



ARKANSAS
Department of Environmental Quality

August 17, 2012

Ken Johnson, Manager
Pine Bluff Wastewater Utility
1520 S. Ohio Street
Pine Bluff, Arkansas 71601-6055

Re: City of Pine Bluff (AFIN: 35-00149 NPDES Permit Number: AR0033316)
Program Modification for Streamlining Rule Update and TBLL Development

Dear Mr. Johnson:

In reference to Pine Bluff Wastewater Utility letter dated June 12, 2012, the Department has made a preliminary review of the "*Pine Bluff Wastewater Utility Pretreatment Program*" narrative. In general, the narrative appears acceptable for approval but the Department has the following concerns:

(1) The City's conclusion in "*Section 9: Technically Based Local Limit Evaluation*" in Section 9.7 that "...*local limits are not necessary at this time...*" supports all of the submitted non-conventional data. The Department's review of the 2010 and 2011 DMR data indicates that the POTW's BOD₅, CBOD₅ and TSS effluent concentrations approached the effluent limits on a consistent basis. Preliminary engineering calculations indicate that the City may need local limits for some of these pollutants. Since the POTW is receiving large organic loadings from several SIUs, the City must develop local limits for BOD₅, CBOD₅, TSS and NH₃-N (or demonstrate that local limits for these conventional pollutants are not necessary).

(2) The Enforcement Response Guide (ERG) in Section 7 indicates that the Environmental Compliance Supervisor has authority to impose monetary fines. In accordance with Section 10.7 in Ordinance #6381, only the Manager has authority to impose Administrative fines. Please review the attached revised ERG with the Department's changes.

(3) The narrative did not contain a letter from the City Attorney. The last program narrative (approved on September 18, 1984 and modified on September 8, 1992) has a letter from the City Attorney (Robert Tolson) dated March 22, 1983. Since the letter is about three decades old, the Department recommends that the City submit a new letter or the City must confirm that the September 1983 letter is still applicable.

August 17, 2012

Page 2 of 2

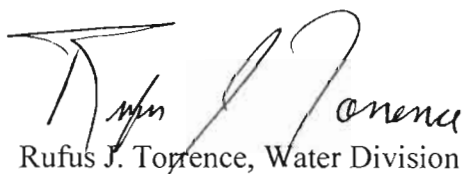
(4) Finally, the example permit in Appendix G does not show the Streamlining update for Significant Non-Compliance (SNC). The City must either update the SNC criteria in all SIU permits or remove the criteria.

In conclusion, the City must submit additional data to show that local limits for conventional pollutants are not necessary or submit a Technically Based Local Limits development for these pollutants. The City must submit an updated Section 7. The City must submit a letter from the City attorney. Finally, the City must submit a revised example permit for Appendix G.

The Department will expect the City to submit the required information by October 1, 2012.

If the City has questions or concerns, please do not hesitate to contact the Department at (501) 682-0626 or torrence@adeq.state.ar.us.

Sincerely,



Rufus J. Torrence, Water Division Engineer

Attachment: Proposed Revisions to Section 7: Procedures to Determine and Identify Violations



SECTION 7: PROCEDURES TO DETERMINE AND IDENTIFY VIOLATION(S)

GENERAL:

Drafting a response guide is important to anticipate the types of noncompliance that are likely to occur. The enforcement response guide should allow the Utility to select from several alternative initial and follow-up actions. The Wastewater Utility must rely initially on actions such as Notices of Noncompliance exceedences to notify the facility to promptly resolve the problem. However, when the violation is significant or when the industrial user does not promptly undertake corrective action, the Wastewater Utility must be in a position to respond with more severe enforcement responses including fines and judicial proceedings. Additionally, when the user fails to return to compliance following the initial enforcement response, the Control Authority must escalate its enforcement response in a follow-up action.

7.1 EXPLANATIONS OF VIOLATIONS

EPA has defined significant noncompliance in its proposed revision, the General Pretreatment Regulations, as violations which meet one or more of the following criteria:

- Chronic Violations of Wastewater Discharge Limits- Those in which Sixty-Six percent or more of all of the measurements taken for the same pollutant parameter 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(1).
- Technical Review Criteria (TRC) Violations- Those in which Thirty-Three percent or more of all of 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 403.3(1) multiplied by the applicable TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH).

- Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(1) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of POTW or the general public).
- Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment and has resulted in the POTW's exercise of its emergency authority under paragraph to halt or prevent such a discharge.
- Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.
- Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports on compliance with compliance schedules.
- Failure to accurately report noncompliance.
- Any other violations or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment program.

7.2 REPORTING REQUIREMENTS

All laboratory tests performed must meet the requirements mandated by the federal Environmental Protection Agency (EPA). The Wastewater Analytical Report (Appendix J) is used to inform the industrial user about the sample collected from their discharge. The Wastewater Analytical Report is faxed to the Industrial Users within five (5) working days after review by the Environmental Compliance Supervisor.

The Environmental Compliance Supervisor will use bold face type to indicate on the Wastewater Analytical Report when a pollutant has exceeded the limitations indicated in the industrial user's permit. This will be followed by a Notice of Noncompliance (Appendix K) along with a form for the industrial user to complete with their response (Appendix L) sent by certified mail regarding the nature of the violation. The Notice of Noncompliance will list the pollutant

concentration, maximum concentration allowable, and monitoring date regarding the pollutant. Additionally, the industrial user is required to conduct an investigation and determine the cause of the noncompliance, and the steps taken to prevent recurrences, as indicated by the report. A copy of the Report of Noncompliance will be retained in the industrial user's file. The Industrial User is required to respond to the Report of Noncompliance within (30) days providing an explanation regarding the reason(s) for permit limit overages, actions taken to prevent further violations, and an anticipated timeframe that noncompliance violations are expected to continue.

In order to ensure that its system has the needed information and that the information is current, the Utility should actively manage the flow of information into its system. For each industrial user, the Utility must determine what data is legally required or needed, as well as, when and how they can be obtained. This will include the requirement notification that the Industrial Users must give to the Control Authority of any change in discharge. The Utility will track the submission of reports, and if the reports submitted are deficient, the industrial users will be notified and required to submit the information in a specified time frame.

Furthermore, an enforcement action will be issued (including fines) for facilities that refuse to submit information to the Utility in the time specified.

7.3 REMEDYING NONCOMPLIANCES

Once the facility has demonstrated a pattern of noncompliance with the local pretreatment requirements, the Wastewater Utility will follow the procedures listed in this section to remedy the problem. Such actions may involve the following:

- A meeting or informal conference with the industrial user's designated representative. The purpose of this meeting is for each party to ascertain the reason(s) for the noncompliance and to establish an expedient means of the industry meeting compliance with the pretreatment requirements. The Industrial

Representative will explain why this industry is in violation and what steps have been taken to bring the industry into compliance with the pretreatment program. The Utility will explain to the industrial user the purpose of the pretreatment program, how their industry is involved, and why it's necessary to enforce the program requirements based on the testimony surrendered, the magnitude of the previous violations, and compliance history of the industrial user.

- Development of a compliance schedule for the Utility's review and acceptance. This compliance schedule will list activities and the dates those activities are to be completed for the industry to achieve compliance with the pretreatment program. The industrial users is required to submit a progress report to the Utility no later than fourteen (14) days following each date in the schedule. This progress report will be used to verify to the Utility that each activity has been completed as indicated in the original compliance schedule. After the compliance schedule is complete, the industrial user is expected to be in consistent compliance with the pretreatment requirements. During the implementation of the compliance, any violations occurring will be reported and become a part of the industrial user's record. The compliance schedule is not to be used as a waiver from foregoing enforcement actions toward ongoing noncompliance.
- A meeting, which included the Utility Commission and the non-complying facility, is necessary when a violation continues and it is not corrected by a compliance schedule. The Wastewater Utility may order any discharger (which continues to violate the pretreatment standard) to show cause before the Utility Commission as to why the discharger's service should not be terminated. A written notice shall be served to the discharger by personal service, certified or registered mail. This notice will, also, outline the reasons why the enforcement actions is to be taken, the proposed enforcement action, and it will direct the discharger to show cause before the Utility Commission as to why the proposed enforcement action should not be taken. This notice of a hearing shall be served no less than ten (10) days before such hearing. When directed by the Wastewater Utility, the Attorney for the Utility shall commence an action for appropriate legal and or equitable relief in local court.
- Imposition of a civil penalty may be performed when the noncomplying facility has not achieved compliance after the above steps were implemented. This fine shall not exceed \$1,000 for each parameter in violation and for each episode of noncompliance created by the facility. The fine will be assessed to the noncomplying facility and must be paid within thirty (30) days of receipt.
- Judicial Proceeding is a last enforcement action option for the noncomplying discharger to meet compliance with the pretreatment requirements. The Utility may receive a court order to terminate service to the discharger, and compel the discharger to pay expenses for damages caused by violations of federal, state, and local laws regarding the pretreatment program requirements.

7.4 CRITERIA FOR ESTABLISHING ENFORCEMENT RESPONSE

The enforcement response plan must be appropriate to the violation. However, the action taken must be responsive enough to ensure that proper action is performed to remedy the problem. Listed below are considerations the Utility will use in assessing the appropriate enforcement response:

- Magnitude of Violation
- Effect on the POTW
- Duration of Violation
- Economical Impact
- Good Faith Effort of Industrial User
- Effect on Receiving Stream
- Compliance History of User

The Utility will use the following elements as part of their enforcement response:

Formal

<u>Notice of Noncompliance-</u>	An incident of Noncompliance of a pollutant limit or requirement of the federal, state, and local pretreatment mandates.
<u>Meeting with Utility-</u>	When five (5) or more incidents of noncompliance are not corrected within 90 days following the first incident of noncompliance.
<u>Compliance Schedule-</u>	Will be imposed based on the outcome of the meeting with the Utility and if warranted.
<u>Show Cause Hearing-</u>	Will be conducted <u>after</u> the meeting listed above with the Utility when the noncompliance continues to be uncorrected within the time frame established in the “Meeting with the Utility”.
<u>Civil Penalty-</u>	May be imposed at any time to remedy an immediate problem and where damages may have occurred to the Utility’s Wastewater system. For ongoing noncompliances,

the civil penalty may be imposed based on the outcome of the “Show Cause Hearing”.

Judicial Proceeding-

Will be imposed when all enforcement items listed above have been implemented and the noncomplying facility has not met compliance. Additionally, judicial proceedings may be imposed when it is determined that the discharge from a location may cause substantial impact on the POTW’s personnel or damage to the environment or physical structure.

Criminal Prosecution-

Brought against an individual and/or organization through local court when there was intent to cause environmental harm to the POTW personnel or infrastructure.

Informal

Telephone Calls-

Will serve as the official reminder of late reports, etc.

General Letter-

Will serve to notify the facility of a condition which may be used to advise or bring attention to a matter; however, the condition may not be deemed as a noncompliance incident.

Fax Transmission-

Will provide a report on information such as surcharge values or general information concerning the facility.

7.5 RANGES OF ENFORCEMENT RESPONSES

The following Table will delineate the proper enforcement response for most situations encountered:

<u>Noncompliance</u>	<u>Enforcement Response</u>	<u>Personnel</u>
<i>(Aware)</i>	<i>Notice of Noncompliance</i>	ECS
<i>(Unaware)</i>	<i>Telephone with Letter</i>	ECS

KEY:	MGR – Manager LC – Local Court	ECS – Environmental Compliance Supervisor UC – Utility Commission
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Failure to Renew Permit by Due Date

	<i>Telephone With General Letter</i>	ECS
<i>(After 30 Days)</i>	<i>Notice of Noncompliance</i>	ECS
<i>(More than 30 Days)</i>	<i>Meeting with Utility</i>	MGR/ECS
<i>(More than 90 Days)</i>	<i>Termination of Wastewater</i>	MGR/ECS

Exceedance of Permit Limit

	<i>Notice of Noncompliance</i>	ECS
<i>(After 90 Days or 5 Incidents)</i>	<i>Meeting with Utility</i>	MGR/ECS/LC
<i>(After Compliance Schedule)</i>	<i>Show Cause</i>	UC
<i>(After 30 Days)</i>	<i>Fines</i>	MGR ■■■■
<i>(After 60 Days)</i>	<i>Judicial Proceeding</i>	LC

Discharge Slug Load

<i>(Non-Potential Impact)</i>	<i>Notice of Noncompliance</i>	ECS
<i>(With Potential Impact)</i>	<i>Fines</i>	MGR ■■■■
<i>(Willful Intent)</i>	<i>Criminal Prosecution</i>	LC
<i>(Major Damage Occurred)</i>	<i>Judicial Proceedings</i>	LC

Failure to Submit Reports in a Timely Manner

	<i>Phone Call/General Letter</i>	ECS
<i>(30 Days Late)</i>	<i>Notice of Noncompliance</i>	ECS
<i>(60 Days Late)</i>	<i>Monetary Fine</i>	MGR

KEY:	MGR – Manager	ECS – Environmental ■■■■
	LC – Local Court	UC – Utility Commission

Total Refusal to Submit

Termination of Service MGR/UC

Falsification of Reports

Monetary Fine MGR

(Willful Intent)

Criminal Prosecution
Termination of Service LC


Refusal of Entry

Letter ECS/MGR
Obtain a Warrant LC

Failure to Mitigate Noncompliance

Notice of Noncompliance ECS

*(Potential Impact of
Environmental Damages)*

*Monetary Fine with
Termination of Service* MGR 

Dilution of Wastestream to Meet Compliance

(Unintentional) *General Letter* ECS


(Intentional) *Notice of Noncompliance with Fines* ECS

Inadequate Record Keeping

General Letter ECS

(Recurring Event) *Notice of Noncompliance with
Fines following 2 occurrences* ECS

(Refusal) *Fines* MGR

KEY:	MGR – Manager	ECS – Environmental 
	LC – Local Court	UC – Utility Commission

Bypassing of Wastewater

	<i>Notice of Noncompliance</i>	ECS
<i>(Recurring)</i>	<i>Fines with Termination of Services following 2 occurrences</i>	ECS

No Permit to Discharge

	<i>Notice of Noncompliance</i>	ECS
<i>(Refusal)</i>	<i>Fines with Termination of Service</i>	ECS

KEY:	MGR – Manager	ECS – Environmental XXXXXXXXXX
	LC – Local Court	UC – Utility Commission

7.6 CONDITIONS FOR ESCALATING VIOLATIONS

In order for an enforcement action to be effective, it must be done in a timely manner. The noncompliance must be detected and responded to in a prompt and proper way. Noncompliance that is identified during the screening process should be reviewed to evaluate the type of enforcement response needed. Enforcement responses must be done in a prompt manner to correct the noncompliance situation from escalating into a major problem. The Utility will deliver an enforcement response based on the nature of the noncompliance, the time period, if the noncompliance is recurring and any potential impact which may cause damage to human health, environment, or the POTW infrastructure. It is expected that an immediate enforcement response will occur based on the severity of the noncompliance incident, especially when there is potential danger of damage to the Utility's personnel or infrastructure.

A decision to seek formal enforcement is generally triggered by a failure to achieve compliance in a specified time period through less formal means. Formal enforcement should be considered for each violation or group of violations that meets the definition of *significant noncompliance*. A formal action should be supported by a well-documented record of the violation by the industrial user and any prior efforts to obtain compliance on the part of the Utility. In the event the industrial user has received conflicting information regarding its compliance status, the status should be clarified in writing. The Utility may consider a special onsite review or inspection to verify the data available prior to commencing enforcement actions. The Utility may also designate the responsibility for preparing a formal enforcement action or providing the necessary information to an Attorney. Periodically, it may be necessary to alter this guide to have more effective enforcement response. Additionally, time changes regarding escalations of steps contained within

this guide may need to be evaluated. However, it is the Utility's desire to have a guide, which will make the response commensurate to the noncompliance incident.