



THE ANATOMY OF AN ENFORCEMENT RESPONSE PLAN [ERP]



Why have an ERP?

- 40 CFR Part 403.8(f)(5) – Federal Pretreatment Regulations require it
- 15A NCAC 02H .0906 (b)(7) – State Regulations require it
- Sewer Use Ordinance – Local Law



What is the purpose of an ERP?

- To provide “FAIR” and “EQUITABLE” treatment of “ALL” POTW Users for anticipated enforcement actions
- To ensure enforcement action will be taken in accordance with the Enforcement Response Plan



How is an ERP developed?

- NC Division of Water Resources Pretreatment Unit provided a Model ERP for the Control Authority to follow
- However, Municipalities have discretion to use Model or develop different format



How is an ERP developed?

- Set up to meet the needs of the Control Authority Publicly Owned Treatment Works [POTW]
- ERP must be approved by local governing board (Municipality, Sewer Authority, City Council) as appropriate
- ERP is sent to DWR for approval

ERP SECTIONS

SECTION 1.

INTRODUCTION



Section 1. Introduction

This section states that it is the responsibility of the Control Authority to enforce the pretreatment regulations.

Introduces and explains the reasons the POTW has an ERP:

- a) 40 CFR 403.8(f)(5)
- b) 15A NCAC 02H .0906 (b)(7)



Section 1. Introduction (cont.)

It also states the purpose of the ERP, which generally, is to ensure Fair & Equitable Treatment to all POTW users.

Categories of users covered by the ERP:

- a) Industrial
- b) Commercial
- c) Pump and haul users
- d) Residential

ERP SECTIONS

SECTION 2.

ENFORCEMENT ACTIONS AVAILABLE



Section 2. Enforcement Actions Available

The POTW Director is empowered through NC General Statute 143-215.6A and the Local SUO to take a wide variety of enforcement actions.

This section also provides a list of actions and where they are in the Sewer Use Ordinance [SUO].



Section 2. Enforcement Actions Available (cont.)

1. Notice of Violation
2. Consent Order
3. Show Cause Hearing
4. Administrative Orders
5. Emergency Suspensions
6. Termination of Permit

7. Civil Penalties
8. Injunctive Relief
9. Water Supply
Severance



Section 2. Enforcement Actions Available cont.

In addition to those listed previously, violators may be referred by the Director to the DA for possible criminal prosecution.



Section 2. Enforcement Actions Available (cont.)

In determining the amount of penalties for a particular violation, the following things are considered:

1. The degree and extent of the harm to the natural resources, to the public health or to public and/or private property
2. The duration and gravity of the violation
3. The effect on ground or surface water quantity and/or quality and/or on air quality



Section 2. Enforcement Actions Available (cont.)

4. The cost of rectifying the damage
5. The amount of money saved by non-compliance
6. Whether the violation was committed willfully or intentionally
7. The prior record of the violator in complying or failing to comply
8. The costs of enforcement to the POTW

ERP SECTIONS

SECTION 3.

INVESTIGATION OF NON-COMPLIANCE



Section 3. Investigation of Noncompliance

POTW User compliance is usually investigated in 3 ways:

1. On-site inspections
2. Sampling of the effluent
3. Review of self-monitoring data

Compliance status of POTW users is evaluated at a minimum every six months.

ERP SECTIONS

SECTION 4.

TYPES OF VIOLATIONS



Section 4. Types of Violations

1. Unpermitted discharges

- POTW users are responsible for obtaining and renewing permits if required, failure to do so is a violation

2. Permit Limits

- POTW users are responsible for maintaining compliance with all limits.
- The POTW will evaluate the extent of any violations to determine if Significant Non-Compliance has occurred.



Section 4. Types of Violations (cont.)

3. Self-Monitoring Violations

The POTW user must adequately conduct all monitoring as required by the permit, including:

- All required parameters
- The correct frequency
- Correct sampling and analysis methods
- Re-sampling if required



Section 4. Types of Violations (cont.)

4. Reporting Violations

The POTW user must provide all information as required in the permit or SUO

- Late Reports
- Incomplete Reports
- Extra sampling information
- Incorrect data



Section 4. Types of Violations (cont.)

5. Permit Conditions

Failure to apply or reapply for a permit

Violations of General or Other Conditions

- Slug Loading
- Dilution Prohibition
- Proper Operation of Pretreatment Units
- Right of Entry
- Construction
- Production Changes



Section 4. Types of Violations (cont.)

6. Enforcement Orders

Failure to meet the requirements of an order

- Milestone dates
- Interim limits
- Reporting requirements

ERP SECTIONS

SECTION 5.

**RESPONSES: TIMEFRAMES,
RESPONSIBLE OFFICIALS,
AND ESCALATED ACTIONS.**



Section 5. Responses: Timeframes, Responsible Officials & Escalated Actions

1. ERP Matrix outlines various types of violations and specifies POTW actions (initial and escalated), timeframes and the officials responsible for completing the actions
2. This is where many POTWs differ in their actions when responding to violations— Points System, Tier System, Fee Schedule

North Carolina Model Enforcement Chart

Items in **Bold** are strongly recommended as **Absolute Minimum Actions**

Type of Violation	POTW Action	Timeframe	Responsible Official	Expected Action from User	Escalated Action if Needed
<i>Unpermitted Discharges</i>					
Unpermitted Discharge Unaware Of Requirement	Notice Of Violation	Within 30 Days Of Discovery Of Discharge	Pretreatment Coordinator	File Permit Application	Suspend Service Until Permit Is Issued
Unpermitted Discharge Aware Of Requirement	Notice Of Violation With Penalty Assessed	Within 30 Days Of Discovery Of Discharge	Director	File Permit Application	Suspend Service Until Permit Is Issued
Unpermitted Discharge results in NPDES or other State issued permit or State General Statute violations	Order to Cease Process Causing Violation Notice of Violation with recommended minimum of \$1,000 and up to \$25,000/day per violation Penalty	Order to Cease Immediately Notice of Violation within 7 days	Director	File Permit Application Steps Taken to avoid violation	Suspend Service Until Permit Issued
Unpermitted Discharge results in Endangerment	Suspend Service Notice of Violation with recommended minimum \$,1000 and up to \$25,000 per day per violation Penalty	Suspend Service Immediately Notice of Violation within 7 days	Director	File Permit Application Steps Taken to avoid future endangerment	

North Carolina Model Enforcement Chart

Items in **Bold** are strongly recommended as **Absolute Minimum Actions**

Type of Violation	POTW Action	Timeframe	Responsible Official	Expected Action from User	Escalated Action if Needed
Permit Limits Violations					
Permit Limits Violation Single Event Minor	Notice of non-Compliance or Notice of Violation with \$0 to \$25,000 Penalty	Within 30 days of receiving data	Pretreatment Coordinator	Conduct Additional Monitoring and Return to Compliance	Notice of Violation with Penalty
Permit Limits Violation Technical Review Criteria (TRC)	Notice of Violation with 0 to \$ 25,000 Penalty	Within 30 days of receiving data	Pretreatment Coordinator	Conduct additional monitoring and return to compliance	Second Notice of Violation with Increased Penalty
Permit Limits Violation Significant non- Compliance	Notice of Violation with 0 to \$ 25,000 Penalty	Within 30 days of Receiving all Data	Pretreatment Coordinator	Report cause of Non- compliance and steps taken to prevent violation	Enforceable Schedule (AO) if not resolved by end of 2nd 6-month period
Permit Limits Violation results in NPDES or other State issued permit or State General Statute violations	Order to Cease process causing Violation Notice of Violation with recommended minimum \$ 1000 and up to \$ 25,000/ day per violation Penalty	Order to Cease Immediately Notice of Violation Within 7 days of Discovering Violation	Director	Report cause of Non- compliance and steps taken to prevent violation	Suspend Service Until resolved Enforceable Schedule (AO) if not resolved by end of 2nd 6-month period
Permit Limits Violation results in Endangerment	Suspend Service Notice of Violation with a recommended minimum \$1000 and up to \$25,000 per day per violation Penalty	Suspend Service Immediately Notice of Violation within 7 days	Director	File for Reissuance of Permit	

North Carolina Model Enforcement Chart

Items in **Bold** are strongly recommended as **Absolute Minimum Actions**

Type of Violation	POTW Action	Timeframe	Responsible Official	Expected Action from User	Escalated Action if Needed
<i>Other Violations</i>					
Self Monitoring Violations	Notice of Violation with a recommended Minimum Penalty Equal or Greater Than Cost of Missed Testing	Within 30 Days of Discovery	Pretreatment Coordinator	Conduct Missed Sampling	Second Notice of Violation with Penalty equal to Twice Cost of Missed Testing
Reporting Violations Late Report	Notice of Non-Compliance	Within 30 days of the Report Due Date	Pretreatment Coordinator	Submit Report	Notice of Violation Penalty Assessed Possible SNC if over 30 days
Reporting Violations Incomplete or Inaccurate Reports	Notice of Non-Compliance	Within 30 days of Report Submission	Pretreatment Coordinator	Submit Revised Report	Notice of Violation Penalty Assessed
Reporting Violations Intentional Falsification	Referred to District Attorney	As soon as suspected	Director		
Violation of Permit Conditions	Notice of Violation with Penalty up to \$25,000 per day per violation	Within 30 Days of Discovery	Pretreatment Coordinator or Director	Varies	Second Notice of Violation with Increased Penalty
Violation of Permit Conditions results in NPDES or other State issued permit or State General Statute violations or Endangerment	Suspend Service Notice of Violation with up to \$25, 000 per day per violation Penalty	Suspend Service Immediately Notice of Violation Within 7 days	Director	Steps taken to Avoid Reoccurrence	

North Carolina Model Enforcement Chart

Items in **Bold** are strongly recommended as **Absolute Minimum Actions**

Type of Violation	POTW Action	Timeframe	Responsible Official	Expected Action from User	Escalated Action if Needed
<i>Other Violations (cont.)</i>					
Violations of Enforcement Order Conditions or Limits	Notice of Violation assess Stipulated Penalty and Actions listed for same violation type in ERP	Within Time frame listed in Enforcement Order or For the Same Type of Violation in ERP	Pretreatment Coordinator or Director	Additional Monitoring and Steps taken to avoid recurrence	Same as Escalated Action for Same Type of Violation Possible Revocation of Order
Failure to Meet a Milestone Date in an Enforcement Order (Does not Affect Other Dates)	Notice of Violation and Assess Penalty Stipulated in Order	Within 14 days of Discovery	Pretreatment Coordinator	Submit a schedule to complete the Requirement	Show Cause Hearing
Failure to Meet a Milestone Date in an Enforcement Order (Affects Other Dates)	Show Cause Hearing and Assess Stipulated Penalties	Within 30 days of Discovery	Director	Negotiate new Order and Abide by New Conditions	Possible Termination of Service
Failure to Meet Final Compliance Date	Notice of Violation and Assess stipulated penalties	Within 14 days of Discovery	Director	Document Compliance	Possible Termination of Service



Enforcement Actions

Enforcement actions may include:

1. Telephone calls
2. Informal meetings
3. Various levels of written notices
4. Administrative Orders
5. Fines



Enforcement Actions (cont.)

6. Reimbursements of agency costs
7. Show Cause Hearing
8. Cease and Desist Order
9. Permit revocation
10. Termination of services
11. Criminal or civil actions



Penalty Assessment

Different Methods Exist for Penalty Assessment

1. Fee Schedule Method

1. A set fee may be in place for many violations
2. Fee may escalate based on the type and/or severity and/or the frequency of violations
3. Eliminates the guess work in determining the penalty for each violation
4. Fair & Equitable



Penalty Assessment (cont.)

Fee Schedule Method example:

1. June sampling data indicated that the pH reading on 6/20/06 was 5.8 SU.
2. This would be considered a Single event violation
3. Fee schedule may state that for each single event violation the penalty is \$50.00
4. NOV issued & penalty assessed for \$50.00, plus enforcement cost (if applicable)



Penalty Assessment (cont.)

2. Point System Method

1. POTW User is Assessed a certain amount of points based on violation(s)
2. A monetary value may be assigned to a point range or after a given point level is achieved
3. Monetary value formula may be used in calculating total fine



Penalty Assessment (cont.)

3. Tiered System

1. Different violations are assigned to different tiers
2. A different official is responsible handling different tier level violations
3. Tier levels of violations and enforcement responses correspond



Penalty Assessment (cont.)

3. Tiered System (cont.)

4. Tier 1 may be – NOV with no Civil Penalty
5. Tier 2 may be - \$100 Civil Penalty & NOV
6. Tier 3 may be - \$500 Civil Penalty, NOV & Consent Order
7. Higher Tiers may include up to \$25,000 Civil Penalty, NOV, Show Cause Hearing, Public Notices & Termination of Services



Conclusion

- The Enforcement Response Plan is the centerpiece of the Control Authority's enforcement program.
- It ensures Fair & Equitable treatment to all Users.
- It promotes consistent & timely use of enforcement actions.



Conclusion

Know your ERP and FOLLOW your ERP!!

If you do not follow your ERP, your town may receive a violation.



Questions?