will present facts at the hearing that demonstrate <<insert user's full legal name OR shortened version of that name defined above>>'s noncompliance of <<insert>> and will review enforcement policies identified in the City's ERP. <<insert user's full legal name OR shortened version of that name defined above>> will be given an opportunity to demonstrate why the City should not seek monetary, civil, and/or criminal penalties, discontinuance of service, or initiate additional enforcement actions.

The Show Cause hearing will be held on XXXXXXX, 20XX at XX:00 XX.M – XX:00 v.M. at the address and conference room listed below:

City of Henderson
City Hall
240 Water Street
Henderson, Nevada 89015
<<insert name>> Conference Room – <<insert number>> Floor

Please do not hesitate to contact me at <<insert telephone number>> if you have questions concerning this matter.

Sincerely,

<<insert name>>

<<insert title>>

cc: <<insert name, insert title>>

APPENDIX B

ENFORCEMENT RESPONSE GUIDE

[Attached]

CITY OF HENDERSON ENFORCEMENT RESPONSE GUIDE (“GUIDE”)

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
I. UNAUTHORIZED DISCHARGE			
A. Unpermitted discharge	1) IU unaware of requirement; no harm to POTW/environment	NOV with permit Application form	I
	2) IU unaware of requirement; harm to POTW/environment	Show Cause	U
		AO	U
		Administrative Fine	U
		Civil Action	U, A
	3) Failure to comply continues after notice by the POTW	Show Cause	U
		Administrative Fine	U
		Civil Action	U, A
		Criminal Action	U, A
		Terminate Service	U
Revoke Permit		U	
B. Nonpermitted discharge (failure to renew)	1) Permit expired; no application	Show Cause	U
		Civil Action	U, A
		Criminal Action	U, A
		Terminate Service	U
		Revoke Permit	U

CITY OF HENDERSON ENFORCEMENT RESPONSE GUIDE (“GUIDE”)

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL	
II. PERMIT LIMIT VIOLATION				
A. Exceedance of local or federal standards (permit limit)	1) Isolated <u>AND</u> no harm	NOV	I	
		Automatic IU resampling	I	
		Unannounced inspection	I, S	
		Unannounced City sampling	I, S	
	2) Recurring violations within a 90 calendar day period <u>OR</u> harm to POTW or environment	In addition to the above		
		Show Cause	S, U	
		AO	U	
		Administrative Fine	U	
		Civil Action	U, A	
		Criminal Action	U, A	
Terminate Service	U			
Revoke Permit	U			

CITY OF HENDERSON ENFORCEMENT RESPONSE GUIDE (“GUIDE”)

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
III. MONITORING AND REPORTING VIOLATIONS			
A. Reporting violation	1) Report is improperly signed or certified.	NOV	I
	2) Report is improperly signed or certified after notice by city	Show Cause Hearing	I, U
		AO	U
	3) Late Reporting	NOV	I
	4) Report 30 calendar days or more late	Show Cause Hearing	U
		Civil Action	U, A
	5) Failure to report spill or changed discharge; IU unaware of requirement	Phone Call; NOV	I
	6) Failure to report spill or changed discharge; IU aware of requirement	Show Cause Hearing	I, U
		AO	U
		Administrative Fine	U
		Civil Action	U, A
	7) Repeated failure to report spills	Show Cause	I, U
		Civil Action	U, A
		Terminate Service	U
Revoke Permit		U	
8) Falsification	Criminal Action	U, A	
	Terminate Service	U	
	Revoke Permit	U	
9) Missing or incomplete information	NOV	I	
10) Failure to correct report with missing or incomplete information	Show Cause Hearing	U	
	AO	U	
	Administrative Fine	U	
	Civil Action	U, A	
B. Failure to monitor correctly	1) Failure to monitor pollutants as required by permit	NOV	I
		AO	U
	2) Recurring failure to monitor	Show Cause Hearing	U

CITY OF HENDERSON ENFORCEMENT RESPONSE GUIDE (“GUIDE”)

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
		Civil Action	U, A
C. Improper sampling	1) Evidence of intent	Civil Action	U, A
		Criminal Action	U, A
		Administrative Fine	U
		Terminate Service	U
		Revoke Permit	U
D. Enforceable compliance schedules	1) Missed milestone	NOV	I
		Review Meeting	I
		AO	U
	2) Recurring violation or violation of schedule in AO	Show Cause	U
		Administrative Fine	U
		Civil Action	U, A
		Criminal Action	U, A
		Terminate Service	U
	3) Failure to start construction, complete construction, or achieve compliance within 90 days of the date specified in an enforceable order	Revoke Permit	U
		Show Cause	U
		Administrative Fine	U
		Civil Action	U, A
		Terminate Service	U
		Revoke Permit	U

CITY OF HENDERSON ENFORCEMENT RESPONSE GUIDE (“GUIDE”)

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
IV. OTHER PERMIT VIOLATIONS			
A. Wastestreams are diluted in lieu of treatment	1) Initial violation	Review Meeting	I
		AO	U
	2) Recurring	Show Cause Hearing	S, U
		AO	U
		Administrative Fine	U
		Civil Action	U, A
		Terminate Service	U
Revoke Permit	U		
B. Failure to mitigate noncompliance	1) Failure to comply with a requirement to cease discharge	Show Cause Hearing	S, U
		AO	U
		Administrative Fine	U
		Civil Action	U, A
C. Failure to properly operate and maintain pretreatment facility	1) Initial Violation	NOV	I
		Review Meeting	I
	2) Recurring.	Show Cause Hearing	S, U
		AO	U
		Administrative Fine	U
		Civil Action	U, A
		Terminate Service	U
Revoke Permit	U		

CITY OF HENDERSON ENFORCEMENT RESPONSE GUIDE (“GUIDE”)

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
V. VIOLATIONS DETECTED DURING SITE VISITS			
A. Entry Denial	1) Entry denied or consent withdrawn; copies of records denied	Obtain Warrant	A
		Criminal Action	U, A
B. Failure to provide free access	1) Initial violation	NOV and AO	I, S
		Administrative Fine	U
		Show Cause Hearing	S, U
C. Inadequate record keeping	1) Inspector finds files incomplete or missing; initial violation	NOV	I
		Review Meeting	I
	2) Recurring, after prior notice to remedy	Show Cause Hearing	S, U
		AO	U
D. Failure to report	1) Inspector finds additional files; initial violation	Phone call; NOV	I
		Review Meeting	I
	2) Recurring, after prior notice to remedy	Review Meeting	I
		Show Cause Hearing	S, U
		AO	U
		Administrative Fine	U

CITY OF HENDERSON ENFORCMENT RESPONSE GUIDE (“GUIDE”)

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
VI. SIGNIFICANT NONCOMPLIANCE			
A. Chronic violation of wastewater discharge limits	Defined here as those in which sixty-six percent or more of all of the measurements taken during a six month period exceed (by any magnitude) the daily maximum limit for the same pollutant parameter.	Show Cause	S, U
		Administrative Fine	U
		Civil Action	U, A
		Criminal Action	U, A
		Terminate Service	U
		Revoke Permit	U
		Newspaper Publication (required)	S
B. Technical review criteria (TRC) violations	Defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six month period equal or exceed the product of the daily maximum limit or average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats oil & grease, and 1.2 for all other pollutants except pH).	Show Cause	S, U
		Administrative Fine	U
		Civil Action	U, A
		Criminal Action	U, A
		Terminate Service	U
		Revoke Permit	U
		Newspaper Publication (required)	S
C. Any other violation of a pretreatment effluent limit	Daily maximum or longer-term average, either alone or in combination with other discharges, caused interference or pass through or endangered the health of POTW personnel or the general public.	Show Cause	S, U
		Administrative Fine	U
		Civil Action	U, A
		Criminal Action	U, A
		Terminate Service	U
		Revoke Permit	U
		Newspaper Publication (required)	S

CITY OF HENDERSON ENFORCMENT RESPONSE GUIDE (“GUIDE”)

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
D. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the City’s exercise of its emergency authority under this chapter to halt or prevent such a discharge.		Show Cause	S, U
		Administrative Fine	U
		Civil Action	U, A
		Criminal Action	U, A
		Terminate Service	U
		Revoke Permit	U
		Newspaper Publication (required)	S
E. Failure to meet, within 90 days after the date, a compliance schedule milestone contained in a permit or enforcement order for starting construction, completing construction, or attaining final compliance.		Show Cause	S, U
		Administrative Fine	U
		Civil Action	U, A
		Criminal Action	U, A
		Terminate Service	U
		Revoke Permit	U
		Newspaper Publication (required)	S
F. Failure to provide, within 30 days after the due date required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.		Show Cause	S, U
		Administrative Fine	U
		Civil Action	U, A
		Criminal Action	U, A
		Terminate Service	U
		Revoke Permit	U
		Newspaper Publication (required)	S
G. Failure to accurately report noncompliance.		Show Cause	S, U
		Administrative Fine	U
		Civil Action	U, A
		Criminal Action	U, A
		Terminate Service	U
		Revoke Permit	U
		Newspaper Publication (required)	S

CITY OF HENDERSON ENFORCEMENT RESPONSE GUIDE (“GUIDE”)

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
	H. Any other violation or group of violations which will adversely affect the operation or implementation of the local pretreatment program.	Show Cause	S, U
		Administrative Fine	U
		Civil Action	U, A
		Criminal Action	U, A
		Terminate Service	U
		Revoke Permit	U
		Newspaper Publication (required)	S

VII. TIME FRAMES FOR RESPONSES

Initial enforcement responses (involving contact with the industrial user and requesting information on corrective or preventative action(s)) will occur within 30 days of City’s actual knowledge of a violation.

Violations, which threaten health, property or environmental quality, are considered emergencies and will receive immediate response, such as halting the discharge or discontinuance of service.

UNLESS OTHERWISE SPECIFIED, THE EVALUATION PERIOD IS FOR ONE (1) YEAR FROM DATE OF VIOLATION.

VII. TIME FRAMES FOR RESPONSES

Initial enforcement responses (involving contact with the industrial user and requesting information on corrective or preventative action(s)) will occur within 30 days of City's actual knowledge of a violation.

Violations, which threaten health, property or environmental quality, are considered emergencies and will receive immediate response, such as halting the discharge or discontinuance of service.

Unless otherwise specified, the evaluation period is for one (1) year from date of violation.

VIII. DESCRIPTION OF TERMS

A	City Attorney
AO	Administrative Order
Civil Action	Civil litigation against the industrial user seeking equitable relief, monetary penalties and actual damages.
Guide	Enforcement Response Guide
I	Pretreatment Inspector
IU	Industrial User
LOE	Letter of Explanation
NOV	Notice of Violation
POTW	Publicly Owned Treatment Works
Review Meeting	Informal compliance meeting with IU to resolve noncompliance
S	Regulatory Program Manager/Supervisor
Show Cause Hearing	Formal meeting requiring the IU to appear and demonstrate why the City should not take a proposed enforcement action against it
U	Environmental Program Manager/Utility Services Director