

**Charleston Water System's  
Plum Island Treatment Facility**



**Industrial Pretreatment Enforcement Response Guide**

In accordance with Section 4.1.4 of Charleston Water System (CWS) Water and Wastewater Policy Manual (EO-CEO-00001), referred to throughout as “Policies,” this Enforcement Response Guide defines a range of appropriate enforcement actions based on the nature and severity of industrial pretreatment noncompliance events and other relevant factors.

The Industrial Pretreatment Program Manager will monitor the activities of all permitted industrial users through the review of industrial self-monitoring data, compliance monitoring data, and annual inspections of industrial facilities (including industrial user record review). Enforcement actions will be initiated by the Industrial Pretreatment Program Manager in each instance that noncompliance is detected.

The Industrial Pretreatment Program Manager will initiate and supervise all enforcement actions. The Policies provide a number of different enforcement mechanisms that may be utilized for enforcement of any prohibition, limitation or requirement.

Notwithstanding any initial enforcement action, if the user fails to return to compliance, CWS may elect to utilize additional enforcement mechanisms or action to achieve compliance.

CWS will also evaluate appropriate enforcement actions in the context of the user’s prior violations. **Since pretreatment enforcement is a matter of strict liability**, the knowledge, intent, or negligence of the user is not normally considered, however, these factors are considered before initiating criminal prosecutions.

The enforcement action selected must also be appropriate to the noncompliance. CWS will consider the following criteria when determining the type of enforcement action:

- Magnitude of the violation
- Duration of the violation
- Urgency of corrective action
- Effect of the violation on the receiving water
- Effect of the violation on the WWTP
- Compliance history of the industrial user
- Cooperation of the user in addressing the noncompliance

Six basic enforcement actions are available to CWS and are described briefly in the following pages. These six enforcement actions are:

1. Notice of Violation
2. Administrative Orders
3. Civil Litigation
4. Criminal Prosecution
5. Termination of Sewer Service
6. Supplemental Enforcement Actions

## 1. Notice of Violation

The Notice of Violation (NOV) is a written communication from CWS to the industrial user providing notification of noncompliance. The NOV is an appropriate initial action to non-significant violations, for example cases of infrequent and minor noncompliance. However, if the user does not return to compliance following receipt of the NOV, CWS may

take additional enforcement actions. In cases of significant noncompliance, a NOV may also be issued prior to issuing an Administrative Order (AO) or pursuing civil or judicial remedies. "Significant" is defined in the *Policies*.

For maximum effectiveness, the NOV should be written and delivered to the user immediately upon detection of noncompliance. As a general rule, the NOV should be received by the user no later than five business days after the CWA's discovery of the noncompliance. The NOV should either be hand-delivered or sent by certified or registered mail.

## 2. Administrative Orders

Administrative Orders (AO) direct industrial users to undertake or to cease specified activities. The terms of AOs may or may not be negotiated with industrial users. AOs are recommended as the initial action to significant noncompliance (unless judicial proceedings are more appropriate), and may incorporate compliance schedules, administrative penalties and fines, and termination of service orders. CWA utilizes several types of AOs:

- A. Cease and Desist Orders. A cease and desist order directs a noncompliant user to cease illegal or unauthorized discharges immediately or to terminate its discharge altogether. A cease and desist order should be used in situations where the discharge could cause interference or pass through, or otherwise create an emergency situation. The order may be issued immediately upon discovery of the problem or following a hearing. In an emergency, the order to cease and desist may be communicated by telephone. However, a subsequent written order should be served on the industrial user, either in person or by certified mail. **CWS may order immediate cessation of any discharge to its collection system, regardless of a user's compliance status.** In non-emergency situations, the cease and desist order may be used to suspend or permanently revoke industrial wastewater discharge permits. If the user fails to comply with the order, CWS may take independent action to halt the discharge, such as blocking the user's connection point or providing for termination of water service if possible.
- B. Show Cause Orders. An order to show cause directs the user to appear before CWS's hearing officer, explain its noncompliance, and show cause why more severe enforcement actions against the user should not be initiated. The order to show cause is typically issued after informal contacts or NOVs have failed to resolve the noncompliance. However, the show cause hearing can be used to investigate violations of previous orders. During the hearing, CWS can explore the circumstances surrounding the noncompliance and evaluate the sufficiency of evidence for subsequent civil or criminal actions. For example, if the cause of noncompliance appears to be resolved or nearly resolved at the conclusion of a hearing, a consent order may be drafted which incorporates the findings of the review board. If the user must install pretreatment equipment to achieve compliance, the circumstances surrounding the noncompliance should be weighed and a reasonable schedule for installation and start-up developed. Completion of this schedule and any additional requirements will normally be administered through the consent order. Should the hearing result in an impasse between the user and the hearing officer, CWS may follow up the meeting by issuing a compliance order, including a schedule and imposing a fine, or refer the case to its attorney for civil litigation or criminal prosecution. The results of a show cause hearing, along with any data and testimony (recorded by tape machine or stenographer) submitted as evidence, are generally available to the public and may also serve as evidentiary support for future enforcement actions. **The hearing procedure will be in accordance, as practicably as possible, with the procedures prescribed by SCDHEC Regulations 61-72.**
- C. Consent Orders. The consent order is an agreement between CWS and the industrial user normally containing three elements: (1) compliance schedules; (2) stipulated fines and/or remedial actions; and (3) signatures of CWS and industry representatives. A consent order is appropriate when the user

assumes responsibility for its noncompliance and is willing (in good faith) to correct its cause(s). The consent order will prohibit future violations and provide for corrective action in that event.

- D. Compliance Orders. A compliance order directs the user to achieve or restore compliance by a date specified in the order. It is issued unilaterally and its terms need not be discussed with the user in advance. The compliance order is usually issued when noncompliance cannot be resolved without construction, repair, or process changes. Compliance orders are also frequently used to require industrial users to develop management practices, spill prevention programs and related CWS pretreatment program requirements. The compliance order should document the noncompliance and state required actions to be accomplished by specific dates, including interim and final reporting requirements. If the user doesn't comply with the order, CWS may initiate additional enforcement action. The circumstances of an industrial user's noncompliance frequently dictate the type of order needed to achieve a return to compliance. No one type of AO is appropriate for all situations, and CWS may use more than one type of order when responding to a particular instance of noncompliance. For example, an industrial user which discharges a slug load may be issued an order which requires the industrial user to cease and desist (to immediately halt the unauthorized discharge) and to show cause (i.e., to appear before CWS and explain why more severe enforcement actions should not be taken).

### **3. Civil Litigation**

Civil litigation is the process of filing a lawsuit against an industrial user in an appropriate court. The CWS will seek all damages sustained to the treatment facility(ies), as well as any applicable fines and penalties. Litigation is normally pursued when the industrial user is considered to be recalcitrant and unwilling to cooperate. Examples of when civil litigation is an appropriate enforcement action are : (1) emergency situations where injunctive relief is necessary to halt or prevent discharges which threaten human health or the environment, or interfere with the WWTP; (2) when efforts to restore compliance through cooperation with the industrial user have failed and a court supervised settlement (consent decree) is necessary to enforce program requirements; or (3) to impose civil penalties and recover losses incurred due to noncompliance. Finally, successfully concluded civil litigation helps to deter future noncompliance through establishment of favorable judicial precedent. In addition, the awareness that litigation is a viable enforcement option will influence industrial users to respond promptly to alternative enforcement actions, such as notices of violation or administrative orders.

### **4. Criminal Prosecution**

Criminal prosecution is the process of charging individuals and/or organizations with violations of that are punishable, upon conviction, by fines and/or imprisonment. CWS may recommend criminal enforcement when it has evidence of noncompliance demonstrating criminal intent, cases involving repeat violations, aggravated violations (such as discharges which endanger the health of treatment plant employees), and when other actions to restore compliance (such as notices of violations and administrative orders) have failed. Criminal prosecution may be brought prior to, concurrently with, or subsequent to civil litigation.

### **5. Termination of Sewer Service**

Termination of service is the revocation of an industrial user's privilege to discharge industrial wastewater into CWS's sewer system. Termination may be accomplished by physical severance of the industry's connection to the collection system. Termination of service is an appropriate response to users that have not

responded adequately to previous enforcement responses. When CWS must act immediately to halt or prevent a discharge which presents a threat to human health, the environment, or the WWTP, cease and desist orders and termination of service may be the only appropriate responses. Unlike civil and criminal proceedings, termination of sewer service is an administrative response which can be implemented directly by CWS.

The types of violations which warrant termination of service are:

- a. Unpermitted discharge(s) which violate the WWTP's NPDES permit or which create a dangerous situation threatening human health, the environment, or the treatment plant.
- b. Discharge(s) that exceed local or categorical discharge limits including Best Management Practices (BMPs) and result in damage to the environment.
- c. Slug loads causing interference, pass through, or damage to human health, the environment, or the treatment plant.
- d. Failure of the industrial user to notify CWS of effluent limit violations or slug discharge which resulted in environmental or WWTP damage.
- e. Complete failure of the industrial user to sample, monitor, or report as required by an AO.
- f. Failure of the industrial user to install required monitoring equipment per condition of an AO.
- g. Major violation of a permit condition or AO accompanied by evidence of negligence or intent.

There are four basic methods to terminate sewer service: (1) physically sever (or plug) the user's connection to the WWTP's collection system, (2) halt the discharge by revoking the user's discharge permit, (3) issue a cease and desist order, or (4) arrange for termination of the user's water service, if possible.

## 6. Supplemental Enforcement Responses

Supplemental or innovative enforcement responses may be used to complement the more traditional enforcement actions described in the preceding sections. Supplemental enforcement responses are typically low cost and are designed to reinforce the compliance obligations of industrial users. The application of these responses must be determined on an individual basis. Many supplemental responses require actions on the part of noncompliant users. To ensure that users are legally bound to perform these actions, the techniques should be included as terms of administrative orders or settlement agreements. When considering supplemental enforcement responses, CWS is not limited to the responses which will be discussed below, and may experiment to develop additional supplemental responses. The following are a few suggested supplemental enforcement responses:

- A. Public Notices. Publication of a list of industrial users which significantly violate applicable pretreatment standards is required annually by the EPA. At least once a year, CWS will publish the names of significant violators in order to be a more effective means of encouraging compliance. CWS may choose to publish more frequently if desired. While public notice is not a direct enforcement action against a user, awareness that significant violations result in public notice will deter users concerned with their public image.
- B. Increased Self-Monitoring, Reporting, and Surveillance. Generally, industrial users demonstrating a history of noncompliance should be subject to increased self-monitoring or surveillance (i.e.,

sampling and inspections by CWS). Since recurring violations indicate that at least one chronic problem exists at the facility, CWS should monitor the user closely and require additional user self-monitoring until the problem is corrected and consistent compliance is demonstrated. Increased surveillance and more stringent self-monitoring requirements for chronic violators will also provide a powerful incentive to return to compliance.

#### Timeframes for Response

1. All violations will normally be identified and documented within five (5) days of receiving compliance information.
2. Follow-up actions for the initial or recurring violations identified in the initial enforcement response will normally be taken within 15 days of violation detection.
3. Follow up actions for continuing or recurring violations will normally be taken within 60 days of the initial enforcement response. For all continuing violations, the response will normally include a compliance schedule.
4. Violations which threaten health, property or environmental quality are considered emergencies and will normally receive immediate responses such as halting the discharge or terminating service.
5. All violations meeting the criteria for significant noncompliance will normally be addressed with an enforceable order within 30 days of the identification of significant noncompliance.

CWS will annually publish in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, the names of dischargers that significantly violated their discharge limits, which failed to submit accurate or prompt reports indicating noncompliance with a discharge limit, or caused CWS to seek relief for noncompliance during the previous 12 months. A copy of the publication will also be sent to SCDHEC. If no significant violation has occurred, no publication will be required.