

**ENFORCEMENT RESPONSE PLAN
OF THE
CHEMUNG COUNTY
SEWER DISTRICTS
CHEMUNG COUNTY, NEW YORK**

July 14, 1999

TABLE OF CONTENTS

I.	Description of Terms	3
II.	Statement of Purpose	6
III.	Enforcement Authorities	6
IV.	Enforcement Response Guide	9
V.	Enforcement Responses	23

ENFORCEMENT RESPONSE PLAN
OF THE CHEMUNG COUNTY
SEWER DISTRICTS

I. DESCRIPTION OF TERMS AND ABBREVIATIONS

The following identifies terms and abbreviations used throughout the Enforcement Response Plan and the Enforcement Response Guide. Interested persons should also consult the definitions section of the Chemung County Sewer Use Law and the Rules and Regulations promulgated thereunder.

- a. AB
The Administrative Boards of the Chemung County Sewer Districts.
- b. AO
Administrative Order.
- c. CAA
The Control Authority Attorney or designee.
- d. Civil Action
Civil litigation in an appropriate court of law against the IU seeking equitable relief, monetary penalties and actual damages.
- e. Control Authority
Any Chemung County Sewer Authority District including but not limited to the AB, ED and DD of a Chemung County Sewer District, and any department or division of the County of Chemung duly authorized or designated to administer or operate the County's sewer district.
- f. County Sewer Use Law
The Chemung County Sewer Use Law for Chemung County Sewer Districts including the Rules and Regulations and scale of charges of the Chemung County Sewer Districts, N.Y. County Law §250-279-b, and the Chemung County Charter.
- g. County Sewer Use Law Rules & Regulations
The Rules & Regulations for the Chemung County Sewer Districts.

h. Criminal Investigation

Investigation to determine whether there are grounds for criminal litigation pursuing punitive measures against the IU through an appropriate court of law.

i. DD

The Deputy Director of the Chemung County Sewer Districts or designee.

j. ED

The Executive Director of the Chemung County Sewer Districts.

k. Fine

Monetary penalty assessed by Control Authority officials. Fines shall be assessed by the ED and may appear as a charge on an IUs Sewer use bill.

l. Interference

As defined in the County Sewer Rules and Regulations.

m. IU

Industrial user.

n. NOV

Notice of Violation

o. Pass Through

As defined in the County Sewer Rules and Regulations.

p. SNC

Significant Noncompliance, as defined in 40 C.F.R. §403.8(f)(2)(vii), as follows:

An industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- (a) Chronic violations 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 or the average limit for the same pollutant parameter;
- (b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more 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 the average limit multiplied by the applicable

TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH.)

- (c) Any other 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 (including endangering the health of POTW personnel or the general public);
 - (d) 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 exercise of its emergency authority to halt or prevent such a discharge;
 - (e) 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 construction, completing construction, or attaining final compliance;
 - (f) Failure to provide within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, and reports on compliance with compliance schedules;
 - (g) Failure to accurately report noncompliance;
 - (h) Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program
- q. Slug
As defined in the County Sewer Rules and Regulations.
- r. SPDES Permit
State Pollution Discharge Elimination System Permit issued to the Control Authority by the New York Department of Environmental Conservation.

II. STATEMENT OF PURPOSE

United States Environmental Protection Agency (EPA) regulations, 40 C.F.R. §403.8(f)(5), requires that all Publicly Owned Treatment Works (POTW) with approved pretreatment programs develop and implement an Enforcement Response Plan (Plan). Under 33 U.S.C. §1319(b), (d) and (f) of the Clean Water Act EPA has authority to bring an enforcement action against any POTW that fails to properly implement a pretreatment program. Under the requirements of EPA's regulations the Plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of IU noncompliance and shall, at a minimum:

1. describe how a POTW will investigate instances of noncompliance;
2. describe the types of escalating enforcement responses the POTW will take in response to all reasonably anticipated types of IU violations and the time periods within which responses will take place;
3. identify by title the official(s) responsible for implementing each type of enforcement response; and
4. adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as provided in 40 C.F.R. §403.8(f)(1) and(2).

These four requirements for the Enforcement Response Plan are discussed below.

III. ENFORCEMENT AUTHORITIES AND IMPLEMENTATION

A. Derivation of the Chemung County Sewer Use Law

The enforcement authority of the Chemung County Sewer Districts derives from Local Law No. 8, entitled "Chemung County Sewer Use Law," enacted by the Legislature of the County of Chemung by Resolution No. 8A-227, effective August 13, 1984, as amended. The authority for the Chemung County Sewer Use Law derives from N.Y. Const. art. IV, N.Y. Mun. Home Rule Law §10 (McKinney 1969), and N.Y. County Law §§250 through 279-b (McKinney 1991).

B. Enforcement Authorities of the Chemung County Sewer Use Law

Section 203 of the Chemung County Use Law authorizes the Administrative Board of the Chemung County Sewer District No. 1 and the Administrative Board of the Elmira Sewer District and their delegees, including the Executive Director, to implement and enforce the Sewer Use Law and the Rules and Regulations. The following provisions of the Chemung County Sewer Use Law specify the enforcement authority of the Control Authority.

Section 401	Ä	Violations
Section 402	Ä	Notification of Violation
Section 403	Ä	Consent Orders
Section 404	Ä	Administrative or Compliance Orders
Section 405	Ä	Administrative Fines
Section 406	Ä	Cease and Desist Orders
Section 407	Ä	Termination of Permit
Section 408	Ä	Show Cause Hearing
Section 409	Ä	Failure of User to Petition the ED
Section 410	Ä	Notice
Section 411	Ä	Right to Choose Multiple Remedies
Section 412	Ä	Civil Action for Penalties
Section 413	Ä	Criminal Penalties
Section 414	Ä	Injunction Relief
Section 415	Ä	Summary Abatement
Section 421	Ä	Enforcement Response Plan

C. Enforcement Responsibility

In accordance with Section 203 of the County Sewer Use Law enforcement will be the responsibility of the Chemung County Sewer Districts' Administrative Boards acting through the CAA, ED, and DD, or applicable designees. The Enforcement Response Guide, which is found in Section IV.c. of this Enforcement Response Plan, lists the Control Authority personnel responsible for taking specific types of enforcement actions. Section 421 of the County Sewer Use Law directs that all violations be met with some type of enforcement response. This enforcement response plan reflects the primary responsibility of the Control Authority to enforce all applicable pretreatment requirements and standards as provided in the County Sewer Use Law and the Rules and Regulations.

D. Enforcement Investigations

The Control Authority solicits and receives information about POTW users and possible violations from a number of sources. First, non-POTW persons such as police, fire, water authority personnel or citizens may provide potential enforcement information. Second, information about possible violations is received from self-monitoring and other reports or notices of violations submitted by system users. Third, information is obtained from field inspections conducted by Control Authority personnel. The DD or delegee is responsible for promptly reviewing all information and conducting initial enforcement investigations. Once a violation is suspected or confirmed, the appropriate personnel listed in the Enforcement Response Guide proceed with the investigation. General investigation and response timeframes are provided in Section IV.D. of this Enforcement Response Plan.

Section 421 of the Chemung County Sewer Use Law requires that all violations of the Law or the Rules and Regulations be met with some type of enforcement response. This means that violations will usually be met with at least a Notice of Violation (NOV). For example, in the case of an isolated, insignificant exceedence of a Federal or local standard the Control Authority would usually issue an NOV. The NOV requires the user to provide an explanation of the violation in writing, and requires the user to specify measures it will take to correct the noncompliance and prevent reoccurrences.

The DD is also responsible for scheduling and conducting periodic announced and unannounced field investigations and inspections, including recordkeeping, sampling and chain of custody procedures. All sampling will be conducted in accordance with the sampling procedures established in Sections 905, 910, and 913 of the Rules and Regulations. All investigations and enforcement actions taken will be logged by the DD or designee and included in the IU file, along with all supporting documentation. The DD is also responsible for tracking enforcement follow-up activities, including due dates and compliance schedule milestones.

E. Violation Identification

Violations will be identified through all means available, including but not limited to routine review of IU reports and monitoring and inspection reports conducted by the Control Authority. The DD or designee is responsible for promptly reviewing compliance information, as described in III.D., above.

F. Reservation of Rights By the Control Authority

The Enforcement Response Plan and the Enforcement Response Guide have been prepared by the Control Authority to meet federal requirements (40 C.F.R. §403.8(f)(5)) and are intended to act as internal Control Authority guidance only. They do not confer any rights upon IUs or any other persons and are not intended to limit the authority of the Control Authority to take any action which is available to it under any state, federal or local laws, or applicable rules and regulations for any violation thereof. The Control Authority specifically reserves the right to take any enforcement action it deems appropriate for any particular set of circumstances.

IV. ENFORCEMENT RESPONSE GUIDE

A. Introduction

This section of the Plan details an Enforcement Response Guide (Guide) that will be considered when the Control Authority evaluates the type of enforcement response appropriate for particular violations. The Guide describes the types of escalating enforcement responses the Control Authority will take in response to all anticipated types of violations. The Guide also specifies by title the officials responsible for each type of response. The time periods within which responses will generally take place are set out in Section IV.D. The Guide is primarily intended to serve three main purposes:

Identify enforcement responses that may be appropriate in relation to the nature and severity of the violation and the overall degree of noncompliance;

Notify IUs of the types of enforcement responses which should be anticipated in response to specified violations;

Provide guidance to encourage a uniform application of enforcement responses to comparable levels and types of violations, and to provide a mechanism to review the appropriateness of responses by the Control Authority.

B. Determination Of Appropriate Response

The Control Authority will consider any relevant criteria, including the following, when determining an appropriate response:

- Magnitude of the Violation;
- Duration of the Violation;
- Effect on Receiving Waters;
- Effect on the POTW;
- Compliance History of the IU;
- Good Faith of the IU.

Each of these factors is explained in more detail below:

1. Magnitude of Violation. The magnitude of the violation will be considered in determining the type of enforcement response (administrative, civil or criminal), the level of that response and the amount of any fine. Generally, an isolated, unintentional instance of noncompliance can be addressed with an informal response or an NOV. Escalated enforcement responses will be pursued where a violation threatens public health and the environment, damage to public or private property, or the integrity of the Control Authority's program (e.g., falsification of a self-monitoring report, a slug discharge that could pass through or interfere with the POTW, and failure to meet reporting requirements including reporting of noncompliance or violations of compliance schedules). Any SNC will generally be responded to by an enforcement action requiring a return to compliance.

2. Duration of the Violation. Violations (regardless of severity) which continue over prolonged periods of time will subject the IU to escalated enforcement actions.

3. Effect on Receiving Waters. One of the primary objectives of the National Pretreatment Program is to prevent pollutants from "passing through" the POTW and entering the receiving body of water. Consequently, any violation which results in environmental harm will be met with an escalated response. At a minimum, environmental harm will be presumed whenever an industry discharges a pollutant into the sewage system which:

- Passes through the POTW;

- Causes or contributes to a violation of the POTW's SPDES permit (including but not limited to effluent limitations, action levels, and monitoring requirements such as bioassays);

- Has a demonstrated toxic effect on the receiving waters (i.e., fish kill);

Causes or contributes to a violation by the POTW of any water quality standard or guidance value.

4. Effect on the POTW. Some violations may have an effect on the POTW itself, or the health and safety of the public or POTW employees. For example, the violation may result in significant increases in treatment costs, interfere or harm POTW personnel, equipment, processes, operations or cause sludge and/or biosolids contamination resulting in increased treatment and/or disposal costs. These types of violations will usually be addressed by an administrative or civil enforcement action, which will include fines, penalties, and recovery of additional costs, expenses and damages for the harm to the POTW and its operations, and an order to correct the violation. For example, when an IU's discharge unintentionally upsets the treatment plant, damages the collection system through pipe corrosion, causes an obstruction, or causes additional expenses (e.g., to trace a spill back to its source, or increased sludge handling and disposal costs), the Control Authority's response will typically include cost recovery, civil penalties, and a requirement to correct the condition causing the violation.

5. Compliance History of the IU. Compliance history is an important factor in determining which of the designated remedies listed in the Guide should apply to a particular violation. Recurring violations (even of different requirements) suggest that a more serious response may be warranted, particularly where such violations indicate an inadequate treatment system, a poorly maintained or operated treatment system or a casual approach to compliance in general. A good compliance history may make a less severe response appropriate.

6. Good Faith of the IU. The IU's good faith in responding to and correcting noncompliance is also a factor in determining the appropriate response. Good faith is the IU's earnest and demonstrated intention to remedy its noncompliance in a timely manner. Specific IU actions must support a finding of good faith. Good faith can be demonstrated by cooperation with the POTW, timely and full disclosure of the circumstances surrounding the violation and timely completion of corrective measures. However, compliance with prior enforcement orders or timely reporting which is required by law will not necessarily be viewed as a demonstration of good faith. It is important to be aware that good faith does not eliminate the necessity for an enforcement action. However, an IU's good faith may allow the Control Authority to reasonably select less stringent enforcement responses. Actions which cause or contribute to harm to the POTW will usually result, at a minimum, in recovery of costs regardless of good faith. Enforcement responses are also intended to have a deterrent effect on the rest of the regulated community, which suggests that assessment of at least a nominal fine will occur even in instances where good faith has been demonstrated.

C. Enforcement Response Guide

1. Introduction. The Guide, including suggested fine amounts, is not binding on the Control Authority; however the Guide will be consulted for guidance purposes prior to initiating an enforcement response. It should be noted that notwithstanding the Guide, all instances of noncompliance will

be responded to on a case-by-case basis and in appropriate circumstances the maximum response available may be used as a first response.

2. Conciliation Meetings. At any point before or during the enforcement action, the ED or DD, as appropriate, may, but shall not be required to, invite representatives of the IU to a conciliation meeting to discuss the violation and methods of correcting the cause of the violation. Such additional meetings as seem advisable may be held to aid in the resolution of a problem. If the IU and ED/DD can agree to appropriate remedial and preventive measures, they shall commit to such agreement in writing with provisions for a reasonable compliance schedule and the same shall be incorporated into a consent order. If an agreement is not reached through the conciliation process the ED/DD should continue with the enforcement policy outlined below and take such other actions as are deemed advisable to ensure compliance.

**ENFORCEMENT RESPONSE PLAN
GUIDELINE CHART**

I. UNAUTHORIZED DISCHARGES (No permit)

NATURE OF VIOLATION	ENFORCEMENT RESPONSES	FINE	PERSONNEL
---------------------	-----------------------	------	-----------

NONCOMPLIANCE

A. Unpermitted discharge (including spills or slugs)

IU unaware of requirement; no harm to POTW/environment	NOV with application form		DD
IU unaware of requirement; harm to POTW	-AO with fine and/or -Civil action	X	ED CAA
Failure to apply continues after notice by the POTW or report of incident	-AO with fine and/or -Civil action -Criminal investigation -Terminate service	X	ED CAA CAA AB

B. Nonpermitted discharge (failure to renew)

IU has not submitted application within 10 days of due date	NOV		DD
---	-----	--	----

II. DISCHARGE LIMIT VIOLATION

NATURE OF VIOLATION	ENFORCEMENT RESPONSES	FINE	PERSONNEL
NONCOMPLIANCE			
A. Exceedance of local or Federal Standard including spills, slugs, and permit limitation			
Isolated, not significant	NOV		DD
Isolated, significant, no harm to POTW or environment	AO with fine	X	ED
Isolated, harm to POTW or environment	-AO with fine and/or -Civil action -Criminal investigation	X	ED CAA CAA
Recurring, no harm to POTW or environment	AO with fine	X	ED
Recurring; significant (harm)	-AO with fine and/or -Civil action -Terminate service -Criminal investigation	X	ED CAA AB CAA

III. MONITORING AND REPORTING VIOLATIONS

NATURE OF VIOLATION	ENFORCEMENT RESPONSES	FINE	PERSONNEL
NONCOMPLIANCE			
A. Reporting violation			
Report is improperly signed or certified	NOV		DD
Report is improperly signed or certified after notice by POTW	AO with fine	X	ED
Isolated not significant (e.g., 10 days late)	NOV		DD
Significant (e.g., report 30 days or more late)	AO with fine per day	X	ED
Reports are always late or no reports at all	-AO with fine and/or -Civil action	X	ED CAA
Failure to report spill or changed discharge (no harm)	NOV		DD
Failure to report spill or changed discharge (results in harm)	-AO with fine and/or -Civil action	X	ED CAA
Repeated failure to report spills	-AO with fine and/or -Civil action -Terminate service -Criminal investigation	X	ED CAA AB CAA
Falsification	-Criminal investigation -Terminate service		CAA AB
B. Failure to monitor correctly			
Failure to monitor all pollutants as required by permit	-NOV or -AO with fine	X	DD ED
Recurring failure to monitor	-AO with fine and/or -Civil action	X	ED CAA

C. Improper sampling

Evidence of intent	-Criminal investigation		CAA
	-Terminate service		AB

D. Failure to install monitoring equipment

Delay of less than 30 days	NOV		ED
Delay of 30 days or more	AO with fine per day	X	ED
Recurring, violation of AO	-Civil action		CAA
	-Criminal investigation		CAA
	-Terminate service		AB

E. Compliance schedules (in permit)

Missed milestone by less than 30 days, or will not affect final milestone	-NOV or -AO with fine	X	DD ED
Missed milestone by more than 30 days, or will affect final milestone (good cause for delay)	AO with fine	X	ED
Missed milestone by more than 30 days or will affect milestone (no good cause for delay)	-AO with fine and/or -Civil action -Terminate service	X	ED CAA AB
Recurring violation or violation of schedule in AO	-Civil action -Criminal investigation -Terminate service		CAA CAA AB

IV. OTHER PERMIT VIOLATIONS

NATURE OF VIOLATION	ENFORCEMENT RESPONSES	FINE	PERSONNEL
---------------------	-----------------------	------	-----------

NONCOMPLIANCE

A. Wastestreams are diluted in lieu of treatment

Initial violation	AO with fine	X	ED
Recurring	-AO with fine and/or -Civil action -Terminate service	X	ED CAA AB

B. Failure to mitigate noncompliance or halt production

Does not result in harm	NOV		DD
Does result in harm	-AO with fine and/or -Civil action	X	ED CAA

C. Failure to properly operate and maintain pretreatment facility

Does result in harm	NOV		DD
Does not result in harm	-AO with fine and/or -Civil action	X	ED CAA

V. VIOLATIONS DETECTED DURING SITE VISITS

NATURE OF VIOLATION	ENFORCEMENT RESPONSES	FINE	PERSONNEL
NONCOMPLIANCE			
A. Entry denial			
Entry denied or consent withdrawn. Copies of records denied	Obtain warrant and return to IU		DD/CAA
B. Illegal discharge			
Insignificant Violation No harm to POTW or environment.	NOV		DD
Significant Violation No harm to POTW or environment.	AO with fine	X	ED
Discharge causes harm or evidence of intent/negligence	-Civil action -Criminal investigation		CAA CAA
Recurring, violation of AO	Terminate service		AB
C. Improper sampling			
Unintentional sampling at incorrect location	NOV		DD
Unintentional using incorrect sample type	NOV		DD
Unintentional using incorrect sample collection techniques	NOV		DD
D. Inadequate recordkeeping			
Inspector finds files incomplete or missing (no evidence of intent)	NOV		DD
Recurring	AO with fine	X	ED

E. Failure to report additional monitoring

Inspection finds evidence of unreported monitoring	NOV		DD
Recurring	AO with fine	X	ED

END OF ENFORCEMENT RESPONSE GUIDELINE CHART

D. Timeframes for Responses

1. All violations generally will be identified and documented within 14 days of receiving compliance information.
2. Initial enforcement responses, if necessary, (involving initial contact with the IU and/or requesting information on corrective or preventative actions) generally will occur within 30 days of violation detection.
3. Follow up actions for continuing or reoccurring violations generally will be taken within 60 days of the initial enforcement response. For all continuing violations the response will usually include a compliance schedule.
4. Violations which threaten health, property or environmental quality are considered emergencies and an immediate response may be appropriate. Such response may include halting the discharge or terminating service.
5. All violations meeting the criteria for SNC generally will be addressed with an enforceable order within 45 days of the identification of SNC.

V. ENFORCEMENT RESPONSES

A. Notice of Violation

The Control Authority intends to issue NOV's for relatively minor or infrequent violations of pretreatment standards and requirements. The NOV will require the IU to explain, in writing, the cause of the noncompliance, and to propose measures to be taken to correct the noncompliance and prevent its reoccurrence. Although it may lack the deterrent effect of an administrative fine or criminal indictment, an NOV can nevertheless be an effective initial response to minor noncompliance for several reasons. First, the NOV provides the IU with an opportunity to correct noncompliance on its own initiative rather than according to a schedule of actions determined by the Control Authority and incorporated into a formal order, and thus fosters a cooperative environment between the IU and the Control Authority. Second, the NOV documents the initial attempts of the Control Authority to resolve the noncompliance. Should circumstances require the Control Authority to subsequently take a more stringent approach; the NOV documents that the Control Authority escalated its response consistent with its Plan, rather than reacting to the noncompliance with arbitrary or unnecessarily harsh or lenient enforcement. Finally, by providing the Control Authority with an inexpensive and prompt response to violations, the NOV demonstrates to the regulated community the County's commitment to implement a viable enforcement program.

B. Administrative Fines

1. Definition. An administrative fine is a monetary penalty assessed by the Control Authority for violations of pretreatment standards and requirements. The Control Authority will issue administrative fines through the mechanism of an administrative order and fines may appear as charges on the IU's sewer use bill. The Chemung County Sewer Use Law and Rules and Regulations detail the procedures for assessment of administrative fines and applicable appeal procedures. Administrative fines are among the most effective responses to noncompliance because they may be assessed at the Control Authority's discretion and the amount of the fines may be determined on an individual basis. Administrative fines differ from civil penalties (penalties imposed through court proceedings), since fines are assessed by the Control Authority directly and do not require court intervention unless the IU contests the action or refuses to pay the fine. Administrative fines are punitive in nature and are not related to a specific cost born by the Control Authority. Instead, fines are to recapture the full or partial economic benefit of noncompliance, and to deter future violations.
2. Considerations in Assessing Fines: Administrative fines will generally be used as an escalated enforcement response when NOV's or administrative orders have not prompted a return to compliance or when the initial violation is significant. The Guide contained herein provides guidance regarding the types of violations that are likely to result in administrative fines. Whether administrative fines are appropriate responses to noncompliance also depends greatly on the circumstances surrounding the violation. When using this enforcement response, either singly or in conjunction with another response (e.g., an

administrative order requiring the IU to take steps to return to compliance), the Control Authority will generally consider the factors set forth in IV.B.

Specific examples of when fines may be particularly appropriate include:

When the IU remains in noncompliance after receiving repeated NOVs; and

When the IU violates the terms of an administrative order (such as failing to meet a compliance schedule deadline).

C. Administrative Orders

1. Administrative Orders

AOs are enforcement documents which direct IUs to undertake or to cease specified activities. AOs may also assess an administrative fine and/or require specific additional actions of the IU. Where appropriate, the Control Authority may choose to negotiate the terms of an AO with the IU. AOs will generally be used as the first formal response to more serious instances of noncompliance (unless judicial proceedings are more appropriate). AOs may incorporate compliance schedules, administrative fines, and termination of service orders.

2. Elements of Administrative Orders

Administrative orders issued by the Control Authority will generally specify the following:

Title. The title will specify the type of AO order being issued, to whom it is being issued, the purpose(s) of the AO, contain an identification number, and be printed on the letterhead of the Control Authority.

Legal authority. The specific legal authorities in the County Sewer Use Law under which the order is issued will be cited.

Finding of noncompliance. All violations will be carefully described. The description will include the date(s), the specific permit conditions/ordinance provisions violated, and any damages attributable to the violation.

Ordered activity. All AOs will set out all ordered activity including, e.g., installation of treatment technology, additional monitoring, appearance at a show cause hearing, etc.

Milestone dates for corrective actions. Where compliance schedules are specified, all progress or "milestone" dates will be clearly established, including due dates for any required written reports.

Standard clauses. Administrative Orders will often include clause(s) which provide that: (1) compliance with the terms and conditions of the AO will not be construed to relieve the IU of its obligation to comply with applicable Federal, State or local laws; (2) violation of the AO itself may subject the IU to all penalties available under the County Sewer Use Law; (3) no provision of the AO should be construed to limit the Control Authority's authority to issue supplementary or additional orders or take other action deemed necessary to implement its pretreatment program; and (4) the provisions of the AO shall be binding upon the IU, its officers, directors, agents, employees, successors, assigns, and all persons, firms, and corporations acting under, through, or on behalf of the IU.

3. Types of Administrative Orders

Cease and Desist Orders. A Cease and Desist Order directs a noncompliant IU to cease illegal or unauthorized discharges immediately or to terminate its discharge altogether. A cease and desist order will be used in situations where the discharge could cause interference or pass through, or otherwise create an emergency situation. The order may be issued immediately upon discovery of the problem or following a formal or informal hearing, as appropriate. In an emergency, the order to cease and desist may be given by telephone. However, the Control Authority will issue a subsequent written order to the IU, either in person or by registered mail. If necessary (and within its legal authority), the Control Authority may order immediate cessation of any discharge to its collection system, regardless of a IU's compliance status. In nonemergency situations, the cease and desist order will be used to suspend or permanently revoke industrial wastewater discharge permits. If the IU fails to comply with the order, the Control Authority may take independent action to halt the discharge, such as blocking the IU's connection point. Such termination of service orders will usually be issued by the AB, as discussed in the section below on termination of service. Cease and desist orders that do not involve termination of service will be issued by the ED.

Consent Orders. Consent orders combine the force of an AO with the flexibility of a negotiated settlement. The Consent Order is an agreement between the Control Authority and the IU normally containing three elements: (1) compliance schedules; (2) stipulated fines or remedial actions; and (3) signatures of the ED or designee for the Control Authority and, for the IU, a "responsible corporate officer" as that term is defined in 40 C.F.R. §122.22(a). A Consent Order is appropriate when the IU assumes responsibility for its noncompliance and is willing (in good faith) to correct its cause(s). The IU need not admit to the noncompliance in the text of the Order. Thus, signing the Order is neither an admission of liability for purposes of civil litigation nor a plea of guilty for purposes of criminal prosecution. However, the Control Authority will ensure that the Consent Order prohibits future violations and provides for corrective action on the part of the IU.

In determining the terms to include in a Consent Order, the

Control Authority may take an IU's extenuating circumstances (e.g., financial difficulties, technical problems, and other impediments to necessary corrective action) into consideration. The Consent Order should address every identified (and reasonably potential) deficiency in the IU's compliance status at the time of the Order.

Show Cause Orders. An Order to Show Cause directs the IU to appear before the Control Authority, explain its noncompliance, and show cause why more severe enforcement actions (such as a cease and desist order) against the IU should not be pursued. The Order to Show Cause may be issued after informal contacts or NOV's have failed to resolve the noncompliance. However, the Show Cause Order/hearing may also be used to investigate violations of other orders. The Show Cause hearing may be formal (i.e., conducted according to the rules of evidence, with verbatim transcripts and cross-examination of witnesses) and open to the public. The results of a formal Show Cause hearing, along with any data or testimony submitted as evidence, are generally available to the public and may also serve as evidential support for future enforcement actions. Alternatively, the Control Authority may choose to conduct an informal hearing. However, findings resulting from informal hearings will be carefully documented. For example, the Control Authority may use an informal hearing to interview employees of the IU, examine discharge records, or negotiate the installation of a pretreatment system.

If a formal hearing is held, a hearing officer will be appointed as specified in the County Sewer Use Rules and Regulations. If an informal hearing is held, the hearing will be conducted by the CAA, AB, ED or DD, depending on the type and severity of the violation.

If a formal hearing is held, the Control Authority will typically put forth evidence of noncompliance. In response, the IU may admit or deny the noncompliance, explain mitigating circumstances, demonstrate its eventual compliance and describe all other corrective measures. During the hearing, the Control Authority can explore the circumstances surrounding the noncompliance and evaluate the sufficiency of the evidence for subsequent civil or criminal actions. If the IU does not understand the violation's nature (that is, what constitutes a violation under the County Sewer Use Law), the hearing can serve to educate the IU.

At the conclusion of the Show Cause hearing, the hearing officer in the case of a formal hearing, or the AB, CAA, ED or DD in the case of an informal hearing, will determine whether further action is warranted and, if so, its nature and extent. For example, if the problems causing the noncompliance appear to be resolved or nearly resolved at the hearing's conclusion, a Consent Decree may be drafted which incorporates the findings of the hearing. If the IU must install pretreatment equipment to achieve compliance, the circumstances surrounding the noncompliance will be weighed and a reasonable schedule for installation and start-up developed. Completion of this schedule and any additional requirements including fines will normally be administered through a Consent Order.

Should a Show Cause hearing result in an impasse, the Control Authority may follow up the meeting by issuing a Compliance Order, including a schedule, impose a fine, or refer the case to its attorney for civil litigation or criminal prosecution.

Compliance Orders. A Compliance Order directs the IU to achieve or restore compliance by a date specified in the Order. It is issued unilaterally by the Control Authority and its terms need not be discussed with the IU in advance. A Compliance Order is usually issued when noncompliance cannot be resolved without construction, repair, or process changes. Compliance Orders are also frequently used to require IUs to develop management practices, spill prevention programs and related Control Authority pretreatment program requirements.

A Compliance Order should document the noncompliance and list the required actions to be accomplished by specific dates, including interim and final requirements. In drafting the compliance schedule, the Control Authority will generally take into consideration all factors reasonably relevant to an appropriate schedule duration. For example, if the IU must install a complete pretreatment system, time will generally be allowed to obtain the necessary construction permits, and to design and construct the system. However, in such cases the Control Authority may require intermediate measures to ensure that the IU is making acceptable progress.

Once these milestones are set, the Control Authority will track the IU's performance against them and take escalated enforcement response, if needed. For example, the Control Authority may order the IU to show cause for failing to meet a major milestone, impose an additional fine or initiate judicial proceedings.

D. Termination of Sewer Service

Termination of service is the revocation of an IU's privilege to discharge wastewater into or to the Chemung County sewer system. The federal General Pretreatment Regulations, 40 C.F.R. §403.8(f)(1)(vi)(B), require that the Control Authority have legal authority to immediately halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons, or which presents or may present an endangerment to the environment, or which threatens to interfere with the POTW's operation. Termination of service may also be an appropriate response to serious or continued noncompliance.

Termination of service must be authorized by the AB in accordance with the procedures specified in the County Sewer Use Law and regulations. However, in the case of emergencies, the ED will conduct the termination of service action. There are three methods to terminate sewer service: physically sever (or plug) the IUs connection to the sewer, halt the discharge by revoking the IU's discharge permit, or issue a cease and desist order. An IU will receive prior notice of termination, except in emergency situations. The notice will identify the violation, reference the legal authority to terminate service, describe the method for

terminating service, specify a date and time when service will be terminated, and provide a hearing date to determine whether service may be restored.

E. Civil Litigation

The federal General Pretreatment Regulations, 40 C.F.R. 403.8(f) (1) (vi) (A), require the Control Authority to have legal authority to assess civil penalties in at least the amount of \$1,000 a day for each violation of pretreatment standards or requirements. The federal General Pretreatment Regulations also require the Control Authority to have legal authority to seek injunctive relief for noncompliance of pretreatment standards and requirements.

Civil litigation is the formal process of filing lawsuits against IUs to secure court ordered action to correct violations and/or to secure penalties for violations, including the recovery of costs to the POTW of the noncompliance. It will normally be pursued when the corrective action required is costly and complex, the penalty to be assessed exceeds that which the Control Authority can assess administratively or when the IU is considered to be recalcitrant and unwilling to cooperate. The term "civil litigation" also includes enforcement measures which require involvement or approval by the courts, such as injunctive relief and settlement agreements. Civil litigation is similar to criminal prosecution in that it requires the full cooperation of the Control Authority and may result in court trials of IUs and assessment of penalties. However, civil litigation is conducted for different purposes than criminal litigation. It requires a less stringent burden of proof in order for the Control Authority to prevail. Note that the Clean Water Act states that IUs are strictly liable (i.e., without regard to intent or negligence) for all pretreatment violations. See 33 U.S.C. §1319.

Civil actions may be brought by the CAA or designee in any court of competent jurisdiction for any violation of any provision of the County Sewer Use Law or Rules or Regulations promulgated thereunder. The ED, in coordination with the CAA, will recommend to the AB that civil proceedings be instituted in appropriate cases. The AB may then, acting through the CAA or designee, bring suit in the name of the County against any person for violation of the County Sewer Use Law or Rules or Regulations. In addition, the ED, in coordination with the CAA, may recommend that the AB petition the State of New York or the United States Environmental Protection Agency, as appropriate, to exercise such methods or remedies as shall be available to such government entities under Federal or State laws in the area of water pollution control.

F. Criminal Prosecution

Criminal Prosecution is the formal process of charging individuals and/or organizations with violations of legal provisions that are punishable, upon conviction, by fines and/or imprisonment. Criminal prosecution would be appropriate when the Control Authority has evidence of noncompliance with applicable provisions of the County Sewer Use Law or State or Federal Law which shows criminal intent;

usually involving cases of repeated violations, aggravated violations (such as discharges which endanger the health of treatment plant employees), and when less formal efforts to restore compliance (such as NOVs, AOs and civil litigation) have failed. Criminal prosecution may be initiated prior to, concurrently with, or subsequent to civil litigation. Usually, mitigating factors such as prompt and complete disclosure of the noncompliance and good faith efforts at cooperation with the Control Authority in trying to restore compliance will argue for use of other enforcement tools prior to initiating criminal prosecution.

Criminal prosecution for applicable violations of the Chemung County Sewer Use Law will be initiated by the District Attorney. In appropriate cases, the AB, through the CAA, may also petition the State of New York or the United States Environmental Protection Agency to evaluate criminal proceedings as may be provided for by applicable State or Federal laws.

End of Enforcement Response Plan