ENFORCEMENT RESPONSE PLANS

[ERP]

NC-PC Webinar

October 2023

Why have an ERP?

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

What is the purpose of an ERP?

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

How is the ERP developed?

- NC Division of Water Resources Pretreatment Unit provided a Model ERP for the Control Authority to follow

Municipalities have discretion to use Model or develop different format

- Either Model or Local must include minimum 5 Sections discussed later

How is 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 (town) 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)

Introduction

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

Categories of users covered by the ERP:

a) Industrial

b) Commercial

c) Pump and haul users

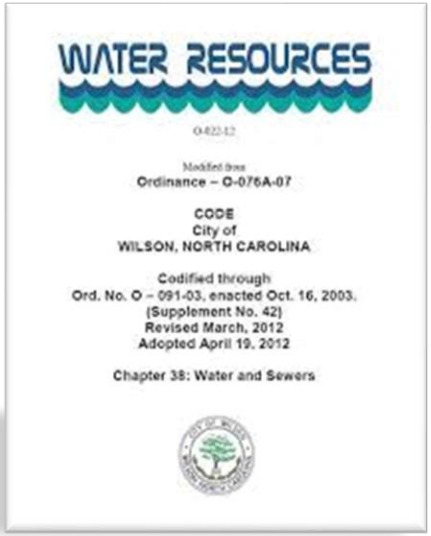
d) Residential

ERP SECTIONS

SECTION 2.
ENFORCEMENT ACTIONS AVAILABLE

Section 2- Enforcement Actions

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


WATER RESOURCES

Ordinance – O-076A-07

CODE
City of
WILSON, NORTH CAROLINA

Codified through
Ord. No. O – 091-03, enacted Oct. 16, 2003.
(Supplement No. 42)
Revised March, 2012
Adopted April 19, 2012

Chapter 38: Water and Sewers

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

Section 2- Enforcement Actions

- Notice of Violation
- Show Cause Hearing
- Administrative Order
- Consent Order
- Civil Penalties
- Emergency Suspension
- Termination of Permit
- Injunctive Relief
- Water Supply Severance

Section 2- Enforcement Actions

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

EPA also has a Criminal Investigation Division (CID) which may be of assistance.

Section 2- Enforcement Actions

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

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

Section 2- Enforcement Actions

- Cost of rectifying the damage
- Amount of money saved by Non-Compliance [Economic Benefit]
- Whether the violation was committed willfully or intentionally
- The prior record of the violator in complying or failing to comply
- Cost of enforcement to the POTW

ERP SECTIONS

SECTION 3.
INVESTIGATION OF NONCOMPLIANCE

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

- **Unpermitted Discharges**
  - POTW users are responsible for obtaining and receiving permits if required, failure to do so is a violation.
- **Permit Limits**
  - POTW users are responsible for maintaining compliance with all limits
  - POTW will evaluate the extent of any violations to determine if Significant Non-Compliance has occurred.

Section 4- Types of Violations

- **Self-Monitoring Violation**
  - 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

- **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

- **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

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

ERP Matrix outlines various types of violations and specifies POTW actions (initial and escalated), timeframes and the officials responsible for completing the actions.

This is where many POTWs differ in their actions when responding to violations– Points System, Tier System, Fee Schedule

Whichever Matrix you choose, you MUST FOLLOW

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.)

- Reimbursements of Agency Costs
- Show Cause Hearing
- Cease and Desist Order
- Permit Revocation
- Termination of Services
- Criminal or Civil Actions

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
Unpermitted Discharges					
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
Other Violations					
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 D[illegible]	[illegible]	[illegible]	Notice of Violation Penalty Assessed Possible SNC if over 30 days
Reporting Violatio[illegible] Incomplete or Inaccurate Reports	[illegible]	[illegible] 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	

WHAT DOES YOUR ERP SAY????

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
Other Violations (cont.)					
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

Penalty Assessment

Different methods exist for penalty assessment.

1. FEE SCHEDULE METHOD

- Set fee may be in place for many violations
- Fee may escalate based on the type and/or severity and/or frequency of violations.
- Eliminates the guess work in determining the penalty for each violation.
- Fair and Equitable

Fee Schedule EXAMPLE

June sampling data indicated that the pH reading on 6/20/23 was 5.8 SU. [limit=6.0]

This would be considered a single event violation

1. Fee schedule may state that for each single event violation the penalty is $50.00
2. NOV issued & penalty assessed for $50.00, plus enforcement cost (if applicable)

Penalty Assessment (cont.)

2- POINT SYSTEM METHOD

- Enforcement actions (violations, orders, etc.) are issued with different responsible officials designated as with other methods.
- POTW User is assessed a certain number of points based on violations(s) in addition to issued enforcement action.
- A monetary value is assigned to a point range or after a given point level is achieved.

Point System EXAMPLE

June sampling data indicated that the pH reading on 6/20/23 was 5.8 SU. [limit=6.0]

This would be considered a single event violation.

1. Matrix states a single event minor violation = 0.5 point(s)
2. NOV issued. No penalty assessed. Penalties may be assessed at end of Semi-Annual Period **but only if TOTAL** number of points assessed > 4.0 points.

11. City of Wilson or Categorical permit limit exceeded
(per calendar month)

*Isolated	0.5-1.0 pt. NOV & additional monitoring
*Chronic	
- No harm	2.0-3.0pts. NOSV& additional monitoring
-Harm caused	3.0-4.0 pts. NOSV, additional monitoring, Show Cause Suspension of service
*Technical Review Criteria (TRC) violation (no harm)	
-Isolated	3.0-4.0 pts. NOSV& additional monitoring
-Chronic	4.0-6.0 pts. NOSV & additional monitoring Show Cause
*TRC violation (harm caused)	6.0-8.0 pts. NOSV, Show Cause & Suspension of service

Penalty Assessment (cont.)

3- TIERED SYSTEM METHOD

- Different violations are assigned to different tiers
- A different official is responsible for handling different tier level violations
- Tier levels of violations and enforcement responses correspond

Tiered System EXAMPLE

IV. DESCRIPTION OF NONCOMPLIANCE – EFFLUENT LIMIT VIOLATIONS FLOW and pH VIOLATIONS	1st Time	2nd Time
1. Effluent Flow Violations	----------	----------
▪ Daily Maximum Flow limit for Categorical SIUs	Tier 2.2	Tier 2.2
▪ Six Month Average Flow limit for All other SIUs	Tier 2.2	Tier 2.2
2. Effluent pH Violations	----------	----------
▪ Single Event [not meeting SNC]	Tier 3	Tier 3
▪ pH Violation meeting Hazardous Waste Definition [<2.0 or >12.5]	Tier 4 or 5	Tier 4 or 5
▪ pH Violations meeting SNC Chronic definition	Tier 5.1	Tier 5.1

June sampling data indicated that the pH reading on 6/20/23 was 5.8 SU. [limit=6.0]

TIER	ENFORCEMENT ACTION
Tier 1	Informal Enforcement Notifications/Actions *[IWS will select appropriate Tier 2 enforcement action(s) from this list on case-by-case basis]* Informal Notice of Deficiency Informal Notice of Exceedance Enforcement Meeting Initiation of SIU/IU Self-Monitoring or Increase in SIU/IU Self-Monitoring Employee Training Requirement Installation of Sampling and/or Monitoring Equipment
Tier 2	2.1 Formal Notice of Deficiency – No Civil Penalty 2.2 Formal Notice of Exceedance – No Civil Penalty
Tier 3	Formal Notice of Violation No Civil Penalty
Tier 4	Formal Notice of Violation - Civil Penalty Assessed 4.1 Civil Penalty from $50-$500 4.2 Civil Penalty from $500-$1000 4.3 Civil Penalty from $1000-$5000
Tier 5	Notice of Significant Noncompliance [SNC] – Civil Penalty Assessed, Public Notice, *Possible Show Cause Hearing* 5.1 Civil Penalty from $50-$1000 5.2 Civil Penalty from $1000-$5000 5.3 Civil Penalty from $5000-$25,000
Tier 6	Consent Order - Notice of Violation or SNC, Civil Penalty Assessed Public Notice [if applicable], *Possible Show Cause Hearing* Civil Penalty from $100-$500
Tier 7	Consent Order/Administrative Order – NOV or SNC, Civil Penalty Assessed, Public Notice [if applicable], *Possible Show Cause Hearing* Civil Penalty from $500-$1000
Tier 8	Administrative Order – NOV or SNC, Civil Penalty Assessed, Public Notice Civil Penalty from $1000 to $25,000 (See Note 6, page 15)
Tier 9	Show Cause Hearing [concerning TOS], NOV, Civil Penalty, Possible Termination of Service, Public Notice [if applicable] Civil Penalty from $1000 to $25,000
Tier 10	Termination of Service – Public Notice 10.1 Termination of Service [Emergency] – Notice of SNC, Civil Penalty Civil Penalty from $1000 to $25,000 10.2 Termination of Service [Escalating Enforcement] Show Cause Hearing, Notice of SNC, Civil Penalty, Public Notice Civil Penalty from $1000 to $25,000

Tiered Example

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

Wrapping it up

- 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.

Know your ERP and FOLLOW your ERP!!

If you do not follow your ERP,

your town may receive a violation.

Questions?

JoEllen Gay- Greenville Utilities Commission
gayjj@guc.com 252-551-1542