

ENFORCEMENT RESPONSE PLAN

CITY OF MEBANE, NC Water Resources Department

I. Introduction

This Enforcement Response Plan was developed in accordance with the City of Mebane Sewer Use Ordinance, State regulations set forth at 15A NCAC 2H .0900, and Federal regulations set forth at 40 CFR Part 403.8(f)(5) which state the following:

The POTW shall develop and implement an Enforcement Response Plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. Plans shall at a minimum:

- (i.) Describe how the POTW will investigate instances of noncompliance;*
- (ii.) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which response will take place;*
- (iii.) Identify (by title) the official(s) responsible for each type of response;*
- (iv.) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8(f)(1) and (f)(2).*

It is the enforcement philosophy of the City of Mebane that the issuance of reasonable, technically based, yet POTW protective, Significant Industrial User Permits represents the *best* enforcement response plan. If permit requirements are met by the permittee, it will not be necessary to activate a formal enforcement response plan. However, when necessary, enforcement is typically progressive, in that problems are addressed at the lowest level and with the least formality possible consistent with the specific violation. However, this plan has been developed for guidance and is not intended to create legal rights or obligations, or to limit the enforcement discretion of the City of Mebane. Therefore, no enforcement procedure is contingent upon the completion of any “lesser” activity.

II. Purpose

The purpose of this Enforcement Response Plan (ERP) is to comply with the Federal pretreatment regulation requirements and to provide an enforcement framework document. An Enforcement Response Plan is an effective way to ensure that the City of Mebane takes fair, consistent, and equitable enforcement actions against industrial users that violate Pretreatment Standards and Requirements. It should be noted that, even with an ERP, judgment and flexibility will be needed at times in response to unusual instances of noncompliance. Some violations may require a response that deviates from the ERP depending on the particulars of the situation.

The ERP outlines the procedures that will be used to identify, document, track, and respond to noncompliance. The ERP also provides guidance for selecting the enforcement action most appropriate for a given violation. In general, enforcement actions will be taken in accordance with this Enforcement Response Plan. However, the enforcement actions listed here are not exclusive and the City of Mebane reserves the right to implement other enforcement responses available to it under the SUO and North Carolina law, separately or in

combination with these responses. Enforcement actions taken in response to the requirements of 40 CFR Part 441 will be taken/decided on a case-by-case basis.

III. Enforcement Authorities Available to the City

The City of Mebane is empowered by North Carolina General Statutes (NCGS) 143-215.6A and the City of Mebane Sewer Use Ordinance (SUO) to take a wide variety of enforcement actions. The following is a list of those actions:

INFORMAL ENFORCEMENT NOTIFICATIONS/ACTIONS	
Action	Description
Informal Notice of Deficiency (NOD)/ Informal Notice of Violation (NOV)	Verbal, telephone, facsimile, email, data summary sheet entry, inspection report entry, or on-site notification to the industrial user that a violation and/or deficiency has occurred. In general, informal NODs and NOVs are used for minor isolated violations or as an initial step leading to an escalated enforcement response. All informal NODs and NOVs are documented and placed in the respective industrial user file.
Enforcement Meeting	Informal Meeting used to gather information concerning noncompliance, discuss steps to alleviate noncompliance, and determine the commitment level of the industrial user.
Initiation of IU Self-Monitoring or Increase in IU Self-Monitoring	Initiation/additional self-monitoring is used when a violation has occurred and additional self-monitoring must be conducted per 40 CFR 403.12(g)(2). This is also used for exceedance of Local Pollutant Allocations.
Employee Training Requirement	Used when the IWS feels that a violation has been caused by industrial user employee(s) lack of knowledge concerning permit/SUO requirements.
Installation of Additional Sampling and/or Monitoring Equipment	Used in instances where the IWS determines that due to a violation or problem caused by the industrial user, more intensive and immediate sampling may need to be conducted on a routine basis.

FORMAL ENFORCEMENT NOTIFICATIONS/ACTIONS	
Action	Description
Formal Notice of Deficiency (NOD)/ Formal Notice of Exceedance (NOE)	A formal NOD/NOE is a written notice to the noncompliant industrial user that a deficiency or Local Pollutant Allocation exceedance has occurred. A NOD/NOE includes a statement detailing the legal authority under which the City issued the NOD/NOE, a description of the deficiency(ies)/exceedance(s), and the date(s) the deficiency(ies)/exceedance(s) occurred. A NOD/NOE may require a response from the industrial user that details the causes of the violation(s) and the corrective action taken to correct the violation and prevent similar violations from occurring.
Formal Notice of Violation (NOV)	A formal NOV is a written notice to the noncompliant industrial user that a pretreatment violation has occurred. A NOV includes a statement detailing the legal authority under which the City issued the NOV, a description of the violation(s), and the date(s) the violation(s) occurred. A NOV may require a response from the industrial user that details the causes of the violation(s) and the corrective action taken to correct the violation and prevent similar violations from occurring. In general a NOV is considered to be more serious enforcement action than a NOD.

FORMAL ENFORCEMENT NOTIFICATIONS/ACTIONS (continued)	
Notice of Significant Noncompliance (SNC)	Written notice to a noncompliant IU that violation(s) of a Federal, State, and/or local discharge standard or pretreatment requirement has occurred and the violation(s) met the 40 CFR Part 403.8(f)(2)(vii) Definition of SNC. The industrial user will be publicly noticed in the <i>Mebane Enterprise</i> and a civil penalty will be assessed.
Consent Orders (CO)**	A voluntary agreement with a non-compliant IU that includes specific acts to be taken by the discharger to correct the non-compliance within a time period also specified by the order. Such documents shall have the same force and effect as administrative orders and shall be judicially enforceable.
Administrative Order (AO)**	An enforcement document that directs industrial users to undertake and/or to cease specified activities by specified deadlines. The terms of an AO may or may not be negotiated with industrial users. AOs may incorporate compliance schedules, administrative penalties, termination of service, and show cause orders.
<i>**An enforceable order is the minimum level of enforcement used to address Significant Noncompliance (SNC) in two consecutive 6-month periods (for the same parameter).</i>	
Show Cause Hearing (SCH)	A formal meeting requiring the industrial user to appear, explain its noncompliance, and “show cause” as the why more severe enforcement actions against the user should not go forward. The meeting may also serve as a forum to discuss corrective action and compliance schedules. A SCH is not a prerequisite to a civil penalty assessment nor is any action or inaction taken by the City in a SCH subject to an Administrative appeal.
Emergency Suspension (ES)	The revocation of an industrial user’s privilege to discharge nondomestic wastewater into the sanitary sewer system. ES is used when the discharge from an industrial user presents imminent endangerment to the health or welfare of persons or the environment, or threatens to interfere with the POTW’s operations. ES may be accomplished by physical severance of the industrial user’s connection to the collection system, issuance of an AO (Cease and Desist Order) which compels the industrial user to immediately terminate its discharge, revocation of the industrial user permit, or a court ruling.
Termination of Permit or Permission to Discharge	A specific type of Administrative Order whereby the IU permit to discharge is revoked and further discharges of process wastewater are prohibited. Permit revocation includes provisions for a show cause hearing as to why the proposed action should not be taken.
Water Supply Severance (WSS)	A specific type of Administrative Order whereby the water supply to the industrial user is terminated.
Injunctive Relief	The formal process whereby the City files a lawsuit against the industrial user to secure court ordered action to correct violations and to secure penalties for the violations including recovery of cost to the POTW for the noncompliance.
Civil Penalties	Administrative penalty issued to an industrial user who fails to comply with any provision of the SUO, or any orders, rules, regulations, and permits issued under the authority of the City of Mebane SUO. The City of Mebane SUO authorizes penalties of up to twenty-five thousand dollars (\$25,000.00) per day per violation. Civil penalties are in addition to assessed reimbursement costs for legal fees, equipment repair or replacement, sampling/monitoring costs, and any penalties assessed to the City resulting from the subject violation. <i>The City reserves the right to assess the maximum penalty for any violation.</i>
Criminal Penalties/Prosecution	For violations that warrant criminal prosecutions, the City will refer the case to the Environmental Protection agency or the State Bureau of Investigation. Circumstances that trigger EPA or State referrals include evidence of criminal intent, willfulness, evidence of negligence, and bad faith shown by the IU.

IV. Personnel Responsible for Enforcement Responses

In general, the City of Mebane Pretreatment Coordinator is responsible for making all enforcement recommendations, with oversight and approval by the POTW Director. The Pretreatment Coordinator is authorized to issue enforcement actions with civil penalties up to \$1000. Enforcement actions with Civil Penalties greater than \$1000 require the signature of the Pretreatment Coordinator and the POTW Director. Termination of Permit or Permission to Discharge requires the signature of the Pretreatment Coordinator and the POTW Director.

The City Attorney may be requested to review escalated penalties prior to issuance if the Pretreatment Coordinator and/or POTW Director deem it necessary.

V. Enforcement Measure(s) Considerations

In determining which enforcement measure(s) to use and the amount of any civil penalties, the City of Mebane by consider the following:

- a. The degree and extent of the impact/harm to the natural resources of the State, the public health, the POTW, or public or private property as a result of the violation (including effect on groundwater, surface water, or air quality);
- b. The duration and magnitude of the violation;
- c. The cost of repairing the damage to the POTW, the POTW collection system, public or private property, and/or the natural resources of the State;
- d. Whether the violation was committed negligently, grossly negligently, recklessly negligently, willfully, or intentionally;
- e. The amount of money saved, if any, by noncompliance, including the cost of continuing to discharge in noncompliance instead of stopping operations;
- f. Cost incurred by the IU in correcting the problem (i.e. capital improvements, product losses during shut-down, extra monitoring and/or sampling costs, etc) and IU cooperation and good faith effort to resolve noncompliance;
- g. The prior record of the industrial user in complying or failing to comply with the conditions of its Industrial User Permit, the Sewer Use Ordinance, or other applicable law or regulation;
- h. The cost to the POTW (including legal fees, sampling/analytical costs, engineering/consulting fees, etc.) required, in the opinion of the City of Mebane, to take necessary investigative/enforcement action, determine the nature and extent of damage, prevent further damage, and repair any damage;
- i. The cost to the POTW for any civil penalties, fines, legal costs, and/or other costs associated with any enforcement action or legal action taken against the City of Mebane for NPDES violations or other violations caused by the industrial user violation(s);

- j. Conventional pollutant violation vs. toxic pollutant violation vs. non-conventional pollutant violation;
- k. Violation(s) resulting from vandalism or the action of third-party entities;
- l. Deficiencies or violations occurring as a result of circumstances beyond the industrial user's control as determined by the City of Mebane.

VI. Investigation of Noncompliance

The City of Mebane will generally investigate compliance with the Sewer Use Ordinance and Industrial User Permits in five ways:

- a. On-site inspections of the User including scheduled and unscheduled visits;
- b. Scheduled and unscheduled sampling of the User's effluent;
- c. Review of monitoring data collected by the User and the City of Mebane;
- d. Review of records/activities required to be documented and maintained by the User;
- e. Review of procedures and implementation outlined in any plans required of the User (i.e. TOMP, Pollutant Management Plans, slug control plans, etc.);
- f. Spill and illegal discharge investigations.

The compliance status of Significant Industrial Users will be evaluated for each semi-annual reporting period. The reporting periods are from January 1-June 30 and July 1-December 31 for each calendar year.

VII. Types of Violations

The following is a list of different types of violations by category. This list is not inclusive, but serves as a general list of anticipated types of noncompliance. The User's Industrial User Permit, the City of Mebane SUO, and State and Federal laws and regulations serve as additional references for pretreatment requirements.

- a. Unpermitted Discharges: Unpermitted discharges can result from one or more of the following:
 - i. Failure to obtain a permit;
 - ii. Discharge to a point not identified in the pretreatment permit;
 - iii. Discharge of a pollutant or waste stream not identified in the pretreatment permit; and/or
 - iv. Continuation of discharge after expiration or termination of the pretreatment permit.
- b. Effluent Permit Limit Violations: Users are responsible for maintaining compliance with all effluent pollutant limits. A user who violates any effluent pollutant limitation(s) outlined in their Industrial User Permit or the SUO shall be considered to be in violation. In evaluating the extent of violation(s), Significant Non-Compliance (SNC) as defined by State and EPA regulations will be determined.
- c. Local Pollutant Allocation Exceedance: A User who exceeds any Local Pollutant Allocation shall also be subject to enforcement actions.

- d. Self-Monitoring Violations: Monitoring violations occur when a User fails to adequately conduct all the monitoring required in the Permit, including monitoring frequencies and sampling methods specified. This includes a User who fails to conduct re-sampling when a limit violation occurs.
- e. Reporting Violations: Reporting violations occur when a user fails to provide information required by the permit within the time period stated in the permit or when the information is incomplete or false. Reports required by the permit can include self-monitoring reports, spill prevention plans, baseline monitoring reports, ninety day compliance reports and sludge handling plans. In the case of late or incomplete reports, the severity of the violation depends on the lateness of the report. If a complete report is not submitted within 45 days of the due date, the violation is considered SNC. Knowingly submitting false information is always considered a significant violation.
- f. Permit Conditions: A User who violates the general conditions, special conditions, or other conditions (i.e. slug loading, dilution prohibition, failure to properly operate pretreatment system, etc.) outlined in its Permit or the SUO shall be considered to be in violation.
- g. Enforcement Orders: Failure to meet the requirements of an Order (i.e. interim limits, milestone dates, etc), whether the Order was entered into voluntarily or mandated by the POTW, shall be considered a violation. Missing a scheduled compliance milestone by more than ninety (90) days is considered SNC.

VIII. Enforcement Time Frames

- a. Violations will be identified and documented within thirty (30) days of the City receiving information.
- b. Initial enforcement responses will occur within forty-five (45) days of violation detection.
- c. Violations meeting the criteria for SNC in two consecutive six-month periods for the same parameter will be addressed with an enforceable order within forty-five (45) days of the identification of the second incident of SNC.
- d. Violations that threaten health, property, or environmental quality will be considered emergencies and will receive immediate responses such as halting the discharge or terminating service.

IX. Responses to Noncompliance

This guide further outlines types of violations, the nature of the violation, and enforcement responses. Users will be notified of each violation. Unless otherwise noted, this nine-tier administrative enforcement structure will be based on a semi-annual reporting period (January 1- June 30 and July 1 –December 31). Civil penalties will be assessed from the range(s) specified in each tier.

Users found to be in SNC for two (2) consecutive 6-month periods for the same parameter will be issued an enforceable order to return to compliance. In all cases, escalated or continuing enforcement action will be taken against Users who do not return to compliance in a timely manner. In cases where there is harm or potential harm to persons, property, the POTW, and/or the environment or in other extraordinary cases, one or more tiers may be “skipped” in order to bring the User into compliance.

In any enforcement proceedings, SIU permits, Consent Orders, and/or Administrative Orders shall govern in any conflicts or contradictions to this ERP.

Enforcement actions taken in response to the requirements of 40 CFR Part 441 will be taken/decided on a case-by-case basis.

TIER	ENFORCEMENT ACTION
Tier 1	<p><u>Informal Enforcement Notifications/Actions</u> <i>(The City will select appropriate Tier 1 enforcement actions(s) from this list on a case-by-case basis)</i></p> <p>Informal Notice of Deficiency Informal Notice of Violation Enforcement Meeting Initiation of/Increase in IU Self-Monitoring Employee Training Requirement Installation of Sampling and/or Monitoring Equipment</p>
Tier 2	<p>2.1 Formal Notice of Deficiency – No Civil Penalty 2.2 Formal Notice of Exceedance – No Civil Penalty</p>
Tier 3	Formal Notice of Violation – No Civil Penalty
Tier 4	<p>Formal Notice of Violation – Civil Penalty Assessed</p> <p>4.1 Civil Penalty \$50 - \$500 4.2 Civil Penalty \$500 - \$1,000 4.3 Civil Penalty \$1,000 - \$5,000</p>
Tier 5	<p>Notice of Significant Noncompliance(SNC) – Civil Penalty Assessed, Public Notice, Possible Show Cause Hearing</p> <p>5.1 Civil Penalty \$50 - \$1,000 5.2 Civil Penalty \$1,000 - \$5,000 5.3 Civil Penalty \$5,000 - \$25,000</p>
Tier 6	<p>Consent Order – NOV or SNC, Civil Penalty Assessed, Public Notice (if applicable), Possible Show Cause Hearing</p> <p>Civil Penalty \$100 - \$500</p>
Tier 7	<p>Consent Order/Administrative Order – NOV or SNC, Civil Penalty Assessed, Public Notice (if applicable), Possible Show Cause Hearing</p> <p>Civil Penalty \$500 - \$10,000</p>
Tier 8	<p>Show Cause Hearing (concerning TOS), NOV, Civil Penalty Assessed, Possible Termination of Service, Public Notice (if applicable)</p> <p>Civil Penalty \$1,000 - \$25,000</p>
Tier 9	<p>Termination of Service – Public Notice</p> <p>9.1 Termination of Service (Emergency) – Notice of SNC Civil Penalty \$1,000 - \$25,000</p> <p>9.2 Termination of Service (Escalating Enforcement) – Show Cause Hearing, Notice of SNC, Public Notice Civil Penalty \$1,000 - \$25,000</p>

UNAUTHORIZED DISCHARGES	1st TIME	2nd TIME
1. Discharge Without a Permit**	-----	-----
• IU unaware of requirement and no harm caused	Tier 2	Tier 3
• IU aware of requirement, self-reported, and no harm caused	Tier 2	Tier 3
• IU aware of requirement and no harm caused	Tier 3	Tier 4
• IU unaware of requirement and harm caused	Tier 5	Tier 5
• IU aware of requirement (evidence of neglect or willful intent) and harm caused	Tier 5	Tier 5.3
2. Discharge Outside of Scope of Application/Permit (Permitted Facility)**	-----	-----
• No harm caused, no evidence of intent, and self-reported	Tier 2	Tier 3
• No harm caused, no evidence of intent	Tier 3	Tier 4
• No harm caused with evidence of intent	Tier 4.1	Tier 4.2
• Harm caused, no evidence of intent	Tier 5	Tier 5
• Harm caused with evidence of intent	Tier 5	Tier 5.3
3. Permitting Requirements	-----	-----
• IU fails to return Industrial Waste Survey Form	Tier 3	Tier 4
• IU fails to submit permit application or renewal application within required timeframe	Tier 3	Tier 4
• IU fails to apply for permit or Permit Modification after receiving notice	Tier 4.1	Tier 4.2
4. Unauthorized/Illegal Discharges**	-----	-----
• Discharge to manhole, carwash, etc. – No harm	Tier 4	Tier 5
• Discharge to manhole, car wash, etc. – Harm caused	Tier 5	Tier 5.3
EFFLUENT LIMITATION VIOLATIONS (except Flow and pH)	1st 6-MONTHS	2nd 6-MONTHS
1. Chronic violation for same parameter	Tier 3	Tier 3
2. TRC violation for same parameter	Tier 3	Tier 4.1
3. Significant Noncompliance (Chronic or TRC), no harm	Tier 5.1	Tier 6
4. Significant Noncompliance (Chronic or TRC), with harm**	-----	-----
• SNC resulting in harm to POTW (process upset/inhibition/disruption, change in effluent)	Tier 5	Tier 6
• SNC resulting in NPDES permit violation (pass-through or interference)	Tier 5	Tier 7
• SNC resulting in other POTW violation (i.e. stream standard violation)	Tier 5	Tier 6
5. Sampling event(s) resulting in Significant Noncompliance and endangerment	Tier 8 or 9	Tier 8 or 9
EFFLUENT FLOW AND pH LIMITATION VIOLATIONS	1st TIME	2nd TIME
1. Effluent Flow Violations	-----	-----
• Daily Maximum Flow limitation	Tier 2.2	Tier 2.2
• Average Flow limitation	Tier 2.2	Tier 2.2

EFFLUENT FLOW AND pH LIMITATION VIOLATIONS (continued)	1st TIME	2nd TIME
2. Effluent pH Violations	-----	-----
• Single Event (not meeting SNC)	Tier 3	Tier 3
• pH Violation meeting Hazardous Waste Definition (≤ 2.0 or ≥ 12.5)	Tier 4 or 5	Tier 4 or 5
• pH Violations meeting Chronic SNC Definition	Tier 5.1	Tier 5.1
LOCAL POLLUTANT ALLOCATION EXCEEDANCE	1st 6-MONTHS	2nd 6-MONTHS
1. Minor Exceedance of 6-Month Average	-----	-----
• Allocation is at “domestic” concentration	Tier 1	Tier 1
• Allocation is above “domestic” concentration	Tier 1	Tier 2
2. Major Exceedance of 6-Month Average	-----	-----
• Allocation is at “domestic” concentration	Tier 2.2	Tier 3
• Allocation is above “domestic” concentration	Tier 2.2	Tier 3
3. Major Exceedance of Same Parameter in Three Consecutive 6-Month Periods	Tier 3 or 4	-----
REPORTING VIOLATIONS	1st TIME	2nd TIME
1. Late submittal of required “report” (report complete)	-----	-----
• Less than or equal to 45 days, with notification to City	No action	Tier 1
• Less than or equal to 45 days, without notification to City	Tier 1	Tier 2
• More than 45 days, with notification to City (non-SIU)	Tier 3	Tier 4
• More than 45 days, with notification to City (SIU)	Tier 5.1	Tier 5.1
• More than 45 days, without notification to City (non-SIU)	Tier 4	Tier 4
• More than 45 days, without notification to City (SIU)	Tier 5.1	Tier 5.1
• Report not submitted	Tier 5.1	Tier 5.1
2. Failure to report results of all wastewater analyses**	-----	-----
• No violations of effluent limitations in data not reported	Tier 3	Tier 4.1
• Violations of effluent limitations in data not reported	Tier 4 or 5	Tier 5
3. Failure to properly report noncompliance on self-monitoring data submittal	Tier 5	Tier 5
4. Failure to provide 24-hour Notification of self-monitoring violation	Tier 3	Tier 4
5. “Reports” Improperly Submitted (Report not Complete)	-----	-----
• Failure to submit signatory certification statement with report	Tier 1	Tier 3
• Failure to submit COC/lab analyses with report	Tier 1	Tier 2
• Failure to submit proper signature on report (wrong person)	Tier 1	Tier 3
6. Failure to Submit “Change in Signatory Official” Form within 30 days of change	Tier 1	Tier 3
7. Failure to report spill or new/changed discharge**	-----	-----

REPORTING VIOLATIONS (continued)	1st TIME	2nd TIME
• No harm caused, no evidence of intent	Tier 3	Tier 4.1
• No harm caused, evidence of intent	Tier 4.2	Tier 5
• Harm caused, no evidence of intent	Tier 5	Tier 5
• Harm caused, evidence of intent	Tier 5.3	Tier 8
• Evidence of neglect (with or without harm)	Tier 4 or 5	Tier 5
• Recklessly negligent or willful intent (with or without harm)	Tier 4 or 5	Tier 6
8. Failure to submit 5 day letter after a spill or slug load	Tier 3	Tier 4
9. Failure to respond to NOD, NOV, or other official notification within required timeframe**	-----	-----
• Less than or equal to 45 days	Tier 1	Tier 3
• More than 45 days (non-SIU)	Tier 3	Tier 4
• More than 45 days (SIU)	Tier 5	Tier 5
10. Report Falsification**	Tier 5	Criminal
SELF-MONITORING VIOLATIONS	1st 6-MONTHS	2nd 6-MONTHS
1. Failure to collect all required samples and/or analyze for all required parameters	-----	-----
• ≥80% of all required samples and parameters were completed	Tier 3	Tier 4.1
• <80% of all required samples and parameters were completed	Tier 5.1	Tier 5
2. Failure to conduct all analyses using 40 CFR Part 136 Methodology	Tier 3	Tier 4 or 5
3. Failure to collect the appropriate sample type(s) (Grab or Composite as listed in permit)	Tier 3	Tier 4 or 5
4. Failure to collect the sample(s) from the location outlined in the permit	Tier 3	Tier 4 or 5
5. Failure to conduct required re-sampling (for non-compliance) within required timeframe	-----	-----
• Less than or equal to 30 days late	Tier 3	Tier 4 or 5
• More than 30 days late	Tier 5.1	Tier 5.1
PERMIT/SUO CONDITION VIOLATIONS	1st TIME	2nd TIME
1. Failure to install or properly maintain sampling point, monitoring, or metering equipment	-----	-----
• Failure to install sampling, flow, or monitoring equipment**	Tier 3	Tier 4 or 5
• Failure to maintain sampling, flow, or monitoring equipment	Tier 3	Tier 4 or 5
• Failure to calibrate flow meter as per permit requirement	Tier 3	Tier 4 or 5
• Failure to install sampling/monitoring point	Tier 3	Tier 4 or 5
2. Failure to operate or properly maintain pretreatment system	-----	-----
• No harm caused, no evidence of intent	Tier 3	Tier 3 or 4
• No harm caused, with evidence of intent**	Tier 4	Tier 5
• Harm caused, no evidence of intent	Tier 5	Tier 5

PERMIT/SUO CONDITION VIOLATIONS (continued)	1st TIME	2nd TIME
• Harm caused, with evidence of intent**	Tier 5.3	Tier 7
3. Limited access or refusal to present records**	Tier 4 or 5	Tier 5
4. Entry Denial**	Tier 4 or 5	Tier 5
5. Failure to implement required plans (TOMP, Spill/Slug Control, PMP, etc.)	-----	-----
• No harm caused, no evidence of intent	Tier 3	Tier 4
• No harm caused, with evidence of intent**	Tier 4.1	Tier 4.2
• Harm caused, no evidence of intent	Tier 5	Tier 5
• Harm caused, with evidence of intent**	Tier 5	Tier 7
6. Dilution of wastestream to meet limitations**	-----	-----
• First incident	Tier 4 or 5	-----
• Second incident, after notification	Tier 5	-----
7. Failure to mitigate noncompliance or halt production	-----	-----
• No harm	Tier 3	Tier 4 or 5
• Harm caused	Tier 5	Tier 5
8. Failure to meet milestone dates of Compliance Schedules	-----	-----
• Starting/completing construction or obtaining final compliance ≤90 days	Tier 3	Tier 3
• Starting/completing construction or obtaining final compliance >90 days	Tier 5.1	Tier 5.2
• Any other milestone ≤90 days	Tier 3	Tier 3
• Any other milestone >90 days	Tier 5	Tier 5
9. Inadequate Record Keeping	-----	-----
• Incomplete files or files missing	Tier 1	Tier 3
• Failure to maintain logs, inspections, or other reports as required	Tier 3	Tier 4.1
• Failure to maintain records for 3 years	Tier 3	Tier 4.1
10. Failure to Record and Maintain Flow Records (as listed in the Permit)	-----	-----
• First Incident	Tier 3	-----
• Second Incident, after notification	Tier 4 or 5	-----
11. Failure to Obtain Authorization to Construct for Pretreatment System/Equipment	Tier 4 or 5	Tier 5
12. Failure to Install Pretreatment System**	-----	-----
• No harm	Tier 3	Tier 4.1
• Harm caused	Tier 5	Tier 5
13. Tampering with City sampling and/or monitoring equipment**	-----	-----
• With no intent to alter/affect results of sampling event	Tier 3	Tier 4.1
• With intent to alter/affect results of sampling event	Tier 5	Criminal

PERMIT/SUO CONDITION VIOLATIONS (continued)	1st TIME	2nd TIME
14. Failure to correct deficiency (NOD) within required timeframe	-----	-----
• Initial	Tier 3	Tier 4.1
• Same Deficiency, after Initial Notification	Tier 4.1	Tier 4.2
15. Violation of any Permit Condition/Requirement that causes:**	-----	-----
• Harm to POTW (process upset/inhibition/disruption, change in effluent)	Tier 5	Tier 5
• NPDES permit violation (pass through or interference)	Tier 5	Tier 5
• Other POTW violation (i.e. stream standard violation)	Tier 5	Tier 5
16. Failure to meet milestone date in Administrative and/or Enforcement Order	-----	-----
• Will follow stipulated penalties contained in Order	-----	-----
17. Multiple Notice of Violation in one Semi-Annual Period	-----	-----
• More than 2 NOVs in one semi-annual period for infractions other than effluent limitation violations	Tier 4	-----

SPECIAL NOTES FOR NONCOMPLIANCE CHARTS

1. Unless otherwise noted “1st Time” means the first violation incident in a semi-annual reporting period and “2nd Time” means the second violation incident in the same semi-annual reporting period. Incidents that occur more than twice in a six-month reporting period will be handled as 2nd time violations. The incident count will begin again during the next semi-annual reporting period.
2. Violations marked with tow asterisks (**) are serious violations and “1st Time” and “2nd Time” refer to the life of the permit. The incident count does not reset or begin again during the next semi-annual reporting period for these violations.
3. Certain violations list two different enforcement tiers to address the possibility of any Significant Noncompliance (SNC) issues.
4. Any violation falling under more than one category in the Noncompliance Charts will be enforced using the highest tier.
5. Three (3) or more Tier 3 or lower violations within the same semi-annual reporting period may result in a Tier 3 or tier 4 enforcement action at the discretion of the City of Mebane.

Appendix: Definitions and Abbreviations

DEFINITIONS

Allocation [See Local Pollutant Allocation]

Conventional Pollutants

Biochemical Oxygen Demand [BOD], Fecal Coliform, Oil and Grease, Total Suspended Solids [TSS], and pH.

Dilution

An increase in the use of process water or potable water to achieve compliance with the limitations contained in the wastewater discharge permits/documents or in any other pollutant specific limitation or allocation developed by the City, as a partial or complete substitute for adequate treatment. Dilution is prohibited unless expressly authorized by the IWS or an applicable pretreatment standard or requirement, with the sole exception of complying with pH standards.

Domestic Waste

Liquid waste that has the pollutant levels given in subsection 2.3 of the City of Mebane Sewer Use Ordinance and is from the noncommercial preparation and handling of food and/or from the sanitary conveniences of dwellings, commercial buildings, industrial facilities, or institutions.

Harm

Damage to public or private property; injury to any person(s); POTW process upset/inhibition/disruption and/or adverse change in POTW effluent characteristics/concentrations; adverse change in POTW sludge characteristics/concentrations; and/or adverse impact on the environment.

Industrial User

Any person which is a source of indirect discharge.

Interference

The inhibition, or disruption of the POTW treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the POTW's NPDES or Non-discharge Permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA)(42 U.S.C. §6901, *et seq.*), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any State sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

Life of Permit

Permit issuance is typically for a maximum five year period. This timeframe shall be considered the life of the permit.

Local Pollutant Allocation

A concentration or mass-based pollutant-specific loading allocated to a user by the City of Mebane under the provisions of the Local Pollutant Allocation Program. Allocations are issued for certain pollutants not specifically required to be limited in a wastewater discharge permit. Local Pollutant Allocations are issued in a separate local control document.

Major Exceedance [of an Allocation]

- For toxic pollutants >1.2 times the Local Pollutant Allocation
- For conventional and non-conventional pollutants >1.4 times the Local Pollutant Allocation

Minor Violation

Any violation that does not meet the EPA published Technical Review Criteria definition:

- For toxic pollutants <1.2 times the limitation
- For conventional and non-conventional pollutants <1.4 times the limitation

National Pollutant Discharge Elimination System [NPDES] Permit

A permit issued pursuant to section 402 of the Act (33 USC §1342), or pursuant to NCGS 143-215.1 by the State under delegation from EPA.

Non-Conventional Pollutants

Any pollutant that is neither a Toxic Pollutant nor a Conventional Pollutant.

Pass-Through

A discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the POTW's NPDES, collection system, or Non-discharge Permit.

pH

A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

Pollutant

Any "waste" as defined in NCGS 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor).

Pollutant Management Plan

Plan used to achieve pollution prevention of an allowable discharge in lieu of complying with Federal Categorical Pretreatment Standards. This plan shall outline measures taken to control the discharge of regulated pollutant to the POTW.

Pretreatment

The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW collection system and/or treatment plant. The reduction or alteration may be obtained by physical, chemical or biological processes, or process changes or other means, except as prohibited by 40 CFR Part 403.6(d).

Publicly Owned Treatment Works [POTW]

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 devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of

this ordinance, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the City who are, by contract or agreement with the City, or in any other way, users of the POTW of the City.

Report

The term "report" shall be defined as *any* submission required by the City. Reports include, but are not limited to, Baseline Monitoring Reports, 90-Day Compliance Reports, TOMP or Solvent Management Plans, Spill/Slug Plans, Pollutant Management Plans, Self-Monitoring Reports, Self-Monitoring Violation Re-Sampling Reports, Accidental Discharge 5-Day Reports, Signatory Official Sheets, Signatory Official Change Notification Forms, Company Name Change Notifications, Production Status Change Notifications, Production Value Reports [for Production-Based Categorical Standards], and Pollutant Certifications [TTO, Cyanide].

Signatory Official

An Authorized Representative of the industrial user as defined by Subsection 1.2.a.3 of the City of Mebane Sewer Use Ordinance.

Significant Industrial User

Any industrial user that discharges wastewater into a publicly owned treatment works and that:

- (1) Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewaters); or
- (2) Contributes process wastewater which makes up five percent or more of the NPDES or Non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS and Ammonia; or
- (3) Is subject to Categorical Pretreatment Standards under 40 CFR Part 403.6 and 40 CFR chapter I, Subchapter N, Parts 405-471; or
- (4) Is found by the City to have the potential for impact, either singly or in combination with other contributing industrial users, on the wastewater treatment system, the quality of sludge, the system's effluent quality, or compliance with any pretreatment standards or requirements.
- (5) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraphs (A) and (B) above has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirements, or for contributing to violations of the POTW's effluent limitations and conditions in its NPDES or Non-discharge permit, and thus is not a Significant Industrial User.
- (6) Subject to approval under Rule .0907(b) of this Section, the Control Authority may determine that an Industrial User meeting the criteria in paragraph (C) above meets the requirements of 40 CFR Part 403.3(v)(2) and thus is a Non-Significant Categorical Industrial User.
- (7) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraph (3) above meets the requirements of 40 CFR Part 403.12(e)(3) and thus is a Middle Tier Significant Industrial User. Sampling and inspection requirements may be cut in half as per 40 CFR Parts 403.8(f)(2)(v)(C) and 403.12(e)(3).

Significant Noncompliance [SNC]

The status of noncompliance of a Significant Industrial User when one or more of the following criteria are met. Additionally, any Industrial User which meets the criteria in Parts (3), (4), or (8) shall also be SNC.

- (1) Chronic Violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l);
- (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including

- instantaneous limits, as defined by 40 CFR Part 403.3(i) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS and fats, oils and grease, 1.2 for all other pollutants (except flow and pH));
- (3) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR Part 403.3(i) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public);
 - (4) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either the Control Authority's or the POTW's, if different from the Control Authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and Section 8.1(e) of this SUO to halt or prevent such a discharge;
 - (5) Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by 90 days or more after the schedule date.
 - (6) Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and periodic compliance reports within 45 days from the due date.
 - (7) Failure to accurately report noncompliance.
 - (8) Any other violation or group of violations that the control authority determines will adversely affect the operation or implementation of the local pretreatment program.

Slug Discharge

Any discharge at a flow rate or concentration which has a reasonable potential to cause Interference or Pass-Through, or in any other way violates the POTW's regulations, local limits, or Industrial User Permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in section 2.1 of the City of Mebane Sewer Use Ordinance.

Slug/Spill Plan

A plan developed to outline measures the Industrial User will take/use to control slugs or spills on-site. This plan shall include (1) description of discharge practices, including non-routine batch discharges; (2) description of stored chemicals; (3) procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibited discharge standard with procedures for follow-up written notification within five days, if required, and (4) procedures to prevent adverse impact from any accidental spill or slug discharge, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

Tampering

Altering sampling equipment or flow equipment [i.e. settings, location, placement of tubing] used for the purposes of compliance monitoring and/or handling such equipment negligently or destructively.

Toxic Organic Management Plan

A strategy for keeping track of all solvents delivered to a site, their storage, use, and disposal. This includes keeping spent solvents segregated from other process wastewaters to maximize the value of the recoverable solvents, to avoid contamination of other segregated wastes, and to prevent the discharge of toxic organics to any wastewater collection system or the environment. The plan should address the control of spills and leaks and also ensure that there is no deliberate dumping of solvents.

Toxic Pollutant

Any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act, or in the case of sludge use or disposal practices, any pollutant identified in the regulations implementing Section 405(d) of the Clean Water Act.

Unauthorized Discharge

An unauthorized discharge is any:

- (1) Process Wastewater Discharge outside the scope of the permit application and/or permit
- (2) Process Wastewater Discharge from a facility meeting the definition of Significant Industrial User without an SIU permit
- (3) Process Wastewater Discharge from a facility with an expired SIU permit
- (4) Process Wastewater Discharge that violates any Sewer Use Ordinance limitation, requirement, or condition [unless specifically allowed in a document issued to the Industrial User by the City of Mebane]