

JUNE 2020

REVISED DECEMBER 2023

City of Arcata

Enforcement Response Plan

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List of Acronyms

BMP	Best Management Practice
BOD	Biochemical oxygen demand
ERG	Enforcement Response Guide
ERP	Enforcement Response Plan
NOV	Notice of Violation
POTW	Publicly-owned treatment works
SIU	Significant industrial user
SNC	Significant noncompliance
TRC	Technical Review Criteria
TSS	Total suspended solids
USEPA	United States Environmental Protection Agency
WWTP	Wastewater Treatment Plant

Introduction

The Enforcement Response Plan (ERP) outlines the procedures followed by the City of Arcata (City) to identify, document, and respond to violations of Title VII, Chapter 2 of the City of Arcata Municipal Code (Sewer Use Ordinance, No. 1461). This ERP identifies the duties of City personnel responsible for implementation and the methods and specific criteria used to review compliance data, determine compliance with applicable regulations, and determine the enforcement action most appropriate in the event of a violation. This ERP also includes the Enforcement Response Guide (ERG), which is a table of potential types of noncompliance and the associated range of enforcement responses that can be taken.

This ERP was prepared by following United States Environmental Protection Agency (USEPA) *Guidance for Developing Control Authority Enforcement Response Plans* (ERP Guidance). This ERP is organized into the following sections:

- Introduction;
- Permitting;
- Procedures for identifying noncompliance;
- Evaluating noncompliance;
- Penalty policy;
- Enforcement tools; and
- Enforcement Response Guide.

PURPOSE

This ERP details the enforcement procedures and lists key steps necessary to assure that wastewater discharges from users maintain compliance with all local, state, and federal limitations.

ENFORCEMENT LEGAL AUTHORITY

Title VII, Chapter 2 of the City of Arcata Municipal Code provides the standards and the legal authority for the implementation and enforcement, including administrative enforcement procedures and civil and criminal penalties for violations, of the Pretreatment Program. This ERP is carried out by Environmental Services personnel under the Director of Environmental Services (Director), or authorized designee. The Environmental Services Pretreatment personnel at the City includes the Director of Environmental Services, Deputy Director of Environmental Services, the Wastewater Operations and Compliance Manager, and an Environmental Compliance Technician. Under this ERP, the Director is responsible for implementation of inspection and documentation activities leading to the activation of penalties for noncompliance under the City’s Pretreatment Program. The primary responsibilities of the Director, however, are to monitor, coordinate, and maintain the processes necessary for regulated entities to comply fully with the City’s wastewater requirements. In general, the Director delegates implementation and initial enforcement activities to Environmental Services personnel. The City Attorney provides legal counsel and assistance, as necessary.

This ERP includes a wide range of enforcement options available based on an assessment of the nature and severity of the violation. Along with departmental enforcement officials, the City Attorney will enforce applicable City of Arcata Municipal Code requirements, including court action if required. Specific enforcement tools and their anticipated uses are detailed in the Enforcement Tools section of this ERP.

Permitting

Per the City of Arcata Municipal Code Title VII, Chapter 2, Section 7471.3, a wastewater discharge permit must be obtained at least ninety (90) days prior to the expiration of an existing wastewater discharge permit or prior to commencing discharge to the publicly owned treatment works (POTW). The POTW consists of any device or systems owned by the City used in the collection, storage, treatment, recycling, and reclamation of wastewater including sewers, pipes, and other conveyances owned by the City which convey wastewater to the City of Arcata Wastewater Treatment Plant (WWTP). Users must submit an application for a wastewater discharge permit that includes operational information such as the volume and nature of discharge. Classification of users as Significant Industrial Users (SIUs) are evaluated through the Industrial Process Identification & Wastewater Characteristics Survey. Prior to wastewater discharge permit issuance, pre-permit inspections, meetings and baseline monitoring may be conducted with Environmental Services. The draft permit, created by Environmental Services personnel, is routed to the Director for review and approval.

Procedures for Identifying Noncompliance

There are several activities associated with the identification and investigation of noncompliance, including maintenance of the non-residential user inventory, reviewing user submittals, and inspection and sampling activities by Environmental Services personnel. A brief description of these activities is provided below.

NON-RESIDENTIAL USER INVENTORY

An essential step for identifying noncompliance is to accurately account for users to the collection system and WWTP, where the users are located, and the nature and volume of wastewater being discharged. The Industrial User Inventory was started in August of 1993 using a master list of businesses, compiled from the Pacific Yellow Pages and the City of Arcata Finance Department Business License database. The inventory is routinely updated using:

- Responses to the “Industrial Process Identification & Wastewater Discharge Characteristic Survey” submitted by businesses within City limits, as required based on review of business license applications.
- Communication with other City Departments including Engineering and Community Development.
- Regular inspection of commercial and industrial areas by Environmental Services personnel for new business operations.
- All users identified as industrial, and most users identified as “non-residential, non-retail” will be inspected a minimum of once per year.

The Director of Environmental Services is responsible for maintaining and updating the inventory.

REVIEW OF USER SELF-MONITORING REPORTS

Compliance monitoring involves the tracking and review of compliance data obtained from self-monitoring reports submitted to the City by permitted users and information obtained by the City from:

- Routine inspections of permitted users;
- Referral follow-up inspections;

- Routine wastewater sampling; and
- Direct sampling of sewer connections.

Self-monitoring requirements and deadlines for permitted users are tracked through entry of self-monitoring schedules into a calendar upon permit issuance. Receipt of the self-monitoring data, by the specified date, is verified by the Wastewater Operations and Compliance Manager or Environmental Compliance Technician. If self-monitoring results are not received on time, the City will implement appropriate enforcement actions. If in reviewing the self-monitoring results Pretreatment personnel finds a violation, the violation date is added to the file. If a user is in violation of a categorical or local limit, the user must conduct re-sampling and submit the results of the re-sample to the City within 30 days of becoming aware of the violation. The Wastewater Operations and Compliance Manager will implement an appropriate enforcement action that is sent to the user via certified mail. The deadline for user response to the enforcement action is added to the calendar and the file. If a response is received from the user, a written plan for prevention of the violation is required. The City may also conduct additional sampling and/or inspections, especially for higher level violations. If the user is found to be in compliance, a normal sample schedule is resumed. If the user's noncompliance is confirmed or there is no response from the user, enforcement is escalated.

Compliance data from self-monitoring reporting, routine inspections, or sampling events are reviewed. Prompt review of compliance data is important if no prior notification by the user was made, and a problem is noted that requires immediate City response. Situations that may require immediate response include discharges that may be toxic to the POTW or affect hydraulic capacities or the integrity of the collection system. Pretreatment Program personnel are trained to review compliance data for both discharge and non-discharge violations and to provide notification to the Director, as needed.

INSPECTION AND SAMPLING

Inspection and verification sampling are another method by which the City obtains compliance data other than that which is obtained directly from users. Verification sampling that is performed by the City may seem redundant since self-monitoring is a user requirement, but it is a critical step in verifying compliance with wastewater discharge permit requirements. The authority to perform verification monitoring exists under Title VII, Chapter 2, Section 7473 of the City of Arcata Municipal Code. Inspection and verification sampling may be a result of:

- Random sampling and inspection on a routine basis;
- Annual sampling and inspection of each SIU as required by 40 CFR Part 403;
- Response to known or suspected compliance problems;
- Investigation of slug loads; or
- Verification of corrective actions required of the user by the City.

The City conducts monitoring of wastewater from significant industrial users at least annually. Sampling and analysis is to be performed in accordance with 40 CFR Part 136. Quality assurance/quality control procedures are followed to maximize sample integrity. The City follows inspection procedures to ensure consistent, thorough, and well-documented inspections.

Other permitted or certified users are inspected to verify monitoring and recordkeeping requirements on a routine basis commensurate with the perceived risk posed to the collection system or WWTP by its discharge. Samples may or may not be collected during the inspection of these users. Information gathered during monitoring and inspections of users by the City is used to verify compliance status and to determine

if an enforcement response must be initiated or continued. The Director is responsible for review and determination of the appropriate response. If a user is in violation, resampling is conducted. If the results are in compliance, a normal sample schedule is resumed; if the results are not in compliance, appropriate enforcement actions are taken.

TYPICAL INSTANCES OF NONCOMPLIANCE

Article 9 of the Sewer Use Ordinance sets the legal authority for the City to assess administrative and judicial remedies when a user has violated or continues to violate any provision of the Sewer Use Ordinance, wastewater discharge permit or order issued thereunder, or any other pretreatment standard or requirement. Offense(s) deemed a violation shall include without limitation:

- Denied right-of-entry or access to applicable records;
- Discharge of prohibited wastes;
- Discharge of drainage water or groundwater, except as approved by the City;
- Unreported/unauthorized bypass of pretreatment;
- Failure to install and maintain a sample port and/or a control manhole;
- Illegal discharge;
- Violation of categorical pretreatment standards or local limits;
- Discharging to the POTW without first securing a wastewater discharge permit;
- Falsifying information; or
- Noncompliance of enforcement actions (e.g., administrative orders).

Penalty Policy

The penalty associated with violations depends on the seriousness, frequency, and persistence of the violation. The magnitude of the violation, duration of the violation, effect of the violation on receiving water and/or the WWTP and the compliance history of the user may all be considered when determining an appropriate penalty. Additional charges for costs associated with violation(s) (including sampling, analysis, investigation) will be billed to the user in noncompliance in accordance with Title VII, Chapter 2, Section 7494.1 of the City of Arcata Municipal Code. The user in noncompliance should not gain an economic benefit from having been in violation and should instead experience a negative economic effect. After the penalty is computed, the amount may be increased or decreased to account for recalcitrance, litigation costs, and ability to pay.

Enforcement Tools

Article 9, Sections 7490 to 7492.5, of the City of Arcata Municipal Code outlines the types of enforcement tools available that may be taken on users that are in noncompliance with wastewater discharge permit requirements, previous enforcement actions, and pretreatment standards and requirements. The Director may take any, all, or any combination of these enforcement actions against a noncompliant user. Each of these types of enforcement actions are presented below.

TYPICAL ENFORCEMENT ACTIONS

Notice of Violation (NOV)

The City may serve a user a verbal or written NOV after finding that any user has violated or continues to violate any provision in Title VII, Chapter 2 of the City or Arcata Municipal Code or any other Pretreatment

Requirement. The user is required to submit a written response to the City within ten (10) days upon receipt of an NOV. The written response shall include an explanation of the cause of the violation, a discussion of corrective actions taken to mitigate the violation, and actions taken to prevent future similar violations.

Significant Noncompliance

An SIU (or any user that violations subparagraphs (c), (d), or (h) below) is determined to be in significant noncompliance (SNC) if any of the following occur:

- a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of all measurements taken for the same pollutant parameter during a six-month (6) period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits; (applies to SIU only)
- b. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric pretreatment standard or requirement, including instantaneous limits, multiplied by the applicable criteria (1.4 for biochemical oxygen demand [BOD], total suspended solids [TSS], fats, oils, and grease, and 1.2 for all other pollutants except pH); (applies to SIU only)
- c. Any other violation of a pretreatment standard or requirement as defined in Title VII, Chapter 2 of the City of Arcata Municipal Code that the Director determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of City personnel or the general public; (applies to any Industrial User)
- d. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Director's exercise of emergency authority to halt or prevent such a discharge; (applies to any Industrial User)
- e. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance; (applies to SIU only)
- f. Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standards deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- g. Failure to accurately report noncompliance; or (applies to SIU only)
- h. Any other violation(s), which may include a violation of Best Management Practices (BMPs), which the Director determines will adversely affect the operations or implementation of the Pretreatment Program. (applies to any Industrial User)

The Director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the WWTP, a list of the users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements.

Increased Monitoring and Inspections

As a result of any discharge violation, increased sampling and inspections are required to verify that the violation has been corrected. The magnitude of the violation will dictate how many follow-up samples and

inspections will be conducted to verify that the violation has been corrected. Additional monitoring will continue at the facility until the Director determines that the user has sufficiently demonstrated that the discharge is no longer in violation or a threat to violate pretreatment standards or requirements.

ESCALATED ENFORCEMENT ACTIONS

Almost all cases of noncompliance are corrected by following the routine types of enforcement actions listed above and in the ERG. In those cases where noncompliance is not corrected, the next step in the escalation of enforcement action is the issuance of an administrative order. The types of administrative orders that may be taken by the Director include consent orders, compliance orders, cease and desist orders, and termination of service or revocation of wastewater discharge permit.

Consent Orders

A consent order is an agreement with the user to achieve or restore compliance within a specified time. A consent order includes the specific action taken by the user, and associated time period, to correct the noncompliance. If the user does not come into compliance within the time provided, additional enforcement actions may occur. A consent order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a consent order relieve the user of liability for any violation, including any continuing violation.

Compliance Orders

A compliance order directs a user to achieve or restore compliance within a specified time. A compliance order is often a stipulated agreement that may include a compliance schedule, additional self-monitoring and BMPs, the payment of monetary penalties, or cost recovery for and the imposition of penalties when milestones are not met. If the user does not come into compliance within the time provided, additional enforcement actions may occur. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation.

Cease and Desist Orders

A cease and desist order directs the user to cease and desist all such violations and requires the user to:

- Immediately comply with all requirements; and
- Take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Administrative Fines

An administrative complaint may be issued by the Director when regulations from Title VII, Chapter 2 of the City of Arcata Municipal Code, wastewater discharge permit or order issued thereunder, or any other pretreatment standard or requirement are violated. If the user is found to be in violation, a civil penalty may be considered. Fines are assessed in accordance with Title VII, Chapter 2, Section 7490.7 of the City of Arcata Municipal Code and Section 54740.5 of the California Code of Regulations.

Emergency Suspensions

In instances when a discharge reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons, it may be necessary to immediately suspend a discharge (after informal

notice to the user). In instances where the users discharge threatens to interfere with operation of the POTW or endanger the environment, the Director may immediately suspend a user's discharge. In the event of a user's failure to voluntarily comply with the suspension order, the City may immediately sever the sewer connection. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply. Any user that is responsible for discharge presenting imminent endangerment will be required to provide the Director with a detailed written statement, prior to any show cause or termination hearing, outlining the cause of the harmful contribution and subsequent preventative measures taken to avoid future occurrence.

Termination of Discharge or Revocation of Wastewater Discharge Permit

The City may issue an order to a noncompliant user of its intent to revoke the user's wastewater discharge permit and/or terminate sewer service. The Director has the authority to issue these notices and actions against the user.

Injunction

The City, through the City Attorney, may seek injunctive relief through the Superior Court of Humboldt County to restrain or compel specific performance of the wastewater discharge permit, order, or other requirement imposed by Title VII, Chapter 2 of the City of Arcata Municipal Code on activities of the user. The Director may also seek such other action as appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation.

Civil Penalties

The City Attorney may initiate a civil lawsuit against a user in violation of Title VII, Chapter 2 of the City of Arcata Municipal Code, wastewater discharge permit or order issued thereunder, or any other pretreatment standard or requirement. Users shall be liable to the City for a maximum civil penalty of \$5,000 per violation day and penalties shall accrue for each day of violation. Civil penalties may include administrative penalties, attorney's fees, court costs, and other expenses associated with enforcement activities. In determining the amount of civil penalties, all relevant circumstances including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

Criminal Prosecution

The City Attorney may initiate criminal prosecution against a user who willfully or negligently violates Title VII, Chapter 2 of the City of Arcata Municipal Code, wastewater discharge permit or order issued thereunder, or any other pretreatment standard or requirement. The user may be charged with a misdemeanor or infraction, at the discretion of the City Attorney and may be subject, upon conviction, to financial penalties and/or imprisonment.

SHOW CAUSE HEARING

The Director may order a user which has violated, or continues to violate, any provision of Title VII, Chapter 2 of the City of Arcata Municipal Code, wastewater discharge permit or order issued thereunder, or any other pretreatment standard or requirement, to appear before the Director and show cause why a

proposed enforcement action, including but not limited to termination of service, should not be taken. Notice shall be served on 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 show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served on the user personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user.

REMEDIES NONEXCLUSIVE

Enforcement actions are not required to be initiated from the least severe enforcement action to the most severe enforcement action. As stated previously, the Director may take any, all, or any combination of the enforcement actions against a noncompliant discharger. The Director has the authority to take other action against any user if the circumstances warrant. The Director has the authority to take more than one enforcement action against any noncompliant user as needed.

Enforcement Response Guide

This tabulated Enforcement Response Guide (ERG) details several enforcement options for different violations or noncompliance with consideration for the circumstances of the noncompliance. The Director will select, using best professional judgement, the appropriate response from the guide once a violation has been identified. Implementation of this ERP must be consistent so that existing and potential users will not be able to cite inconsistency or arbitrary enforcement as a defense for their own noncompliance. Note that any of the violations tabulated in the ERG may also be subject to administrative penalties, injunctions, civil penalties, and/or criminal prosecution. The following tables list the enforcement options for sampling, monitoring or reporting violations, compliance schedule violations, effluent limit violations and noncompliance detected through inspections or field investigations.

Significant Noncompliance

Violations resulting in Significant Noncompliance – Each violation will be reviewed to determine if it results in, or could result in, Significant Noncompliance (SNC). Any violation that results in SNC will be addressed through formal enforcement action regardless of the enforcement response otherwise dictated by the enforcement response guide.

Sampling, Monitoring, or Reporting Violations

Type of Violation	Degree and/or Nature of Violation	Enforcement Response
Failure to sample, monitor, or report (routine reports, Baseline Monitoring Reports)	Isolated and infrequent	Phone call or Notice of Violation requiring a report within 10 days. If no response, Administrative Order issued.
Failure to sample, monitor, report or notify	User does not respond to letters or follow through on verbal or written agreement, or frequent violation	Administrative Order or judicial action, including penalties. If no response received, request criminal investigation.
Failure to notify of effluent limit violation or slug discharge	Frequent or infrequent with no known effects	Phone call or Notice of Violation. If no response within 10 days, issue Administrative Order.
	Frequent or continued violation	Show cause hearing or judicial action and penalties.
	Known environmental or POTW damage results	Judicial action and penalties, termination of service.
Sampling, monitoring, or reporting deficiencies	Minor, isolated, or infrequent	Phone call or Notice of Violation with corrections to be made on next submittal.

Type of Violation	Degree and/or Nature of Violation	Enforcement Response
	Major (missing information, late reports) isolated or infrequent	Notice of Violation or Administrative Order with corrections to be made on next submittal.
	Major, continued. Remains uncorrected for 30 days or more	Administrative Order or judicial action

Compliance Schedules (Construction phases or planning)

Type of Violation	Degree and/or Nature of Violation	Enforcement Response
Reporting false information	Any instance	Request for criminal investigation, judicial action, penalties, termination of service
Missing interim date	Will not cause final date or other interim dates to be late.	Notice of Violation
	Will result in other missed interim dates Violation for a good or valid cause.	Notice of Violation, Administrative Order
Missed final date	Violation due to forces beyond control (strike, natural cause, etc.)	Require documentation of good or valid cause
	45 days or more outstanding. Failure or refusal to comply without good or valid cause.	Administrative Order, judicial action, and penalties
Failure to install monitoring equipment	Less than 30 days	Notice of Violation
	30 days or more delay.	Administrative Order to begin monitoring and install equipment in minimal time. Penalty for each additional day. Temporary termination of service.

Effluent Limits

Type of Violation	Degree and/or Nature of Violation	Enforcement Response
Exceedance of local or federal standard (numerical permit limit, narrative standard, or BMP)	Infrequent or isolated violations (no harm/damage)	Phone call, Notice of Violation

Type of Violation	Degree and/or Nature of Violation	Enforcement Response
Exceedance of local or federal standard (numerical permit limit, narrative standard, or BMP)	Infrequent or isolated significant (with known harm/damages)	Notice of Violation, Administrative Order
Exceedance of local or federal standard (numerical permit limit, narrative standard, or BMP)	Recurring or with evidence of negligence or intent	Administrative Order, judicial action, and penalties
Slug load (Reported as required)	Isolated without known damages	Notice of Violation, Administrative Order
	Recurring	Judicial action and penalties, termination of service
Discharge without permit or approval	One time without known environmental or POTW damage and user unaware of requirement	Phone call, Notice of Violation with application form
	One time that results in environmental damage or continuing violation and user unaware of requirement.	Administrative Order, judicial action, and penalties. Request for criminal investigation.
	Continuing violation with known environmental or POTW damage	Judicial action and penalties. Request for criminal investigation. Termination of service
	User does not submit application within 10 days of due date	Phone call, Notice of Violation

Noncompliance Detected Through Inspections or Field Investigations

Type of Violation	Degree and/or Nature of Violation	Enforcement Response
Entry Denial	Entry denied, copies of records denied	Notify Director and/or police. City Attorney to obtain warrant return to the facility.
Minor violation of analytical procedures	Any instance	Notice of Violation
Major violation of analytical procedures	Evidence of negligence or intent	Administrative Order, judicial action, and penalties
	No evidence of negligence or intent	Notice of Violation, Administrative Order

Type of Violation	Degree and/or Nature of Violation	Enforcement Response
Minor violation of permit condition	Evidence of negligence or intent	Administrative Order, judicial action, and penalties. Possible reference for criminal investigation.
	No evidence of negligence or intent	Notice of Violation with immediate correction required
Major violation of permit condition	Evidence of negligence or intent	Administrative Order, judicial action, and penalties. Possible reference for criminal investigation. Termination of service
Failure to report additional monitoring	Inspection finds additional files	Notice of Violation