

PRETREATMENT PROGRAM PROCEDURES MANUAL



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Town of Amherst, Virginia

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APPENDIX A – SAMPLE ENFORCEMENT CONTROL DOCUMENTS

I. INTRODUCTION

A. Definitions

1. *Compliance Order or CO*: An official enforcement document which directs an Industrial User to undertake or to cease specific activities and which carries specific legal actions for repeated noncompliance.
2. *Compliance Schedule*: A schedule of required activities (or milestones) necessary for an Industrial User to achieve compliance with all pretreatment program requirements.
3. *Consent Order*: An agreement between the Town and the Industrial User which specifies the specific activities and completion date which will be taken to correct noncompliance.
4. *Industrial Users, IU, or User*: A source of indirect discharge.
5. *Incident*: Any pollutant released in a discharge, spill, or changed discharge that causes an upset, pass through, or interference at the Town's POTW.
6. *Interference*: A discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use of disposal; and therefore, is a cause of a violation of the Town's VPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.
7. *Isolated Violation*: Any violation which occurs 2 times or less during any 6 month period or as determined by the Pretreatment Coordinator.
8. *Late Report*: Any report, communication or response that is received by the Town after the specified due date.
9. *Milestone Date*: Any date included in a Compliance Schedule which defines when a certain requirement must be met as, but not limited to, engineering, ordering and installation of pretreatment equipment, and compliance with a pretreatment standard.
10. *Notice of Violation or NOV*: An official communication from the Town to an Industrial User which informs the Industrial User that a pretreatment violation has occurred.

11. *Pass Through*: A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the Town's VPDES permit, including an increase in the magnitude or duration of a violation.
12. *Penalties*: Depending on the circumstances of the violation(s), the term "legal action" refers to either civil or criminal penalties as described below:
 - a. *Civil Penalties*: Where warranted, the Town may impose civil penalties on Industrial Users who fail to comply with the Town's Pretreatment Policy or a federal, state, or local pretreatment regulation. These fines will be up to a maximum of \$2,500 per day per violation for repeated or severe violations.
 - b. *Criminal Penalties*: Any Industrial User who willfully or negligently violates any provisions of the Town's Pretreatment Policy or a federal, state, or local pretreatment regulation may be subject to criminal prosecution. Criminal prosecution may also be commenced where it is determined that an Industrial User has falsified information in connection with the pretreatment requirements. Violations may result in criminal penalties of up to \$2,500 per day per violation and/or 12 months in jail for each violation.
13. *Pretreatment Coordinator*: The person designated by the Town of Amherst who is charged with certain duties and responsibilities by this policy, including the operation of the POTW, or a duly authorized representative of that person.
14. *Publicly Owned Treatment Works or POTW*: A "treatment works," as defined by Section 212 of the Act (33 U.S.C. §1292), which is owned by the Town. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.
15. *Repeated Violation*: Any violation which occurs more than 2 times during any 6 month period or as determined by the Pretreatment Coordinator.
16. *Severe Violation*: Any discharge whether isolated or continual that would cause an upset or pass through at the Town's treatment plant in the wastewater treatment process or sludge treatment processes, use, or disposal.
17. *Show Cause Hearing*: An official meeting between the Town and an Industrial User to resolve violations. As a result, the Town will decide whether to grant a Compliance Schedule or issue a Consent Order to the noncompliant User, or take any other action that might be necessary.

18. *Significant Noncompliance*: The term significant noncompliance shall mean:
- a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of wastewater measurements taken during a six (6) month period exceed the daily maximum limit or average limit for the same pollutant parameter by any amount;
 - b. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
 - c. Any other discharge violation that the Pretreatment Coordinator finds has caused, alone or in combination with other discharges, interference or pass through, including any discharge endangering the health of POTW personnel or the general public;
 - d. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the Pretreatment Coordinator's exercise of its emergency authority to halt or prevent such a discharge;
 - e. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
 - f. Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
 - g. Failure to accurately report noncompliance; or
 - h. Any other violation(s) that the Pretreatment Coordinator determines will adversely affect the operation or implementation of the local pretreatment program.
19. *Termination of Service*: The issuance of a formal notice of termination by the Town to an Industrial User for repeated or severe violations, or for Significant Noncompliance.
20. *Town*: Refers to the Town of Amherst, Virginia and its acting personnel.

B. Industrial User Identification

The following methods will be used to identify and locate Industrial Users subject to control under Section 17-15 of the Pretreatment Ordinance. A standard survey form will be used to identify the character and volume of discharge.

1. Site Plan Approvals - As part of the site plan approval process, the Town will require that a Significant Discharger Survey Form be submitted to the Pretreatment Coordinator. These forms will be required as part of each site plan application. Completed forms will be provided to the Pretreatment Coordinator to determine if proposed discharge characteristics need to be further investigated and regulated. Further investigation will be deemed appropriate if the proposed discharge would cause the establishment to be determined to be a significant industrial user (SIU) pursuant to Chapter 17-15 of the Town Code. Site plan approval will not be granted until the Pretreatment Coordinator is assured that the project proposed by the site plan will comply with Chapter 17-15 of the Town Code.
2. Plumbing Permits - All Town plumbing permits are issued through the Department of Building Inspection. The Department of Inspection will require each nonresidential plumbing and building permit applicants to complete a Significant Discharger Survey Form. Completed forms will be provided to the Pretreatment Coordinator to determine if discharge characteristics need to be further investigated and regulated. Further investigation will be deemed appropriate if the estimated discharge would cause the establishment to be determined to be a significant industrial user pursuant to Chapter 17-15 of the Town Code. In accordance with §108 of the Virginia Uniform Statewide Building Code, the Department of Code Compliance will not issue any plumbing or building permit that the Pretreatment Coordinator has determined may result in the permittee not complying with the Town's Sewer Use and Pretreatment Ordinance (Ordinance). In addition, the Office of Inspection inspects all new or replaced water/sewer services after installation.
3. Review of other Information - If requested by the Pretreatment Coordinator, the Town's Utility Billing Department can supply reports on water consumption patterns. If requested by the Pretreatment Coordinator, the Town's Fire Department will provide a list of current hazardous use permits.
4. Industrial User Surveys - Industrial user survey forms will be mailed every 5 years beginning in 1998. A list of all industrial and commercial water and sewer customers will be generated by the Town's Department of Public Works. Customers that are determined to have discharges which could contain priority pollutants or discharges which could affect the operation of the publicly owned treatment works (POTW) will be sent a survey to complete. The response to the survey will be required within 30

days of mailing. The enterprises to be surveyed will include but not be limited to:

- a. All industrial customers
- b. Automotive and boat repair shops
- c. Machine shops
- d. Dentist offices
- e. Medical/Optical offices or clinics
- f. Dry cleaners
- g. Photo developing services
- h. Laboratories (commercial and educational)
- i. Commercial laundries
- j. Retail petroleum sales
- k. Furniture refinishers
- l. Printing shops
- m. Radiator repair shops
- n. Funeral homes
- o. Animal clinics
- p. Restaurants
- q. Motels
- r. Car/truck washes

C. Issuance and Reissuance of Industrial User Permits

1. Survey Review - The Town's Pretreatment Coordinator will review the completed wastewater surveys and the Significant Discharger Survey Form to determine discharges of concern. Dischargers contributing flows which may effect the POTW will be inspected. If, in the judgement of the Pretreatment Coordinator, a nonpermitted discharger requires regulating, the facility will be requested to complete an industrial wastewater discharge permit/waiver application.
2. The need to conduct sewer main surveillance sampling or self-monitoring to collect baseline data will be determined by the Pretreatment Coordinator. The decision will be based on an interview with the discharger on the content of the survey, or any other information that the Pretreatment Coordinator feels is relevant.
3. Discharge Permit Renewals - All significant industrial users will be issued discharge permits which are effective for not longer than five years. Permit language requires the filling of a new permit application 90 days prior to permit expiration.
4. Notification of Pretreatment Standards - If the conditions warrant, a Permit will be issued by the Pretreatment Coordinator within 30 days of receiving the completed permit application. Monitoring and reporting requirements, concentration limitations, and the need for slug control plans will be identified.

II. COMPLIANCE MONITORING

A. Self Monitoring

Unless otherwise required in the Industrial User Permit, self monitoring will be conducted quarterly for Significant Industrial Users. The installation of self-monitoring sampling equipment will be subject to the approval of the Town. Flow proportional sampling devices may be required by the Town if dictated by Federal or State law or if appropriate to protect the POTW. Compliance with sampling protocol will be verified during annual on-site inspections. All required sampling and monitoring procedures are to be performed in accordance to EPA requirements (40 CFR Part 136).

B. Unscheduled Monitoring

The Town will perform compliance monitoring to verify the accuracy of data by splitting samples or by conducting random unscheduled independent sampling events once per year. Compliance monitoring events conducted by the Town will be in accordance with 40 CFR Part 136. A portable composite sampling device will be used to allow insertion into a manhole. The discharger will be responsible for providing an approved sampling manhole for the collection of such samples. All sampling events will be documented by a sampling log filled out by the person conducting the sampling. All required sampling and monitoring procedures are to be performed in accordance to EPA requirements (40 CFR Part 136).

C. Demand Monitoring

Emergency, demand or investigative monitoring shall be conducted by the Town in response to known or suspected violations of a discharger's permit or of the Town's pretreatment ordinance. Instances of pass through, interference sludge contamination or POTW workers experiencing injuries or illness related to industrial discharges to the POTW may also initiate emergency, demand or investigative monitoring. Such monitoring shall be structured to address the conditions giving rise to the monitoring. All sampling events will be documented by a sampling log filled out by the person conducting the sampling. All sampling and monitoring procedures are to be performed in accordance to EPA requirements (40 CFR Part 13')

D. Receiving and Analyzing Reports from Industrial Users

All self monitoring, compliance monitoring, reports, compliance schedules, compliance status and enforcement actions will be recorded in a computerized record keeping program. Any document received by the Town of Amherst will be rubber stamped with date it was received. Data entry will be made under the direction of the Pretreatment Coordinator. The Pretreatment Coordinator will perform review and tracking of these reports in accordance with the procedures

described in the Enforcement Response Plan. A hard copy of the data will be generated semi-annually. A separate filing system will be used to track individual industrial user industrial pretreatment program documents and correspondence. A separate file drawer will be reserved to contain these files. As a minimum, the files will contain the following:

1. Permit/Waiver and completed Permit/Waiver applications
2. Correspondence
3. Completed on site inspection forms
4. Compliance monitoring sample results
5. Enforcement
6. Reports

E. Violation Response

Should the Pretreatment Coordinator determine that a violation of the Ordinance or the Industrial User Permit has occurred, the Pretreatment Coordinator shall proceed with the violation response procedures given in Section III of this manual. In cases where Notices of Violations (NOVs) or other written enforcement documents are issued, the Pretreatment Coordinator may require inspections. NOVs and other enforcement documents may contain corrective and reporting requirements which would initiate reinspections and additional monitoring to verify that corrective actions have been taken. NOVs will provide opportunities and requirements for responses by the permittees. Abatement and control of problem discharges may be addressed by the enforcement procedures given in the Section III of this manual, the slug control plan and by permit revisions.

F. Sampling

1. General Sampling Protocol

Sample collection for self-monitoring, compliance monitoring and emergency, demand or investigative monitoring shall consist of grab samples, grab composite samples, and flow proportional composite samples.

- a. Samples will be collected at an easily accessible location that provides a well-mixed waste stream. The sampling point will be located at the end of the process and/or the convergence where the discharger discharges into the POTW.
- b. Grab and composite sampling will be conducted primarily during working hours and will be flow proportioned if possible.
- c. All sampling shall be performed in accordance with 40 CFR 136. All samples shall be appropriately preserved. Only EPA recommended sampling containers will be used to collect and store the samples.
- d. An accurate sampling and chain-of-custody log shall be maintained for all samples. The log shall contain as a minimum, date and time of sampling, exact location of sampling, type of sample collected (i.e. grab, composite), method of sampling, method of preservation, name(s) and signature(s) of person(s) handling the samples in the field, during transportation, and in the laboratory, date and time samples were received at the laboratory for analysis, date analysis was performed, name(s), analytical techniques or method used, and the results of the analysis.

2. Reporting

All significant industrial users must report at least quarterly during the months of January, April, July and October. Noncompliance, pretreatment system bypass, and slug load events must be reported immediately to the Town of Amherst. These requirements for reporting will appear in the standard permit language. All other reporting requirements such as 90-day compliance reports, baseline monitoring reports, etc. will appear in the individual permits or in enforcement orders.

3. On-Site Inspections

- a. Inspections - On-site inspections of all significant industrial users will be conducted by Town staff annually. More frequent site inspections can be made at the discretion of the Pretreatment Coordinator. Additional inspections could be made if an SIU has repeated slug discharges, repeated violations of permit limits, has an increased water consumption, has undergone an expansion, or if monitoring of any kind suggests that an inspection may be warranted. Also changes in the POTW's influent or effluent characteristics or residuals characteristics, or the occurrences of pass through, interference or any instances of injury or illness to POTW workers related to industrial discharges may result in more frequent on-site inspections. All inspection activities will be documented on the inspection form. The form must be signed by the person conducting the inspection.

- b. Violation Response - Should, during the inspection, the Pretreatment Coordinator or the inspector determine that a violation of the Pretreatment Ordinance or of the discharge permit has occurred, the Pretreatment Coordinator or inspector shall proceed with the violation response procedures given in Section III. of this plan. In cases where NOV's or other written enforcement documents are issued, reinspections may be required by the Pretreatment Coordinator. NOV's and other enforcement documents may contain correction and reporting requirements which would initiate reinspections and additional monitoring to verify that corrective actions have been taken. The NOV's will provide opportunities and requirements for responses by the permittees or dischargers. Abatement and control of problem discharges may be addressed by the enforcement procedures given in the Enforcement Response Plan, and by permit revisions.

G. Emergency Situations

Regardless of the method of discovery, an emergency situation can be deemed to exist by the Pretreatment Coordinator if as a result of an ongoing or potential discharge, an imminent or substantial endangerment to the health or welfare of persons, or the environment or an imminent or potential interference or pass through is discovered or detected.

1. Immediate Notification

Upon discovery of an emergency situation, the Pretreatment Coordinator shall notify

- a. The discharger of the situation and shall require that the conditions giving rise to the emergency situation be abated or controlled as soon as possible;
- b. The Town of Amherst
- c. The Town of Amherst Department of Emergency Services and if required, the Virginia Department of Emergency Services and the HAZMAT unit if hazardous materials are involved; and
- d. The Virginia Department of Environmental Quality (DEQ).

2. Suspension of Sewer Service

If in accordance with Section III of this manual and Sec. 17-15.10.6 of the Pretreatment Ordinance, the Pretreatment Coordinator determines that the situation endangers public safety or may result in disruption or damage to the POTW, or harm to the environment, the sewer service to the discharging facility may be terminated pending delivery of the written order to cease and desist such violations giving rise to the emergency

situation. The written order to cease and desist will be issued by the Town of Amherst in accordance with Sec. 17-15.10.5 of the Pretreatment Ordinance. In the event that the discharger fails to comply with such a suspension order, the Town of Amherst may take other actions as may be appropriate to prevent damage to the POTW or the endangerment to any individual.

H. Review of Local Limits

Local limits development is not a one-time event for POTWs. Local limits should be reviewed annually and revised as necessary to respond to changes in Federal or State regulations, environmental protection criteria, plant design and operational criteria, and the nature of industrial contributions to POTW influent. To the extent that a POTW can anticipate changes and develop appropriately protective local limits, the need to revise a particular local limit in the future may be reduced. Factors that may influence the need for reevaluation of local limits include:

- Changes in VPDES permit limits to include additional or more restrictive toxic pollutant limits, including organic pollutants
- Changes in water quality limits including toxicity requirements
- Changes in sludge disposal standards or POTW disposal methods
- Modifications to the treatment plant, causing changes in the process removal efficiencies and tolerance to inhibition from pollutant removal efficiencies and/or process inhibition.
- Connection to the POTW of new industrial users
- Addition of new processes at existing industrial users
- Shutdown of industrial users or discontinuation of process discharges
- Changes to existing industrial user processes, including chemical substitutions, expected to alter pollutant characteristics and loadings to the POTW
- Alteration of pretreatment operations.

By use of foresight, POTWs can extend the validity of local limits to the projected term of an IU permit (five years). Effective planning will eliminate frequent local limits modifications which may tax POTW resources and weaken IU compliance efforts.

I. Public Participation Requirements

Public participation requirements are based upon the requirements imposed by EPA, DEQ, and for rate wetting purposes, the code of Virginia.

1. New or Modified Program Approval Public Notice - The POTW shall comply with VR680-14-01 §7.8.B as it relates to funding the DEQ issued public notice for approval of the Town's pretreatment program.
2. Significant Noncompliance Public Notice - In January of each year, any users in significant noncompliance during the preceding year shall have their names and addresses published in the local newspaper, as required under 40 CFR 403.8 (f) (2) (vii) and Section 17-15.9 of the Pretreatment Ordinance.
3. Rate Setting Public Notice - At such times that discharge permit fees are set or revised, a public notice on the establishment or revision of rates would be published in the a local newspaper.
4. Revisions to the Pretreatment Ordinance and to Local Limits Establishment or Revisions - In accordance with 40 CFR §403.5 (c) (3), the Town will provide individual notice and an opportunity to respond to affected persons and groups before promulgation of new or revised local limits. These notices will be mailed to each known discharger subject to categorical pretreatment standards, each known significant discharger, and to the Town of Amherst DPW. In addition, a public notice on the establishment or revision to local limits shall be published in the a local newspaper.
5. Public Access to Records - In accordance with Section 17-15.8 of the Pretreatment Ordinance, information and data on any industrial user obtained from reports, questionnaires, permit applications, permits, monitoring programs, and from governmental inspections shall be available to the public without restriction unless the industrial user specifically requests and is able to demonstrate to the satisfaction of the Town that the release of such information would divulge information, processes, or methods of production entitled to protection under the Virginia Freedom of Information Act or other applicable law. Such confidential information shall be made available upon written request to governmental agencies for uses related to the Town's Sewer Use and Pretreatment Ordinance in accordance with Section 17-15.8 of the Pretreatment Ordinance. All other information relating to development, implantation, execution, or modification of the industrial pretreatment program shall be available to the public as provided by the Virginia Freedom of Information Act. All requests for information relating to these matters can be requested from the Town of Amherst.

III. ENFORCEMENT RESPONSE

A. Procedures

1. Pre-Enforcement Screening

The pre-enforcement screening is accomplished by reviewing information as soon as possible after it is received. The screening is designed to effectively separate non-complying dischargers from those meeting their wastewater permit conditions. Screening will be performed by the Pretreatment Coordinator or his/her designated representative. These procedures should also identify all reports expected in a specified time period (i.e. all reports due in the next 30 days), specify criteria for determining obvious compliance from non-compliance, and describe follow-up activities (i.e. action to take if non-compliance detected).

Along with procedures to identify non-compliance, Publicly Owned Treatment Works should also track previous non-compliance. A means for evaluating the severity of each instance of non-compliance should also be established including time frames for responses to detected violations. Additional procedures should indicate how the Publicly Owned Treatment Works intends to document the violation (i.e. technical evidence that the permit has been violated), identify individual/governmental entity responsible for evaluating the Significant Industrial User's compliance, and identify and track what action, if any, has been taken by the Publicly Owned Treatment Works. The Pretreatment Coordinator will develop and maintain a database for tracking non-compliance.

2. Formal Enforcement Evaluation

Once the need for an enforcement response has been determined by the pre-enforcement screening, the selection of an appropriate initial action must be made. Initial actions can range from informal responses, such as a telephone call, to civil penalties or termination of service. The Town's Enforcement Response Plan which outlines the appropriate range of enforcement responses is provided in Section III.D.

A sound enforcement program should establish a chain of concurrence. (i.e. the technical staff determines the type of violation, and the city attorney concurs that the evidence presented legally supports the enforcement response planned). This concurrence should be given or denied within a certain time period. Procedures and criteria for escalating the enforcement response in a timely manner are delineated in Section III.D.

3. Formal Enforcement Action

A formal enforcement action is defined as one that requires action to achieve compliance (including a timetable or compliance schedule to undertake that action), contains consequences for non-compliance that are independent of the original violation, and subjects the person to adverse legal consequences for non-compliance.

4. Demand Monitoring and Inspections

Field investigations are often the most critical factor in determining an appropriate enforcement response. Such investigations provide an independent basis to identify instances of non-compliance. The Town's Enforcement Response Plan in Section III.D. contains criteria and protocols for when to conduct "demand" sampling. Protocols for "demand" sampling are provided in Section II.F.3.b.

B. Enforcement Responses

1. Notice of Violations

A Notice of Violation (NOV) is an official communication from the Pretreatment Coordinator to the noncompliant Industrial User which informs the User that a pretreatment violation has occurred. The NOV is an appropriate initial response to nonsignificant violations. In case of significant noncompliance, a NOV may also be issued prior to issuing an administrative order or pursuing judicial remedies. The NOV's purpose is to notify the industrial User of the violation(s): it may be the only response necessary in cases of infrequent and generally minor violations. If the User does not return to compliance following receipt of the NOV, the Pretreatment Coordinator should proceed to more stringent enforcement measures.

The NOV is issued for relatively minor or infrequent violations of pretreatment standards and requirements. Although it may lack the deterrent effect of an administrative fine or criminal indictment, a NOV can nevertheless be an effective response for several reasons. First, the NOV provides the Industrial User with an opportunity to correct noncompliance on its own initiative rather than according to a schedule of actions determined by the Pretreatment Coordinator, and thus fosters a cooperative environment between the Industrial User 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 establishes that the Control Authority escalated its response according to its enforcement response plan, rather than reacting to the noncompliance with arbitrary or unnecessarily harsh enforcement. Finally, by providing the Pretreatment Coordinator with an inexpensive

and prompt response to violations, the NOV demonstrates to the regulated community the viability of the Town's pretreatment enforcement program.

For maximum effectiveness, the NOV should be written and delivered to the User immediately upon detection of the violation. The NOV should be received by the User no later than five (5) business days after discovery of the noncompliance. The NOV should either be hand-delivered to the Industrial User by Town personnel or be sent to the Industrial User via certified mail, return receipt requested.

A copy of each NOV, signed by the responsible Control Authority official, should be placed in the Industrial User's file, along with the certified mail receipt or similar statement by the person who delivered it.

The violating User must respond to the NOV within 10 days. The response must include written explanation for the violation, how it was corrected and what procedures will be initiated to prevent the reoccurrence or the violation in the future.

If the User fails to respond to the NOV within 10 days of receipt, the Pretreatment Coordinator will issue a second NOV, which may be accompanied by a Compliance Order.

All NOVs should be copied to the Town Attorney and the Virginia Department of Environmental Quality.

2. Consent Order

The consent order is an agreement between the Town and the industrial user normally containing three elements: (1) compliance schedules; (2) stipulated fines or remedial actions; and (3) signatures of Town and industry representatives.

A consent order is appropriate when the user assumes responsibility for its noncompliance and is willing (in good faith) to correct its cause(s). The user need not admit 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 Pretreatment Coordinator must make sure that the consent order prohibits future violations and provides for corrective action on the part of the industry. The consent order should address every identified (and potential) deficiency in the user's compliance status at the time of the order.

In determining the terms to include in the consent order, the Pretreatment Coordinator may take a user's extenuating circumstances (e.g., financial difficulties, technical problems, and other impediments to necessary corrective action) into consideration.

3. Show Cause Hearing

An order to show cause directs the user to appear before the Pretreatment Coordinator, explain its noncompliance, and show cause why more severe enforcement actions against the user should not go forward. The order to show cause is typically issued after informal contacts or NOV's have failed to resolve the noncompliance. However, the show cause order/hearing can also be used to investigate violations of previous orders.

The 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. Alternatively, the Pretreatment Coordinator may choose to conduct an informal hearing or close it to the public. However, findings resulting from informal hearings should also be carefully documented. For example, the Pretreatment Coordinator could use an informal hearing to interview employees of the industrial user, examine discharge records, or negotiate the installation of a pretreatment system.

If a formal hearing is held, the Pretreatment Coordinator will typically put forth evidence of noncompliance. In response, the user may admit or deny the noncompliance, explain mitigating circumstances, demonstrate its eventual compliance and describe all other corrective measures. During the hearing, the Pretreatment Coordinator can explore the circumstances surrounding the noncompliance and evaluate the sufficiency of the evidence for subsequent civil or criminal actions. If the user does not understand the violation's nature (that is, what constitutes a violation under the ordinance), the hearing can serve to educate the user while saving the Town litigation expenses.

The Pretreatment Coordinator must then 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 user must install pretreatment equipment to achieve compliance, the circumstances surrounding the noncompliance should be weighed and a reasonable schedule for installation and start-up developed. Completion of this schedule and any additional requirements will normally be administered through the consent order.

Should the hearing result in an impasse between the user and the Pretreatment Coordinator, the Pretreatment Coordinator 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. The results of a formal show cause hearing, along with any data and testimony (recorded by tape machine or stenographer) submitted as evidence, are generally available to the public and may also serve as evidentiary support for future enforcement actions.

4. Compliance Order

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

The compliance order should document the noncompliance and state required actions to be accomplished by specific dates, including interim and final reporting requirements. In drafting the compliance schedule, the Pretreatment Coordinator should be firm but reasonable, taking into consideration all factors relevant to an appropriate schedule duration. For example, if the user must install a complete pretreatment system, time should be allowed to obtain the necessary construction permits, and to design and construct the system. However, in such cases the Pretreatment Coordinator should require intermediate measures to ensure that the user is making acceptable progress.

Once these milestones are set, the Pretreatment Coordinator must track the user's performance against them and escalate its enforcement response as needed. For example, the Pretreatment Coordinator may order the user to show cause for failing to meet a major milestone, impose an additional fine or initiate judicial proceedings.

5. Cease and Desist Order

A cease and desist order directs a noncompliant user to cease illegal or authorized discharges immediately or to terminate its discharge altogether. A cease and desist order should 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 hearing. In an emergency, the order to cease and desist may be given by telephone. However, a subsequent written order should be served on the industrial user, either in person or by registered mail. If necessary (and within the Town's legal authority), the Pretreatment Coordinator may order immediate cessation of any discharge to the Town's collection system, regardless of a user's compliance status. In nonemergency situations, the cease and desist order may be used to suspend or permanently revoke industrial wastewater discharge permits. If the user fails to comply with the order, the Town may take independent action to halt the discharge, such as terminating water service or blocking the user's connection point.

C. Considerations

The enforcement response selected must also be appropriate to the violation. This determination is often a matter of common sense. The Pretreatment Coordinator should consider the following criteria when determining a proper response:

1. Magnitude of the Violation

Generally, an isolated instance of noncompliance can be met with an informal response or a NOV. Any “significant noncompliance” should be met with an enforceable Compliance Order that requires a return to compliance by a specific deadline.

2. Duration of the Violation

Violations (regardless of severity) which continue over prolonged periods of time should subject the industrial user to escalated enforcement actions. For example, an effluent violation which occurs in two out of three samples over a six-month period or a report which is more than 30 days overdue is considered significant, while a report which is two days late should not be deemed significant.

The Pretreatment Coordinator’s response to these situations must prevent extended periods of noncompliance from recurring. A Compliance Order is recommended for chronic violations. If the Industrial User fails to comply with the Compliance Order, the Pretreatment Coordinator should initiate judicial action with civil penalties. If the prolonged violation results in serious harm to the POTW, the Pretreatment Coordinator should also consider terminating service or obtaining a court order to halt further violations as well as to recover the costs of repairing the damage.

3. Effect on the Receiving Water

One of the primary objectives of the National Pretreatment Program is to prevent pollutants from “passing through” the POTW and entering the receiving stream. Consequently, any violation which results in environmental harm should be met with a severe response. Environmental harm should be presumed when an industry discharges a pollutant into the sanitary sewer system which:

- Passes through the POTW
- Causes a violation of the POTW’s VPDES permit (including water quality standards)
- Has a toxic effect on the receiving waters (i.e., fish kill).

At a minimum, responses to these circumstances should include a Compliance Order. Where the Town incurs or is likely to incur VPDES

finances and penalties, the response should initiate judicial action with civil penalties to ensure recovery from the noncompliant User. In severe instances, the Pretreatment Coordinator may also wish to pursue damages for the destruction or harm to local natural resources. If a User's discharge causes repeated harmful effects, the Control Authority should seriously consider terminating service to the User.

4. Effect on the POTW

Some violations may have negative impacts on the POTW itself. For example, they may result in significant increases in treatment costs, interfere or harm POTW personnel, equipment, processes, operations, or cause sludge contamination resulting in increased disposal costs. These violations should be met with a civil penalty and an order to correct the violation in addition to recovery of additional costs and expenses to repair the POTW. For example, when the Industrial User's discharge upsets the treatment plant, damages the collection system through pipe corrosion, causes an obstruction or explosion, or causes additional expenses (e.g., to trace a spill back to its source), the Pretreatment Coordinator's response should include cost recovery, civil penalties, and a requirement to correct the condition causing the violation.

5. Compliance History of the User

A pattern of recurring violations (even of different program requirements) may indicate either that the User's treatment system is inadequate or that the user has taken a casual approach to operating and maintaining its treatment system. These indications should alert the Pretreatment Coordinator to the likelihood of future significant violations. Accordingly, users exhibiting recurring compliance problems should be strongly dealt with to ensure that consistent compliance is achieved. Compliance history is an important factor for deciding which of the two or three designated appropriate remedies to apply to a particular violator. For example, if the violator has a good compliance history, the Pretreatment Coordinator may decide to use the less severe option.

6. Good Faith of the User

The User's "good faith" in correcting its noncompliance is a factor in determining which enforcement response to invoke. "Good faith" may be defined as the User's honest intention to remedy its noncompliance coupled with actions which give support to this intention. Generally, a User's demonstrated willingness to comply should predispose the Pretreatment Coordinator to select less stringent enforcement responses. However, good faith does not eliminate the necessity of an enforcement action. For example, if the POTW experiences a treatment upset, it should recover its costs regardless of prior good faith. Good faith is typically demonstrated by cooperation and completion of corrective measures in a

timely manner (although compliance with previous enforcement orders is not necessarily good faith).

D. Enforcement Response Plan

SAMPLING, MONITORING AND REPORTING

Non-Compliance	Circumstances	Range of Response and Responsible Position
Failure to sample, monitor or report (routine reports, BMRs)	Isolated or infrequent More than 30 days overdue – Significant Noncompliance (SNC)	Phone call or written Notice of Violation (NOV) requiring a report within 10 days. If no response is received, issue an Compliance Order (CO) by the Pretreatment Coordinator.
Failure to sample, monitor report or notify	Industrial User (IU) does not respond to letters, does follow through on verbal or written agreement or frequent violation-Significant Noncompliance (SNC)	CO or judicial action including penalties if no response is received. Request criminal investigation. Within 10 days by the Pretreatment Coordinator.
Failure to notify of effluent limit violation or slug discharge	Isolated or infrequent. No known effect.	Phone call or NOV. If no response within 10 days, issue and CO by the Pretreatment Coordinator.
Failure to notify of effluent limit violations or slug discharge	Frequent or continued violation – SNC.	Show cause meeting, CO or judicial actions, including penalties. Within 10 days by the Pretreatment Coordinator.
Minor sampling, monitoring or reporting deficiencies (computational or typographical errors).	Isolated or infrequent	Phone call or NOV. Corrections to be made on next submittal. CO if continued. Within 10 days by the Pretreatment Coordinator.
Major or gross sampling, monitoring, or reporting deficiencies (missing information late reports).	Isolated or infrequent	NOV or CO. Corrections to be made on the next submittal. Within 10 days by the Pretreatment Coordinator.
Major or gross reporting deficiencies	Continued. Remains uncorrected 30 days or more –SNC.	CO or judicial action. Within 10 days by the Pretreatment Coordinator.
Reporting false information	Any instance –SNC.	Request for criminal investigation. Judicial action, penalties, sewer ban. Within 10 days by the Pretreatment Coordinator.

COMPLIANCE SCHEDULES (Construction Phases or Planning)

Non-Compliance	Circumstances	Range of Response and Responsible Position
Missed interim date.	Will not cause late final date or other interim dates.	NOV. Within 10 days by the Pretreatment Coordinator.
Missed interim date.	Will result in other missed interim dates. Violation for good or valid cause.	NOV or CO. Within 10 days by the Pretreatment Coordinator.
Missed interim date.	Will result in other missed interim dates. No good or valid cause – SNC.	NOV, CO, or judicial action including penalty. Within 10 days by the Pretreatment Coordinator.
Missed final date	Violation due to force major (strike, act or God, etc.).	Contact permittee and require documentation of good or valid cause; show cause. Within 10 days by the Pretreatment Coordinator.
Missed final date, initial or final construction date	90 days or more outstanding. Failure or refusal to comply without good or valid cause – SNC.	CO or judicial action including penalty. Within 10 days by the Pretreatment Coordinator.
Failure to install monitoring equipment	Continued –SNC.	CO to begin monitoring (using outside contracts, if necessary) and install equipment within 30 days by the Pretreatment Coordinator. Temporary sewer ban.

EFFLUENT LIMITS

Non-Compliance	Circumstances	Range of Response and Responsible Position
Exceeding final limits (categorical local or prohibited).	Infrequent or minor violations.	NOV. Within 10 days by the Pretreatment Coordinator.
Exceeding final limits.	Infrequent or isolated major violations exceed the limits by TRC of a single effluent limit.	NOV, CO (judicial if environmental harm resulted including penalty). Within 10 days by the Pretreatment Coordinator.
Exceeding final limits.	Violation(s) that are SNC.	CO or judicial action including penalty. Within 10 days by the Pretreatment Coordinator.
Exceeding interim (categorical or local)	Without known damages	NOV or CO. Within 10 days by the Pretreatment Coordinator.
Exceeding interim limits.	Results in known environmental or POTW damage –SNC.	CO or judicial action including penalty. Within 10 days by the Pretreatment Coordinator.
Reported slug load	Isolated without known damage.	Show cause or CO. Within 10 days by the Pretreatment Coordinator.
Reported slug load	Isolated with interference, pass-through or damage-SNC.	CO or judicial action including penalty. Within 10 days by the Pretreatment Coordinator.
Reported slug load	Recurring –SNC.	Judicial action, including penalty. Sewer Ban. Within 10 days by the Pretreatment Coordinator.
Discharge without a permit or approval	One time without known environmental or POTW damage.	CO. Within 10 days by the Pretreatment Coordinator.
Discharge without a permit or approval	One time that results in environmental damage or continuing violation – SNC.	CO or judicial action penalty. Request for criminal investigation. Within 10 days by the Pretreatment Coordinator.
Discharge without a permit or approval	Continuing violation with known environmental or POTW damage – SNC.	Judicial action and penalty. Request for criminal investigation. Disconnect from sewer. Within 10 days by the Pretreatment Coordinator.

NON-COMPLIANCE DETECTED THROUGH INSPECTIONS OR FIELD INVESTIGATIONS

Non-Compliance	Circumstances	Range of Response and Responsible Position
Minor violation of analytical procedures	Any instance.	NOV. Within 10 days by the Pretreatment Coordinator.
Major violation of analytical procedures	No evidence of intent	NOV or CO. Within 10 days by the Pretreatment Coordinator.
Major violation of analytical procedures	Evidence of negligence or intent – SNC.	CO or judicial action penalty (possible criminal action). Within 10 days by the Pretreatment Coordinator.
Minor violation of permit condition	No evidence of negligence or intent.	NOV. Immediate correction required. Within 10 days by the Pretreatment Coordinator.
Minor violation of permit condition	Evidence of negligence or intent – SNC.	CO or judicial action and penalty (possible criminal action). Within 10 days by the Pretreatment Coordinator.
Major violation of permit condition	Evidence of negligence or intent – SNC.	CO or judicial action and penalty (possible criminal action). Sewer ban. Within 10 days by the Pretreatment Coordinator.

E. ERP Evaluation

After the Enforcement Response Plan has been implemented, its effectiveness should be periodically assessed to identify progress and institute improvements. An Enforcement Response Plan should detect instances of non-compliance near their occurrence. Therefore, evaluation and modification of the Enforcement Response Plan should occur annually so that an ineffective system is not retained for a long period of time.

IV. REPORTING REQUIREMENTS

The Pretreatment Coordinator shall submit a report annually to the Virginia Department of Environmental Quality (DEQ) describing the Town's pretreatment activities over the past 12 months. In the event that the Town is not in compliance with any condition or requirement of the permit, the Pretreatment Coordinator shall also include the reasons for non-compliance and state how and when the Town shall comply with such conditions and requirements. This annual report is due on January 15 of each year and shall contain, but not be limited to, the following information:

1. A summary of the results of the Rutledge Creek WWTP influent, effluent, and sludge sampling for those pollutants for which the Town regulates discharges by Industrial Users, and for any non-priority pollutants which the Town believes may be causing or contributing to interference of pass through or adversely impacting sludge quality.
2. A discussion of upset, interference, or pass through incidents, if any, at the Rutledge Creek WWTP which the Town knows or suspects were caused by Industrial Users of the treatment works. The discussion shall include the reason why the incidents occurred, the corrective actions taken, and, if known, the name and address of the Industrial User(s) responsible.
3. The cumulative number of Industrial Users that the Pretreatment Coordinator has notified regarding Baseline Monitoring Reports, 90 Day Compliance Reports, and the cumulative number of Industrial Users response.
4. An updated list of the Town's Industrial Users including their name and address or a list of deletions and additions keyed to a previously submitted list. The Pretreatment Coordinator shall provide a brief explanation of each deletion. The list shall identify the Industrial Users subject to Federal Categorical Pretreatment Standards and which set(s) of standards are applicable; Industrial Users subject to local limits only; and Industrial Users subject to local limits that are more stringent than Federal Categorical Pretreatment Standards. The Pretreatment Coordinator shall also identify the users classified as Significant Industrial Users. The Pretreatment Coordinator shall characterize the compliance status of each Industrial user (and describe which standards or requirements are not being complied with) by employing the following descriptions:

- a. In compliance with baseline monitoring report and 90 day compliance report requirements (where applicable);
- b. Consistently achieving compliance;
- c. Inconsistently achieving compliance;
- d. Significantly violating applicable pretreatment requirements as defined in VR 680-14-01;
- e. On a compliance schedule to achieve compliance (include the date final compliance (include the date final compliance is required));
- f. Not achieving compliance and not on a compliance schedule;
- g. Industrial Users compliance status unknown; and
- h. Industrial Users without permits, including Industrial Users with expired permits.

A summary of the sampling and inspection activities conducted by the Town during the past year to gather information and data regarding Industrial Users. The summary shall include:

- 1. The names and addresses of the Industrial Users subject to surveillance by the Town and an indication of whether they were inspected, sampled or both, and the frequency of those activities at each Industrial User; and
- 2. The conclusions or results of the inspection or sampling of each Industrial User.

A summary of the compliance and enforcement activities during the past year. The summary shall include the names and addresses of the Industrial Users affected by the following actions:

- 1. Warning letter of notice of violation;
- 2. Administrative Order;
- 3. Civil actions;
- 4. Criminal actions;
- 5. Assessment of monetary penalties, identify the amount of the penalty assessed each industrial user;
- 6. Restriction of flow to the Publicly Owned Treatment Works; and
- 7. Disconnection from discharge to the Publicly Owned Treatment Works.

A description of any significant changes in operating the pretreatment program which differ from the information in the Town's approved Pretreatment Program including, but not limited to, changes concerning;

- 1. The program's administrative structure;

2. Local Industrial User limitations;
3. Monitoring program or monitoring frequencies;
4. Legal Authority or enforcement policy;
5. Funding mechanisms;
6. Resource requirements; and
7. Staffing levels.

A summary of the annual pretreatment budget, including the cost of pretreatment program administrative functions and equipment purchases.

A summary of the public participation activities to involve the public. This shall include a copy of the annual publication of significant violators, if such publication was needed to comply with VR 680-14-01:1.

Other requirements in accordance with VPDES special conditions and DEQ guidance.

The Pretreatment Coordinator shall submit to DEQ a statement of the basis for desired program modification and a modified program description for all substantial program modifications as defined in VR 680-14-01. The Town must await formal approval from DEQ before implementing substantial program modifications.

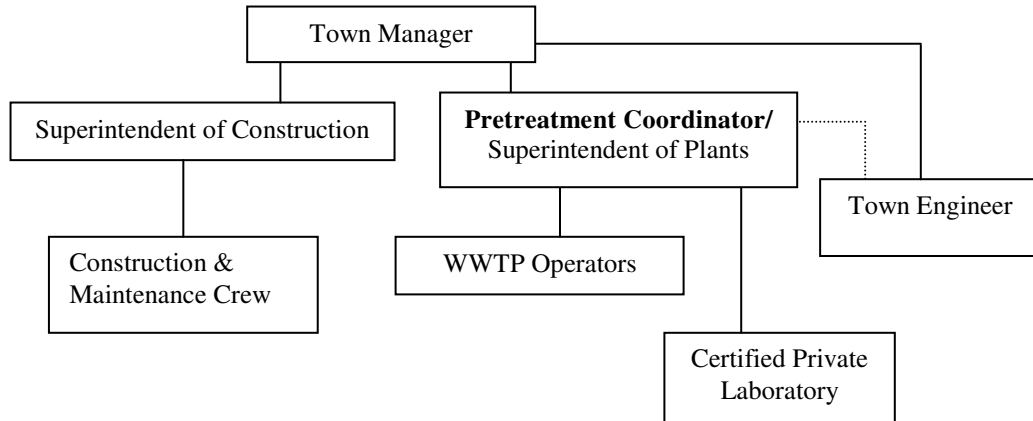
The Pretreatment Coordinator shall notify DEQ of any other modifications to its Pretreatment Program at least 30 days prior to implementation. Modifications that are not considered substantial are deemed approved unless DEQ notifies the Town within 90 days that the modification is not approved.

V. RESOURCES FOR DEVELOPMENT AND IMPLEMENTATION

A. Staffing

Day-to-day responsibility for the ongoing development and implementation of the Industrial Pretreatment Program will rest with the Town of Amherst staff unless and until the operation of the wastewater treatment plant is outsourced to a contract operator. The Superintendent of Plants has been designated the "Pretreatment Coordinator." Other Town of Amherst staff, however, will be utilized for a portion of the administrative duties. The following organizational chart depicts the Town's staffing structure:

Staffing for Industrial Pretreatment Program



Amherst has a Town Attorney who is retained by, and who answers directly to, the Town Council of the Town of Amherst. Although the attorney is the Council’s attorney, he also serves as the Town Manager’s legal counsel for most matters, including the enforcement of the Town’s ordinances which includes the Industrial Pretreatment Ordinance.

In Amherst, the Town Manager is ultimately responsible for all staff activities and functions related to the wastewater treatment service. Development and implementation of Amherst’s industrial pretreatment program has been delegated to the Superintendent of Plants. The Superintendent of Plants is responsible for the operation and maintenance of the Town’s wastewater treatment plant, and the Town’s Superintendent of Construction oversees the maintenance of the off-plant portions of the sanitary sewage collection system. Since overall administration of the industrial pretreatment program is the responsibility of the Superintendent of Plants, management of the program has been delegated to that official. Permit writing, technical review of submittals, etc. will be coordinated by the Superintendent of Plants and jointly handled by the Town Manager and the Town Engineer. Sampling and laboratory analysis will be performed by the WWTP operators under the direction of the Superintendent of Plants. A private certified laboratory will be used for the analysis of all flow parameters for which the WWTP laboratory is not certified to perform.

Zoning permits for significant new construction, building renovation, and building modification are issued by the Town Manager. Building code enforcement is handled by the Amherst County Building Official’s office. The zoning permit process will allow the Town Manager to review which provisions of the Industrial Pretreatment Program apply to the applicant.

B. Equipment

The Town of Amherst has the vehicles, samplers, computers and laboratory equipment necessary to implement the industrial pretreatment program. Some analytical testing, such as metal analysis, will have to be performed by private laboratories.

C. Program Funding & Revenue Sources

The Town of Amherst's wastewater utility system is a self-supporting enterprise separate and apart from the Town's general fund and is supported by user fees. Direct costs and overhead for all administrative and staff support are charged to this Sewer Fund.

The Town's annual budget includes funding for public works personnel, private laboratory work, and consultants required to implement the industrial pretreatment program. The Town's Industrial Pretreatment Ordinance provides for the setting of reasonable fees to recover the costs of maintaining the industrial pretreatment program. As of this writing, the costs of implementing the program are being absorbed as a general operating cost.

APPENDIX A
SAMPLE ENFORCEMENT CONTROL DOCUMENTS

[Town of Amherst Letterhead]

DATE

Certified Mail
Return Receipt Requested

Name
Title
Company
Address

RE: Industrial User Permit No. ____
Notice of Violation

Dear _____:

This notice is to inform you that your facility is in violation of your Industrial User Permit. The specific details of the violations are outlined below. Within ten (10) days of receipt of this notice, you must respond in writing with an explanation regarding how these violations occurred, and what actions will be taken to prevent the violation from reoccurring.

Standards/Requirements Violated:

1. _____
2. _____

All self-monitoring, sampling and reporting must be done in accordance with your permit requirements. Failure to meet the requirements of your permit may result in the imposition of penalties, and possible suspension or your wastewater service.

If you have any questions regarding this letter or your permit requirements, please call me at (____) ____-____.

Sincerely,

First Name Last Name
Pretreatment Coordinator