

ENFORCEMENT RESPONSE PLAN
for
The City of Troy
Municipal Industrial Pretreatment Program
Authorized by Troy Codified Ordinance 915.13(j)

To ensure that Publicly Owned Treatment Works (POTWs) develop and implement specific enforcement procedures to remedy violations of local pretreatment programs, on July 24, 1990, the United States Environmental Protection Agency (U.S. EPA) amended the General Pretreatment Regulations to require all POTWs with approved pretreatment programs to develop and implement enforcement response plans. Under 40 CFR 403.8(f)(5), "the plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user (IU) noncompliance. The plan shall, at a minimum:

- 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 40CFR 403.8(f)(1) and (f)(2).

The City of Troy Enforcement Response Plan describes the processes for obtaining and evaluating information on IU compliance, for identifying noncompliance, for selecting an appropriate enforcement action, and for resolving noncompliance in a timely, fair, and consistent manner. The plan will be periodically reviewed for effectiveness and updated and revised as necessary.

I. ENFORCEMENT PRINCIPLES AND PROCEDURES

A. Responsibilities, Procedures, and Timeframes

Throughout the enforcement process, it is important for all levels of management to be able to assess the effectiveness of the pretreatment program and to identify progress or deficiencies. The enforcement procedures described in this plan give management the information needed to ensure that the program makes timely decisions and is successfully implemented. To provide for internal management control, the enforcement response plan:

1. Identifies the individuals or units responsible for each element of the plan
2. Describes procedures for collecting and disseminating information including the sampling and inspection of IUs and notifying IUs of violations
3. Ensures tracking of program activities including compliance reviews and enforcement actions
4. Allows for the evaluation of specific activities in terms of their quality, timeliness, results, and accomplishment of program objectives.

Table 1
City of Troy Pretreatment Program
Responsible Parties

Title	Responsibilities
City Council	Legal and financial responsibility for program.
City of Troy Law Director	Legal assistance, as required.
City of Troy Service and Safety Director (“Director”)	General oversight of all City operations
City of Troy Superintendent Wastewater Treatment (“Superintendent”)	Overview of program activities and responsible for initiation of formal enforcement actions with legal assistance as necessary.
City of Troy Operations Technician	Administration of day-to-day program activities.
City of Troy Wastewater Staff (Sampling Crew, etc.)	Program assistance as directed by Superintendent

B. Definitions

There are several important terms that are defined by Federal EPA regulations and by Troy Codified Ordinance. These terms are defined below. These definitions are designed to identify those IUs and those violations which are likely to have the most significant impact on treatment plant operations and successful pretreatment program implementation. They provide a mechanism for identifying the most effective use of permitting, monitoring, and enforcement resources and are used in this respect in this enforcement response plan.

1. Industrial User (IU)

Any nonresidential user who discharges an industrial waste effluent into the POTW.

2. Significant Industrial User (SIU)

- All industrial users subject to categorical pretreatment standards*; and
- Any other user** that:
 - Discharges an average of twenty-five thousand gallons per day or more of process wastewater to the POTW (process wastewater excludes sanitary, non-contact cooling and boiler blowdown wastewaters);
 - Contributes a process waste stream that makes up five per cent or more of the average dry weather hydraulic or organic capacity of the treatment plant; or
 - Is designated as such by the director on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

*An Industry which meets the criteria in this paragraph may be classified as a Non-Significant Categorical Industrial User if the IU does not discharge more than one hundred gallons per day of total categorical wastewater (see TCO 915.01)

**Upon finding that an industrial user meeting the criteria in this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the director may determine in accordance with specified procedures, that such industrial user is not a significant industrial user.

3. Significant Noncompliance (SNC)

IU violations that meet one or more of the following criteria:

- Chronic violations of wastewater discharge limits defined here as those in which sixty-six percent (66%) or more of all of the measurements taken during a six-month period exceed instantaneous, daily maximum limit or the average limit for the same pollutant parameter. These violations are applicable to SIUs only and apply to each permitted monitoring point;

- Technical Review Criteria (TRC) violations, defined 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 instantaneous, daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil and grease; and 1.2 for all other pollutants except pH) These violations are applicable to SIUs only and apply to each permitted monitoring point;
- Any other violation of a pretreatment effluent limit 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;
- Any discharge of a pollutant that has caused imminent danger of human health, welfare or to the environment or has resulted in the POTW's exercise of emergency authority to halt or prevent such a discharge;
- Failure to meet, within ninety days after the schedule date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- Failure to provide, within forty five days after the due date, any required reports or information including, but not limited to, permit application forms, ninety day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- Failure to accurately report noncompliance;
- Any other violation or group of violations, including violations of BMP's, which the Director determines will or has adversely affected the operation or implementation of the City's pretreatment program.

C. Industrial User Inventory Data

The City of Troy Operations Technician and his assistants are responsible for maintaining an accurate, up-to-date IU inventory. This task is accomplished in several ways. For instance, all IUs are required to promptly notify the POTW at least 30 days in advance of any substantial changes in the volume or character of pollutants in their discharge. In addition, all SIUs discharging to the City of Troy POTW must submit periodic compliance reports as well as an IU discharge permit renewal application at least once every five years. As permits expire and are renewed, updated information will be obtained on the reapplication. Furthermore, IU discharge permits are not transferable to a new owner and/or operator without prior approval of the City. Thus, updated information will be obtained from the new owner and/or operator.

Inspections and sampling of targeted industries are also conducted to keep inventory information current. Information obtained from these inspections is used to update the IU inventory. In addition, questionnaires are periodically sent to all City businesses in order to maintain and update information on their sewer use.

Finally, all new industries are required to fill out disclosure/discharge permit applications to determine their potential impact on the City of Troy POTW and whether or not they will require an individual discharge permit.

D. Sampling and Inspection of Industrial Users

The City of Troy pretreatment program includes field investigations which are used to verify the compliance status determined from SIU self-monitoring activities, to collect samples, to initiate emergency or remedial action, and to gather additional information. The field investigations may be routine compliance monitoring or special monitoring in response to violations, technical problems, or to support permit modifications. In general, all SIUs are inspected and sampled by the City at least annually. A detailed inspection form has been developed to ensure that the results of each visit are documented. IUs are advised of any deficiencies found during an inspection. Where special on-site investigations require warrants, the warrants will be obtained with advice from legal counsel. The City of Troy Operations Technician is responsible for the coordination of all sampling and inspections and for ensuring that they are performed in accordance with established procedures. It is critical that proper procedures be followed during sampling and inspections, including quality assurance/ quality control and chain-of-custody procedures, so that all information collected may be used as evidence in enforcement proceedings, if necessary.

E. Compliance Screening

The compliance screening process involves the review of all available information to sort out noncomplying discharges for appropriate enforcement response. The initial review includes an assessment, as appropriate, of compliance with schedules, reporting requirements (including slug and accidental discharge notices), and applicable pretreatment standards. The City of Troy Operations Technician and his assistants are responsible for this initial review step which is designed primarily to identify apparent violations rather than to determine the appropriate enforcement response.

The screening process is to be completed by the City of Troy Operations Technician and his assistants within 15 calendar days after receiving various IU reports and lab results of monitoring events. The screening process verifies that the reports are submitted on schedule, that they cover the proper time period, include all information required, and are properly signed and certified. The parameters reported, the number of measurements for each parameter, the method of analysis, the sampling procedures, the discharge concentration, and other information supplied by the IU are compared to the requirements in the IU's permit or order and applicable pretreatment standards. Any discrepancy is a violation that the IU will be required to correct. If a report lacks a required signature, it is

incomplete. All alleged violations (including those arising from inspections and private complaints) are identified and recorded in a Violation File specific to each IU. This file serves as a log for the compliance history of the IU and the enforcement responses of the City of Troy.

F. Enforcement Evaluation

The violations and discrepancies that are identified during the compliance screening process are then reviewed to evaluate the type of enforcement response needed. This review is normally conducted by the City of Troy Operations Technician and his assistants, although consultation with the City of Troy Superintendent and/or the City of Troy Law Director may be necessary in some cases. An enforcement response guide has been developed to assist in this evaluation and is included in Section II of this plan. The guide identifies types of responses that are appropriate based on factors such as the nature of the violation, the duration of the violation, the frequency of the violation, the potential impact of the violation, and the compliance history and attitude of the violator. The responses available vary from informal responses such as telephone calls or written notices of violation to formal responses such as administrative orders, judicial actions, and termination of sewer service. The enforcement response selected is related to the seriousness of the violation and the enforcement response is escalated if compliance is not achieved expeditiously after taking initial action. All contact made with the IU related to enforcement is to be documented in the Violation File for that IU.

G. Enforcement Mechanisms

A range of enforcement mechanisms is necessary in order to achieve the maximum degree of compliance by IUs. The mechanisms used in the City of Troy Enforcement Response Guide are discussed briefly below. Responsible officials and timeframes for implementation of the enforcement mechanisms are provided in the Enforcement Response Guide in Section II.

1. Informal Notices and Meetings

Informal notice is the least coercive of the enforcement mechanisms and is generally to be conducted by the City of Troy Operations Technician and his assistants. Informal notice may consist of a telephone call or "reminder" letter to notify an IU of a minor violation (such as a report submitted a few days late) and to seek an explanation, suggest the exercise of more due care, and/or notify the "violator" that subsequent violations of the same type may be dealt with more severely.

If a telephone call does not produce compliance or an adequate explanation of the reason for noncompliance, a meeting between City of Troy officials and the IU may be held to emphasize the importance of maintaining compliance and to inform the IU of stronger enforcement mechanisms available. All

informal contacts, notices, and meetings with the IU will be documented in the Violations Summary for the IU.

2. Notice of Violation

A notice of violation (NOV) is a written notice to the IU that a pretreatment violation has occurred and that the noncompliance must be explained and corrected. It may also require specific corrective actions and schedules to be adhered to and will make it clear that additional enforcement action will be pursued if compliance is not attained as scheduled and that compliance with the notice does not excuse previous violations. NOV's will be delivered by the City of Troy Operations Technician and his assistants personally or sent by certified or registered mail with return receipt requested. Copies will be maintained in the IU file. The return receipt will serve as proof that the IU received the notice in the event that more formal enforcement proceedings are necessary. In general, the NOV will be sent within 20 calendar days after discovery of the noncompliance and will require a response from the IU within 10 calendar days of receipt of the NOV explaining the violation and putting forth a plan for correction and prevention thereof.

3. Administrative Orders and Fines

Administrative Orders (AOs) are enforcement documents which direct IUs to undertake or to cease specified activities. Four common types of AOs are consent orders, show cause orders, compliance orders, and cease and desist orders. The City of Troy may use more than one type of AO when responding to a particular instance of noncompliance.

A consent order combines the force of an AO with the flexibility of a negotiated settlement. The consent order is an agreement between the City of Troy and the IU normally containing three elements: (1) compliance schedules; (2) stipulated fines or remedial actions; and (3) signatures of City of Troy and industry representatives.

A show cause order directs the IU to appear before the City of Troy to explain its noncompliance and to show cause as to why more severe enforcement actions against the user should not go forward. The notice of the meeting will be served personally or by registered or certified mail (return receipt requested) at least 10 days prior to the hearing. The hearing may be formal and open to the public or informal and closed to the public. It may be conducted by the City of Troy Operations Technician, the City of Troy Superintendent, and/or the City of Troy Law Director depending on the circumstances and will be carefully documented in the Violation File. This action is not a prerequisite for further and immediate enforcement action.

A compliance order directs the user to achieve or restore compliance by a date specified in the order. Its terms need not be discussed with the industry in advance. The compliance order will document the noncompliance and state required actions to be accomplished by specific dates, including interim and final reporting requirements. Once these milestones are set, the City of Troy Operations Technician and his assistants will track the user's performance against them in order that the enforcement response can be escalated, if needed.

A cease and desist order directs a noncompliant user to cease illegal or unauthorized discharges immediately or to terminate its discharge altogether. The order may be issued immediately upon discovery of the problem or following a hearing. In an emergency, the order to cease and desist may be given by telephone with a subsequent written order served on the IU, either in person or by registered mail. The cease and desist order may also be used to suspend or permanently revoke an IU discharge permit.

An administrative fine is a monetary penalty assessed by the City for violations of pretreatment standards and requirements under the authority vested in Ohio Revised Code 6111.032(B). Administrative fines differ from civil penalties (penalties imposed through court proceedings) since fines are assessed by the City directly and do not require court intervention unless the user contests the action or refuses to pay the fine. Administrative fines will be assessed by the Director in accordance with State and Federal law and will be not less than one hundred dollars (\$100.00) or more than one thousand dollars (\$1,000.00). Each day of occurrence shall be considered a separate offense.

The City of Troy will consider the following factors when assessing administrative fines: the type and severity of the violation; the number of violations cited; the duration of the noncompliance; the impact of the violation on the POTW and the environment; whether the violation threatened human health; any economic benefit or savings that the IU derived from the noncompliance; the compliance history of the user; and "good faith" efforts of the user and other policy considerations normally involved in an enforcement action. An administrative fine may be assessed through a variety of mechanisms including assessment on the sewer bill, through an NOV, AO, or a show cause hearing. The mechanism chosen for a particular situation will, at a minimum, specify the violations for which the penalty is being assessed, indicate the amount of the penalty, and order the IU to take corrective action to return to compliance.

4. Civil Litigation

Civil litigation is the formal process of filing lawsuits against IUs to secure court ordered action to correct violations and to secure penalties for violations including the recovery of costs to the POTW of the noncompliance. It

includes enforcement measures which require involvement or approval by the courts, such as consent decrees and injunctive relief. Civil litigation requires the full cooperation of the City of Troy Law Director and may result in court trials of IUs and assessment of penalties.

Consent decrees are agreements between the City of Troy and the IU reached after a lawsuit has been filed. To be binding, the decree must also be signed by the judge assigned to the case.

Injunctions are court orders which direct parties to do something or refrain from doing something. Injunctions to halt or prevent discharges are usually temporary in nature (they have a fixed expiration date) and they may generally be sought without prior notice to the user. However, injunctions may be sought for permanent relief, if necessary, to protect the POTW. The IU is then given the opportunity to present arguments against the granting of the injunction.

Civil litigation may be necessary to recover costs associated with noncompliance and to impose civil penalties.

5. Criminal Prosecution

Criminal prosecution is the formal process of charging individuals and/or organizations with violations of ordinance provisions that are punishable, upon conviction, by fines and/or imprisonment. The alleged criminal action is defined as willful, negligent, knowing, and/or intentional violations. Criminal prosecution requires the full cooperation of the City of Troy Law Director and may result in court trials of the IU.

Several factors will be used to determine when violations should be addressed through criminal actions. These factors include the willfulness of the violation, knowledge of the violation, nature and seriousness of the offense, need for deterrence, compliance history of the subject, adequacy of the evidence, and the adequacy of penalties and sanctions available through civil or administrative enforcement actions.

Examples of criminal violations include falsification of data, tampering with results or equipment, and willful or negligent failure to provide notice of slug or accidental discharges. Criminal actions require additional evidence and proof beyond a reasonable doubt of knowledge and intent of the violator to conceal a violation or fact. All suspected instances of criminal violation will be evaluated. Criminal action will be used, if needed, to deter future violations by the individual or IU community at large.

The criminal investigation/prosecution process basically involves the six steps described briefly below:

Step One - Discovery

In this step, the City receives information of criminal activity. This information may result from routine monitoring and inspection activities, observations by citizen groups, incriminating reports from IUs, or interviews with potential defendants and informants.

Step Two - Gathering Evidence

In this step, the City must gather evidence of criminal activity which will be admissible in a criminal trial. This evidence must be gathered immediately upon belief that criminal activity has or is about to be committed since such incriminating evidence may be destroyed. It must also be collected in a manner which assures its admissibility in court.

Step Three - Initiating Criminal Prosecution

In this step, the gathered evidence is brought to the prosecutor and a decision is made to seek an indictment of the IU by a grand jury.

Step Four - Pretrial Options

In this step, the defendant pleads to the criminal charges in the indictment. If the defendant pleads guilty, a sentencing hearing is scheduled. If a not guilty plea is entered, a trial date is set.

Step Five - The Criminal Trial

At the trial, each side may present evidence, call witnesses, question the evidence, and cross-examine the witnesses of the other side. At the conclusion of the trial, a verdict is issued.

Step Six - Sentencing and Appeal

If the defendant is convicted, it may receive a fine, a prison sentence, or both. Defendants may appeal convictions on all counts or choose to appeal one or more counts. The prosecution's right of appeal is extremely limited in criminal cases.

6. Sewer Service Suspension

Suspension of service is the revocation of an IU's privilege to discharge industrial wastewater into the City of Troy's sewer system. The City of Troy has the authority to halt immediately any actual or threatened discharge presenting or causing an imminent or substantial endangerment to the health or welfare of persons, the POTW, or the environment upon formally or informally notifying the IU of a violation. Suspension may be accomplished by physical severance of the industry's connection to the collection system, by issuance of an AO which compels the user to terminate its discharge, or by a court ruling. All legal and operational implications of suspension will be

carefully considered by the City of Troy prior to using this enforcement response.

7. Publication of List of Industrial Users in Significant Noncompliance

The City of Troy Operations Technician and his assistants are responsible for preparing and publishing, at least annually in the largest daily newspaper circulated in the service area, a description of those IUs found to be in significant noncompliance.

II. ENFORCEMENT RESPONSE GUIDE

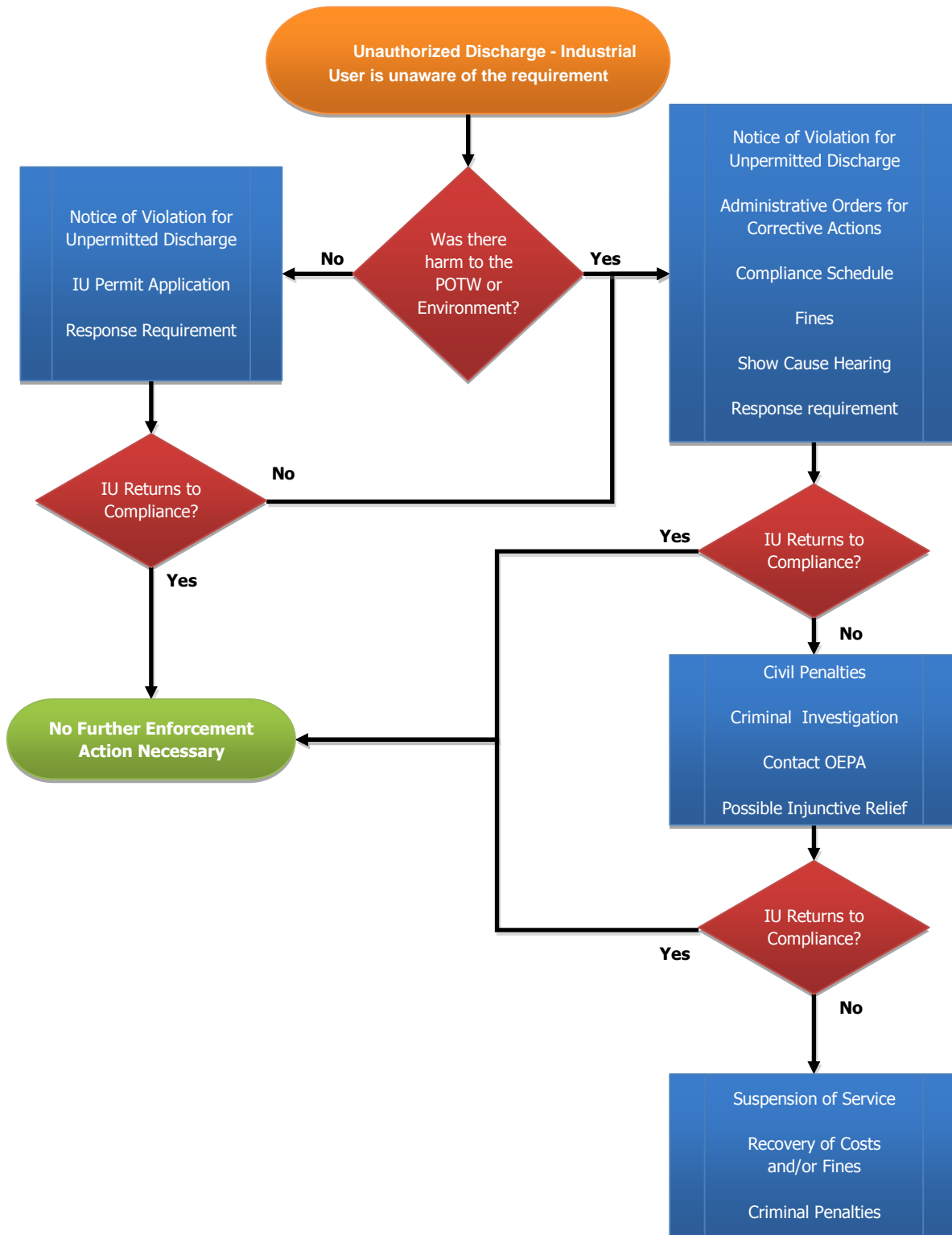
Once instances of noncompliance are documented by the City of Troy Operations Technician and his assistants, the following guide will be used to select the appropriate enforcement response. This guide identifies types of anticipated violations, indicates initial and follow-up responses, and designates personnel and timeframes for these responses. As discussed in Section I.F of this plan, when selecting an appropriate response from the list of enforcement options in the guide, a number of factors are considered including the good faith and compliance history of the IU, the previous success of enforcement actions taken against the particular IU, and the nature, duration, frequency, and potential impact of the violation. This guide will be consistently followed by the City of Troy unless adequate justification exists to vary the response. As stated previously, all supporting documentation regarding the violation and its enforcement actions are maintained in the IU's file.

The enforcement response guide organized as follows:

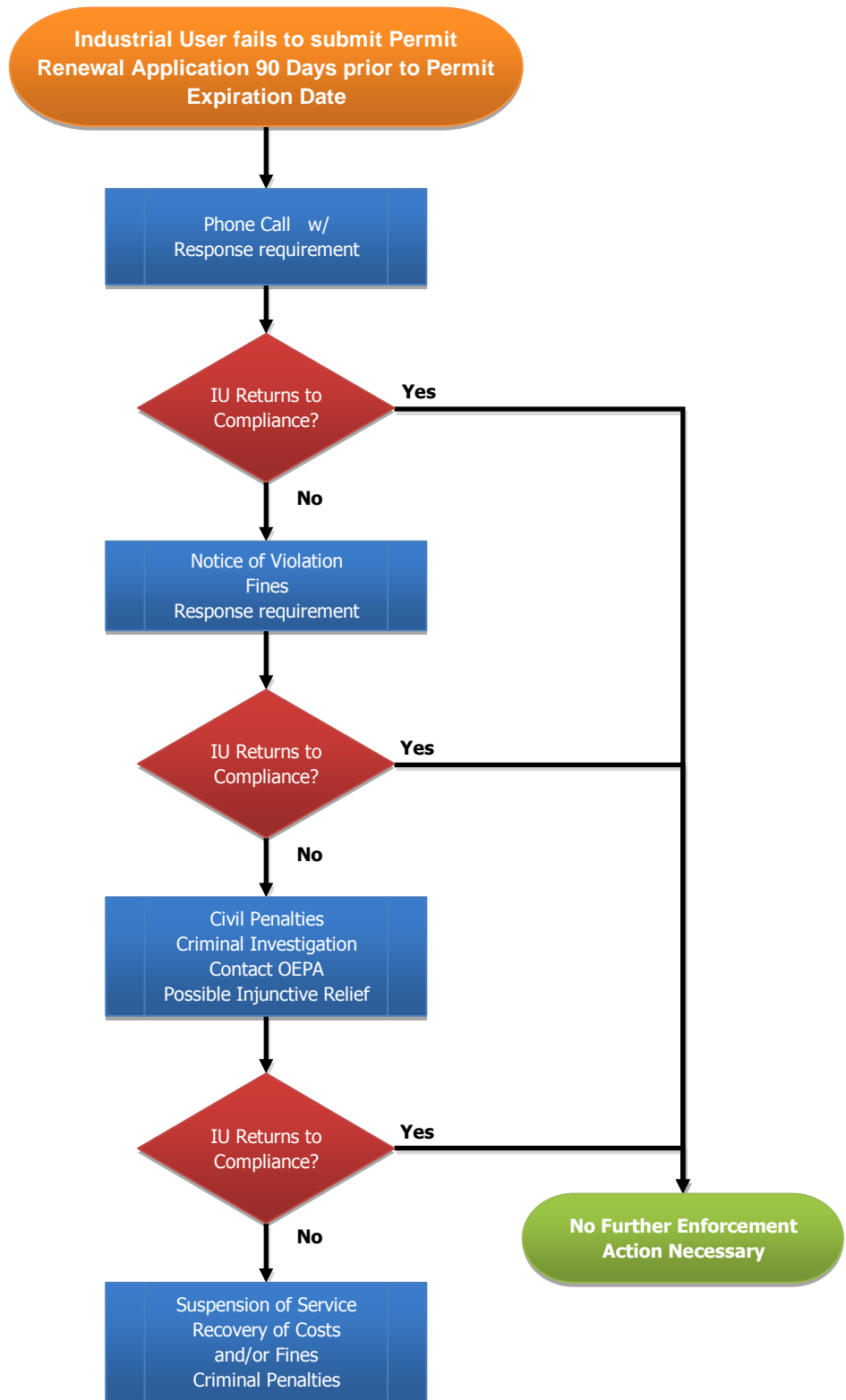
- Unauthorized Discharge Violations
- Permit Renewal Violations
- Discharge Limit/BMP Violations – No Harm
- Discharge Limit/BMP Violations –Harm
- Monitoring and Reporting Violations
- Compliance Schedule Violations
- Other Permit and/or Ordinance Violations
- Site Visit/Inspection Violations
- Significant Non-Compliance Violations

1. Turn to the page relating to the type of violation in question
2. Follow the arrows starting at the most appropriate orange entry condition
3. The selection of enforcement responses in the blue boxes is made based on the factors described above. For example, first offenders or those demonstrating good faith efforts might merit a more lenient response. Repeat offenders or "negligent" activity might require a more stringent response. The appropriate response is then selected from the range of responses listed after consideration of such factors.

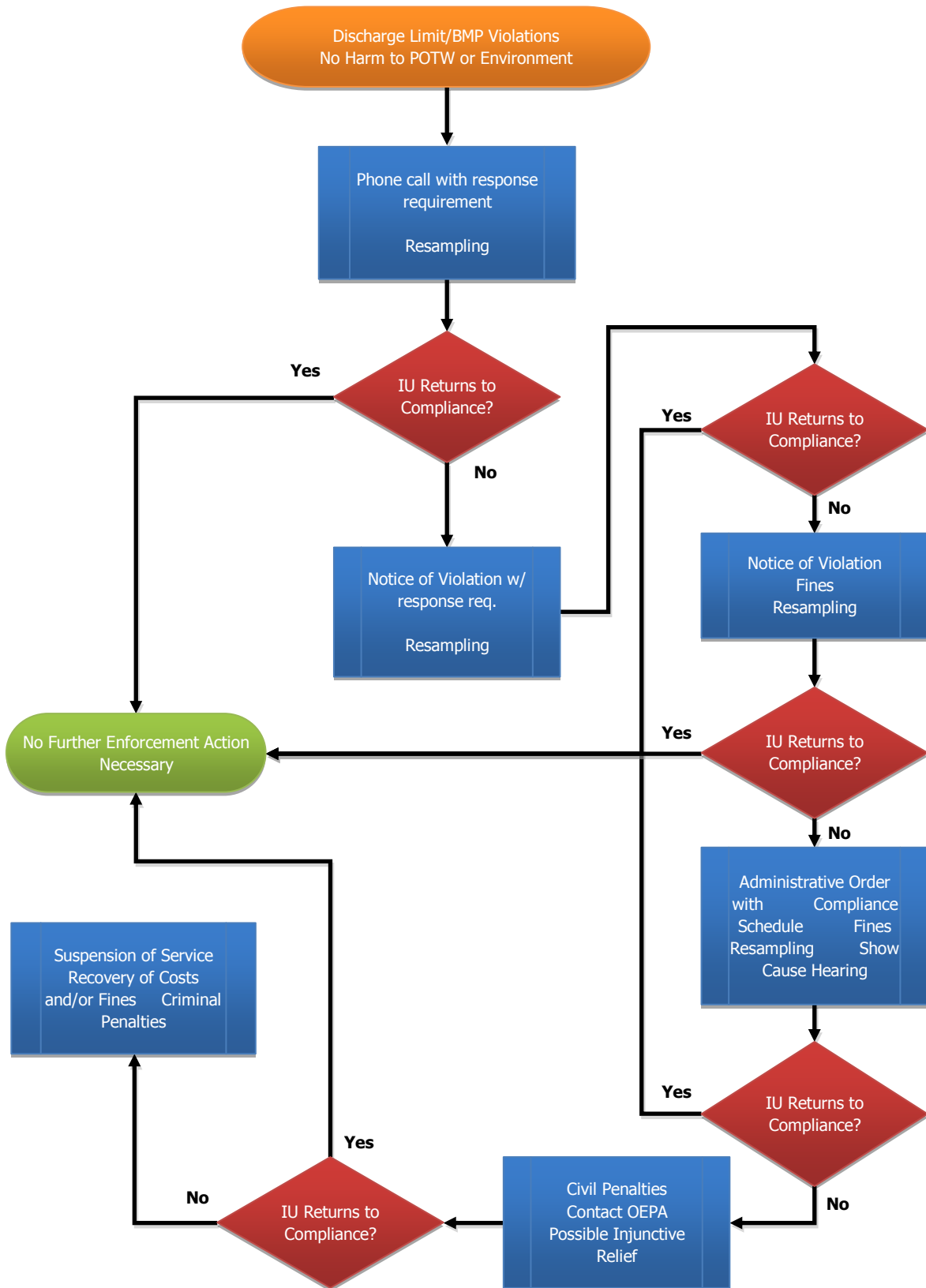
Unauthorized Discharge Violations



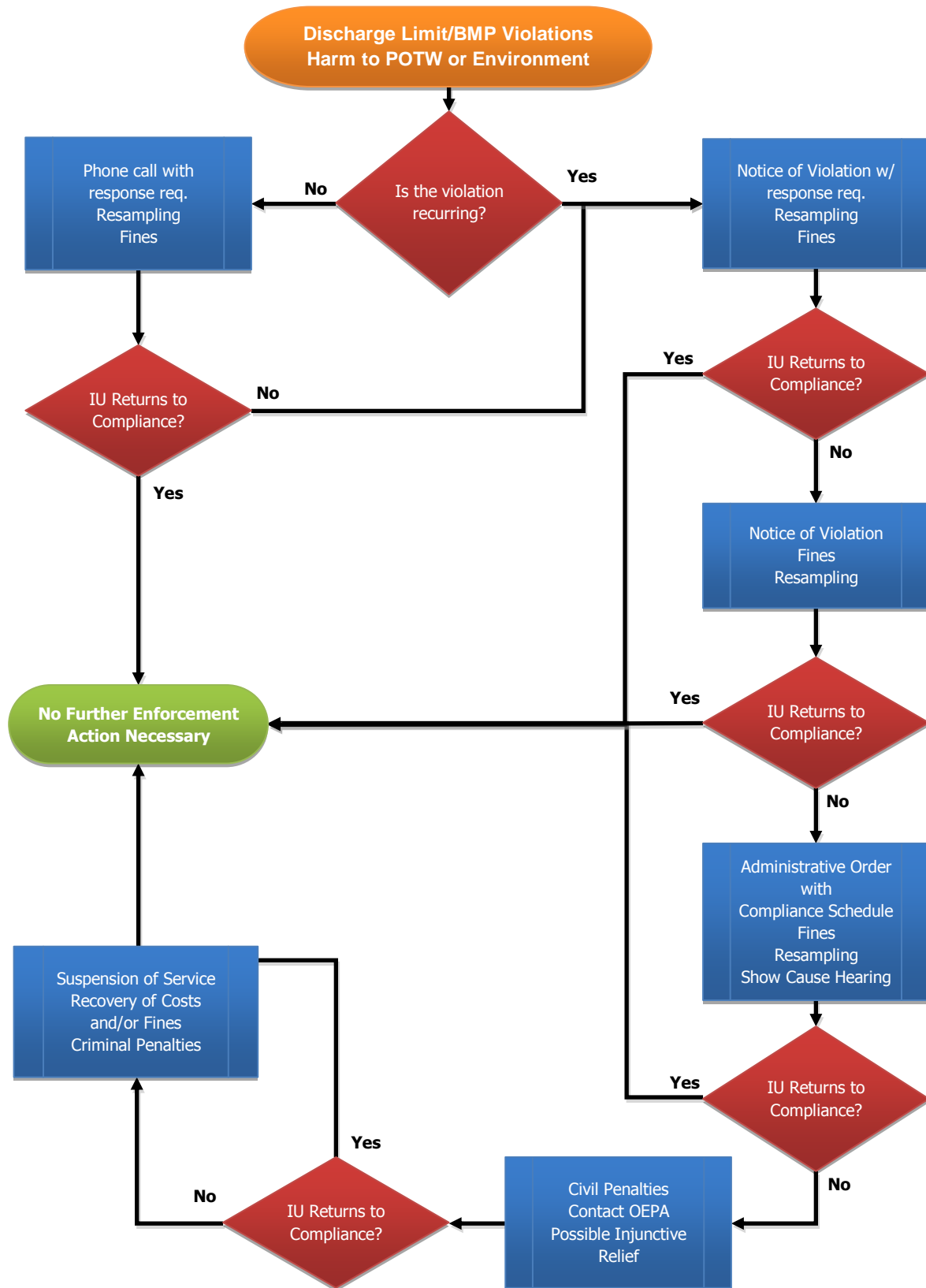
Permit Renewal Violations



Discharge Limit / BMP Violations - No Harm



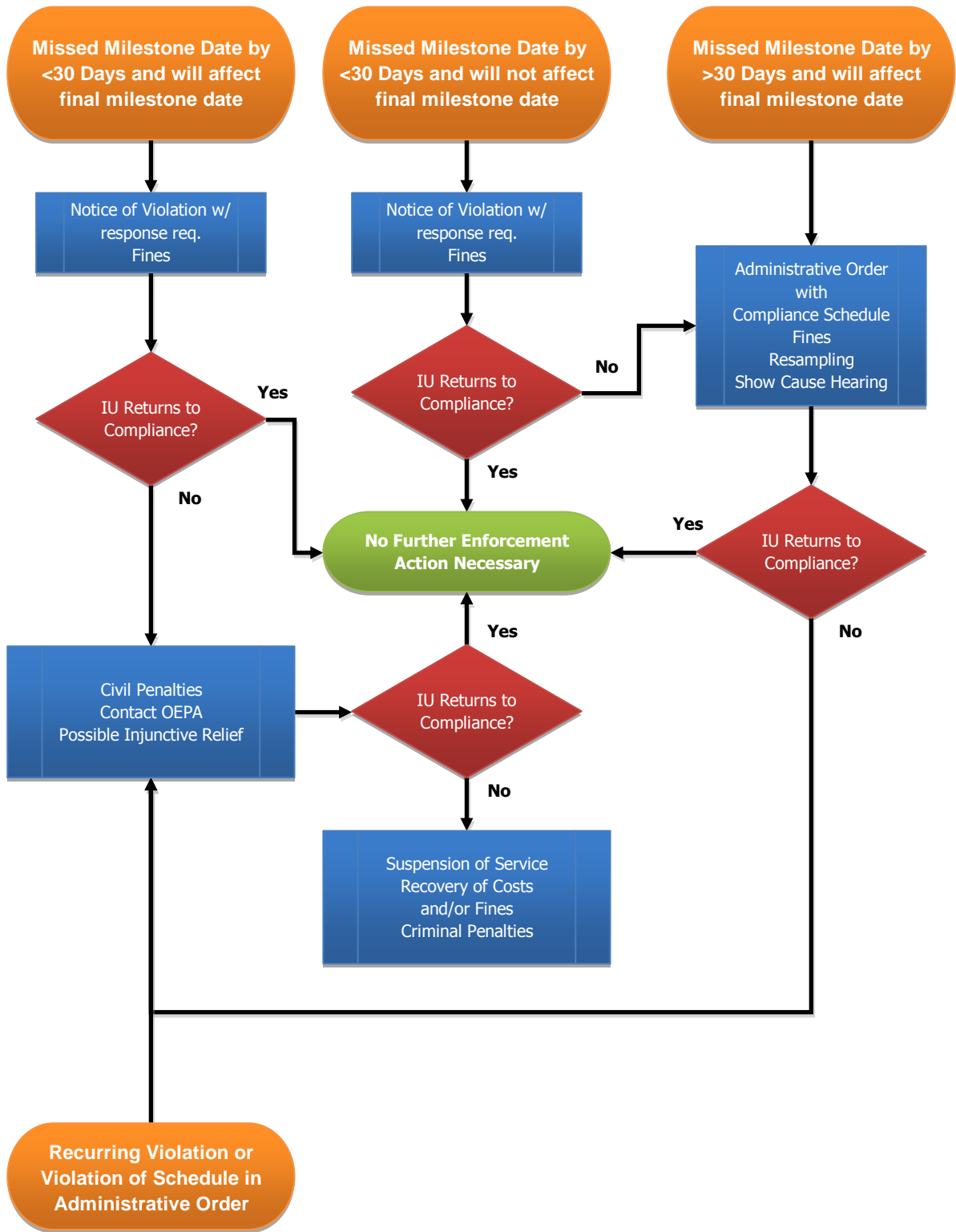
Discharge Limit / BMP Violations - Harm



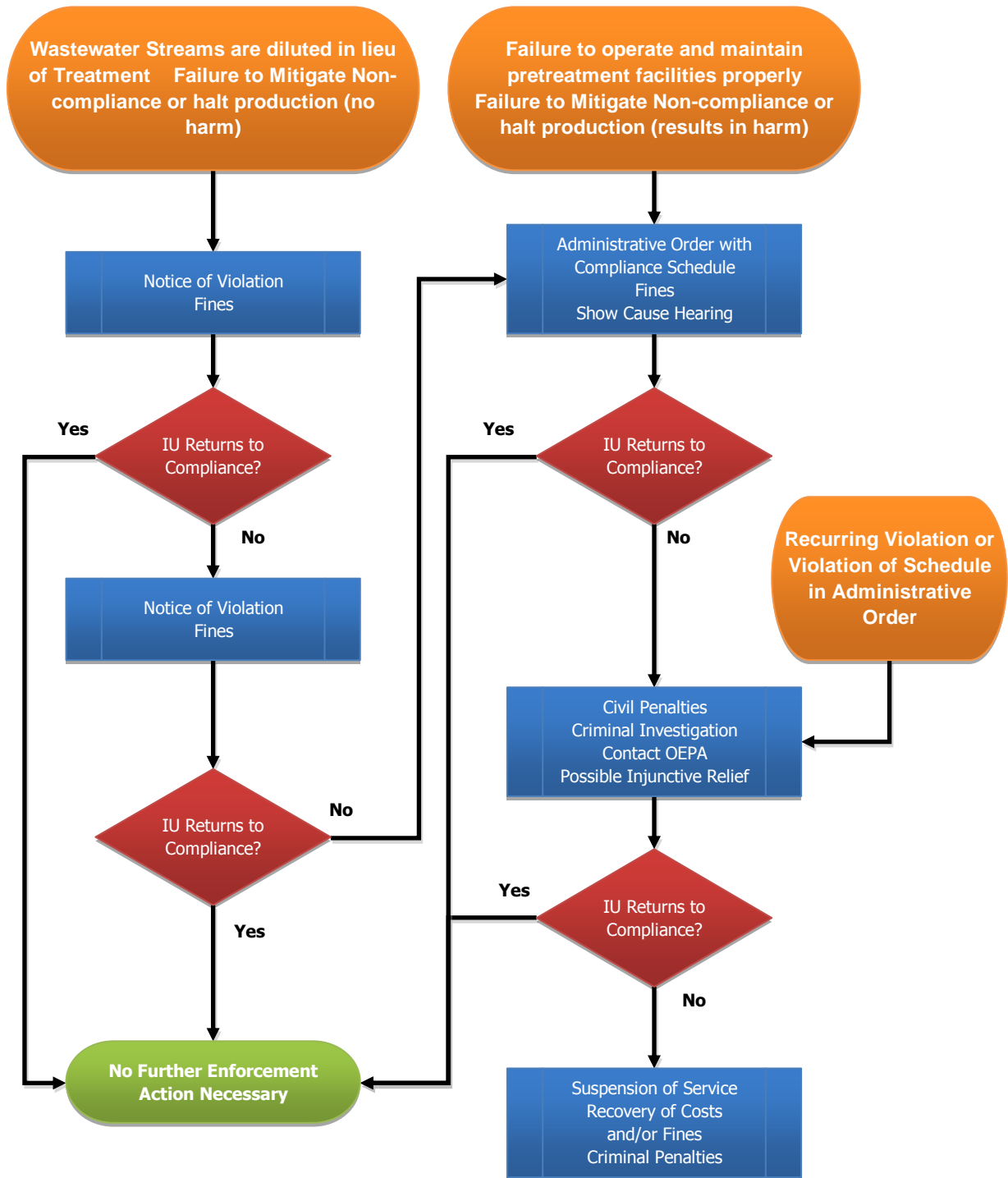
Monitoring and Reporting Violations



Compliance Schedule Violations



Other Permit and/or Ordinance Violations



Site Visit / Inspection Violations



Significant Non-Compliance Violations

