

Chapter 8 Enforcement Guidance

Section A. Quick Reference Info

1. Definition - The Enforcement Response Plan is an outline of the Control Authority procedures that will be followed when a user is found to be in violation.
2. Chapter Acronyms
 - AO- Administrative Order
 - ERP- Enforcement Response Plan
 - NNC-Notice of Noncompliance
 - NOV-Notice of Violation
 - POTW-Publicly Owned Treatment Works
 - SIU-Significant Industrial User
 - SOC-Special Order by Consent/Schedule of Compliance
 - SUO-Sewer Use Ordinance
 - SNC-Significant Non-Compliance (formerly Reportable Non-Compliance(RNC))
3. Purpose
 - To provide for fair and equitable treatment in initial and escalating enforcement actions.
4. Regulatory References
 - 40CFR 403.8(f)
 - NPDES Part III
 - POTW Sewer Use Ordinance
 - North Carolina General Statute 143-215.6A and 143-215.6B
 - 15A NCAC 2H.0905
5. DEM Requirement
 - ERP submitted and approved by the Division
 - Modifications to ERP submitted to Division
 - ERP followed for all violations
6. Implementation Frequency
 - **Continuous implementation after Division approval**
7. Appendices
 - Appendix 8-A, North Carolina Model ERP
 - Appendix 8-B, Model NOV
 - Appendix 8-C, Enforcement Orders
8. Other Guidance Documents
 - EPA Guidance for Developing Control Authority Enforcement Response Plans

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Section B. Discussion

PURPOSE OF AN ERP

Why does a POTW **want to** have an Enforcement Response Plan (ERP)? In 1992 North Carolina Pretreatment Program POTWs issued over 1150 Notices of Violation and were involved in dozens of civil penalties issues. Any POTW can quickly find itself involved in a complex enforcement situation. The POTW must ensure that all users are treated fairly. A well written ERP may help ensure productive POTW-industry relations and help avoid potential legal battles that result from real or perceived unequal treatment. Because it is a policy statement, and because it is desirable that the ERP provide some flexibility, the ERP should not be adopted as an ordinance.

Why does a POTW **need to** have an ERP? Federal and State regulations require an ERP. The POTW NPDES permit Part III (Pretreatment Requirements) also requires the development of an Enforcement Response Plan. In fact 40CFR 403. 8 states that a POTW **shall** develop and implement an enforcement response plan. The four minimum requirements of the plan are:

1. How the POTW will investigate noncompliance;
2. The types of and time frames for escalating enforcement action for all anticipated types of violations;
3. The officials responsible(by title) for each type response;
4. In general, that the plan adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards.

CONTENTS OF AN ERP

The model ERP that follows this discussion is written as a guide for the POTW to develop its own ERP. Each ERP should be tailored by the POTW to suit local conditions.

Note that *User* has been substituted for *Significant Industrial User* in the discussion and model ERP. All Users, SIU or not, are bound by the provisions of the SUO and NCGS 143-215.

Introduction

The introduction should state that the purpose of the ERP is to provide for fair and equitable treatment of all Users. It should also include a statement that it is the POTW's responsibility to enforce all applicable pretreatment requirements and standards. This statement will be reinforced in the ERP that follows it and satisfies requirement #4 listed above.

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The POTW Director is empowered by the POTW's Sewer Use Ordinance (SUO) to take a wide variety of enforcement actions. Under NC law the Director has the power to take enforcement ranging from a simple notice of non-compliance to a penalty of up to \$10,000 dollars per day per violation to service termination. One of the good things about the ERP is that it stipulates which enforcement actions will be taken, but still offers flexibility for the Director to determine the severity of each action depending on the circumstances of each violation. In fact, state law mandates that the Director consider factors, such as duration of violation, in deciding the amount of any civil penalty. A complete list of factors may be found in the model ERP and the NC Model SUO Section 8.2. If the ERP were adopted as a part of the SUO or other ordinance, then this flexibility would not be possible. Please remember that if no enforcement action or inappropriate action is taken then the Division or EPA can take action against the POTW.

Available Enforcement Actions

The enforcement section of the SUO describes the different types of available enforcement actions. The ERP should list these and the corresponding sections of the SUO that describe them. You may choose to redescribe the types of enforcement. This is also a good opportunity to explain the complete procedure followed for each type of enforcement action.

Investigation of Noncompliance

How will the POTW investigate instances of Non-Compliance? The standard answer has been "the staff(POTW) will investigate, compliance three ways: on site inspections, self monitoring data, and data collected by the POTW." This statement is adequate to meet the requirements of State and Federal regulations and, specifically, requirement #1 listed above. The POTW may choose to more thoroughly explain its procedures for investigating non-compliance.

Types of Violations

What is Non-Compliance? Non-compliance ranges from violations of the SUO by unpermitted users to significant non-compliance of permit limits by SIUs to violations causing imminent endangerment. A discussion of compliance with SIU permits, including determining Significant Noncompliance, may be found in Chapter 7 of this guidance. The Sewer Use Ordinance also defines which users must be permitted, reporting requirements, and other conditions. The ERP should briefly define the types of violations and categorize them to aid in following an enforcement action through the ERP. The Model ERP contains an example of how to categorize these violations. POTWs may choose to categorize violations differently.

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Responses: Timeframes, Responsible Officials, Escalated Actions

The previous model ERP used a chart called the Enforcement Response Guide (ERG) to list the types of violations, responses, responsible officials etc. The revised ERP also contains a chart resembling the ERG. The chart is a tool used to make the ERP easier to use. It is the simplest way of meeting two of the minimum requirements, #2 and #3 listed above. The chart includes types of violations and the responses, timeframes, and official(s) responsible for each response. Your POTW's ERP should be written to suit your local conditions. However, remember your ERP must meet the four minimum requirements of 40 CFR 403.8. Minimum POTW actions are printed on the chart in bold print.

The previous model also included a relatively complex enforcement flow chart. The flow chart was another tool to aid decisions regarding enforcement actions. Instead of a flow chart, simply follow the enforcement chart from left to right to respond to a particular type of violation. If the User does not respond satisfactorily, continue to follow across to the first escalated enforcement action.

ENFORCEMENT- GENERAL

The main reason the Model ERP has been revised is to provide more flexibility in the range of responses to various violations, since it is impossible to anticipate every type of violation and the circumstances surrounding each violation. The ERP and your enforcement approach, like all aspects of the pretreatment program, should be realistic. Swift and punitive enforcement accompanied by significant penalties is required in cases of serious violation. However, if industries are constantly violating permit limits or being found in Significant Noncompliance, yet problems are not being observed at the POTW, in the receiving stream, in the POTW sludge, or with human health considerations, then re-evaluate the situation. Is additional sampling needed to define the extent of the problem? Is additional loading for the problem parameter available such that permit limits may be increased? Is the headworks analysis based on site-specific data using realistic assumptions? This evaluation must be completed promptly, however, so that the POTW may take the appropriate action, which may indeed be enforcement. If an industry is in SNC for one 6-month period, begin to evaluate your options immediately; don't wait for another 6 months and place yourself in danger of DEM or EPA enforcement.

