

***Enforcement Response Plan for  
Industrial Users  
(Pretreatment)***

***Adopted by the Henderson Water and Sewer Commission Board  
15 August 2016***



**Enforcement Response Plan  
Industrial Pretreatment Program  
Henderson Water & Sewer Commission  
Henderson, Kentucky**

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**ENFORCEMENT RESPONSE PLAN  
INDUSTRIAL PRETREATMENT PROGRAM**

Henderson Water Utility  
Henderson, Kentucky

**I. Introduction**

Final regulatory changes to the National Pretreatment Program outlined in 40 CFR 403 became effective on August 23, 1990. These changes required all Publicly Owned Treatment Works (POTW) with approved Pretreatment Programs to develop and implement an Enforcement Response Plan (ERP). Henderson Water Utility is the operator of the City of Henderson's POTW. The ERP provides guidelines for HWU personnel in determining appropriate enforcement actions toward violations encountered in the Pretreatment Program. The authority for enforcement is specified in the Henderson Sewer Use Ordinance which incorporates local, state and federal regulations as specified in 40 CFR 403.

The ERP describes how HWU will investigate instances of noncompliance, describes the types of enforcement actions that HWU may take in response to all anticipated types of violations and the time periods within which these enforcement actions will be taken and followed up. It reflects HWU's primary responsibility to enforce all applicable pretreatment standards and requirements. The plan also includes a general discussion of the criteria to be used in determining a proper response in various noncompliant situations. In addition, a tabular guide is provided to outline recommended responses to various pretreatment violations.

## II. Personnel

The Pretreatment Program's overall administrative operation is carried out by the General Manager of HWU. The General Manager's main duties include, but are not limited to, the supervision of operations and personnel at the water and wastewater treatment plants, the distribution and collection systems for both facilities and oversight of the Henderson Pretreatment Program. The General Manager is the representative of the Henderson Water & Sewer Commission in all assigned tasks. To fulfill these duties, the General Manager is assisted by other city personnel that are assigned specific duties, including implementation of the Pretreatment Program. Wherever the General Manager is called for or cited in this ERP, it shall be understood to include any HWU employee designated by the General Manager to serve in an enforcement or oversight capacity under the General Manager's direction.

To assist the General Manager in administering the Pretreatment Program, a Pretreatment Coordinator has been designated. The Pretreatment Coordinator is responsible for the supervision of industrial monitoring and sample collection conducted by the city, industrial user reporting, data assimilation, and industrial user inspections among other implementation tasks. As the General Manager's designated representative, the Pretreatment Coordinator is authorized to initiate specific enforcement proceedings as needed to protect the POTW, the environment and the health and welfare of the general public.

Additional personnel are available at the POTW to assist the Pretreatment Coordinator as needed. Duties of these personnel include sampling, equipment inspection and maintenance and laboratory analysis. Treatment plant personnel are also available to assist in emergency situations as conditions may require.

The General Manager and Pretreatment Coordinator may from time to time procure the assistance of an attorney for any legal services needed in enforcement proceedings. This attorney would advise the Pretreatment Coordinator on proper enforcement actions and orchestrate any judicial actions deemed necessary by the General Manager and/or the Pretreatment Coordinator.

### **III. Violation Identification**

Violations of the Pretreatment Program are identified from various sources of information gathered through implementation of the program. Such sources include but are not limited to: on-site inspections of Significant Industrial Users (SIUs), city compliance monitoring of an SIU's discharge, and data submitted from SIU self-monitoring reports. Details of these sources are discussed below.

**On-site Inspections-** At least once each year, the Pretreatment Coordinator and/or his/her designee will conduct a pretreatment inspection at each SIU site to ascertain if all requirements of the Industrial User Permit and the Henderson Sewer Use Ordinance are being met. Inspections may also be conducted as part of the permit application process and to verify compliance schedule milestone achievement. During the inspection, all areas of the industry used for production, that produce process wastewater, are used to store chemicals or raw materials and that are also involved in pretreatment of the industrial wastewater prior to discharge will be observed. The inspector(s) may also review and/or copy all pretreatment records, examine any new processes and pretreatment equipment, observe monitoring techniques, inspect the condition of sampling equipment, and obtain samples for city compliance monitoring. The Pretreatment Coordinator may provide the SIU with a 24-hour notice prior to the

inspection, however this is not required. The inspector will look for violations throughout the inspection and note all findings on a report form to be filed for future reference.

**City Monitoring** - The city will sample all industries at least once each year. Parameters to be analyzed will be, at a minimum, those listed in each SIU's Industrial User Permit. In addition, during this annual sampling, the city may, at the Pretreatment Coordinator's discretion, monitor for the full scan of parameters contained in the Henderson Sewer Use Ordinance as a check of compliance. Compliance monitoring for additional pollutants not regulated by the ordinance may also be conducted at the Pretreatment Coordinator's own discretion. All monitoring and analyses will be conducted in accordance with 40 CFR Part 136 and Part 261 and will be properly documented through the use of chain-of-custody forms in case future legal action is required.

**Self-monitoring** - All SIUs are required to self-monitor their process discharges as outlined in their Industrial User Permits, but in any case no less frequently than once every six (6) months. Any monitoring conducted at a frequency greater than that required must also be submitted to the Pretreatment Coordinator. Sampling must be conducted at the approved monitoring point outlined in the SIU's discharge permit. All sampling and analyses must be conducted in accordance with 40 CFR 136 and 261. All analytical results are required to be properly signed and certified, if applicable, and submitted to the Pretreatment Coordinator by the 30<sup>th</sup> day of the month following the month in which the monitoring occurs. Each Industrial User Permit describes in detail the requirements for sampling frequency, methods, reporting, recordkeeping, effluent discharge limitations and other restrictions applicable to the individual industry. The

Industrial User Permit is a reflection of the Henderson Sewer Use Ordinance and the requirements noted therein. All pretreatment personnel should be familiar with the requirements of the permits and have a general working knowledge of the ordinance.

**Demand Monitoring** - Monitoring under emergency conditions, in response to identified violations or for litigation purposes may also be conducted as the Pretreatment Coordinator deems necessary. Proper sampling techniques and analytical procedures will be observed throughout the monitoring period and chain-of-custody forms and other records will be properly maintained at all times. All POTW personnel assigned to assist the Pretreatment Coordinator will be trained in the proper procedures for emergency sampling. The Pretreatment Coordinator shall be contacted as soon as possible and informed of any emergency situations. At that time, the Pretreatment Coordinator shall oversee the monitoring of the emergency condition while it exists. During sampling for litigation purposes, the Pretreatment Coordinator shall coordinate all efforts as needed. If necessary, the Pretreatment Coordinator may seek the advice of legal counsel to insure that the evidence needed for prosecution is properly obtained. The services of an outside laboratory may be obtained in order to demonstrate that unbiased data has been collected.

#### IV. Sewer Use Ordinance

The Henderson Sewer Use Ordinance has been updated to comply with all federal pretreatment regulations and guidelines. The Henderson Sewer Use Ordinance is the authority by which the General Manager and Pretreatment Coordinator operate the Pretreatment Program. All policies outlined in this ERP are in accordance with the requirements and regulations contained in the ordinance, and this ERP is incorporated into the Ordinance by reference.

#### V. Violation Categorization

The Enforcement Response Guide (ERG) included in this document provides a systematic method to determine appropriate responses to particular violations and noncompliant situations. The Pretreatment Coordinator can use this guide to conduct equitable enforcement actions for various anticipated violations. The ERG is included in Appendix A of this document.

Although the ERG is to be utilized to help determine specific responses to various types of violations, the Pretreatment Coordinator must first evaluate important aspects surrounding the violations. The criteria that should be considered prior to enforcement are as follows:

- 1. Magnitude of the Violation(s)** - Generally, an isolated instance of noncompliance can be met with an informal enforcement response. More serious violations such as those that could threaten public health or damage the POTW must be responded to with more severity. All instances of Significant Noncompliance (SNC) should be responded to with an enforceable order that requires a return to compliance by a specific deadline. An SIU is defined as being in Significant

Noncompliance (SNC) when it meets one or more of the following criteria, as defined in the Henderson Sewer Use Ordinance:

- a. Chronic Violations of wastewater discharge limits, defined herein as when sixty-six percent (66%) or more of all measurements for a pollutant parameter taken during a six (6) month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- b. Technical Review Criteria (TRC) Violations, defined herein as those in which thirty-three percent (33%) or more of all measurements for a pollutant parameter taken during a six (6) month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and equals 1.2 for all other pollutants except pH.);
- c. Failure to report noncompliance accurately;
- d. Any violation of a pretreatment effluent limit (daily maximum or longer term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass-through or has endangered the health of the POTW personnel or the general public;
- e. Any discharge of a pollutant that has caused imminent endangerment to human health/welfare or to the environment or has resulted in the POTW's use of its emergency authority under 40 CFR 403 to halt or prevent such a discharge;

- f. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting or completing construction or attaining final compliance;
- g. Failure to provide required reports within thirty (30) days of the due date; and;
- h. Any violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

**2. Duration of the Violation** - Violations, regardless of severity, which continue over a prolonged period of time should be subject to a formal enforcement action. The U.S. Environmental Protection Agency (EPA) recommends issuance of administrative orders for chronic violations. If the SIU fails to comply with the administrative order, administrative penalties or judicial action should be initiated. If prolonged violations result in serious harm to the POTW, termination of service should be considered immediately.

**3. Effect on Receiving Stream** - Any violation which results in environmental harm should be met with a severe enforcement response. Environmental harm should be evaluated whenever an SIU is shown to discharge pollutants into the sanitary sewer system which are known to pass through the POTW, cause a violation of the POTW's KPDES permit and/or have a toxic effect on the receiving stream (i.e., toxicity test failure, fish kill, etc.). The result of the discharge should dictate

the severity of the enforcement response, including payment for damages accrued.

4. **Effect on the POTW** - Violation(s) causing harm to the POTW may range from the increased cost of treatment to the actual destruction of equipment or harm to POTW personnel. Response to the violation(s) should be determined on the seriousness of the harm caused and the cost to the city.
5. **Compliance History of the SIU** - A pattern of recurring violations may indicate inadequate pretreatment equipment at the facility or a casual approach to operation and maintenance of said equipment. Significant Industrial Users (SIUs) exhibiting recurring instances of significant noncompliance should be addressed with an appropriately severe response.
6. **Economic Benefit to SIU** - The economic benefit received by the SIU for not installing pretreatment equipment as necessary to insure that consistent compliance is achieved should be considered when selecting an enforcement response.
7. **Good Faith of the SIU** - An SIU's efforts to remedy violations, coupled with actions which support the SIU's intention to cease all violations, should be considered in the enforcement response initiated; however, good faith does not automatically eliminate the necessity of an enforcement action and should be considered along with other criteria as described above.

## **VI. Compliance Tracking**

The Pretreatment Coordinator, or his/her designee, will review all compliance monitoring and self-monitoring reports submitted for each SIU. These reports will be examined to determine if they have been submitted on time, are complete for all required parameters and if any violations of permit limits have occurred. The Pretreatment Coordinator, or designee, will track the compliance status of each SIU by reviewing all discharge data at the end of each quarter on a rolling six (6) month basis to determine if the SIU meets the definition of SNC. Compliance schedule milestones and other due dates for reports will also be tracked monthly.

## **VII. Enforcement Response**

The Pretreatment Coordinator will be responsible for categorizing the significance of an SIU's violation(s) using the criteria discussed previously in this document. Upon making this categorization, the Pretreatment Coordinator will use the ERG to determine the most appropriate response to be used in addressing the noncompliance. Those responses available through the Henderson Sewer Use Ordinance to the Pretreatment Coordinator are as follows:

- A. Notice of Violation (NOV)** - A Notice of Violation (NOV) is issued when exceedance of a pretreatment standard or requirement occurs. It is any official communication from the city to the noncompliant SIU which informs the user that a pretreatment violation has been recorded. The NOV is an appropriate initial response to violations not categorized as significant noncompliance and may be the only response necessary in cases where the violations are isolated and/or minor. The NOV provides the SIU with an opportunity to correct noncompliance on its own initiative. The NOV also can act as a short-term

compliance schedule by requiring certain corrective actions by the SIU within a set period of time. Notice of Violations (NOVs) document the city's initial attempts to resolve the noncompliance and, should circumstances require a more stringent approach, the NOV establishes a basis for escalation of enforcement actions according to the ERP and not in an arbitrary manner. The NOV will be issued to the SIU in noncompliance within fourteen (14) days of becoming aware of a violation and will be either hand-delivered or sent by certified mail (return receipt requested). A sample NOV is shown in Appendix B of this document.

**B. Administrative Fines** - An administrative fine is a monetary penalty assessed by the General Manager for violations of pretreatment standards and requirements that result in SNC. When there is a violation, administrative fines may be issued at the General Manager's discretion and the amount of the fine may be determined on a case-by-case basis. Administrative fines differ from civil penalties in that they do not require court intervention unless the SIU contests the action or refuses to pay the fine. Administrative fines are punitive in nature and may not be related to a specific cost incurred by the city. Legal authority for administrative fines has been established in the Henderson Sewer Use Ordinance. The General Manager or his/her designee has the authority to assess fines at any time. Such fines are appropriate when: (1) the SIU remains in SNC after receiving repeated NOVs from the city and has made no attempt to remedy the situation; or (2) when the SIU violates the terms of an administrative order. The initial amount of the fine, as with other enforcement responses, shall

depend on the categorization of the violation's severity. Escalation of the fine up to the maximum allowed by the ordinance may take place if the SNC is not addressed to the General Manager's satisfaction. Notice Of Violations (NOVs), administrative orders and show-cause hearings may all be utilized as mechanisms for issuing administrative fines as follows:

**NOV** - An NOV may be issued notifying the SIU that a violation or continued violations have occurred and that a fine has been assessed. The NOV shall identify the specific violations and include a provision explaining that full payment of the fine is due to the city within a specified period of time.

**Administrative Order** - A formal order may be issued specifying actions that must be taken to correct certain noncompliant conditions and assessing an administrative fine as part of the order.

**Show-Cause Hearing** - A formal or informal meeting may be called between the city and the SIU in violation. Assessment of an administrative fine may be one result of such a meeting. The show-cause hearing may also be used to give an SIU the opportunity to appeal the fine or may be used to determine the proper fine to be issued.

- C. Administrative Order** - An Administrative Order (AO) is an enforceable document which directs an SIU to undertake certain actions or to cease specified activities in order to facilitate a return to compliance. Administrative Orders (AOs) can be of the types listed below:

**Cease and Desist Order** - This order directs the noncompliant SIU to cease or terminate all illegal, unauthorized and/or noncompliant discharges immediately. This order should be used in cases where the discharge could cause, or is causing, interference or pass-through of the POTW. A Cease and Desist Order may be issued immediately upon discovery of a violation or following a show-cause hearing. In an emergency, the Cease and Desist Order may be verbal and delivered by telephone and followed by a written order (hand-delivered or certified mail). If the SIU falls to comply with the order, the General Manager or his/her designee may take action to stop the discharge by terminating water service or blocking the SIU's discharge point. An example of a Cease and Desist Order is shown in Appendix B.

**Consent Order** - The Consent Order is an agreement between the Henderson Water and Sewer Commission (HWSC) and the SIU in noncompliance. Three (3) elements are present in the order: (1) a compliance schedule agreed to by both parties; (2) stipulated fines or remedial actions; and, (3) signatures of both Commission and SIU representatives. A Consent Order is appropriate when the SIU assumes responsibility for its noncompliance and is willing to correct its causes; however, depending upon the specific terms of the order, signing may or may not be an admission of guilt for purposes of civil litigation and/or criminal prosecution. The Consent Order should specifically be used to

prohibit future violations and provide for corrective actions on the part of the industry. An example of a Consent Order is included in Appendix B.

**Compliance Order** - A Compliance Order directs the SIU to achieve or return to compliance by a specified date. This order is most appropriate when noncompliance can be resolved without construction, repair or process changes. It may be issued to require an SIU to develop best management practices, waste minimization, spill prevention programs or slug control plans. The milestones set in the Compliance Order must be tracked by the Pretreatment Coordinator to determine if escalated enforcement actions are needed. An example of a Compliance Order is included in Appendix B.

**Show-Cause Order** - An order to show cause directs the SIU to appear before the General Manager, explain its noncompliance and show cause as to why more severe enforcement actions should not be taken against the SIU. This order may be issued after informal contacts, NOVs or other orders have failed to resolve the noncompliance. The show cause hearing can be conducted by the General Manager or his/her designee and may be either formal or informal and open or closed to the public. The General Manager may follow up the hearing by issuing a Compliance Order, Consent Order, a compliance schedule, an administrative fine or may refer the case to legal counsel for civil litigation or criminal prosecution. An example of a Show-Cause Order is included in Appendix B.

**D. Civil Litigation** - Civil litigation is the formal process of filing lawsuits against SIU's to secure court ordered action to correct noncompliance and to secure penalties for violations including the recovery of costs to the POTW for the noncompliance. This

process is normally pursued when the corrective action required has not been taken by the SIU, the penalty to be assessed exceeds that which the General Manager can assess administratively or when the SIU is recalcitrant and unwilling to cooperate. Civil litigation includes enforcement measures which require involvement or approval by the court system, such as injunctive relief and settlement agreements. The Federal Pretreatment Regulations require the City of Henderson to have legal authority to seek or assess civil penalties in at least the amount of \$1,000.00 per day for each violation by an SIU. The regulations also require the city to have legal authority to seek injunctive relief for noncompliance by SIU's. Both of these requirements have been fulfilled in the Henderson Sewer Use Ordinance. The General Manager or his/her designee shall initiate civil litigation through legal counsel. All data gathered for such a purpose shall be properly collected and documented. A general outline of the civil litigation process is shown in Figure 1.

- E. Criminal Prosecution** - Criminal prosecution is the formal process of charging individuals and/or organizations with violations of ordinance provisions that are punishable, upon conviction, by fines and/or imprisonment. The Henderson Sewer Use Ordinance authorizes criminal prosecution for ordinance violations when they are willful or negligent and may be appropriate in cases of repeated violations or when less formal efforts to restore compliance have failed. Criminal prosecution may be brought prior to, concurrently with, or subsequent to civil litigation. The General Manager shall initiate criminal prosecution through legal counsel. All data gathered for prosecution shall be properly collected and documented. A general outline of the criminal prosecution process is shown in Figure 2.

**F. Termination of Service** - Under the Henderson Sewer Ordinance, the General Manager has the authority to immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of the general public, POTW personnel, or to the environment, or which threatens to interfere with the POTW's operation. The General Manager or his/her designee may terminate sewer and/or water service to any user in violation of the Henderson Sewer Use Ordinance. There are three (3) methods that will be used to terminate sewer service: (1) physically sever (or plug) the SIU's connection to the sewer; (2) halt the discharge by revoking the SIU's Industrial User Permit; or, (3) issue a Cease and Desist Order. All of these methods of termination require notice to the SIU and are outlined in the Henderson Sewer Use Ordinance. Advance notice is intended to fulfill the legal due process requirements associated with service termination and enables the SIU to halt production in time to avoid backflow, spills and other harm to the SIU's facility. The General Manager or his/her designee will initiate termination as necessary, depending on specific circumstances, but will work closely with legal counsel toward further litigation as needed.

**VIII. Abbreviations**

- AO - Administrative Order
- CCE - City Code Enforcement Officer
- City - City of Henderson (may refer to HWU, as a subdivision of the City)
- GM - General Manager
- HWSC - Henderson Water & Sewer Commission
- HWU - Henderson Water Utility
- NOV - Notice of Violation
- PC - Pretreatment Coordinator
- POTW - Publicly Owned Treatment Works
- SIU - Significant Industrial User

## Exhibit I

### Outline for the Civil Litigation Process

- Henderson Water & Sewer Commission (HWSC) decides to sue the SIU to recover costs, seek civil penalties and corrective actions.
- HWSC files complaint alleging ordinance and/or permit violations. They may also file a motion for a preliminary injunction if violations are ongoing.
- SIU files a response admitting or denying allegations.
- Trial date set.
- Discovery process involving HWSC and SIU.
- Settlement Negotiations - If successful, issue Consent Order; if unsuccessful, proceed to trial.
- Trial.
- Verdict - If the SIU is held liable, court awards cost recovery and/or civil penalties, if the SIU is not held liable, return to status quo.
- Appeals.

## Exhibit 2

### Outline for Criminal Prosecution

- HWSC receives information regarding criminal activity.
- HWSC gathers evidence of criminal activity.
- HWSC takes evidence to prosecutor. Prosecutor seeks indictment of SIU.
- Grand jury indicts the SIU.
- Defendant pleads to criminal charges in indictment. If SIU pleads guilty, sentencing hearing is scheduled. If SIU pleads not guilty, trial date is set.
- Criminal trial is held and verdict issued.
- Sentence pronounced. If defendant appeals and is successful, a new trial is held or sentence is reduced. If appeal is unsuccessful, sentence is served.

# **Appendix A**

## **Enforcement Response Guide**

**Henderson Water Utility**

**Henderson, Kentucky**

## ENFORCEMENT RESPONSE GUIDE

**Henderson Water & Sewer Commission  
Henderson, Kentucky**

Violation	Nature/Description	Enforcement Response	Personnel
<b>Unauthorized Discharges</b>			
Unpermitted Discharge	IU unaware of requirements; no harm to POTW/environment	--Phone call	PC
		--NOV with Permit Application Form	PC
	IU unaware of requirements; interference, upset and/or pass-through of the POTW	--NOV with \$250 fine --AO with \$250 fine --Civil Action	PC, GM PC, GM G M
Non-permitted Discharge	Failure to renew Industrial User Permit; IU has not submitted application within 10 days of due date	--NOV with \$500 fine	PC, GM
		--Civil Action	GM
		--Criminal Action	GM
		--Terminate Service	GM
Non-permitted Discharge	Failure to renew Industrial User Permit; IU has not submitted application within 10 days of due date	--Phone call	PC
		--NOV	PC
		--AO with \$250 fine	PC, GM

## ENFORCEMENT RESPONSE GUIDE

### Henderson Water & Sewer Commission Henderson, Kentucky

Violation	Nature/Description	Enforcement Response	Personnel
<b><u>Effluent Discharge Limit Violations</u></b>			
Exceedance of Permit Limit or Federal Pretreatment Standard	Isolated; not SNC	--Phone call	PC
	Isolated; SNC but no harm to POTW, environment or public	--NOV	PC
		--AO to develop Spill Prevention Plan	PC
	Isolated; SNC and harm to POTW, environment or public	--Show Cause Order	GM
		--AO with \$1000 fine/cost recovery	GM
		--Civil Action	GM
	Chronic, not SNC	--NOV	PC
--AO with \$250 fine		PC	
Chronic; SNC but no harm to POTW, environment or public	--NOV	PC	
	--AO with \$500 fine	PC, GM	
Chronic; SNC and harm to POTW. environment or public	--AO with \$1000 fine	PC, GM	
	--Show Cause Order	GM	
	--Civil Action	GM	
	--Terminate Service	GM	

## ENFORCEMENT RESPONSE GUIDE

### Henderson Water & Sewer Commission Henderson, Kentucky

Violation	Nature/Description	Enforcement Response	Personnel
<b>Monitoring and Reporting Violations</b>			
Reporting Violation	Report Is improperly signed or certified; not SNC	--Phone call --NOV	PC PC
	Report Is Improperly signed or certified after notice by PC; SNC	--NOV with \$250 fine --Show Cause Order	PC PC, GM
	Late report; not SNC (<5 days late)	--Phone call	PC
	Late report; not SNC (5-30 days late)	--NOV	PC
	Late report; SNC (>30 days late)	--NOV with \$250 fine	PC
	Late report; chronic SNC	--AO with \$500 fine --Show Cause Order --Civil Action	PC PC, GM GM
	Failure to report spill or changed discharge; no harm to POTW, public or environment	--NOV --NOV with \$250 fine	PC PC, GM
	Failure to report spill or changed discharge; harm to POTW, public or environment	--AO with \$1000 fine/cost recovery --Civil Action	PC, GM GM
	Repeated failure to report spills	--Show Cause Order --Terminate Service	PC, GM GM
	Falsification of a report	--AO with \$500 fine --Criminal Action --Terminate Service	PC, GM GM GM

## ENFORCEMENT RESPONSE GUIDE

### Henderson Water & Sewer Commission Henderson, Kentucky

Violation	Nature/Description	Enforcement Response	Personnel
<b>Monitoring and Reporting Violations (Cont.)</b>			
Failure to monitor correctly	Failure to monitor for all pollutants as required by Industrial User Permit	--NOV	PC
	Chronic failure to monitor for all pollutants as required by Industrial User Permit	--NOV with \$250-\$500 fine --Civil Action	PC GM
Improper sampling techniques	No evidence of intent	--NOV	PC
	Evidence of intent	--Criminal Action --Terminate Service	GM GM
Failure to install monitoring equipment	Delay of less than 30 days	--NOV	PC
	Delay of 30 days or more	--AO	PC
	Chronic delay; violation of AO	--Civil Action --Criminal Action --Terminate Service	GM GM GM

## ENFORCEMENT RESPONSE GUIDE

### Henderson Water & Sewer Commission Henderson, Kentucky

Violation	Nature/Description	Enforcement Response	Personnel
<b>Other Violations</b>			
Waste-streams are diluted in lieu of treatment	Initial violation	--NOV with \$500 fine	PC
	Recurring violation	--Show Cause Order --Criminal Action	PC, GM GM
	Terminate Service	--GM	
Failure to mitigate violation or halt production	Does not result in harm to POTW, public or the environment	--NOV --NOV with \$250 fine	PC PC
	Does result in harm to POTW, public or the environment	--Show Cause Order --AO with \$500 fine/cost recovery --Civil Action	PC, GM PC, GM GM
Failure to properly operate and maintain Pretreatment equipment or facility	Does not result in harm to POTW, public or the environment	--NOV	PC
	Does result in harm to POTW, public or the environment	--NOV with \$500 fine/cost recovery --Civil Action	PC GM

## ENFORCEMENT RESPONSE GUIDE

### Henderson Water & Sewer Commission Henderson, Kentucky

Violation	Nature/Description	Enforcement Response	Personnel
<b>Other Violations (Cont.)</b>			
Failure to meet Compliance Schedule	Missed milestone by less than 30 days, or will not affect final milestone	--NOV	PC
	Missed milestone by more than 30 days, or will affect final milestone; Good cause for delay	--NOV --AO with \$250 fine to escalate --Show Cause Order	PC, GM PC, GM GM
	Missed milestone by more than 30 days, or will affect final milestone; No good cause for delay	--AO with \$500 fine to escalate --Civil Action --Terminate Service	PC, GM GM GM
	Chronic violations of Compliance Sched.	--Civil Action --Criminal Action --Terminate Service	GM GM GM

## ENFORCEMENT RESPONSE GUIDE

### Henderson Water & Sewer Commission Henderson, Kentucky

Violation	Nature/Description	Enforcement Response	Personnel
<b>Violations Detected During Site Visits</b>			
Entry Denial	Entry denied or consent withdrawn;	-- Obtain warrant and return to IU	PC, GM
	Copies of records denied	-- NOV with \$250 fine	PC, GM
Illegal Discharge	Illegal discharge observed; no harm to POTW, public or the environment	-- NOV with \$250 fine	PC
	Illegal discharge observed; harm to POTW or evidence of Intent/negligence	-- Civil Action	GM
		-- Criminal Action	GM
		-- Terminate Service	GM
	Recurring Illegal discharges observed	-- Civil Action -- Terminate Service	GM GM
Improper Sampling	Unintentional sampling at Incorrect location	-- NOV	PC
	Unintentional use of incorrect sample type	-- NOV	PC
	Unintentional use of improper sample collection techniques	-- NOV	PC
	Recurring use of incorrect sampling location, type or collection techniques; Evidence of intent	-- Show Cause Order	PC, GM
		-- AO with \$500 fine to escalation	PC, GM
	-- Civil Action	GM	
	-- Criminal Action	GM	
	-- Terminate Service	GM	

## ENFORCEMENT RESPONSE GUIDE

### Henderson Water & Sewer Commission Henderson, Kentucky

Violation	Nature/Description	Enforcement Response	Personnel
<b>Violations Detected During Site Visits (Cont.)</b>			
Inadequate Recordkeeping	Inspector finds files Incomplete and/or missing; Isolated, no evidence of intent	--NOV	PC
	Inspector finds files Incomplete and/or missing; chronic, recurring	--NOV with \$250 fine --Criminal Action	PC, GM GM
Failure to report additional monitoring	Inspector finds additional files not submitted	--NOV	PC
	Chronic, recurring failure to report	--NOV with \$250 fine	PC

## **Enforcement Response Guide**

### **Henderson Water & Sewer Commission Henderson, Kentucky**

#### **Timeframe for Enforcement Responses**

- A. All violations will be identified and documented within five (5) days of receiving compliance information.
  
- B. Initial enforcement responses (involving contact with the industrial user and requesting information on corrective or preventative actions) will occur within fifteen (15) days of violation detection.
  
- C. Follow up actions for continuing or reoccurring violations will be taken within sixty (60) days of the initial enforcement response. For all continuing violations, the response will include a compliance schedule.
  
- D. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.
  
- E. All violations meeting the criteria for Significant Noncompliance (SNC) will be addressed with an enforceable order within thirty (30) days of the identification of Significant Noncompliance (SNC).

## Appendix B

Model: Notice Of Violation (NOV)  
Cease and Desist Order  
Consent Order  
Show Cause Order  
Compliance Order

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# Henderson Water Utility

111 Fifth Street  
Henderson, Kentucky 42420

## NOTICE OF VIOLATION

[Date]

[User Name]

[Address]

### LEGAL AUTHORITY

Pursuant to the legal authority vested in the General Manager of the Henderson Water Utility under the provisions of the City's Sewer Use Ordinance as stated in Article II, Division 2, Section 23-34, Paragraph (b), the following findings are made and formal notice of violation is hereby issued.

### FINDINGS

1. In order for the City of Henderson to comply with all state and federal laws and regulations as required by the Clean Water Act or 1977 as amended, and the general pretreatment regulations as defined in 40 CFR, Part 403, the City enacted by ordinance "Sewer Use Regulations", and through the Henderson Water Utility administers those regulations.
2. The ordinance sets forth uniform requirements for all direct and indirect contributors to the wastewater collection and treatment system and to the municipal separate storm sewer system.
3. The ordinance sets forth specific requirements for industrial users by requiring an approved industrial user permit under an established pre-treatment program meeting the requirements of 40 CFR, Part 403.
4. In accordance with the requirements of the Sewer Use Regulations, [User name] was issued an Industrial User Permit and is required to perform routine sampling and monitoring to assure compliance with specific requirements of the permit and all other conditions of the Sewer Use Regulations.
5. The Industrial User Permit issued to [User name] contains specific numeric limits on the quantity of certain types of pollutants which [User name] may discharge. The approved Industrial User Permit contains limits for Copper, Lead and Zinc which are 0.46 mg/l, 0.43 mg/l, and 1.31 mg/l, respectively.

6. Compliance monitoring performed [Date] at [User name] and submitted to HWU indicates the following results: Copper at 8.29 mg/l, Lead at 0.514 mg/l, and Zinc at 3.11 mg/l.
7. Each of the above results exceeds the numeric limits established in the [User name] approved Industrial User Permit and are considered to be in violation of the Sewer Use Regulations and your permit.

BASED ON THE ABOVE FINDINGS, NOTICE OF VIOLATION IS HEREBY GIVEN:

### **NOTICE**

1. [User Name], located at [Address] has exceeded their individual Industrial User Permit limits per Article II, Division 2, Section 23-31 (d) (2).
2. In order to remain compliant with the City of Henderson's Sewer Use Regulations and the approved Industrial User Permit, [User Name] must within ten (10) calendar days of the receipt of this Notice of Violation (NOV) submit to the Henderson Water Utility General Manager an explanation of the violation(s) and a plan with specific actions (the corrective action plan) for the satisfactory correction and prevention thereof.
3. Submission of this explanation and corrective action plan in no way relieves the user of the potential liability for a violation occurring before or after receipt of this notice of violation.
4. The corrective action plan shall be submitted to:

Tom Williams, P.E  
General Manager  
Henderson Water Utility  
111 Fifth Street  
Henderson, Kentucky 42420  
270.826.2421  
[williamst@hkywater.org](mailto:williamst@hkywater.org)

# Henderson Water Utility

111 Fifth Street  
Henderson, Kentucky 42420

## CEASE AND DESIST ORDER

[Date]

[User Name]

[Address]

### LEGAL AUTHORITY

Pursuant to the legal authority vested in the General Manager of the Henderson Water Utility under the provisions of the City's Sewer Use Ordinance as stated in Article II, Division 2, Section 23-34, Paragraph (b), the following findings are made and this Order is hereby issued.

### FINDINGS

1. In order for the City of Henderson to comply with all state and federal laws and regulations as required by the Clean Water Act or 1977 as amended, and the general pretreatment regulations as defined in 40 CFR, Part 403, the City enacted by ordinance "Sewer Use Regulations", and through the Henderson Water Utility administers those regulations.
2. The ordinance sets forth uniform requirements for all direct and indirect contributors to the wastewater collection and treatment system and to the municipal separate storm sewer system.
3. The ordinance sets forth specific requirements for industrial users by requiring an approved industrial user permit under an established pre-treatment program meeting the requirements of 40 CFR, Part 403.
4. In accordance with the requirements of the Sewer Use Regulations, [User Name] was issued an Industrial User Permit and is required to perform routine sampling and monitoring to assure compliance with specific requirements of the permit and all other conditions of the Sewer Use Regulations.
5. This data shows that [User Name] has violated its Industrial User Permit and the Henderson Sewer Use Ordinance in the following manner:
  - a. [User name] has violated its permit limits for [Name of Pollutant] in each sample collected between [Date] and [Date], for a total of [Number of Violations] separate violations of the permit.
  - b. [User name] has failed to comply with an Administrative Compliance Order requiring [procedures required by Compliance Schedule] by [Compliance Date].

- c. [User name] has failed to appear at a show cause hearing pursuant to an order requiring said attendance.

BASED ON THE ABOVE FINDINGS, [User Name] IS HEREBY NOTIFIED THAT:

**ORDER**

1. Within 24 hours of receiving this order, cease all nondomestic discharges into the City of Henderson sanitary sewer system. Such discharges shall not recommence until such time as [User name] is able to demonstrate that it will comply with its current Industrial User Permit and any limitations therein and the Henderson Sewer Use Ordinances
2. Failure to comply with this order may subject [User name] to having its connection to the sanitary sewer system sealed by Henderson Water Utility and assessed the costs for such work.
3. Failure to comply with the requirements of this order shall constitute a further violation of the Henderson Sewer Use Ordinance and may subject [User name] to civil or criminal penalties or such other enforcement responses as may be deemed necessary by the General Manager.
4. This order, entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ shall be effective upon receipt by [User name].

Signed: \_\_\_\_\_

Tom Williams, P.E.  
General Manager  
Henderson Water Utility  
111 Fifth Street  
Henderson, Kentucky 42420  
270.826.2421  
[williamst@hkywater.org](mailto:williamst@hkywater.org)

# Henderson Water Utility

111 Fifth Street  
Henderson, Kentucky 42420

## CONSENT ORDER

[Date]

[User Name]

[Address]

## LEGAL AUTHORITY

Pursuant to the legal authority vested in the General Manager of the Henderson Water Utility under the provisions of the City's Sewer Use Ordinance as stated in Article II, Division 2, Section 23-34, Paragraph (b), the following findings are made and this Order is hereby issued.

## FINDINGS AND ORDER

1. The City of Henderson owns and, through the Henderson Water Utility operates a Wastewater Treatment Plant which can be adversely impacted by discharges from industrial users, including [User Name], and implements a Pretreatment Program to control such discharges into the sanitary sewer system of the City of Henderson.
2. [User Name] has consistently violated the pollutant discharge limitations in its Industrial User Permit as set forth in Exhibit A, attached hereto.
3. Therefore, to ensure that [User Name] is brought into compliance with its Industrial User Permit at the earliest possible date, IT IS HEREBY AGREED AND ORDERED, BETWEEN [User Name] AND THE GENERAL MANAGER OF HENDERSON WATER UTILITY, that [User Name] shall:
  - a. By [Date], obtain the services of a licensed professional engineer specializing in wastewater treatment for the purpose of designing a pretreatment system which will bring [Name of User] into compliance with its Industrial User Permit.
  - b. By [Date], submit plans and specifications for the proposed pretreatment system to the General Manager for review.
  - c. By [Date], install the pretreatment system in accordance with the plans and specifications submitted in item b above
  - d. By [Date], achieve compliance with the limits set forth in Exhibit A.
  - e. [Name of User] shall pay \$1,000.00 per day for each and every day it fails to comply with the schedule set out in items a-d above.

4. In the event that [User Name] fails to comply with any of the deadlines set forth above, [User Name] shall, within one (1) working day after expiration of the deadline, notify the General Manager, in writing. This notice shall describe in detail the reasons for [User Name]'s failure to comply, the additional amount of time needed to complete the remaining work and the steps to be taken to avoid future delays. This notification in no way excuses [User Name] from its responsibility to meet any later milestones required by this Consent Order.
5. Compliance with the terms and conditions of the Consent Order shall not be construed to relieve [User Name] of its obligation to comply with its Industrial User Permit which remains in full force and effect. The City reserves the right to seek any and all remedies available to it under the provisions of the Sewer Use Ordinance.
6. Violation of this Consent Order shall constitute a further violation of the City's Sewer Use Ordinance and subjects [User Name] to all penalties described by the provisions of the Henderson Sewer Use Ordinance.
7. Nothing in this Consent Order shall be construed to limit any authority of Henderson Water Utility to issue any other orders or take any other enforcement action which it deems necessary to protect the wastewater treatment plant, the environment and/or the public health and safety.

**SIGNATORIES**

**FOR [User Name]**

\_\_\_\_\_

Date

\_\_\_\_\_

Name  
[User Name]

**FOR HENDERSON WATER UTILITY**

\_\_\_\_\_

Date

\_\_\_\_\_

Tom Williams, P.E.  
General Manager  
Henderson Water Utility

# Henderson Water Utility

111 Fifth Street  
Henderson, Kentucky 42420

## ADMINISTRATIVE SHOW CAUSE ORDER

[Date]

[User Name]

[Address]

### LEGAL AUTHORITY

Pursuant to the legal authority vested in the General Manager of the Henderson Water Utility under the provisions of the City's Sewer Use Ordinance as stated in Article II, Division 2, Section 23-34, Paragraph (b), the following findings are made and this Order is hereby issued.

### FINDINGS

1. The City of Henderson owns and, through the Henderson Water Utility operates a Wastewater Treatment Plant which can be adversely impacted by discharges from industrial users, including [User Name], and implements a Pretreatment Program to control such discharges into the sanitary sewer system of the City of Henderson.
2. [User Name] discharges nondomestic wastewater containing pollutants into the sanitary sewer system of the City of Henderson, and is a "Significant Industrial User" as defined by the provisions of the City of Henderson's Sewer Use Ordinance.
3. [User Name] was issued an Industrial User Permit on [Date] which contains prohibitions, restrictions and numerical limitations on the quality of the wastewater it discharges to the sanitary sewer system of the City of Henderson.
4. Pursuant to the Sewer Use Ordinance and the above referenced permit, data is routinely collected and submitted on the compliance status of [User Name].
5. This data shows that [User Name] has violated its Industrial User Permit in the following manner:
  - (a) [User Name] has violated its permit limits for [Name of Pollutant] in each sample collected between [Date] and [Date], for a total of [Number of Violations] separate violations of the permit.
  - (b) [User Name] has failed to submit a periodic compliance report due on [Date].
  - (c) These violations satisfy the Henderson Water & Sewer Commission's definition of Significant Noncompliance.

**ORDER**

BASED ON THE ABOVE FINDINGS, [User Name] IS HEREBY ORDERED TO:

1. Appear at a meeting with the General Manager of Henderson Water Utility to be held on [Date] at [Time], at the Main Offices of Henderson Water Utility.
2. At this meeting, [User Name] must demonstrate why Henderson Water & Sewer Commission through Henderson Water Utility, should not pursue a judicial enforcement action, or other escalated enforcement action, against [User Name] at this time
3. This meeting will be closed to the public.
4. Representatives of [User Name] may be accompanied by legal counsel if they so choose. If [User Name] chooses to be accompanied by legal counsel, HWU legal counsel will also attend.
5. Failure to comply with this order shall also constitute a further violation of the Henderson Sewer Use Ordinance and may subject [User Name] to civil or criminal penalties or such other enforcement responses as may be necessary and appropriate.
6. This order, entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, shall be effective upon receipt by [User Name]

Signed: \_\_\_\_\_

Tom Williams, P.E.  
General Manager  
Henderson Water Utility

**RECEIPT ACKNOWLEDGED BY [User Name]**

\_\_\_\_\_  
Date

Signed: \_\_\_\_\_  
for [User Name]

Printed Name: \_\_\_\_\_

# Henderson Water Utility

111 Fifth Street  
Henderson, Kentucky 42420

## ADMINISTRATIVE COMPLIANCE ORDER

[Date]

[User Name]

[Address]

### LEGAL AUTHORITY

Pursuant to the legal authority vested in the General Manager of the Henderson Water Utility under the provisions of the City's Sewer Use Ordinance as stated in Article II, Division 2, Section 23-34, Paragraph (b), the following findings are made and this Order is hereby issued based on findings of violation of the conditions of the Industrial User Permit issued under the provisions of the City's Sewer Use Ordinance.

### FINDINGS

1. [User Name] discharges nondomestic wastewater containing pollutants into the sanitary sewer system of the City of Henderson.
2. [User Name] is a "Significant Industrial User" as defined by Article I of the City of Henderson's Sewer Use Ordinance
3. [User Name] was issued an Industrial User Permit on [Date] which contains prohibitions, restrictions and numerical limitations on the quality of the wastewater discharged to the sanitary sewer system of the City of Henderson.
4. Pursuant to the Sewer Use Ordinance and the above referenced permit, data is routinely collected and submitted on the compliance states of [User Name].
5. This data shows that [User Name] has violated its Industrial User Permit in the following manner:
  - a. [User Name] has violated its permit limits for [Name of Pollutant] in each sample collected between [Date] and [Date], for a total of [Number of Violations] separate violations of the permit.
  - b. [User Name] has failed to submit a periodic compliance report due on [Date].
  - c. These violations satisfy the Henderson Water & Sewer Commission's definition of Significant Noncompliance.

**ORDER**

BASED ON THE ABOVE FINDINGS, [User Name] IS HEREBY ORDERED TO:

1. Within 180 days from the date of this order, install pretreatment equipment which will adequately treat [User Name]'s wastewater to a level which will comply with its Industrial User Permit and the Henderson Sewer Use Ordinance.
2. Within five (5) days of the date of this order, [User Name] shall submit all periodic compliance reports due since [Date].
3. Within ten (10) days, pay to the City treasurer's office, a fine of \$[Amount of Fine] for the above-described violations in accordance with Article XI of the Sewer Use Ordinance.
4. Report, on a monthly basis, the wastewater quality and the corresponding flow and production information as described on page [Page Number] of the Industrial User Permit for a period of [Time Period] from the effective date of this order.
5. All reports and notices required by this order shall be sent, in writing, to the following address:

Mr. David Brister  
Environmental Compliance & Pretreatment Coordinator  
Henderson Water Utility  
230 North Alvasia Street  
Henderson, Kentucky 42420

6. This order does not constitute a waiver of the Industrial User Permit which remains in full force and effect. The Henderson Water & Sewer Commission reserves the right to seek any and all remedies available to it under the provisions of the Henderson Sewer Use Ordinance for any violation cited by this order
7. Failure to comply with the requirements of this order shall constitute a further violation of the Henderson Sewer Use Ordinance and may subject [User Name] to civil or criminal penalties or such other enforcement responses as may be necessary.
8. This order, entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, shall be effective upon receipt by [User Name].

Signed: \_\_\_\_\_

Tom Williams, P.E.  
General Manager  
Henderson Water Utility

