

## DELHI CHARTER TOWNSHIP

### ENFORCEMENT RESPONSE PLAN

This Control Authority Enforcement Response (CAER) Plan provides guidelines to assist the Township in determining, on a case-by-case basis, the appropriate minimum investigation of, and enforcement responses (and escalation of enforcement responses) to, instances of noncompliance with the Delhi Charter Township Wastewater Collection and Treatment Ordinance, as amended, (hereinafter referred to as the Township's "Wastewater Collection and Treatment Ordinance"). The Plan has been developed and is implemented under the authority provided by Section 78(g) of the Township's Wastewater Collection and Treatment Ordinance, and other applicable local, state and federal laws and regulations. The Plan and any associated regulations developed by the Township shall become effective upon approval by resolution of the Township Board.

Violations of local limits, categorical standards and other pretreatment requirements, whether isolated or recurrent, are violations not only of the Township's Wastewater Collection and Treatment Ordinance, but also of state and federal laws which separately provide for civil and criminal penalties. Accordingly, enforcement by the Township of its Wastewater Collection and Treatment Ordinance does not preclude enforcement actions by the state, the federal government, or third-parties. Further, the risk of an enforcement action being brought by the state, the federal government or third-parties increases with the length of noncompliance with applicable laws, even where enforcement actions are being taken independently by the Township to enforce its own regulations. The Plan is designed to assist the Township in obtaining full and timely compliance by Users with the Township's Wastewater Collection and Treatment Ordinance.

#### Definitions

For purposes of the CAER Plan, the following terms and abbreviations shall have the meanings set forth below:

- **“Continuing violation”** means a violation of the Wastewater Collection and Treatment Ordinance which is shown to continue or exist by at least two consecutive monitoring or inspection events.
- **“DP”** means a Wastewater Discharge Permit issued to an Industrial User as provided by Article 7 of the Wastewater Collection and Treatment Ordinance.
- **“ISM”** means inspection, surveillance and monitoring activities and procedures as necessary to determine compliance or noncompliance of a User with applicable requirements as authorized by Section 85 of the Wastewater Collection and Treatment Ordinance and other applicable provisions of law.
- **“Isolated violation”** means a violation of the Wastewater Collection and Treatment Ordinance that is not a continuing or recurring violation.

- **“MCI”** means a Municipal Civil Infraction subject to payment of a civil fine of not less than \$1,000.00 per day for each violation, plus costs and other sanctions, as provided by Section 90 of the Wastewater Collection and Treatment Ordinance.
- **“Minor Violation”** means a violation that is primarily technical in nature, where there is no substantial evidence of intent or negligence; and with no substantial likelihood of having an adverse impact on human health, safety, welfare, property, or the environment, or the administration of the Township’s IPP.
- **“Major Violation”** means a violation where there is evidence of intent or negligence; or that may have an adverse impact on human health, safety, welfare, property, or the environment; or on the administration of the Township’s IPP.
- **“NOV”** means Notice of Violation as provided by Section 86 of the Wastewater Collection and Treatment Ordinance.
- **“OE”** means an enforcement order as provided by Section 87 of the Wastewater Collection and Treatment Ordinance, including, without limitation, any of the following types of orders as determined appropriate by the Township based upon the circumstances in question: Order to Immediately Cease and Desist Discharge; Order to Terminate Sewer Services; Order to Cease Discharge within a Time Certain; Order to Effect Pretreatment; Order to Perform Affirmative Action; or Order to Show Cause.
- **“OE-ICD”** means an Order to Immediately Cease and Desist Discharge as provided by Section 87(b)(1) of the Wastewater Collection and Treatment Ordinance.
- **“OE-TERM”** means an Order to Terminate Sewer Services as provided by Section 87(b)(5) of the Wastewater Collection and Treatment Ordinance.
- **“OSC”** means an Order to Show Cause as provided by Section 87(b)(6) of the Wastewater Collection and Treatment Ordinance.
- **“Recurring violation”** means a continuing violation or a violation that is part of a pattern of noncompliance with the Wastewater Collection and Treatment Ordinance.
- **“SNC”** means Significant Noncompliance as provided by Section 89 of the Wastewater Collection and Treatment Ordinance.
- **“User”** means any person who contributes, causes or permits the contribution, introduction or discharge of wastewater into the POTW, whether intentional or unintentional, and whether directly or indirectly, as provided by Section 4 of the Wastewater Collection and Treatment Ordinance.
- **“Wastewater Collection and Treatment Ordinance”** means the Township’s Wastewater Collection and Treatment Ordinance, but also includes any permit, order, notice or agreement issued or entered into under the Ordinance.

### **Enforcement Response Guide Table**

The Enforcement Response Guide Table describes: (1) examples of acts or omissions by a User of the POTW which may result in noncompliance with the Wastewater Collection and Treatment Ordinance; (2) examples of circumstances under which instances of noncompliance may arise (including the nature and frequency of the noncompliance and other mitigating or aggravating factors); and (3) a minimum range of possible enforcement responses. The examples in the Table are listed solely for purposes of illustration and are not intended to be exclusive or exhaustive.

The enforcement response chosen for any particular instance of noncompliance must ultimately be determined by the Township on a case-by-case, fact-specific basis under the Wastewater Collection and Treatment Ordinance. In determining an appropriate enforcement response to violations, the factors considered may include: the magnitude of the violation(s); the duration of the violation(s); the frequency of violations; the effect of the violation(s) on the receiving waters; the effect of the violation(s) on the POTW; the compliance history of the User (including the User's good faith efforts to comply); and other factors as determined appropriate by the Township under the circumstances.

In addition to the types of enforcement responses listed in the Table, the Township may also institute legal proceedings in the appropriate court to seek, without limitation, injunctive relief, costs, damages, penalties, imprisonment or any other relief that the court may order for any violation of the Wastewater Collection and Treatment Ordinance.

*[Enforcement Response Guide Table begins on next page.]*

**DELHI TOWNSHIP ENFORCEMENT RESPONSE GUIDE TABLE**

NONCOMPLIANCE	CIRCUMSTANCES	RESPONSES
<i>Sampling, Monitoring and Reporting</i>		
Failure to sample, monitor, or report.	Isolated.	Phone call and/or NOV. If no response within 10 days, ISM, OE and/or MCI.
Failure to sample, monitor, report or notify.	User does not respond to letters, does not follow through on verbal or written agreement, or recurring violation.	NOV, ISM, OE and/or MCI.
Failure to notify of effluent limit violation or slug discharge.	Recurring or continued violation.	NOV, ISM, OE and/or MCI.
Minor sampling, monitoring, or reporting deficiencies (computational or typing errors).	Isolated.	Phone call and/or NOV. Corrections to be made on next submittal. ISM and/or OE, if continued.
Major or gross sampling, reporting deficiencies (missing information, late reports, etc.).	Isolated.	NOV, ISM and/or OE. Corrections monitoring, or to be made on next submittal.
Major or gross reporting deficiencies.	Remains uncorrected 30 days or more.	NOV, ISM and/or OE. MCI, OE-ICD and/or OE-TERM, if no response.
Reporting false information; tampering with sampling/monitoring equipment.	Any instance.	NOV, ISM, OE, MCI, OE-ICD and/or OE-TERM. Request criminal investigation if any evidence of intent.
Refusal to permit access to premises, records, samples, etc.	Any instance.	NOV, ISM, OE, MCI, OE-ICD and/or OE-TERM.

***Compliance Schedules***

Missed NOV interim date.	Will not cause late final or other interim dates.	Phone call and/or if no response within 10 days, ISM and/or OE.
Missed interim date.	Will result in other missed interim dates. Violation for good or valid cause.	Phone call, NOV, ISM and/or OE.
Missed interim date.	Will result in other missed interim dates. No good or valid cause.	Phone call, NOV, ISM , MCI and/or OE.
Missed final date.	Violation due to forces beyond control of user.	NOV, require documentation of reason for violation, ISM and/or OE.
Missed final date.	Failure or refusal to comply without good cause.	NOV, ISM, OE, MCI, OE-ICD and/or OE-TERM.
Missed final date.	90 days or more outstanding. Failure or refusal to comply without good valid cause.	NOV, ISM, OE, MCI, OE-ICD and/or OE-TERM.
Failure to install monitoring equipment.	Continued.	NOV, ISM, OE, MCI, OE-ICD and/or OE-TERM.
Reporting false information.	Any instance.	NOV, ISM, OE, MCI, OE-ICD and/or OE-TERM. Request criminal investigation if any evidence of intent.

***Effluent Limits***

Exceeding limits (final).	Isolated violations not exceeding TRC for any effluent limit.	Phone call and NOV. If no response within 10 days, ISM and/or OE.
Exceeding limits (final).	Continuing or recurring violations not exceeding TRC for any effluent limit.	Phone call and NOV. If no response within 10 days, ISM and/or OE.
Exceeding limits (final).	Isolated violations exceeding TRC for any effluent limit.	Phone call and NOV. OSC, OE and/or MCI if

		environmental harm.
Exceeding limits (final).	Continuing or recurring violations exceeding TRC for any effluent limit.	Phone call and NOV. OSC, OE and/or MCI if environmental harm.
Exceeding limits (final).	Violation(s) that are SNC.	NOV, OE, MCI, OE-ICD and/or OE-TERM.
Exceeding limits (interim).	Without known damages.	Phone call and NOV. OSC and/or OE.
Exceeding limits (interim).	Results in known environmental or POTW damage.	NOV, OE, MCI, OE-ICD and/or OE-TERM.
Reported slug load.	Isolated without known damage.	Phone call, NOV, OSC and/or OE.
Reported slug load.	Isolated with known interference pass-through, or damage.	NOV, OE, MCI and/or OE-ICD.
Reported slug load.	Recurring.	NOV, OE, MCI, OE-ICD and/or OE-TERM.
Discharge without a DP or other approval.	One time without known damage.	Phone call, NOV, OSC and/or OE.
Discharge without a DP or other approval.	One time with known damage, or continuing violation.	NOV, OE, MCI, OE-ICD and/or OE-TERM. Request criminal investigation if any evidence of intent.

***Noncompliance Detected Through Inspection/Field Work***

Minor violation of analytical procedures.	Any instance.	Phone call and/or NOV. If no response w/in 10 days, ISM and/or OE.
Major violation of analytical procedures.	No evidence of intent.	Phone call and NOV. OSC, ISM and/or OE.
Major violation of analytical procedures.	Evidence of negligence or intent.	NOV, ISM, MCI, OE-ICD and/or OE-TERM. Request

		criminal investigation if any evidence of intent.
Minor violation of DP.	No evidence of negligence or intent.	Phone call, NOV, OSC and/or OE. Immediate correction required.
Minor violation of DP.	Evidence of negligence or intent.	NOV, ISM, OE, MCI, OE-ICD and/or OE-TERM. Request criminal investigation if any evidence of intent.
Major violation of DP.	Evidence of negligence or intent.	NOV, ISM, OE, MCI, OE-ICD and/or OE-TERM. Request criminal investigation if evidence of intent.

*[Text of Delhi Township CAER Plan continues on next page.]*

### **Timeframes For Responses**

In addition to the timeframes for enforcement responses as set forth in the Enforcement Response Guide Table, above, the following timeframes for enforcement response guidelines shall apply to violations of the Wastewater Collection and Treatment Ordinance. They are to be applied at the discretion of the POTW Superintendent as determined appropriate to the particular circumstances and as needed to ensure compliance with applicable requirements.

- All violations will be identified and documented by the POTW upon discovery, or upon notification by the user.
- Except as otherwise expressly provided by this ERP, initial phone calls or other initial actions in response to a known or suspected violation should be made as soon as reasonably possible after becoming aware of the situation. In all cases, however, initial responses involving contact with the industrial user and requesting information on the nature of the violation, corrective and preventative action taken, etc., should occur within 15 days after detection of the violation.
- Subsequent response actions should also proceed without unnecessary delay, and should be conducted as expeditiously as possible, consistent with the nature and severity of the violation, applicable requirements and regulations as provided by the Wastewater Collection and Treatment Ordinance and other local, state and federal laws and regulations, and as necessary to minimize any reasonably likely adverse impacts on human health, safety, property, the environment, or the POTW.
- Unless otherwise specified by a NOV, within 30 days of the date of the NOV, the user shall submit to the POTW an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions. If no response to the NOV is received within that period (or other period as specified by the NOV), the POTW should issue an appropriate Order and take any additional necessary enforcement actions.
- The POTW should take action to enforce or escalate enforcement of a continuing or recurring violation as soon as reasonably possible, preferably within 30 days from the time that the POTW determines that the violation is continuing or recurring, with the goal of obtaining compliance within 60 days from that time. The enforcement response to a continuing or recurring violation should include a compliance schedule with a final compliance date, as determined appropriate by the POTW.
- Any actual or threatened discharge to the POTW which presents (or may present) imminent or substantial endangerment to the health or welfare of persons, to property, to the environment, or which causes (or may cause) Interference or Pass Through, or any other action or omission of a User where the POTW determines that a delayed response might endanger human health, the environment or the POTW, is subject to immediate suspension and abatement as determined necessary by the POTW under the authority of the Wastewater Collection and Treatment Ordinance, including, without limitation, the



immediate issuance of an Order to Immediately Cease and Desist Discharge or an Order to Terminate Sewer Services.

- Any violation which meets the criteria for a Significant Noncompliance should be addressed with an appropriate order within 30 days of the identification of the Significant Noncompliance.

### **Additional Enforcement Guidelines Applicable to IPP Violations**

The following additional enforcement response guidelines apply to violations of the Wastewater Collection and Treatment Ordinance. They are to be applied at the discretion of the POTW Superintendent as determined appropriate to the particular circumstances and as needed to ensure compliance with applicable requirements.

- All phone calls to initiate lower level enforcement actions and the issuance of Notices of Violation are the responsibility of the POTW Superintendent (or the Superintendent's delegated representative). The Superintendent is also be responsible for other aspects of the administration and enforcement of the Township's Wastewater Collection and Treatment Ordinance, in conjunction with the Township Attorney and other Township officials, as determined appropriate by the Superintendent or as otherwise required by the Wastewater Collection and Treatment Ordinance.
- A written record should be kept of all phone calls made by the POTW for purposes of initiating or furthering an enforcement action. At a minimum, the record should include the names of the parties participating in the call, the time and date of the call, the purpose of the call, the violation involved, any compliance schedules agreed upon, and any representations made by the User regarding compliance or intent to comply, as appropriate to the particular circumstances.
- All remedies for violations provided by the Wastewater Collection and Treatment Ordinance are cumulative. The imposition of a single penalty, fine, order, damage, or surcharge upon any person for a violation of the Wastewater Collection and Treatment Ordinance, or of any permit, order, notice or agreement issued or entered into under the Wastewater Collection and Treatment Ordinance, does not preclude the imposition by the Township or a court of competent jurisdiction of a combination of any or all of those sanctions and remedies or additional sanctions and remedies with respect to the same violation, consistent with applicable statutory limitations on penalty amounts. A criminal citation and prosecution of a criminal action against a person is not dependent upon or held in abeyance during any civil, judicial, or Township administrative proceeding, conference, or hearing regarding the person.
- Best Management Practices (BMPs), Best Management Practices Plans (BMPPs), Pollutant Reduction Plans (RPs): BMPS, BMPPs, RPs and similar practices or minimization plans are case specific and to be implemented as provided by the Wastewater Collection and Treatment Ordinance. Non-Compliance is based on the IU's permit, an Order, or the provisions of the Wastewater Collection and Treatment

Ordinance. Non-Compliance may result in (and in most cases will result in) immediate elimination from BMPs, BMPPs, RPs, and similar approaches. Enforcement response shall be dependant on the violation and shall be executed as per the discretion of the POTW Superintendent. IUs may reapply for BMPs, BMPPs, ROs, etc., with POTW approval ass situation warrants and subject to the requirements of the Wastewater Collection and Treatment Ordinance.