

# **Idaho Pollutant Discharge Elimination System**

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Enforcement Response Guide



**State of Idaho  
Department of Environmental Quality**

**May 2017**



Printed on recycled paper, DEQ May 2017, PID  
IPGF, CA 82988. Costs associated with this  
publication are available from the State of Idaho  
Department of Environmental Quality in accordance  
with Section 60-202, Idaho Code.

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## Acronyms

|       |  |
|-------|--|
| CAS   | compliance agreement schedule                |
| CO    | consent order                                |
| CSO   | compliance schedule order                    |
| DEQ   | Idaho Department of Environmental Quality    |
| DMR   | discharge monitoring report                  |
| IPDES | Idaho Pollutant Discharge Elimination System |
| NOD   | notice of deficiency                         |
| NONC  | notice of noncompliance                      |
| NONFA | notice of no further action                  |
| NOV   | notice of violation                          |
| POTW  | publicly owned treatment works               |
| NNCR  | NPDES noncompliance reports                  |
| SIU   | significant industrial user                  |
| SNC   | significant noncompliance                    |
| TRE   | toxicity reduction evaluation                |
| TRO   | temporary restraining order                  |

## 1 Purpose, Principles, and Measures

This guide supplements the Idaho Department of Environmental Quality's (DEQ's) *Enforcement Manual* and is designed to help Idaho Pollutant Discharge Elimination System (IPDES) Program compliance and enforcement staff determine the appropriate enforcement response to a specific violation of an IPDES permit and related sections of state law. This guide serves two purposes:

1. It recommends an enforcement response that is timely and appropriate with respect to the nature and severity of the violation and the overall degree of noncompliance.
2. It ensures uniform application of enforcement responses to comparable levels and types of violations.

While this guide addresses a broad range of IPDES Program violations, it is not intended to cover every possible noncompliance event (Attachment A). The enforcement responses reflect the enforcement actions available to DEQ. When taking into consideration the elements of the *IPDES Enforcement Response Guide*, DEQ will administer any enforcement responses available under, and consistent with, state law. DEQ maintains enforcement discretion in all cases.

DEQ considers an effective enforcement response as one that ensures the noncompliant facility returns to compliance as expeditiously as possible, establishes the appropriate deterrent effect for a particular violator and for other potential violators, and promotes fairness of government treatment among comparable violators and among complying and noncomplying parties.

When determining the level of the enforcement response, IPDES staff should consider the following:

- The degree of variance from the permit condition or legal requirement,
- The severity of adverse impacts or threats of adverse impacts to human health or the environment,
- The duration of the violation,
- Previous enforcement actions taken against the violator,
- The deterrent effect of the response on the violator and on the similarly situated regulated community, and
- Any information regarding knowledge or intent of the violator.

## 2 Timing of Enforcement Response

DEQ must respond to all significant noncompliance (SNC)<sup>1</sup> in a timely and appropriate manner. The response should reflect the nature and severity of the SNC violation. Unless there is supportable justification, the response must be a formal enforcement action or require a return to

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<sup>1</sup> SNC designations are made in accordance with EPA's December 12, 1996, guidance document *General Design for SNC Redefinition Enhancement in PCS*, the October, 2007, *Interim Significant Noncompliance Policy for Clean Water Act Violations Associated with CSOs, SSOs, CAFOs, and Storm Water Point Sources*, and the September 21, 1995, memorandum "Revision of NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Non-Monthly Average Limits."

compliance by the permittee, generally within one quarter from the date that the SNC violation is first reported on the quarterly NPDES noncompliance reports - (NNCRs), but may be both.

DEQ expects to take a formal enforcement action before the violation appears on the second quarterly NNCR, generally within 60 days of the first quarterly NNCR. When formal enforcement action is not taken, DEQ will keep a written record that clearly justifies why the alternative action (e.g., informal enforcement or permit modification) was the more appropriate action.

There is no specific timeframe established to initiate and complete an enforcement response. However, it is DEQ's general guideline to determine the appropriate enforcement response, action, and documentation within 45 days of identifying a violation. DEQ will consider the appropriate formal enforcement response in those instances when noncompliance continues beyond a reasonable time.

Throughout this guidance, references to days represent calendar days, unless specified otherwise (e.g. business days). In computing any period of time scheduled to begin after or before the occurrence of an activity or event, the date of the activity or event is not included. The last day of the period is included, unless it is a Saturday, a Sunday, or a legal holiday, in which case the period runs until the end of the next day (which is not a Saturday, a Sunday, or holiday). However, when a party or interested person is served by mail, 3 days are added to the prescribed time.

### **3 Technical Assistance as a Conjunctive Tool**

In some instances, DEQ may provide technical assistance to permittees with documented chronic violations. However, a regulated entity may request technical assistance at any time. Technical assistance is the provision of advice, assistance, or training pertaining to the installation, operation, and maintenance of equipment; it is not compliance assistance. For information on compliance assistance, see section 4.3.1. Rather, its function is independent of any enforcement action DEQ may pursue and may or may not be a resource for a permittee. The objective of technical assistance is to provide permittees with the expertise needed to gain compliance. Technical assistance may involve site visits to teach skills, guidance on obtaining grants and loans, or help solving problems related to the operation and maintenance of a treatment works. While the proper operation and maintenance of a facility is the responsibility of the permittee, DEQ staff expertise may be a useful resource for the regulated community.

While a permitted facility may request technical assistance at any time, the IPDES Program may request a technical assistance inspection of a permitted facility by regional DEQ engineering staff to determine the cause of a chronic violation. For example, a small community may lack the financial resources to employ a consultant capable of troubleshooting a deficient treatment removal process. As a result, the facility continues to report effluent limit exceedances. IPDES personnel may proceed with enforcement action while informing the facility that DEQ regional engineering staff is available for technical assistance. Technical assistance does not preclude the IPDES Program from initiating a formal enforcement response.

## 4 Enforcement Responses

DEQ will exercise three possible levels of response to an illegal discharge or other violations of the IPDES program requirements: no immediate action, informal response, or formal enforcement action. DEQ will review the violation and determine the appropriate enforcement response.

### 4.1 Escalating Enforcement Responses

DEQ will respond in a timely manner to every known noncompliance event. The magnitude, frequency, and duration of a noncompliance event determine whether DEQ's response is formal or informal or requires immediate action. Events resulting in known harm to public health or the environment prompt a formal enforcement action. Harmful events are those events that create a nuisance or render surface waters detrimental or injurious to public health, safety, or welfare; fish and wildlife; or beneficial uses of the water body (e.g., swimming beach closures or fish kills). For those noncompliance events identified as not significant, DEQ may offer compliance assistance, and may deploy an escalating informal response process to bring permittees back into compliance. For an example of an escalating response, see Figure 1. DEQ reserves discretion when initiating an informal response such that an informal response may begin with the highest level (i.e., notice of intent to enforce).

DEQ's initial informal response to an isolated single noncompliance event may be to contact the facility via phone or e-mail. If the permittee is unresponsive or fails to return to compliance expeditiously, then DEQ may escalate the informal response by sending the permittee a written notification. As the severity (magnitude) of the violation increases, a formal enforcement response becomes more likely. Where frequent unrelated noncompliance events persist, DEQ may inform the permittee in writing that a formal enforcement action is imminent.

Significant noncompliance violations identified on a quarterly NNCR as unresolved or recurring violations similar in nature (e.g., chronic reporting deficiencies) should trigger a formal enforcement action. When establishing enforceable schedules (timelines) for achieving compliance, DEQ will strive to set realistic expectations of the permittee.

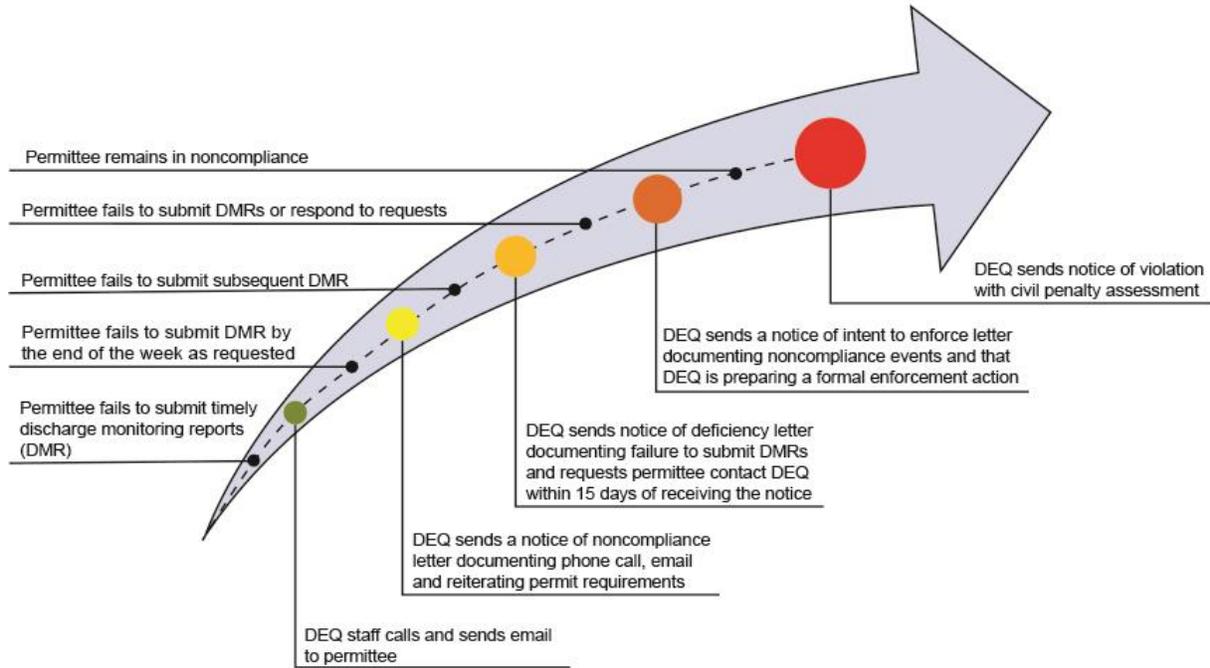


Figure1. Example of an Escalating Enforcement Response

**Figure 1. Example of an escalating enforcement response.**

## 4.2 No Immediate Action

DEQ may encounter circumstances that delay an informal response or formal enforcement action. For example, a file review may reveal noncompliance with a permit condition or IPDES rule; DEQ may choose to address this discovery at a later date, during a compliance evaluation inspection. Should IPDES resources become constrained by workload and preclude immediate action, DEQ will focus enforcement actions on those violations posing the greatest risk to public health and the environment.

## 4.3 Informal Responses

Informal responses typically take four forms: compliance assistance, notices of noncompliance, notices of deficiency, and notices of intent to enforce.

### 4.3.1 Compliance Assistance

DEQ uses compliance assistance in the form of verbal or electronic notifications/requests (phone call, e-mail) to inform a permittee of a problem and to informally explain regulatory requirements (e.g., surface water quality standards, environmental statutes and rules) and permit requirements or to provide guidance on how to comply with or satisfy a particular permit condition. For example, DEQ may explain the purpose of a storm water pollution prevention plan or quality assurance project plan and provide resources to assist in completing these types of documents. Compliance assistance is not technical assistance; for information on technical

assistance, see section 3. DEQ will contact permittees via phone within 5 days of becoming aware of a noncompliance event, regardless of whether a formal response will follow.

DEQ uses permittee education and outreach (i.e., compliance assistance) when noncompliance is identified statewide or by sector (e.g., storm water). As reporting data are reviewed and inspections are conducted, DEQ will analyze noncompliance trends and address these issues through education and outreach, including publication of online IPDES resources, permittee file reviews, workshops, conferences, and newsletters.

### **4.3.2 Noncompliance Letters**

#### **4.3.2.1 Notice of Noncompliance**

DEQ issues a notice of noncompliance (NONC) letter when compliance assistance efforts have proven ineffective or when noncompliance issues by first time violators that do not cause actual harm to human health or the environment are identified. Violators will be given an opportunity to rectify the situation within a realistic timeframe (typically within 30–60 days). A NONC is best suited for addressing paperwork-related noncompliance, not including failure to develop a plan as required by a permit condition. For example, a permittee may miss a deadline for notifying DEQ that a particular plan has been updated; DEQ may attempt to contact the facility, and where the permittee developed the plan but neglected to notify, DEQ may issue a NONC.

#### **4.3.2.2 Notice of Deficiency**

DEQ issues a notice of deficiency (NOD) letter to inform the permittee that a noncompliance event has occurred and requires corrective action. This letter provides the responsible party an opportunity to correct the situation within a specified period of time. The NOD stipulates the appropriate corrective action required to achieve compliance and the type of response required of the permittee. A NOD is best suited for addressing noncompliance events with no known harm to public health or the environment.

#### **4.3.2.3 Notice of Intent to Enforce**

DEQ may issue a notice of intent to enforce (NOIE) letter when noncompliance issues persist beyond a previously established amount of time or when noncompliance nears the threshold for initiating a formal enforcement response. This letter is often issued after an NONC or NOD letter and prior to a notice of violation (NOV). This letter is the most serious form of an informal enforcement action. It will follow the format of an NOV to facilitate the transition from an informal response to a formal enforcement action. The NOIE will:

- Cite DEQ’s authority to pursue administrative or judicial enforcement actions,
- Cite the statute, rule or permit condition allegedly violated,
- State the findings of fact that support DEQ’s position that a violation occurred,
- Provide a final offer for compliance assistance,
- Specify reasonable timelines to achieve compliance,
- Require a written response that corrective action has been completed, or a schedule for returning to compliance, and
- Identify the individual to whom correspondence and inquiries should be directed.

While the NONC, NOD, and NOIE are all informal responses, the IPDES NOIE is most similar to EPA's notice of violation informal enforcement action.

### **4.3.3 Notice of No Further Action**

DEQ will issue a notice of no further action (NONFA) once it has been determined that a facility has adequately addressed the documented noncompliance. This notice documents that the documented noncompliance has been adequately addressed by the facility. Issuance of a NONFA by DEQ does not preclude the agency from taking further enforcement action regarding those specific noncompliance events up to the statute of limitations.

## **4.4 Formal Responses**

Pursuant to Idaho Code §39-175E, all investigation, inspection, and enforcement authorities set forth in Idaho Code §§39-101 through 39-130 are available to DEQ with respect to the IPDES program. The public will be given the opportunity to comment on all proposed enforcement action settlements.

### **4.4.1 Administrative Actions**

**A notice of violation (NOV)** under Idaho Code §39-108 is a notice that documents a violation. The majority of enforcement work starts with an NOV. There is no requirement to issue an NOV every time a violation is observed. An NOV is not an order. The notice must include an opportunity to confer with DEQ within 20 days of receiving the notice, unless a later date is agreed to. This compliance conference provides the violator an opportunity to explain the circumstances of the alleged violation and propose a remedy for returning to compliance. The notice may require a written response within 15 days. NOV's may precede other formal administrative or civil/judicial enforcement actions and may include a civil penalty. An NOV is not required prior to filing a civil enforcement action. If an NOV is issued, however, a civil action may not be filed until the recipient has been afforded an opportunity for a compliance conference and to enter into a consent order (discussed below).

**A compliance agreement schedule (CAS)** under Idaho Code §39-116A is an enforceable schedule that establishes actions necessary to maintain or come into compliance as expeditiously as practicable. The term of the agreement is not to exceed 10 years. Annual meetings between DEQ and the permittee will be included in the schedule when agreements last longer than 1 year.

**A consent order (CO)** under Idaho Code §39-108 is an administrative order entered into by agreement of the violator and DEQ. It may include a provision providing for payment of any agreed civil penalty. If no agreement is reached, DEQ may initiate a civil enforcement action in district court.

### **4.4.2 Civil Remedies**

**A civil suit** under Idaho Code §39-108 and 109 is an enforcement action that causes a violator to be liable to the state for a sum to be assessed by the court. A civil suit is filed in district court by the Office of the Attorney General in consultation with DEQ. Sufficient evidence must be

available to prove the case in court. DEQ is not required to initiate or prosecute an administrative action before initiating a civil enforcement action.

**A temporary restraining order (TRO) and preliminary injunction** under Idaho Code §39-108(8) allows DEQ to seek immediate injunctive relief when there is an imminent and substantial danger to public health and the environment.

#### **4.4.3 Criminal Remedies**

Per Idaho Code §39-117, any person will be guilty of a misdemeanor who willfully or negligently violates any IPDES standard or limitation, permit condition, or filing requirement; who knowingly makes any false statement, representation, or certification in any IPDES form, in any notice, or report required by an IPDES permit; or who knowingly renders inaccurate any monitoring device or method required to be maintained. The convicted party may be punished by a fine or imprisonment (Idaho Code §18-113). DEQ's *Enforcement Manual* (2000) describes the procedures to refer a potential criminal action to the Office of the Attorney General.

## Attachment A. Noncompliance events, circumstances, and range of responses.

The table below outlines various noncompliance scenarios, circumstances, and the range of responses that may be appropriate. When using this table:

- “Isolated or infrequent” refers to a noncompliance event that occurs at an interval once within a permit cycle and unrelated to another noncompliance event.
- Phone calls should be noted in the IPDES database record and followed up with noncompliance letters if reports are not received within the specified timeframe.
- A noncompliance letter includes notice of noncompliance (NONC), notice of deficiency (NOD), and notice of intent to enforce letters. The specific letter type depends on the escalating factors.
- Consult the Office of the Attorney General before proceeding with a formal enforcement action.

| Noncompliance   | Circumstances   | Range of Response <sup>a</sup>  |
|---|---|---|
| <b>Sampling, Monitoring, and Reporting</b>  |   |   |
| Failure to sample, monitor, or report (routine reports, discharge monitoring reports [DMRs])              | Isolated or infrequent (depending on circumstance)  | Phone call, noncompliance letter, or NOV. Request that a report be submitted immediately.   |
|   | Permittee does not respond to NOV, does not follow through on verbal or written commitments, or commits frequent violations | Consider CAS or CO, depending on circumstance. Judicial action if failure to comply with CAS, CSO, or CO. Consider referral for criminal prosecution, if applicable or warranted. |
| Failure to sample, monitor, or report (IDAPA 58.01.25.300.10)   | Any instance  | NOV, CAS, CO, or judicial action.   |
| Failure to sample, monitor, or report (one-time requirement)  | Any instance  | Noncompliance letter, NOV, CAS, CO, or judicial action.   |
| Failure to perform biological testing as required   | Isolated or infrequent  | NOV or CAS.   |
|   | Frequent or continued   | CAS, CO, or judicial action.  |
| Failure to report biological testing results  | Submitted within 30 days of due date  | Noncompliance letter.   |
|   | Submitted 30 days or more late  | NOV, CAS, CO, or judicial action.   |
| Failure to submit final toxicity reduction evaluation (TRE) planning or implementation report as required | Submitted within 30 days of due date  | Noncompliance letter.   |
|   | Submitted 30 days or more late  | NOV, CAS, CO, or judicial action.   |
| Failure to file 24-hour report for effluent violations required by IDAPA 58.01.25.300.12                  | No known harm   | NOV, CAS, or CO.  |
|   | Known harm  | Consider referral for criminal prosecution, if applicable or warranted. If not, judicial action (including TRO).  |

| Noncompliance   | Circumstances  | Range of Response <sup>a</sup>   |
|---|--|--|
| <b>Sampling, Monitoring, and Reporting (cont.)</b>  |  |  |
| Failure to submit with DMRs a report explaining other violations  | Isolated or infrequent   | Phone call, noncompliance letter, or NOV.  |
|   | Frequent or continued violations                                   | CAS or CO.   |
| Minor sampling, monitoring, or reporting deficiencies (e.g., computational or typographical errors)   | Isolated or infrequent   | Phone call, noncompliance letter, or NOV. Require corrections be made in next submittal.               |
|   | Frequent or continued violations                                   | NOV, CO, or CAS with penalty.  |
| Major or gross sampling, monitoring, or reporting deficiencies (e.g., missing information, late reports, or repeated occurrences of computational errors) | Isolated or infrequent   | NOV, CAS, or CO. Require corrections be made in the next submittal.                                    |
|   | Frequent or continued violations                                   | CAS, CO, or judicial action.   |
| Reporting false information   | Any instance   | Consider referral for criminal prosecution, if applicable or warranted. If not, judicial action.       |
| Failure to install monitoring equipment   | 90 days or more outstanding with no good or valid cause            | NOV, CAS, CO, or judicial action.  |
| <b>Quality Assurance</b>  |  |  |
| Nonsubmittal of DMR quality assurance data  | Isolated or infrequent   | Noncompliance letter, NOV, CAS, or CO.   |
|   | Continued violation  | NOV, CAS, or CO.   |
| <b>Permit Effluent Limits</b>   |  |  |
| Effluent limit exceedance   | Outside permittee's control (e.g., upset or bypass)                | Contact permittee and require proof of good and valid cause, noncompliance letter.                     |
|   | Isolated or infrequent minor violation                             | Noncompliance letter, NOV.   |
|   | Isolated or infrequent major violations of a single effluent limit | NOV, CAS, CO, or judicial action.  |
|   | Frequent violations of effluent limits                             | CAS, CO, or judicial action.   |
| Failure to meet whole effluent toxicity testing limits  | Isolated or infrequent violation with no known harm                | NOV or CAS.  |
|   | Isolated or infrequent with known harm                             | CAS, CO, or judicial action.   |
|   | Continuing violations with or without harm                         | CO or judicial action.   |
| Discharge without a permit  | One time with no known harm  | NOV, CAS, or CO.   |
|   | One or more times with or with no known harm                       | Consider referral for criminal prosecution, if applicable or warranted. If not, other judicial action. |

| Noncompliance  | Circumstances   | Range of Response <sup>a</sup>   |
|--|---|--|
| <b>Permit Compliance Schedule</b><br>(Construction phases or planning, including required TRE activities) <sup>b</sup> |   |  |
| Missed interim date  | No written notification within 14 days  | Phone call, noncompliance letter, NOV, or CO.  |
|  | Will not cause late final date or other interim dates   | Phone call, noncompliance letter, NOV, or CO.  |
|  | Will result in other missed interim dates but the violation is for good or valid cause  | NOV, CAS, or CO. Contact permittee and require documentation of good and valid cause.  |
|  | Will result in other missed interim dates and no good or valid cause (i.e., was negligent)  | CAS, CO, or judicial action <sup>c</sup> .   |
|  | Will result in missed final date and no good or valid cause   | Judicial action.   |
| Missed final date <sup>d</sup>   | No written notification within 14 days  | Phone call, noncompliance letter, NOV, or CO.  |
|  | Violation due to act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy (force majeure) | Contact permittee and require submittal of written documentation of good and valid cause and date of or schedule for returning to compliance. Follow-up with facility to determine compliance. |
|  | 90 days or more outstanding with no good or valid cause   | NOV, CAS, or judicial action.  |
| Failure to make timely corrective control/treatment decisions as part of TRE   | Late with good or valid cause   | NOV.   |
|  | Continued violation with no good or valid cause   | CAS, CO, or judicial action.   |
| Failure to undertake TRE control/treatment activities as required  | Isolated or infrequent  | Phone call, noncompliance letter, NOV, CAS, CO, or judicial action.  |
|  | Frequent or continued   | CAS, CO, or judicial action.   |
| Exceeding interim effluent limits  | Outside permittee's control (e.g., upset or bypass)   | Contact permittee and require proof of good and valid cause, noncompliance letter.   |
|  | No known harm   | Noncompliance letter, NOV, CAS, CO, or judicial action.  |
|  | Known harm  | Judicial action.   |
| Failure to meet interim whole effluent toxicity testing limits   | Isolated or infrequent with no known harm   | Noncompliance letter, NOV, CAS, or CO.   |
|  | Isolated or infrequent with harm  | CAS, CO, or judicial action.   |
|  | Continued violation with or without harm  | CO or judicial action (TRO).   |

| Noncompliance   | Circumstances  | Range of Response <sup>a</sup>   |
|---|--|--|
| <b>Compliance Inspection</b>  |  |  |
| Minor violation of sampling or analytical procedure (e.g., failure to update quality assurance project plan)  | One instance or as many as three unrelated instances   | Noncompliance letter.  |
|   | More than three instances  | NOV.   |
| Major violation of sampling or analytical procedure (e.g., failure to follow quality assurance project plan)  | No evidence of intent  | Noncompliance letter, NOV, CAS, or CO.   |
|   | Evidence of negligence or intent   | Consider referral for criminal prosecution, if applicable or warranted. If not, judicial action.                   |
| Violation of permit conditions other than (numerical) effluent, schedule, or reporting requirement (e.g., BMP, O&M, unauthorized discharge or bypass, record detention, or record availability) | No evidence of negligence or intent  | Noncompliance letter, NOV, CAS, or CO with immediate correction action required.                                   |
|   | Evidence of negligence or intent   | NOV, CAS, or CO. Consider referral for criminal prosecution, if applicable or warranted. If not, judicial action.  |
| <b>Compliance Agreement Schedule</b><br>(Construction phases, TRE activities)   |  |  |
| Missed deadline   | Contained in CAS previously issued and good or valid cause   | CO or judicial action. Contact permittee and require documentation of cause, if not already provided by permittee. |
|   | Contained in CAS previously issued and no good or valid cause                                      | Judicial action.   |
| Reporting false information   | Any instance   | Consider referral for criminal prosecution, if applicable or warranted. If not, judicial action.                   |
| Exceeding interim effluent limits   | Outside permittee's control (e.g., upset or bypass)  | Contact permittee and require proof of good and valid cause.   |
|   | No known harm  | NOV, CAS, CO, or judicial action.  |
|   | Known harm   | Judicial action.   |
| Failure to meet interim whole effluent toxicity testing limits  | Isolated or infrequent with no known harm  | NOV, CAS, or CO.   |
|   | Isolated or infrequent with harm   | CAS, CO, or judicial action.   |
|   | Continued violation with or without harm   | CO or judicial action (or TRO).  |
| <b>Consent Order with Interim Limits</b>  |  |  |
| Exceeding interim limits contained in CO  | Isolated or infrequent violation   | Judicial action on basic violation.  |
|   | Frequent or continued violations within the control of the permittee or known environmental damage | Amend CO; consider referral for criminal prosecution, if applicable or warranted. If not, judicial action.         |

| Noncompliance  | Circumstances   | Range of Response <sup>a</sup>  |
|--|---|---|
| <b>Consent Order with Compliance Schedule</b>  |   |   |
| Missed deadline  | Contained in CO and good or valid cause   | Contact permittee and require documentation of cause, if not already provided by permittee.                                   |
|  | Contained in CO and no good or valid cause  | Judicial action.  |
| Reporting false information  | Any instance  | Consider referral for criminal prosecution, if applicable or warranted. If not, judicial action.                              |
| Exceeding interim effluent limits  | Outside permittee's control (e.g., upset or bypass)   | Contact permittee and require proof of good and valid cause.  |
|  | No known harm   | NOV, CAS, CO, or judicial action.   |
|  | Known harm  | Judicial action.  |
| Failure to meet interim whole effluent toxicity testing limits   | Isolated or infrequent with no known harm   | NOV, CAS, amend CO.   |
|  | Isolated or infrequent with harm  | Judicial action.  |
|  | Continued violation with or without harm  | CO or judicial action (TRO).  |
| <b>Pretreatment Program (State Control): Industrial Users</b>  |   |   |
| Failure to submit baseline monitoring reports or other required pretreatment reports or plans.   | Isolated or infrequent  | Phone call, noncompliance letter, NOV, or CAS.  |
|  | Continued   | NOV, CAS, CO, or judicial action.   |
| Failure to sample or analyze or to properly sample or analyze as required, including resampling  | Isolated or infrequent  | NOV, CAS, or CO.  |
|  | Frequent or continued   | CAS, CO, or judicial action.  |
| Reporting false information  | Any instance  | Consider referral for criminal prosecution, if applicable or warranted. If not, judicial action.                              |
| Failure to submit notice of slug loading or 24-hour report required by 40 CFR §403.12, adopted by reference at IDAPA 58.01.25.003.02.x | Single incident   | NOV, CAS, or CO.  |
|  | Multiple incidents  | Consider referral for criminal prosecution, if applicable or warranted. If not, judicial action.                              |
| Failure to maintain and have records available   | Isolated or infrequent  | NOV.  |
|  | Frequent or continued   | CAS, CO, or judicial action.  |
| Failure to meet schedule requirements  | Violation due to act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy (force majeure) | If not already provided, contact user and require documentation of good and valid cause and date and schedule for compliance. |
|  | Missed interim date but will not affect meeting final date  | Phone call, noncompliance letter, or NOV.   |
|  | Missed final date by less than 90 days  | Noncompliance letter, NOV, or CAS.  |
|  | Missed final date by 90 days or more for no good or valid cause.  | CO or judicial action.  |

| Noncompliance  | Circumstances                                       | Range of Response <sup>a</sup>   |
|--|---|--|
| <b>Pretreatment Program (State Control): Industrial Users (cont.)</b>  |   |  |
| Violation of general standards, categorical standards, or local limits (including no treatment installed)  | Minor or infrequent with no known harm.             | Phone call, noncompliance letter, NOV, CAS, or CO.   |
|  | Frequent violations or known harm                   | NOV, CAS, or judicial action.  |
|  | Causes interference or pass through                 | Consider referral for criminal prosecution, if applicable or warranted. If not, NOV, CAS, CO, or judicial action (including injunction). |
| Discharge of slug load   | Any discharge with timely notification              | NOV or CAS.  |
|  | Any discharge without timely notification           | CO or judicial action (including TRO).   |
| <b>Pretreatment Program: POTW Implementation</b>   |   |  |
| Nonsubmittal of required pretreatment reports  | Within 30 days of date required in approved program | Noncompliance letter, CAS, or CO.  |
|  | Continued nonsubmittal after notification           | NOV, CAS, or judicial action.  |
| Violation of any requirement of an approved pretreatment program, pretreatment regulation, or IPDES permit   | Minor or infrequent                                 | NOV, CAS, or CO.   |
| <b>Pretreatment Program: Violations by POTWs</b>   |   |  |
| Failure to establish significant industrial user (SIU) control mechanism after program approval, as required   | Within 6 months of program approval                 | Noncompliance letter.  |
|  | Continued violation after notification              | NOV, CAS, CO, or judicial action.  |
| Failure to issue a new control mechanism or reissue a control mechanism to an industrial user (UI) on a timely basis   | Within 90 days of date required in approved program | Noncompliance letter.  |
|  | Continued violation after notification              | NOV, CAS, CO, or judicial action.  |
| Failure to perform at least 80% of required inspections  | Continued   | NOV, CAS, CO, or judicial action.  |
| Failure to establish and enforce SIU self-monitoring requirement, as required  | Isolated or infrequent                              | Phone call, noncompliance letter, or NOV.  |
|  | Continued   | CAS, CO, or judicial action.   |
| Failure to appropriately enforce pretreatment standards (categorical standards, and local limits, including BMPs, and pretreatment requirements)   | Isolated or infrequent                              | Phone call, noncompliance letter, or NOV.  |
|  | Continued non-enforcement against one or more SIUs  | CAS, CO, or judicial action.   |
| Failure to enforce against instances of pass through or interference, and any permit conditions (such as monitoring, record keeping, reporting, or notification of hazardous waste discharge.) | Any instance  | CO or judicial action.   |
| Failure to publish list of significant violators, as required by 40 CFR §403.8(f)(2)(viii), adopted by reference at IDAPA 58.01.25.003.02.x  | Within 30 days of date required in approved program | Noncompliance letter .   |
|  | Continued violation                                 | NOV, CAS, CO, or judicial action.  |

| Noncompliance   | Circumstances  | Range of Response <sup>a</sup>                     |
|---|--|--|
| <b>Pretreatment Program: Major Violations by POTWs (cont.)</b>                            |  |  |
| Failure to comply with compliance schedule  | Milestone missed by less than 90 days  | Noncompliance letter.                              |
|   | Milestone missed by 90 days or more  | NOV, CAS, CO, or judicial action.                  |
| Failure to maintain and update user inventory   | Continued violation  | NOV, CAS, CO, or judicial.                         |
| Failure to investigate instances of reported or alleged noncompliance by industrial users | Isolated or infrequent and no known harm                                     | Noncompliance letter.                              |
|   | Continued violation or single violation with known harm                      | NOV, CAS, CO, or judicial action.                  |
| <b>Pretreatment Program: Obtaining Approval</b>   |  |  |
| Failure to submit an approvable program   | First occurrence and 90 days or more outstanding with no good or valid cause | Noncompliance letter, CAS, CO, or judicial action. |
|   | Continued violation  | NOV or judicial action.                            |

<sup>a</sup> DEQ reserves the right to exercise enforcement discretion in response to an IPDES Program violation, including its right to depart from the approach set out in this Enforcement Response Guide, if circumstances warrant such departure.

<sup>b</sup> If the compliance schedule is established by a judicial order, the violation should be brought to the attention of the program manager and legal counsel to determine whether the court should be notified. DEQ may not excuse or allow a violation of a court order without court approval.

<sup>c</sup> Judicial action includes those civil and criminal remedies DEQ may pursue in district court (sections 4.4.2 and 4.4.3).

<sup>d</sup> The enforcement response chosen for missed final dates must be consistent with national EPA policy provisions for achieving a particular level of treatment.