

Sewerage and Water Board of New Orleans
Pretreatment Program
Enforcement Response Plan

A. INTRODUCTION

Under the requirements of 40 CFR 403.B(f) (5), Industrial Pretreatment Program Control Authorities are required to develop a Pretreatment Program Enforcement Response Plan (P.P.E.R.P.). This plan is designed to provide specific criteria by which the Control Authority personnel can select the enforcement action appropriate to the nature of an industrial pretreatment discharge violation and provide comprehensive consistent enforcement of the provisions of the local sewer use ordinance. This plan identifies the specific Sewerage and Water Board of New Orleans (SWBNO) personnel who are responsible for each phase of enforcement and an outline of procedures to be followed by the Authority to identify, document and respond to industrial pretreatment violations of Section 16.2-4 of the Sewerage and Water Board of New Orleans Plumbing Code:

B. ELEMENTS OF THE ENFORCEMENT PLAN

The order of precedence for enforcement responses outlined in this Enforcement Response Plan should not be construed to prevent the Sewerage & Water Board of New Orleans Environmental Affairs (EA) from taking a stronger action without first implementing less stringent steps, if a judgment is made that a more forceful response is necessary.

The enforcement response plan contains the following elements:

- A description of how noncompliance by industrial discharges will be investigated;
- An outline of the types of escalating enforcement actions that the Sewerage & Water Board of New Orleans will implement in response to different types of industrial user violations and the time periods within which these actions will be initiated and followed up; and
- Procedures for documenting compliance data which will enable the information to be used as evidence in administrative and judicial enforcement actions.

C. NONCOMPLIANCE INVESTIGATION

All members of the Environmental Affairs staff have the authority and responsibility to investigate industrial noncompliance. The Environmental Affairs Division Chief is the signatory authority for all enforcement actions.

Instances of industrial noncompliance will be determined by:

Review of permits and permit applications;
Review of user self-monitoring reports;
Sampling and inspection of industrial users;
Sampling of POTW influent and/or effluent;
Evaluation of treatment plant upsets and NPDES permit noncompliances;
Lift station/collection system inspections, and
Investigation of public complaints

Inspections in conjunction with sampling constitute the routine mechanism by which noncompliance investigations will be initiated. Sampling events, all relevant compliance records, permits, permit applications and self-monitoring reports will be reviewed. Any irregularities, anomalies or code violations discovered during these procedures will result in further investigation, corrective procedures and possibly subsequent enforcement procedures. All Significant Industrial User's (SIU's) will be monitored in this fashion.

Inspection schedules – Significant Industrial Users, as defined as all categorical users and any noncategorical user meeting any of the following conditions:

- Discharges 25,000 gallons of process wastewater per day.
- Contributes a process wastewater which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the treatment plant.
- Has a reasonable potential in the opinion of the Superintendent to adversely affect the POTW by causing inhibition, pass through, sludge contamination or endangerment of POTW workers.

will be inspected once a year and sampled once a year for parameters defined by the SIU Wastewater Discharge Permit. Non-routine inspections will take place in the event of notification of a change in operation, change in the nature of the wastewater discharge, change of SIU ownership; or in the case of a maintenance crew complaint or of an upset or problems at the wastewater treatment plant or any other evidence that the character of the wastewater has changed measurably from that listed in its discharge permit, exceeds the plumbing code limits or is otherwise causing problems in the collection system or at the wastewater treatment plant. .

Data from the permit application and/or permit will be compared to the results of self-monitoring reports to determine whether the discharge is within applicable Federal and State limits. If the discharge exceeds the appropriate limit or is out of compliance with non-discharge requirements (i.e. reporting deadlines, consent order milestones, administrative order conditions, general prohibited discharges outlined in Section 16.2C of the Plumbing Code, then the noncompliance will be documented in the user's permit

file. The documentation shall include the date of inspection, nature of non-compliance, person contacted, and conditions of Compliance Order will be recorded and kept in Industrial User's file. After written documentation of the noncompliance is completed and logged into the IU's file, then the appropriate response can be chosen from the enforcement response guide. If multiple noncompliance events are discovered during the investigation, all violations will be logged into the IU file and the appropriate enforcement response for each violation will be selected from the enforcement response guide.

D. ENFORCEMENT RESPONSE GUIDE

Any user who is found to have violated or who willfully or negligently failed to comply with any provisions of Sections 16.2-4 and the orders, rules, regulations and permits issued hereunder, may be fined in an amount not to exceed Five Thousand Dollars (\$5,000.00) for each offense. 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 Sewerage and Water Board of New Orleans may recover reasonable attorneys fees, court costs, court reporter fees and other expenses by appropriate suit at law against the person found to have violated this Code or the orders, rules, regulations and permits issued hereunder,

The amount of these fines shall be determined by the duration of and severity of the violation(s). This is determined at the show cause hearing and the Environmental Affairs Division Chief may recommend the amount of the fine in accordance with the Violation of Fines Schedule.

Violations will be delineated by class and will roughly fall into one of four (4) classes.

Classes:

- 1. Illegal discharge which causes no damage to sewer lines, pumping stations or POTW's and is not chronic or recurrent.**
- 2. Illegal discharge which causes no damage to sewer lines, pumping stations or POTW's and is chronic or recurrent.**
- 3. Illegal discharge which causes damage to sewer lines, pumping stations or POTW's and is not chronic or recurrent.**
- 4. Illegal discharge which causes damage to sewer lines, pumping stations or POTW's and is chronic or recurrent.**

Depending on the class of the violations, administrative action will occur in the following sequence:

Documented Phone Calls or Informal Discussions

Warning Notice of Violation

Notice of Violation

Consent Order

Cease and Desist Order

Show Cause Hearing

Administrative Order

Administrative Fine

Criminal Investigation

These actions are preliminary to those which are short of civil litigation and/or criminal prosecution, if such measures are ultimately necessary.

Documented Phone Calls or Informal Discussions

In the case of the most minor violation of a permit in Section 16.2-4, a telephone call or informal meeting may be sufficient to obtain the desired compliance. Phone calls should be documented by contemporaneous notes. A copy of the notes should be retained in the user's master file. Likewise, if an informal discussion is held, notes should be kept summarizing the discussion. Copies of the notes should be retained in the user's master file. A follow-up to the phone call shall be an email or letter to the user outlining discussion made by phone or in person.

Warning Notice of Violation

A warning notice of violation is the lowest level of formal response to a violation. It is a written response presented to the violator shortly after a violation has been identified and is intended for minor violations that would not cause harm to the environment. A notice of violation form may be used in lieu of a letter outlining violation.

Official Notice of Violation

An NOV is an official notification to inform a non-compliant user of a violation of Section 16.4(M)(1). The official NOV will be issued on SWBNO letterhead. It will include instructions for the satisfactory correction and prevention of the violation and may carry a minimum fine of \$100. Inspection to ensure performance of any corrective actions may be conducted by the EA staff at their discretion.

Consent orders

Consent orders are entered into between the SWBNO and the user to ensure compliance with specific actions to be taken by the user to correct non-compliance within a specified time period. The EA Division Chief may enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents shall include specific action to be taken by the user to correct the noncompliance within a time period specified in the document.

Cease and desist orders

Cease and desist orders may be issued when the EA Division Chief finds that an user has violated, or continues to violate, Section 16.2-4 of the Plumbing Code or order issued there under. The order shall require that the user:

- a) Comply forthwith; and
- b) Take such appropriate remedial or preventive action as may be needed or deemed necessary to properly address a continuing or threatened violation, including halting operations and terminating the discharge. Issuance of a cease and desist order shall not be an obstacle or a prerequisite for taking any other action against the user.

Show Cause Hearing

A show cause hearing shall be held prior to any enforcement action other than a telephone call, warning notice of violation notice of violation (NOV), Consent Agreement and Cease and Desist Order, . The purpose of a show cause hearing is to provide a forum for the user to present a defense to charges outlined, or to obtain additional information.

A user may waive the right to a Show Cause Hearing and agree to the recommendation of penalty from the Chief of Environmental Affairs Division. The user shall agree to correct the violation within thirty (30) days or the time outlined in either Consent Agreement or Administrative Order.

Administrative Orders

Administrative orders (AO) are enforcement documents that direct users to perform, or to cease, specific activities. Administrative orders may also invoke a penalty. There are two primary types of administrative orders: consent orders and cease and desist orders.

Administrative orders contain the following components:

1. Title - The title specifies the type of order being issued, to whom it is being issued, summarizes the purpose of the order, and contains an identification number.
2. Legal Authority - The authority under which the order is issued (Section 16.2-4 of the Plumbing Code).
3. The Finding of Noncompliance - All violations must be described including the dates, the specific permit and/or ordinance provisions violated, and any damages known and attributable to the violation.
4. Required Activity - All orders should specify the required actions, such as installation of Best Management Practices (BMP), additional inspections, appearance at show cause hearings, etc.

5. Milestone Dates for Corrective Actions - When compliance schedules are appropriate, all milestone dates must be established including due dates for required written reports.
6. Supplemental Clauses - The document should contain standard clauses providing that:
 - a) Compliance with the terms and conditions of the administrative order shall not be construed to relieve the user of its obligation to comply with applicable state, federal or local law, or the permit;
 - b) Violation of the administrative order itself may subject the user to additional penalties as set out in Section 16.2-4 of the Plumbing Code;
 - c) No provision of the order shall be construed to limit the Sewerage and Water Board of New Orleans' authority to issue supplementary or additional orders, or to take action deemed necessary to implement this program or ordinance;
 - d) The order shall be binding upon the user, its officers, directors, agents, employees, successors, assigns, and all persons, firms or corporations acting under, through or on behalf of the user.

Administrative orders issued as a result of a violation of Section 16.2-4 of the Plumbing Code shall contain a recommendation of penalty as determined using Violation of Fine Schedule in this document. Administrative orders may also be used to advise the user of the need to take, or cease, certain actions, and in such case, may or may not be associated with penalties as defined in the ordinance or in this guide.

Penalties, Administrative or Civil

Section 16.4F authorizes assessment of penalties not to exceed \$1,000 per violation per day. The penalty is assessed according to the violation schedule in Attachment No. 1. Before assessment of any administrative penalty, a show cause hearing must be held with the non-compliant user. The user may waive their right to a show cause hearing as noted in the Show Cause Hearing section above.

If a violation results in conditions requiring the expenditure of public funds for mitigation of damages, a penalty shall be assessed in such amount as to offset the public funds so expended. This will in no way reduce or offset the liability of the user with respect to damages incurred.

Civil Injunction

A civil injunction may be requested at any time, for any violation, if in the opinion of the EA staff in consultation with the SWBNO legal staff, such action is justified, needed or appropriate.

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Criminal Investigations

In cases where criminal acts are reasonably suspected, the EA Chief and the Special Counsel shall gather information to be forwarded to the district attorney for action. Criminal prosecution, if pursued, shall be in addition to other actions authorized by Section 16.4, and all investigation documents will be turned over to Louisiana Department of Environmental Quality Enforcement Division for Criminal prosecution.

Explanation of Use of Tables

This section provides an explanation on the use of Table A: Response Guide for Violation and Table B: Violation Response Guide.

Table A indicates how point values are assigned for each violation with consideration to the severity, duration, degree of harm, and compliance history of the owner. All possible violations may not be listed; however, this does not preclude an appropriate enforcement response.

Table A contains three columns titled Initial Points, Repeat Value and Cumulative.

- If no history of violations is noted, the value under the column "Initial Points" may be used in conjunction with Table B to assess a typical response to the violation.
- If the user has a history of similar violations, the initial point value plus the product of the number of previous occurrences times the repeat value should be used as shown in the following formula:

Total Point Value (TP) = $P + (N \times R)$, where:

P = Initial Point Value for a single violation

N = Number of previous occurrences

R = Repeat Value from Table A

- Should more than one violation be noted at a time, the "Cumulative" column should be consulted. If violations are cumulative in nature, the sum of the individual point values should be used to judge the response. If not, the greatest individual values should be used to judge response, with the documentation for that response, however, noting all violations.

Once a point value is determined, Table B should be consulted for recommended responses. Table B provides a schedule of appropriate responses based upon the number of "points" determined by Table A.

Example:

An owner violates the terms of the Plumbing Code Section 16.2C by discharging tank from plating operation with a pH <5. This violation is considered significant and causes harm. Investigation reveals the user failed to obtain a discharge permit and is classified as a categorical user, Metal Finisher. This is a violation of Section 16.4B. This is the first time the user has been cited for the same violation: Total Point Value (TP) = $P + (N \times R)$. Therefore:

Failure to obtain permit: $TP = 2 + (0 \times 1) = 2$, where:

2 = Points charged for failure to obtain permit from Table A

0 = Number of previous occurrences; and

1 = Repeat value from Table A.

User aware of requirement, caused harm to POTW or the environment: $TP = 3 + (0 \times 1) = 3$, where:

3 = Pts. charged for user aware of requirement and caused harm to POTW from Table A

0 = Number of previous occurrences; and

1 = Repeat value from Table A.

Total points = 5

VIOLATION RESPONSE GUIDE – TABLE B

Points	Action	Fine, maximum*
1	Warning Letter	\$100
2	Notice of Violation	\$250
3	Notice of Violation	\$400
4	Administrative Order	\$500
5	Administrative Order	\$600
6	Administrative Order	\$750
7	Administrative Order	\$1000
8+	Criminal Investigation/Prosecution and/or Termination of Service	\$1000

***Maximum Fine is per violation per day. In addition to fine, remediation cost may be charged to violator.**

Violation of Fine Schedule – Table A

Description of Violation	Initial Points	Repeat Value	Cumulative
Unauthorized Discharges – No Permit			
IU unaware of requirement, no harm to POTW	1	1	Yes
IU aware of requirement, no harm to POTW	2	2	Yes
IU unaware of requirement, harm to POTW	2	1	Yes
IU aware of requirement, harm to POTW	3	2	Yes
Failure to comply continues after notice by SWBNO	4	3	Yes
Failure to obtain discharge permit prior to discharge	2	1	Yes
Discharge Limit Violation			
Isolated, no harm to POTW or environment	1	1	Yes
Reoccurring, no harm to POTW or environment	2	2	Yes
Isolated, harm to POTW or environment	3	2	Yes
Reoccurring, harm to POTW or environment	4	3	Yes
After ten days and no proper response shown	5	3	Yes
Reoccurring, significant harm to POTW or environment	5	3	Yes
Non-Compliance Reporting			
Report less than 30 days	2	2	Yes
Report late 30 days or more	3	2	Yes
No report	4	3	Yes
Failure to report spill or changed discharge, harm to POTW or environment	4	3	Yes
Falsifying reports	5	3	Yes
Improper sampling, unintentional	1	1	Yes
Improper sampling, intentional	3	2	Yes
Non-Compliance Other Permit Violations			
Dilution of waste stream in lieu of treatment	3	3	Yes
Failure to mitigate non-compliance or halt production which results in harm of POTW or environment	3	2	Yes
Failure to properly operate and maintain pretreatment facility which results in harm of POTW or environment	3	2	Yes
Violations Detected During Inspection			
Illegal discharge, no harm to POTW or environment	2	2	Yes
Illegal discharge, harm to POTW or environment	3	2	Yes
Recordkeeping			
Files incomplete or missing	1	1	Yes
Failure to report additional monitoring	1	1	Yes