



**REGIONAL WATER RESOURCE AGENCY
ENFORCEMENT RESPONSE PLAN
& GUIDE**

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INTRODUCTION

On July 24, 1990 (55 Fed. Reg. 30082), the Environmental Protection Agency promulgated regulations to require all Publicly Owned Treatment Works (POTWs) to adopt an enforcement response plan (ERP) as part of their approved pretreatment programs. The regulation as stated in 40 CFR 403.8(f)(5) is as follows:

The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

- (i) Describe how the POTW will investigate instances of noncompliance;
- (ii) 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;
- (iii) Identify (by title) the official(s) responsible for each type of response;
- (iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8(f)(1) and (f)(2).

The ERP outlines the procedures that will be used to identify, document, track and respond to noncompliance. The ERP also provides guidance for selecting the enforcement action most appropriate for a given violation.

PURPOSE

The purpose of the ERP is to provide consistent enforcement responses for similar violations and circumstances. The ERP describes violations, defines a range of appropriate enforcement actions based on the nature and severity of the violation and other relevant factors, and identifies personnel responsible for finalizing enforcement responses.

ADMINISTRATION AND JURISDICTION

All entities discharging nondomestic waste to the POTW are subject to the provisions of the ERP. The Control Authority, RWRA, consistently administers and implements all elements of the ERP.

ABBREVIATIONS

AO - Administrative Order
CA - Control Authority, Regional Water Resource Agency (RWRA)
ERG - Enforcement Response Guide
ERP - Enforcement Response Plan
IU - Industrial User
NOV- Notice of Violation
POTW - Publicly Owned Treatment Works
WL - Warning Letter

DEFINITIONS

Control Authority – 40 CFR 403.3(f)(1) - *Regional Water Resource Agency (RWRA)* -The POTW if the POTW' Pretreatment Program Submission has been approved in accordance with the requirements of 40 CFR 403.11..

Domestic Sewage – 40 CFR 503.9(g) – waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

Industrial User or User – 40 CFR 403.3(j) – Means a source of indirect discharge.

Industrial Wastewater – 40 CFR 503.9(n) – wastewater generated in a commercial or industrial process.

Publicly Owned Treatment Works (POTW) – 40 CFR 403.3(q) –A treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

IDENTIFYING AND INVESTIGATING INSTANCES OF NONCOMPLIANCE

There are many activities associated with the identification and investigation of noncompliance. A brief description of these activities is provided in this ERP. Detailed discussions and procedures for the activities can be found in other relevant sections of the approved pretreatment program document. The activities that facilitate the identification and investigation of noncompliance are as follows:

Industrial User Inventory – The Industrial Waste Coordinator prepares and maintains annually an Industrial Waste Inventory. This is an essential step for identifying noncompliance and knowing who is discharging non-domestic waste to the POTW, where they are located, and the nature of the non-domestic waste being discharged. The Industrial Waste Coordinator maintains a current inventory of all non-domestic sources of waste to the POTW.

Monitoring and Inspection Plan - The Industrial Waste Coordinator prepares an annual monitoring and inspection plan. RWRA monitors the wastewater from each Significant Industrial User (SIU) at least twice per year. RWRA requires all sampling and analysis to be performed in accordance with 40 CFR Part 136.

A comprehensive inspection of each SIU is conducted by RWRA at least once per year. RWRA follows inspection procedures discussed elsewhere in the approved pretreatment program to ensure consistent, thorough, and well documented inspections.

Information gathered during RWRA’s industrial user monitoring and inspections is used to verify industrial user compliance status and to determine if enforcement response must be initiated or continued.

Compliance Screening - All reports from Industrial Users and reports generated by RWRA are carefully reviewed, on an “as-received” basis for timeliness, completeness and accuracy. The screening process includes an evaluation of compliance with report due dates, numerical standards, sample handling and analysis requirements, signatory/certification requirements, monitoring frequency etc.

All violations are clearly documented and addressed in accordance with the Enforcement Response Guide.

DESCRIPTION OF ENFORCEMENT ACTIONS

Informal Notice

Verbal Notification - Verbal notifications by telephone or in person provide an immediate notification of violations. In general, verbal notifications are used for minor isolated violations or as an initial step leading to an escalated enforcement response. All verbal notifications related to enforcement or the investigation of suspected violations are documented in writing and placed in the respective Industrial User file.

Warning Letters - Warning letters are issued under the same circumstances as verbal notifications. They may be issued as follow-up letters to verbal notifications or in lieu of verbal notifications.

Informal Meeting - An informal meeting may be used to gather information concerning noncompliance, discuss steps to alleviate or prevent noncompliance, and determine the

commitment level of the industrial user. All informal meetings related to enforcement or to the investigation of suspected violations are documented in the respective Industrial User file.

Notice of Violation - A notice of violation (NOV) is a written notice to the noncompliant industrial user that a pretreatment violation has occurred. A NOV includes a statement detailing the legal authority under which the Control Authority issued the NOV, a description of the violation(s), and the date(s) the violation(s) occurred. The NOV requires a response from the Industrial User that details the causes of the violation(s), and the corrective actions taken to correct the violation and prevent similar violations from occurring. In general, NOVs are considered to be more stringent enforcement responses than warning letters. A NOV is the minimum level of enforcement used to address Significant Noncompliance.

Administrative Order - Administrative orders (AOs) are enforcement documents that direct Industrial Users to undertake and/or to cease specified activities by specified deadlines. The terms of an AO may or may not be negotiated with Industrial Users. AOs may incorporate compliance schedules, administrative penalties, termination of service and show cause orders.

Show Cause Hearing - A show cause hearing is a formal meeting requiring the Industrial User to appear, explain its noncompliance, and show cause as to why more severe enforcement actions against the user should not go forward. The meeting may also serve as a forum to discuss corrective action and compliance schedules.

Termination of Service - Termination of service is the revocation of an Industrial User's privilege to discharge nondomestic wastewater into the sewer system. Termination of service is used when the discharge from an industrial user presents imminent endangerment to the health or welfare of persons, or the environment, or threatens to interfere with the POTW's operations or as an escalating enforcement action to a significant violation when a noncompliant industrial user fails to respond adequately to previous enforcement actions. Termination of service may be accomplished by physical severance of the industrial users connection to the collection system, issuance of an AO (cease and desist order) which compels the IU to immediately terminate its discharge, revocation of the IUs discharge permit, or a court ruling.

Administrative Fines - An administrative fine is a punitive monetary charge assessed by RWRA rather than a court. The penalty authority must be authorized in the POTW's local legal authority. The purpose of the fine is to recover the economic benefit of noncompliance and to deter future violations. When assessing an administrative fine, RWRA will consider the following factors:

- type and severity of the violation
- number of violations cited
- duration of noncompliance
- impact of the violation on the receiving water, sludge quality, and POTW operation
- whether the violation threatened public health
- the economic benefit or savings the industrial user gained from the noncompliance
- compliance history of the industrial user

- whether the industrial user is making a good faith effort to comply

The minimum fine assessed is \$250 and is increased by \$250 increments.

Civil Litigation - Civil litigation is the formal process whereby RWRA files a lawsuit against the industrial user to secure court ordered action to correct violations and to secure penalties for the violations including recovery of costs to the POTW for the noncompliance. Civil litigation also includes enforcement measures which require involvement or approval of the court, such as injunctive relief.

PERSONNEL RESPONSIBILITIES

Industrial Waste Coordinator or his/her designee - The Industrial Waste Coordinator (IWC) is responsible for the day to day implementation and enforcement of the industrial pretreatment program. The enforcement responses carried out by the IWC are as follows:

- Informal notices (verbal and written)
- Informal meetings
- Notices of violation
- Administrative fines

Executive Director or his/her designee - The Executive Director has the responsibility to monitor the IWC's actions and to initiate the following enforcement actions at the recommendation of the IWC:

- Administrative fines
- Show cause hearings
- Administrative order
- Termination of service
- Referrals to the RWRA Attorney for civil or criminal litigation

RWRA Attorney - The RWRA Attorney will provide legal consultation as requested by the Executive Director on administrative orders and will take the lead on all referrals for civil litigation and RWRA initiated criminal investigations

ENFORCEMENT RESPONSE GUIDE

The Enforcement Response Guide (ERG) designates several enforcement options for each type (or pattern) of noncompliance. The intent of the ERG is to provide direction for appropriate enforcement response and to ensure consistent enforcement for similar violations and circumstances. Factors that will be evaluated when determining the appropriate response are as follows:

- good faith of the user
- compliance history of the user
- previous success of the enforcement actions against the user (e.g. If historically NOV's have not been effective in returning the user to compliance in a reasonable period of time, an administrative order would be a more appropriate response.)
- violations effect on the environment and/or public health
- violations effect on the POTW

Violations resulting in Significant Noncompliance - Any violation that results in Significant Noncompliance (SNC) will be addressed through formal enforcement action regardless of the enforcement response otherwise dictated by the enforcement response guide. The minimum level of enforcement used to address SNC is an NOV.

Escalating Enforcement Response – Escalating enforcement response will be used for recurring violations to achieve compliance subsequent to informal or formal enforcement. A recurring violation is one in which the same type of violation occurs on consecutive reporting period, the violation occurs seasonally, or any other pattern of noncompliance is shown.

Violations falling under more than one Category – Violations that fall under more than one category in the enforcement response guide will be addressed through the more severe enforcement response. All alleged violations will be included in the more severe response.

Timeframes for Enforcement Responses

- All violations will be identified and documented within five days of receiving compliance information.
- Initial enforcement responses (informal) will occur within 15 days of identifying a violation.
- Follow up actions for continuing or recurring violations will be taken within 60 days of the initial enforcement response.
- Violations which threaten health, property, or environmental quality are considered emergencies and will receive immediate response such as halting the discharge or terminating service.
- All violations meeting the criteria for significant noncompliance will be addressed through formal enforcement within 30 days of the identification of significant noncompliance.

Enforcement Response Guide Table

VIOLATION	NATURE OF VIOLATION	ENFORCEMENT RESPONSES	PERSONNEL*
UNAUTHORIZED DISCHARGES			
1. Unpermitted discharge	IU unaware of requirement; no harm to POTW/environment	-Phone Call or Warning Letter -NOV with Permit Application Form	A A
	IU unaware of requirement; The discharge is causing harm to POTW	-NOV w/fine -AO w/ fine -Civil Action	B C C
	Failure to apply for permit continues after notice by IWC	-NOV w/fine -Civil Action -Criminal Action -Terminate Service	B C E D
2. Nonpermitted discharge (Permit Required)	Failure to renew Industrial User Permit; IU has not submitted application within 10 days of the due date	-Phone Call or Warning Letter -NOV -AO w/fine	A A C
DISCHARGE LIMIT VIOLATIONS			
1. Exceedance of Local or Federal Standard (Permit Limit)	Isolated; not SNC	-Phone Call or Warning Letter -NOV	A A
	Isolated; SNC but no harm to POTW, environment or public	-NOV -AO to develop Spill Prevention Plan	A A
	Isolated; SNC and harm to POTW, environment or public	-Show Cause Hearing -AO w/ fine/cost recovery -Civil Action	C C C
	Chronic, not SNC	-NOV -AO w/fine	A C
	Chronic: SNC but no harm to POTW, environment or public	-NOV -AO w/ fine	A C
	Chronic: SNC and harm to POTW, environment, or public	-AO w/ fine -Show Cause Hearing -Civil Action -Terminate Service	C C C D
MONITORING & REPORTING VIOLATIONS			
1. Reporting violation	Report is improperly signed or certified	-Phone Call or Warning Letter -NOV	A A
	Report is improperly signed or certified after notice by IWC	-NOV w/fine -AO -Show Cause Hearing	B C C
	Late report; not SNC (<5 days late)	-Phone Call or Warning Letter -NOV	A A
	Late report; not SNC (5-30 days late)	-NOV	A

VIOLATION	NATURE OF VIOLATION	ENFORCEMENT RESPONSES	PERSONNEL*
	Late report; SNC (>30 days late)	-NOV w/fine -AO w/fine	B C
	Late report; chronic SNC	-AO / fine -Show Cause Hearing -Civil Action	C C C
	Failure to report spill or changed discharge; no harm to POTW, public or environment	-NOV -NOV w/fine	A B
	Failure to report spill or changed discharge; harm to POTW, public or environment	-AO w/ fine / cost recovery -Civil Action	C C
	Repeated failure to report spills	-Show Cause Hearing -Terminate service	C D
	Falsification on a report	-AO w/ fine -Criminal Action -Terminate Services	C E D
2. Failure to monitor correctly	Failure to monitor all pollutants as required by Industrial User Permit	-NOV -AO	A C
	Chronic failure to monitor for all pollutants as required by Industrial User Permit	-NOV w/ fine -AO w/fine -Civil Action	B C C
3. Improper sampling	No evidence of intent	-NOV	A
	Evidence of intent	-Criminal Action -Terminate services	E D
4. Failure to install monitoring equipment	Delay of less than 30 days	-NOV	A
	Delay of 30 days or more	-AO	C
	Chronic delay; violation of AO	-Civil Action -Criminal Action -Terminate services	C E D
OTHER PERMIT VIOLATIONS			
1. Wastestreams are diluted in lieu of treatment	Initial violation	-NOV w/ fine	B
	Recurring violation	-Show Cause Hearing -Criminal Action -Terminate Service	C E D
2. Failure to mitigate violation or halt production	Does not result in harm to POTW, public or the environment	-NOV -NOV w/ fine	A B
	Does result in harm to POTW, public or the environment	-Show Cause Hearing -AO w/ fine / cost recovery -Civil Action	C C C
3. Failure to properly operate and maintain pretreatment facility	Does not result in harm to POTW, public or the environment	-NOV -NOV w/fine	A B

VIOLATION	NATURE OF VIOLATION	ENFORCEMENT RESPONSES	PERSONNEL*
	Does result in harm to POTW, public or the environment	-NOV w / fine / cost recovery -AO w/fine -Civil Action	B C C
4. Failure to meet Compliance Schedule	Missed milestone by less than 30 days, or will not affect final milestone	-NOV -NOV w/fine -AO w/fine	A B C
	Missed milestone by more than 30 days, or will affect final milestone (good cause for delay)	-NOV -NOV w/fine -AO w/ \$250 fine to escalate -Show Cause Hearing	A B C C
	Missed milestone by more than 30 days, or will affect final milestone (no good cause for delay)	-AO w/ \$500 fine to escalate -Show Cause Hearing -Civil Action -Terminate Service	C C C D
	Chronic violation of Compliance Schedule	-Civil Action -Criminal Action -Terminate Action	C E D
VIOLATIONS DETECTED (Site Visit)			
1. Entry Denial	Entry denied or consent withdrawn; Copies of records denied	-Obtain warrant and return to IU -NOV w/ fine	B B
2. Illegal Discharge	Illegal discharge observed; No harm to POTW, public or environment	-NOV w/ fine -AO w/fine	B C
	Illegal discharge observed; harm to POTW or evidence of Intent/negligence	-Civil Action -Criminal Action -Terminate Service	C E D
	Recurring Illegal discharges observed	-Civil Action -Terminate Service	C D
3. Improper Sampling	Unintentional sampling at incorrect location	-Warning Letter -NOV	A A
	Unintentional use of incorrect sample type	-Warning Letter -NOV	A A
	Unintentional use of incorrect sample collection techniques	-Warning Letter -NOV	A A
	Recurring use of incorrect sampling location, type or collection techniques; Evidence of intent	-Show Cause Hearing -AO w/ \$500 fine to escalate -Civil Action -Criminal Action -Terminate Service	C C E E D
4. Inadequate record keeping	Inspector finds files incomplete and or missing; Isolated, no evidence of intent	-Warning Letter -NOV	A A
	Inspector finds files incomplete and or missing; chronic, recurring	-NOV w/ fine -AO w/fine -Criminal Action	B C E
5. Failure to report additional monitoring	Inspector finds additional files not submitted	-NOV -NOV w/fine	A B

VIOLATION	NATURE OF VIOLATION	ENFORCEMENT RESPONSES	PERSONNEL*
	Chronic, recurring failure to report	-NOV w/ fine -AO w/fine	B C

*The following Personnel will be included in the implementation of the appropriate enforcement responses:

- A. Industrial Waste Coordinator or his/her designee
- B. Industrial Waste Coordinator or his/her designee with notification to the Executive Director or his/her designee
- C. Conference to include representatives from the industrial User and the Agency. Agency representatives shall include Industrial Waste Coordinator or his/her designee, Executive Director or his/her designee, and possibly the Agency Attorney.
- D. Executive Director or his/her designee
- E. Appearance before the Agency Board, with the Executive Director or his/her designee and the Industrial Waste Coordinator or his/her designee

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