



**ENFORCEMENT RESPONSE PLAN  
Industrial Pretreatment Program**

**Utilities Department  
Wastewater Division**  
*Revised April 2019*

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## APPENDICES

APPENDIX A	– EXAMPLE ENFORCEMENT DOCUMENTS
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### Enforcement Response Plan (ERP) Revision Record

Date	Description / Purpose for Revision	Do the municipal codes need to be revised to reflect ERP Revisions?	Sections of the municipal code that were revised and the date of revision.
11/14/1991	Initial Preparation	NA	NA
6/5/2013	Overall modification of ERP to make consistent with the new NPDES permit requirements, administrative changes, and new municipal codes.	Yes	
7/16/18	Modifications of ERP to address current regulations and review of 2014-2016 noncompliance records.	No	NA
4/15/19	Modifications of ERP to address public comments received following 2/21/2019 Enforcement Response Plan Update Meeting with industries and 2/25/19 letter to industries.	No	NA

## **SECTION 1. INTRODUCTION**

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As required by Title 40 of Code of Federal Regulations (40 CFR 403.8(f)(5)), the City of Modesto (City) has developed and implemented the following Enforcement Response Plan (ERP). The ERP contains detailed procedures indicating how the City investigates and responds to instances of Industrial User (IU) noncompliance. The purpose of the City ERP is to ensure that IUs of the City's publicly owned treatment works (POTW) are in compliance with the Modesto Municipal Code (MMC) Title 1 Chapter 6 and Title 5 Chapter 6 as well as all Federal and State regulations. This ERP includes the following:

- Identification of enforcement authority and personnel responsible for enforcement response;
- Procedures for the City to identify and characterize instances of noncompliance;
- Presentation of the range of escalating enforcement actions the City may take to respond to instances of noncompliance, the time periods within which responses will take place, as well as the procedures for implementation; and
- References to MMC sections authorizing the City to enforce applicable Federal and State pretreatment requirements and standards.

This ERP is a dynamic document and will be reviewed periodically and modified as appropriate. As City policies and procedures are developed, they will be incorporated into the ERP accordingly.

## **SECTION 2. ENFORCEMENT AUTHORITY**

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The City implements and enforces its approved Pretreatment Program in accordance with the requirements of the Regional Water Quality Control Board (RWQCB), the Federal Clean Water Act (CWA), and Title 40 of the Code of Federal Regulations (40 CFR 403.8(f)(5)) which requires the development and implementation of this ERP. The ERP was developed in accordance with Environmental Protection Agency (EPA) guidelines.

The MMC regulates wastewater discharge to protect public health and safety, the City's POTW, City personnel, and the environment. The City enforces all limitations and requirements on any IU, in accordance with applicable State and Federal discharge limitations.

In accordance with MMC 5-6.104, the City has the authority to regulate and/or prohibit the discharge of any waste, directly or indirectly, to the City's sewer facilities. This authority includes the right to establish limits, conditions, and prohibitions; to establish flow rates or prohibit flows discharged to the City's sewer facilities; to require the development of compliance schedules for the installation of equipment systems and materials by all users; and to take all actions necessary to enforce its authority, whether within or outside the City's boundaries, including those users that are tributary to the City or within areas for which the City has contracted to provide sewerage services.

## SECTION 3. ABBREVIATIONS AND DEFINITIONS

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### 3.1 Abbreviations

BOD	Biochemical Oxygen Demand
BMR	Baseline Monitoring Report
BMP	Best Management Practices
CA	City Attorney
CD	Compliance Directive
CFR	Code of Federal Regulations
City	City of Modesto
CIU	Categorical Industrial User
CSWP	Compliance Schedule Work Plan
CWA	Clean Water Act
DA	District Attorney
ECI	Environmental Compliance Inspector
ECS	Environmental Compliance Section
EPA	Environmental Protection Agency
ERCM	Environmental Regulatory Compliance Manager
ERG	Enforcement Response Guide
ERP	Enforcement Response Plan
ESS	Environmental Services Supervisor
FOG	Fats, Oils and Grease
FSE	Food Service Establishment
gpd	gallons per day
IU	Industrial User
MAIL	Maximum Allowable Industrial Loading
MMC	Modesto Municipal Code
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
NSCIU	Non-Significant Categorical Industrial User
P2	Pollution Prevention
POTW	Publicly Owned Treatment Works
ppm	parts per million
RWQCB	Regional Water Quality Control Board – Central Valley Region
SIU	Significant Industrial User
SNC	Significant Noncompliance
SS	Suspended Solids
TRC	Technical Review Criteria
TSS	Total Suspended Solids
UD	Director of Utilities
WDP	Wastewater Discharge Permit
WDR	Waste Discharge Requirements
WWTP	Wastewater Treatment Plant

## 3.2 Definitions

**Many of the definitions originate in the MMC or CFR. References are provided in brackets where applicable.**

**Abatement** [MMC 1-6.207(a)]: Any action the City may take to remove or alleviate a nuisance including, but not limited to, demolition, removal, repair, cleaning, boarding and securing or replacement of property.

**Authorized representative of industrial user** [MMC 5-6.103]: May be: (1) a principal executive officer of at least the level of vice-president. If the industrial user is a corporation; (2) a general partner or proprietor if the industrial user is a partnership or proprietorship, respectively. A duly authorized representative is responsible for the overall operation of the facilities from which the direct or indirect discharge originates.

**Best Management Practices (BMP)** [40 CFR 403.3(e)]: Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

**Biochemical Oxygen Demand (BOD)** [MMC 5-6.103]: A test that measures the organic strength of wastewater. The test represents the quantity of oxygen required by sewage for biochemical oxidation in five (5) days at twenty (20) degrees Celsius in ppm.

**Building/Structure** [MMC 1-6.207(d)]: Includes, but is not limited to, any house, garage, carport, duplex, apartment, condominium, mobile home, storage shed, any commercial establishment, warehouse, fence, wall or other structures affixed to or upon real property, or any assemblage of materials on private property of another for the purpose of human habitation.

**Bypass** [MMC 5-6.103 and 40 CFR 403.17(a)]: The intentional diversion of waste streams from any portion of an IU's treatment facility.

**Categorical Industrial User (CIU)** [MMC 5-6.103]: All industrial users subject to National Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N.

**Categorical standards** [MMC 5-6.103]: Industrial waste discharge standards developed by the EPA that are applied to the effluent from any industry, in any category, anywhere in the United States, that discharges to a POTW. These are standards based on the technology available to treat the wastewaters from the processes of the specific industrial category and normally are measured at the point of discharge from the regulated process. The standards are listed in the Code of Federal Regulations.

**Cease & Desist Order (CD Order)** [MMC 5-6.103]: An order by the Director requiring immediate termination of an activity or situation which threatens to create or does create a significant safety hazard noncompliance with the provisions of this chapter, or noncompliance with State and/or Federal law. The order shall be enforceable in court.

**City** [MMC 5-6.103]: City of Modesto in the State of California.



**City Manager** [MMC 1-6.207(f)]: The Manager of the City of Modesto, the Deputy City Manager, or any person or persons designated by the City Manager to act in his/her stead.

**Civil Litigation:** A lawsuit filed in a civil court against an IU seeking equitable relief, monetary penalties, and actual damages.

**Civil Penalties or Administrative Civil Penalties:** A punitive monetary penalty levied for violation of the City's wastewater municipal code in accordance with Governmental Code Section 54740.5, as may be appropriate under the factual circumstances.

**Compliance Directive (CD)** [MMC 5-6.103]: An enforcement document which directs an industrial user to implement corrective or remedial measures.

**Compliance Schedule Work Plan (CSWP):** A time schedule of remedial measures that contains increments of progress (e.g. milestones, in the form of dates).

**Criminal Prosecution:** The pursuit of punitive measures against a person and/or organization through a court of law.

**Director** [MMC 5-6.103]: The Director of Utilities of the City or such other persons as may be designated by the Director of Utilities to perform the services or make the determinations permitted or required in this chapter to be made by the Director of Utilities of the City.

**Domestic wastewater/sanitary sewage** [MMC 5-6.103]: The liquid and solid waterborne wastes derived from the ordinary living processes of humans of such character as to permit satisfactory disposal, without special pretreatment, into the public sewer or into a private wastewater disposal system.

**Enforcement Order:** An official document which directs an IU to implement corrective or remedial measures.

**Enforcement Response Guide (ERG):** A matrix that identifies violations and specifies the associated enforcement action City personnel may administer.

**Enforcement Response Plan (ERP)** [paraphrased from 40 CFR 403.8(f)(5)]: One of the key components of an approved POTW pretreatment program; includes step-by-step enforcement procedures developed and followed by POTW personnel to identify, document, and respond to violations by IUs.

**Fats, Oils, and Grease (FOG)** [MMC 5-6.1001(m)]: Any substance such as vegetable or animal product that is used in, or is a byproduct of, the cooking of food or food preparation process, and that becomes or may become viscous, or solidifies or may solidify.

**Food Service Establishment (FSE)** [paraphrased from MMC 5-6.1001(o)]: A permanently constructed structure maintained, used or operated at least in part for the purpose of storing, preparing, servicing or manufacturing or packing or otherwise handling food, and which has any process or device that uses or produces FOG, or grease vapors, steam, fumes, smoke or odors that are required to be removed by an exhaust hood pursuant to California Health and Safety

Code Section 114149.1 or in accordance with the California Uniform Retail Food Facilities Law (California Health and Safety Code Sections 113700, et seq.). A limited food preparation establishment is not considered an FSE when engaged only in reheating, hot holding, or assembly of ready to eat food products, provided that there is no wastewater discharge containing FOG, as described in the City's wastewater municipal code.

**Hearing Officer** [MMC 1-6.207(i)]: Any person appointed by the City Manager to preside over administrative hearings.

**Industrial User (IU)** [MMC 5-6.103]: Any person who discharges or causes a discharge of industrial wastewater directly or indirectly to the City sewage system which requires a permit under the provisions of this chapter. This specifically includes any categorical users connected to the City sewage system whether or not they discharge process wastewater.

**Industrial wastewater/industrial waste** [MMC 5-6.103]: All water-carried wastes and wastewater of the community, excluding domestic wastewater, and including all wastewater from any commercial or industrial production, manufacturing, processing, agricultural or other operation. These may also include wastes of human origin similar to domestic wastewater.

**Inspector** [MMC 5-6.103]: A person authorized by the Director to inspect any development discharging or anticipating discharge to the wastewater collection system and/or the POTW.

**Interference** [MMC 5-6.103]: A discharge that alone or in conjunction with a discharge from other sources, both: (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, including either the use or disposal of sludge, and (2) Is a cause of a violation of any requirement of the City's National Pollutant Discharge Elimination System (NPDES) permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any applicable regulation.

**Local Limits** [MMC 5-6.103]: Pollutant discharge limits set by the local POTW based on the treatment plant's efficiency in treating specific pollutants.

**Major Industry** [MMC 5-6.103]: Any IU whose effluent discharge exceeds 4.0 million gallons per month (MG/mo), or whose BOD loading is greater than or equal to twenty thousand (20,000) pounds per month, or total suspended solids (TSS) is greater than or equal to ten thousand (10,000) pounds per month.

**Maximum Allowable Industrial Loading (MAIL)**: The estimated maximum loading of a pollutant that can be received at the City's POTW headworks from all permitted industrial users and other controlled sources without causing pass through or interference. The MAIL shall be calculated by applying a safety factor to the maximum allowable headworks loading and discounting for uncontrolled sources, hauled waste, and growth allowance.

**Minor Industry** [MMC 5-6.103]: Any industry with an average effluent discharge which exceeds twenty-five thousand (25,000) gallons per day (gpd), or has a reasonable potential, in the opinion of the City, to adversely affect the POTW.

**Modesto Municipal Code (MMC)**: Regulatory, penal, and administrative ordinances of general application in the City of Modesto. Ordinances regulating the collection, treatment, and disposal

of waste to the City POTW are specifically addressed in Title 5, Chapter 6 of the City's municipal code.

**National Pollutant Discharge Elimination System (NPDES) Permit [MMC 5-6.103]:** A permit issued pursuant to Section 402 of the Clean Water Act (33 U.S.C. 1342), governing direct discharges to the waters of the State.

**Noncompliance:** Any violation of pretreatment requirements (discharge limits, sampling, analysis, reporting, compliance schedules, regulatory deadlines, etc.) for which the IU is liable for enforcement, including fees.

**Noncompliance Fee:** A fee issued to the noncompliant IU to deter noncompliance, provide fair and equitable treatment of the regulated community, provide swift resolution of environmental issues, and recover costs incurred by the City as a result of noncompliance. Costs incurred by the City as a result of noncompliance may include, but are not limited to, inspection and sampling fees, transportation, equipment, and labor to investigate and/or demonstrate IU compliance as well as administrative time spent in resolution of noncompliance.

**Nonsignificant Categorical Industrial User (NSCIU) [40 CFR 403.3(v)(2)]:** An IU subject to categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N, that the City has determined is exempt from the definition of a significant industrial user (SIU) on a finding that the IU never discharges more than 100 gpd of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

1. The IU, prior to the City's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
2. The IU annually submits the certification statement required by 40 CFR 403.12(q), together with any additional information necessary to support the certification statement; and
3. The IU never discharges any untreated concentrated wastewater.

**Nonsignificant Industry [MMC 5-6.103]:** An industry that produces and discharges less than twenty-five thousand (25,000) gallons of wastewater per day and is not classified as a significant or categorical industry.

**Notice and Order [MMC 1-6.207(k)]:** A document used in abatement actions and assessment of civil penalties involving serious code violations which provide notice of municipal code, uniform code or applicable State Code violations and orders a responsible party to take certain steps to correct the violations within a definitive period of time. Civil penalties may also be imposed in conjunction with this notice.

**Notice of Violation (NOV) [MMC 5-6.103]:** A notice issued by the Director or Inspector to the industrial user, hand delivered or mailed, informing the industrial user that a violation has occurred.

**Order to Show Cause Hearing (Show Cause Hearing)** [MMC 5-6.103]: A meeting with representatives of a user and the Director or his/her designee to discuss reasons for noncompliance and corrective actions. At this time, the user may be issued an administrative order and/or fines.

**Pass Through** [40 CFR 403.3(p)]: A discharge from an industrial source that exits the POTW into the waters of the State in quantities or concentrations that, alone or in conjunction with discharge(s) from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation). Pass through shall also include any industrial discharge that exits the POTW into the City's land disposal system in quantities or concentration in which, alone or in conjunction with discharge(s) from other sources, causes a WDRs violation for land disposal (including an increase in the magnitude or duration of the violation).

**Person:** Any individual, firm, association, business, or organization, corporation, partnership, trust, estate, or any other legal entity recognized by law as the subject of legal rights or duties.

**Pollutant** [MMC 5-6.103]: Any substance which causes an impairment (reduction) of water quality to a degree that may have an adverse effect on any beneficial use of the water. Pollutants include: any dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into waters and onto the ground, or deposited where subsurface waters may become contaminated by leaching.

**Pollution Prevention (P2) Industry:** Businesses or industries containing processes that have potential to discharge pollutants of concern but do not otherwise fit the profile of an IU requiring a wastewater discharge permit.

**Pretreatment Requirements** [MMC 5-6.103]: Requirements for users, established by the City, State, or other regulatory agency for the insurance of compliance to pretreatment standards. Requirements may include, but are not limited to, the installation and maintenance of treatment equipment, metering facilities, and/or monitoring facilities.

**Pretreatment Standards** [MMC 5-6.103]: The maximum levels of pollutants allowed to be discharged under local, State, or Federal guidelines when implementing the best available technology to treat the process wastewater of the users.

**Property** [MMC 1-6.207(o)]: Any parcel of land which is identified in the secured roll of the Stanislaus County Assessor, all residential, commercial and other real property, including but not limited to front yards, side yards, backyards, driveways, walkways, alleys, sidewalks, including any building or structure whether fixed or moveable, located on such property.

**Property Owner** [MMC 1-6.207(p)]: The record owner of real property as listed in the most current equalized assessment roll as maintained by the Stanislaus County Assessor.

**Publicly Owned Treatment Works (POTW)** [MMC 5-6.103]: A treatment works as defined by Section 212 of the Act (33 U.S.C. 1292) which is owned in this instance by the City. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does

not include pipes, sewers, or other conveyances not connected to the facility providing treatment. For the purposes of this chapter, “POTW” shall also include any sewers that convey wastewater from persons outside the City, who are, by contract or agreement users of the City treatment plant.

**Responsible Party** [MMC 1-6.207(q)]: Any occupant, lessor, lessee, manager, licensee, or other person having control over a structure or parcel of land. A responsible party may be a property owner.

**Show Cause Hearing:** See definition for Order to Show Cause Hearing.

**Show Cause Meeting:** A meeting for an industrial user with an ECI and ESS to discuss noncompliance, steps towards achieving compliance, and potential enforcement actions.

**Significant Industrial User (SIU)** [MMC 5-6.103]:

- (1) All categorical users; and
- (2) Any noncategorical users that:
  - (i) Discharge twenty-five thousand (25,000) gallons or more per day of process wastewater (excluding domestic wastewater)
  - (ii) Contributes a process wastewater which makes up five (5) percent or more of the average dry weather hydraulic or organic (BOD, SS) capacity of the POTW; or
  - (iii) Has a reasonable potential, in the opinion of the City, to adversely affect the POTW.

**Significant Noncompliance (SNC)** [MMC 5-6.103]: SIUs that have a reasonable potential, in the opinion of the City, to adversely affect the POTW can be listed as significant noncompliance (SNC). In addition, SIUs can be listed as SNC if any one (1) of the follow conditions occurred

- (1) Chronic violations where sixty-six (66) percent or more of the measurements exceed the same daily maximum limit or the same average limit in a six (6) month period;
- (2) Violations where thirty-three (33) percent or more of the measurements exceed the same daily maximum limit or the same average limit by more than the technical review criteria (TRC) in a six (6) month period;
- (3) Failure to provide reports for compliance schedules, self-monitoring data, or categorical standards (BMR, ninety (90) day compliance reports, and periodic reports) within forty-five (45) days from the due date;
- (4) Any discharge that has caused imminent endangerment of human health/welfare or to the environment and has resulted in the POTW’s exercise of its emergency authority to halt or prevent such a discharge;
- (5) Any other violation(s) of an effluent limit (average or daily maximum) that the City believes has caused, alone or in combination with other discharges, interference with POTW (e.g., sludge loads) or pass through, or endangerment of health of the POTW personnel or the public;
- (6) Violations of compliance schedule milestones, contained in a local control mechanism or enforcement order, for starting construction, completing construction, and attaining final compliance by delay of ninety (90) days or more after any compliance schedule date;

(7) Any other violations or violations that the Director considers to be a significant violation. A violation which remains uncorrected for forty-five (45) days after notification of noncompliance; is part of a pattern of noncompliance over a twelve (12) month period; involves a failure to accurately report noncompliance; or resulted in the POTW exercising its emergency authority under 40 CFR 403.8(f)(1)(vi)(B) date.

**Total Suspended Solids (TSS)** [MMC 5-6.103]: Any insoluble material contained as a component of wastewater and capable of separation from the liquid portion of the wastewater by the appropriate filtering procedures and expressed in terms of milligrams per liter.

**Upset** [40 CFR 403.16(a)]: An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the IU. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

**Wastewater Discharge Permit (WDP)** [MMC 5-6.103]: A control mechanism issued to an industrial user, or any person discharging to the sewage system that the Director determines needs a permit, to regulate its discharge of toxic, organic, or hydraulic loading to the wastewater collection, conveyance, and treatment system.

**Wastewater Treatment Plant (WWTP)**: That portion of the POTW which is designed to provide treatment of domestic and industrial wastewater.

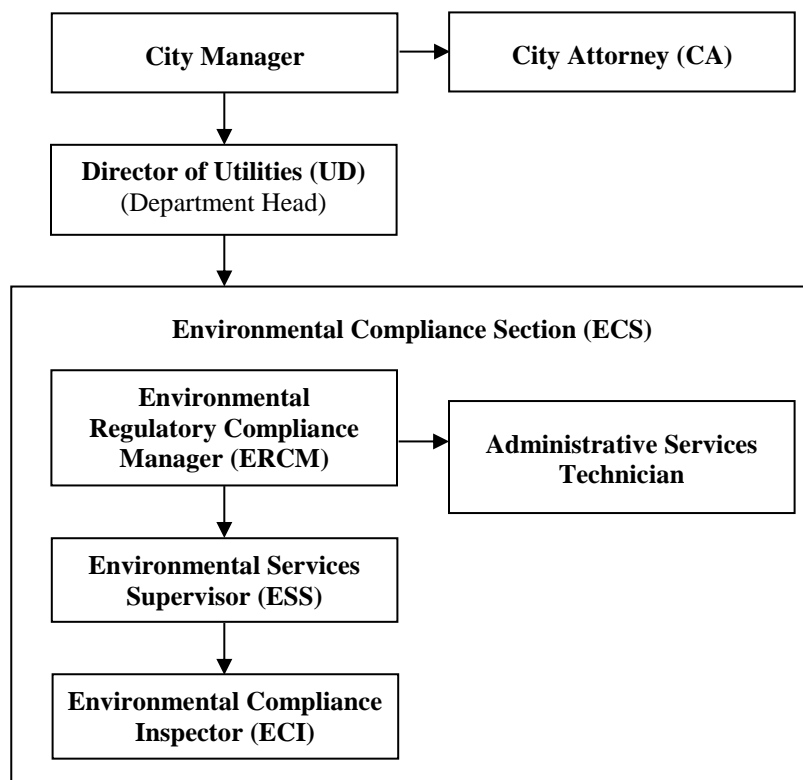
## SECTION 4. PERSONNEL RESPONSIBLE FOR PRETREATMENT PROGRAM ACTIVITIES AND ENFORCEMENT

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### 4.1 General Administration

The Environmental Compliance Section (ECS) is a division of the City Utilities Department responsible for administering and enforcing the Industrial Pretreatment Program. Responsibilities of the ECS include planning, performing, and documenting all inspection and sampling activities necessary to determine the compliance or noncompliance of an IU with the MMC, WDPs, and all State and Federal Pretreatment Standards and Requirements. The organizational structure of the staff involved with the Pretreatment program is depicted in Figure 4.1.

**Figure 4.1 Pretreatment Program Staff Organizational Structure**



## **4.2 Description of Staff Involved in Enforcement of Pretreatment Program**

A description of the roles and responsibilities of personnel involved with enforcement of the Pretreatment Program is provided below.

### **4.2.1 City Manager**

The City Manager plans, organizes, directs, and reviews the overall administrative activities and operations of the City. The City Manager represents the City's interests with other levels and agencies of government, business interests, and the community at large. For the Pretreatment Program, the City Manager is involved in all major enforcement actions (as defined in Section 6 of this ERP). When it is determined that enforcement will involve civil litigation or criminal prosecution, the City Manager will refer action to the City Attorney.

### **4.2.2 City Attorney**

The City Attorney (CA) provides consultation as requested by the City Manager for issues needing legal clarification and for procuring search warrants. The City Attorney acts as a lead on all referrals by City staff for civil litigation and for criminal investigations and prosecutions.

### **4.2.3 Director of Utilities**

The Director of Utilities (UD) oversees the functions of the Utilities Department and receives policy direction from the City Manager. The UD is responsible for implementing programs and strategies for protecting the City's water resources and wastewater treatment capacity, securing a reliable supply of high quality water to meet future needs, and ensuring the availability of adequate physical facilities to meet future needs. For the Pretreatment Program, the UD is involved with enforcement actions at the Cease and Desist level and above.

### **4.2.4 Environmental Regulatory Compliance Manager**

The Environmental Regulatory Compliance Manager (ERCM) oversees the ECS and staff, manages the Pretreatment Program, coordinates activities with other divisions and departments, and provides technical support to the UD. The ERCM is responsible for the development of the Pretreatment Program in accordance with the MMC and in compliance with all local, State, and Federal regulations. Development and issuance of WDPs for IUs is overseen by the ERCM. The ERCM is involved with enforcement and compliance actions at the level of a Show Cause Hearing or above.

### **4.2.5 Administrative Services Technician**

The Administrative Services Technician provides administrative, statistical, and analytical support to the ECS. The Administrative Services Technician assists with the development of Pretreatment Program reports and budgets, along with the development of fees, procedures, and documentation for all enforcement and compliance activities.



#### 4.2.6 Environmental Services Supervisor

The Environmental Services Supervisor (ESS) supervises inspection staff and receives general direction from the ERCM. The ESS is involved in all noncompliance and enforcement activities until the IU is back in compliance with the MMC, WDPs, and all local, State, and Federal Pretreatment Standards. The ESS implements policies and procedures of the Pretreatment Program, meets with IU representatives to discuss the Pretreatment Program requirements, and coordinates inspections, sampling, and monitoring of IUs.

#### 4.2.7 Environmental Compliance Inspector

Environmental Compliance Inspectors (ECIs) report directly to the ESS and are responsible for monitoring IUs for compliance with the MMC, WDPs, and all local, State, and Federal Pretreatment Standards. The ECI performs IU sampling and inspection activities and conducts ongoing monitoring, compliance tracking, data collection/analysis, and reporting to ensure IU compliance and assists with the investigation of instances of noncompliance. In addition, Liquid Waste Hauler Permits are reviewed, modified, and issued by ECIs.

## **SECTION 5. IDENTIFICATION AND INVESTIGATION OF INSTANCES OF NONCOMPLIANCE; POLICIES AND PROCEDURES**

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The ECS is responsible for the identification and characterization of instances of noncompliance with the MMC, WDPs, or applicable State or Federal Pretreatment Standards and Requirements. Additional information on specific regulations, procedures, and policies on noncompliance can be found in the MMC Title 1, Chapter 6 and Title 5, Chapter 6. New policies, regulations, and updates/changes will be incorporated into the ERP and MMC as appropriate.

The ECS may become aware of IU noncompliance through various screening procedures, including the following:

- Review of IU reports
- Sampling, inspection, and monitoring activities
- Sampling of WWTP influent, effluent, or sludge
- Evaluation of collection system and POTW upsets
- Observations from City staff and the public

There a variety of activities associated with the identification and investigation of noncompliance. This section provides information on activities of the Pretreatment Program for investigation and identification of IU noncompliance. Details on time frames used throughout this section are in accordance with the Federal Pretreatment Standards and Requirements.

### **5.1 Permitted Industry Reporting Requirements**

Noncompliance may be identified through review of IU reports. IUs may be required by WDPs to produce and submit a variety of reports to ensure compliance with the Pretreatment Program. National minimum pretreatment program reporting requirements for IUs are specified in 40 CFR 403.12. Brief descriptions of various types of IU reports are provided below; however, they may vary by WDP and type of IU. The descriptions provided do not necessarily encompass all types of IU reports. References to the local, State, or Federal regulations are provided, where applicable.

1. Baseline Monitoring Report (BMR) – MMC 5-6.103 and 40 CFR 403.12(b)

A BMR is a report required for all IUs subject to a Categorical Pretreatment Standard. This report provides information that documents an IU's compliance status with all applicable Pretreatment Standards. If an IU is in noncompliance with the BMR, a compliance schedule work plan (CSWP) must be submitted with the BMR describing actions to achieve compliance.

2. Compliance Schedule Work Plan (CSWP) – 40 CFR 403.12(c)(1-3)

A CSWP is an enforcement document which either contains a time schedule or directs an IU to create a time schedule to meet any provision of the MMC or WDP.

3. Compliance Schedule Progress Report – 40 CFR 403.12(c)(3)

A Compliance Schedule Progress Report is a document used to track an IU's compliance with the CSWP. This document must be submitted within 14 days after the scheduled completion date of each milestone listed in the CSWP.

4. Notice of Potential Problems, including Slug Loading– 40 CFR 403.12(f)

A Notice of Slug Loading Report is used to notify the ECS immediately after occurrence of a slug load or any other discharge that may cause interference or pass through. This report alerts the POTW to any potential hazards of the discharge. All IUs must notify ECS within 24 hours of becoming aware of the incident and the Notice of Slug Loading Report must be submitted within five (5) days of the incident. All IUs shall notify ECS immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by 40 CFR 403.5(b).

5. Noncompliance Notification Report and Repeat Sampling Report – 40 CFR 403.12(g)(2)

A Noncompliance Notification Report is used to describe and track IU noncompliance. All IUs must notify ECS within 24 hours of becoming aware of a violation and submit the Noncompliance Notification Report within five (5) days of the incident. The IU must repeat sampling and analysis and submit the results (Repeat Sampling Report) within 30 days after becoming aware of the violation.

6. Notification of Changed Discharge – 40 CFR 403.12(j)

A Notification of Changed Discharge alerts the ECS of anticipated changes in wastewater characteristics and flow, which may affect the POTW. All IUs must notify the ECS in advance of any substantial change in volume or character of constituents in their discharge. In addition, IUs are required to notify ECS and the POTW immediately of any changes at its facility affecting potential for a slug discharge (see Notice of Potential Problems, including Slug Loading, described in Item 4, above).

7. Periodic Compliance Report – 40 CFR 403.12(e)

The ECS is allowed to require a Periodic Compliance Report for all Categorical Industrial Users (CIUs) and IUs subject to equivalent mass or concentration limits set by the City. This report is to be submitted with current self-monitoring sampling and flow data required to confirm compliance with WDP limits.

8. Notification of Discharge of Hazardous Waste – 40 CFR 403.12(p)

A Notification of Discharge of Hazardous Waste is used by an IU to notify ECS, the State hazardous waste authorities, and the EPA Regional Waste Management Division Director in writing of any discharge to the POTW that, if otherwise disposed of, would be classified as a hazardous waste under 40 CFR, Part 261. The notification should follow the precepts found in 40 CFR 403.12.

9. Bypass Report or Notification of Bypass – 40 CFR 403.17

If a bypass results in noncompliance, the IU must provide a Bypass Report to ECS detailing the description of the bypass and the cause, the duration of the bypass, and the steps being taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The IU must provide oral notice to ECS within 24 hours of detecting an unanticipated bypass; and the Bypass Report is due within five (5) days. For an anticipated bypass, the IU must submit Notification of Bypass to the ECS at least ten (10) days before the intent to bypass.

## **5.2 Inspections**

The ECS conducts various types of inspections to determine compliance and investigate instances of noncompliance with the MMC, WDPs, or applicable State or Federal Pretreatment Standards and Requirements.

### 5.2.1 Responsible Personnel

Typically, inspections are conducted by ECIs under the direction of the ESS. ECIs are responsible for documenting results of inspections and recommending follow-up or enforcement actions for noncompliance.

### 5.2.2 Types of Inspections

The type of inspection that is conducted for an IU depends on the reason for the inspection, the classification of the IU, and the complexity of the operation at the facility.

#### *5.2.2.1 Survey Inspection*

Survey inspections are used to determine how an IU affects the POTW. A survey inspection is conducted as an initial screening which is generally accomplished when canvassing an area. Information gathered during a survey includes the business name, address, date, type of business, if chemicals are used or present, if there is non-domestic discharge to the POTW, and if a WDP is required.

#### *5.2.2.2 IU Complaints*

The City may receive complaints about an IU which may result in an investigation. If an IU noncompliance issue is found as it relates to pretreatment equipment and requirements, an enforcement order is issued. If an accidental unauthorized discharge is released to the POTW or environment, the IU is required to report the incident per local, State, and Federal regulations.

### *5.2.2.3 Full Facility Inspection*

A full facility inspection is an in-depth tour of an existing permitted facility, the initial inspection of a new facility, or the initial inspection of an unpermitted facility which may need a WDP. The full facility inspection can be either announced or unannounced.

### *5.2.2.4 Announced Inspection*

Announced or scheduled inspections occur when the IU's authorized representative is contacted beforehand and the inspection is mutually scheduled. Notice will be provided to the IU's authorized representative a minimum of 24 hours before the desired time of the inspection. This type of inspection is conducted when a detailed and thorough review of the IU facility is necessary, and the frequency varies depending on specific needs of the City.

During an announced inspection, the IU's records may be reviewed. Typically, the purpose of an announced inspection is to:

- Collect and analyze a sample of the discharge and evaluate the data and information necessary to determine the IU's compliance with Federal, State, and local Pretreatment Standards and Requirements
- Identify changes in materials used, operational processes, or treatment processes that may affect the nature or volume of the discharge(s)
- Update the City's database and permit file
- Verify the Self-Monitoring Reports submitted by the IU

### *5.2.2.5 Unannounced Inspections*

Unannounced or unscheduled inspections generally take place when ECS staff determines from the results of City monitoring, self-monitoring, or information received from other sources that the IU is in noncompliance or that there is some other need for a site visit. If ECS staff has reason to believe an IU is not meeting MMC, WDP, or Pretreatment Standards or Requirements, or if the ECS staff determines that an announced inspection may interfere with obtaining the required information, an unscheduled inspection will be performed. The frequency of performing this type of inspection is unpredictable and will not be limited.

### *5.2.2.6 Demand Inspections*

Demand inspections are typically performed in response to an emergency situation. When notification is made to the City of an accidental discharge, slug load, or spill, ECS staff will conduct appropriate inspections and/or sampling.

A demand inspection may be used to retrieve information to assist in the following:

- A determination of the nature, duration, and hazard of the IU's discharge
- Collection of samples to verify the characteristics of the discharge

- Identification of required corrective actions
- Documentation of completion of corrective actions or compliance activities

### 5.2.3 Activities During Inspections

During an inspection, ECS staff may meet with IU’s representative to evaluate the IU’s recent efforts to reach compliance and may or may not perform sampling. If an IU is identified as being in SNC, the appropriate enforcement action in accordance with this ERP will be taken.

### 5.2.4 Inspection Frequency

The Federal Pretreatment Regulations require inspection of SIUs at least once a year per 40 CFR 403.8(f)(2)(v). Inspection frequencies for all permitted IUs are based on the following criteria:

- Minimum requirements for IUs per Federal Pretreatment Regulations
- The IU’s potential to adversely affect the POTW (e.g., the type of discharge, concentration of pollutants in discharge, type of control measures, and reliability of control measures for compliance)
- The volume and variability of discharge
- The compliance history of the IU
- POTW problems known or suspected to have been caused by the IU
- Special considerations or circumstances such as seasonal production schedules or batch discharges

The ECS may perform inspections more frequently than required in the Federal Pretreatment Regulations if determined necessary. The minimum frequency of IU inspections performed by ECS staff is summarized in Table 5.1.

**Table 5.1 Minimum Inspection Frequency**

<b>INDUSTRY CLASSIFICATION</b>	<b>MINIMUM INSPECTION FREQUENCY</b>
Major <sup>a</sup>	once/year
Minor <sup>a</sup>	once/year
Categorical <sup>a</sup>	once/year
Pollution Prevention (P2)	once/every other year
Groundwater Cleanup	once/year

<sup>a</sup> Major, Minor, and Categorical Industries (aka CIUs) are considered SIUs, unless an exception as defined in Section 3 of the ERP is granted.

### 5.2.5 Inspection Procedures

Inspection procedures and guidelines which can generally be applied to all classifications of IUs are summarized below.

#### *5.2.5.1 Pre-Inspection Preparation*

Prior to conducting an inspection, ECS staff reviews information on the IU including, but not limited, to the following:

- The IU's WDP
- Facility Plan
- Facility pretreatment equipment and requirements
- Compliance history and status
- Results of recent sampling and inspection activities
- Name of authorized representative or other contact
- Required safety and security measures

#### *5.2.5.2 Legal Basis of Entry*

The City is authorized to enter an IU's premises to conduct an inspection for Pretreatment Program compliance per MMC 1-6.104. In addition, the City's Pretreatment Program has been approved by the EPA and the RWQCB; thus granting the City necessary authority to implement all facets of the program, including inspections.

#### *5.2.5.3 Non-Credentialed Persons Accompanying the Inspector*

Consent of the IU or IU's representative must be obtained for persons accompanying an inspector to enter a site if they do not have specific authorization (e.g., acting as an agent of the City). If consent is not given, such individuals may not enter the premises. If consent is given, these individuals may not view confidential business information unless officially authorized for access.

#### *5.2.5.4 Response to Denial of Entry*

If ECS staff is refused entry into a facility to conduct an inspection, the following procedural steps will be taken by the ECS staff:

1. Present identification
2. Discuss reason for denial
3. Record notes and observations pertaining to the denial:

- Facility name and exact address
  - Name, title, and authority of the person who refused entry
  - Date and time of refusal
  - Reason for the denial; and
  - Facility appearance (e.g., neat and orderly, or chaotic)
4. Leave premises and contact immediate supervisor
  5. Sample at a manhole immediately downstream of the facility (if possible)

#### *5.2.5.5 Obtaining a Warrant for an Inspection*

In the event that an IU denies entry, the ECS will determine whether a search warrant is necessary in consultation with the UD and City Manager. The ERCM will consult with the City Attorney to obtain a search warrant. If a search warrant is necessary, the necessary actions will be taken in obtaining an inspection warrant in accordance with MMC 1-6.104. For some inspections requiring a warrant, the assistance of a law enforcement officer may be necessary.

#### *5.2.5.6 Elements of a Facility Inspection*

Information collected during an inspection will vary depending on the objective of the site visit. Components of an inspection may include, but not be limited to, the following:

- Entrance interview
- Physical site review (including chemical inventory)
- Sampling and monitoring review
- Exit interview

#### *5.2.5.7 Data Collection and Documentation*

Inspection reports contain pertinent information to be used as a basis for future permitting, compliance, and enforcement decisions. Inspection reports are used to accomplish the following objectives:

1. To organize and coordinate all information in a comprehensive manner for use by ECS to determine MMC, WDP, and Pretreatment Program compliance.
2. To clearly identify areas that require follow-up activity.
3. To provide significant background information on the facility that can be reviewed prior to conducting subsequent inspections.



All documentation collected by the ECS to provide evidence of suspected violations is included as part of the inspection report (e.g., field notes, photographs, drawings, copies of records).

### **5.3 Monitoring and Sampling**

The City's Monitoring and Sampling Program of IUs has been developed to meet the requirements of 40 CFR 403.8(f)(2)(ii) and (v) and MMC Title 5, Chapter 6.

#### 5.3.1 Responsible Personnel

Typically, monitoring and sampling activities are conducted by ECIs under the direction of the ESS. ECIs are responsible for documenting results of monitoring and sampling activities and recommending follow-up or enforcement actions for noncompliance.

#### 5.3.2 Monitoring and Sampling Objectives

The Monitoring and Sampling Program is conducted to ensure the following objectives are satisfied:

1. To verify the quality of both ECS sampling and IU self-monitoring data
2. To verify that sampling locations specified in the WDP are adequate and representative
3. To verify compliance with WDP discharge limits
4. To support enforcement actions
5. To support the development of local limits
6. To support IU investigations and WDP development/revisions

#### 5.3.3 Types of Monitoring and Sampling

A general summary of monitoring and sampling activities performed for the Pretreatment Program are summarized below. Detailed policies and specific procedures for these activities can be found in the IU WDPs.

##### *5.3.3.1 Conventional Pollutants*

The ECS collects samples from SIUs for conventional pollutants a minimum of once per month. Conventional pollutants monitored by ECS include BOD and TSS. Major IUs are required by WDPs to have a 24-hour composite sampler. Grab samples are collected for Minor IUs without a composite sampler. Results of monthly samples are used to monitor SIU compliance with WDP limits.

##### *5.3.3.2 Conventional Pollutants Self-Monitoring*

SIUs are required to self-monitor for conventional pollutants (e.g., BOD, TSS, pH, temperature) a minimum of once per month unless required otherwise by enforcement orders or City programs. SIUs must submit monthly Self-Monitoring Reports and other notices to the City in accordance with the requirements of 40 CFR 403. Further information on SIU self-monitoring is described in Section 5.4.1 of this ERP.

#### *5.3.3.3 Monthly Meter Reads*

Major IUs are required by WDPs to have an effluent meter. Monthly influent and/or effluent meter reads are used for SIU billing and compliance purposes.

#### *5.3.3.4 Categorical Self-Monitoring*

CIUs are required to conduct self-monitoring, which includes sample collection for constituents identified in their WDP and/or limited by applicable categorical Pretreatment Standards, a minimum of two times per year, per 40 CFR 403.12(e). At least one sample is required to be collected in the first half of the year (January to June), and the second sample is required to be collected in the second half of the year (July to December).

#### *5.3.3.5 Annual Categorical Sampling*

The ECS collects samples from CIUs for constituents identified in their WDP and/or limited by applicable categorical Pretreatment Standards, at least once per year. Annual sampling by ECS is used to verify CIU compliance with WDPs independently of CIU self-monitoring.

#### *5.3.3.6 Annual Pollution Prevention (P2) Wet Sampling*

The ECS collects samples from P2 Industries for constituents identified in their WDP at least once per year.

### 5.3.4 Sampling Frequency

In general, the following time frames apply for sampling and reporting frequencies and IU responses to violations discovered from sampling results:

- Self-Monitoring Reports must be received by the ECS by the 10<sup>th</sup> of the following month
- IUs must notify ECS within 24 hours of becoming aware of violation
- Appropriate report must be submitted within five (5) days of a violation
- Sampling must be repeated and reported within 30 days of notifying ECS of a violation

The criteria applied by the ECS for determining sampling frequencies are based on similar elements as those used for inspections:

- Minimum requirements for IUs per Federal Pretreatment Regulations

- The IU's potential to adversely affect the POTW (e.g., the type of discharge, concentration of pollutants in discharge, type of control measures, and reliability of control measures for compliance)
- The volume and variability of discharge
- The compliance history of the IU
- POTW problems known or suspected to have been caused by the IU
- Special considerations or circumstances such as seasonal production schedules or batch discharges

## 5.4 Sampling Procedures

General sampling procedures for the Pretreatment Program are summarized below. Specific instructions for an IU's sampling methods and procedures can be found within their WDP.

### 5.4.1 Self-Monitoring

Self-monitoring sampling requirements are contained in WDPs and are required per 40 CFR 403.12(h) for noncategorical SIUs and 40 CFR 403.12(b), (d), and (e) for CIUs. The WDP specifies the frequency of sampling, location of sampling, type of sample, parameters for analysis, quality assurance, and quality control submittal requirements.

Major and Minor IUs are required to perform self-monitoring of conventional pollutants at a minimum of once per month or twelve times annually. In addition, they are required to submit Self-Monitoring Reports which include a Certification Statement, summary of sample dates, chain-of-custody records, and analytical data reports from a certified lab. Self-Monitoring Reports must be received by ECS by the 10<sup>th</sup> of the following month.

When Self-Monitoring Reports or other reports are received, they are reviewed by ECIs to determine if all Federal, State, and local requirements have been addressed. The following is an example of some of the criteria that is evaluated:

- Reporting on time
- Lab results compared to pollutant limitations
- All IU reporting requirements are met
- All pollutants are covered in the report
- Certification Statements signed
- Report is signed by the appropriate person

If the report indicates noncompliance or the IU fails to submit the necessary reports, the ECS will initiate appropriate follow-up activities including enforcement responses identified in Section 6 of this ERP.

#### 5.4.2 Quality Assurance, Quality Control, and Analytical Techniques

The testing laboratory operated by the City is a State-certified wastewater laboratory. The laboratory is required to use testing methods outlined in 40 CFR 136 or other methods approved by the EPA. The laboratory is responsible for maintaining ongoing quality assurance and quality control programs to ensure the accuracy of tests performed.

#### 5.4.3 Chain-of-Custody Record

The chain-of-custody record is used to document the possession and handling of a sample from the time of collection through the time the sample is received by authorized laboratory personnel. Any person having possession of the sample must sign the form when receiving the sample as well as sign when the sample is transferred out of their possession. Chain-of-custody records provide an accurate written record that may serve as a basis for legal action or enforcement.

## **SECTION 6. ENFORCEMENT RESPONSE**

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The City enforcement procedures are based on an escalating response considering the severity of noncompliance. IU violations may range from relatively minor violations (e.g. late reports without effluent discharge limit violation) to major violations resulting in POTW upsets. Each instance of noncompliance is a violation and as such should be reviewed and appropriately addressed. However, selection of the appropriate enforcement response will relate to some or all of the following factors:

- Duration of the violation;
- The frequency or recurrence of the violation;
- The seriousness of the violation;
- Compliance history of the IU;
- Any good faith efforts of the IU to comply;
- The responsible parties conduct after issuance of an enforcement order;
- The economic impact of noncompliance fee(s) on the responsible party;
- The impact of the violation upon the community;
- Degree of harm or potential harm to the public, environment, or City POTW;
- Any other factors that justice may require.

An outline of escalating levels of enforcement implemented by the City is presented in Table 6.1 and detailed in the sections to follow.

**Table 6.1 Escalating Enforcement Response Guide**

Violation	Initial and Escalating Enforcement Responses	Noncompliance Fee Level	Personnel <sup>a</sup>
<b>Monthly Permit Limit Exceedance</b>			
One occurrence within rolling twelve month period	NOV, Tier 1	1	ECI/ESS
Two occurrences within rolling twelve month period	NOV, Tier 2	2	ECI/ESS
Three or more occurrences within rolling twelve month period	Compliance Schedule Work Plan	3	ECI/ESS
	Show Cause Meeting	4	ECI/ESS
	Show Cause Hearing	5	ESS/ECRM
	Cease and Desist	5	UD/CA

<b>Violation</b>	<b>Initial and Escalating Enforcement Responses</b>	<b>Noncompliance Fee Level</b>	<b>Personnel <sup>a</sup></b>	
	Revocation of Permit and Service Termination	5	UD/CA	
	Administrative Civil Penalty		UD/CA	
<b>Specific Non-Hazardous Waste Prohibition [as defined in 40 CFR 403.5(b) and MMC 5-6.209]</b>				
Examples:	One occurrence within rolling twelve month period	NOV, Tier 1	1	ECI/ESS
pH violation (greater than 2 and less than 5.0 or greater than 12.0 and less than 12.5)	Two to three occurrences within rolling twelve month period	NOV, Tier 2	2	ECI/ESS
Containing pesticides and other toxic pollutants in toxic amounts, not considered hazardous waste.	More than three occurrences within rolling twelve month period	Compliance Schedule Work Plan	3	ECI/ESS
		Show Cause Meeting	4	ECI/ESS
		Show Cause Hearing	5	ESS/ECRM
		Cease and Desist	5	UD/CA
		Revocation of Permit and Service Termination	5	UD/CA
	Administrative Civil Penalties			UD/CA
<b>Failure to Sample, Monitor, or Report</b>				
Examples:	One occurrence within rolling twelve month period	NOV, Tier 1	1	ECI/ESS
Failure to collect required samples	Two to three occurrences within rolling twelve month period	NOV, Tier 2	2	ECI/ESS
Late or incomplete report. If greater than 45 days, considered to be a Significant Noncompliance violation.	More than three occurrences within rolling twelve month period	Compliance Schedule Work Plan	3	ECI/ESS
Failure to report bypass, spill, slug loading, or permit exceedances.		Show Cause Meeting	4	ECI/ESS
		Show Cause Hearing	5	ESS/ECRM
		Cease and Desist	5	UD/CA
		Revocation of Permit and Service Termination	5	UD/CA
		Administrative Civil Penalties		

<b>Violation</b>	<b>Initial and Escalating Enforcement Responses</b>	<b>Noncompliance Fee Level</b>	<b>Personnel <sup>a</sup></b>	
<b>Pretreatment Equipment Violation</b>				
Example: 1) Sampler not in operation, or not properly reset. 2) Split sample not left for the City. 3) Incorrect refrigerator temperature. 4) No 24-hour composite sample. 5) Facility is not properly filling out sampling/monitoring log.	One occurrence within rolling twelve month period	Notice of Corrective Action	ECI	
	Two occurrences within rolling twelve month period	NOV, Tier 1	1	ECI/ESS
	Three occurrences within rolling twelve month period	NOV, Tier 2	2	ECI/ESS
	More than three occurrences within rolling twelve month period	Compliance Schedule Work Plan	3	ECI/ESS
		Show Cause Meeting	4	ECI/ESS
		Show Cause Hearing	5	ESS/ECRM
		Cease and Desist	5	UD/CA
		Revocation of Permit and Service Termination	5	UD/CA
		Administrative Civil Penalties		UD/CA
	<b>Bypass</b>			
As defined in MMC 5-6.103 and 40 CFR 403.17(a). No enforcement action if conditions listed in 40 CFR 403.17(d)(i) through (iii) are satisfied.	NOV, Tier 1	1	ECI/ESS	
	NOV, Tier 2	2	ECI/ESS	
	Compliance Schedule Work Plan	3	ECI/ESS	
<b>Late Brokering (submitted after the 10<sup>th</sup> of the following month being requested for changes)</b>				
	One occurrence within a rolling twelve month period of the following: When an industry requests Flow and TSS permit changes after the 18th of the current month, and BOD permit changes after the 25th of the current month.	Notice of Corrective Action		ECI
	A request made after the 10th of the following month, or a second occurrence of the dates listed above within a rolling twelve-month period.	NOV, Tier 1	1	ECI/ESS
	Three occurrences of the dates listed above within a rolling twelve month period	NOV, Tier 2	2	ECI/ESS
	More than three occurrences of the dates listed above within a rolling twelve month period	Compliance Schedule Work Plan	3	ECI/ESS
		Show Cause Meeting	4	ECI/ESS
		Show Cause Hearing	5	ESS/ECRM
		Cease and Desist	5	UD/CA
		Revocation of Permit and Service Termination	5	UD/CA

<b>Violation</b>	<b>Initial and Escalating Enforcement Responses</b>	<b>Noncompliance Fee Level</b>	<b>Personnel <sup>a</sup></b>		
		Administrative Civil Penalties	UD/CA		
<b>Significant Noncompliance [as defined in 40 CFR 403.8(f)(2)(viii) and MMC 5-6.103] <sup>b</sup></b>					
<p>Example:</p> <p>1) Failure to meet, within 90 days after schedule date, a compliance schedule milestone.</p> <p>2) Failure to provide, within 45 days after the due date, required reports.</p> <p>3) Discharge of hazardous waste regulated under the Resource Conservation and Recovery Act.</p>	One occurrence within rolling twelve month period	Compliance Schedule Work Plan	3	ECI/ESS	
	Two to three occurrences within rolling twelve month period	Show Cause Meeting	4	ECI/ESS	
		Show Cause Hearing	5	ESS/ECRM	
		Cease and Desist	5	UD/CA	
	More than three occurrences within rolling twelve month period	Revocation of Permit and Service Termination	5	UD/CA	
		Administrative Civil Penalties		UD/CA	
	<b>Compliance Schedule</b>		Show Cause Meeting	4	ECI/ESS
	<p>Examples:</p> <p>Missed compliance schedule milestone date. If greater than 90 days, considered to be a Significant Noncompliance violation.</p>	Show Cause Hearing	5	ESS/ECRM	
		Cease and Desist	5	UD/CA	
		Revocation of Permit and Service Termination	5	UD/CA	
<b>Inspections</b>					
	Delay of entry, greater than 15 minutes	Notice of Corrective Action		ECI	
	Second occurrence of delay of entry within a twelve month period or Denial of Entry	NOV, Tier 1	1	ECI/ESS	
	Third occurrence of delay of entry within a twelve month period or second Denial of Entry	NOV, Tier 2	2	ECI/ESS	
	More than three occurrences of delay of entry within a twelve month period or three or more Denial of Entry	Obtain Warrant		UD/CA/DA	
<b>Nonpayment</b>					
	Fees more than 30 days late and uncontested or upheld through appeal	Show Cause Meeting	4	ECI/ESS	
		Show Cause Hearing	5	ESS/ECRM	
		Revocation of Permit and Service Termination	5	UD/CA	
		Administrative Civil Penalties		UD/CA	



Violation	Initial and Escalating Enforcement Responses	Noncompliance Fee Level	Personnel <sup>a</sup>
Other	Notice of Corrective Action		ECI
	NOV, Tier 1	1	ECI/ESS
	NOV, Tier 2	2	ECI/ESS
	Compliance Schedule Work Plan	3	ECI/ESS
	Show Cause Meeting	4	ECI/ESS
	Show Cause Hearing	5	ESS/ECRM
	Cease and Desist	5	UD/CA
	Revocation of Permit and Service Termination	5	UD/CA
	Administrative Civil Penalties		UD/CA

<sup>a</sup> Personnel: ECI = Environmental Compliance Inspector; ESS = Environmental Service Supervisor; ECRM = Environmental Regulatory Compliance Manager; UD = Director of Utilities; CA = City Attorney; DA = District Attorney

<sup>b</sup> Names of IUs in Significant Noncompliance are also published annually in local newspaper.

## 6.1 Description of Enforcement Responses

Descriptions of each enforcement response listed in Table 6.1 are provided below.

### 6.1.1 Notice of Corrective Action

A Notice of Corrective Action consists of a request for the IU to complete a corrective action for minor violations with the MMC, Federal and State regulations, and/or the WDP. Some violations are not considered minor. The first enforcement action for non-minor violations will be a Notice of Violation, Tier 1. Refer to Table 6.1 for more information.

The Notice of Corrective Action also demonstrates that the City will note and follow-up on all instances of noncompliance. Notices of Corrective Action may be used to:

- Correct minor violations and to seek an explanation;
- Suggest the exercise of more due care;
- Notify the IU that subsequent violations of the same type will result in more severe enforcement actions such as a NOV and noncompliance fees.

### 6.1.2 Notice of Violation (NOV)

If a Notice of Corrective Action does not result in compliance or if a non-minor permit violation occurs, a NOV may be issued in accordance with MMC 5-6.702. An NOV is a written notice to the IU that a violation of one or more WDP conditions, noncompliance with any effluent limitations, other conditions and limitations as specified in the IU's WDP, or other provisions as listed in Title 5, Chapter 6 of the MMC has occurred. The IU may be required to pay fees to the City as specified by Municipal Code, Ordinance, or Resolution, and this ERP. The IU must

respond within the time period specified in the NOV. The IU's timely response to the NOV and acceptable completion of corrective actions, if any, included in the NOV will be considered in determining the need for and type of subsequent enforcement responses. An example NOV is included for reference in Appendix A of this ERP. The NOV includes the following elements:

1. The date and location of the violation(s) and the approximate time the violation(s) were observed;
2. The WDP and/or MMC section(s) violated and a brief description of how the section(s) were violated;
3. Where appropriate, the action(s) required to correct the violation(s);
4. Where appropriate, a deadline by which violation(s) must be corrected and the consequences of failing to comply.

There are two tier levels for NOV's. NOV, Tier 1, is the first level. If noncompliance continues, a NOV, Tier 2, will be issued. Following a review of the IU response to the NOV, a follow-up inspection is typically conducted by an ECI and additional enforcement (e.g., re-sampling) may be implemented. The IU may be assessed a noncompliance fee. The purpose of the fee is to deter noncompliance, provide fair and equitable treatment of the regulated community, prevent economic benefits associated with noncompliance, and to recover any costs incurred by the City as a result of noncompliance actions (e.g., inspection, re-sampling, and administration).

Typically, all enforcement actions set forth in the NOV will terminate when corrective actions have been verified complete by the ECI and approved by the ESS. If the IU fails to reply to the NOV or take corrective action within the time period specified, enforcement may escalate.

#### 6.1.3 Compliance Schedule Work Plan (CSWP)

If noncompliance continues after issuing an NOV, enforcement actions may escalate to issuance of a CSWP as outlined in MMC 5-6.706 and as required by 40 CFR 403.129(c). A CSWP is an enforcement document which either contains a time schedule or directs an IU to create a time schedule to meet any provision of the WDP, MMC, or Pretreatment Standard and achieve compliance by a specified date. A noncompliance fee may be applied with the CSWP.

#### 6.1.4 Show Cause Meeting

If the IU fails to meet the time schedule for compliance contained in the CSWP, the IU will be issued a request for a Show Cause Meeting. This meeting directs the IU to appear before the ECI and ESS and explain its continued noncompliance. Following the meeting, the City will issue a letter summarizing the results of the meeting and potential future enforcement actions if compliance is not achieved by a particular time. The Show Cause Meeting will be scheduled by the ECI or ESS with the IU. Progressive enforcement actions may be initiated if a meeting is not scheduled within an acceptable time frame (usually up to 30 days following contact). A noncompliance fee may be applied with the Show Cause Meeting.

### 6.1.5 Order to Show Cause Hearing

Continued failure to resolve noncompliance will result in progressive enforcement actions. Prior to initiating further enforcement action, the IU will be issued an Order to Show Cause Hearing, in accordance with MMC 5-6.705. This order directs the IU to appear before the City (Show Cause Hearing) and explain its noncompliance and show cause why major enforcement action against the IU should not proceed. The Order to Show Cause Hearing will specify the time and place for the Show Cause Hearing, the proposed enforcement action, and the reasons for such action. The Order to Show Cause Hearing will be served personally or by registered or certified mail (return receipt requested) at least fifteen days prior to the hearing. Such notice may be served on any authorized representative of the IU. Whether or not the IU appears as ordered, immediate enforcement action may be pursued following the hearing date. A Show Cause Hearing is not a prerequisite for taking any other enforcement actions against the IU. A noncompliance fee may be applied with the CSWP.

### 6.1.6 Cease and Desist Order

When compliance is not achieved through a NOV and Show Cause Hearing for continued noncompliance, or for other instances of noncompliance with a WDP, MMC, or any Federal, State, or local law, a Cease and Desist Order may be issued in accordance with MMC 5-6.707. The IU must respond to the Cease and Desist Order within the time period specified. The IU's timely response to the Cease and Desist Order and acceptable completion of corrective actions will be considered in determining the need for and type of subsequent enforcement responses. The Cease and Desist Order may include the following elements:

1. The MMC section(s) violated and a brief description of how the section(s) were violated;
2. The dates and locations of the violation(s);
3. The action required to correct the outstanding violation(s) and time frames for completion;
4. The aggregate amount of noncompliance fees imposed for each violation, if any;
5. A demand that the responsible party(ies) commence and complete all action to correct the outstanding violations under the guidance of the appropriate City departments;
6. Any other consequences should the responsible party fail to comply with the terms and deadlines outlined in the Notice and Order;
7. Appropriate hearing procedures.

Following a review of the IU response to the Cease and Desist Order, a follow-up inspection is typically conducted by the ECI and additional enforcement (e.g., re-sampling) may be implemented. The Cease and Desist Order may include a noncompliance fee to deter noncompliance, provide fair and equitable treatment of the regulated community, prevent economic benefits associated with noncompliance, and recover any costs incurred by the City as a result of noncompliance actions (e.g., inspection, re-sampling, administration).

Typically, all enforcement actions set forth in the Cease and Desist Order will terminate when corrective actions have been verified complete by the ERCM. If attempts at compliance through initial enforcement fail or when there is harm or potential harm to the public, the environment, or the City POTW, the City may pursue further actions including additional Cease and Desist Orders, permit revocation and service termination or judicial proceedings (civil litigation or criminal prosecution). The circumstances of noncompliance will dictate the appropriate type of Cease and Desist Order to issue. The time frame for requiring compliance after issuance of a Cease and Desist Order will vary depending on the circumstances.

#### 6.1.7 Revocation of Permit and Termination of Service

As specified in MMC 5-6.711, any IU who performs the following actions, violates any condition of its WDP, or violates any applicable State and Federal regulations, may have its permit revoked:

1. Knowingly provides a false statement, representation, record, report, or other document to the City;
2. Refuses to provide records, reports, plans, or other documents required by the City to determine permit terms, conditions, or limitations, discharge compliance, or compliance with the MMC;
3. Falsifies, tampers with, or knowingly renders inaccurate any monitoring device or sample collection method;
4. Fails to report significant changes in operations or wastewater constituents and characteristics;
5. Fails to comply with the terms and conditions of a City cease and desist order or compliance schedule;
6. Refuses reasonable access to the IU's premises for the purpose of inspection and monitoring;
7. Does not make timely payment of all amounts owed to the City for IU charges, noncompliance fees, or any other fees;
8. Discharges a slug load/slug discharge to the City's POTW;
9. Discharges pollutant(s) that causes pass through or interference with the City's POTW;
10. Fails to submit an oral notice and/or a written report of a spill or bypass occurrence;
11. Violates any condition or limitation of its WDP or any provision of the MMC.

As part of the revocation of permit, the City may physically terminate sewage service pursuant to MMC 5-6.708.

Methods that may be used for service termination include the following:

- Physically plugging or disconnecting the IU’s sewer line from the POTW;
- Ordering the IU to cease operations and halt the discharge.

#### 6.1.8 Civil Penalties

Any IU or person whose discharge causes damage or harm to the public, the environment, or the City POTW, who violates any requirement of MMC Title 5 Chapter 6 (in accordance with MMC 5-6.704), or fails to comply with an enforcement order will be held liable and such action may be punishable by pursuit of civil action and penalties, as provided in California Government Code Sections 54739, 54740, and 54740.5, regardless of intent, negligence, an emergency event, or accidental discharge. If enforcement actions are not effective in causing an IU to achieve compliance, the City may pursue civil action. The City will consider the type and circumstances of the violation, the extent of harm caused by the violation, the economic benefit derived by the IU or person as a result of the violation, the persistence and length of time of the violation, and the actions of the IU or person to correct the noncompliance. A civil action can be sought to obtain compliance, civil penalties, and to recover damages.

Civil penalties will not exceed the amount sum set forth in California Government Code Section 54740, the CWA, and Code of Federal Regulations. In 2018, the sum specified is \$25,000 for each day that the violation occurs. California Government Code Section 54740.5 provides additional limitations on civil penalties for specific types of violations.

The determination of the civil penalties will be in accordance with MMC 1-6.304, as follows:

- (a) In determining the date when civil penalties start to accrue, a Director may consider the date when the department first discovered the violation.
- (b) The assessment of civil penalties shall end when all action required by the notice and order has been completed.
- (c) In determining the amount of the civil penalty to be assessed on a daily rate, the Director may consider some or all of the following factors:
  - (1) The duration of the violation;
  - (2) The frequency or recurrence of the violation;
  - (3) The seriousness of the violation;
  - (4) The history of the violation;
  - (5) The responsible parties conduct after issuance of the notice and order;
  - (6) The good faith effort by the reasonable person to comply;
  - (7) The economic impact of the penalty on the responsible party;

- (8) The impact of the violation upon the community;
- (9) Any other factors that justice may require.

#### 6.1.9 Criminal Prosecution

As specified in MMC 5-6.713, criminal prosecution may be sought for:

1. Any user who willfully violates or recklessly disregards any provision of MMC Chapter 5, any orders or permits issued hereunder, or any other pretreatment requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000.00) per violation per day or imprisonment for not more than one (1) year or both.
2. Any user who knowingly makes any false statements, representations, or certifications in any application, record, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under MMC Chapter 5 shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000.00) per violation per day or imprisonment for not more than one (1) year or both.
3. In the event of a second conviction, the user shall be punished by a fine not to exceed three thousand dollars (\$3,000.00) per violation per day or imprisonment for not more than three (3) years or both.

#### 6.1.10 Noncompliance Fees

Noncompliance fees are issued with an enforcement action to deter noncompliance, provide fair and equitable treatment of the regulated community, prevent economic benefits associated with noncompliance, and recover costs incurred by the City as a result of noncompliance in accordance with MMC 5-6.703. These fees may include, but not be limited to, the costs of additional inspection and follow-up, sampling, monitoring, laboratory analysis, treatment, disposal, and administrative processing incurred as a result of the noncompliance. The Noncompliance Fee Schedule is presented in Table 6.2. This Noncompliance Fee Schedule will be updated periodically to reflect inflation, adjustments to costs for enforcing noncompliance, and noncompliance trends by industrial users.

**Table 6.2 Noncompliance Fee Schedule**

<b>LEVEL</b>	<b>CORRESPONDING ENFORCEMENT RESPONSE</b>	<b>NONCOMPLIANCE FEE PER OCCURRENCE</b>
1	Notice of Violation, Tier 1	\$150 + \$15 per day for late or incomplete reports
2	Notice of Violation, Tier 2	\$500 + \$50 per day for late or incomplete reports or compliance
3	Compliance Schedule Work Plan	\$1,000 + \$100 per day for late or incomplete reports or compliance
4	Show Cause Meeting	\$1,500
5	Show Cause Hearing, Cease and Desist, or Revocation of Permit and Service Termination	\$2,000

**6.2 Other Enforcement Actions**

Other enforcement actions are related to maximum allowable industrial loadings, annual discharge limit exceedances, and categorical permit violations. Each is discussed below.

**6.2.1 Maximum Allowable Industrial Loadings (MAIL)**

The City may incorporate IU-specific limits into WDPs as determined necessary in the form of mass-based MAIL and concentration-based local limits in accordance with MMC 5-6.210.

**6.2.2 Annual Discharge Limit Exceedances**

A NOV, administrative fine, and overage fine will be assessed for permit exceedances on an annual basis (based on January through December calendar year) for flow, BOD, and TSS. The amounts of the administrative fines and overage fines are subject to change based on sewer rate increases as set forth in the most current City Council Resolution.

**6.2.3 Categorical Permit Violations**

Any CIU whose discharge parameters exceed the limited concentration of chemicals in the amount set by the EPA will have imposed a processing fine for each parameter per pound over the CIU permit limit. The amount of the processing fine will be as set forth in the most current City Council Resolution. As of 2018, the most current City Council Resolution is 91-141.

**6.2.4 Annual Publication of Significant Violators**

The City will annually publish in a newspaper of general circulation in the Modesto area, a list of the SIUs and IUs who have SNC with applicable WDP limits, MMC, or Pretreatment Standards at least once during the twelve previous months in accordance with MMC 5-6.715 and 40 CFR 403.8(f)(2)(viii). The notification will also summarize any enforcement actions taken against the

SIU(s) and IU(s) during the same twelve-month period. A SIU or IU is considered in SNC if its violations meet one or more of the criteria set forth in MMC 5-6.103 - Definitions as set forth in 40 CFR 403.8(f)(2)(viii), and as defined in Section 3.2 of this ERP.

## **6.3 Appeal Process**

### 6.3.1 Informal Appeal Process

The informal appeal process applies for the following types of enforcement orders: Notice of Corrective Action, Notice of Violation, and Compliance Schedule Work Plan. The appeal must be received by the ECS within 20 calendar days from the service date of the enforcement order. The appeal request should be submitted in writing to the ECS and must contain the following information:

1. A brief statement setting forth the interest of the appealing party in the matter relating to the imposition of the enforcement order;
2. A brief statement, in ordinary and concise language, of the material facts which the appealing party claims support the contention that no enforcement order response and/or noncompliance fee should be imposed or that a noncompliance fee of a different amount is warranted; and
3. An address which the appealing party agrees notice of any additional proceedings may be received by first class mail.

Upon receiving the request for appeal, the ECS will provide a written response to the appealing party within 20 calendar days.

### 6.3.2 Formal Appeal Process

The formal appeal process applies for the following types of enforcement orders: Show Cause Meeting, Show Cause Hearing, Cease and Desist, Revocation of Permit and Service Termination, or Civil Penalties. An IU has the right to appeal an enforcement order in accordance with MMC 1-6.501. The appealing party may file the appeal within 20 calendar days from the service of the enforcement order. The appeal request should be made in writing and filed with the City Clerk and must contain the following information:

1. A brief statement setting forth the interest of the appealing party in the matter relating to the imposition of the enforcement order;
2. A brief statement, in ordinary and concise language, of the material facts which the appealing party claims support the contention that no enforcement order and/or Administrative Citation or noncompliance fee should be imposed or that an Administrative Citation or noncompliance fee of a different amount is warranted; and
3. An address which the appealing party agrees notice of any additional proceedings or an order relating to the imposition of the administrative penalty may be received by first class mail.



Upon receiving the request for appeal, the City Manager or a designee will appoint an administrative hearing officer and a hearing will be scheduled.

#### **6.4 Enforcement Response Time**

The City aims to issue an enforcement response within 30 days of a violation. Actual timeframes may vary depending on resource constraints and circumstances associated with the violation.