



CFPUA Enforcement Response Plan

Assessing Civil Penalties

William Roy and Maggie Butler

2022

Why Do You Need An Enforcement Response Plan?

Code of Federal Regulations or CFR

Title 40 Protection of Environment

Chapter 1 Environmental Protection Agency

Subchapter N Effluent Guidelines and Standards

Part 403 General Pretreatment Regulations for Existing and New Sources of Pollution

403.8 Pretreatment Program Requirements: Development and Implementation by POTW

(f) POTW Pretreatment Requirements

(5) The POTW shall develop and implement an enforcement response plan.

Specifically, an ERP must:

At A Minimum:

- ✓ Describe how the POTW will investigate instances of noncompliance.

At A Minimum:

- ✓ Describe how the POTW will investigate instances of noncompliance.
- ✓ Describe types of escalating enforcement responses the POTW will take for each type of violation, including time frames for each response.

At A Minimum:

- ✓ Describe how the POTW will investigate instances of noncompliance.
- ✓ Describe types of escalating enforcement responses the POTW will take for each type of violation, including time frames for each response.
- ✓ Identify by title the official(s) responsible to each type of response.

At A Minimum:

- ✓ Describe how the POTW will investigate instances of noncompliance.
- ✓ Describe types of escalating enforcement responses the POTW will take for each type of violation, including time frames for each response.
- ✓ Identify by title the official(s) responsible to each type of response.
- ✓ 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).

CFPUA's Old ERP:

- ✓ Operated under the old ERP since CFPUA was created in 2008
- ✓ Initial ERP included minor modifications but mirrored City of Wilmington Plan
- ✓ Functional but had opportunity for improvement

Review of other plans:

- ✓ Boone.
- ✓ Buncome County.
- ✓ Charlotte.
- ✓ Greensboro.
- ✓ Raleigh.
- ✓ Winston Salem.
- ✓ North Carolina Department of Environmental Quality's Model Plan.

Goals for new ERP were to:

- ✓ Include a Notice of Deficiency option
- ✓ Include food service establishments
- ✓ Provide equitability among similar violations for similar users
- ✓ Expand penalty ranges
- ✓ Provide an improved avenue for documentation and repeatability when considering the 8 factors when determining the monetary amount of a civil penalty
- ✓ Continue to ensure it is fair, equitable, and defensible

Then We Got Creative

CFPUA's Current ERP

- ✓ Was formally approved by the NCDEQ December 12, 2016.
- ✓ They were enthusiastic about the new plan.
- ✓ They thought that it was very creative and that it would be good to share with other utilities across the state.
- ✓ Things got hectic and then covid comes along.....and 6 years later here we are.

The Major Innovation Was That.....

We developed a process that will allow you to be able to explain and justify the dollar amount assessed as a civil penalty.

Once the civil penalty amount is calculated, it is approved by:

- ✓ Environmental Compliance Officer**
- ✓ Environmental Compliance Supervisor**
- ✓ Environmental Compliance Manager**
- ✓ Director of Environmental Management**

Administrative Violations

Enforcement Response

<u>1</u>	Late submittal of required reports/records as listed in permit. Second occurrence within 365-day window.	1 st occurrence	NOD
		2 nd occurrence	1 pt. & NOV
	Each occurrence thereafter within 365-day window.	4 pts. & NOV	
<u>2</u>	SIU failure to provide, within 45 days after the due date, required reports/records such as baseline monitoring reports, 90-day compliance reports, self-monitoring reports and reports on compliance with compliance schedules.	3 pts., NOV & SNC	
<u>3</u>	Failure to submit complete report. Second occurrence within 365-day window.	1 st occurrence	NOD
		2 nd occurrence	1 pt. & NOV
	Each occurrence thereafter within 365-day window.	2 pts. & NOV	
<u>4</u>	Failure to report spill or new/changed discharge.		
	No harm or evidence of intent. Second occurrence within 365-day window.	1 st occurrence	NOD
		2 nd occurrence	2 pts. & NOV
	Each occurrence thereafter within 365-day window.	5 pts. & NOV	
	Results in harm, no evidence of intent.	3 pts. & NOV	
	Evidence of intent (with or without harm).	5 pts. & NOV	
<u>5</u>	Intentional falsification of required report/records.	10 pts., NOV & SNC	

<u>1</u>	Failure to correct deficiency within timeframe as required, SIU only.	4 pts. & NOV
<u>2</u>	Failure to sample or analyze/reanalyze/measure required parameters by the proper test method per sampling frequency; IUs will not be penalized for both not sampling and not analyzing for the same parameter.	
	First Occurrence.	2 pts. & NOV
	Second and each occurrence thereafter within 365-day window.	3 pts. & NOV
<u>3</u>	Failure to install or properly maintain sampling point, monitoring and/or metering equipment	
	Isolated occurrence; due diligence to repair	NOD
	Second and each occurrence thereafter within 365-day window	3 pts. & NOV
<u>4</u>	Food Service Establishment failure to maintain pretreatment equipment	NOD
	Food Service Establishment failure to maintain pretreatment equipment after NOD	NOV
	Food Service Establishment failure to maintain pretreatment equipment after NOV	4 pts., NOV & Civil Penalty
	Food Service Establishment failure to maintain pretreatment equipment after Civil Penalty	7 pts., NOV & Civil Penalty
	Food Service Establishment failure to maintain pretreatment equipment after second Civil Penalty	Revoke Permit/Suspend Service

CIVIL PENALTY SCHEDULE

The following is a civil penalty schedule CFPUA will follow when judging compliance for IUs, FSEs and/or other noncompliant users. **Civil penalty assessments will begin once 4 points have accrued.** The Civil Penalty Assessment Form ESCCA-00005.446B will be used to calculate and document the Civil Penalty monetary amount. Penalties will be assessed within the proposed ranges, taking into account the particular circumstances of each violation and the timeliness of the actions to achieve compliance in accordance with Chapter 5 - Sec. 5 - 189 (b) of the CFPUA Utility Regulations and Ordinance.

<u>Points</u>	<u>Civil Penalty Monetary Range</u>
4	\$100 - 1,000
5	\$100 - 1,500

Points**Civil Penalty Monetary Range**

4	\$100 - 1,000
5	\$100 - 1,500
6	\$100 - 2,000
7	\$100 - 2,500
8	\$500 - 4,000
9	\$500 - 6,000
10	\$500 - 8,000
11	\$1,000 – 10,000
12	\$2,000 – 12,000
13	\$2,500 – 13,000
14	\$2,500 – 14,000
15	\$2,500 – 15,000
16	\$2,500 – 16,000
17	\$3,000 – 17,000
18	\$3,000 – 18,000
19	\$3,000 – 19,000
20	\$3,000 – 20,000
>20	\$3,500 up to \$25,000/day/violation as determined by the Executive Director or designee

The challenge is if someone has 12 points, how can you legally justify and defend assessing \$2,000 or \$12,000 or somewhere in between?

<u>Points</u>	<u>Civil Penalty Monetary Range</u>
4	\$100 - 1,000
5	\$100 - 1,500
6	\$100 - 2,000
7	\$100 - 2,500
8	\$500 - 4,000
9	\$500 - 6,000
10	\$500 - 8,000
11	\$1,000 – 10,000
12	\$2,000 – 12,000

That is what Maggie is going to show you in a few minutes and I think you will like the method.

<u>Points</u>	<u>Civil Penalty Monetary Range</u>
4	\$100 - 1,000
5	\$100 - 1,500
6	\$100 - 2,000
7	\$100 - 2,500
8	\$500 - 4,000
9	\$500 - 6,000
10	\$500 - 8,000
11	\$1,000 – 10,000
12	\$2,000 – 12,000

Considers the 8 Factors Listed in Sewer Use Ordinance

- ✓ Degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation
- ✓ Duration and gravity of the violation
- ✓ Effect on ground or surface water quantity or quality or on air quality
- ✓ Cost of rectifying the damage
- ✓ Amount of money saved by noncompliance
- ✓ If the violation was committed willfully or intentionally
- ✓ Prior record of the violator in complying with the ordinance
- ✓ Costs of enforcement

Environmental Management Director

Wilmington, North Carolina 28401

RE: Assessment of Civil Penalties - Permit [REDACTED]
July 2021 through December 2021 – Total Penalty \$347.70

Dear Mr. [REDACTED]:

During the semi-annual period July 2021 through December 2021, [REDACTED] had violations of the permit. You were mailed Notice of Violations (NOVs) on August 17, 2021 and on September 9, 2021 describing the non-compliance. Points were assessed for the violations in accordance with CFPUA's Enforcement Response Plan. Copies of the NOVs showing the violations and points assessed are attached to this civil penalty.

Accumulated points for the semi-annual period July 2021 through December 2021 total six points. Therefore, in accordance with CFPUA's Enforcement Response Plan, and pursuant to the authority delegated to the undersigned by the Executive Director, [REDACTED] is hereby assessed a civil penalty of \$347.70. The penalty assessment will be added to your next bill.

You may appeal this penalty by a written demand that identifies the specific issues to be contested. The demand must be mailed to the Executive Director within thirty (30) days of receipt of this letter. Unless such demand is made, this decision shall

Maggie is going to explain how the Civil Penalty Assessment Form works.