Town Of Redkey, Indiana

Industrial Pretreatment

Enforcement Response Guide (ERG)

ORDINANCE NO. 2014-3

Town of Redkey, Indiana

Industrial Pretreatment Enforcement Guide

Table of Contents

Enforcement Response Guide

I. Purpose

This Enforcement Response Guide provides a framework on how the Town of Redkey investigates and responds to instances of industrial and/or non-residential noncompliance with discharge standards set forth in the Town's Sewer Use Ordinance.
These procedures have been promulgated by the EPA to include a wide range of enforcement responses available to the Town of Redkey in the event of noncompliance. In any specific case, factors may warrant different responses than those contained in these procedures for a variety of reasons, such as the degree of variance from pretreatment standards, duration of violation, previous enforcement actions and the deterrent effect of the response.
The enforcement response procedures address a broad range of pretreatment violations. It is not the intent of these procedures to limit the enforcement discretion of the administering agencies.

II. Enforcement Authority

This Ordinance shall be enforced by the Redkey Town Council also known as the Control Authority. The superintendent of the wastewater treatment plant is the duly authorized representative of Control Authority in all enforcement activities related to this Ordinance. Enforcement actions which require legal actions are made by the Town Council upon the recommendation of the wastewater treatment plant superintendent.

III. Intent

The intent of this Ordinance is to:

- Establish enforcement responses that are appropriate to the severity and nature of the violation, the overall degree of noncompliance, to protect the integrity of the treatment plant and:
- Provide a uniform application of enforcement responses to comparable levels of violations and:
- Stress the importance of the pretreatment program along with proper operation and maintenance of the pretreatment facilities.

IV. Categories of Violations.

- Violations of monitoring, sampling and reporting
- Violations of compliance schedules.
- Violations of discharge limits.
- Violations detected through field inspections or monitoring.

V. Types of Enforcement Responses.

1. **VTN** - Verbal telephone notice.
2. **SV** - Site visit.
3. **LOV** - Letter of violation.
4. **SCH** - Show cause hearing.
5. **AO** - Administrative order.
6. **ECS** - Enforcement compliance schedule.
7. **AF** - Administrative fine.
8. **LIT - Litigation.**
9. **SNC** - Significant noncompliance.
10 **TRC** - Technical review criteria.

VI. Description of Enforcement Responses.

1. **VTN - Verbal Telephone Notice.** - A verbal telephone notice is used to notify an industrial user of a very minor type of violation, such as a report being received one or two days late.

2. **SV - Site Visit** - A visit to the site to observe and discuss a problem with an industry. The site visit may require a written response within ten (10) days indicating the reason for noncompliance and steps taken to prevent the violation in the future.

3. **LOV - Letter of Violation** - A written letter to the industrial user indicating the type of alleged violation and requiring a written response within a period of ten (10) days indicating the reason for noncompliance and steps taken to prevent future violations.

4. **SCH - Show Cause Hearing** - A meeting to show why a proposed enforcement action should not be taken. Notice shall be served to the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action and a request that the user indicate why the proposed enforcement should not be taken. The notice shall be served by registered or certified mail (return receipt requested) at least ten (10) days prior to the meeting. Whether or not the user appears as requested, immediate enforcement action may be taken following the hearing date.

5. **AO - Administrative Order** - An Administrative Order can be used in such cases where the Town has reached agreement with the user to take corrective action to prevent future violations. The order would be used to outline minor compliance schedules along with other conditions that might be required, such as additional monitoring and reporting.

6. ECS - Enforcement Compliance Schedule - This is a formal Enforcement Compliance Schedule and may be signed by both the Town and the industry involved. the ECS is used when serious or long term violations of the discharge limits occur that usually require design and construction of new or additional pretreatment facilities. The time frame involved may be from six (6) months to a year or more depending on the extent of the facilities to be constructed. The schedule may also contain administrative fines. Violations of the ECS can result in the next step consisting of additional administrative fines.

7. **AF-Administrative Fine** - An Administrative Fine would be used in the event all lower types of enforcement have failed. The next response step is court action. The administrative fine exists in an effort to avoid court activity but at the same time correct the problem. The maximum fine is $2500.00 per violation per day.

8. **LIT- Litigation** - Litigation may become necessary in the event all other efforts to resolve violations of this Ordinance have failed. In such event, it may become necessary to file civil suits for injunctive relief and/or civil penalties, termination of service, etc. Since action of this type would involve the court system, the Town attorney would normally handle the procedures for due process.

The wastewater superintendent shall be responsible for making a recommendation to the Town Council to initiate litigation. The superintendent shall also be responsible for maintaining the records of all response procedures undertaken, the dates of each response and any action taken by the industry. The superintendent shall also be responsible for reviewing the files every three (3) months to determine if there have been any significant noncompliance event and if so, the superintendent shall tabulate such events on an annual basis and submit the results to the Town Council for publishing the names of the noncompliant users in the local newspaper.

9. **SNC - Significant Noncompliance** - Significant noncompliance events are user violations which meet one or more of the following criteria:

A. Violations of Discharge Limits.

a. Chronic Violations - Sixty six percent (66%) or more of the measurements exceed the same daily maximum limit or the same average limit in a six (6) month period.

b. Technical Review Criteria (TRC) -Thirty three percent (33%) or more of the measurements exceed the same daily maximum limit or the same average limit in a six (6) month period.

7. Formal Action -

(a) Compliance Schedules

When the Town finds that a discharge of wastewater has taken place in violation of the requirements in the Sewer Use Ordinance and/or industrial pretreatment standards, the Town may require the discharger through written notification (certified mail) to submit for approval a detailed compliance schedule of specific actions which the discharger shall take in order to prevent or correct a recurrence of said violations, including but not limited to milestone dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment facilities required for the discharger to reach compliance. Such milestone dates would be hiring an engineer, completing preliminary and final plans, executing contracts, starting construction, filing progress reports and completing construction. The discharger's response to this directive will then be evaluated to determine compliance. If compliance is not achieved, the enforcement action will proceed to Cease and Desist procedures.

(b) Cease and Desist

When the Town finds that a discharger has not reached compliance in a timely manner in accordance with the Compliance Schedule directive, the Town following a discovery meeting with the discharger may issue an order to Cease and Desist and that the discharger comply forthwith in conformance with a compliance schedule set by the Town or take appropriate remedial or preventative action in the event of a threatened violation.

The reply from the discharger to this directive will then be evaluated as to whether the discharger has achieved compliance. If compliance has not been achieved, the enforcement action will proceed to the courts requesting injunctive relief and imposition of civil penalties.

(c) Injunction

Further, when the Town finds that a discharge of wastewater has taken place in violation of the Sewer Use Ordinance and/or industrial pretreatment standards, or otherwise causes or threatens to cause a condition of pollution or nuisance, the Town following a discovery meeting with the industrial user may petition to the court for issuance of a preliminary or permanent injunction or both, as may be appropriate in restraining the continuance of such a discharge. Such dischargers having significantly violated their users permit and/or the terms of the Town's Sewer Use Ordinance are further subject to fines imposed by the Town in amounts not less than twenty five hundred dollars ($2500.00) per day for each offense cited.

(d) Civil Penalties.

Any discharger who is found to have significantly violated or fails to comply with any enforcement action of the Ordinance and the rules, regulations and permits issued hereunder may be fined not less than twenty five hundred dollars ($2500.00) for each offense cited. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. In addition to the penalties provided herein, the Town may recover reasonable attorney's fees, court costs, court reporter's fees and other expenses of litigation by appropriate suit of law against the discharger if found to have significantly violated the Sewer Use Ordinance, orders, rules. regulations and permits issued. The discharger's response to this directive will then be evaluated to determine whether compliance has been achieved. If compliance has not been achieved, the Enforcement action will proceed to Show Cause considerations.

(e) Show Cause.

Further, when a violation of the Ordinance or applicable pretreatment regulations occurs and is not corrected by timely compliance, the Town may order any discharger to show cause, stating why permit revocation should not be taken. A written notice shall be served on the discharger by a personal service, certified or registered mail, specifying the time and place of said hearing to be held by the Town. The hearing will consider the violation, proposed Enforcement action and reasons why the proposed Enforcement action should not be taken. Notice of the hearing shall be served not less than ten (10) days prior to the scheduled hearing.

The discharger's response to this directive will then be evaluated to determine whether the discharger has achieved compliance. If compliance has not been achieved, the Enforcement action will then proceed toward revocation of the dischargers permit and subsequent termination of service.

(f) Permit Revocation.

Finally, the Town for good cause will suspend the wastewater treatment service and the wastewater discharge permit of a discharger when it becomes obvious that an actual or threatened discharge presents or threatens an imminent or substantial danger to the environment, interference with the operation of the wastewater treatment plant, violates any pretreatment limits imposed by the Sewer Use Ordinance or any wastewater discharge permit issued by the Town. Any discharger notified of the suspension if the Town's wastewater treatment service and/or the dischargers wastewater discharge permit shall within a reasonable period of time as established by the Town terminate all discharges.

IX. Noncompliance Categories Subject to Enforcement

The following categories of noncompliance shall be subject to enforcement:

A. Failure to submit required reports (Baseline monitoring report, self monitoring reports, compliance reports, monthly operating reports).

B. Failure to meet interim or final compliance schedule dates.

C. Violations of maximum or average pollution limits for industry specific categories Categorical standards).

D. Violations of prohibited discharges under the Pretreatment Standards (40 CFR 403.5).

E. Violation of local limits outlined in the Town's Sewer Use Ordinance.

F. Falsification of information submitted to the Town.

G. Treatment plant upsets and interferences caused by an Industrial User.

X Penalties

It is the policy of the Town of Redkey to establish an ongoing cooperative relationship with our industrial users resulting in discharge limits that will not adversely affect the treatment results at the wastewater plant and achieve compliance with the National Pretreatment plant Standards and the Town's NPDES permit. In the event of failure to bring an industrial user into compliance with applicable discharge limits, the Town at it's discretion may levy fines for noncompliance in accordance with Section 8 of the Town's Sewer Use Ordinance. The fine is $2500.00 per day. Each day the violation occurs shall be considered a separate offence. The level of enforcement will be determined by the harm caused, duration of the violation and good faith efforts of the industry to achieve compliance. In addition to the Administrative fines, the industry shall be responsible for any loss, damage and expense by reason of such violation.

XI. Discharge Permits.

The superintendent may require new industrial users or existing users who plan to significantly increase their discharge volume and/or pollutant loading to apply for a discharge permit. The purpose of the permit is to determine the ability of the wastewater treatment plant to treat the discharge adequately. Wastewater discharge permits may contain the following:

1. Limits on the average or maximum rate of discharge, time of discharge and requirements for flow regulation.

2. Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass or other measure of identified pollutants or properties.

3. Requirements for the installation of pretreatment facilities, pollution control or construction of appropriate containment facilities designed to reduce, eliminate or prevent the introduction of flow or pollutants beyond the capacity of the treatment plant.

4. Development and implementation of spill control plans, total toxic control plans or other special conditions including management practices necessary to prevent accidental or unanticipated discharges.

5. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the treatment plant.

6. Change the unit charge or schedule of the industrial use charges and fees for the wastewater discharged to the treatment plant.

7. Requirement for installation and maintenance of inspection, sampling facilities and equipment.

8. A statement that compliance with the wastewater discharge permit does not relieve the industrial user from compliance with all applicable Federal and State pretreatment standards including those which become effective during the term of the discharge permit.

9. Other conditions as deemed necessary by the superintendent to ensure compliance with this Ordinance, Federal and State laws, rules and regulations.

XII. Significant Industrial User.

A significant Industrial User is any user subject to the Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter 1, Sub Chapter N; and any other user that discharges an average of twenty five thousand (25,000) gallons or more per day of process wastewater to the treatment plant (excluding sanitary, non-contact cooling water or boiler blowdown wastewater), or contributes a process wastestream that makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the treatment plant: or is designated as such by the superintendent on the basis that the industrial user has a reasonable potential for adversely affecting the performance of the treatment plant: or for violating any pretreatment standard or requirement in accordance with 40 CFR 403.8 (f) (6).

XIII. Sample Collection and Analysis

Except as indicated below, the industrial user must collect wastewater samples using flow proportional composite collection techniques. in the event flow proportional sampling is not feasible, the superintendent may authorize the use of time proportional sampling or through a minimum of four (4) grab samples when the user demonstrates that this will provide a representative sample of the wastewater being discharged. In addition, grab samples may be required to show compliance with daily maximum limits.

Samples for oil and grease, temperature, pH, cyanide, phenols, toxicity, sulfides and volatile organic compounds must be obtained by grab samples.

All pollutant analysis and sampling must be performed in accordance with the techniques prescribed in 40 CFR Part 136 unless otherwise specified in an applicable Categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, the sampling and analysis may be performed in accordance with the latest edition of Standard Methods For The Examination Of Water And Wastewaters.

XIV. Table of Noncompliance Events.

The following tables describe typical noncompliance events and the range of response that would generally be issued to the industrial user for noncompliance.:

ENFORCEMENT RESPONSE GUIDE

Compliance Schedules for Construction or Planning Phase

Whenever an LOV is issued requiring a response and the industrial user fails to respond, the next level of enforcement should be undertaken.

NONCOMPLIANCE	CIRCUMSTANCES	RANGE OF RESPONSE
Reporting false Information	Any instance – **SNC**	**AF, LIT** penalties. Sewer ban
Missed interim Date	Will not cause late final Date or other interim dates	**LOV, SV**
Missed Interim Date	Will result in other missed interim dates. Violation for good or valid cause	**LOV, SV or AO**
Missed Interim Date	Will result in other missed interim dates. No good or valid cause - **SNC**	**LOV, AO, AF** or **LIT**
Missed Final Date	Violation due to strike's, act of God, etc.	Contact permittee and require Documentation of good or valid cause; show cause
Missed Final Date	90 days or more Outstanding. Failure or Refusal to comply without Good or valid cause	**AO, AF** or **LIT** including Penalty
Failure to install Monitoring equipment	Continued – **SNC**	**AO, AF** to begin monitoring (using outside contracts, if necessary) and install equipment within minimal time

ENFORCEMENT RESPONSE GUIDE

Sampling, Monitoring And Reporting By The Industry

Whenever an LOV is issued that requires a response and the industrial user fails to respond, the next level of enforcement should be taken.

Noncompliance	Circumstances	Range Of Response
Failure to sample,monitor or report (routine reports) baseline monitoring report.	Isolated or infrequent	**VTN, SV, or LOV** requiring a response within 10 days.
Failure to sample, monitor or reply	User does not respond to letters.	**AO, ECS, AF or LIT**
Failure to notify of effluent violations or slug discharges.	Isolated or infrequent. No known effects.	**VTN, SV, or LOV. If** no response within 10 days, issue an **AO.**
Failure to notify of effluent violations or slug discharges.	Frequent or continued violations.- **SNC**	**SCH, AO, AF, or LIT** including penalties.
Failure to notify of effluent violations or slug discharges.	Known environmental or POTW damage. **SNC**	**AF, LIT** and penalties.
Minor sampling, monitoring or reporting deficiencies. (computational or typo's)	Isolated or infrequent	**VTN, SV or LOV** Corrections to be made on next report. **AO** if continued
Major or gross sampling, monitoring or reporting deficiencies (missing information, late reports)	Isolated or infrequent	**SV, LOV, or AO** Corrections to be made on the next submittal.
Major or gross reporting deficiencies.	Continued. Remains uncorrected 30 days or more.	**AO, AF or LT**

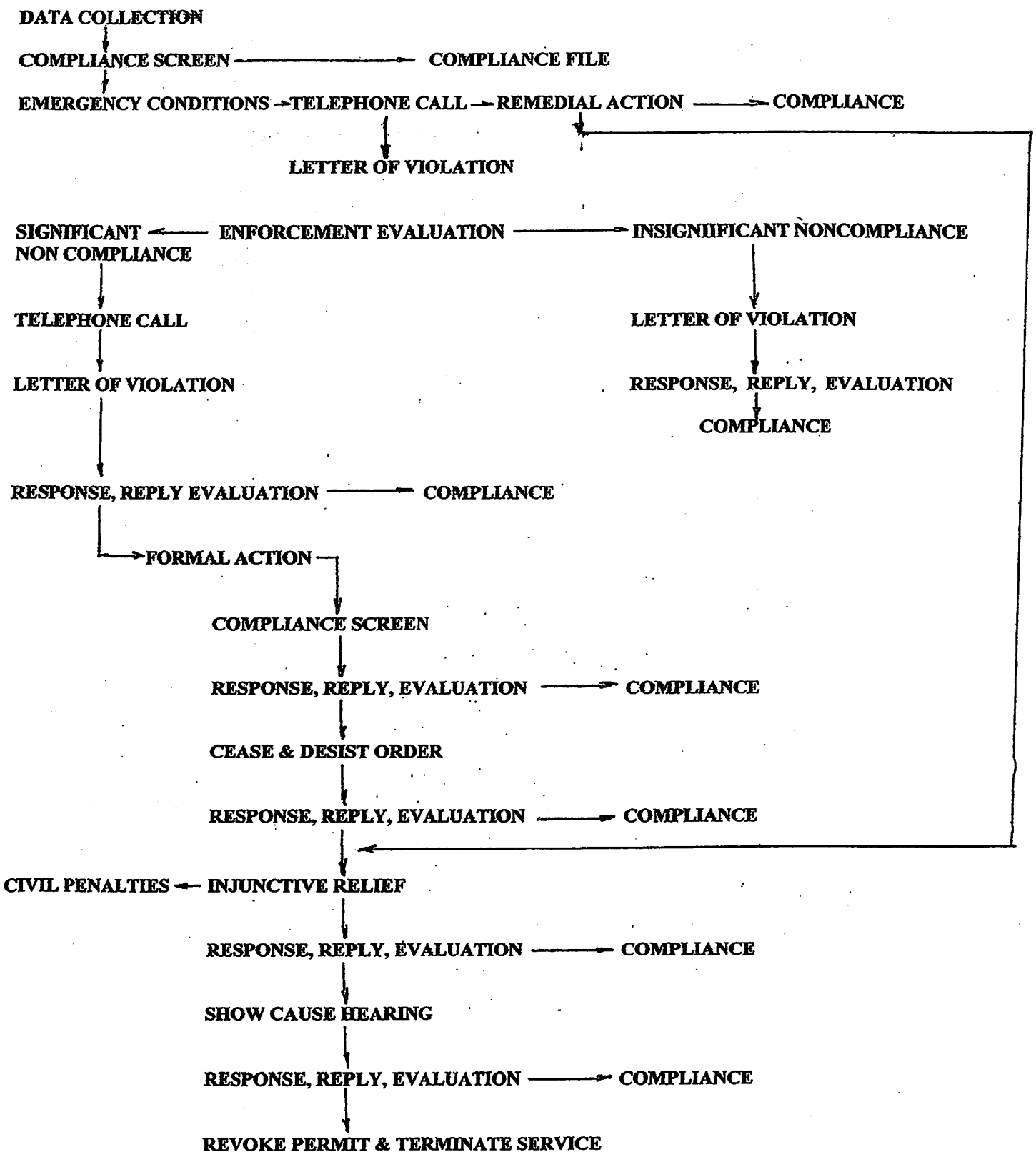
ENFORCEMENT RESPONSE GUIDE

Discharge Limitations

Whenever an LOV is issued that requires a response and the Industrial User fails to respond, the next level of enforcement should be undertaken.

Noncompliance	Circumstances	Range of Response
Exceeding Final Limits (categorical, Local, or prohibited)	Infrequent or isolated minor violation.	**VTN, SV or LOV**
Exceeding final limits	Infrequent or isolated major violations exceed the limits by **TRC** of a single effluent limit	**VTN, SV, LOV, AF or LIT** if environmental harm resulted, including penalty.
Exceeding Final limits	Violations which are **SNC**	**AO, ECS, AF, or LIT**
Exceeding Interim Limits (Categorical or Local)	Without known damages	**LOV or AO**
Exceeding Interim Limits	Results in known environmental or **POTW** damage **SNC**	**AO, ECS, AF, or LIT** including penalty
Reported Slug Load	Isolated without known damage.	**LOV, SCH, or AO**
Reported Slug Load	Isolated with known interference, pass through or damage - **SNC**	**AO, AF, or LIT** including penalty.
Reported Slug load	Recurring - **SNC**	**LIT** - including penalty.
Discharge without a Permit or Approval	One time without known environmental or **POTW** damage	**AO**
Discharge Without a Permit or Approval	One time which results in environmental damage or continued violation, **SNC**	**AO, AF, or LIT** and penalty. Request for criminal investigation.
Discharge without a Permit or Approval.	Continuing violation with known environmental or **POTW** damage	**LIT** and penalty. Request for criminal investigation and disconnect.

XV
FLOW CHART OF ENFORCEMENT RESPONSES



Approved and adopted by the Town Board of Redkey, Indiana on

The _____ Day of_____ 2014.

By:

_____
Kyle Champ

_____
Jon Davis

_____
David Dudelston

_____
Ted Friddle

_____
Greg Curme

Attest _____ Clerk-Treasurer
Debbie James

Approved and adopted by the Town Board of Redkey, Indiana on

The 8 Day of April 2014.

By:

Kyle Champ

Jon Davis

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Attest Debbie James Clerk-Treasurer
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