



ENFORCEMENT RESPONSE PLAN

August 31, 1992

Updated: April 28, 1993; August 11, 1998; September 30, 2004; April 30, 2007

The policies and procedures set forth in this document are intended for the guidance of government 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 District.

Milwaukee Metropolitan Sewerage District

Enforcement Response Plan

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I. Introduction

The Milwaukee Metropolitan Sewerage District (District) Regulates discharges to the sewerage system to prevent harm to the District's collection and treatment facilities and to ensure that the District's biosolids, discharges to Lake Michigan, and emissions to the air meet all applicable requirements. The District's regulatory activity is called the "Pretreatment Program". Both the U.S. Environmental Protection Agency and the Wisconsin Department of Natural Resources require that the District have a Pretreatment Program.¹ As part of the Pretreatment Program, the District enforces local, state, and federal regulations, including general pretreatment requirements and the categorical pretreatment standards.² The District's regulations are set forth in Chapter 11, MMSD Rules.

According to state and federal requirements, the District must develop and implement an *Enforcement Response Plan*.³ This document discusses how the District identifies violations, how the District will respond, and the titles of the persons responsible for the responses. Goals for the *Enforcement Response Plan* include:

1. Facilitating the enforcement of pretreatment standards and requirements,
2. Making reactions to noncompliance faster,
3. Increasing consistency among enforcement actions,
4. Providing notice to the regulated community of what it can expect when pretreatment standards or requirements are violated, and
5. Identifying of the resources required for enforcement.

The District prepared this *Enforcement Response Plan* according to the District's Rules.⁴ This document provides only explanatory material and is merely informational in nature. This *Enforcement Response Plan* does not create legal rights or obligations and does not limit the enforcement discretion of the District.

¹ 40 CFR 403.8(a) and sec. NR 211.30, Wis. Adm. Code

² 40 CFR 403 and 405 to 471 and secs. NR 211 and 221 to 297, Wis. Adm. Code

³ 40 CFR 403.8(f)(5) and sec. NR 211.23(1)(g), Wis. Adm. Code

⁴ Section 11.802, MMSD Rules

II. Pretreatment Personnel

The Pretreatment Program is administered by the Industrial Waste Department of the Water Quality Protection Division. The District's Staff Attorneys provide legal counsel.

A. Water Quality Protection Manager

This person has overall responsibility for the pretreatment program and supervises the General Supervisor Point Source Control and the Senior Industrial Waste Engineers.

B. General Supervisor/Point Source Control

This person supervises the crews of the District that sample discharges to the sewerage system. This person develops sampling schedules, evaluates monitoring facilities, and ensures that the sampling staff has the appropriate knowledge, skills, and equipment to properly collect samples.

C. Senior Industrial Waste Engineers

These persons have routine, direct contact with the various users of the sewerage system that discharge non-domestic wastes. Each engineer is assigned certain users. These engineers: provide information regarding regulatory requirements; review plans, specifications and operating procedures; draft permits and permit modifications; inspect facilities; ensure that reports are timely and complete; review monitoring data submitted to or collected by the District; and ensure that the District's database of user information is current. If an engineer identifies a violation, the engineer recommends a response to the Manager of Industrial Wastes and Conveyance Monitoring.

D. Senior Staff Attorney

This person provides legal counsel and representation. The Attorney maintains a knowledge of the various statutes, regulations, and judicial opinions that are relevant to the Pretreatment Program. In addition, the Attorney provides drafting advice regarding the various documents necessary for operation of the Pretreatment Program, such as notices, permits, and orders. Finally, the Attorney represents the District in judicial proceedings, formal administrative proceedings, and related matters.

III. Compliance Monitoring and Enforcement Options

A. Inventory of Users

The first priority of the Pretreatment Program is identifying all of the users of the sewerage system who may discharge non-domestic wastewater. To identify these users, the District obtains information from telephone directories, the District's *Notice of Intent* form, inspections of industrial parks, and municipal records for building, plumbing, and water supply. The District meets with each municipality once per year to review the inventory. In addition, the District contacts municipalities semi-annually to confirm additions to or deletions from the inventory. One Senior Industrial Waste Engineer supervises this inventory.

After identifying sources of non-domestic wastewater, a second step is designating "significant industrial users."⁵ All users regulated by categorical pretreatment standards are significant industrial users. The District may also designate other users as significant industrial users. To make this designation, the District considers the flow rate of the user's discharge, the concentration or mass of a pollutant in the discharge, and other characteristics related to the user's potential to adversely affect the sewerage system.

B. District Surveillance of Users

1. User Reports

Users that discharge non-domestic wastewater must submit a variety of reports to the District. Before a user commences a new discharge or significantly changes an existing discharge, the user must submit a *Notice of Intent* to the District.⁶ Users subject to categorical pretreatment standards must submit a baseline monitoring report, a 90-day report, and periodic compliance reports.⁷ For these reports, users must measure pollutant concentrations, flow rates, and sometimes other parameters such as production rates. Users must also submit reports for non-routine events, such as spills or treatment plant upsets, changed circumstances, such as significant changes in production levels, and special discharges, such as the discharge of materials that if otherwise disposed would be a hazardous waste.⁸

User reports are the District's primary source of user information and may be a basis for enforcement actions. Senior Industrial Waste Engineers determine whether a facility has satisfied all applicable reporting requirements and whether the reported information shows a violation.

⁵ Sec. 11.103, MMSD Rules; 40 CFR 403.3(t); and sec. NR 211.03(19m), Wis. Adm. Code

⁶ Sec. 11.401, MMSD Rules

⁷ Secs. 11.402 (baseline reports), sec. 11.404 (90-day reports), and 11.406 (periodic compliance reports), MMSD Rules

⁸ Secs. 11.408 (violation), 11.409 (bypass), 11.410 (changed production), 11.411 (upsets and spills), 11.412 (hazardous waste), MMSD Rules

2. Sampling by the District

The District periodically samples discharges to the sewerage system from significant industrial users.⁹ The routine sampling rate is three times per year, but this sampling rate may vary according to the user's circumstances. For example, more frequent sampling may occur at users that have a history of violations or have highly variable discharges. Alternatively, at a user who discharges rarely, the District will sample according to the timing of the discharge.

Samples are analyzed in the District's Central Laboratory or by a contract laboratory. The laboratory provides the results of the analyses to the Senior Industrial Waste Engineers.

The District will increase its sampling frequency at a user when the District identifies a violation. The amount and timing of additional sampling depends upon the severity of the violation and other circumstances. If the violation is isolated and not severe, then a sampling frequency of once per month for at least the following two months will be common. If the violation is severe or is part of continuing problems, then the District may increase the sampling frequency to biweekly, weekly, or daily.

When the District samples a user, the user must pay fees for sample collection, preparation, and analysis.¹⁰ The District imposes these fees for such routine sampling and for sampling in response to a violation.

In many cases, the appropriate sampling location is located on the user's property. If a user denies access to this sampling location, then the sampling crew will ask to discuss the situation with the person responsible for overall management of the facility. If the user continues to deny access, then the District will collect upstream and downstream samples from the nearest accessible manholes. In addition, the General Supervisor/Point Source Control will contact the appropriate Senior Industrial Waste Engineer and Senior Staff Attorney, who will confer with highest accessible manager of the facility. If the user continues to deny access, then the District will seek an inspection and sampling warrant or other appropriate order, civil penalties, or a combination of these.

C. Informal Responses

If a problem is isolated and does not involve a suspicion that the user is violating an applicable limit, then the District may respond informally. Circumstances that would lead to an informal response include: an isolated failure to properly sign or certify a report, an isolated failure to collect the correct type of sample, or an isolated failure to analyze a sample for all of the regulated pollutants. Informal responses include a telephone call, a facility visit, or a letter from the Senior Industrial Waste Engineer. Conversations during a telephone call or during a facility visit will be summarized in writing to ensure that District records include a discussion of the problem and the District's recommendations.

⁹ Sec. 11.803, MMSD Rules. District surveillance of users is required by: 40 CFR 403.8(f)(2)(v) and (vi) (1991) and sec. NR 211.23(1)(a), (c), (f), and (h), Wis. Adm. Code

¹⁰ Sec. 11.803(3) and (4), MMSD Rules

D. Notice of Noncompliance

The District's first response to most violations is the *Notice of Noncompliance* (NON).¹¹ A Senior Industrial Waste Engineer prepares the NON and issues it after approval from the Water Quality Protection Manager. The NON discusses the circumstances of the violation and the consequences of continued violation.

In most cases, the NON will require the user receiving the NON to respond in writing within 15 days from the date of receipt. The response must discuss the actions that the user has taken to identify the cause of the violation and the actions that the user has taken or will take to prevent similar violations in the future. The NON will also specify a date by which the user must show a return to compliance to prevent escalated enforcement action. Usually, this date will be 45 days after the District issues the NON.

E. Notice of Violation

The District will issue a *Notice of Violation* (NOV) if:

1. A user has failed to respond to a NON,
2. A user has failed to achieve compliance before a deadline set forth in a NON,
3. A user caused or threatened to cause immediate significant harm to the environment or the sewerage system, or
4. A user is in significant noncompliance.¹²

A Senior Industrial Waste Engineer prepares the NOV and issues it after approval from the Water Quality Protection Manager and, if necessary, consultation with the Senior Staff Attorney.

Every NOV will:

1. Be written,
2. Be delivered by hand or by certified mail,
3. State the nature of the violation,
4. Indicate the date by which the user must respond,
5. Discuss the essential elements of the user's response,

¹¹ Sec. 11.807, MMSD Rules

¹² Sec. 11.808, MMSD Rules

6. Describe the additional enforcement actions that the District may take if the user fails to respond,
7. Indicate that any District decision set forth in the NOV is not a final decision for purposes of judicial review, and
8. Describe the administrative procedures that are available for reviewing any decision set forth in the NOV.

If the user satisfies a criterion for significant noncompliance set forth in Section F, the NOV will indicate that the user's name will be published in the District's periodic public notice of users in significant noncompliance.

As part of a user's response to an NOV, the District may require the user to submit a written remedial action plan and schedule, require the user to meet with District staff at the District's offices to discuss attaining compliance, or require other actions by the user.

F. Notice of Continuing Violation

The District will issue a *Notice of Continuing Violation* (NCV) when:

1. The District has already taken some enforcement action,
2. Additional violations occur, and
3. Escalation of the case to a higher level is inappropriate.

For example, the District would use an NCV to inform a facility of violations occurring when the facility is on a compliance schedule. In this case, escalation is inappropriate because the facility is already working towards compliance. The District recognizes that achieving compliance may require the application of complex technical solutions that require time to develop, design, implement, and optimize. In this case, the NCV is for the facility's information only and would not require additional action.

For another example, the District may use an NCV to respond to violations that are repeated, but are separated by significant periods of compliance and are not of a high magnitude. The intermediate results in compliance and the low magnitude of the violations makes escalation inappropriate, but the District must still express its dissatisfaction with repetitive violations. In this case, the NCV may require additional remedial action to prevent additional violations.

An NCV may follow an NON, an NOV, or another NCV.

A Senior Industrial Waste Engineer prepares the NCV and issues it after approval from the Water Quality Protection Manager and, if necessary, consultation with the Senior Staff Attorney.

G. Publication of the Names of Users in Significant Noncompliance

At least once per year, the District will publish the names of the users that were in one or more of the following states of noncompliance since the period covered by the previously published list.¹³

1. Chronic violations

66% or more of all of the measurements taken during a six month period exceed by any magnitude the daily maximum limit or the average limit for any one pollutant;

2. Technical review criteria violations

a. 33% or more of all of the measurements taken during a six month period for a particular pollutant equal or exceed the daily maximum limit or the average limit for that pollutant multiplied by either 1.4, for BOD, TSS, and hexane extractable materials, or 1.2, for all other pollutants except pH; or

b. For pH, 33% or more of the measurements taken during a six month period are less than 5.

3. Other violations causing pass through or interference

Any violation that has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of District personnel or the general public;

4. Hazardous Discharges

Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the District's exercise of its emergency authority to halt or prevent a discharge;

5. Failure to comply with a compliance schedule

Failure to start construction, complete construction, or attain compliance within 90 days after the date contained in a compliance schedule, wastewater discharge permit, or order;

6. Failure to report

Failure to provide, within 45 days after the due date, any required report, such as a baseline monitoring report, an initial compliance report, a periodic compliance report, or a progress report;

¹³ Sec. 11.810, MMSD Rules. These criteria reflect the requirements of: 40 CFR 403.8(f)(2)(vii) and sec. NR 211.23(1)(j), Wis. Adm. Code

7. Inaccurate reporting

Failure to accurately report noncompliance; or

8. Failure to collect or analyze samples

Failure to collect samples according to the requirements established by an applicable wastewater discharge permit or to analyze samples using a method set forth in 40 C.F.R. Part 136 or sec. NR 219, Wis. Adm. Code, or a method specifically required by an applicable categorical pretreatment standard.

These criteria are based upon corresponding federal and state regulations.

Both the “chronic violation” and the “technical review criteria violation” involve reviewing data for a six month period. The regulations of the U.S. Environmental Protection Agency and the Wisconsin Department of Natural Resources do not define the six month periods that the District must use to implement these criteria. Until federal or state regulations prescribe the six month periods that the District must use, the District will use the first half of the year and the second half of the year.

The District will publish the list in the newspaper with the largest circulation in the District. Currently, this newspaper is the *Milwaukee Journal Sentinel*.

H. Orders

The District uses orders to direct users to perform certain activities before a specified time.¹⁴ The Water Quality Protection Manager may issue these orders, which are drafted by the Senior Staff Attorney. Orders will:

1. Be written,
2. State the reasons for the order,
3. Describe the administrative procedures that are available to review the District’s determination, and
4. Be hand delivered or delivered by certified mail, return receipt requested.

In addition to orders issued by the Water Quality Protection Manager, the Commission may issue orders to users.¹⁵

The Executive Director may order the installation of a bulkhead in the outfall of any user if the Executive Director has found that the user has not adequately responded to a previous NOV or order or

¹⁴ Sec. 11.811, MMSD Rules

¹⁵ Sec. 200.45(2), Wis. Stats.

if the Executive Director finds certain other circumstances.¹⁶ Before inserting a bulkhead, the District will deliver to the user a written notice describing the reasons for the bulkhead order.

The Executive Director may issue orders that contain stipulations made by users in response to enforcement actions by the District. These orders will cover three general areas: achieving compliance; recovery of District costs; and the payment of penalties. The elements of these orders will vary according to the issues involved in each enforcement action. For example, an order may set forth a compliance schedule that a user presented to the District at a conference related to an NOV. Orders may also contain settlement agreements developed during civil litigation.

I. Permit Revocation

The District may revoke a user's wastewater discharge permit for any of the following reasons:

1. Failure to accurately report wastewater constituents or other characteristics of the discharge;
2. Failure to report significant changes in wastewater constituents or other characteristics;
3. Failure to submit timely reports;
4. Failure to allow the District or its representatives reasonable access to the user's premises for inspection or monitoring;
5. Failure to pay the fees imposed by the District;
6. Discharging any substance prohibited by ch. 11, MMSD Rules, or discharging a substance in excess of the amount allowed in a wastewater discharge permit; or
7. Any other violation of the wastewater discharge permit, ch. 11, MMSD Rules, a District order, a judicial order, or any other applicable local, state, or federal law.¹⁷

The user must cease all discharges of non-domestic wastewater immediately after the District has notified the user that the District has revoked the user's permit.

Permit revocation is one of the last steps in the enforcement hierarchy. It will occur after a long period of recalcitrance or after one or more discharges have caused acute adverse impacts to the sewerage system or the environment. The mere administrative act of revoking a permit does not guarantee an end to discharges. Therefore, permit revocation will often occur in conjunction with other actions, such as a bulkhead order or legal action to seek a temporary restraining order or a permanent injunction.

A Senior Industrial Waste Engineer prepares the permit revocation letter and issues it after approval of the Water Quality Protection Manager and the Senior Staff Attorney.

¹⁶ Sec. 11.813, MMSD Rules

¹⁷ Sec. 11.812, MMSD Rules

J. Civil Litigation

The District may initiate civil proceedings in response to any violation of: Chapter 11, MMSD Rules; a wastewater discharge permit; any other applicable local, state, or federal law; or a notice of violation or order issued by the District.¹⁸ In general, the District will utilize civil litigation to respond to gross or persistent violations, deliberate violations, and violations that cause acute harm to the sewerage system or the environment. The vast majority of violations will be resolved before the initiation of civil proceedings for penalties or other relief.

The Senior Staff Attorney will represent the District in these proceedings. To develop the District's case, the Staff Attorney will consult with the Water Quality Protection Manager, the General Supervisor/Point Source Control, and the Senior Industrial Waste Engineer assigned to the user.

The District may seek injunctive relief. For example, the District may seek an order to halt or prevent any discharge that would be a public nuisance; would endanger public health, welfare, or the environment; or would interfere with the operation of the sewerage system.

If the District suspects that the user is discharging pollutants that may imminently endanger public health, the environment, or the structures or employees of the District, then the District will immediately summon law enforcement officials, such as police officers or fire fighters, to facilitate entry. Simultaneously, the District's legal staff will seek from an appropriate court a temporary restraining order.

Under state law, the District may seek civil penalties up to \$10,000 per day for each violation of a pretreatment standard or requirement.¹⁹ Under federal law, the District may seek penalties up to \$25,000 per day for each violation.²⁰ The law under which the District will act depends upon the circumstances of the case. Considerations will include the size of the desired penalty the type of violations, and whether violations are continuing.

The District does not expect to seek civil penalties in every case. Penalties are most appropriate in cases involving egregious violations or deliberate wrongdoing, such as falsified reports and non-representative sampling. For example, the District will seek penalties if the District has evidence of deliberate dilution, process modification during sampling, discharges timed to avoid District sampling, or falsified reports.

In general, the U.S. Environmental Protection Agency's Civil Penalty Policy will provide the basis for calculating the amount sought. Parameters include:

1. The number of violations,
2. The seriousness of the violations, including whether the violations harmed the environment or the sewerage system,

¹⁸ Sec. 11.818, MMSD Rules

¹⁹ Sec. 200.45(1)(e), Wis Stats. and sec. 283.91(2), Wis. Stats.

²⁰ 33 USC secs. 1319 and 1365

3. Any economic benefits resulting from the violations,
4. The deterrent effect of the penalty,
5. The user's compliance history,
6. The user's good faith efforts to comply or the user's recalcitrance to compliance,
7. The economic impact of the penalty on the user, and
8. Any other factors that justice may require.

In any civil action, the District will seek to recover the costs incurred by the District that are related to the violation. For example, if a user's discharge caused damage, an obstruction, or an impairment in the sewerage system, then the user is liable to the District for the costs of cleaning, repairing, or replacing the affected components. The District will also seek to recover the administrative costs of the enforcement action, such as sampling costs, analysis costs, and the costs of the District's engineering, legal, and support staff.

When investigating a case, the District may identify evidence of violations of air quality or hazardous waste disposal requirements, along with wastewater violations. To facilitate a comprehensive remedy, the District will refer these cases to the U.S. Attorney or the Wisconsin Department of Justice because they are able to undertake multimedia enforcement actions.

Users are subject to a wide variety of environmental laws. These laws may be enforced by the State of Wisconsin, the United States, or by a private individual or organization using "citizen suit" provisions. If the District determines that an enforcement action by one of these entities has a potential to affect the volume or characteristics of a user's discharge to the sewerage system, then the District may seek to intervene to assist in prosecution or to ensure that any consent decrees or orders protect the District's interests. Alternatively, the District may participate in the case as a friend of the court for the purpose of commenting upon injunctive relief or a monetary judgment.

When the District has decided to commence civil litigation, the District will issue a press release and otherwise inform the public of the impending action. The District will issue a general announcement of the action, including a summary of the circumstances and directions for obtaining further information. At the conclusion of the case, the District will announce the results of the litigation.

The governing body of the District, the Commission, will discuss civil litigation in closed session to the extent necessary to maintain privileged communications with legal counsel.

Documents related to litigation that are not subject to a privilege recognized under law will be public records and will be available for public review and copying according to the public records laws of the State of Wisconsin.

K. Criminal Prosecution

If any person willfully or negligently violates any pretreatment standard or requirement or knowingly makes a false statement or certification in any application, record, report, plan, or other document or knowingly falsifies, tampers with, or renders inaccurate any monitoring device or analytical method, then that person may be punished under the criminal laws of the State of Wisconsin or the United States.²¹ If the Senior Staff Attorney, after consultation with the Water Quality Protection Manager and the Senior Industrial Waste Engineer, determines that criminal prosecution is appropriate in a particular case, then the Senior Staff Attorney will refer the case to the proper authorities for prosecution. Depending upon the case, the proper authority may be a county District Attorney, the Department of Justice of the State of Wisconsin, or the Federal Bureau of Investigation and the U.S. Attorney's office.

L. Waste Hauler Enforcement

Some enforcement activities are specialized for waste haulers. If a disposal unit operator fails to allow the District to sample a discharge or is otherwise uncooperative, then the District may prohibit discharges by that operator or may immediately suspend the disposal unit's waste hauler's license.²² If a disposal unit operator has misrepresented wastes, then the District may revoke the waste hauler's license or prohibit the licensee from doing any business with the District for up to three years.²³

M. Identifying and Counting Violations

The following rules apply to counting violations:

1. A separate violation occurs for each pollutant that exceeds an applicable pretreatment standard;
2. Each day on which a violation occurs is a separate violation;
3. If a user is in noncompliance with any pretreatment standard that is a monthly average, 30-day average, or 4-day average, then the user has one violation on each day of the averaging period;
4. If for any period a user has violated both a maximum and an average pretreatment standard for a particular pollutant, then the total number of violations is the sum of the days on which the maximum standard was violated and the days in the averaging period; and
5. One violation occurs on:
 - a. Each day that a report is late; and

²¹ Sec. 11.818, MMSD Rules

²² Sec. 11.708(1)(b), MMSD Rules

²³ Sec. 11.708(1)(c) and (d), MMSD Rules

b. Each day after an action required to be completed is not completed.²⁴

In general, a “violation” is non-compliance with any federal, state, or District pretreatment standard or requirement.

Violations are generally counted according to the number of requirements violated rather than the number of “events” causing the violations. An exception to the general rule occurs when an upset causes a violation of several categorical pretreatment standards and the user reports the upset according to the applicable requirements. In this case, only one violation occurs.²⁵ When a user fails to obtain a permit before discharge, one violation occurs on each day of discharge without a permit, in addition to violations on a parameter-by-parameter basis, if any.

Accurate and representative sample results are essential for the enforcement of the numerical local limits and categorical pretreatment standards. To obtain these results, flow proportioned composite sampling will be used where appropriate and feasible. However, for some pollutants, this type of sample is inappropriate because a pollutant requires special equipment or handling. Furthermore, in some cases, flow proportioned sampling is not feasible because physical circumstances do not allow the use of the necessary sampling equipment. In circumstances when flow proportioned sampling is not feasible or is inappropriate, other sampling techniques will be used, such as time proportioned composite sampling, a composite sample made from manually or mechanically collected grab samples, averaging the separate analytical results of several grab samples, or one grab sample.

For pollutants requiring a grab sample, one grab sample will generally be used. A special grab sampling protocol involving multiple grab samples may be used if the District has incorporated the sampling protocol into a wastewater discharge permit.²⁶ If no special sampling protocol is established in a user’s wastewater discharge permit and flow proportioned sampling is inappropriate or not feasible, then the District will use one grab sample to evaluate compliance and the user is foreclosed from arguing that the one grab sample is non-representative.

Evaluating compliance with pH limits presents special problems in certain cases. Even when pH monitoring and treatment equipment is functioning well, pH adjustment can take several minutes because treatment chemicals cannot be instantaneously added and mixed after pH below the applicable limit is detected. Therefore, pH below the applicable pH limit for less than 15 continuous minutes is not a violation if a user or the District continuously monitors for pH and no circumstances show an intent to violate the pH pretreatment standard.

In some cases, the user and the District have contemporaneous sample results. The following rules apply when these results differ and one result shows a violation when another result does not.

When users submit sample results in a periodic compliance report, a user certifies that the results are accurate and representative. Based upon this certification, a user’s results will be conclusive when user sampling shows violations, even if contemporaneous District sampling does not.

²⁴ Sec. 11.818(3)(c), MMSD Rules

²⁵ 33 USC 1319(c)(5) and (d)

²⁶ Secs. 11.203(1)(c) and 11.601(2)(c), MMSD Rules

When the District collects a sample and splits it with a user and the District result shows a violation but the user's sample result does not, the District will presume that the District's result is more accurate. A user may rebut this presumption by showing that the District improperly collected the sample or made analytical errors.

In every case, sample variability will affect the exercise of the District's enforcement discretion.

N. Settlement Policies

The U.S. Environmental Protection Agency has implemented a policy promoting waste minimization and pollution prevention in settlement agreements. The District will also implement this concept.²⁷

The District will not accept any settlement agreement that prevents public access to documents that are not protected by a privilege recognized under law.

All payments included in a settlement agreement must be expressly recognized as fines, penalties, or forfeitures. This action prevents the discharge of these payments in bankruptcy.²⁸

Settlement agreements may include payments for mitigation projects. These projects must be substantially related to the purposes of the District. The project may be completed by a governmental agency, an educational institution, or the person subject to the enforcement action. The District will not accept projects managed by other private individuals or organizations. "Mitigation" does not include a capital or operating expense that should have occurred in the past to achieve compliance. Mitigation projects must supplement payments to the District for the District's costs related to the violation and for the avoided costs of compliance. The District will not accept mitigation as a substitute for these other payments. For tax purposes, the District will require that payments for mitigation be classified as a penalty and not as a business expense or charitable contribution.

O. Compliance at Facilities Not Routinely Monitored

While the routine activities of the pretreatment program focus on significant industrial users, the District recognizes that other users have a potential to discharge materials that can cause problems in the sewerage system and the environment. The District regularly receives letters and telephone calls that describe activities that the informant perceives as potentially harmful. For example, a person may report a neighbor dumping motor oil into a sewer or an employee at a store that sells pesticides or cleaners may report that old inventory was flushed away.

The District's response to these tips will be very case-specific. Critical factors include the volume of material discharged, the potential harm, whether the discharge has the potential to be repetitious, and the other demands on enforcement resources at the time of the case. A common response will be a visit to

²⁷ Sec. 11.818(8), MMSD Rules

²⁸ 11 USC sec. 523(a)(7)

the site to investigate the case. If the District suspects that a violation occurred, then the District will educate the discharger of the applicable rules and the proper disposal methods. Another common response will be referral of the case to the Department of Natural Resources. If harm is potentially significant and repetitious, then the District may undertake monitoring or other surveillance. To address generic, widely dispersed problems, the District will, from time to time, participate in educational programs, distribute literature, make public service announcements, or present displays at public events.

IV. Enforcement Responses

The District will consider each violation's unique context to determine how the District should respond. In general, the District will consider seven factors when identifying the proper response to a violation:

1. The magnitude of the violation,
2. The duration of the violation,
3. The effect on the receiving water,
4. The effect on the sewerage system,
5. The user's compliance history,
6. The user's good faith in preventing or resolving the violation, and
7. Consistent treatment of similarly situated users.

The District has considered these seven factors, the personnel described in Chapter II, and the response options described in Chapter III to develop general guidelines for enforcement responses. Recommended responses are listed in the following table. The Table shows:

1. The types of violations expected by the District,
2. The characteristics of the violation that affect the District's response,
3. A recommended response on the violation, and
4. The responsible District staff.

The responses given in the table are only recommendations. The District may find different responses appropriate after considering the factors listed above and other germane information. The tables does not create legal rights or obligations. The tables does not limit the enforcement discretion of the District.

In the following Table, responsible staff are designated using the following abbreviations:

Abbreviation	Position
GSPSC	General Supervisor Point Source Control
SIWE	Senior Industrial Waste Engineer
SSA	Senior Staff Attorney
WQPM	Water Quality Protection Manager

The first position listed has primary responsibility, the second person listed has secondary responsibility, and so forth.

Generally, any case involving repetitious violations or violations that have severe effects will have an escalated response. Similarly, if a user fails to take reasonable action to mitigate the cause or effect of a violation, the District may escalate the response.

MILWAUKEE METROPOLITAN SEWERAGE DISTRICT Enforcement Responses

Violation	Characteristics	Response	Responsible Personnel
Discharge before receiving a letter of approval or a wastewater discharge permit	New user, user not aware of requirements	Obtain information, write permit if necessary	SIWE, WQPM
	New user, user aware of requirements	Order or civil litigation	WQPM, SSA
	Existing user subject to categorical standards; user not aware of requirements	Write permit	SIWE
	Existing user subject to categorical standards; User aware of requirements	Order or civil litigation	WQPM, SSA
Discharge of a prohibited substance or the discharge of a substance in excess of an applicable limit	Isolated; no harm	NON	SIWE, WQPM
	Isolated; harm to the sewerage system or the environment	Order or civil litigation	SIWE, SSA, WQPM
	Continuing or multiple separate incidents; no harm to the sewerage system or the environment	NOV or order or both	SIWE, WQPM, SSA

	Continuing or multiple separate incidents; harm to the sewerage system or the environment	Order or civil litigation or criminal prosecution or permit revocation	SSA, WQPM, SIWE
	Continuing or multiple separate incidents; harm to the sewerage system or the environment	Order or civil litigation or criminal prosecution or permit revocation	SSA, WQPM, SIWE
Improper reporting	Report is improperly signed or certified; user unaware of requirements	Informal contact	SIWE
	Report is improperly signed or certified, after notice from District of requirements	NON	SIWE, WQPM
	Report is late by less than 30 days	NON	SIWE, WQPM
	Report is late by more than 30 days	NOV	SIWE, WQPM, SSA
	Pattern of late reports	NOV and order	SIWE, WQPM, SSA
	Failure to report violation, slug, upset, bypass or hazardous waste; no harm to the sewerage system or the environment	NON	SIWE, WQPM
	Failure to report violation, slug, upset, bypass, or hazardous waste; harm to the sewerage system or the environment	NOV, order, or civil litigation	SIWE, SSA, WQPM
	Failure to report a significant change in production or flow	NON or NOV	SIWE, WQPM
	Results of all samples not reported	NON	SIWE, WQPM

	Falsification	Civil or criminal prosecution or permit revocation	SSA, SIWE, WQPM
Improper sampling or analysis	Isolated failure to take the required type of sample	Informal	SIWE, WQPM
	Isolated failure to analyze for all of the regulated pollutants	Informal	SIWE, WQPM
	Failure to re-sample after self-monitoring identifies a violation	NON	SIWE, WQPM
	Recurring failure to take the required type of sample	NON or NOV	SIWE, WQPM, SSA
	Knowingly taking a non-representative sample	Civil litigation or criminal prosecution	SSA, SIWE, WQPM
	Tampering with monitoring equipment	Civil litigation or criminal prosecution	SSA, SIWE, WQPM
	Intentionally improper analysis	Civil litigation or criminal prosecution	SSA, SIWE, WQPM
Improper record keeping	Records are incomplete or missing; no evidence of intent	Informal	SIWE, WQPM
	Recurring incomplete record keeping; no evidence of intent	NON or NOV	SIWE, WQPM, SSA
Failure to complete an activity required by a compliance schedule or order	Missed deadline by less than 30 days; final compliance date not affected	NON	SIWE, WQPM
	Missed deadline by 30 days or more or final compliance date affected; good cause for delay	NOV	SIWE, WQPM, SSA
	Missed deadline by 30 days or more or final compliance date affected; no good cause for delay	Order of civil litigation	SSA, SIWE, WQPM

	Recurring missed deadlines	Civil litigation	SSA, SIWE, WQPM
	Missed deadline in a consent decree or settlement	Liquidated penalties as set forth in the decree or settlement	SSA, SIWE
Denial of Entry	Entry allowed after consultation; misunderstanding of access requirements	Informal	GSPSC, SIWE
	Continuing denial; circumstances cause suspicion that user is trying to hide wrongful acts	One or more of the following: warrant, order, civil litigation, or permit revocation	SSA, GSPSC, WQPM