



LEWISTON-AUBURN

WATER POLLUTION CONTROL AUTHORITY

ENFORCEMENT RESPONSE PLAN

Effective: September 16, 2019

This Enforcement Response Plan is a guidance document for administration and enforcement of the:

**Rules & Regulations Governing the
Discharge of Water and Wastes
into the POTW**

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Introduction

The United States Environmental Protection Agency and the State of Maine Department of Environmental Protection require the Lewiston-Auburn Water Pollution Control Authority (Authority) to implement an Industrial Pretreatment Program. Enforcement of program requirements is essential to assure that the requirements of the program are met, and that all participants are treated in the same manner. To effectively administer enforcement of the pretreatment program, the Authority must have:

- ❑ A system to determine if industrial users are complying with pretreatment standards and requirements, and
- ❑ Procedures to respond to non-compliance by industrial users.

The Authority has developed an Industrial Pretreatment Program and devised rules and regulations that include standards for the discharge of industrial wastes and wastewaters; provides requirements for both Industrial Users and Authority pollutant monitoring; and institutes a system for regular inspection of industrial users and their discharges. The purpose of this document is to establish an enforcement management system that will complement the Industrial Pretreatment Program.

The Enforcement Response Plan is intended to:

- ❑ Develop requirements for industrial users to conduct self-monitoring and promptly report any noncompliance to the Authority.
- ❑ Ensure compliance screening of all relevant data.
- ❑ Institute a system by which formal enforcement action is taken, and follow-up when necessary, by a pre-determined plan.
- ❑ Provide guidance for enforcement action to assure that consistent, fair and equitable treatment enforcement action is taken.

THE LEWISTON-AUBURN WATER POLLUTION CONTROL AUTHORITY

ENFORCEMENT RESPONSE PLAN

Part I. Legal Authorities

Pursuant to the legal authorities vested in the Lewiston-Auburn Water Pollution Control Authority (hereafter called the Authority) by the State of Maine Department of Environmental Protection (DEP) and Authority's Rules and Regulations Governing the Discharge of Water and Wastes, the Board of Directors of the Authority hereby set forth the Lewiston-Auburn Water Pollution Control Authority's Enforcement Response Plan as required by the Maine DEP in Rule Chapter 528, section 9 (f) (5).

The actions, measures and responses of this Enforcement Response Plan shall be applicable to all significant industrial users of the Authority, as identified by either the Authority, the State of Maine, or the United States Environmental Protection Agency, that discharge water and/or wastes into the publicly owned treatment works served by the Authority's wastewater treatment plant.

Part II. Administrative Enforcement Remedies

The Superintendent is empowered, under Sections 10 and 11 of Rules and Regulations Governing the Discharge of Wastes into the POTW, to issue orders and take other actions to assure compliance with the pretreatment standards and/or requirements by any industrial user, and to take other actions necessary to protect the public health and safety, the publicly owned treatment works, public or private property, or the environment. The remedies provided for in the Authority's Rules and Regulations are not exclusive. The Superintendent may take any, all, or any combination of actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the Authority's Enforcement Response Plan. Further, the Superintendent is empowered to take more than one enforcement action against any noncompliant user, except where prohibited by law.

Specific action and remedies, as defined in Sections 10 and 11 of the Authority's Rules and Regulations are:

- A. Notice of Violation
- B. Consent Order
- C. Show Cause Hearing
- D. Compliance Order
- E. Cease and Desist Order
- F. Administrative Penalty
- H. Emergency Suspension

- I. Termination of Wastewater Discharge Permit
- J. Judicial Remedy
- K. Injunctive Relief
- L. Civil Penalty
- M. Criminal Prosecution

Part III. Affirmative Defenses

Industrial Users of the Authority may establish an affirmative defense to an action brought by the Authority for noncompliance with categorical pretreatment standards subject to the conditions of Section 12 of the Rules and Regulations Governing the Discharge of Water and Wastes into the POTW.

Part IV. Enforcement Response Guide

There are a number of factors for the Authority to consider when selecting from among the options in this guide. These factors are described and defined in the United States Environmental Protection Agency “Guidance for Control Authority Enforcement Response Plans” (1989). They are:

- Magnitude of the violation
- Duration of the violation
- Effect of the violation on the receiving water
- Effect of the violation on the POTW
- Compliance history of the industrial user
- Good faith of the industrial user

In addition, the Authority will consider what the likelihood is that the noncompliance will continue with and without enforcement action.

The Authority must weigh each of the above factors before deciding whether to use a more or less stringent response to a specific incident.

The Authority shall attempt to consistently follow the responses in this Enforcement Response Plan except that the Authority reserves the right to modify responses and penalties on a case by case basis at the Authority’s discretion. Proper implementation of an Enforcement Response Plan is a condition of the Authority’s Maine Pollutant Discharge Elimination System (MEPDES) permit.

Part V. Timeframes

The Authority shall endeavor to correct noncompliance in a timely manner. The Authority shall use the following guidelines when addressing noncompliance:

- The Authority will immediately respond to violations that threaten public health, POTW property or environmental quality and therefore are considered emergencies.
- The Authority will identify and document noncompliance with pretreatment program standards and requirements within thirty (30) days of receiving documentation of noncompliance.
- The Authority shall initiate enforcement responses involving direct contact with the industrial user within thirty (30) days of receiving documentation of noncompliance.
- Follow-up actions for continuing violations (such as continuing for thirty (30) days or more after the initial reporting period or inspection) or recurring non-compliance (such as a finding of significant noncompliance in more than one six (6) month period per year) shall be taken within one hundred twenty (120) days of the initial enforcement action or within thirty (30) days after the closing of the second six (6) month period. Timeframes may be escalated if the violations are causing harm to the POTW or environment.

Significant Industrial Users of the Authority shall respond to Authority enforcement actions either:

1. Within thirty (30) days from the time the enforcement action is issued; or
2. Within the time frame established in a notice of violation, administrative order or compliance schedule.

Significant Industrial Users of the Authority must provide payment of a monetary penalty to the Authority within thirty (30) days of the date a penalty notice is issued, unless a different timeframe has been established in the penalty notice. Failure to pay a penalty within the time allotted shall be cause for further enforcement action.

Part VI. Appeals Process

A Significant Industrial User subject to enforcement action, in addition to any other rights it may have by law, may appeal a decision made by the Superintendent to the Board of the Authority. An appeal must be made in writing, within thirty (30) days of the date of the enforcement notice or action, to the Chair of the Authority's Board of Directors. The Board shall meet as soon as possible to hear the appeal.

Except in the case of emergency suspensions or termination of discharge, a written appeal shall stay any monetary penalty or administrative enforcement action when the Significant Industrial User has mitigated any ongoing violations of pretreatment standards and remains in compliance with its discharge permit.

Part VII. Schedule of Administrative Penalties

The Authority may assess a maximum administrative penalty of one thousand dollars (\$1,000) per day per violation. The following is a suggested schedule of penalties to be used by the Superintendent when assessing administrative penalties for violations of pretreatment standards or requirements.

1. Unpermitted discharges:

(Not resulting in pass-through or interference)

- First offense \$100 per day
- Second offense¹ \$200 per day
- Subsequent offenses¹ \$400-\$1,000 per day

(Resulting in pass-through or interference)

- All offenses, up to \$1000 per day and/or legal action for the maximum allowable by law.

(Failure to renew)

- First offense \$100 per day
- Second offense \$500 per day
- Subsequent offenses \$1,000 per day

2. Reporting violations:

Late reports

- First offense \$25 per day
- Second offense¹ \$50 per day
- Subsequent offenses¹ \$100-\$1,000 per day

Missing or improper signatures of certification statements, missing documentation or other required information (flow report information, chain of custody, quality control data, etc.) after notice of an Authority set deadline:

- First offense \$50 per day
- Second offense¹ \$100 per day
- Subsequent offenses¹ \$200-\$1,000 per day

¹ Within a five year period from the first offense.

Failure to report noncompliance with discharge limitations within 24 hours of awareness

- First offense \$50 per incident
- Second offense ¹ \$150 per incident
- Subsequent offenses¹ \$300 - \$1,000 per incident

Failure to report noncompliance within an Authority set reporting period (such as monthly average violations, by-pass of pretreatment systems, and significant change in process)

- First offense \$100 per incident
- Second offense ¹ \$200 per incident
- Subsequent offenses¹ \$400 - \$1,000 per incident

Failure to properly and/or accurately report a spill or slug discharge or upset condition including emergency by-pass (no harm)

- First offense \$100 per incident
- Second offense \$200 per incident
- Subsequent offenses \$400 - \$1,000 per incident

Failure to properly and/or accurately report a spill or slug discharge or upset condition including emergency by-pass (with harm)

- All incidents \$1,000 per day of discharge

3. Discharge Violations

Exceedances of local or federal standards – daily maximum or BMP (Best Management Practice)

Isolated not significant

- First offense \$50 per day
- Second offense¹ \$100 per day
- Subsequent offenses¹ \$200 - \$1,000 per day

Recurring not significant All incidents \$250 - \$1,000 per incident

¹ Within a five year period from the first offense.

Exceedances of local or federal standards –monthly average

Isolated not significant

- First offense \$50 per incident
- Second offense¹ \$100 per incident
- Subsequent offenses¹ \$250 - \$1,000 per incident

Recurring not significant All incidents \$250 - \$1,000 per incident

Violations of local or federal standards (daily maximum, BMP or monthly average)

Isolated or recurring - harm to the POTW - per incident \$1,000 per violation

Self-Monitoring Noncompliance (failure to monitor for a pollutant, failure to re-test within 30 days of a report of violation, etc.)

- First offense \$50 per incident
- Second offense¹ \$150 per incident
- Subsequent offenses¹ \$500 - \$1,000 per incident

4. Denial of reasonable entry for inspection or monitoring

- First offense \$100 per incident
- Second offense \$500 per incident
- Subsequent offenses \$1,000 per incident

5. Tampering with monitoring equipment

- First offense \$250 per incident
- Subsequent offenses \$1000 per incident

The Superintendent may assess and collect via a compliance order or compliance schedule administrative penalties for:

- Missing compliance schedule milestones, or
- Other violations of discharge permits or the Authority' Rules and Regulations.

¹Within a five year period from the first offense.

Part VIII. Administrative Enforcement Actions and Remedies

The Authority will use the following guide to address enforcement actions for violations of the pretreatment standards and requirements. The type of enforcement chosen will be dependent on the nature of the violation, the industrial user's history with addressing the violation(s), and other factors. Continued noncompliance after notice by the Authority may result in escalating enforcement actions. Administrative enforcement actions may be taken in addition to assessment of any administrative penalties

Noncompliance	Nature of the Violation	Administrative / Enforcement Response	Personnel
Unpermitted discharge	SIU unaware of requirement; no harm	-Notice of Violation (NOV) -Administrative penalty	Pretreatment Coordinator (PC) Superintendent *(S)
	IU unaware of requirement; harm	-Administrative order - Civil Action	S S
	Failure to apply for permit after notice by Authority	-Notice of Violation -Administrative penalty -Administrative order -Civil Action -Terminate Service	PC PC S S S
Nonpermitted discharge	SIU has not submitted an application or re-application within 45 days of the due date	-Notice of Violation -Administrative penalty	PC PC
Exceedance of local limit or other pretreatment standard	Isolated-not frequent	-Notice of Violation -Administrative penalty	PC PC
	Isolated-significant (no harm)	-Notice of Violation -Administrative penalty -Administrative Order	PC PC S
	Recurring (no harm)	-Administrative penalty -Administrative order -Show Cause Hearing -Compliance Schedule -Civil Action	PC S PC S S
	Recurring, significant (with harm)	-Notice of Violation -Administrative penalty -Administrative order -Show cause hearing -Compliance schedule -Civil Action -Termination of Service	PC PC S PC S S S
	Intentional or knowing discharge of a prohibited substance	-Notice of Violation -Administrative penalty -Criminal Investigation -Termination of Service	PC PC S S

Reporting violation	Report is improperly signed or certified	-Phone call -Notice of Violation	PC PC
	Report is improperly signed or certified after notice by the Authority	-Notice of Violation -Administrative penalty -Show cause hearing -Administrative order	PC PC PC S
	Isolated, not significant (such as report less than 5 days late)	-Phone call -Notice of Violation -Administrative penalty	PC PC PC
	Significant (such as report 30 or more days late)	-Notice of Violation -Administrative penalty -Administrative order	PC PC S
	Continuing history of late reports, or not reporting at all	-Administrative penalty -Show Cause hearing -Administrative Order -Civil Action	PC PC S S
	Failure to report spill, slug discharge, by-pass, or change in discharge (no harm)	-Notice of Violation -Administrative penalty -Civil Action -Criminal Investigation	PC PC S S
	Failure to report spill, slug discharge, by-pass, or change in discharge (with harm)	-Notice of Violation -Administrative penalty -Administrative order -Civil Action -Criminal Investigation	PC PC S S S
	Repeated failure to report spills or slug discharges, or by-passes	-Administrative penalty -Show Cause hearing -Civil action -Terminate service	PC PC S S
	False statements or reports	-Notice of Violation -Administrative penalty -Criminal investigation -Termination of Service	PC PC S S
Failure to Monitor	Failure to monitor for one or more permit required pollutants in a reporting period	-Phone call -Notice of Violation -Administrative penalty -Administrative order	PC PC PC S
	Recurring failure to monitor for permit required pollutants	-Notice of Violation -Administrative penalty -Show Cause hearing -Administrative order -Termination of Service	PC PC PC S S
Failure to monitor with evidence of intent	Failure to sample in a required time period, or during an upset condition, or collection of a non-representative sample	-Notice of Violation -Administrative penalty -Criminal Investigation -Termination of Service	PC PC S S

Failure to pretreat or install control structure or monitoring equipment (such as flow meter) after notice by Authority Failure to pretreat or install control structure or monitoring equipment (such as flow meter) after notice by Authority	Delay of less than 30 days	-Notice of Violation -Administrative penalty	PC PC
	Delay of 30 days or more	-Notice of Violation -Administrative penalty -Show cause hearing -Compliance schedule -Administrative order	PC PC PC S S
	Recurring, violation of compliance schedule or administrative order	-Administrative penalty -Show cause hearing -Civil action -Termination of service	PC PC S S
	Missed milestone by less than 30 days, or will not affect final milestone	-Notice of Violation	PC
	Missed milestone by more than 30 days or missed milestone will delay final milestone (with good cause)	-Notice of Violation -Administrative penalty -Administrative order	PC PC S
	Missed milestone by more than 30 days or missed milestone will delay final milestone (without good cause)	-Notice of Violation -Administrative penalty -Show cause hearing -Administrative order -Civil action	PC PC PC S S
	Recurring violations of schedule or violation of administrative order	-Show cause hearing -Administrative penalty -Civil action -Criminal investigation	PC PC S S
Pretreatment requirement violations	Dilution in lieu of treatment	-Notice of Violation -Administrative penalty -Administrative order	PC PC S
	Failure to mitigate noncompliance	-Notice of Violation -Administrative penalty -Show Cause hearing -Administrative order -Civil Action -Termination of Service	PC PC PC S S S
	Failure to properly operate and maintain a pretreatment facility	-Notice of Violation -Administrative penalty -Show Cause hearing -Administrative order -Civil Action -Termination of Service	PC PC PC S S S
	Denial of entry for inspection or sampling, or consent to copy records denied	-Notice of Violation -Search warrant -Administrative penalty	PC S PC

Illegal or prohibited discharge Illegal or prohibited discharge	No harm to the POTW or environment	-Notice of Violation -Administrative penalty -Administrative order	PC PC S
	Discharge causes harm/ or evidence of intent or negligence	-Notice of Violation -Administrative penalty -Administrative order -Civil Action -Criminal Investigation	PC PC S S S
	Recurring, violation of administrative order	-Civil action -Termination of Service	S S
Improper Sampling	Unintentional sampling at wrong location, unintentional wrong sample type, unintentional incorrect analytical method or sampling technique	-Notice of Violation -Administrative penalty -Administrative order	PC PC S
Inadequate record keeping	Incomplete or missing files, failure to retain records for three years or more if required.	-Notice of Violation -Administrative penalty	PC PC
	Recurring or evidence of intent	-Administrative penalty -Administrative order -Civil action	PC S S
Failure to report results of any monitoring in addition to permit requirements	Files found during inspection or submitted after due date, no evidence of intent	-Notice of Violation -Administrative penalty	PC PC
	Recurring or evidence of intent	-Administrative penalty -Administrative order -Civil action	PC S S

* (S) May also represent the Assistant Superintendent in the tables above.