§ 1178-a. Enforcement and special powers of the authority. 1. Administrative sanctions and civil liability. a. Any user who has been finally determined to violate any rules, regulations, permits or orders of the authority made pursuant to this title, shall be strictly liable, without regard to fault, to a penalty of not to exceed ten thousand dollars per violation per day. Each violation shall be a separate and distinct violation and, in the case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct violation. The penalties provided for herein shall be imposed by the authority, pursuant to the rules and regulations of the authority.

b. The authority may bring suit for collection or recovery of any such penalty in any court of competent jurisdiction. Any sanction, penalty, action or cause of action for the recovery of a penalty, under this title, may be settled or compromised by the authority, before or after proceedings are brought to recover such penalties and prior to the entry of judgment thereof. All penalties received by the authority shall be deposited with the treasurer and applied by the board to the benefit of the authority's sewer rent payors and bondholders.

c. In addition to the penalties provided herein, in the event of a violation or threatened violation of any of the authority's rules, regulations, permits, or orders, the authority is authorized to:

(i) obtain a warrant upon application to the Erie county court or any other court of competent jurisdiction, based upon reasonable cause and reliable information that such violation is threatened or has occurred, for entry onto a user's premises or effluent source where entry has been denied or obstructed; or

(ii) suspend or revoke any user's discharge permit; or

(iii) discontinue, disconnect or block the user's access to the sewer system; or

(iv) obtain an injunction or other judicial relief upon application to a court of competent jurisdiction, to enjoin any user from continuing such violation or from carrying out the threat of such violation. In any such suit the court shall have jurisdiction to grant the authority, without bond or undertaking, such prohibitory or mandatory injunctions as the facts may warrant, including prevention or abatement of pollutant

discharges, temporary restraining orders or preliminary injunctions; and

(v) recover the fee, cost or expense incurred by the authority for any investigation, sampling, monitoring (enhanced or otherwise), removal and remediation costs or other actual expenses, fees or costs, including attorneys fees and costs.

d. Imposition of any sanction or penalty or application for judicial relief, shall not be a bar against, or prerequisite for taking any other action against a user.

e. In determining the amount of an administrative or civil penalty, the authority or the court shall consider the seriousness of the violation or violations, any history of such violations, any good faith efforts to comply with applicable requirements and such other matters as justice may require.

2. Summary abatement. Notwithstanding any inconsistent provisions of law, whenever the general manager finds, after investigation, that any person is discharging any pollutant, sewage, industrial waste or other waste which, in his judgment, presents an imminent danger to the facilities, the environment or the public health, safety or welfare of persons and the general manager determines that it would be harmful to delay action until an opportunity for a hearing can be provided, the general manager may, without prior hearing, order such person by notice, in writing wherever practicable or in such other form as in the general manager's judgment will reasonably notify such person whose practices are intended to be proscribed, to discontinue, abate or alleviate such discharge, and thereupon such person shall immediately discontinue, abate or alleviate such discharge. In the event of non-compliance with such order, the authority is authorized to discontinue, disconnect or block the user's access to the sewer system. Within thirty days after the issuance of such order, the authority shall give written notice to any such person which provides for an opportunity for a hearing.

3. Records, reports, inspections and entry. a. Whenever required to carry out the purposes and objectives of this title, including but not limited to, developing or assisting in the development of any discharge

limitation, or other limitation, prohibition or discharge standard, pretreatment standard, or standard of performance; or determining whether any industrial user is in violation of any such discharge limitation, or other limitation, prohibition, discharge standard, pretreatment standard, or standard of performance or the authority's rules, regulations, permits or orders;

(i) the authority may require industrial users to:

(1) establish and maintain such records;

(2) make such reports;

(3) install, use and maintain such monitoring equipment or methods (including where appropriate, biological monitoring equipment or methods);

(4) sample such discharges, in accordance with such methods, at such intervals, and in such manner as the authority shall prescribe in its rules, regulations, permits or orders; and

(5) provide such other information as the authority may reasonably require; and

(ii) except as otherwise provided by a court warrant or order, the authority or its authorized representative, (including an authorized contractor acting as a representative of the authority) upon presentation of his credentials:

(1) shall have a right of entry, at all reasonable times, to, upon, or through any premises in which any effluent source of an industrial user is located or in which any records are required to be maintained pursuant to this title or any rules, regulations, orders or permits of the authority;

(2) may, at reasonable times during regular business hours, have access to and copy any records required to be maintained pursuant to this title or any rules, regulations, orders or permits of the authority;

(3) may, during all times of industrial user discharges, inspect any monitoring equipment or method which is required pursuant to this title or any rules, regulations, orders or permits of the authority; and

(4) may, during all times of industrial user discharges, have access to and sample any discharges or pollutants, resulting directly or indirectly from activities or operations of the industrial user of the premises in which an effluent source is located.

b. Any records, reports or information obtained under this section shall, in the case of discharge data, be related to any applicable limitation, toxic pretreatment, or performance standards, and shall be available to the public, except that upon a showing satisfactory to the authority by any person that records, reports, or information, or particular part thereof (other than discharge data), to which the authority has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the authority shall consider such record, report, or information, or particular portion thereof confidential, except that such record, report, or information may be disclosed to officers, employees, or authorized representatives of the United States or New York state concerned with carrying out the Clean Water Act or when relevant to any proceeding under this title or the Clean Water Act.

4. Proceedings before the authority. a. Whenever the authority determines, after investigation, that there has been a violation of any of the provisions of this title or any rules, regulations, orders or permits issued pursuant thereto, the authority shall give notice in writing, in such form as will reasonably notify the alleged violator or violators setting forth any thing or act done or omitted to be done or claimed to be in violation of any such provisions, and requiring that the matters complained of be corrected. Such notice shall inform the violator of an opportunity for a hearing, or that the alleged violator appear in person or by attorney before the authority, at a reasonable time and place in said notice specified, and show cause why enforcement action should not be taken.

b. The authority shall establish in its rules and regulations procedures for the conduct of any hearings.

c. In any hearing, a hearing officer may administer oaths, examine witnesses, and issue, in the name of the authority, notices of hearings and subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any hearing conducted by the authority.

d. In any proceeding before the authority, the burden of proof, with respect to violations of or liability imposed by this title or by rules, regulations, orders or permits issued pursuant thereto shall be upon the user or person cited by notice. In any such proof, the authority or the hearing officer may rely upon the self-monitoring reports submitted by the person being investigated or any other evidence.

e. After due consideration of the written and oral statements, and testimony and arguments, or on default in appearance, the authority may issue and enter such final order or make such final determination as it deems appropriate under the circumstances, and shall notify such person or persons thereof in writing.

f. The general manager may designate an agent of the authority or any other person, independent of the authority, to serve and preside as hearing officer.

g. In case of contumacy or refusal to obey a notice of hearing or subpoena issued by the authority, the supreme court shall have jurisdiction, upon application of the authority, to issue an order requiring such person to appear and testify or produce evidence as the case may require.