ENFORCEMENT RESPONSE PLAN

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PIMA COUNTY, ARIZONA

REGIONAL WASTEWATER RECLAMATION DEPARTMENT
Industrial Wastewater Control

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PIMA COUNTY REGIONAL WASTEWATER RECLAMATION DEPARTMENT
Industrial Wastewater Control
ENFORCEMENT RESPONSE PLAN
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Executive Summary

The Industrial Wastewater Ordinance (1991-140 13.36) and a pretreatment program mandated by the Arizona Pollutant Discharge Elimination System (AZPDES) permits issued by the Arizona Department of Environmental Quality (ADEQ) to Pima County in conformity with Arizona Administrative Code (AAC) R18-9-A905(A)(3)(d), adopting by reference 40 CFR § 122.44(j), Arizona Revised Statutes (ARS) § 49-391 and the Clean Water Act (CWA), as amended by the Water Quality Act (WQA) of 1987 give the Director of the Pima County Regional Wastewater Reclamation Department (RWRD) 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 through Satellite System Agreements. The Director has the primary responsibility within the RWRD for developing and maintaining the Pretreatment Program, and has delegated the Pretreatment Program requirements to the Compliance and Regulatory Affairs Office Program Manager.

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, RWRD will utilize discretion to respond to noncompliance and to deviate from the ERP when determined appropriate.

The CWA traces its roots to the Federal Water Pollution Control Act passed in 1972. It sets forth basic requirements to regulate the nature and quantity of industrial wastes discharged to POTWs; regulations such as 40 CFR § 403. The U.S. EPA has revised part 403 pursuant to sections 307(b) and 402(b)(8) of the CWA. The most recent revision to part 403 resulted in the promulgation of a final rule on October 14, 2005. Contained within part 403.8(f)(5) is a list of minimum requirements for the development of an ERP.

The actions required of the RWRD, as outlined in this document, are intended to satisfy the U.S. EPA's requirement for the development of an ERP and the Regulatory Bill of Rights ARS § 11-1606.

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. This substantive policy statement establishes a framework

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for the management of enforcement matters and emphasizes 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 and State legislation.

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

<u>Definition of Terms</u>

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.

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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 samples of discharge from User operations are 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 Report Forms, 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.) or 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 User's 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's Office, and the 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 arises on a case-by-case basis.

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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 severity of the enforcement action is not dependant 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 any time during the previous year is published in the daily newspaper with the largest circulation within 120 days of the end of the calendar year.

2.2 Pre-Enforcement

2.2.A Request for Information. A 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 the 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 User's authorized representative, explaining the nature of the discrepancy. The User is encouraged to return to compliance.

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

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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 of 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 the letter) explaining reasons for the 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 RWRD 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 as provided in 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.
- 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 the Director reallows discharge. 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 the User can apply for a new permit. The User has ten (10) days to respond in writing to the NOV.
- Other Orders. The Director may issue additional Orders determined 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.

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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 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 or preliminary or 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 ARS § 49-391;
- 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. § 13-2407 (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.

<u>Civil Actions.</u> 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 are attached as Exhibits “A” and “B” in Section 8 below.

<u>Criminal Prosecution.</u> 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.

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

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), Pollution Prevention School (PPS) used to educate nonsignificant Users in lieu of assessing a penalty, and negotiated settlement agreements.

2.4.A Pollution Prevention School (PPS)

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. PPS attendance may be required when there is a violation of the pretreatment program and an option when a new permit is issued.

Course Content: The class is approximately four (4) hours in length. It covers the background of the Clean Water Act and NPDES/AZPDES 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; available exemptions; the Enforcement Response Plan and the penalties for violations of a 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) to go to school; or (2) attend a Show Cause Meeting. A fee for the course may be required.

2.4.B Negotiated Settlement Agreements

Purpose: As provided by State Statute (ARS § 49-391(c)), pretreatment programs may seek compliance and recovery of civil penalties by a negotiated settlement agreement. This process is anticipated for Users who are in significant noncompliance.

When to Use Agreements: Negotiated Settlement Agreements are appropriate when the User has not previously entered into an administrative or civil consent decree or been found liable in a State or Federal court for similar violations. Pursuant to ARS § 49-391(C), before a negotiated settlement becomes final, the County shall provide a period

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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 Amounts sections.

2.4.C Supplemental Environmental Project (SEP)

Introduction

The term Supplemental Environmental Project (SEP) refers to a project that may serve in addition to and in some cases in lieu of a monetary penalty as the basis for the settlement of an enforcement action.

In the settlement of a pretreatment violation, RWRD may require the alleged violator to achieve and maintain compliance with federal, state and local pretreatment regulations and to pay a civil penalty. To further the Department’s goals to protect and enhance public health and the environment, one or more SEPs, may be included in a settlement agreement.

The following is a statement of policy by which the Department will consider to accept an SEP as part of or all of the settlement of an administrative enforcement action. The Department believes these projects provide a useful environmental benefit beyond what can be secured solely through administrative orders.

Guidance for Discretion

The ultimate decision as to the settlement of an administrative enforcement action rests with the Pima County Board of Supervisors. The policies and procedures in this document are intended for the guidance of the Department.

Criteria for SEPs

A judgment as to the appropriateness of an SEP in a particular action will generally be made in accordance with the following criteria:

1. Benefit to the Environment from SEP

   SEP’s will be allowed only when the Department is satisfied that an SEP will benefit the environment or promote public health or safety.

2. Planned, Completed or Required Activities

   An SEP may not be allowed for projects which the Violator has initiated prior to discovery of the violation.

   Projects that have been committed to or started before the identification of a violation or initiation of enforcement resolution discussions may mitigate the penalty in other ways.

3. Relationship to Monetary Penalty

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An SEP may not replace damages. A monetary penalty may still be necessary in order to assure that the Department's enforcement actions are effective in deterring future violations by the Violator or others in the regulated community. Penalties maintain a level playing field by ensuring that violators do not obtain an unfair economic advantage over their competitors who made the necessary expenditures to comply. Penalties encourage companies to adopt pollution prevention and recycling techniques, so that they minimize their pollutant discharges and reduce their potential liabilities.

Under the following circumstances, the Department may allow an SEP constituting a 100%, dollar-for dollar penalty offset:

1. The proposed SEP constitutes a pollution prevention or pollution reduction/waste minimization project;
2. The Violator's compliance history does not suggest a pattern of non-compliance with environmental laws; or
3. When the Violator is an agency, board, commission, council or department of the state, a municipality, or a non-profit organization or small business.

4. <u>Available Only if Violations and Pollution Corrected</u>

An SEP may be considered only if violations and all pollution created or threatened are fully corrected and abated in a timely manner under an enforceable agreement. A Compliance Schedule timeline shall be not longer than five years.

5. <u>Relationship to Violation ("Nexus" Requirement)</u>

Generally, an SEP may be approved if the Department determines there is a direct relationship between the nature of the violation(s) and the environmental benefits to be derived from the SEP. Alternatively, the Board of Supervisors may approve an SEP which, while lacking a direct nexus to the violation, either furthers the Department's statutory mission or reduces the likelihood of future violations similar to those at issue. The Department prefers SEPs with a direct nexus. To constitute a "direct nexus," the SEP must:

1. improve the environment injured by the violation;
2. reduce the total risk posed to public health or the environment by the violation;
3. result in the restoration of natural or man-made environments from the actual or potential damage resulting from the violation; or
4. protect natural environments from actual or potential damage resulting from the violation.

An "indirect nexus" may be consistent with this policy if it substantially furthers the Department's statutory mission or reduces the likelihood of future violations similar to those at issue.

6. <u>Initiation</u>

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The proposal to do an SEP may be initiated by either the Violator or by the Department. The burden of developing the SEP and convincing the staff of its benefits and likelihood of success are the responsibility of the Violator. An SEP proposal may be made at any time during an enforcement action, although the Department should consider both the status of the action and the resources that have been committed to it before deciding whether to accept an SEP.

7. Compliance History

The Violator's compliance history and capacity to successfully and promptly complete the project must be examined during evaluation of a proposed SEP.

8. Compliance with SEP

The Negotiated Settlement Agreement or Consent Decree shall specify time-specific milestones to be met in implementing the SEP, including a completion date.

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2.4.D ARS § 49-391(C) Public Notice

Public notice and comment will be provided pursuant to the requirements of ARS § 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 comment 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 the Public Works Building, 201 N Stone Ave, 8th Floor, RWRD Office.

(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 User, the agreement will be finalized. Consent Decrees will be filed with the State Superior Court and negotiated settlement agreements will be filed with the Director of RWRD.

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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/Designee shall issue all Notifications of Violation.

3.2.B Sewer Service Termination

The Director/Designee shall authorize Sewer Service termination.

3.2.C Emergency Authority

The Director/Designee requests the County Attorney to obtain appropriate judicial order(s).

3.2.D Judicial Actions

The Director/Designee requests the County Attorney to obtain appropriate judicial action(s).

3.2.E Alternative Enforcement

The Director/Designee shall determine if Alternative Enforcement is appropriate.

3.2.F Consent Decrees

The Board of Supervisors shall approve all Consent Decrees.

3.2.G Negotiated Settlement Agreements

The Board of Supervisors shall approve all Negotiated Settlement Agreements.

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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 ARS § 49-391 and 40 CFR § 403.8(f)(1) and (2).

Section 5: Scheduling Criteria

Field Investigations are scheduled to meet annual requirements, respond to emergency and remedial actions, violations, and technical problems, and to support permit modification.

Section 6: Penalty Policy

Pima County RWRD can propose to the Board of Supervisors acceptance of a monetary penalty to be included in a Negotiated Settlement Agreement for violations of pretreatment standards or requirements. Monetary penalties are intended to recapture the full economic benefit of noncompliance and to deter future violations.

6.1 When to Assess Penalties

Penalties are to be sought by the Director 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 that 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:

- The seriousness of the violation.
- The economic benefit, if any, resulting from the violation.
- Any history of such violation.
- Any “good faith” efforts to comply with the applicable requirements.
- The economic impact of the penalty on the violator.
- Such other factors as justice may require.

It is the County’s policy to seek the maximum penalty available in a court action if not otherwise resolved in settlement pursuant to this policy.

6.2 Methods of Assessing Penalties

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

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6.3 Penalty Amount

The Penalty is calculated from the findings of the Penalty Evaluation List utilizing 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 from 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.

6.3.A Penalty Factor

	Criteria	**Penalty Adjustment Factor**
1.	Base Penalty Amount	1
2.	Significant Industrial User (SIU)	0.5
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.	Recurrence, Failure to Correct	2
9.	Impact on Sludge Disposal	2
10.	Penalty for Actions which cause damages	3
11.	The Good Faith to restore compliance	-0.5
12.	Extraordinary efforts to stop violation	-1
13.	The Compliance History of User	-0.5
14.	Pollution Prevention School	

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6.3.B Unauthorized Discharges (No Permit)

Noncompliance	Amount of Penalty	Penalty Adjustment Factor
1. Unpermitted Discharge	$200 per day of discharge	1,4,5,6,7,8,9,10,11,13
2 Unpermitted Discharge (failure to renew)	$1,000 per incident	1,8,9,10,11
3 Others	$200 per day of discharge	1,4,5,6,7,9,10

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

This section includes, but is not limited to the following: improperly signing or certifiying a report; using incorrect sample collection or analytical procedures; failing to submit self-monitoring information; failing 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	1,2,8,9,10,11,12,13,14
2. Failure to Monitor	$200 per pollutant	1,2,3,7,8,9,10,11,12,13
3. Failure to Make Notification	$400 per incident	1,3,4,6,7,8,9,10,11,12
4. Enforceable Compliance Schedules	$200 per day	1,8,9,10,11
5. Inadequate Recordkeeping	$200 per day	1,7,9,10,11
6. Failure to Report Additional Monitoring	$200 per incident	1,2,7,9,10,11,13
7. Failure to Accurately Report Noncompliance	$1,000 per incident	1,10,13
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	1,2,3,4,5,6,7,8,9,10,11,12,13

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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	1,2,3,4,5,6,7,8,9,10,11,12,13
2. Numeric Violation of Federal Categorical Monthly Average	$1,000 times days in month in which there is a discharge	12
3. Waste streams are Diluted in Lieu of Treatment	$2,000 per day of discharge	1,2,3,4,5,8,9,10,11,12,13
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	1,2,3,4,5,6,7,8,9,10,11,12,13
6. Others	$2,000 per day of discharge	1,2,3,4,5,6,7,8,9,10,11,12,13

6.3.E Recovery of Damages and Penalty

Noncompliance	Amount of Penalty
1. Reimbursement of costs to Department to respond and correct damages 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.

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Section 7: Enforcement Response Guide

The Enforcement Response Guide, adopted by Pima County, is the standard EPA configuration[1]. 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;" 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 7.3.

CA	County Attorney
CO	Compliance Officer
Civil Action	Civil litigation against the User seeking relief, monetary penalties and actual damages
D	Director/Designee
ERG	Enforcement Response Guide
IU	Industrial User
NOV OCA	Notification of Violation Order of Corrective Action
NOV OSC OCA	Notification of Violation Order to Show Cause Order of Corrective Action: Requires the User to appear at a formal meeting and demonstrate why the County should not take a proposed enforcement action.
POTW	Publicly Owned Treatment Works. The County owns or operates 11 POTWs. The County's two major POTWs are commonly referred to as the Ina Road Wastewater Reclamation Facility and the Roger Road Wastewater Reclamation Facility.
Review Meeting	Informal compliance meeting with User to resolve noncompliance

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[1]Guidance for Developing Control Authority Enforcement Response Plans. September 1988, Office of Water EN-338.

7.2 Instructions for using the Enforcement Response Guide

(1) Locate the type of noncompliance in the first column.
(2) Using the second column, identify the most accurate description of the nature of the violation.
(3) RWRD IWC staff will assess the appropriateness of the recommended response(s) in the third column. 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 User. Specify corrective action or response required from the User.
(6) Document User responses and resolution of noncompliance.
(7) Follow up with escalated enforcement action if the User response is not received or if violations continue.

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7.3 Pima County Wastewater Enforcement Response Guide (ERG)

I. Unauthorized Discharges (No Permit)

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

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II. DISCHARGE LIMIT VIOLATION

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
Exceedance of Local or Federal Standard (permit limit)	1. Isolated	Phone call	CO
		NOV OCA	D
		Automatic IU resampling	CO
		Inspection	CO
		County sampling	CO
	2. Recurring; two or more violations within a 90-day period	Automatic IU resampling	CO
		Inspection	CO
		County sampling	CO
		NOV OSC OCA	D
		Civil action	D, CA
		Criminal action	CA
		Terminate services	D
		Revoke permit	D

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III. MONITORING AND REPORTING VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
A. Reporting Violation	1. Report is improperly signed or certified	Phone call NOV OCA	CO D
	2. Report is improperly signed or certified after notice by County	NOV OSC OCA	D
	3. Any single report 30 days or more late	NOV OSC OCA Civil action	D D, CA
	4. Failure to report spill or change in discharge; IU unaware of requirement	Phone call NOV OCA	CO D
	5. Failure to report spill or change in discharge; IU aware of requirement	NOV OSC OCA Civil action	D D, CA
	6. Repeated failure to report spills	NOV OSC OCA Civil action Terminate services Revoke permit	D D, CA D D
	7. Falsification	Civil action Terminate services Revoke permit	D, CA D D
	8. Missing or incomplete information	Phone call; NOV	CO

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NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
	9. Failure to correct report with missing or incomplete information	NOV OSC OCA Civil action	D, D, CA
B. Failure to Monitor Correctly	1. Failure to monitor all pollutants as required by permit	NOV OCA	D
	2. Recurring failure to monitor	NOV OSC OCA 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
D. Enforceable Compliance Schedule Violation	1. Missed milestone	NOV OCA Review meeting	D CO
	2. Recurring violation or violation of schedule in Consent Decree/Negotiated Settlement Agreement	NOV OSC OCA 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	NOV OSC OCA Civil action Terminate services Revoke permit	D D, CA D D

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NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
IV. OTHER PERMIT VIOLATIONS			
A. Waste streams are diluted in lieu of treatment	1. Initial violation	Review meeting	CO
	2. Recurring	NOV OSC OCA 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	NOV OSC OCA Civil action Terminate services Revoke permit	D D, CA D D
C. Failure to properly operate and maintain pretreatment equipment	1. Initial violation	NOV OCA Review meeting	CO CO
V. VIOLATIONS DETECTED DURING SITE VISITS			
A. Entry Denial	1. Entry denied or consent withdrawn. Copies of record denied	Obtain warrant Criminal action Revoke permit Terminate services	CA CA D D
B. Failure to Provide Access	1. Initial Violation	NOV OCA NOV OSC OCA	CO D
C. Inadequate Recordkeeping	1. Inspector finds files incomplete to missing. Initial Violation	Phone call; NOV Review meeting	CO CO
	2. Recurring after prior notice to remedy	NOV OSC OCA	D

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NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
D. Failure to Report Additional Monitoring	1. Inspector finds additional results; Initial Violation	Phone call NOV OCA Review meeting	CO D CO
	2. Recurring after prior notice to remedy	Review meeting NOV OSC OCA	CO D
VI. MISCELLANEOUS SIGNIFICANT NONCOMPLIANCE (SNC)			
A. Chronic violations of Wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements taken for the same pollutant parameter during a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined in 40 CFR § 403.3(l)		NOV OSC OCA Civil action Criminal action Terminate services Revoke permit	D D, CA CA D D
B. Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements for the same pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits as defined in 40 CFR § 403.3(l) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH)		NOV OSC OCA Civil action Criminal action Terminate services Revoke permit	D D, CA CA D D
C. Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR § 403.3(l) (daily maximum, longer-term average, instantaneous limit, or narrative standard) that the Director determines has caused, alone or in combination with other Discharges, Interference or Pass-through (including endangering the health of POTW personnel or the general public)		NOV OSC OCA Civil action Criminal action Terminate services Revoke permit Newspaper publication required	D D, CA CA D D D

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NONCOMPLIANCE	NATURE OF THE VIOLATION	RANGE OF ENFORCEMENT RESPONSE	PERSONNEL
D. Any discharge of a Pollutant that has caused imminent endangerment to human health, welfare or the environment or has resulted in the Director's exercise of emergency authority under Section 13.36.195 of this Article to halt or prevent such a discharge		NOV OSC OCA 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 local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance		NOV OSC OCA Civil action Criminal action Terminate services Revoke permit	D D, CA CA D D
F. Failure to provide, within 45 days after due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules		NOV OSC OCA Civil action Criminal action Terminate services Revoke permit	D D, CA CA D D
G. Failure to accurately report noncompliance		NOV OSC OCA Civil action Criminal action Terminate services Revoke permit	D D, CA CA D D
H. Any other violation or group of violations, which may include a violation of Best Management Practices, which the Director determines will adversely affect the operation or implementation of the local Pretreatment program		NOV OSC OCA Civil action Criminal action Terminate services Revoke permit Newspaper publication required	D D, CA CA D D D

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7.4 Timeframes for Responses

A. Violations shall 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) shall occur within 30 days of RWRD's 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 shall 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 shall be escalated within 90 days of the initial enforcement action.

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EXHIBIT A SAMPLE CONSENT DECREE

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BARBARA LAWALL
PIMA COUNTY ATTORNEY
CIVIL DIVISION
_____
_____
32 North Stone Avenue, Suite 2100
Tucson, Arizona 85701
Telephone: (520) 740-5750
Email: _____
Attorney for Pima County

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.	Case No.: _____ **CONSENT DECREE AND SETTLEMENT AGREEMENT (Non-classified Civil)** Assigned to: Hon. _____

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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") pursuant to A.R.S. § 49-391(C) in order to resolve all disputes among them according to the terms, conditions and provisions herein.

4. The parties acknowledge that final approval of this Agreement is subject to the requirements of A.R.S. § 49-391(C), which provides for a mandatory thirty (30) day public notice and comment period.

PROVISIONS

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

6. 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 _____.

7. _____ 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.

8. _____ shall pay to Pima County Regional Wastewater Reclamation Department the sum of $_____ (_____ and ___/100 Dollars) as

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settlement of the civil penalties requested by Pima County in the Complaint under Pima County Code, Section 13.36.____ (Ordinance No. ____) within thirty (30) days of filing this Decree. Payment shall be made by certified or cashiers' check to Pima County Regional Wastewater Reclamation Department, delivered to the Pima County Attorney's Office, Civil Division, 32 North Stone Avenue, Suite 2100, Tucson, Arizona 85701. The payment shall be accompanied by a letter of transmittal.

9. _____ further agrees to perform a Supplemental Environmental Project (SEP) in the form of [INSERT TERMS, e.g. HGI, GGI, ETC.]. This SEP shall be completed by _____.

10. _____ further agrees to send representative(s) to IWC's Pollution Prevention School.

11. Pima County Regional Wastewater Reclamation Department shall accept the sum of $_____ (_____ and __/100 Dollars), completion of the SEP, and attendance at IWC's Pollution Prevention School 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.

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

13. _____ agrees to comply with the provisions herein according to the following compliance schedule: [List of compliance requirements and agreed-upon deadlines for completion.]

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14. Upon _____'s payment to Pima County of the sum of $_____ (_____ and ___/100 Dollars), Pima County shall cause the case number _____ entitled Pima County, a body politic and corporate v. _____ to be dismissed with prejudice and this Decree shall be terminated.

15. 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.

16. 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.

17. 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.

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18. 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.

19. 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.

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

21. 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.

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PIMA COUNTY	**__(name of company/person)_____**
By_____ Chair, Board of Supervisors	By_____
Date _____	Date _____

APPROVED AS TO FORM:

BARBARA LAWALL
PIMA COUNTY ATTORNEY

By_____
_____, Esq.
Deputy Pima County Attorney

Date _____

By_____
(name of attorney or if no attorney,
"Representation waived")

Date_____

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EXHIBIT B SAMPLE NEGOTIATED SETTLEMENT AGREEMENT

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BEFORE THE PIMA COUNTY BOARD OF SUPERVISORS

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

This Negotiated Settlement Agreement (hereinafter "Agreement") is hereby made and entered into this ____ day of _____, ____, between Pima County, Arizona, a body politic, (hereinafter "Pima County") and _____ (hereinafter "_____") pursuant to A.R.S. § 49-391(C).

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 treatment system.

2. Pursuant to Pima County Ordinance _______ and Pima County Code ("P.C.C."), Title 13, Chapter 36, Pima County has authority to regulate persons who are Industrial Users of Pima County's wastewater treatment 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 Reclamation Facility and Ina Road Wastewater Reclamation Facility, by Arizona Pollutant Discharge Elimination System ("AZPDES") Permits No. AZ 0020923 and 0020001, respectively. [Add or remove treatment facilities where applicable.]

4. _____ is a "Person" as defined in P.C.C. § 13.36.____ (Ordinance No. ____) .

5. _____ is an "Industrial User" of Pima County's wastewater treatment system as defined in P.C.C. § 13.36. .____ (Ordinance No. ____) .

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6. Under A.R.S. § 49-391(C), Pima County has the authority to enter into this Agreement with _____ with regard to the local enforcement of wastewater pretreatment requirements.

7. The parties acknowledge that final approval of this Agreement is subject to the requirements of A.R.S. § 49-391(C), which provides for a mandatory thirty (30) day public notice and comment period.

II. FINDINGS

8. At the time of the industrial pretreatment violations that give rise to this Agreement, _____ operated (and continues to operate) a food service facility located at _____, Tucson, Pima County, Arizona.

9. _____ is a food service facility that discharges industrial wastewater to both the Ina Road Wastewater Reclamation Facility AZPDES, Permit No. AZ0020001, and the Roger Road Wastewater Reclamation Facility, AZPDES Permit No. AZ 0020923, both Publicly Owned Treatment Works ("POTW").

10. P.C.C. § 13.36.____ (Ordinance No. ____) states:

[Quote from applicable ordinance.]

11. P.C.C. § 13.36.____ (Ordinance No. ____) states:

[Quote from applicable ordinance.]

12. P.C.C. § 13.36.____ (Ordinance No. ____) defines Interference as:

[Quote from applicable ordinance.]

13. P.C.C. § 13.36.____ (Ordinance No. ____) lists as prohibited wastes any industrial wastewater that may be adverse or harmful to the POTW, POTW personnel, POTW equipment, or POTW effluent quality, including, but not limited to:

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[Quote from applicable ordinance.]

14. P.C.C. § 13.36.____ (Ordinance No. ____) lists the following standard for the allowable discharge of industrial wastewater to the POTW. The discharge must comply with the following discharge limitations (in part):

[Quote from applicable ordinance.]

15. On _____, Pima County Regional Wastewater Reclamation Department Operations Division notified the Industrial Wastewater Control Section (IWC) of a public sewer system overflow downstream from _____.

16. On _____, IWC conducted an inspection at the Industrial User's facility. IWC collected a sample of industrial wastewater discharging from the cleanout on the discharge side of the facility's grease trap.

17. The analytical test results of the wastewater discharge revealed that _____ exceeded the Pima County Code limit for oil and grease. _____ discharge violation is as follows:

Sample Date	Sample Location	Parameter	Limit	Violation

18. Pima County Code § 13.36.____ (Ordinance No. ____) states:

[Quote from applicable ordinance.]

19. Pima County Wastewater Reclamation Department, Operations Division incurred clean up costs for the Sanitary Sewer Overflow (SSO). This amount does not include any expenditure for other damages, costs or claims related to the SSO.

20. Pima County alleges that _____violated P.C.C. § 13.36.____ (Ordinance No. ____) by failing to ensure that the discharge from their operation was in compliance with the provisions set forth in this Ordinance.

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21. An Industrial User is in Significant Noncompliance (as defined in P.C.C. § 13.36. .____ (Ordinance No. ____)) if its violation meets the following criteria:

[Quote from applicable ordinance.]

22. On _____, _____ was issued a Notice of Violation, No. _____ for the discharge violations and for being in Significant Non-compliance. A copy of the Notice of Violation is attached and hereby incorporated as Exhibit A.

III. TERMS AND CONDITIONS

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

24. Settlement Terms.

a. _____ agrees to pay the sum of _____ ($) dollars

b. _____ further agrees to perform a Supplemental Environmental Project (SEP) in the form of [INSERT TERMS, e.g. HGI, GGI, ETC.]. This SEP shall be completed by _____.

c. _____ further agrees to send representative(s) to IWC's Pollution Prevention School.

d. The payment of the total amount of $_____, completion of the SEP and attendance at IWC's Pollution Prevention School shall represent full settlement of penalties and costs imposed by Pima County under P.C.C., Title 13, Chapter 36 for the violations alleged in the Notice of Violation.

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Neither the assessment nor payment of these amounts pursuant to the Negotiated Settlement Agreement shall constitute a waiver, release or stipulation regarding damages, costs or other claims incurred by Pima County as a result of the SSO and introduction of sewage into the private residences affected by the SSO.

25. Method of Payment. The payment shall be made by company check payable to Pima County Regional Wastewater Reclamation Department and delivered to the Pima County Attorney's Office, Civil Division, 32 Stone Avenue, Suite 2100, 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 per annum. In the event that payment is not made within sixty (60) days from the date of execution of Agreement, this Agreement becomes voidable at the discretion of Pima County, and Pima County may then file a complaint in Superior Court and seek all available civil penalties against _____.

26. Failure of Compliance. The parties agree that it is the responsibility of _____ to achieve and maintain compliance with all applicable Federal, State and local laws, regulations and permits. Compliance with this Agreement shall not be a defense to any enforcement actions commenced pursuant to said laws, regulations, or permits and based on _____ activities or omissions occurring after _____, the date of negotiation of this agreement.

27. Entire Agreement. 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.

28. Attorneys' Fees. In the event that either Pima County or _____ finds 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 judgment is secured by the prevailing party in such action or proceeding, all

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reasonable attorneys' fees shall be included in said judgment. The amount of reasonable attorneys' fees shall be determined by the court and not by a jury.

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

30. Form of Notice. Unless otherwise provided for in this Agreement, any notice or communication between the parties 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 Pima County:	To:
Industrial Wastewater Control C/O Pima County Attorney's Office Civil Division 32 North Stone Avenue Tucson, AZ 85701	_____ _____ _____ Tucson, AZ 857__

31. Non-Waiver Provisions. This Agreement in no way relieves _____ of its responsibility to comply with all applicable Federal, State, local laws, or permits conditions in operating its Pima County facility.

32. 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 Agreement shall remain in full force and effect.

33. Good Faith. The parties agree that each of them shall take 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.

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

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

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

37. Date of Public Notice. Public notice of the thirty (30) day comment period shall be given at the Pima County Board of Supervisors' Meeting scheduled on _____.

PIMA COUNTY

By_____
Chair, Board of Supervisors

Date _____

_____

By_____

Date _____

ATTESTED TO:

CLERK OF THE BOARD
OF SUPERVISORS

By_____
[Name of current Clerk]
Clerk of the Board of Supervisors

Date _____

APPROVED AS TO FORM:

BARBARA LAWALL
PIMA COUNTY ATTORNEY

By_____
[Name of applicable attorney]
Deputy Pima County Attorney

Date_____

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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	5.0 – 11 (min.-max.)	N/A	Grab	Once per week

(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 four (4) individual portions obtained at equal time or flow intervals for 24 hours or for the duration of discharge, whichever is shorter.

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II HISTORY

The history for the referenced facility for the period January 1, 2012 through June 30, 2012 is as follows:

2012	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	M, R (1.66)		
Days of Discharge - 18						
Mar.						
1-7	.04		1.41		Min. 4.5 for 53 minutes	N
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	K	1.02		Max. 7.4	
19-25	.03		1.00			
26-2	.02		0.95			
Monthly Avg.	.07		1.05			
Days of Discharge - 20						

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	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	L	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)
9 Daily Maximum (Violations A, B, E, H, I, J, K, L, and N)
3 Monthly Average (Violations D, G and M)

The Self-Monitoring Report received on September 2, 2012 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 July 28, 2012 was received September 2, 2012, 35 days late (Violation O).

TRC determination - TRC Factor for Cadmium = .1 x 1.2 = 0.12

10 of the 27 measurements equal or exceed the TRC value.

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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

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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, K, & L 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
L	=	$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

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

Violations A, B, E, H, I, J, K & L = (8 X $3,000)	=	$24,000.00
Violations C & F = (2 X $5,000)	=	$10,000.00
Violation D	=	$20,000.00
Violation G	=	$18,000.00
PENALTY	=	$72,000.00

SIGNIFICANT NONCOMPLIANCE - LATE REPORTING

Violation Reference

O 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

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PENALTIES FOR OTHER NONCOMPLIANCE DURING PERIOD OF SNC

Violation
Reference

M 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

N 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	=	$72,000.00
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	=	$84,500.00

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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 User 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 2008, the User failed to submit required report, due to an extended business trip. Upon notification by secretary that report was still on desk unsigned, the User notified Pima County Regional Wastewater Reclamation of delay in submitting report. Report was received June 2, 2012.

III DETERMINATION

Penalty is applicable due to Significant Noncompliance based on the User'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

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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 ll.A.3. of the Permit states that "The User shall at all times maintain in good working order and operation, all pretreatment or control facilities or systems installed or used by the User 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, 2012, 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, 2012, the User 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, 2012. 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 $1,608.00.

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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		
Proposed Penalty/Damages	=	$5,379.00
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

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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 User 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 2011, this business changed ownership. The Permit was modified to reflect the change. In May 2012, the User failed to submit required report. A Notice of Violation was issued to User requiring them to attend a Show Cause Meeting.

III DETERMINATION

Penalty is applicable due to Significant Noncompliance based on the User'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 = S500.00

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

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

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EXHIBIT D

Record of Inspection/Notice of Inspection Rights

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PIMA COUNTY REGIONAL WASTEWATER RECLAMATION DEPARTMENT
INDUSTRIAL WASTEWATER CONTROL SECTION
RECORD OF INSPECTION/NOTICE OF INSPECTION RIGHTS

Business Name_____Date and Time_____

Business Address_____

Contact Name and Title (Print)_____

Contact Phone Number_____Permit Number_____

IWC Rep Name and Contact Info (Print)_____

A representative of the Pima County Regional Wastewater Reclamation Department (RWRD), Industrial Wastewater Control Section (IWC), was present at the above listed address to perform the following:

1. ☐ Inspection to determine compliance with Pima County Code 13.36 and AAC R18-9-A905 and A906.

2. ☐ Sampling to determine compliance with Pima County Code 13.36 and AAC R18-9-A905 and A906– Samples split with business? ☐ YES ☐ NO

   Proposed Tests_____

   _____

3. ☐ Other (Please explain)_____

   _____

I have read both sides of this notice and discussed any questions or concerns with the IWC representative and permission is granted for Pima County Regional Wastewater Reclamation Department personnel to inspect this facility and/or to collect samples in accordance with their statutory authority, Pima County Code, Title 13, Chapter 36, ARS 49-391, AAC R18-9-A905 and AAC R18-9-906.

_____ _____

Signature of Regulated Person OR On-Site Representative Date

While I have the right to refuse to sign this form, the IWC representatives may still proceed with inspection.

☐ The regulated person or authorized on-site representative refused to sign.

_____ _____

Name of Regulated Person or Authorized On-Site Representative Title

☐ The regulated person or an authorized on-site representative was not present at the facility.

_____ _____

IWC Representative's Signature Phone No. Date

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INSPECTION RIGHTS

A. A County inspector or regulator who enters any premises of a regulated person for the purpose of conducting an inspection shall:
   1. Present photo identification on entry of the premises.
   2. On initiation of the inspection, state the purpose of the inspection and the legal authority for conducting the inspection.
   3. Disclose any applicable inspection fees. IWC does not charge any inspection or sampling fees.
   4. Afford an opportunity to have an authorized on-site representative of the regulated person accompany the county inspector or regulator on the premises, except during confidential interviews.
   5. Provide notice of the right to have:
      a. Copies of any original documents taken during the inspection, and that IWC will provide copies of those documents at IWC's expense.
      b. A split of any samples taken during the inspection, if the split of the samples will not prohibit an analysis from being conducted or render an analysis inconclusive.
      c. Copies of any analysis performed on samples taken during the inspection and that IWC will provide copies of this analysis at IWC's expense.
   6. Inform each person if any conversation with the county inspector or regulator during the inspection is being tape recorded.
   7. Inform each person interviewed during the inspection that statements made by the person may be included in the inspection report.

   Additionally:
   - If a Notification of Violation (NOV) is issued or a permit decision is made based on the results of the inspection, the regulated person has the right to appeal the NOV or permit decision. The administrative hearing rights are set forth in Pima County Code 13.36 Article VI.
   - If the regulated person has any questions or concerns about this inspection, they may contact Doug Kirkland, IWC Supervisor at 520-724-6200.
   - If the regulated person has any questions concerning their rights to appeal an administrative order or permit decision, they may contact Jeff Prevatt – Manager, Compliance & Regulatory Affairs Office (CRAO) at 520-724-6200. They may also appeal the administrative order or permit decision as outlined in Pima County Code 13.36.200.

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A.R.S. §11-1606 Industrial Wastewater Discharge Permit Application Process Notice

Pima County Industrial Wastewater Ordinance 1991-140 Section 13-36 grants Pima County authority to require Industrial Users discharging to the Pima County Publicly Owned Treatment Works (POTW) to obtain a discharge permit. Authority is granted to Pima County by the Arizona Pollutant Discharge Elimination System (AZPDES) permits issued by the Arizona Department of Environmental Quality (ADEQ) to Pima County in conformity with Arizona Administrative Code (AAC) R18-9-A905(A)(3)(d) adopting by reference 40 CFR § 122.44.j, Arizona Revised Statutes (ARS) § 49-391 and the Clean Water Act (CWA), Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376); AAC R18-9-A905(7) and R18-9-A906.

Under A.R.S. §11-1606, Pima County is required to give you the following information when you apply for an Industrial Wastewater Discharge Permit.

A. The following steps are required to obtain a permit.

Step one – Download or pick up a copy at the address below, complete, print and sign an application at:

http://www.pima.gov/wwm/about/div/CRAO/IWC/index.htm#discharge

Please note that businesses classified under 40 CFR § 405-471 require more detailed application information to meet federal discharge requirements.

Step two – Submit the completed permit application with the appropriate fee to:

Industrial Wastewater Control – 3035 West El Camino Del Cerro – Tucson, Arizona 85745

B. Pima County Regional Wastewater Reclamation Department (PCRWRD) shall issue a written or electronic notice of administrative completeness or deficiencies to a permit applicant within 15 business days. Once a completed Industrial Wastewater Discharge Permit application has been received, PCRWRD will respond with a permit decision within 30 business days. If during the administrative completeness review or substantive application review, additional information is required, RWRD will request the information from the applicant. The applicant shall respond and submit requested information within 30 days.

C. Mr. Jack Parker can provide assistance with the application process and may be contacted at (520) 724-6200 or jack.parker@pima.gov

D. A.R.S. §11-1609 states that requests can be made of the County to clarify its interpretation or application of a statute, ordinance, regulation, delegation agreement or authorized substantive policy statement that affects the issuance of your permit by providing the County with a written request that states:

(1) Your name and address;
(2) The statute, ordinance, regulation, delegation agreement, or authorized substantive policy statement, or part thereof, that requires clarification;
(3) Any facts relevant to the requested ruling;
(4) Your interpretation of the applicable statute, ordinance, regulation, delegation agreement, or authorized substantive policy statement, or part thereof, that requires clarification; and,
(5) Whether, to the best of your knowledge, the issues or related issues are being considered by the County in connection with an existing permit, license or license application.

You may request a written clarification or interpretation by the staff member reviewing your permit application. If you disagree with a staff clarification/interpretation, you may appeal to the Manager of the Compliance and Regulatory Affairs Office. Official decisions may be appealed to the Pima County Board of Supervisors in accordance with Pima County Code 13.36.200.

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