

EPA REGION VIII
MODEL ENFORCEMENT RESPONSE PLAN
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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 POTWs 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 consistently administers and implements all elements of the ERP. The ERP does not preclude the Control Authority from taking any, all, or any combination of actions against a noncompliant industrial user.

ABBREVIATIONS

AO B Administrative Order
CA B Control Authority
ERG B Enforcement Response Guide
ERP B Enforcement Response Plan
IU B Industrial User
NOV B Notice of Violation
POTW B Publicly Owned Treatment Works
WL B Warning Letter

DEFINITIONS

CONTROL AUTHORITY B The entity directly administering and enforcing Pretreatment Standards and requirements against industrial users. The [insert approved pretreatment program City or District].

DOMESTIC WASTEWATER B 1) wastewater from normal residential activities including, but not limited to, wastewater from kitchen, bath and laundry facilities, or 2) wastewater from the personal sanitary conveniences (toilets, showers, bathtubs, fountains, non-commercial sinks, and similar structures) of commercial, industrial or institutional buildings, provided that the wastewater exhibits characteristics which are similar to those of wastewater from normal residential activities. Specifically *excluded* from this definition is wastewater from commercial, industrial, or institutional laundries or food preparation facilities.

INDUSTRIAL USER B Any source that introduces pollutants into a POTW from any non-domestic source.

PUBLICLY OWNED TREATMENT WORKS (POTW) B 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.

PERSONNEL RESPONSIBILITIES

Industrial Pretreatment Coordinator B ***The Industrial Pretreatment Coordinator (IPC) is responsible for the day to day implementation and enforcement of the industrial pretreatment program. The enforcement responses carried out by the IPC are as follows:***

- informal notices (verbal and written)
- notices of violation
- informal meetings
- referrals to the state or EPA for criminal action

Superintendent - The Superintendent has the responsibility to monitor the IPC=s actions and to initiate the following enforcement actions at the recommendation of the IPC:

- show cause hearings
- administrative orders
- consent agreements
- referrals to the city attorney for civil litigation
- referrals to the state or EPA for criminal action

POTW Attorney - The POTW Attorney will provide legal consultation as requested by the Superintendent on consent agreements and administrative orders and will take the lead on all referrals for civil litigation and POTW initiated criminal investigations.

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 - An essential step for identifying noncompliance is knowing who is discharging nondomestic waste to the POTW, where they are located, and the nature of the nondomestic waste being discharged. The Industrial Pretreatment Coordinator maintains a current inventory of all nondomestic sources of waste to the POTW.

Monitoring and Inspection Plan - The Industrial Pretreatment Coordinator prepares an annual monitoring and inspection plan. The Control Authority monitors the wastewater from each Significant Industrial User (SIU) at least once per year. The Control Authority requires all sampling and analysis to be performed in accordance with 40 CFR Part 136. Control Authority sampling procedures, including Quality Assurance/Quality Control procedures, discussed elsewhere in the approved pretreatment program document, are followed to maximize sample integrity

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

Information gathered during Control Authority 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 B All reports from Industrial Users and reports generated by the Control Authority 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 B 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 B 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 B An informal meeting is used to gather information concerning noncompliance, discuss steps to alleviate noncompliance, and determine the commitment level of the industrial user. All informal meetings are documented in the City's files.

Notice of Violation B 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.

Administrative Order B 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. An Administrative Order is the minimum level of enforcement used to address Significant Noncompliance.

Show Cause Hearing B A Show Cause Hearing is a formal meeting requiring the Industrial User to appear, explain its noncompliance, a 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 user's 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 the Control Authority 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 the following factors are considered:

- _ 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

Civil Litigation B Civil Litigation is the formal process whereby the Control Authority 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.

Referral to EPA or the State B Where a POTW does not rely on criminal prosecution for its enforcement authority, referral to the State or EPA may be made. For violations that may warrant criminal prosecution, the Control Authority will refer the case to EPA or the State for further action. Circumstances that trigger EPA or State referrals include evidence of willfulness, evidence of negligence, and bad faith shown by the Industrial User.

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 AO.

Escalating Enforcement Response B Escalating enforcement response will be used for recurring violations and failure 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 periods, the violation occurs seasonally, or any other pattern of noncompliance is shown.

Violations Falling Under more than one Category B 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 or formal) 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

| | TYPE OF NONCOMPLIANCE | CIRCUMSTANCES | SUGGESTED ENFORCEMENT |
|---------------------|--|--|--|
| UNAUTHORIZED | Discharge Without a Permit | IU unaware of requirement; no harm to POTW or environment | NOV with Application Form |
| | | | |
| | Failure to Submit Permit Application or Reapplication with Intent of Discharge | <p>IU has not submitted application within 10 days of due date</p> <p>IU has not submitted application after notice by the POTW</p> <p>Failure to submit application</p> | <p>Phone call; Warning Letter</p> <p>NOV; AO</p> <p>Refer to discharge without a permit</p> |
| | Unauthorized Discharge Through Manhole, Septic Only Receiving Station, Car Wash etc. | <p>No harm to POTW or environment</p> <p>Harm to POTW or environment</p> <p>Recurring</p> | <p>NOV; AO; AO with fine; Civil Action; Criminal Investigation</p> <p>AO with fine; Civil Action; Criminal Investigation</p> <p>Criminal Investigation</p> |
| | Permitted User Discharging Waste not Authorized by Permit | <p>No harm to POTW or environment</p> <p>Harm to POTW or environment</p> <p>Recurring</p> | <p>NOV; AO; AO with fine; Civil Action; Criminal Investigation</p> <p>AO with fine; Civil Action; Criminal Investigation</p> <p>Criminal Investigation</p> |

| | TYPE OF NONCOMPLIANC | S CIRCUMSTANCE | SUGGESTED ENFORCEMENT |
|---------------------------------|--|---|---|
| DISCHARGE LIMIT | Exceedance of Discharge Limitation or Prohibition in Permit or Local Legal Authority | Results in SNC | AO; AO with Fine; Civil Action; Termination of Service |
| | | | |
| REPORTING VIOLATIONS | Document is Improperly Signed or Certified | Isolated incident Previous notice by POTW, | Phone call; WL; NOV NOV; AO; AO with fine |
| | | | |
| | Document is Incomplete or Inaccurate | Isolated Incident Recurring problem | Phone call; WL; NOV AO; AO with fine |
| | Document is Late | 5-days to 29-days 30-days or more Documents are repeatedly late | Phone call; WL; NOV AO; AO with fine AO with fine; Civil Action |
| | Failure to Report Violation, Spill/Slug or Changed Discharge | No actual or potential harm to POTW or environment Actual or potential harm to POTW Recurring problem | NOV; AO AO with fine; Civil Action AO with fine; Civil Action; Terminate Service |
| | Failure to Report Additional Monitoring | Isolated Incident Recurring | Phone Call; WL; NOV AO; AO with fine |
| | Falsification of Information or Data | Any instance | Criminal Investigation; Terminate Service |

| | TYPE OF NONCOMPLIANCE | CIRCUMSTANCES | SUGGESTED ENFORCEMENT |
|---------------------------------|---|---|---|
| SAMPLING VIOLATIONS | Failure to Monitor for all Required Parameters | Isolated | Phone call; WL; NOV |
| | | Recurring | AO; AO with fine; Civil Action |
| | Improper Sample Handling/Analytical Procedures | Isolated | Phone call; WL; NOV |
| | | Recurring | NOV; AO; AO with fine |
| | Failure to Resample within Required Timeframe | Isolated | Phone call; WL; NOV |
| | | Prior Notification from CA | AO with fine |
| | | Recurring | AO; AO with fine |
| | Failure to Install Monitoring Equipment/Sampling Point | Delay less than 30 days | NOV |
| | | Delay greater than 30 days | AO with fine; Civil Action |
| | Tampers with Monitoring Equipment/Sample | Any incident | Criminal Investigation; Termination of Discharge |
| | Sampling at incorrect location | Isolated incident | NOV |
| | | Recurring | AO with fine; Civil Action; Criminal Investigation |
| COMPLIANCE SCHEDULES | Missed Milestone | Less than 30 days late or will not affect final compliance date | NOV; AO |
| | | | |
| | Not in Compliance as of Final Compliance Date | Less than 30 days late | NOV; AO |
| | | Greater than 30 days late; reasonable cause for delay | AO; AO with fine |
| | | Greater than 30 days late, no reasonable cause for delay | Show Cause Order; Civil Action; Termination of Discharge |

| | TYPE OF NONCOMPLIANCE | CIRCUMSTANCES | SUGGESTED ENFORCEMENT |
|-------------------------------------|---|----------------------|----------------------------------|
| INADEQUATE RECORDKEEPING | Files Incomplete or Missing (No Evidence of Intent) | Isolated | NOV |
| | | Recurring | ΔO- ΔO with fine |
| | | | |
| OTHER VIOLATIONS | Entry Denied or Consent Withdrawn | Any Instance | Obtain Warrant and Return to IU |
| | | | |
| | | | |