

**NEENAH MENASHA SEWERAGE COMMISSION (NMSC) INDUSTRIAL  
PRETREATMENT ENFORCEMENT RESPONSE PLAN  
4/1/15**

1. **Purpose of Enforcement Response Plan.** The purpose of the Neenah Menasha Sewerage Commission (NMSC) Industrial Pretreatment Enforcement Response Plan is to establish a uniform enforcement response by NMSC, in the event of non-compliance with the terms and conditions of a NMSC Industrial User Wastewater Discharge Permit by an area industry. This document describes the official NMSC policy and procedure for:
- (i) Obtaining and evaluating information concerning compliance by Industrial Users with their Wastewater Discharge Permits;
  - (ii) Identifying cases of non-compliance;
  - (iii) Selecting and prosecuting appropriate enforcement action; and
  - (iv) Otherwise rectifying non-compliance in a timely, fair and consistent manner.

Since it is appropriate for the enforcement response be tailored to the violation, NMSC will take the following factors into consideration when it decides to proceed with a particular enforcement response:

- Magnitude of the violation.
- Duration of the violation.
- Effect of the violation on the treatment system, treatment sludge, or receiving water.
- Compliance history of the industrial user.
- Good faith of the industrial user.

The enforcement plan is a guidance document. The NMSC may and will take such enforcement actions as are appropriate, whether or not the actions are in accordance with the Response Plan. The policies and procedures set forth in this document are intended for guidance of Commission personnel and to inform the public. This document does not create any rights, either substantive or procedural, that are enforceable by any party in litigation with the NMSC. The enforcement response “guide” does not limit the enforcement discretion of the NMSC. In any case involving repetitious violations or violations that have severe affects, the NMSC response will be escalated from the response listed in the guide.

2. **Key to Acronyms and Abbreviations.**

- |                          |   |
|--------------------------|---|
| <b>AO</b>                | - Administrative Order (examples attached)  |
| <b>PC</b>                | - Pretreatment Coordinator  |
| <b>A</b>                 | - Attorney  |
| <b>Civil Action</b>      | - A civil lawsuit brought by NMSC against an Industrial User, seeking equitable relief, monetary penalties and/or actual damages. |
| <b>Injunctive Relief</b> | - Issuance of an injunction, as appropriate, which restrains or compels the specific performance of the permit.                   |
| <b>Fine</b>              | - A monetary penalty assessed by the Control Authority (NMSC).  |
| <b>IU</b>                | - Industrial User.  |

<b>NOV</b>	- Notice of Violation (Letter of Non-compliance, example attached).
<b>Meeting</b>	- Informal compliance meeting with an IU to resolve recurring non-compliance.
<b>PM</b>	- Plant Manager
<b>Show Cause Hearing</b>	- A formal meeting requiring the IU to appear and demonstrate why the Control Authority should not take proposed enforcement action against the IU. The meeting also may serve as a forum to discuss corrective actions and compliance schedules (example attached).
<b>SNC</b>	- Significant non-compliance as defined by 40 CFR 403.

The terms used herein are defined either in the NMSC Industrial User Discharge Permit, the Industrial Pretreatment Rules and Regulations, or in this text.

**3. Enforcement Response Plan Personnel.**

- a. Pretreatment Coordinator. Duties: To oversee the program, to update the Industrial Pretreatment Rules and Regulations and Wastewater Discharge Permits, and to initiate formal enforcement action.
- b. Assistant Pretreatment Coordinator. Duties: To assist the Pretreatment Coordinator, to screen compliance data, to initiate informal enforcement action, to conduct Industrial User inspections, and to notify an Industrial User of any violation.
- c. Sampling Team. Duties: To conduct compliance monitoring, deliver samples to appropriate laboratory for analysis, maintain chain-of-custody sheets, and to operate and maintain sampling equipment.
- d. Control Authority Attorney. Duties: To initiate and prosecute civil and criminal enforcement litigation.

4. **Compliance Monitoring Procedure.** Any Discharger subject to a Pretreatment standard or requirement shall submit to the NMSC self-monitoring reports as required by the NMSC Industrial Pretreatment Rules and Regulations and NMSC Industrial Pretreatment Discharge permit (the "Permit"). Reports of permittees shall contain the full results of all sampling and analysis of the permittee's discharge, including flow, the nature and concentration thereof, and its production and mass as required by the Permit or by the Commission. The frequency of monitoring by the Discharger shall comply with applicable Categorical Pretreatment Standards. Where such standards fail to specify the frequency of monitoring, the Discharger shall perform the required monitoring as specified in the Commission's Pretreatment Program Discharge Permits.

All analyses shall be performed in accordance with federal regulation 40 CFR Part 136 and/or state administrative code NR 219 and amendments thereto unless specified otherwise. All reports submitted to the NMSC shall be accompanied by a chain of custody for any laboratory data reported, and shall be signed by an authorized representative of the Discharger. An Industrial User shall timely notify the NMSC of any effluent limit violation or slug discharge. Effluent sampling must be repeated within 24 hours, and the analysis must be reported within 30 days for any parameter which is found to be in violation.

The Control Authority (NMSC) shall conduct a facility inspection of each industrial user under permit, at least annually, or if allowed by 40 CFR 403/NR 211 once every two years. A pretreatment industrial user inspection checklist shall be completed for each inspection. Facility inspections shall be prescheduled with the industrial user unless, in the discretion of the NMSC, an unscheduled inspection is warranted.

The control authority shall conduct sampling and flow monitoring of Industrial Users. Frequency of sampling shall be determined by the Commission. Control Authority sampling and flow monitoring will not be prescheduled with the Industrial User.

5. **Compliance Screening.** The compliance screening process shall involve a review by NMSC of all available information in order to detect non-complying dischargers and to bring appropriate enforcement action. This review process shall assess, as appropriate, compliance with schedules, and with reporting requirements and applicable pretreatment standards.

The screening process shall verify that all required reports

- (a) Have been timely submitted;
- (b) Cover the appropriate time periods;
- (c) Include all required information; and
- (d) Are properly signed and certified.

The NMSC Control Authority shall utilize a calendar of events to record and track reporting due dates.

All monitoring data shall be entered into a computer software program for tracking purposes. Non-discharge violations (late report submittal, etc.) shall be noted by pretreatment personnel and recorded manually on the computer. All data shall be reviewed as received. All monitoring data and any correspondence with an industry shall be maintained in a master file by the NMSC.

6. **Significant Non-Compliance (SNC)**

An industrial user is in significant noncompliance if its violation meets one or more of the following criteria. A non-significant industrial user is in significant noncompliance if criteria c, d, or h applies:

- a. Sixty-six percent or more of all the measurements of the industrial user's wastewater for the same pollutant taken during a 6 month period exceeded by any magnitude any numeric pretreatment standard or requirement including an instantaneous limit;
- b. Thirty-three percent or more of all the measurements of the industrial user's wastewater for the same pollutant taken during a 6 month period equaled or exceeded the product of the numeric pretreatment standard or requirement including an instantaneous limit multiplied by either 1.4 for BOD, TSS and fats-oil-grease; 1.2 for all other pollutants except pH; or exceeded a pH limit by .4 standard units;

- c. The control authority has reason to believe that the industrial user has caused, alone or in combination with other discharges, interference, pass-through or endangerment of the health of POTW personnel or the general public because of the violation of a pretreatment standard or requirement;
- d. The industrial user has discharged a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has otherwise resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge;
- e. The industrial user has failed to meet, by 90 days or more, a milestone date contained in a compliance schedule within a local control mechanism or enforcement order for starting construction, completing construction, or attaining compliance;
- f. The industrial user has failed to provide, within 45 days of a deadline a required report containing all required monitoring results and other information, such as baseline monitoring report, 90 day compliance report, periodic self-monitoring report, and reports on compliance with a compliance schedule;
- g. The industrial user has failed to accurately report noncompliance; or
- h. The control authority has determined that any other violation or group of violations, which may include a violation of required best management practices, by the industrial user has adversely affected operation or implementation of the local pretreatment program.

**7. NMSC Enforcement Mechanisms.**

- a. Informal notice to Industrial User for non-significant non-compliance (telephone call). All enforcement telephone calls to IUs will be documented with a form created for this purpose.
- b. Informal meeting with Industrial User (for recurring non-compliance issues.)
- c. Notice of Violation (NOV) [example attached].
- d. Administrative Orders.
  - 1. Cease and Desist Order (example attached)
  - 2. Consent Order (example attached)
  - 3. Compliance Schedules (example attached)
  - 4. Notice of Order to Show Cause (example attached)
- e. Fines.
- f. Civil Action.
- g. Criminal Action.
- h. Criminal Investigation.
- i. Injunctive Relief.
- j. Termination of Services (revocation of discharge permit).

Cease and Desist Order. Directs a non-compliant user to immediately cease illegal or unauthorized discharges or to terminate discharges all together. It is

issued when the discharge could cause interference or pass-through. This order may be issued immediately upon discovery of a problem. In an emergency, the order to cease and desist may be given by telephone. In non-emergency situations, the order may be used to suspend or permanently revoke the user's discharge permit.

Consent Order. This order combines the force of an AO with the flexibility of a negotiated settlement. This may be used when the user assumes responsibility for a noncompliance and is willing (in good faith) to correct the cause(s).

Compliance Orders and Compliance Schedules. An Administrative Order may be issued by the EPA, pursuant to Section 309(a) of the Clean Water Act, without notice or opportunity for prior hearing, requiring compliance with standards or other requirements developed under authority of the Act. The NMSC, under its legal authority, may also issue similar orders. Such an order may be used to place an Industrial User on an enforcement schedule to comply with pretreatment standards.

Order to Show Cause. An Industrial User may be ordered by the Commission to show cause before the Commission at a formal hearing why formal action should not be taken and/or sewer service discontinued. At the hearing the Commission shall present those facts which it believes constitute non-compliance by the IU with the Industrial Pretreatment Rules and Regulations and the IU shall be required to "show cause" why the Commission should not initiate formal action and/or discontinue sewer service.

Fines. The NMSC may impose a fine to enforce its pretreatment program, ranging from \$100 to \$10,000 for each day of non-compliance by an Industrial User.

Civil Actions. The NMSC may file a civil suit seeking injunctive relief against an alleged violator of the Industrial Pretreatment Rules and Regulations. Such suit would seek a judgment prohibiting the defendant-discharger from continuing a specific type of volume or discharge.

Criminal Investigation. Criminal investigation may be initiated by an appropriate county or state agency, upon request of the NMSC, leading to criminal prosecution and punishment of any person who willfully or negligently violates pretreatment standards, or of any who knowingly makes a false statement regarding any report.

Injunctive Relief. The NMSC may petition the Winnebago County Circuit Court through NMSC's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the individual wastewater discharge permit, the general permit, order, or other requirement imposed by these rules and regulations on activities of the

User. The NMSC may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the User to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a User.

Termination of Service. The NMSC has the authority to halt, immediately, an actual or threatened discharge to its treatment facility which may represent an endangerment to the public health, the environment, the POTW personnel, or the POTW.

#### **8. Enforcement Tracking**

When any enforcement action is necessary, the NMSC will track the initial action and any escalated actions taken. A form has been created for this purpose, the "Enforcement Tracking Form."

# Example: Notice of Violation

August 25, 2008

Mr. Steve Smith  
ABC Company  
101 Happy Road  
Neenah, WI 54956

RE: Wastewater Discharge Permit  
NMSC-033-1

Dear Mr. Smith:

As part of the Industrial Pretreatment Program, the Neenah-Menasha Sewerage Commission (NMSC) is obligated to perform compliance monitoring of wastewater from selected industries on an occasional basis. Section 7.1 Inspection and Sampling of the NMSC's Industrial Pretreatment Rules and Regulations 2015-1 provides the authority for the NMSC to carry-out such compliance monitoring.

A 24-hour composite sample was taken at ABC Company on 7/28-29/14. The sample was obtained by representatives of the Commission who are performing the required compliance monitoring analysis of your wastewater. The results of our analysis are enclosed.

Based on the analysis, there is one **VIOLATION** of your permit limitations:

	Permit Limit	Results
<b>Cyanide</b>	<b>0.40 mg/l</b>	<b>1.5 mg/l</b>

The Neenah Menasha Sewerage Commission will be re-testing your facility for cyanide.

Please respond to the NMSC with a written report as to the reason, if one can be determined, for the above limit exceedance, and a statement of the steps you will take to prevent a future exceedance. Please submit this report within 30 days.

If you have any questions or comments on your test results, please contact either Randy Much or myself.

Sincerely,  
Neenah-Menasha Sewerage Commission

Laurie Stenson  
Project Manager

enc

# Example: Cease and Desist Order

In the Matter of

Administrative Cease and Desist Order

Name and Address  
Of Industry

## Legal Authority

*The following findings are made and order issued pursuant to the authority vested in the Neenah Menasha Sewerage Commission, under Section 10.5 of the NMSC Industrial Pretreatment Rules and Regulations. This order is based on findings of violation of the conditions of the wastewater discharge permit under Sections 2.4, 10.3 & 10.4 of the NMSC Industrial Pretreatment Rules and Regulations.*

## Findings

1. ***[Industry]** discharges nondomestic wastewater containing pollutants into the sanitary sewer system of the City of Neenah.*
2. ***[Industry]** is a “significant industrial user” as defined by 1.4 of the NMSC Industrial Pretreatment Rules and Regulations.*
3. ***[Industry]** was issued a wastewater discharge permit on June 15, 2012 which contains prohibitions, restrictions, and other limitations on the quality of the wastewater it discharges to the sanitary sewer.*
4. *Pursuant to the NMSC Industrial Pretreatment Rules and Regulations and the above-referred permit, data routinely collected or submitted on the compliance status of **[Industry]**.*
5. *This data shows that **[Industry]** has violated the NMSC Industrial Pretreatment Rules and Regulations in the following manner:*
  - a. ***[Industry]** has continuously violated its permit limits for copper and zinc in each sample collected between January, 2013 and December, 2014.*
  - b. ***[Industry]** has also failed comply with an administrative compliance order requiring the installation of a pretreatment system and the achievement of compliance with its permit by July 1, 2014.*
  - c. ***[Industry]** has failed to appear at a show cause hearing pursuant to an order requiring said attendance.*



**Order**

THEREFORE, BASED ON THE ABOVE FINDINGS, [INDUSTRY] IS HEREBY ORDERED TO:

1. *Within 24 hours of receiving this order, cease all nondomestic discharges into the NMSC's sanitary sewer. Such discharges shall not recommence until such time as [Industry] is able to demonstrate that it will comply with its current permit limits.*
2. *Failure to comply with this order may subject [Industry] to having its connection to the sanitary sewer sealed by the NMSC, and assessed the costs thereof.*
3. *Failure to comply with this order shall also constitute a further violation of the NMSC Industrial Pretreatment Rules and Regulations and may subject [Industry] to civil or criminal penalties or such other enforcement responses as may be appropriate.*
4. *This order, entered this 12<sup>th</sup> day of January, 2015, shall be effective upon receipt by [Industry].*

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

[Name]

General Manager  
Neenah Menasha Sewerage Commission  
101 Garfield Avenue  
Menasha, WI 54952

# Example: Show Cause Order

In the Matter of

Administrative Show Cause Order

Name and Address  
Of Industry

## Legal Authority

*The following findings are made and order issued pursuant to the authority vested in the NMSC General Manager, under Section 10.3 of the NMSC Industrial Pretreatment Rules and Regulations. This order is based on findings of violation of the conditions of the wastewater discharge permit under Sections 2.4 and 6.4 of the NMSC Industrial Pretreatment Rules and Regulations.*

## Findings

1. ***[Industry]** discharges nondomestic wastewater containing pollutants into the sanitary sewer system of the City of Neenah.*
2. ***[Industry]** is a “significant industrial user” as defined by 1.4 of the NMSC Industrial Pretreatment Rules and Regulations.*
3. ***[Industry]** was issued a wastewater discharge permit on June 15, 2012 which contains prohibitions, restrictions, and other limitations on the quality of the wastewater it discharges to the sanitary sewer.*
4. *Pursuant to the NMSC Industrial Pretreatment Rules and Regulations and the above-referred permit, data routinely collected or submitted on the compliance status of **[Industry]**.*
5. *This data shows that **[Industry]** has violated the NMSC Industrial Pretreatment Rules and Regulations in the following manner:*
  - a. ***[Industry]** has continuously violated its permit limits for copper and zinc in each sample collected between January, 2013 and December, 2014 for a total of 8 separate violations of the permit.*
  - b. ***[Industry]** has failed to submit a periodic compliance report due July 1, 2014.*
  - c. *All of these violations satisfy the NMSC’s definition of significant violation.*

**Order**

THEREFORE, BASED ON THE ABOVE FINDINGS, **[INDUSTRY]** IS HEREBY ORDERED TO:

1. *Appear at a meeting with the General Manager of the Neenah Menasha Sewerage Commission to be held on January 29, 2015, at 2:00 pm at the WWTP, 101 Garfield Avenue.*
2. *At this meeting, **[Industry]** must demonstrate why the NMSC should not pursue a judicial enforcement action against **[Industry]** at this time.*
3. *This meeting will be closed to the public.*
4. *Representatives of **[Industry]** may be accompanied by legal counsel if they choose.*
5. *Failure to comply with this order shall also constitute a further violation of the NMSC Industrial Pretreatment Rules and Regulations and may subject **[Industry]** to civil or criminal penalties or such other enforcement responses as may be appropriate.*
6. *This order, entered this 12<sup>th</sup> day of January, 2015, shall be effective upon receipt by **[Industry]**.*

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

[Name]

General Manager  
Neenah Menasha Sewerage Commission  
101 Garfield Avenue  
Menasha, WI 54952

# Example: Compliance Order

In the Matter of

Administrative Compliance Order

Name and Address  
Of Industry

## Legal Authority

*The following findings are made and order issued pursuant to the authority vested in the NMSC General Manager, under Section 10.4 of the NMSC Industrial Pretreatment Rules and Regulations. This order is based on findings of violation of the conditions of the wastewater discharge permit under Section 5 of the NMSC Industrial Pretreatment Rules and Regulations.*

## Findings

1. *[Industry] discharges nondomestic wastewater containing pollutants into the sanitary sewer system of the City of Neenah.*
2. *[Industry] is a "significant industrial user" as defined by 1.4 of the NMSC Industrial Pretreatment Rules and Regulations.*
3. *[Industry] was issued a wastewater discharge permit on June 15, 2012 which contains prohibitions, restrictions, and other limitations on the quality of the wastewater it discharges to the sanitary sewer.*
4. *Pursuant to the NMSC Industrial Pretreatment Rules and Regulations and the above-referred permit, data routinely collected or submitted on the compliance status of [Industry].*
5. *This data shows that [Industry] has violated the NMSC Industrial Pretreatment Rules and Regulations in the following manner:*
  - a. *[Industry] has violated its permit limits for copper and zinc in each sample collected between January, 2013 and December, 2014.*
  - b. *[Industry] has failed to submit all periodic compliance reports due by June 30, 2014.*
  - c. *All of these violations satisfy the NMSC's definition of significant violation.*

**Order**

THEREFORE, BASED ON THE ABOVE FINDINGS, [INDUSTRY] IS HEREBY ORDERED TO:

1. *Within 180 days, of receiving this order, install pretreatment technology which adequately treat [Industry]'s wastewater to a level which will comply with its wastewater discharge permits.*
2. *Within 5 days, submit all periodic compliance reports due since June 30, 2014.*
3. *Within 10 days, pay to the cashier's office of the NMSC, a fine of \$5,000.00 for the above-described violations in accordance with section 10.6 of the NMSC Industrial Pretreatment Rules and Regulations.*
4. *This order, entered this 12<sup>th</sup> day of January, 2015, shall be effective upon receipt by [Industry].*

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

[Name]

General Manager  
Neenah Menasha Sewerage Commission  
101 Garfield Avenue  
Menasha, WI 54952

# Example: Consent Order

In the Matter of  
Name and Address  
Of Industry

General Manager of Neenah Menasha  
Sewerage Commission  
101 Garfield Avenue, Menasha, WI 54952

## Consent Order

*WHEREAS, The Neenah Menasha Sewerage Commission (NMSC) pursuant to the powers, duties and responsibilities vested in and imposed upon the NMSC General Manager by provisions of the NMSC Industrial Pretreatment Rules and Regulations, have conducted an ongoing investigation of [Industry] and have determined that:*

1. *The NMSC owns and operates a wastewater treatment plant which is adversely impacted by discharges from industrial users, including [Industry], and has implemented a pretreatment program to control such discharges.*
2. *[Industry] has consistently violated the pollutant limits in its wastewater discharge permit as set forth in Exhibit 1, attached hereto.*
3. *Therefore, to ensure that [Industry] is brought into compliance with its permit limits at the earliest possible date, **IT IS HEREBY AGREED AND ORDERED, BETWEEN THE [INDUSTRY] AND THE GENERAL MANAGER OF THE NMSC, that [Industry] shall:***
  - a. *By July 15, 2014, obtain the services of a licensed professional engineer specializing in wastewater treatment for the purpose of designing a pretreatment system which will bring [Industry] into compliance with its wastewater discharge permit.*
  - b. *By September 30, 2014, submit plans and specifications for the proposed pretreatment system to the NMSC for review.*
  - c. *By December 31, 2014, install the pretreatment system in accordance with the plans and specifications submitted in item b above.*
  - d. *By January 15, 2015, achieve compliance with the limits set forth in Exhibit 1.*
  - e. *[Industry] shall pay \$1,000 per day for each day it fails to comply with the schedule set out in items a-d above. The \$1,000 per day penalty shall be paid to the accountant at the NMSC within 5 days of being demanded by the NMSC.*
4. *In the event [Industry] fails to comply with any of the deadlines set forth, [Industry] shall, within one (1) working day after expiration of the deadline, notify the NMSC in writing. This notice shall describe the reasons for [Industry]'s failure to comply, the additional amount of time needed to complete the remaining work, and the steps to be taken to avoid future delays. This notification in no way excuses [Industry] from its responsibility to meet any later milestones required by this Consent Order.*

5. *Compliance with the terms and conditions of this consent Order shall not be construed to relieve **[Industry]** of its obligation to comply with its wastewater discharge permit which remains in full force and effect. The NMSC reserves the right to seek any and all remedies available to it under Section 10 of the NMSC Industrial Pretreatment Rules and Regulations for any violation cited by this order.*
6. *Violation of this Consent Order shall constitute a further violation of the NMSC Industrial Pretreatment Rules and Regulations and subjects **[Industry]** to all penalties described by section 10 of the NMSC Industrial Pretreatment Rules and Regulations.*
7. *Nothing in this Consent Order shall be construed to limit any authority of the NMSC to issue any other orders or take any other action which deems necessary to protect the wastewater treatment plant, the environment or the public health and safety.*

SIGNATORIES

FOR [INDUSTRY]

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Name Representative of [Industry]

FOR NEENAH MENASHA SEWERAGE COMMISSION

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Name, General Manager NMSC

# Pretreatment Program Telephone Documentation

Pretreatment Staff initiating telephone call: \_\_\_\_\_

Industry name and Contact person: \_\_\_\_\_

Date and Time of Call: \_\_\_\_\_

Reason for telephone call: \_\_\_\_\_

Synopsis of conversation:

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Date and Time issue was resolved



## Enforcement Tracking Log

Name of Industry: \_\_\_\_\_

Nature of Violation: \_\_\_\_\_

Date of Violation: \_\_\_\_\_

Initial Enforcement Action Taken: \_\_\_\_\_

Date of Enforcement Action: \_\_\_\_\_

Date IU back in Compliance: \_\_\_\_\_

OR

Escalated Enforcement Action/Date of Action: \_\_\_\_\_

Comments: