



**METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NC
ENFORCEMENT RESPONSE PLAN**

I. Introduction

This document has been prepared as a part of The Metropolitan Sewerage District of Buncombe County's ("the District") pretreatment implementation responsibilities requiring the development of control mechanisms. These mechanisms will assist the District in regulating direct and indirect discharges into its sewer system and in meeting the statutory requirements of the US Environmental Protection Agency General Pretreatment Regulations, 40CFR 403.8(f)(5), State regulations set forth at 15A NCAC 2H .0900, and the District's Sewer Use Ordinance (SUO). The purpose of the Enforcement Response Plan (ERP) is to provide guidelines for anticipated enforcement situations. In general, enforcement actions will be taken in accordance with this Enforcement Response Plan, however, the enforcement actions listed here are not exclusive and the District reserves the right to implement other enforcement responses under the SUO and North Carolina law separately or in combination with these responses.

The District will follow the regulations outlined in 40 CFR Part 441 dental effluent guidelines. Enforcement actions taken in response to the requirements of 40 CFR Part 441 will be decided on a case-by-case basis.

II. Enforcement Actions Available to The District

The District is empowered by North Carolina General Statutes (NCGS) 143-215.6A and the District's Sewer Use Ordinance ("SUO") to take a variety of enforcement actions. The following is a list of those actions and the corresponding section of the SUO which describes each.

Action	SUO Section	N.C. General Statutes
Notice of Violation	9.1(a)	162A-81
Consent Orders	9.1(b)	162A-81
Administrative Orders	9.1(d)	162A-81
Emergency Suspensions	9.1(e)	162A-81
Termination of Permit	9.1(f)	162A-81
Civil Penalties	9.2	143-215.6A, 162A-81
Show Cause Hearing	11	162A-81
Injunctive Relief	12	162A-81

In addition to the actions listed above, a User who violates the provisions of NCGS 143-215.6.B may be referred by the General Manager to the District Attorney for possible criminal prosecution.

In determining which enforcement measure(s) to use, the General Manager, or their designee, may consider the following:

- a. The degree and extent of the harm done to the natural resources of the State, to the public health, or to public or private property as a result of the violation;
- b. The duration and gravity of the violation;
- c. The effect on ground or surface water quality, or air quality;

- d. The cost of repairing the damage to the Sewerage System, to property and to the natural resources of the State;
- e. The amount of money saved, if any, by noncompliance, including the cost of continuing to discharge in noncompliance instead of stopping operations;
- f. Whether the violation was committed negligently, grossly negligently, willfully or intentionally;
- g. The prior record of the User in complying or failing to comply with the conditions of its Permit to Discharge Industrial Waste, the SUO, or other applicable law or regulation;
- h. All costs encumbered by the District in taking the necessary enforcement action, determining the nature and extent of damage, preventing further damage, or repairing any damage.

III. Investigation of Noncompliance

The Staff of the District will generally investigate User compliance with Permits to Discharge Industrial Waste or the SUO in three (3) ways:

- a. On-site inspections of the User, including scheduled and unscheduled visits;
- b. Scheduled and unscheduled sampling of the Users effluent;
- c. Review of monitoring data collected by the User and the District.

The compliance status of Significant Industrial Users will be evaluated for each reporting period. The reporting periods are from January to June and July to December for each calendar year.

IV. Types of Violation

The following is a list of different types of violations, by category. This list is not exclusive but serves as a general list of anticipated types of noncompliance. The User's permit, the District's SUO, and State and Federal laws and regulations serve as additional references for pretreatment requirements.

- a. Non-Permitted Discharges: Users are responsible for obtaining and renewing permits to discharge, if required (hereinafter "Permits").
- b. Permit Limits: Users are responsible for maintaining compliance with all effluent limits. The District will evaluate the extent of the limits violation(s). In determining the extent of violation(s), Significant Non-Compliance (SNC) as defined by State and EPA regulations will be determined.
- c. Self-Monitoring Violations: A User who fails to adequately conduct all the monitoring required in the Permit, including monitoring frequencies and sampling methods specified is in violation. This includes a User who does not re-sample when a limit violation occurs.
- d. Reporting Violations: A User who fails to provide information (e.g., self-monitoring reports) required in its Permit or the SUO in the required time frame is in violation. Late or incomplete reports may also be considered violations.
- e. Permit Conditions: Failure to apply or reapply for a Permit is considered a violation. Users who violate the general or other conditions (e.g., slug loading, dilution prohibition) outlined in their Permits or the SUO shall be in violation.

- f. Enforcement Orders: Failure to meet the requirements of a Consent Agreement or Administrative Order (e.g., interim limits, milestone dates), shall be considered a violation.
- g. Emergency Violation: A violation which the General Manger or Pretreatment Division determines to be a significant danger to the public health, the District Sewerage System, or District personnel. The General Manager or Pretreatment Supervisor shall issue an order to immediately terminate the discharge and shall take such other remedial measures as may be necessary to bring the User into compliance and address the danger to the public health.

V. Enforcement Response Guide

This guide further outlines types of violations, the nature of the violation, enforcement responses, and the District personnel involved. The guide is considered a part of the District's Enforcement Response Plan. The abbreviations utilized are defined as follows:

AO	Administrative Order
CO or CA	Consent Order or Consent Agreement
NOV	Notice of Violation
NOC	Notice of Concern
IU	Industrial User or User
GM	General Manager of The District
SCO	Show Cause Order
SNC	Significant Non-Compliance
WRF	The District Water Reclamation Facility

Responses to violations affecting the operation of The District, resulting in violations of the District’s NPDES Permit, the District’s Collection System Permit, or resulting in environmental harm or endangerment to District staff health or human health will be taken immediately or as soon as possible following discovery.

A User may be sent a Notice of Violation (NOV) for each individual violation. Users found to be in SNC for two (2) consecutive six (6) month periods will be issued an enforceable order to return to compliance. Escalated or continuing enforcement action will be taken against Users who do not return to compliance in a timely manner.

A. Permitted Effluent Violation

Type of Non-Compliance		First Occurrence	Second Occurrence
1.	Effluent Violation	Tier 1	Tier 2
2.	Technical Review Criteria (TRC) Effluent Violation	Tier 1	Tier 3
3.	Effluent Violation > 3.0 ppm above limit for Metals and CN only	Tier 2	Tier 3
4.	Effluent Violation > 5.0 ppm above limit for Metals and CN only	Tier 4	Tier 5
5.	Significant Noncompliance	Tier 2	Tier 4

B. Reporting Violations

Type of Non-Compliance		First Occurrence	Second Occurrence
1.	Report not submitted on time with The District's authorization	No Action	Tier 1
2.	Report not submitted on time without notification to The District within 30 days after the due date	Tier 1	Tier 2
3.	Reoccurring late submittal of reports: Third occurrence in six (6) months	Tier 2	Tier 3
4.	Failure to Report spill/slug or new/changed discharge: No harm or evidence of intent	Tier 1	Tier 3
	Result in harm, no evidence of intent	Tier 3	Tier 4
	Evidence of neglect with or without harm	Tier 5	Tier 6
	Grossly/recklessly negligent or willful intent with or without harm	Tier 6	Tier 7
5.	Failure to Report all self-monitoring data: without violation(s)	Tier 1	Tier 2
	with violation(s)	Tier 1	Considered Falsification
6.	Report Falsification	Tier 5	Tier 7
7.	Reports Improperly Signed	Tier 4	Tier 5
8.	Failure to respond to NOV or other official notification within required time frame	Tier 2	Tier 3

C. Technical Violations

Type of Non-Compliance		First Occurrence	Second Occurrence
1.	Failure to obtain required samples	Tier 1	Tier 2
2.	Failure to obtain follow-up sample(s) to a violation(s)	Tier 2	Tier 4
3.	Failure to install monitoring equipment or sampling location	Tier 3	Tier 4
4.	Failure to maintain and/or operate monitoring equipment	Tier 3	Tier 4
5.	Failure to maintain and/or operate pretreatment system	Tier 3	Tier 5
6.	Failure to calibrate equipment	Tier 1	Tier 3
7.	Improper sampling technique or analysis	Tier 1	Tier 3

D. Administrative Violations

Type of Non-Compliance		First Occurrence	Second Occurrence
1.	Inadequate recordkeeping Incomplete files or files missing	Tier 1	Tier 2
	Failure to maintain records for 3 years	Tier 3	N/A
2.	Delayed entry, limited access, or refusal to present records	Tier 3	Tier 4
3.	Entry denial	Tier 4	Tier 5
4.	Waste stream diluted to achieve compliance	Tier 4	Tier 5
5.	Failure to initiate corrective action(s) outlined in an inspection report	Tier 2	Tier 3
6.	Failure to meet milestone dates of compliance schedules Less than 30 days	Tier 3	N/A
	More than 30 days	Tier 4	Tier 5 (60 days)
	Final milestone date	Tier 5	N/A

E. Unauthorized Discharges

Type of Non-Compliance		First Occurrence	Second Occurrence
1.	Non-permitted discharge (Permitted Facilities)		
	No harm or evidence of intent	Tier 1	Tier 3
	Harm caused with no evidence of intent	Tier 3	Tier 4
	No harm caused with evidence of intent	Tier 5	Tier 6
	Harm caused with evidence of intent	Tier 6	Tier 7
2.	Non-permitted discharge (Non-Permitted Facilities)		
	IU unaware of requirement and no harm caused	Tier 1	Tier 3
	IU aware of requirement and no harm caused	Tier 3	Tier 4
	IU aware of requirement and harm caused	Tier 5	Tier 6
	IU aware of requirement (evidence of neglect or willful intent) and harm caused	Tier 6	Tier 7
3.	IU fails to submit Permit application for renewal of Permit within allotted time	Tier 1	Tier 3
4.	IU fails to apply for Permit after notification	Tier 3	Tier 4
5.	IU fails to notify of process change or addition of new process resulting in a change or increase of waste stream	Tier 3	Tier 4

VI. Administrative Penalty Structure & Responsible Officials

A. Administrative Penalty Structure

The Administrative Penalty Structure is a seven (7) tier system and will be based on a rolling 180 day-period. Civil Penalties will be assessed from the range specified on each tier. The civil penalty will be based on the compliance history of the Industrial User, the magnitude of the violation, the potential for harm to public health, the environment or the District, or where the subject violation caused the District to violate a condition of its NPDES Permit or Collection System Permit. The User will step up a tier each time the same violation occurs within the 180 day-period. In cases where there is harm or potential harm to the District or the environment or in other extraordinary cases, one or more tiers may be skipped to bring the User into compliance. Each day of violation may be considered a separate violation.

Tier	Administrative Penalty
Tier 1	Up to \$250 Civil Penalty; Notice of Concern (NOC) or Notice of Violation (NOV)
Tier 2	\$250.00 to \$500.00 Civil Penalty; NOV
Tier 3	\$500.00 to \$1,500.00 Civil Penalty; NOV; Consent Agreement;
Tier 4	\$1500.00 to \$3000.00 Civil Penalty; NOV; Consent Order or Administrative Order
Tier 5	\$3,000.00 to \$10,000.00 Civil Penalty; NOV; Administrative Order; Public Notice
Tier 6	\$10,000.00 to \$25,000.00 Civil Penalty; NOV; Show Cause Order; Public Notice; Possible Termination of Services
Tier 7	\$10,000.00 to \$25,000.00 Civil Penalty; NOV; Show Cause Order; Public Notice; Possible Termination of Services

These penalties are in addition to assessed reimbursement costs as specified in Section 9.2(c) of the Sewer Use Ordinance for legal fees, equipment repair or replacement, any additional monitoring the District is required to do, and any penalties assessed to The District resulting from the subject violation. The District reserves the right to assess the maximum penalty for any violation.

B. Responsible Officials

Pretreatment Supervisor/Pretreatment Coordinator – Tiers 1 and 2
Director of Operations and Pretreatment – Tiers 3 and 4
General Manager – Tiers 5, 6, and 7

VII. Enforcement Responses & Time Frames

A. Enforcement Responses

1. Phone calls with follow-up email may to be used for immediate notification upon the recognition of a violation to expedite correction of the violation at the lowest level possible. These actions shall be documented in the User's file.
2. Notices of Violation (NOV's) are to be used for minor or infrequent violations that can be resolved in short order.
3. Conferences are to be used where NOV's, phone calls or email do not obtain compliance. They shall be held at the District office with an Industrial Representative, Director of Operations and Pretreatment Personnel. The District's General Manager will be present when necessary.
4. Consent Agreements (CA's) are to be used as a tool in responding to continued Significant Noncompliance. The terms and conditions of CA's may be negotiated depending upon circumstances involved.
5. Administrative Orders (AO's) are to be used as a tool when Consent Agreements (CA's) failed to correct Significant Noncompliance issues. The terms and conditions are non-negotiable and are set by the District.
6. Civil Penalties are to be used as a punitive deterrent to continued noncompliance and/or failure to meet established milestones. The recovery of damages, assessments and extraordinary expenses will be included in the actions taken during the enforcement process.
7. Show Cause Orders will be issued to initiate actions leading to formal hearings in cases of continued Noncompliance or where the General Manager determines that emergency enforcement actions are necessary.
8. Civil Action will be used in cases of continued significant noncompliance or where the General Manager determines that emergency actions are necessary.
9. Criminal Action will be used where there is evidence of criminal intent or in extreme recurring cases.
10. Service Termination will be used in recurring Noncompliance or emergency cases where there is harm to the District's staff, the District's property, private property, public health, or the environment.

B. Time Frames

1. Violations will be identified and documented within thirty (30) days of receiving information.
2. Initial enforcement responses will occur within thirty (30) days of violation detection.
3. Violations meeting the criteria for Significant Noncompliance will be addressed with an enforceable order within thirty (30) days of the identification of Significant Noncompliance.
4. Follow up actions for continuing or recurring violations shall be taken within sixty (60) days of the initial enforcement response. For all continuing violations, the response will include a compliance schedule.
5. Violations which threaten the District's staff or public health, property or environmental quality will be considered emergencies and will receive immediate responses such as halting the discharge or terminating service.