

City of Jeffersonville

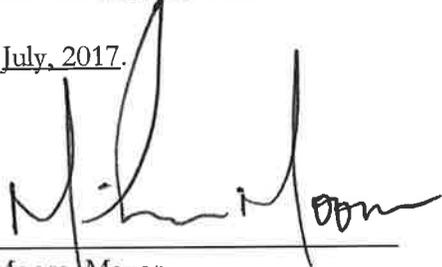


Enforcement Response Procedures

NPDES Permit No. IN0023302

NPDES Permit No. IN0063673

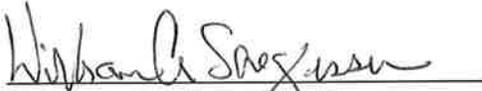
On order to provide consistency in the application of the Enforcement Activities in regard to discharges into the Jeffersonville POTWs , the City of Jeffersonville Sanitary Sewer Board has Reviewed and Adopts these Enforcement Response Procedures which with go into effect this 6th day of July, 2017.



Mike Moore, Mayor
President of the Sanitary Sewer Board



Dale Orem, Board Member



Bill Saegesser, Board Member

ATTEST:



Barbara Hollis
Sanitary Sewer Board Secretary

ENFORCEMENT RESPONSE PROCEDURES

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I. INTRODUCTION

Under the authority granted by Federal Pretreatment Standard 40 CFR 403.8 (f)(5) and NPDES Permit Nos. IN 0023302 and IN0063673, the City of Jeffersonville through the Wastewater Department (Department) is obligated to develop and implement an Enforcement Response Plan regarding violations of any pretreatment and discharge codes, laws or regulations. The plan shall outline the means by which the Department will address noncompliance, including responsible personnel and their respective roles, monitoring and inspections to find violators, determining the appropriate type of enforcement action including escalating penalties for repeat violators, determining adequacy and timelines of IU's responses to enforcement action and proper record-keeping to accurately track progress and ensure that the Department's actions are legally defensible.

This plan includes an Enforcement Response Procedures (ERP) which contains a range of enforcement responses available to the Department. The ERP addresses a broad range of pretreatment violations. It is intended to cover all types of violations but if any are omitted it is not intended to limit the enforcement discretion or action of any of the control agencies.

If a facility appears to be acting in good faith to comply with pretreatment regulations, the Department may choose an enforcement response that is not as coercive as one it would choose against a facility not acting in good faith. It must be noted however, that when taking into account a facility's good faith, congress clearly expressed in the Clean Water Act, that extraordinary efforts are required by the industrial community to comply with the pretreatment requirements. Therefore, the intention of good faith should be considered only if a facility is making every effort to comply with pretreatment requirements.

II. MANAGEMENT PLAN

A. Industrial Classification

Classification of each Industrial User (IU) is based on information obtained through the Wastewater Discharge Permit and preliminary site visit. Each Industry is categorized into one of the following groups:

1. IUs that are subject to federal categorical limits
2. IUs that meet the federal definition of Significant Industrial User (SIU) by:
 - a. discharging 25,000 gallons per day or more of process wastewater, or
 - b. contributing process waste water exceeding 5% of the POTW's dry weather hydraulic or organic loading capacity, or
 - c. having a reasonable potential to adversely affect the POTW workers, the POTW itself and the receiving stream
3. IUs that have non-significant wastewater streams

Any IUs falling under groups 1 and 2 are subject to pretreatment requirements and are issued an Industrial Wastewater Pretreatment (IWP) Permit by the City of Jeffersonville's Wastewater Department. IUs in group 3 are subject to pretreatment regulations, however

the Department does not issue permits to those facilities. Any facilities who identify certain aspects of their operations to be proprietary or confidential business information shall be protected by keeping such information in a separate, locked filing cabinet with access by only appropriate personnel. This information will be excluded from any public open records request.

Potential Industrial Users subject to an Industrial Pretreatment Permit are identified in one of the following ways:

- The company seeking information from the Department prior to locating within the City;
- Any new industry must get a permit for any new building or changes to an existing building. The Wastewater Department has weekly meetings with the Building Commissioner to discuss any changes to existing or new buildings which gives the Department an opportunity to discuss the plans and determine whether the new company may be subject to the pretreatment regulations;
- Regular surveillance in the collection system via CCTV inspections of the sewer lines and manholes. If conditions have changed in the system, the Pretreatment Coordinator is notified and further investigations are made to determine the source(s) of the changed conditions;
- Daily influent samples taken at both treatment plants, provide a mechanism to determine if the influent characteristics have changed, which will result in further investigations to determine the reason for the change; and
- All industrial user activity is monitored and tracked continuously to determine if a user requires a permit and to insure the proper procedures are followed including the application for and issuance of an industrial discharge permit.

B. Compliance Monitoring

Compliance monitoring activities are conducted by the Department. The Director or his authorized agent collect industrial samples and completes a chain-of-custody form which accompanies each sample. This form follows the sample through the analytical process if the analysis is conducted in-house, or until it is signed off by an authorized representative of the Department's contract laboratory and replaced by the contract laboratory's chain-of-custody form. These activities are necessary to identify and document violations and to verify IU self-monitoring reports. Discharge Permits issued to IU's require the submission of monthly self-monitoring reports. These reports are reviewed each month and are used in conjunction with any Department activities to determine compliance.

All permitted IU's are sampled by the Control Authority at a minimum of once per year. Annual sampling is random. IU's having compliance issues or requiring more oversight are sampled at a higher frequency. Surveillance activities are used to identify, independently, occasional and continuing noncompliance by an IU.

C. Industrial Inspections

Each facility that is permitted by the Department must be inspected at least once annually. Scheduled inspections are conducted annually to verify compliance and to identify any potential problems or violations. Additional inspections or site visits may occur during a

given year to track compliance schedule activities, verify changes in discharges or processes, maintain a regulator presence, or scrutinize facilities with discharges most likely to impact the POTW.

D. Compliance Decisions and Enforcement

All violations identified by the Director or the Pretreatment Coordinator are reviewed, evaluated, and addressed according to the guidelines of the Enforcement Management Plan. When determining an appropriate response, particularly one which includes the imposition of penalties, the specific procedures outlined in the Enforcement Response Guide shall be followed. However, additional criteria may be used in determination of the response including:

- Magnitude of the violation
- Duration of the violation
- Effect of the violation on the POTW's receiving stream
- Effect of the violation on POTW processes and equipment
- Compliance history of the industrial user
- Good faith of the industrial user
- Pollutants of particular importance to the POTW

When a minor violation occurs, a telephone call to the IU may suffice, otherwise, the majority of enforcement actions begin with the issuance of an initial Notice of Violation (NOV). The NOV describes the nature of the violation and informs the IU that any additional violations may result in escalated enforcement action.

Once the IU has been notified of a violation or has knowledge of a condition which is a violation, the IU shall be allowed up to thirty (30) calendar days to correct the noncompliance before escalation of the enforcement process occurs unless the violations threaten health, property or environmental quality. This thirty (30) day period applies only to an initial violation.

Any violations occurring after this period will be evaluated according to the ERG.

An IU receiving self-monitoring results, or Department's sampling results, which show a violation shall have thirty (30) days to correct the condition that exists or existed which contributed to the violation. Thereafter, each violation is evaluated for enforcement action. In addition, if a violation occurred during the thirty (30) day correction period, the industry must demonstrate that good faith was exercised to prevent or mitigate further violations during that period.

An IU must also notify the Department within 24 hours of becoming aware of a discharge violation, and is required to repeat the sampling and analysis, and to submit the results of the repeat analysis within (30) days of becoming aware of the violation. Failure to provide 24 hour notice or the 30 day resample report will constitute sampling/reporting noncompliance.

III. ENFORCEMENT PROCEDURES

A. Purpose

IUs that violate federal, state, or local requirements are subject to the conditions of the Department's Enforcement Management Plan and Enforcement Response Procedures (ERP) as contained herein. The ERG will help ensure equitable treatment of violators by providing a consistent basis for selection of appropriate responses to violations. The ERP shall be followed unless mitigating circumstances can be shown.

The ERG groups various types of violations into the following four categories:

- Violations of sampling, monitoring and reporting.
- Violations of compliance schedules.
- Violations of discharge limitations.
- Violations detected through inspection or field monitoring.

B. Types of Enforcement Responses

In order to provide a concise manual in a useable format, acronyms have been used for several of the types of response. A definition of the acronyms is as follows:

- | | |
|---|-----------------------------------|
| ▪ SV = Site Visit | ▪ CDO = Cease and Desist Order |
| ▪ NOV = Notice of Violation | ▪ SC = Show Cause Hearing |
| ▪ CO = Consent Order | ▪ AF = Administrative Fine |
| ▪ AO = Administrative Order | ▪ LIT = Litigation |
| ▪ ECS = Enforcement Compliance Schedule | ▪ SNC = Significant Noncompliance |
| ▪ TRC = Technical Review Criteria | ▪ UD = Utility Director |
| ▪ PTC = Pretreatment Coordinator | ▪ VTN = Verbal Telephone Notice |

1. VTN - A Verbal Telephone Notice describes a response to a minor type of violation which is conveyed verbally to the IU's contact person and no further follow up on the industry's part is expected. VTN is utilized when there is a very minor infraction, such as a report being received one or two days late.
2. SV - A Site Visit is a visit to the industrial site to discuss and observe the problem. This can be a substitution for VTN or NOV. The SV can also be made in conjunction with a NOV, indicating a reason for the noncompliance and what steps are being taken to eliminate any future violations of this nature. A Site Visit form needs to be filled out when this action is taken.
3. NOV - A Notice of Violation is the most widely used enforcement action and is a written notification to the IU indicating the type of apparent violation and requesting a response within ten (10) days, indicating a reason for the noncompliance and what steps are being taken to eliminate any future violations of this nature.

4. AO - An Administrative Order is issued to an IU by the Department and contains necessary corrective measures that need to be carried out by an IU to achieve compliance. A AO may contain minor compliance schedules, directives for increased monitoring and/or reporting frequencies, or other corrective actions that may be required to attain compliance.

An AO may contain one or more of the following requirements: Enforcement Compliance Schedules, Cease and Desist Orders, and Show Cause Hearings. The AO will normally contain a time frame of about six (6) months to one (1) year.

- a. ECS - An Enforcement Compliance Schedule is used when serious or long term violations of discharge limits occur that require the design and installation of new or additional pretreatment equipment. Usually the time frame will be six (6) months to one (1) year. Violations of the ECS can result in the next step, consisting of Administrative Fines.
 - b. CDO - A Cease and Desist Order is used when the District determines that an IU is violating the Sewer Use Ordinance, IWP Permit, any Order previously issued by the City, or any other pretreatment standard or requirement, and that these violations are likely to continue or reoccur. The Cease and Desist Order will direct the non-compliant IU to:
 - i. immediately stop all violations and comply with all requirements, and
 - ii. take immediate action to ensure that the violations do not continue or reoccur, including halting operations and/or terminating the discharge.
 - c. SC - A Show Cause Hearing is a meeting to show cause why a proposed enforcement action should not be taken. Notice shall be served on the IU specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the IU show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the IU. Whether or not the IU appears as ordered, immediate enforcement action may be pursued following the hearing date. A show cause hearing shall not be a prerequisite for taking any other action against the user. The IU may request a show cause hearing at the Department's convenience.
5. AF - An Administrative Fine is a monetary penalty assessed by the Department where deemed appropriate because of the nature and/or intent of the violation. The AF is an escalating response which exists to try to preclude court activity, and yet correct the problem and/or demonstrate the seriousness of the violation to the industry involved. The amount that can be imposed as an AF must be no greater than \$2,500 per violation, with each day and/or parameter being considered a separate violation. The administrative fine may be part of an (AO), or may be instituted as the step above or below an (AO).

6. LIT - Litigation is the most severe enforcement action and is utilized when an IU has not cooperated with the Department or responded to the other enforcement remedies. Litigation defines several courses of action including civil suits for injunctive relief and/or civil penalties, criminal suits, termination of service, etc. These types of actions would all involve the Courts and the City Attorney and would follow the procedures necessary for due process. Criminal cases will be referred to the Clark County Court for prosecution.

8. SNC- Significant Noncompliance See Part III, C for complete definition Utilizing the Enforcement Response Guide, the Director will initiate the appropriate response and see that the files have been updated to show the type of action being taken and the response date, if one is so indicated, and the type of action taken. The Director will initiate any field surveying which he/she feels appropriate to substantiate previous data received, or to double check the response of an IU to the action which they have indicated that they have taken.

C. Significant Noncompliance (SNC)

Instances of Significant Noncompliance (SNC) are IU violations which meet one or more of the following criteria:

1. Violations of Wastewater Discharge Limits

- a. Chronic violations - Sixty-six (66%) or more of all measurements taken during a six month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter.

- b. Technical Review Criteria (TRC) violations - Thirty-three percent (33%) or more of all measurements for each pollutant parameter taken during a six month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC listed below.

Conventional Pollutants: Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), Phosphorus (P), and Ammonia (NH₃-N).

TRC LIMIT - daily maximum x 1.4
TRC LIMIT - monthly average x 1.4

NOTE: Discharge of conventional pollutants in excess of surcharge concentrations will not constitute a significant violation unless the discharge satisfies a condition in 1.c or 1.d below.

Non-Conventional Pollutants: Industrial Pollutants, i.e. Metals, Total Toxic Organics (TTO), Cyanide (CN), etc.

TRC LIMIT - daily maximum x 1.2
TRC LIMIT - monthly average x 1.2

- c. Any other violation or violations of an effluent limit (daily maximum or average) that the City determines has caused, alone or in combination with other discharges, interference (i.e. slug loads) or pass through (including endangering the health of the POTW personnel or the general public.)
 - d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such discharge.
2. 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.
 3. Failure to provide, within 30 days after the due date, required reports such as the baseline monitoring report, 90-day Compliance Report, periodic report, and reports on compliance with compliance schedules.
 4. Failure to accurately report noncompliance.
 5. Any other violation or group of violations which the Department determines will adversely affect the operation or implementation of the local pretreatment program.

On a quarterly basis the Director will be responsible for reviewing the compliance file of all IUs for the previous six (6) months to determine if significant noncompliance exists for any IU. The Pretreatment Coordinator shall be responsible for seeing that all IUs in SNC are tabulated on an annual basis, and that the names of all SNC violators are published in the local daily newspaper, as required by EPA.

IV. ENFORCEMENT RESPONSE PROCEDURES

A. UNAUTHORIZED DISCHARGES (No permit)

	<u>NONCOMPLIANCE</u>	<u>NATURE OF THE VIOLATION</u>	<u>ENFORCEMENT ESPONSES</u>	<u>RESPONSIBLE REPRESENTATIVE</u>
1.	Unpermitted discharge	IU unaware of requirement; no harm to POTW/Environment	Phone call; NOV with application form	PTC
		IU unaware of requirement; harm to POTW	- AO with fine - Civil action	PTC -> UD
		Failure to apply continues after notice by the POTW	- Civil action - Criminal investigation - Terminate service	UD and Legal Counsel
2.	Non-permitted discharge(failure to renew)	IU has not submitted application within 10 days of due date	- Phone call; NOV	PTC
3.	Slug Loads	Slug loads are a violation, whether the IU is aware or not, without property damage or injury	- NOV	PTC
		Slug load with property damage or injury	- AO with fine	PTC -> UD

B. DISCHARGE LIMIT VIOLATION

	<u>NONCOMPLIANCE</u>	<u>NATURE OF THE VIOLATION</u>	<u>ENFORCEMENT ESPONSES</u>	<u>RESPONSIBLE REPRESENTATIVE</u>
1.	Exceedance of local or Federal Standard (permit limit)	Isolated, not significant	- Phone call; NOV	PTC
		Isolated, significant (no harm)	- AO to develop spill prevention plan and fine	PTC -> UD
		Isolated, harm to POTW or environment	- Show cause order - Civil action	UD and Legal Counsel
		Recurring, no harm to POTW/environment	- AO with fine	PTC -> UD
		Recurring, significant (harm)	- AO with fine - Show cause order - Civil action - Terminate service	PTC -> UD UD and Legal Counsel

C. MONITORING AND REPORTING VIOLATIONS

	<u>NONCOMPLIANCE</u>	<u>NATURE OF THE VIOLATION</u>	<u>ENFORCEMENT RESPONSES</u>	<u>RESPONSIBLE REPRESENTATIVE</u>
1.	Reporting violation	Report is improperly signed or certified	- Phone call or NOV	<i>PTC</i>
		Report is improperly signed or certified after notice by POTW	- AO	<i>PTC</i>
		Isolated, not significant (e.g., 5 days late)	- Show cause order	<i>PTC -> UD</i>
			- Phone call; NOV	<i>PTC</i>
		Significant (e.g., report 30 days or more late)	- AO to submit with fine per additional day	<i>PTC -> UD</i>
			- AO with fine	<i>PTC -> UD</i>
		Reports are always late or no reports at all	- Show cause order	<i>UD and Legal Counsel</i>
			- Civil action	
2.	Failure to monitor correctly	Failure to report spill or changed discharge (no harm)	- NOV	<i>PTC</i>
		Failure to report spill or changed discharge (results in harm)	- AO with fine	<i>PTC -> UD</i>
			- Civil action	<i>UD and Legal Counsel</i>
		Repeated failure to report spills	- Show cause order	<i>UD and Legal Counsel</i>
			- Terminate service	
Falsification	- Criminal investigation	<i>UD and Legal Counsel</i>		
	- Terminate service			
3.	Improper sampling	Evidence of intent	- NOV or AO	<i>PTC</i>
4.	Failure to install monitoring equipment	Recurring failure to monitor	- AO with fine	<i>PTC -> UD</i>
		Delay of less than 30 days	- Terminate service	<i>UD and Legal Counsel</i>
		Delay of 30 days or more	- NOV	<i>PTM</i>
5.	Compliance Schedules (in permit)	Recurring, violation of AO	- AO to install with fine for each additional day	<i>PTC -> UD</i>
			- Civil action	<i>UD and Legal Counsel</i>
			- Terminate service	
5.	Compliance Schedules (in permit)	Missed milestone by less than 30 days, or will not affect final milestone	- Terminate service	<i>UD and Legal Counsel</i>
		Missed milestone by more than 30 days, or will affect final milestone (good cause for delay)	- Civil action	
		Missed milestone by more than 30 days, or will affect final milestone (no good cause for delay)	- AO with fine	<i>PTC -> UD</i>
		Recurring violation or violation of schedule in AO	- NOV or AO with fine	
		- Show cause order	<i>UD and Legal Counsel</i>	
		- Civil action		
		- Terminate service	<i>UD and Legal Counsel</i>	
		- Civil action		
		- Terminate service	<i>UD and Legal Counsel</i>	

D. OTHER PERMIT VIOLATIONS

	<u>NONCOMPLIANCE</u>	<u>NATURE OF THE VIOLATION</u>	<u>ENFORCEMENT RESPONSES</u>	<u>RESPONSIBLE REPRESENTATIVE</u>
1.	Wastestreams are diluted in lieu of treatment	Initial violation	- AO with fine	PTC
		Recurring	- Show cause order - Terminate service	UD and Legal Counsel
2.	Failure to mitigate noncompliance or halt production	Does not result in harm	- NOV	PTC
		Does result in harm	- AO with fine - Civil action	PTC -> UD UD and Legal Counsel
3.	Failure to properly operate and maintain pretreatment facility	See No. 2. Above		

E. NON COMPLIANCE DETECTED DURING SITE VISITS

	<u>NONCOMPLIANCE</u>	<u>NATURE OF THE VIOLATION</u>	<u>ENFORCEMENT RESPONSES</u>	<u>RESPONSIBLE REPRESENTATIVE</u>
1.	Entry Denial	Entry denied or consent withdrawn Copies of records denied	- Obtain warrant and return to IU	UD and Legal Counsel
2.	Illegal Discharge	No harm to POTW or environment	- AO with fine	PTC -> UD
		Discharges causes harm or evidence of intent/negligence	- Civil action - Criminal investigation	UD and Legal Counsel
		Recurring, violation of AO	- Terminate service	
3.	Improper Sampling	Unintentional sampling at incorrect location	NOV	PTC
		Unintentionally using incorrect sample type	- NOV	PTC
		Unintentionally using incorrect sample collection techniques	- NOV	PTC
		Intentional improper sampling will be treated the same as falsification outlined on page 10	- Criminal Investigation - Terminate Service	UD and Legal Counsel
4.	Inadequate record keeping	Inspector finds files incomplete to missing (no evidence of intent)	- NOV	PTC
		Recurring	- AO with fine	
5.	Failure to report additional monitoring	Inspection finds additional files	- NOV	PTC
		Recurring	AO with fine	PTC -> UD

F. VIOLATIONS DETECTED DURING SITE VISITS

	<u>NONCOMPLIANCE</u>	<u>NATURE OF THE VIOLATION</u>	<u>ENFORCEMENT RESPONSES</u>	<u>RESPONSIBLE REPRESENTATIVE</u>
1.	Entry Denial	Entry denied or consent withdrawn Copies of records denied	- Obtain warrant and return to IU	<i>UD and Legal Counsel</i>
2.	Illegal Discharge	No harm to POTW or environment	- AO with fine	<i>PTC -> UD</i>
		Discharges causes harm or evidence of intent/negligence	- Civil action	<i>UD and Legal Counsel</i>
		Recurring, violation of AO	- Criminal investigation - Terminate service	<i>UD and Legal Counsel</i>
3.	Improper Sampling	Unintentional sampling at incorrect location	- NOV	<i>PTC</i>
		Unintentionally using incorrect sample type	- NOV	<i>PTC</i>
		Unintentionally using incorrect sample collection techniques	- NOV	<i>PTC</i>
		Intentional improper sampling will be treated the same as falsification as outlined on page 10	- Criminal investigation - Terminate service	<i>UD and Legal Counsel</i>
4.	Inadequate record keeping	Inspector finds files incomplete to missing (no evidence of intent)	- NOV	<i>PTC</i>
		Recurring	- AO with fine	<i>PTC</i>
5.	Failure to report additional monitoring	Inspection finds additional files	- NOV	<i>PTC</i>
		Recurring	AO with fine	<i>PTM -> AUD -> UD</i>

V. TIME FRAMES FOR RESPONSES

The Director through the Pretreatment Coordinator is responsible for reviewing analytical data and information gathered from Self-Monitoring Reports, Department's sampling reports, written notification of accidental discharges, and other sources. The Director makes compliance and enforcement decisions based on this information. This section outlines the time frames within which the Director shall identify and document these violations, and then initiate appropriate enforcement responses.

- A.** All violations will be identified and documented within (10) days of receiving compliance information.
- B.** Initial enforcement responses [involving contact with IU and requesting information on corrective or preventative actions(s)] will occur within (30) days of violation detection.
- C.** Follow up actions for continuing or recurring violations will be taken within (60) days of the initial enforcement response. For all continuing violations, the response will include a compliance schedule.
- D.** Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.

All violations meeting the criteria for SNC will be addressed with an enforceable order within (30) days of the identification of SNC.

Once an IU has been notified of a violation or has knowledge of a condition which is a violation, the IU may be allowed up to thirty (30) calendar days to correct the noncompliance before escalation of the enforcement process occurs. This thirty (30) day period applies only to an initial violation. Any violations occurring after this period will be evaluated according to the ERG.

An IU receiving self-monitoring results, or Department sampling results, which show a violation has thirty (30) days to correct the condition that exists or existed which contributed to the violation. Thereafter, each violation is evaluated for enforcement action. In addition, if a violation occurred during the thirty (30) day correction period, the industry must demonstrate that good faith was exercised to prevent or mitigate further violations during that period. An IU must also notify the Department within 24 hours of becoming aware of a discharge violation, and is required to repeat the sampling and analysis, and to submit the results of the repeat analysis within (30) days of becoming aware of the violation. Failure to provide 24 hour notice or the 30 day resample report will constitute sampling/reporting noncompliance.

The date of a violation (SNC or non-significant) begins on the date that the industry becomes aware of the violation. Each day (and parameter) shall be considered a separate violation until sufficient evidence exists that compliance is met.

**City of Jeffersonville
Enforcement Procedures**

