ENFORCEMENT RESPONSE PLAN

PIMA COUNTY, ARIZONA

DEPARTMENT OF WASTEWATER MANAGEMENT

SEPTEMBER 8, 1993

PIMA COUNTY
DEPARTMENT OF WASTEWATER MANAGEMENT
ENFORCEMENT RESPONSE PLAN

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EXECUTIVE SUMMARY

The Industrial Wastewater Ordinance (1991-140) and Title 40 Code of Federal Regulations (CFR) part 403 gives the Director of the Wastewater Management Department in Pima County authority to enforce local, State and Federal pretreatment standards within the County border. Authority is extended when those facilities outside County lines discharge to treatment facilities within County borders. The Director has the primary responsibility within the Wastewater Management Department for developing and maintaining the Pretreatment Program, and has delegated the Pretreatment Program requirements to the Wastewater Plant Superintendent.

In 1982, the Industrial Wastewater Control Section (IWC) was formed in Pima County, followed by the development of a Pretreatment Program which was adopted by the Board of Supervisors on June 7, 1982. The first Industrial Wastewater Ordinance was adopted by the Pima County Board of Supervisors on October 12, 1982. A fourth Industrial Wastewater Ordinance (1991-140) was adopted on December 10, 1991.

On November 23, 1988, the United States Environmental Protection Agency (U.S. EPA) amended the General Pretreatment Regulations requiring all Publicly Owned Treatment Works (POTWs) with approved pretreatment programs to develop and implement an Enforcement Response Plan (ERP) to provide guidance to Control Authority personnel in identifying, documenting and responding to pretreatment violations. However, Pima County Wastewater Management Department will utilize discretion to respond to noncompliance and to deviate from the ERP when determined appropriate.

The Clean Water Act, (ACT) as amended by the Water Quality Act of 1987, sets forth basic requirements to regulate the nature and quantity of industrial wastes discharged to POTWs; such legislation being found in 40 CFR 403. The U.S. EPA has revised part 403 pursuant to sections 307 (b) and 402 (b)(8) of the Act. The most recent revision to part 403 resulted in the promulgation of a final rule on July 24, 1990. Contained within part 403.8 (f)(5) are a list of minimum requirements for the development of an ERP.

The actions required of the Pima County Wastewater Management Department, as outlined in this document, are intended to satisfy the U.S. EPA's requirement for the development of an ERP.

The elements of the ERP identified below describe a process to identify, document and respond to pretreatment violations in a timely and equitable manner consistent with relevant State and Federal law and with the legal authority contained in Pima County Code, Title 13, Chapter 36. The principles establish a framework for

the management of enforcement matters and emphasize flexibility in controlling the overall operation.

The key elements of the ERP:

- Describe how the POTW will investigate instances of noncompliance;
- Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
- Identify (by title) the official(s) responsible for each type of response; and
- Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8(f)(1) and (2).

Many of these elements have heretofore been incorporated into the Department's existing approved Pretreatment Program. The goal of the ERP is to describe the manner in which the Department enforces its Pretreatment Program in light of recent Federal legislation.

The existing general pretreatment requirements are contained within the Pima County Code, Title 13, Chapter 36.

Definition of terms

Those terms in the ERP which are defined by Pima County Code, Title 13, Chapter 36 shall have the meaning in the code. Conflict between a defined word in the Code and a specialized definition of the same word so noted in an Industrial Wastewater Discharge Permit shall be resolved in favor of the Permit definition.

SECTION 1: METHODS TO INVESTIGATE NONCOMPLIANCE

Methods used by the POTW to investigate the compliance status of the Industrial User (USER) include, but are not limited to, the following:

1.1 Field Inspections. Field inspection is an on-site presence of trained personnel to gather data for immediate fact determination or evaluation of compliance. The types of data gathered include documents, statements, and observations. Physical evidence and information may also be collected as evidence that may lead to enforcement.

1.2 Surveillance Sampling. Surveillance sampling is performed by obtaining a representative sample of a discharged substance in accordance with regulatory requirements. Typically, surveillance sampling are the samples of discharge from USER operations taken by IWC personnel.

1.3 Document Review. Document review includes the analysis of data that relates to the compliance status of a USER, such as USER correspondence, Self-Monitoring Reports, and Baseline Monitoring Reports.

1.4 Meetings. Meetings, both formal and informal, with a USER are utilized to obtain and share information which relates to any aspect of the Pretreatment Program. Meetings may be used to investigate technical issues (laboratory analysis, sampling procedures/locations, application of regulations, etc..), concerns about the compliance status of a USER, or to gather facts concerning alleged violations.

1.5 Increased Monitoring. Increased monitoring by submission of samples and/or records may be required of the USER to provide further data to demonstrate the compliance status.

1.6 Technical Evaluation/Research. In making the determination of a USERs compliance status when substantial technical considerations exist, an evaluation of the best available scientific and technical information will be made. This evaluation may include the assistance of technical resource people, industrial or regulatory subject matter experts, or documents from research, pilot studies, etc.

1.7 Interaction with other Agencies. Review of local and State files, communication with the State and local departments of Environmental Quality, the Southern Arizona Environmental Crimes Task Force, the Pima County Attorney Criminal Division, and County Environmental Task Force, for example, is utilized to further investigate the compliance status.

1.8 Other Methods. Other methods to establish the compliance status may be used as the need may arise on a case-by-case basis.

SECTION 2: ENFORCEMENT/TYPES OF ESCALATING RESPONSES

This section describes the range of available enforcement actions. The enforcement philosophy is progressive; that is, problems are addressed at the lowest level and with the least formality possible, consistent with the specific program. **However, it should be remembered that the enforcement action is not contingent upon the completion of any less formal procedures and depending upon the factual scenario presented, a formal procedure may be needed for the initial action.** Listed below are available enforcement actions.

2.1 Deterrents to Enforcement Actions.

2.1.A Annual Public Notice. In accordance with the requirements and definition of Pima County Code Section 13.36.170(F), a list of USERs who are in significant noncompliance at anytime during the previous year is published in the daily newspaper with the largest circulation within 120 days of the end of the calendar year.

2.1.B Performance Bonds. The Director can require the posting of Performance Bonds by any USER, as required by the Pima County Code, Title 13, Chapter 36.

2.2 Pre-Enforcement.

2.2.A Request for Information. Request for information to determine if noncompliance is occurring can be verbal or written.

2.2.B Regulatory Compliance Assistance. Meetings are held for USERs to discuss compliance questions and to assist the USER in understanding requirements of the Permit and to identify available resources.

2.2.C Verbal Warnings. An attempt to make contact is made by telephone to a USERs authorized representative explaining the nature of the discrepancy. The industry is encouraged to return to compliance.

2.2.D Written Warning. A written warning may be sent to a USERs authorized representative explaining the nature of the discrepancy and seeking further information in determining noncompliance.

2.3 Enforcement.

2.3.A Notification of Violation (NOV). A Notification of Violation states the violation(s), may require submittal of information, and requires the USER to take any corrective action necessary to prevent the recurrence of the violation(s). An NOV may include, but is not limited to:

- An Order for Corrective Action. This Order requires the USER to carry out a corrective plan of action to prevent the recurrence of noncompliance. The USER has ten (10) days to respond in writing (from the time of receipt of letter) explaining reasons for violation(s) and detailing a plan of corrective action.

- An Order to Respond. An Order to Respond requires the USER to respond in writing to allegations of noncompliance.

- A Compliance Schedule. A Compliance Schedule may be made part of an enforcement order. The deadline dates are subject to civil penalties and are as enforceable as a discharge limit.

- An Order to Show Cause. An Order to Show Cause is an action to allow the USER the opportunity to "show cause" why the Wastewater Management Department should not request the Pima County Attorney to petition the courts to impose, assess, and recover a sum not to exceed Twenty-five Thousand Dollars ($25,000.00) for each day in which the violation(s) has occurred. The USER has ten (10) days to respond in writing explaining the reasons for the violation(s) and detailing a plan of corrective action.

- An Order to Cease Discharge. An Order to Cease Discharge orders the USER to cease discharge of industrial waste to the POTW by a specified time on the date of the receipt of the order, and to carry out a corrective plan of action to prevent the recurrence of noncompliance to enable the lifting of the cease discharge order. In addition, a show cause meeting is scheduled. The USER is required to respond within ten (10) days in writing to the NOV. A meeting between the USER and the POTW will occur at the earliest convenience of the USER, but no later than the date specified in the Order.

- An Intent to Suspend. An Intent to Suspend establishes a performance standard which must be demonstrated within a specific time limit. Failure to comply invokes permit suspension.

- Permit Suspension. Permit Suspension states the violation(s), informs the USER of permit suspension, and outlines the corrective

action(s) the USER must carry out before the permit is reactivated and discharge is allowed by the Director. In addition, a show cause meeting may be scheduled. The USER has ten (10) days to respond in writing to the NOV.

- Permit Revocation. Permit Revocation informs the USER of permit revocation and discharge prohibition and outlines corrective action(s) the USER must carry out before a new permit can be applied for. The USER has ten (10) days to respond in writing to the NOV.

- Other Orders. The Director may issue additional Orders determined to be appropriate. Additional Orders and changes to a Suspension or Revocation may follow the initial Order at the discretion of the Director or as additional information becomes available.

2.3.B Sewer Service Termination. Sewer Service Termination is authorized when it is necessary to cease a discharge from a USER that could present a hazard to public health, safety or welfare, environment, or to the POTW.

2.3.C Emergency Authority. The use of Emergency Authority is authorized when a violation presents an immediate hazard to public health, safety or welfare, environment, or to the POTW. Any of the enforcement action options can be used in the event of the need for Emergency Authority invocation, including judicial actions consisting of temporary restraining orders and/or preliminary and permanent injunctions.

2.3.D Judicial Actions. Whenever the Director finds that a USER has violated any of the provisions of Pima County Code, Title 13, Chapter 36, the County Attorney may be requested to take appropriate legal action. This legal action may include, but is not limited to:

- Prohibitive injunctions;
- Mandatory injunctions for corrective action and cleanup;
- Civil penalties pursuant to Pima County Code, Title 13, Chapter 36;
- Criminal penalties pursuant to A.R.S. § 11-251.5; A.R.S. § 13-2311 (Fraudulent Schemes and Practices); A.R.S. § 13-1201 (Endangerment); A.R.S. § 13-1602 (B)(1) (Criminal Damage to a Utility); A.R.S. § 13-2407 (Tampering with a Public Record); A.R.S. § § 49-803 (A)(1) and 49-810 (Discharge of Used Oil to Sewers without a Permit); and
- Recovery of civil damages, penalties and costs to the POTW.

Civil Actions. The County has authority to file a civil suit for violation of any Article of Pima County Code, Title 13, Chapter 36 where appropriate pursuant to A.R.S. § 49-391. A civil action may be settled by Court judgment or Consent Decree. Before a consent decree filed with Superior Court becomes final, the County shall provide a period of thirty (30) days for public comment [A.R.S. § 49-391(C)]. A sample form Consent Decree and Settlement Agreement is attached as Exhibit "A" in Section 8 below.

Criminal Prosecution. The County Attorney has authority pursuant to A.R.S. § 11-251.5 under State law for criminal prosecution of USERs who violate provisions of the ordinance and other State laws. The County may seek criminal prosecution when there is evidence of willfulness, negligence, or bad faith shown by the USER for:

- Violations of the Ordinance;
- Violations of industrial wastewater discharge permits (such as discharges in excess of permit limits, or failure to submit self-monitoring reports);
- Violations of Orders for Corrective Actions issued to implement pretreatment requirements (such as orders to Cease Discharge or Show Cause orders);
- Failure to notify the Control Authority of unauthorized discharges (such as slug loads);
- Falsification of records; or
- Tampering with monitoring equipment.

Violations which continue for more than one day shall be deemed separate and distinct offenses.

The EPA Guidance Document for Developing Control Authority Enforcement Response Plans suggests that "bad faith" is typically demonstrated by a lack of cooperation and incompleteness of corrective measures in a timely manner.

2.4 Alternative Conflict Resolution. Conflicts can also be resolved by alternative methods agreed upon by both the USER and the County on a case-by-case basis, as not to conflict with State Statutes. Examples of actions include the broad based analysis by the County and USERs to resolve the technical violations created by the EPA Test Method 420.1 (total phenols), the Pollution Prevention School used to educate nonsignificant USERs in lieu of assessing a penalty, and negotiated settlement agreements.

2.4.A Pollution Prevention School.

Purpose: To educate USERs in lieu of assessing a pretreatment penalty, who for the first time have one violation related to Sampling, Monitoring, and Submission of Reports with respect to their Industrial Wastewater Discharge Permits and the Industrial Wastewater Ordinance.

Course Content: The class will be approximately four (4) hours in length. It will cover the background of the NPDES program - Permits, Wastewater Collection, Treatment and Disposal in Pima County; the way in which Permits are written; Actions which the USER must take to comply with the Permit; exemptions available; the Enforcement Response Plan and the penalties for violations of their Permit; and a discussion of Pima County Code, Title 13, Chapter 36.

Notice: The USER would be sent an NOV advising them of the alternatives (1) go to school; or (2) attend Show Cause Meeting. A fee for the course will be required.

2.4.B Negotiated Settlement Agreements.

Purpose: As provided by State Statute, pretreatment programs may seek compliance and recovery of civil penalties by a negotiated settlement agreement. This process is anticipated to be used for permittees who are not significant industrial users in significant noncompliance. Negotiated settlements are also not available when the violation causes an interference, pass-through, upset or damage to POTW or public or private property not owned by the permittee.

When To Use Agreements: Settlement Agreements are appropriate when the permittee has not previously entered into an administrative or civil consent decree or been found liable in a State or Federal court for similar violations under this permit. Pursuant to A.R.S. § 49-391(C), before a negotiated settlement becomes final, the County shall provide a period of thirty (30) days for public comment as provided in Section 2.4.C below. A sample form Negotiated Settlement Agreement is attached as Exhibit "B" in Section 8 below.

Penalty Amount: The proposed settlement will be determined using the procedures of Section 6 considering the Penalty Evaluation List and the Penalty Amount sections.

2.4.C § 49-391(C) Public Notice.

Public notice and comment will be provided pursuant to the requirements of § 49-391(C) by the following:

(1) Notice by publication in the general agenda of the Board of Supervisors;

(2) Announcement by the Chairman at the regular agenda meeting that public comments will be received by Industrial Wastewater Control Group (IWC) for thirty (30) days from the date of this announcement, on settlements either administrative or civil. Copies of the settlement and the enforcement file shall be available for public review at Wastewater Management's Permit desk, first floor, Public Works Building.

(3) At the Board of Supervisors' regular agenda Board meeting thirty (30) days subsequent to the agenda item, or as soon thereafter as possible, depending upon the Board's schedule, IWC will report to the Board on the public comments and recommend action to be taken by the Board. If there are sufficient requests from the public for a hearing and oral testimony, the Board may grant a hearing and take oral testimony.

(4) When a settlement is found to be acceptable by the Board and the permittee, the agreement will be filed. Consent Decrees will be filed with the Court and negotiated settlement agreements will be filed with the Director of Wastewater Management.

SECTION 3: OFFICIAL RESPONSIBLE FOR RESPONSE

3.1 Pre-Enforcement. The Compliance Officer is responsible for pre-enforcement responses.

3.2 Enforcement.

3.2.A Notifications of Violation. The Director shall issue all Notifications of Violation.

3.2.B Sewer Service Termination. The Director shall authorize Sewer Service termination.

3.2.C Emergency Authority. The Director requests the County Attorney to obtain appropriate judicial order(s).

3.2.D Judicial Actions. The Director requests the County Attorney to proceed with appropriate judicial action(s).

3.2.E Alternative Enforcement. The Director shall determine if Alternative Enforcement is appropriate.

3.2.F Consent Decrees. The Board of Supervisors shall approval all Consent Decrees.

SECTION 4: POTW'S RESPONSE TO ENFORCEMENT REQUIREMENTS

Pima County's Industrial Wastewater Ordinance reflects the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards as detailed in 40 CFR 403.8(f)(1) and (2).

SECTION 5: SCHEDULING CRITERIA

Field investigations are scheduled to meet annual requirements; in response to emergency and remedial actions; in response to violations; technical problems; or support for permit modification.

SECTION 6: PENALTY POLICY

Pima County Wastewater Management Department can propose for acceptance to the Board of Supervisors a monetary penalty to be included in a Consent Decree for violations of pretreatment standards or requirements. Monetary penalties are to recapture the full economic benefit of noncompliance and to deter future violations.

6.1 When to Assess Penalties. Penalties may be sought by the Director in a State or Federal Court Action for any of the following reasons:

- Significant Noncompliance;
- Anytime there is pass-through, interference or upset;
- Whenever the County is required to use emergency authority; or
- For any other noncompliance for which the Director finds the recovery of civil damages, penalties, and costs to the POTW are appropriate.

In determining the amount of a penalty, the following items of the **Penalty Evaluation List** will be considered:

- Type and severity of violation;
- Number of violations cited;
- Duration of noncompliance;
- Impact of violation on wastewater treatment plant or environment;
- Whether the violation threatened human health;
- Whenever the USER derived any economic benefit or savings from noncompliance;
- Compliance history of the USER; or
- "Good Faith" efforts to restore compliance.

It is the County's policy to seek up to the maximum penalty available in a court action if not otherwise resolved.

6.2 Methods of Assessing Penalties. A.R.S. § 49-391 provides for the enforcement of this Ordinance by imposing and recovery of a penalty of not more than $25,000 for each violation. For continuing violations, each day may constitute a separate offense.

6.3 Penalty Amount. The Penalty is calculated from the findings of the Penalty Evaluation List in the following method: the type of noncompliance, the Proposed Penalty Amount for that type of noncompliance, and the Penalty Adjustment Factor from Section 6.3.A. The tables in Sections 6.3.B., 6.3.C., 6.3.D., and 6.3.E. establish for each type of noncompliance, the base amount of the penalty, and the potential penalty adjustment factors. Section 6.3.A. lists the types of criteria used to determine the penalty adjustment factor, which is a multiplier based on the criteria listed. The Director may propose other Penalty Adjustment Factors for circumstances fundamentally different than those listed; to adequately, but not excessively, recover economic benefit; or, to mitigate extreme hardship on the USER.

The proposed penalty shall be the sum of the Base Penalty Amount from the tables times the number of violations adjusted by the applicable Penalty Adjustment Factors for each type of noncompliance. Four illustrative examples of the calculation for a proposed penalty are found in Exhibit "C" in Section 8 below.

6.3.A Penalty Factor.

CRITERIA	PENALTY ADJUSTMENT FACTOR
(1) - Base Penalty Amount	1
(2) - Significant Industrial User (SIU)	.5
(3) - Slug Load	1
(4) - Failure to Notify - Immediate or 24-hour notice	1
(5) - Upset or Interference of POTW	3
(6) - Pass-through of POTW	3
(7) - Use of Emergency Response, Evacuation, Injury to workers or public	4
(8) - Reoccurrence, Failure to Correct	2
(9) - Impact on Sludge Disposal	2
(10) - The Good Faith to restore compliance	-.5
(11) - Extraordinary efforts to stop the violation	-1
(12) - The Compliance History of USER	-.5
(13) - Pollution Prevention School	

6.3.B Unauthorized Discharges (No Permit).

NONCOMPLIANCE	AMOUNT OF PENALTY	PENALTY ADJUSTMENT FACTOR
(1) Unpermitted Discharge	$200 per day of discharge	1,4,5,6,7,8,9,10,12
(2) Nonpermitted Discharge (failure to renew)	$1,000 per incident	1,8,9,10
(3) Others	$200 per day of discharge	1,4,5,6,7,9

6.3.C Violations Related to Sampling, Monitoring, and Submission of Reports.

[This section includes, but is not limited to the following: Report is improperly signed or certified; using incorrect sample collection or analytical procedures; failing to submit self-monitoring information; failure to notify of slug loads; filing late reports.]

NONCOMPLIANCE	AMOUNT OF PENALTY	PENALTY ADJUSTMENT FACTOR
(1) Failure to Provide Report Within 30 Days After Due Date	$500 per incident	1,2,8,9,10,11,12,13
(2) Failure to Monitor	$200 per pollutant	1,2,3,7,8,9,10,11,12
(3) Failure to Make Notification	$400 per incident	1,3,4,6,7,8,9,10,11
(4) Enforceable Compliance Schedules	$200 per day	1,8,9,10
(5) Inadequate Recordkeeping	$200 per day	1,7,9,10
(6) Failure to Report Additional Monitoring	$200 per incident	1,2,7,9,10,12
(7) Failure to Accurately Report Noncompliance	$1,000 per incident	1,12
(8) Entry Denial	$2,000 per day of discharge	1,8
(9) Failure to Provide Access to Sample Location	$2,000 per day of discharge	1,8
(10) Others	$200 per day	1,2,3,4,5,6,7,8,9,10,11,12

6.3.D Discharge Limit Violation.

NONCOMPLIANCE	AMOUNT OF PENALTY	PENALTY ADJUSTMENT FACTOR
(1) Numeric Violation of Code or Permit	$2,000 per day of discharge	1,2,3,4,5,6,7,8,9,10,11,12
(2) Numeric Violation of Federal Categorical Monthly Average	$1,000 times days in month in which there is a discharge	11
(3) Wastestreams are Diluted in Lieu of Treatment	$2,000 per day of discharge	1,2,3,4,5,8,9,10,11,12
(4) Failure to Mitigate Noncompliance or Halt Production	$2,000 per day of discharge	1,2,3,4,5,6,7,8,9,10,11,12
(5) Failure to Properly Operate and Maintain Pretreatment Facility	$2,000 per day of discharge	1,2,3,4,5,6,7,8,9,10,11,12
(6) Others	$2,000 per day of discharge	1,2,3,4,5,6,7,8,9,10,11,12

6.3.E Recovery of Damages and Penalty.

NONCOMPLIANCE	AMOUNT OF PENALTY
(1) Reimbursement of costs to Department to respond and correct damages caused by USER.	Actual cost of personnel, equipment utilization, and materials in response and corrective action.
(2) Reimbursement of County cost incurred in cleaning, repairing, or replacing private property caused by USER.	Actual cost of payments.
(3) Penalty for actions which caused damages.	Three (3) times the total cost of damages [i.e. the sum of items (1) and (2)].

SECTION 7: ENFORCEMENT RESPONSE GUIDE

The Enforcement Response Guide, adopted for Pima County, is the standard EPA configuration. It is intended as a "snapshot" or quick overview of the enforcement process. Instructions for using the detailed guidance precede the Guide. Stepping through the Enforcement Response Guide, according to the directions, will allow the USER to arrive at a projected course of action under "standard conditions". However, only a small percentage of actual enforcement cases follow "standard conditions", and therefore, the County will still evaluate on a case-by-case basis the most appropriate enforcement course of action.

7.1 Description of Terms.

Terms and abbreviations used in the Enforcement Response Guide are defined below. Specific enforcement responses are described in greater detail in Section 2.

CA	County Attorney
CO	Compliance Officer
Civil Action	Civil litigation against the USER seeking relief, monetary penalties and actual damages
D	Director
ERG	Enforcement Response Guide
IU	Industrial User
NOV	Notification of Violation
POTW	Publicly Owned Treatment Works. The County's two major POTW's are commonly referred to as the Ina Road Water Pollution Control Facility and the Roger Road Wastewater Treatment Plant
Review Meeting	Informal compliance meeting with USER to resolve noncompliance
Show Cause Order	Formal meeting requiring the USER to appear and demonstrate why the County should not take a proposed enforcement action

7.2 Instructions for using the Enforcement Response Guide.

(1) Locate the type of noncompliance in the first column.

(2) Using column two, identify the most accurate description of the nature of the violation.

(3) Assess the appropriateness of the recommended response(s) in column three. First offenders or those demonstrating good faith may merit a more lenient response. Similarly, repeat offenders or those demonstrating willful conduct may require a more stringent response. The County may want to use what would normally be reserved as a follow-up response as the initial action for more serious circumstances.

(4) Document the rationale for selecting the particular enforcement response.

(5) Apply the enforcement response to the industrial use. Specify corrective action or the response required from the USER.

(6) Document USER responses and resolution of noncompliance.

(7) Follow-up with escalated enforcement action, if the USERs response is not received or if violations continue.

7.3 Pima County Wastewater Enforcement Response Guide (ERG).

I. UNAUTHORIZED DISCHARGES (No Permit)

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSES	PERSONNEL
A. Unpermitted Discharge	1. IU unaware of requirements; no harm to POTW/environment.	- Phone call; NOV with permit application form	CO
	2. IU unaware of requirements; harm to POTW.	- Show Cause Order - Civil Action	D D, CA
	3. Failure to comply; continues after notice by the POTW.	- Show Cause Order - Civil Action - Criminal Action - Terminate Services - Revoke Permit	D D, CA CA D D
B. Nonpermitted Discharge (failure to renew)	1. Permit expired; no application submitted.	- Show Cause Order - Civil Action - Criminal Action - Terminate Services - Revoke Permit	D D, CA CA D D

II. DISCHARGE LIMIT VIOLATION

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSES	PERSONNEL
Exceedance of Local or Federal Standard (permit limit)	1. Isolated.	- Phone call; NOV - Automatic IU resampling - Unannounced inspection - Unannounced County sampling	CO CO CO CO
	2. Recurring; 2 or more violations within a 90-day period.	- Automatic IU resampling - Unannounced inspection - Unannounced County sampling - Show Cause Order - Civil Action - Terminate Services - Revoke Permit - Criminal Action	CO CO CO D D, CA D D CA
	3. Harm to POTW or environment.	- Automatic IU resampling - Unannounced inspection - Unannounced County sampling - Show Cause Order - Civil Action - Terminate Services - Revoke Permit - Criminal Action	CO CO CO D D, CA D D CA

III. MONITORING AND REPORTING VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT	PERSONNEL
A. Reporting Violation	1. Report is improperly signed or certified.	- Phone call; NOV	CO
	2. Report is improperly signed or certified after notice by County.	- Show Cause Order	D
	3. Late reporting (29 days or less).	- NOV	CO
	4. Any single report 30 days or more late.	- Show Cause Order - Civil Action	D D, CA
	5. Failure to report spill or changed discharge; IU unaware of requirement.	- Phone call; NOV	CO
	6. Failure to report spill or changed discharge; IU aware of requirement.	- Show Cause Order - Civil Action	D D, CA
	7. Repeated failure to report spills.	- Show Cause Order - Civil Action - Terminate Services - Revoke Permit	D D, CA D D
	8. Falsification.	- Criminal Action - Terminate Services - Revoke Permit	CA D D
	9. Missing or incomplete information.	- Phone call; NOV	CO
	10. Failure to correct report with missing or incomplete information.	- Show Cause Order - Civil Action	D D, CA
B. Failure to Monitor Correctly	1. Failure to monitor all pollutants as required by permit.	- NOV	CO
	2. Recurring failure to monitor.	- Show Cause Order - Civil Action	D D, CA
C. Improper Sampling	1. Evidence of Intent.	- Civil Action - Criminal Action - Terminate Services - Revoke Permit	D, CA CA D D

III. MONITORING AND REPORTING VIOLATIONS (continued)

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT	PERSONNEL
D. Enforceable Compliance Schedules	1. Missed milestone.	- NOV - Review Meeting	CO CO
	2. Recurring violation or violation of schedule in Consent Decree.	- Show Cause Order - Civil Action - Criminal Action - Terminate Services - Revoke Permit	D D, CA CA D D
	3. Failure to start construction, complete construction, or achieve compliance within 90 days of the date specified in an enforceable order.	- Show Cause Order - Civil Action - Terminate Services - Revoke Permit	D D, CA D D

IV. OTHER PERMIT VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSES	PERSONNEL
A. Wastestreams are diluted in lieu of treatment	1. Initial violation.	- Review Meeting	CO
	2. Recurring.	- Show Cause Order - Civil Action - Terminate Services - Revoke Permit	D D, CA D D
B. Failure to mitigate noncompliance or halt production	1. Failure to comply with a requirement to cease discharge.	- Show Cause Order - Civil Action - Terminate Services - Revoke Permit	D D, CA D D
C. Failure to properly operate and maintain pretreatment facility	1. Initial violation.	- NOV - Review Meeting	CO CO

V. VIOLATIONS DETECTED DURING SITE VISITS

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSES	PERSONNEL
A. Entry Denial	1. Entry denied or consent withdrawn. Copies of records denied.	- Obtain Warrant - Criminal Action - Revoke Permit - Terminate Services	CA CA D D
B. Failure to Provide Free Access	1. Initial Violation.	- NOV - Show Cause Order	CO D
C. Inadequate recordkeeping	1. Inspector find files incomplete to missing. Initial Violation.	- Phone Call; NOV - Review Meeting	CO CO
	2. Recurring, after prior notice to remedy.	- Show Cause Order	D

V. VIOLATIONS DETECTED DURING SITE VISITS (continued)

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSES	PERSONNEL
D. Failure to report additional monitoring.	1. Inspector finds additional results; Initial Violation.	- Phone call; NOV - Review Meeting	CO CO
	2. Recurring after prior notice to remedy.	- Review Meeting - Show Cause Order	CO D

VI. MISCELLANEOUS - SIGNIFICANT NONCOMPLIANCE (SNC)

NONCOMPLIANCE	RANGE OF ENFORCEMENT RESPONSES	PERSONNEL
A. Chronic violation of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit for the same pollutant parameter.	- Show Cause Order - Civil Action - Criminal Action - Terminate Services - Revoke Permit - Newspaper Publication Required	D D, CA CA D D D
B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or average limit multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH).	- Show Cause Order - Civil Action - Criminal Action - Terminate Services - Revoke Permit - Newspaper Publication Required	D D, CA CA D D D
C. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).	- Show Cause Order - Civil Action - Criminal Action - Terminate Services - Revoke Permit - Newspaper Publication Required	D D, CA CA D D D
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 under this chapter to halt or prevent such a discharge.	- Show Cause Order - Civil Action - Criminal Action - Terminate Services - Revoke Permit - Newspaper Publication Required	D D, CA CA D D D
E. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a permit or enforcement order for starting construction, completing construction, or attaining final compliance.	- Show Cause Order - Civil Action - Criminal Action - Terminate Services - Revoke Permit - Newspaper Publication Required	D D, CA CA D D D
F. Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90 day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.	- Show Cause Order - Civil Action - Criminal Action - Terminate Services - Revoke Permit - Newspaper Publication Required	D D, CA CA D D D

VI. MISCELLANEOUS - SIGNIFICANT NONCOMPLIANCE (SNC) (continued)

NONCOMPLIANCE	RANGE OF ENFORCEMENT RESPONSES	PERSONNEL
G. Failure to accurately report noncompliance action.	- Show Cause Order	D
	- Civil Action	D, CA
	- Criminal Action	CA
	- Terminate Services	D
	- Revoke Permit	D
	- Newspaper Publication Required	D
H. Any other violation or group of violations which will adversely affect the operation or implementation of the local Pretreatment Program.	- Show Cause Order	D
	- Civil Action	D, CA
	- Criminal Action	CA
	- Terminate Services	D
	- Revoke Permit	D
	- Newspaper Publication Required	D

7.4 Timeframes for Responses

A. Violations will be identified and documented within five days of receiving compliance information.

B. Initial enforcement responses [involving contact with the USER and requesting information on corrective or preventative action(s)] will occur within 30 days of our knowledge of a violation.

C. Violations which threaten health, property, or environmental quality are considered emergencies and will receive immediate responses, (not to exceed 48 hours) such as halting the discharge or terminating services.

D. Follow-up compliance activities will begin no later than 45 days after the initial enforcement action is taken.

E. When follow-up compliance actions indicate that a violation persists or that satisfactory progress is not being made, enforcement will be escalated within 90 days of the initial enforcement action.

EXHIBIT A

STEPHEN D. NEELY
PIMA COUNTY ATTORNEY
CIVIL DIVISION
32 North Stone, Suite 1500
_____
_____
Tucson, AZ 85701
Telephone: (602) 740-5750
Pima County Computer No. _____

Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

PIMA COUNTY, a body politic and corporate, Plaintiff, v. _____, Defendant.	NO. CONSENT DECREE AND SETTLEMENT AGREEMENT (Non-classified Civil) Assigned to Judge _____

RECITALS

1. Plaintiff Pima County ("Pima County") has filed a Complaint pursuant to Pima County Code, Section 13.36.____ (Ordinance No. ____).

2. The Complaint filed by Pima County alleges that Defendant, _____ ("_____"), located at _____, Tucson, Arizona, (specific factual allegations) _____

_____

_____.

3. It is the desire of Pima County and _____ to resolve, settle, release and discharge, without further proceedings, the pending Complaint and all disputes between them

arising out of the allegations thereof, together with all other pending matters arising out of _____'s Permit as of the date of filing the Complaint. To that end, Pima County and _____ have entered into this Consent Decree and Settlement Agreement ("Agreement") in order to resolve all disputes among them according to the terms, conditions and provisions herein.

PROVISIONS

4. All of the foregoing "Recitals" are incorporated by reference in the "Provisions" segment of this Agreement, as though fully set forth herein.

5. The Court has jurisdiction over this matter and over the Parties to this Agreement. The Parties agree not to contest the jurisdiction of the Court to enter this Decree. The Complaint filed by Pima County states a cause of action upon which, if the allegations were proved, relief could be granted against _____.

6. _____ agrees to abide by the provisions and conditions of this Agreement, it does not admit to any of the findings or allegations contained herein, nor does _____ admit liability for any purpose or admit any issues of law or fact.

7. _____ shall pay to Pima County Wastewater Management the sum of $____ (_____ and _/100 Dollars) as full settlement of the civil penalties requested by Pima County in the Complaint under Pima County Code Chapter 13.36 within thirty (30) days of filing this Decree. Payment shall be made by certified or cashiers' check to Pima County Wastewater Management, delivered to the Pima County Attorney's Office, Civil Division, 32 North Stone Avenue, Suite 1500, Tucson, Arizona 85701. The payment shall be accompanied by a letter of transmittal.

8. Pima County Wastewater Management shall accept the sum of $____ (_____ and _/100) Dollars as full payment of any and all claims arising out of Pima County's Complaint against _____. In the event that payment is not made pursuant to this time schedule, interest shall accrue at a simple interest rate of ten percent (10%) and this debt shall be collectable in the same fashion as any other judgment debt approved by order of the

Court.

9. **(Stipulated Penalty section, if required)**

10. Upon _____'s payment to Pima County of the sum of $____ (___ and __/100) Dollars, Pima County shall cause the case No. _____ entitled Pima County, a body politic and corporate v._____, to be dismissed with prejudice and this Decree shall be terminated.

11. Pima County acknowledges full and complete satisfaction of any and all claims arising from the Complaint against _____ and its affiliates, shareholders, directors, officers, employees, agents, assigns or successors in interest, and further declares and represents that no promises, inducements or agreements not herein expressed have been made to _____, and that this Agreement contains the entire agreement between the Parties hereto, and that the terms of this Agreement are contractual and not a mere recital.

12. This Agreement does not relieve _____ of its legal obligation to comply with all applicable federal and state environmental laws, regulations, ordinances and permit conditions in operating its Pima County facility.

13. In the event any Party hereto finds it necessary to employ legal counsel to bring an action at law or other proceeding against any other Party to enforce any of the terms, covenants or conditions herein, the Party prevailing in such action shall be paid all reasonable attorneys' fees by the other Party, and in the event any judgment is secured by such prevailing Party, all such attorneys' fees shall be included in such judgment in such action or proceeding. The amount of reasonable attorneys' fees shall be determined by the Court and not by a Jury.

14. The persons executing this Agreement expressly represent and warrant that they are authorized to execute the same. Further, the Parties expressly acknowledge that they, and each of them, (**either:** have been given the opportunity to be represented by their respective attorneys and that _____ is authorized to and has waived _____ right to an attorney; **or:** have been represented by their respective attorneys) in connection with the preparation and execution of this Agreement, and the terms, conditions and provisions of this

Agreement shall be construed only according to their fair import.

15. The Parties agree that each of them shall do such further action and execute such further documents, if any, which may be necessary or appropriate to implement this Agreement according to all of its terms and conditions.

16. It is the intent of the Parties that this Agreement shall not be used in any judicial proceedings or in any other manner against _____.

17. This Agreement shall be governed by the laws of the State of Arizona, and all actions under it shall be brought in Pima County, Arizona.

PIMA COUNTY	(name of company/person)_____
BY_____ Chairman, Board of Supervisors	BY_____ _____
Dated_____	Dated_____
Approved as to Form: STEPHEN D. NEELY PIMA COUNTY ATTORNEY	_____
By_____ Deputy County Attorney	By_____ (name of attorney or if no attorney "Representation waived")

EXHIBIT B

BEFORE THE PIMA COUNTY BOARD OF SUPERVISORS

IN THE MATTER OF:	)	NEGOTIATED SETTLEMENT AGREEMENT
	)	
PERMIT NO:	)	NO.
_____	)	

This Negotiated Settlement Agreement (hereinafter "Agreement"), made and entered into this ____ day of _____, 199_, between Pima County, Arizona, a body politic and _____ ("_____")_ pursuant to A.R.S. § 49-391(C) as amended effective July 17, 1993.

I. LEGAL AUTHORITY.

1. Pima County is a political subdivision of the State of Arizona with authority pursuant to A.R.S. § 11-264 to establish and maintain a wastewater system.

2. Pursuant to Pima County Ordinance 1991-140 and Pima County Code, Title 13, Chapter 13.36, Pima County has authority to regulate persons who are industrial users of Pima County's wastewater system. Pima County's regulatory program for industrial users is entitled the "Industrial Wastewater Ordinance" (hereinafter "IWO").

3. Pima County's IWO is a federally approved pretreatment ordinance. The Environmental Protection Agency has approved the IWO as being in accordance with the requirements of Title 40 of the Code of Federal Regulations, Section 403.8, and the permit conditions imposed on Pima County's Roger Road Wastewater Treatment Plant and Ina Road Water Pollution Control Facility, by National Pollutant Discharge Elimination System Permits No. AZ 0020923 and 0020001, respectively.

4. _____ is a "Person" as defined in Title 13, Chapter 36, Section 13.36.040(X) of the Pima County Code.

5. _____ is an "Industrial User" of Pima County's wastewater

treatment system as defined in Title 13, Chapter 36, Section 13.36.040(Q) & (R) of the Pima County Code. [or use "Significant Industrial User" PCC 13.36.040(EE)]

6. Public Comment. The parties agree and acknowledge that final approval of this agreement is subject to the requirements of A.R.S. § 49-391(C) which provides for public comment.

II. FINDINGS.

1. _____ discharges nondomestic wastewater containing pollutants in the sanitary sewer system of Pima County, Arizona ("Pima County").

2. At the time of the industrial (discharge, violation, etc.) that gave rise to this Agreement, _____, was a (corporation, sole proprietorship, partnership, etc.) authorized to do business in the State of Arizona and operated a (list type of facility), located at _____, Pima County, Arizona.

3. Pima County's Industrial Wastewater Control Group (hereinafter "IWC") issued Industrial Wastewater Discharge Permit No. _____ to _____(hereinafter "Permit") effective _____. A copy of the Permit is attached as exhibit "A".

4. Part I.C. of the Permit requires _____ to periodically sample its industrial wastewater discharges and to report the results of laboratory analyses in Self-Monitoring Report Forms (hereinafter "SMRF's").

5. (specific facts regarding the violations)

III. TERMS AND CONDITIONS

1. It is the desire of Pima County and _____ to resolve, settle, release and discharge, without further proceedings, all disputes between them arising out of the Findings above, _____'s Permit as of the date of this Agreement. To that end, Pima County and _____ have entered into this Agreement in order to resolve all identified disputes among them according to the terms, conditions and provisions herein.

2. Civil Penalties.

_____ agrees to pay to Pima County Wastewater Management,

within thirty (30) days of the execution date of this Agreement as determined by the latest signature date below, the sum of _____ as full settlement of all penalties requested by Pima County under Pima County Code, Title 13, Chapter 13.36. Payment shall be made in a lump sum by **certified or cashier's check** made payable to the order of Pima County Wastewater Management and delivered to the Pima County Attorney's Office, Civil Division, 32 North Stone Avenue, Suite 1500, Tucson, Arizona 85701. The payment shall be accompanied by a letter of transmittal. In the event that payment in full is not made within thirty (30) days from the date of execution of this Agreement, _____ agrees to pay interest on any outstanding portion at a simple interest rate of ten (10) percent.

Pima County Wastewater Management agrees to accept the sum of _____ _____ as payment in full of all claims arising from the allegations against ____ ____ as set forth in the Findings above. Upon receipt of said sum, Pima County acknowledges full and complete satisfaction of all said claims against _____ and its affiliates, shareholders, directors, officers, employees, agents, assigns, or successors in interest, and further acknowledges and represents that no promises, inducements, or agreements not herein expressed have been made to _____. This Agreement contains the entire agreement between Pima County and _____ and the terms, conditions, and provisions of this Agreement are contractual and not a mere recital.

3. Stipulated Penalties.

4. Compliance Schedules.

5. Failure of Compliance. The parties agree that it is the responsibility of _____ to achieve and maintain complete compliance with all applicable Federal, State and local laws, regulations and permits, and that compliance with this decree shall be no defense to any actions commenced pursuant to said laws, regulations or permits.

6. Attorneys' Fees. In the event that either Pima County or _____ find it necessary to employ legal counsel to bring an action at law or other proceeding against the other Party to enforce any of the terms, conditions, or provisions of this Agreement, the

Party prevailing in such action shall be paid all reasonable attorneys' fees by the other Party, and in the event that any judgement is secured by such prevailing Party in such action or proceeding, all such attorneys' fees shall be included in such judgement. The amount of reasonable attorneys' fees shall be determined by the Court and not by a Jury.

7. Authority. The persons executing this Agreement expressly represent and warrant that they are authorized to execute the same. Pima County and _____ expressly acknowledge that they, and each of them, have been given the opportunity to be represented by their respective attorneys and that they have been so represented in connection with the preparation and execution of this Agreement. The terms, conditions, and provisions of this Agreement shall be construed only according to their fair import.

8. Form of Notice. Unless otherwise provided for in this agreement, any notice or communication with Pima County, the Department of Wastewater Management or Industrial Wastewater Control shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested and shall be addressed as follows:

To the County:

Director
Pima County Wastewater Management
Industrial Wastewater Control Group
5025 West Ina Road
Tucson, Arizona 85743

To _____
_____
_____

9. Non-Waiver Provisions. This agreement in no way relieves _____ ____ of responsibility to comply with any other Federal, State, local law or permit conditions in operating its Pima County facility.

10. Severability. The provisions of this agreement shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with Federal or State law, and therefore unenforceable, the remaining provisions of this decree shall remain in full force and effect.

11. Termination. Upon _____'s payment in full to Pima County of the sum of $_____, this Agreement shall terminate.

12. Good Faith. The Parties agree that each of them shall do such further action and execute such further documents, if any, which may be necessary or appropriate to implement this Agreement according to all of its terms and conditions.

13. Limitations. It is the intent of the Parties hereto that this Agreement shall not be used in any judicial proceedings or in any other manner against _____.

14. Binding Effect. The provisions of this Agreement shall be binding upon the parties to this action, their officers, directors, agents, servants, employees, successors, assigns and all persons, firms and corporations in active concert with them.

15. Governing Law. The terms and conditions of this Agreement shall be governed by the State of Arizona.

16. Date of Public Notice. Public notice will be given at the Pima County Board of Supervisors Meeting scheduled on _____.

PIMA COUNTY

_____
Arizona Corporation

BY_____
Chairman, Board of Supervisors

BY_____

Dated_____

Dated_____

Approved as to Form:

STEPHEN D. NEELY
PIMA COUNTY ATTORNEY

_____
Arizona Corporation

By_____

Deputy County Attorney

By_____

Attorney for _____

EXHIBIT C - Case 1

I BACKGROUND

Industry XYZ, Inc. located at 2600 W. Wastewater Drive, Tucson, Arizona is a Metal Finisher which conducts electroplating operations and, as such, is regulated by the Code of Federal Regulations (CFR) Title 40 Part 433 as a Metal Finishing Category Discharger and is therefore a Significant Industrial User (SIU) in the Pima County Pretreatment Program.

The Industrial Wastewater Discharge Permit for this facility sets forth the limitations of the discharge of industrial wastewater to the POTW. The discharge must comply with the following discharge limitations along with others at the sample location:

DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
Parameters	(Maximum for any one day)	[Monthly Average (1)]	Type	Frequency
Cadmium (total)	0.1 mg/L	0.07 mg/L	Composite (2)	Once per week
Zinc (total)	2.6 mg/L	1.48 mg/L	Composite	Once per week
pH	6.0 - 9.0 (min.-max.) (for any time)	N/A	Continuous Recording (any representative day)	Once per month

(1) The monthly average for a pollutant is the arithmetic mean of analysis results for all composite samples collected during a calendar month.

(2) A composite sample is a combination of no fewer than eight (8) individual portions obtained at equal time or flow intervals for 24 hours or for the duration of discharge, whichever is shorter.

II HISTORY

The history for the referenced facility for the period January 1, 1992 through June 30, 1992 is as follows:

1992	CADMIUM		ZINC		pH	
Month	Conc.	Violation Reference	Conc.	Violation Reference	Standard Unit	Violation Reference
Jan.						
1 - 4	.10		1.40		Min. 6.8	
5 - 11	.12	A	1.45		Max. 7.2	
12 - 18	.20	B	1.20			
19 - 25	.50	C	1.01			
26 - 31	.10		0.96			
Monthly Avg.	.20	D	1.20			
Days of Discharge - 20						
Feb.						
2 - 8	.14	E	1.40		Min. 6.5	
9 - 15	.07		1.79		Max. 7.3	
16 - 22	.07		1.75			
23 - 29	.50	F	1.69			
Monthly Avg.	.20	G	1.44	L, R (1.66)		
Days of Discharge - 18						
Mar.						
1 - 7	.04		1.41		Min. 5.5 for 53 minutes	M
8 - 14	.04		1.59			
15 - 21	.13	H	1.60			
22 - 28	.12	I	1.40		Max. 7.2	
29 - 4	.02		1.20			
Monthly Avg.	.07		1.44			
Days of Discharge - 22						
Apr.						
5 - 11	.12	J	1.21		Min. 6.6	
12 - 18	.12		1.02		Max. 7.4	
19 - 25	.03		1.00			
26 - 2	.02		0.95			
Monthly Avg.	.07		1.05			
Days of Discharge - 20						

	CADMIUM		ZINC		pH	
Month	Conc.	Violation Reference	Conc.	Violation Reference	Standard Unit	Violation Reference
May						
3 - 11	.01		0.95		Min. 6.5	
10 - 16	.02		0.99		Max. 7.0	
17 - 23	.12	K	1.05			
24 - 31	.05		1.10			
Monthly Avg.	.05		1.02			
Days of Discharge - 18						
Jun.						
1 - 6	.08		1.10		Min. 6.5	
7 - 13	.10		1.00		Max. 6.9	
14 - 20	.07		1.26			
21 - 27	.05		1.40			
28 - 30	.02		1.20			
Monthly Avg.	.06		1.19			
Days of Discharge - 20						

III ANALYSIS

The number of numeric violations are as follows:

2 Slug Load (Violations C and F)

8 Daily Maximum (Violations A, B, E, H, I, J, K and M)

3 Monthly Average (Violations D, G and L)

The Self-Monitoring Report received on June 2, 1992 did not indicate a Zinc violation. When the Report was reviewed, the actual monthly average was calculated to be 1.66 instead of the reported 1.44. This arithmetic error is an example of inaccurately reporting noncompliance (Violation R). Additionally, the Self-Monitoring Report due April 28, 1992 was received June 2, 1992, 35 days late (Violation N).

TRC determination - TRC Factor for Cadmium = .1 x 1.2 = .12
9 of the 27 measurements equal or exceed the TRC value.

IV DETERMINATION

Penalty is applicable due to Significant Noncompliance (SNC). Of the eight criteria listed in the Pima County Code, Title 13, Chapter 36, the following apply:

- Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all of the 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;

- Failure to provide, within 30 days after due date, required reports such as periodic Self-Monitoring Reports; and

- Failure to accurately report noncompliance.

V PENALTY CALCULATION

The Proposed Penalty is calculated by the following method: the type of noncompliance, the Base Penalty Amount for that type of noncompliance, and the penalty adjustment factor as provided for in Section 6.3.A. In the following example, Violation Reference refers to the particular violation that occurred; the bold wording refers to the particular violation.

PENALTY FOR SIGNIFICANT NONCOMPLIANCE (SNC) - CADMIUM

Violation Reference

A **Daily Maximum.**

Penalty = Base Penalty Amount plus an Adjustment Factor for SIU.

= $2,000 [Base Penalty (1) + SIU (.5)]

= $2,000 [1 + .5] = $2,000 [1.5] = $3,000.00

B **Daily Maximum. Federal Pretreatment Standard.**

Penalty = Calculated in the same manner as Violation "A" above.

= $3,000.00

V PENALTY CALCULATION (Continued)

Violation Reference			
C	**Daily Maximum. Slug Load.**		
	Penalty	= Base Penalty Amount plus an Adjustment Factor for SIU, and Slug Load	
		= $2,000 [Base Penalty (1) + SIU (.5) + Slug Load (1)]	
		= $2,000 [1 + .5 + 1] = $2,000 [2.5] =	$5,000.00
D	**Federal Categorical Monthly Average.**		
	Penalty	= The number of days of discharge in the month times the Base Penalty Amount	
		= $1,000 [20 days] =	$20,000.00
E, H, I, J, and K	**Daily Maximum.**		
	Penalty	= Calculated in the same manner as Violation "A" Above.	
	E	=	$3,000.00
	H	=	$3,000.00
	I	=	$3,000.00
	J	=	$3,000.00
	K	=	$3,000.00
F	**Daily Maximum. Slug Load.**		
	Penalty	= Calculated in the same manner as Violation "C" Above.	
		=	$5,000.00
G	Federal Categorical Monthly Average.		
	Penalty	= The number of days of discharge in the month times the Base Penalty Amount	
		= $1,000 [18 days] =	$18,000.00

V PENALTY CALCULATION (Continued)

Penalty for Significant Noncompliance with the categorical limit for the parameter Cadmium:

Violations A, B, E, H, I, J & K = (7 X $3,000)	=	$ 21,000.00
Violations C & F = (2 X $5,000)	=	$ 10,000.00
Violation D	=	$ 20,000.00
Violation G	=	$ 18,000.00
PENALTY	=	$ 69,000.00

SIGNIFICANT NONCOMPLIANCE - LATE REPORTING

Violation Reference

N **Reporting Violation (Report more than 30 days late)**

Penalty = The number of incidents times the Base Penalty Amount plus an Adjustment Factor for SIU, and Compliance History

= (1) incident [$500 {Base Penalty (1) + SIU (.5) + Compliance History (-.5)}]

= 1 [$500 (1 + .5 -.5) = 1 [$500 (1] = $ 500.00

SIGNIFICANT NONCOMPLIANCE - ACCURATE REPORTING

R **Failure to Accurately Report Noncompliance**

Penalty = The number of incidents times the Base Penalty Amount.

= 1 incident [$1000 Base Penalty] = $1,000.00

PENALTIES FOR OTHER NONCOMPLIANCE DURING PERIOD OF SNC

Violation Reference

L **Federal Categorical Monthly Average. - ZINC**

Penalty = The number of days of discharge in the month times the Base Penalty Amount plus an Adjustment Factor for Compliance History

= $1,000 [18 days {Base Penalty (1) + Compliance History (-.5)}] = $1,000 [18 days {1 - .5}]

= $1,000 [18 days {.5}] = $1,000 [9] = $ 9,000.00

M Local Limit Minimum pH

Penalty = Base Penalty Amount plus an Adjustment Factor for SIU, and Compliance History

= $2,000 [Base Penalty (1) + SIU (.5) + Compliance History (-.5)]

= $2,000 [1 + .5 - .5] = $2,000 [1] = $2,000.00

TOTAL PENALTY PROPOSED FOR XYZ INDUSTRY

SNC - Cadmium	=	$ 69,000.00
SNC - Late Reporting - 1 incident	=	500.00
SNC - Failure to accurately report	=	1,000.00
Zinc	=	9,000.00
pH	=	2,000.00
TOTAL PENALTY PROPOSED	=	$ 81,500.00

EXHIBIT C - Case 2

I BACKGROUND

RSVP, Inc. located at 2600 W. Wastewater Drive, Tucson, Arizona is a General Automotive Repair facility, which performs automotive repair operations and, as such, is regulated by the Pima County Code, Title 13, Chapter 36.

The Industrial Wastewater Discharge Permit for this facility sets forth the limitations on the discharge of industrial wastewater to the POTW. The Permittee must comply with the following reporting requirements:

> "Monitoring results obtained during each six month reporting period shall be submitted, in tabular form, and postmarked no later than the 28th day of the month after the reporting period."

II HISTORY

For the past two years, RSVP, Inc. has been in consistent compliance. In April 1992, the Permittee failed to submit required report, due to an extended business trip. Upon notification by secretary that report was still on desk unsigned, the Permittee notified Pima County Wastewater Management Department of delay in submitting report. Report was received June 2, 1992.

III DETERMINATION

Penalty is applicable due to Significant Noncompliance based on the Permittee's failure to provide, within 30 days after due date, required reports such as periodic Self-Monitoring Reports.

IV PENALTY CALCULATION

Reporting Violation (Report more than 30 days late)

Penalty = Number of incidents times the Base Penalty Amount plus an Adjustment Factor for Good Faith Efforts and Compliance History

= (1) incident [$500 (+ Base Penalty (1) + Good Faith (-.5) + Compliance History (-.5)]

= (1) incident [$500 (1 -.5 -.5)] = 1 [$500(0)] = $0

TOTAL PENALTY PROPOSED FOR RSVP, INC. = $0

EXHIBIT C - Case 3

I BACKGROUND

The Hotel Sweetwater, located at 2600 W. Wastewater Drive, Tucson, Arizona is an establishment that provides lodging and meals, entertainment and various personal services for the public and, as such, is regulated by the Pima County Code, Title 13, Chapter 36.

The Industrial Wastewater Discharge Permit for this facility sets forth the limitation on the discharge of industrial wastewater to the POTW. The discharge must comply with the following discharge limitation at the sample location:

DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
Parameters	Daily Maximum	Type	Frequency
Oil & Grease	200 mg/L	Grab	Once per 6 mo.

Part II.A.3. of the Permit states that "The Permittee shall at all times maintain in good working order and operation, all pretreatment or control facilities or systems installed or used by the Permittee to achieve compliance with the terms and conditions of this Permit".

II HISTORY

For the past three years, Hotel Sweetwater has been in consistent compliance.

On August 12, 1992, the Industrial Wastewater Control Group was contacted by Field Operations that there was a stoppage that affected two private residences, and that there was considerable build-up of grease in two downstream manholes from the Hotel Sweetwater facility. The investigation determined that the grease build-up was attributable to the discharges from the Hotel Sweetwater grease trap.

On August 15, 1992, the Permittee submitted a Self-Monitoring Report that indicated 1100 mg/L of Oil and Grease had been discharged in the wastewater through the kitchen grease trap on August 7, 1992. No notice was given.

As a result of the damages and cleaning efforts caused by the backup of wastewater into the residences, Pima County reimbursed the homeowners for a total of $3,771.00. The additional cost to the Department for response to the backup and cleaning of the collection system was $1,608.

III DETERMINATION

Penalty is applicable due to SNC based on the Technical Review Criteria, Failure to accurately report noncompliance; plus, damages to public and private property.

IV PENALTY CALCULATION

Proposed Penalty SNC

= Base Penalty Amount plus an Adjustment Factor for Slug Load, Interference to the POTW and Failure to Notify

= $2,000 [Base Penalty (1) + Slug Load (1) + Interference to POTW (3) + Failure to Notify (1)]

= $2,000 [1 + 1 + 3 + 1] = $2,000 [6] = $12,000.00

Recovery of Damages and Penalty

Damages Insurance Claims		$ 3,771.00
Departmental Personnel Cost		1,200.00
Departmental Equipment and Materials Cost		408.00
Recovery of Damages	=	$ 5,379.00

Proposed Penalty/Damages

Penalty = 3 [$5,379.00]	=	$16,137.00

Total Penalty Proposed for Hotel Sweetwater

Numeric Violation	=	$ 12,000.00
Recovery of Damages	=	5,379.00
Damages	=	16,137.00
TOTAL PENALTY PROPOSED	=	$ 33,516.00

EXHIBIT C - Case 4

I BACKGROUND

The U-B Clean Car Wash located at 2600 W. Wastewater Drive, Tucson, Arizona is an Automotive Wash and, as such, is regulated by the Pima County Code, Title 13, Chapter 36.

The Industrial Wastewater Discharge Permit for this facility sets forth the limitations on the discharge of industrial wastewater to the POTW. The Permittee must comply with the following reporting requirements:

> "Monitoring results obtained during each six month reporting period shall be submitted, in tabular form, and postmarked no later than the 28th day of the month after the reporting period."

II HISTORY

For the past four years, U-B Clean Car Wash has been in consistent compliance. In October 1992, this business changed ownership. The Permit was modified to reflect the change. In May 1993, the Permittee failed to submit required report. A Notice of Violation was issued to Permittee requiring them to attend a Show Cause Meeting.

III DETERMINATION

Penalty is applicable due to Significant Noncompliance based on the Permittee's failure to provide, within 30 days after due date, required reports such as periodic Self-Monitoring Reports.

IV PENALTY CALCULATION

Reporting Violation (Report more than 30 days late)

Penalty = Number of incidents times the Base Penalty Amount

= (1) incident [$500 (+ Base Penalty (1)]

= (1) incident [$500 (1)] = $500.00

TOTAL PENALTY PROPOSED FOR U-B Clean Car Wash = $500.00

IV PENALTY CALCULATION (Continued)

At the Show Cause Meeting, the Permittee submitted required reports explaining recent purchase and unfamiliarity with Permit requirements.

Permittee is a candidate for Pollution Prevention School and opted to attend in lieu of Penalty.