



GREENSBORO NC ENFORCEMENT RESPONSE PLAN

Pacific Northwest
Pretreatment Conference
September 2010

Martie Groome
City of Greensboro NC

EPA Requirements for Enforcement Response Plan [ERP]

- Describe how the POTW will investigate instances of noncompliance:
 - Describe the types of escalating enforcement response the POTW will take in response to all anticipated types of IU violations and the time periods within which response will take place
 - Identify the official(s) responsible for each type of response
 - Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards as detailed in 40 CFR Part 403.8(f)(1) and (f)(2)
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Previous ERP

- ❑ Very Similar To EPA Model
 - ❑ Civil Penalty Matrix: \$0-\$25,000 for most serious violations
 - ❑ Vague – I liked that at first...lots of flexibility
 - ❑ Difficult to Justify Specific Values Assessed Sometimes
 - ❑ Historical Precedents-Better have a good memory!
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Why Did We Change It?

- Regime Change Coming....My Retirement!
 - Greensboro IUs have only dealt with 2 people in 60 years!
 - Much More Detailed and Specific...historical precedents built into document
 - One Major Enforcement Change
 - Civil Penalty for All Instances of SNC
 - Protect Industries from “Canoes”
 - “Punish me please!”
 - Major Change in Document Format
 - Enforcement Philosophy Essentially the Same...
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Anatomy of Greensboro's New ERP

- Introduction
 - Purpose
 - Enforcement Actions Available
 - Responsible Personnel
 - Enforcement Considerations
 - Investigation of Noncompliance
 - Types of Violations
 - Enforcement Response Guide
 - Time Frames
 - Appendices
 - Document Specific Definitions and Abbreviations
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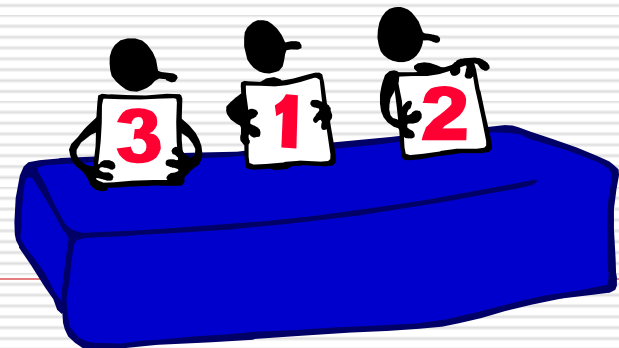
Enforcement Response Plan

Introduction & Purpose

- ERP is a statement of *policy*
 - *Not a regulation, code or statute*
 - Judgment and flexibility will be needed at times in response to unusual instances of noncompliance
 - Some violations may require a response that deviates from the ERP depending on the particulars of the situation
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Enforcement Philosophy of City of Greensboro IWS

- All problems/violations will be addressed at the lowest level and with the least formality possible consistent with the specific violation
- BUT, no enforcement procedure is contingent upon the completion of the “lesser” activity



Enforcement Philosophy of City of Greensboro IWS

- ❑ Issuance of reasonable, technically based, yet POTW protective, Industrial User permits is the “best” Enforcement Response Plan
- ❑ If permit requirements are met by the permittee, it will not be necessary to activate the formal enforcement response plan



ERP Purpose

- Comply with EPA requirements
 - Comply with State of NC requirements
 - Provide Enforcement Framework
 - Effective way to ensure fair, consistent and equitable enforcement actions
 - Guidance for selecting the enforcement action most appropriate for a given violation
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ERP Public Participation

- Greensboro Not Required by State of NC
o Let Industrial Users Comment on Draft ERP
 - We wanted all IUs to be the first to see and comment on it...State of NC had not even seen it yet
 - ERP was the topic for the IU Mandatory Annual Meeting that year
 - 1 written comment submitted by an SIU
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INFORMAL ENFORCEMENT NOTIFICATION/ACTIONS

Informal NOD or NOV

Enforcement Meeting

Initiation/Increase in Self-Monitoring

Employee Training Requirement

Installation of Additional Sampling and/or
Monitoring Equipment

Local Pollutant Allocations

- ❑ NOT a SIU Permit Limit
 - ❑ Separate Local Document Issued
 - ❑ Used for pollutants that are <50% loaded
 - Many set at domestic concentration
 - Control Mechanism but not with the same force as SIU Permit limit
 - ❑ Enforcement is also different
-

Informal Notice of Deficiency or Informal Notice of Violation

- Can be verbal, via telephone, via email, data summary sheet or on-site notification
- Generally used for minor isolated violations or allocation exceedances
- Can be initial step to escalating action
- All informal NODs and NOVVs are documented in IU files



Enforcement Meeting

- Informal Meeting

- Used to:

- Gather information concerning noncompliance
 - Discuss steps to alleviate noncompliance
 - Determine the commitment level of the industrial user
-

Initiation/Increase in Industrial User Self-Monitoring

- Used when a violation has occurred and additional monitoring must be conducted per 40 CFR Part 403.12(g)(2) [EPA required resample when violation has occurred]
 - Also used for exceedance of Local Pollutant Allocations
-

Employee Training Requirement

- ❑ Used when the Industrial Waste Section feels that a violation has been caused by an industrial user employee(s) lack of knowledge concerning permit/SUO discharge requirements or limitations, etc.
- ❑ Training and employee attendance must be documented and submitted to IWS



Installation of Additional Sampling/Monitoring Equipment

- Used in instances where the Industrial Waste Section determines that due to a violation or problem caused by the industrial user, more intensive and immediate sampling may need to be conducted on a routine basis
-

FORMAL ENFORCEMENT NOTIFICATION/ACTIONS

Formal Notice of Deficiency/Exceedance
Formal Notice of Violation
Notice of Significant Noncompliance
Civil Penalties
Show Cause Hearing
Consent Order
Administrative Order
Termination of Service/
Water Supply Severance

Formal Notice of Deficiency or Formal Notice of Exceedance

- ❑ Formal documents
 - ❑ Generally used for minor isolated violations or allocation exceedances
 - ❑ Can be included in Industrial User inspection document
 - ❑ Can be initial step to escalating action
 - ❑ Documentation of all informal NODs and NOEs is placed in IU files
-

Formal Notice of Violation

- Formal Document
 - Description of violation(s), date(s) of violations
 - Response may be required from IU
 - Cause of violation in detail
 - Correction Action taken to prevent similar violations from occurring
 - Generally considered a more “serious” enforcement action than a formal NOD
-

Notice of Significant Noncompliance [SNC]

- Formal Document
 - Description of violation(s), date(s) of violations
 - Informs IU that violations have occurred that meet the SNC definition in 40 CFR Part 403.8(f)(2)(vii)
 - Civil Penalty will be in Document
 - IU will be included in Public Notice in newspaper
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Significant Noncompliance [SNC]

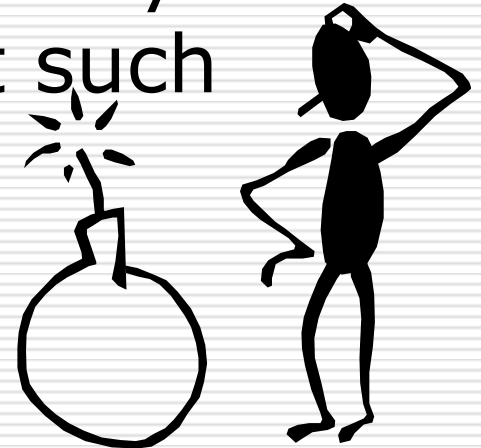
1. Chronic Violations of wastewater discharge limits
 - 66% of all measurements taken in 6 month period exceed limit [by any magnitude]
 2. Technical Review Criteria violations
 - 33% or more of all measurements taken in 6 month period *equal or exceed* product of the limit multiplied by the applicable TRC [1.4 for BOD, TSS, O&G and 1.2 for all other pollutants]
-

Significant Noncompliance [SNC]

3. Any other violation of a pretreatment effluent limit..that the IWS determines has caused alone or in combination with other discharges, interference or pass-through [including endangering the health of POTW personnel or the general public]
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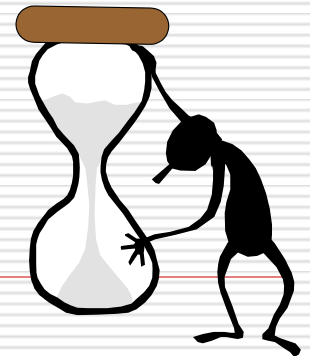
Significant Noncompliance [SNC]

4. 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 to halt or prevent such discharge;



Significant Noncompliance [SNC]

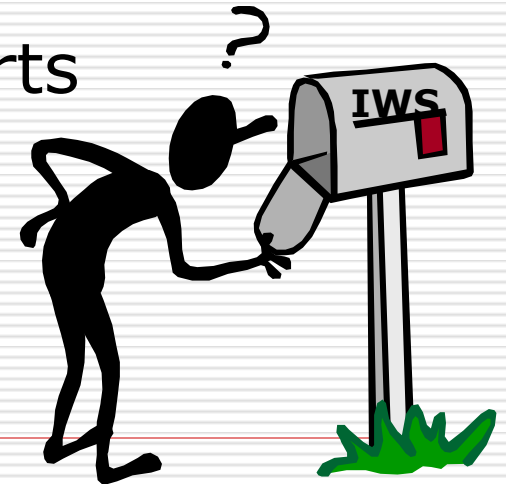
5. Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction or attaining final compliance;



Significant Noncompliance [SNC]

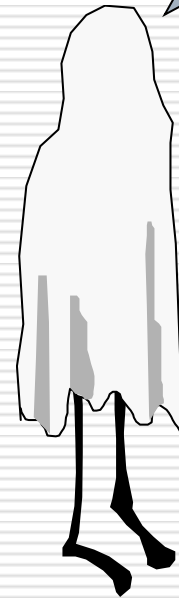
6. Failure to provide within thirty (30) days after the due date, required reports, such as:

- Baseline monitoring reports
- 90 day compliance reports
- Periodic self-monitoring reports
- Reports on compliance with compliance schedules;



Significant Noncompliance [SNC]

7. Failure to accurately report noncompliance;
8. Any other violation of group of violations which the IWS determines will adversely impact the operation or implementation of the local pretreatment program



What violation? I didn't see a violation...

Civil Penalties

- ❑ Administrative penalty issued for failure to comply with any provision of the SUO, orders, rules, regulations or permits issued under SUO authority
- ❑ City of Greensboro Sewer Use and Pretreatment Ordinance authorizes civil penalties of up to *\$25,000 per day per violation*

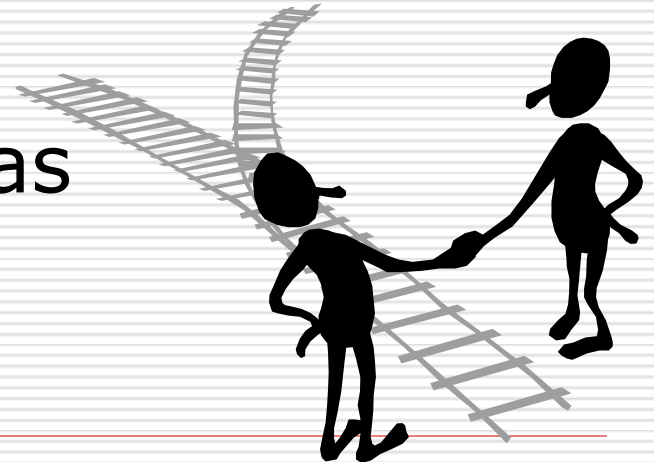


Show Cause Hearing [SCH]

- Formal Meeting - IU required to appear to “show cause” why more severe enforcement actions should not go forward
 - *Can be used for any level of enforcement action*
 - May also be forum to discuss corrective action and compliance schedule
 - NOT a prerequisite to civil penalty
 - IWS Action/inaction in SCH hearing not subject to administrative appeal
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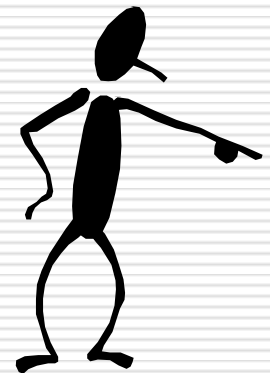
Consent Orders

- Voluntary agreement between IWS and non-compliant IU that includes specific acts to be taken by the discharger to correct noncompliance within a time period also specified by the order
- Same Force and effect as administrative orders



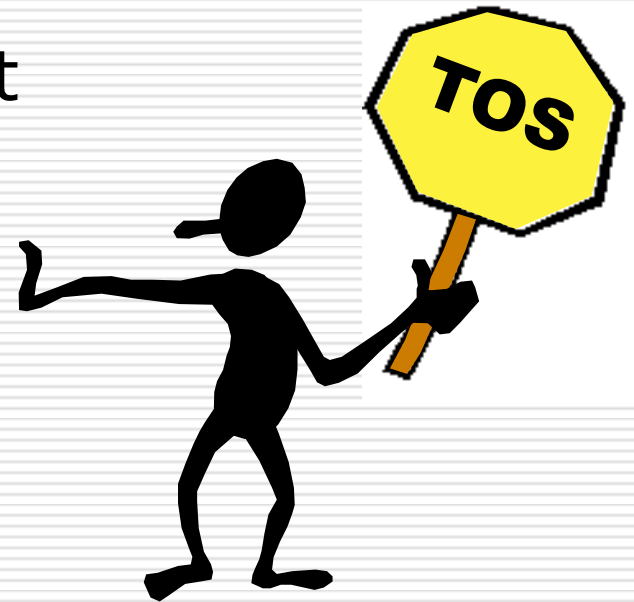
Administrative Order [AO]

- ❑ Enforcement documents that direct IU to undertake and/or cease specified activities by specified deadlines
- ❑ Terms of AO may or may not be negotiated with IU
- ❑ AO may incorporate compliance schedules, administrative penalties, termination of service, etc.



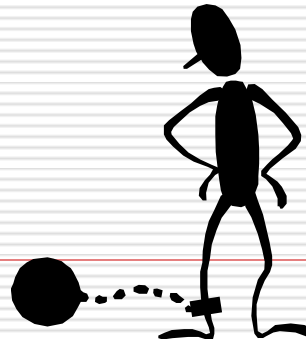
Termination of Service or Water Supply Severance

- ❑ TOS is the revocation of IU privilege to discharge nondomestic wastewater to POTW
 - Imminent endangerment
 - Escalating enforcement
- ❑ Accomplished through
 - Physical severance of connection
 - Cease and Desist Order



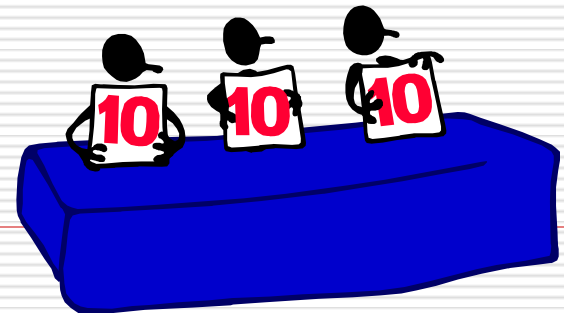
Enforcement Actions Involving other Entities

- Civil Litigation/Injunctive Relief
 - City files lawsuit to secure court ordered action to correct violations and to secure penalties for the violations
- Criminal Penalties/Prosecution
 - For violations that may warrant criminal prosecution [criminal intent, willfulness]
 - EPA CID
 - SBI or FBI



ENFORCEMENT ACTIONS

- 10 Tier System [Tier list on page 9]
 - Ranging from Informal Notice of Deficiency to Termination of Service
- Generally Escalating Actions
- The IWS reserves the right to assess the maximum penalty for any violation



Items to Note:

- Harm vs. No Harm
 - EPA Definitions of Interference and Pass-Through Tied to NPDES Permit Violation
 - Definition of Harm Written by IWS
 - Self-Reported vs. POTW Investigation Discovery
 - Must Be Given Enforcement Credit for “Confession”
 - POTW Equalization Basin
 - Evidence of Intent
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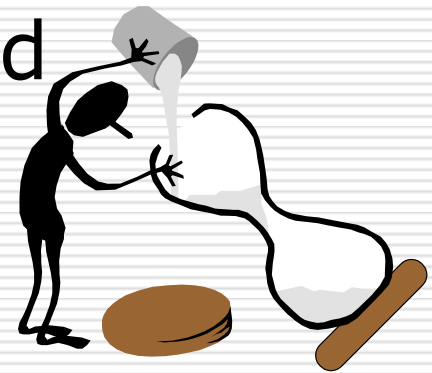
Types of Violations in Enforcement Response Guide Charts [pg 10-14]

- Reporting Violations
 - Unauthorized Discharges
 - Effluent Limitations Violations
 - All parameters other than flow and pH
 - Flow and pH
 - Local Pollutant Allocation Exceedance
 - Self-Monitoring Violations
 - Permit/SUO Condition Violations
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PLEASE NOTE:

"1st Time" and "2nd Time"

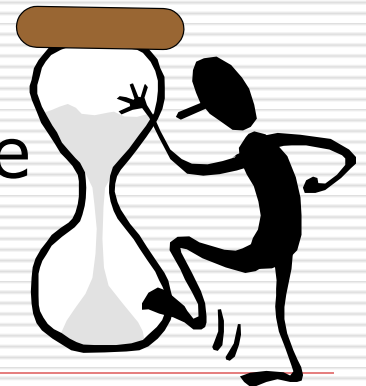
- ❑ Unless otherwise noted, "*1st time*" means the first violation incident in a semi-annual reporting period and "*2nd time*" means the second violation incident in the same semi-annual reporting period.
- ❑ The "incident time clock" would begin again during the next semi-annual reporting period.



PLEASE NOTE:

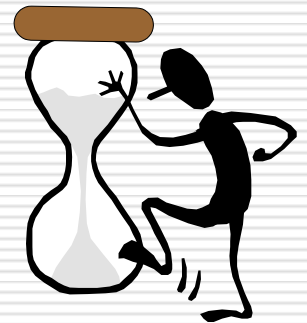
Life of the Permit Violations (**)

- ❑ Certain violations are serious violations and "1st time" and "2nd time" refer to the life of the permit.
 - The incident "time clock" DOES NOT RESET or begin again during the next semi-annual reporting period
 - These violations are marked in the Enforcement Response Guide chart with two asterisks (**)



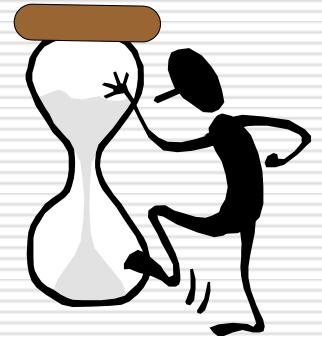
Life of the Permit Violations (**)

- ❑ Failure to report results of all wastewater analyses (**)
- ❑ Failure to report spill or new/changed discharge (**)
- ❑ Failure to respond to NOD, NOV or other official notification within required timeframe (**)
- ❑ Report Falsification (**)



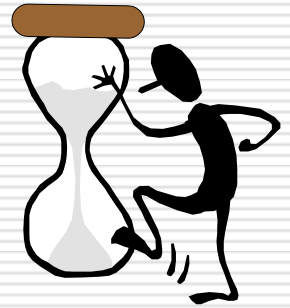
Life of the Permit Violations (**)

- ❑ Unauthorized Discharge (**)
- ❑ Unauthorized/Illegal Discharges (**)
- ❑ Limit violation – SNC resulting in harm
- ❑ Limit violation – SNC resulting in endangerment (**)
- ❑ Failure to install sampling, flow or monitoring equipment (**)



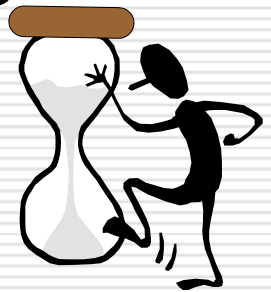
Life of the Permit Violations (**)

- ❑ Failure to operate or properly maintain pretreatment system [with evidence of intent] (**)
- ❑ Limited access or refusal to present records (**)
- ❑ Entry Denial (**)
- ❑ Failure to implement required plans [with evidence of intent] (**)



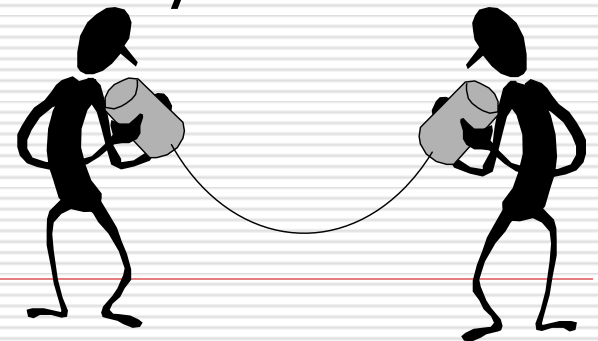
Life of the Permit Violations (**)

- ❑ Failure to install pretreatment system (**)
- ❑ Tampering with IWS sampling and/or monitoring equipment (**)
- ❑ Violation of any permit condition/requirement that causes: Harm to POTW, NPDES permit violation or Other POTW violation (**)



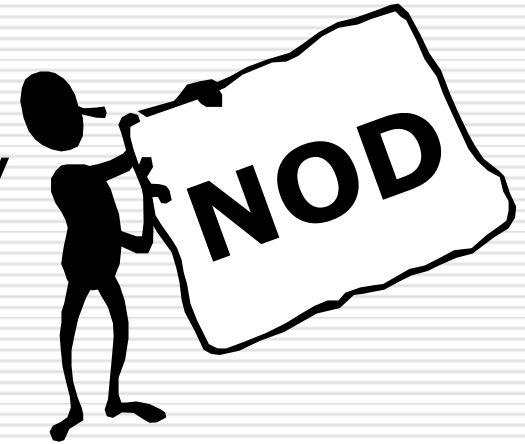
Tier 1 – Informal Enforcement Notifications/Actions

- ❑ Informal Notice of Deficiency [NOD] or Notice of Violation [NOV]
- ❑ Enforcement Meeting
- ❑ Initiation/Increase in Self-Monitoring
- ❑ Employee Training Requirement
- ❑ Installation of Sampling and/or Monitoring Equipment



Tier 2 – Formal Enforcement Notifications/Actions

- Formal Notice of Deficiency
 - No Civil Penalty



- Formal Notice of Exceedance
 - No Civil Penalty



Tier 3

- Formal Notice of Violation [NOV]
 - No Civil Penalty

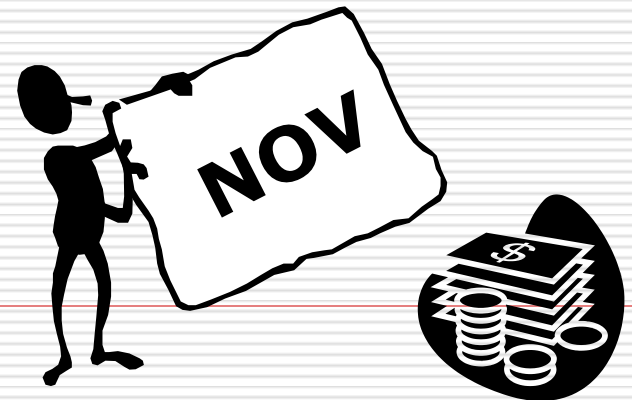


Tier 4 – Formal Notice of Violation with Civil Penalty Assessed

4.1 Formal Notice of Violation [NOV] and Civil Penalty from \$50-\$500

□ 4.2 Formal Notice of Violation [NOV] and Civil Penalty from \$500 - \$1000

□ 4.3 Formal Notice of Violation [NOV] and Civil Penalty from \$1000-\$5000



Tier 5 – Significant Noncompliance [SNC] with Civil Penalty Assessed

- ❑ 5.1 Notice of SNC and Civil Penalty from \$50-\$500
- ❑ 5.2 Notice of SNC and Civil Penalty from \$100-\$5000
- ❑ 5.3 Notice of SNC and Civil Penalty from \$5000-\$25,000
- ❑ Public Notice in Newspaper
- ❑ Possible Show Cause Hearing



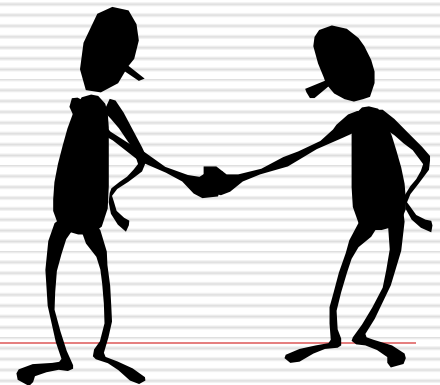
Civil Penalties

- Civil penalties are in addition to assessed reimbursement costs for legal fees, equipment repair or replacement, sampling/monitoring costs and any penalties assessed to the City resulting from the subject violation. *The IWS reserves the right to assess the maximum [civil] penalty for any violation.*
-

Tier 6

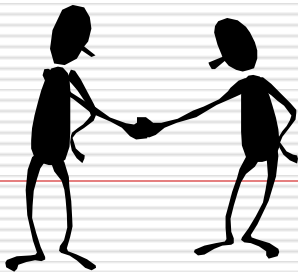
□ Consent Order

- Notice of Violation [NOV] or Notice of Significant Noncompliance [SNC]
 - If Significant Noncompliance [SNC], public notice in newspaper
- Civil Penalties of \$100 - \$500 Assessed and/or Stipulated in Order
- Possible Show Cause Hearing



Tier 7

- Consent Order *or* Administrative Order
 - Notice of Violation [NOV or Notice of Significant Noncompliance [SNC]
 - If Significant Noncompliance, Public Notice in newspaper
 - Civil Penalties of \$500 - \$1000 Assessed and/or Stipulated in Order



Consent Order



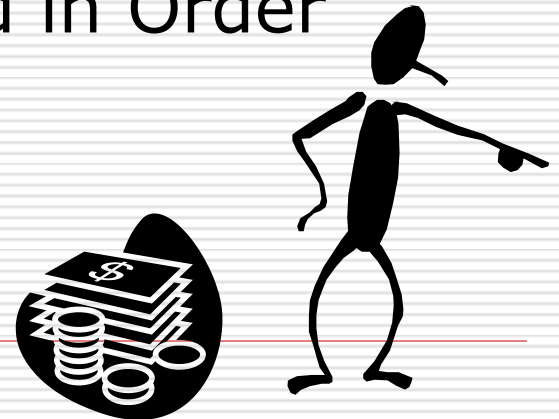
Administrative Order



Tier 8

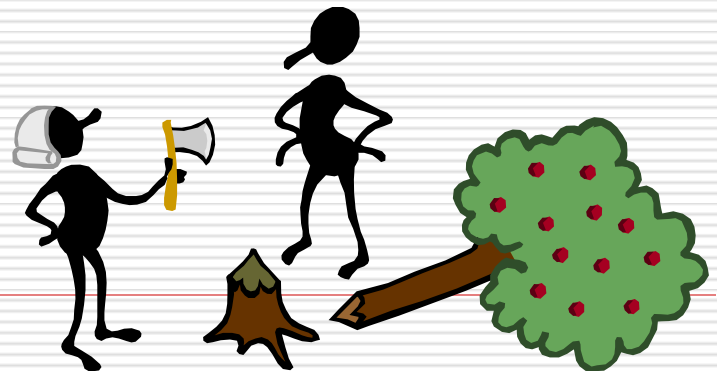
Administrative Order

- Notice of Violation [NOV or Notice of Significant Noncompliance [SNC]
 - If Significant Noncompliance, Public Notice in newspaper
- Civil Penalties of \$1000 - \$25,000 Assessed and/or Stipulated in Order



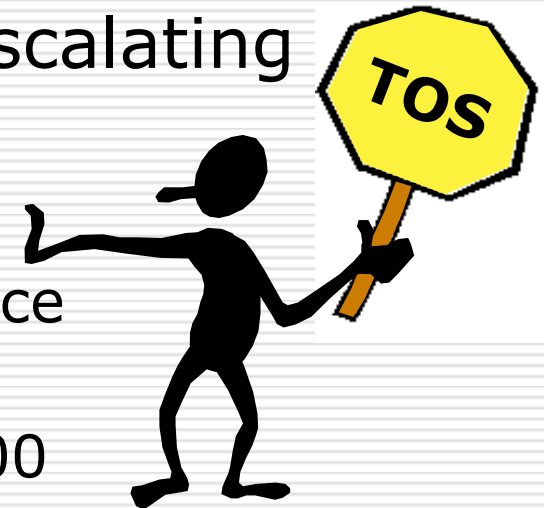
Tier 9

- Show Cause Hearing [concerning Termination of Service]
 - Notice of Violation or Notice of Significant Noncompliance
 - Possible Termination of Service
 - Civil Penalty from \$1000-\$25,000



Tier 10 – Termination of Service

- 10.1 Termination of Service [Emergency]
 - Notice of Significant Noncompliance
 - Public Notice in Newspaper
 - Civil Penalty from \$1000 - \$25,000
- 10.2 Termination of Service [Escalating Enforcement]
 - Show Cause Hearing
 - Notice of Significant Noncompliance
 - Public Notice in Newspaper
 - Civil Penalty from \$1000 - \$25,000



Responsible Officials

- Enforcement Actions with Civil Penalties of up to \$1000
 - Pretreatment Coordinator Signature
 - Enforcement Actions with Civil Penalties of over \$1000
 - Industrial Waste Section Supervisor signature
 - Termination of Service
 - Water Resources Director and Industrial Waste Section Supervisor signatures
-

Enforcement Factors to Consider (Required by State of NC)

- ❑ The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
 - ❑ The duration and gravity of the violation;
 - ❑ The effect on ground or surface water quantity or quality or on air quality;
 - ❑ The cost of rectifying the damage;
-

Enforcement Factors to Consider (Required by State of NC)

- ❑ The amount of money saved by noncompliance;
 - ❑ Whether the violation was committed willfully or intentionally;
 - ❑ The prior record of the violator in complying or failing to comply;
 - ❑ The costs of enforcement to the Publicly Owned Treatment Works (POTW);
-

Other Considerations Added by City of Greensboro

- The cost to the POTW for any civil penalties, fines, legal costs and/or other costs associated with any enforcement action or legal action taken against the City of Greensboro for NPDES violations or other violations caused by the industrial user violation(s).
-

Other Considerations Added by City of Greensboro

- ❑ Conventional pollutant violation vs. toxic pollutant violation vs. non-conventional pollutant violation
 - ❑ Violation(s) resulting from vandalism or the action of third-party entities
 - ❑ Deficiencies or violations occurring as a result of circumstances beyond the industrial user's control as determined by the IWS
-

Definitions to Note:

□ Harm

- Damage to public or private property;
 - Injury to any person(s);
 - POTW process upset/inhibition/disruption and/or adverse change in POTW effluent characteristics/concentrations;
 - Adverse change in POTW sludge characteristics/concentrations; and/or
 - Adverse impact on the environment
-

Definitions to Note:

□ Unauthorized Discharge

- Process wastewater discharge outside the scope of the permit application and/or permit
 - Process wastewater discharge from a facility meeting the SIU definition without an SIU permit
 - Process wastewater discharge from a facility with an expired SIU permit
 - Process Wastewater Discharge that violates any Sewer Use Ordinance limitation, requirement or condition [unless specifically allowed in a document issued to the Industrial User by the City of Greensboro Industrial Waste Section]
-

Definitions to Note:

Pollutant

- All regulated parameters *except flow* are considered to be pollutants

Tampering

- Altering sampling equipment or flow measurement equipment [i.e. settings, location, placement of tubing] used for the purposes of compliance monitoring and/or handling such equipment negligently or destructively
-

Tampering

- Not always with intent/criminal
 - But can be sometimes!
 - The Lawn Mower
 - Caused us to lose a sampling day
 - The Bucket of Potable Water
 - “We didn’t have much flow and were afraid it would hurt your sampler to ‘pump dry’, so we put the tube in a bucket of water.” *Yeah right!*
-

Definitions to Note:

□ Report:

- Any submission required by the IWS including BMR, 90 Day Compliance Report, Toxic Organic Management Plan, Spill/Slug Plan, Self-Monitoring Reports, Violation Resampling Report, Pollutant Certifications, Accidental Discharge 5-Day Report, Production Status Change Notification, Signatory Official Change Notification, etc.
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Civil Penalty Appeal Process

- Reconsideration Petition to Pretreatment Coordinator
 - Appeal to Industrial Waste Section Supervisor
 - Hearing: Hearing Officer is Pretreatment Coordinator from another City
 - PT Coordinator makes recommendation to Water Resources Director
 - Final Administrative Appeal
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Largest Civil Penalty Issued

- ❑ ~\$104,000 [Large Textile Firm]
 - ❑ Failure to Notify POTW of Raw Material Change that impacted SIU effluent
 - No SIU Permit limit for phosphorus because they had levels <domestic
 - ❑ Caused total phosphorus NPDES quarterly average permit violation
 - Quarterly Average limit = 2.0 mg/l
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Lessons Learned "Gotham City" ERP

Lesson to Approval Authority (State of NC)
Lesson to Control Authority (Me!)

ERP: Circa 1988-1989

- State PT Group was short-staffed
 - Cities KNEW that State was not truly reading half of what we sent them
 - But State kept requiring that every permit, every permit modification, etc. be sent to them for “review/approval”
 - Our ERP Was Due
 - I was upset with State...
 - Decided to Do a Little Test....
-

“Gotham City ERP”

- Actually Said City of Greensboro ERP
 - Later came to be known as “Gotham City ERP”
 - Submitted to State of NC
 - Official Looking Cover Letter asking for prompt review and approval
 - Received “Letter of Approval” and requirement to fully implement as submitted
-

Gotham City ERP

- All SIU permits shall be issued for a period not to exceed six months. The Pretreatment Section of the NC DEHNR Division of Water Quality permit comment period shall not exceed FIVE working days. If the DWQ Pretreatment Section does not respond to a submitted permit within FIVE working days, the DWQ Pretreatment Section and the Director of the Division of Water Quality shall be considered to be in non-compliance with the City of Gotham Pretreatment Regulations and shall be subject to enforcement action (see penalty section for non-compliance). Please note that failure to respond within the designated time-frame constitutes a separate violation for each day and each permit submitted.
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Gotham City ERP

- All SIU permit applications and documents shall be signed in blood by the Significant Industrial User Signatory Official to ensure proper identification of the Signatory Official for purposes of enforcement (see penalty section for non-compliance).
 - All permit, ordinance and Pretreatment Program violations are hereby deemed to be felonies.
-

Gotham City ERP

- The Pretreatment Coordinator of the City of Gotham shall hold the position of judge, jury and if necessary, executioner. No appeals of permit requirements, permit limits, or enforcement actions shall be entertained.
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Gotham City ERP

- In lieu of a published Pretreatment Annual Report, enforcement proceedings shall be held on the first of March at the City of Gotham Town Square. Pretreatment Annual Report narratives shall be read aloud during all enforcement proceedings. DWQ Pretreatment and regional office staff have the option of attending these proceedings to audibly review the Gotham Pretreatment Annual Report. The narrative will be read at least twice during the proceedings to comply with current requirements for submitting two copies of the report.
-

Gotham City ERP

- ❑ All SIUs shall henceforth meet the same permit limits as set forth in the receiving POTW's NPDES permit
- ❑ All domestic waste (which cannot meet any of the above standards) shall be separated from the process wastewater flow. This separation shall be accomplished through the construction of community outhouses. Due to the domestic waste exclusion, the use of the Combined Wastestream Formula shall no longer be necessary. However, the formula itself shall be maintained in the city's historical archives.

Gotham City ERP

□ **FIRST OFFENSE**

- The SIU Signatory Official/DWQ PT Staff shall be deposited in stocks (a wooden frame with lockable openings for both hands and feet) for a minimum of 24 hours in front of City Hall.
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Gotham City ERP

☐ **SECOND OFFENSE**

- ☐ The SIU Signatory Official shall be stoned or doused while in the stocks.
 - **Simple Violation** - The Signatory Official shall be doused with his own non-compliant effluent.
 - **TRC Violation** - The Signatory Official shall be stoned with wastewater sludge cakes.
-

Gotham City ERP

□ **SECOND OFFENSE (continued)**

- **Significant Non-Compliance** - The Signatory Official shall be doused with certified hazardous waste. The City of Gotham Pretreatment Section will sign all hazardous waste manifests for waste utilized in the enforcement proceedings. The Non-Compliant SIU shall be responsible for all costs associated with the necessary site clean-up and groundwater remediation following the enforcement proceedings.
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Gotham City ERP

❑ **SECOND OFFENSE (Continued)**

- ❑ A public admission charge of \$3.00 per person shall be administered. Profits shall be used for the development of analytical methods which can detect pollutant concentrations to the nanogram level.
 - ❑ *(We had recently received NPDES permits with mercury limits in nanograms and this was long before EPA Method 1631!)*
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Gotham City ERP

☐ **THIRD OFFENSE**

- The SIU Signatory Official shall be publicly flogged.
 - **Simple Violation** - The SIU Signatory Official shall be flogged for 30 minutes.
 - **TRC Violation** - The SIU Signatory Official shall be flogged for 1 hour.
 - **Significant Non-Compliance** - The SIU Signatory Official shall be flogged for a minimum of 2 hours +/-10 minutes
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Gotham City ERP

- Fourth Offense (Significant SNC)
 - SIU Signatory Official/DWQ PT Staff Shall be Executed
 - Obituary Shall Serve as Public Notice of SNC
 - Fifth Offense
 - SIU Permit Shall be Revoked
 - DWQ PT Delegation Shall be Revoked
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QUESTIONS???

