

City of Three Rivers

ENFORCEMENT RESPONSE PLAN

General

The National Pretreatment Standards and Requirements state in 40 CFR 403.8 (f) (5) that all Publicly Owned Treatment Works (POTWs) must develop and implement an Enforcement Response Plan (ERP) in order to control nondomestic users in noncompliance. The ERP must include procedures to identify instances of noncompliance, to respond to violations with the appropriate level of response, and to continue as necessary to follow up with higher levels of enforcement response. The ERP identifies instances of noncompliance and describes the various types of enforcement responses. It summarizes in table form the appropriate enforcement response to several types of noncompliance occurrences.

This ERP provides guidelines to assist the City in determining, on a case-by-case basis, the appropriate minimum investigation and enforcement responses (and escalation of enforcement responses) to instances of noncompliance with the City of Three Rivers Sewer Use and Pretreatment Ordinance (Chapter 19 of the City of Three Rivers Code of Ordinances, as amended), (hereinafter referred to as the “Sewer Use Ordinance” or “SUO”). The ERP has been developed and is implemented under the authority provided by the Sewer Use Ordinance and other applicable local, state and federal laws and regulations. The ERP and any associated regulations developed by the City shall become effective upon approval by resolution of the City Council.

Violations of local limits, categorical standards and other pretreatment requirements, whether isolated or recurrent, are violations not only of the City's Sewer Use Ordinance, but also of state and federal laws which separately provide for civil and criminal penalties. Accordingly, enforcement by the City of its Sewer Use Ordinance does not preclude enforcement actions by the state, the federal government, or third-parties. The ERP is designed to assist the City in obtaining full and timely compliance by Users with the City's sewer use ordinance.

No provision of this Enforcement Response plan shall be interpreted or construed to limit in any way the City's power, authority, or discretion to take appropriate enforcement action in any case as provided by the City's Sewer Use Ordinance or other applicable laws and regulations.

Definitions

For purposes of the Enforcement Response Plan, the following terms and abbreviations shall have the meanings set forth below:

“CM” means the City Manager of the City or the City's Manager's designee, including, but not limited to, the CWP Director.

“Continuing violation” means a violation of the Sewer Use Ordinance which is shown to continue or exist by at least two consecutive monitoring or inspection events.

“CWP Director” means the person designated by the City to supervise the operation the

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POTW, including, but not limited to, the CWP. References to “CWP Director” shall include the Director’s authorized representatives.

“ISM” means inspection, surveillance and monitoring activities and procedures as necessary to determine compliance or noncompliance of a User with applicable requirements as authorized by Section 19-17.102 of the Sewer Use Ordinance and other applicable provisions of law.

“Isolated violation” means a violation of the Sewer Use Ordinance that is not a continuing or recurring violation.

“LOV” means a letter of violation. A LOV may be used for minor violations.

“MCI” means a Municipal Civil Infraction subject to payment of a civil fine of not less than \$1,000.00 per day for each violation, plus costs and other sanctions, as provided by Section 19-17.107 of the Sewer Use Ordinance.

“Minor Violation” means a violation that is primarily technical in nature, where there is no substantial evidence of intent or negligence; and with no substantial likelihood of having an adverse impact on human health, safety, welfare, property, or the environment, or the administration of the City’s IPP.

“Major Violation” means a violation that meets the conditions of significant noncompliance as provided by 1043.01 (53) of the Sewer Use Ordinance; where there is evidence of intent or negligence; or that may cause an adverse impact on human health, safety, welfare, property, or the environment; or on the administration of the City’s IPP.

“NOV” means a Notice of Violation as provided by Section 19-17.103 of the Sewer Use Ordinance.

“OE” means an enforcement order as provided by Section 19-17.104 of the Sewer Use Ordinance, including, without limitation, any of the following types of orders as determined appropriate by the City based upon the circumstances in question: Order to Immediately Cease and Desist Discharge; Order to Terminate Sewer Services; Order to Cease Discharge within a Time Certain; Order to Effect Pretreatment; Order to Perform Affirmative Action; or Order to Show Cause.

“OE-ICD” means an Order to Immediately Cease and Desist Discharge as provided by Section 19-17.104(B)(1) of the Sewer Use Ordinance.

“OE-TERM” means an Order to Terminate Sewer Services as provided by Section 19-17.104(B)(5) of the Sewer Use Ordinance.

“OSC” means an Order to Show Cause to provide evidence to the City and explain why proposed enforcement actions should not be taken as provided by Section 19-17.104(B)(6) of the Sewer Use Ordinance.

“Recurring violation” means a continuing violation or a violation that is part of a pattern of noncompliance with the Sewer Use Ordinance.

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“SNC” means Significant Noncompliance as provided by 19-17.106 of the Sewer Use Ordinance.

“User” means any person who contributes, causes or permits the contribution, introduction or discharge of wastewater into the POTW, whether intentional or unintentional, and whether directly or indirectly, as provided by Section 19-1.02 of the Sewer Use Ordinance.

“Sewer Use Ordinance” means the City’s Sewer Use Ordinance, but also includes any permit, order, notice or agreement issued or entered into under the Ordinance.

Types of Enforcement

There are various types or levels of enforcement the City can serve upon the User under the authority established by the City’s Sewer Use Ordinance. The primary types of enforcement and a brief explanation of each level include:

Enforcement Tool	Description
Phone Call	CM will make direct verbal contact (not voice message) with a person in a position of responsibility for the nondomestic user to correct a minor violation or as an initial minimum contact in other circumstances. A written record should be kept of all phone calls made by the City for purposes of initiating or furthering an enforcement action. At a minimum, the record should include the names of the parties participating in the call, the time and date of the call, the purpose of the call, the violation involved, any compliance schedules agreed upon, and any representations made by the user regarding compliance or intent to comply, as appropriate to the particular circumstances.
Letter of Violation (LOV)	CM sends a LOV to correct a minor violation.
Notice of Violation (NOV)	CM will serve nondomestic user with written notice stating the nature of the violation and providing a time limit for the satisfactory correction of the violation. The user shall, within the period of time stated in notice, permanently cease all violations.
Civil Fine (MCI)	CM assesses monetary fine for violation as provided by Section 19-17.107 of the Sewer Use Ordinance.
Inspection, Surveillance, Monitoring Activity (ISM)	CM institutes inspection, sampling and oversight of nondomestic user as authorized by Section 19-17.102 of the Sewer Use Ordinance.

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Order of Enforcement (OE)	A written directive from the CM to correct or remediate a situation where a violation has occurred or to prevent a violation from occurring. This directive is used to compel a nondomestic user to install the necessary treatment facilities, devices, or other appurtenances, to properly operate existing facilities, or to institute BMPs, or take other actions. This includes without limitation, any of the following types of orders as determined appropriate by the City based upon the circumstances in question: Order to Immediately Cease and Desist Discharge; Order to Terminate Sewer Services; Order to Cease Discharge within a Time Certain; Order to Effect Pretreatment; Order to Perform Affirmative Action; or Order to Show Cause.
Order to Show Cause (OSC)	A written directive from the CM issued to the nondomestic user to provide evidence and explain why proposed enforcement actions should not be taken.
Order of Enforcement to Immediately Cease and Desist (OE-ICD)	A written directive from the CM to immediately stop the actions leading to a violation. This requires the nondomestic user to take whatever actions necessary to stop the violation.
Order of Enforcement to Terminate Services (OE-TERM)	A written directive from the CM to immediately terminate service to a nondomestic user that has recurring, uncorrected violations.
Criminal Investigation (CI)	Where knowing or intentional violation, CM may request a criminal investigation, leading to imposition of criminal fines, as provided by Section 19-17.108 of the Sewer Use Ordinance.

Timeframes For Responses

The following timeframes apply to the City’s enforcement responses.

- All violations will be identified and documented by the City upon discovery, or upon notification by the user.
- Except as otherwise expressly provided by this ERP, initial phone calls or other initial actions in response to a known or suspected violation should be made as soon as reasonably possible after becoming aware of the situation. In all cases, however, initial responses involving contact with the industrial user and requesting information on the nature of the violation, corrective and preventative action taken, etc., should occur within 15 days after detection of the violation.

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- Subsequent response actions should also proceed without unnecessary delay, and should be conducted as expeditiously as possible, consistent with the nature and severity of the violation, applicable requirements and regulations as provided by the Sewer Use Ordinance and other local, state and federal laws and regulations, and as necessary to minimize any reasonably likely adverse impacts on human health, safety, property, the environment, or the POTW.
- Unless otherwise specified by a NOV, within 30 days of the date of the NOV, the user shall submit to the POTW an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions. If no response to the NOV is received within that period (or other period as specified by the NOV), the City should issue an appropriate Order and take any additional necessary enforcement actions.
- The City should take action to enforce or escalate enforcement of a continuing or recurring violation as soon as reasonably possible, preferably within 30 days from the time that the City determines that the violation is continuing or recurring, with the goal of obtaining compliance within 60 days from that time. The enforcement response to a continuing or recurring violation should include a compliance schedule with a final compliance date, as determined appropriate by the City. Compliance deadlines will be determined by the City on a case-by-case basis, based on the severity of the violation and its impact on the POTW, and may be more or less than 60 days depending on the circumstances.
- Any actual or threatened discharge to the POTW which presents (or may present) imminent or substantial endangerment to the health or welfare of persons, to property, to the environment, or which causes (or may cause) Interference or Pass Through, or any other action or omission of a User where the City determines that a delayed response might endanger human health, the environment or the POTW, is subject to immediate suspension and abatement as determined necessary by the City under the authority of the Wastewater Collection and Treatment Ordinance, including, without limitation, the immediate issuance of an Order to Immediately Cease and Desist Discharge or an Order to Terminate Sewer Services.
- Any violation which meets the criteria for a Significant Noncompliance should be addressed with an appropriate order within 30 days of the identification of the Significant Noncompliance.

Noncompliance Identification and Enforcement Response Guide Table

The Enforcement Response Plan Guide Table set forth below is intended to help identify different types of noncompliance and the probable appropriate action level of enforcement response. The Table outlines a range of recommended responses to violations of the City's Sewer Use Ordinance and covers the following possible causes of noncompliance:

- Sampling, Monitoring and reporting violations
- Unauthorized discharges
- Compliance Schedules
- Effluent Limit Violations
- Violations detected during industrial inspections by the City

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In general, the Table should be used as follows:

- Locate the type of noncompliance in the first column and identify the most accurate description of the violation.
- Consider the nature of the violation in column two. First offenders or users demonstrating good faith efforts may merit a more lenient response. Similarly, repeat offenders, non-cooperative users, or those demonstrating negligence may require a more stringent response.
- Apply the enforcement response in column three to the nondomestic user. Use any single enforcement action, combination of enforcement actions, or all the enforcement actions listed, depending on the severity of the violation. Specify corrective action or other responses required of the nondomestic user if any. Column four indicates personnel responsible for each response (the City Manager or the City Manager's designees).
- Follow up with escalated enforcement action if the nondomestic user's response is not timely received or violation continues.

[Enforcement Response Guide Table begins on next page]

CITY OF THREE RIVERS - ENFORCEMENT RESPONSE GUIDE TABLE

NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSE*	RESPONSIBLE PERSONNEL
<i>SAMPLING, MONITORING, AND REPORTING</i>			
Failure to adequately sample, monitor, report or notify.	Isolated or infrequent	Phone Call, LOV and/or NOV. If no response within 10 days, ISM, OSC and/or MCI.	CM
Failure to adequately sample, monitor, report or notify.	Previous deficiency remains uncorrected 30 days or more or continued or recurring	NOV, ISM, MCI, OE-ICD, OE-TERM.	CM
Failure to notify of effluent limit violation or slug discharge.	Isolated or infrequent	LOV, NOV, ISM, OSC and/or MCI.	CM
Failure to notify of effluent limit violation or slug discharge.	Previous deficiency remains uncorrected 30 days or more or continued or recurring	NOV, OSC, OE-ICD, OE-TERM, and/or MCI.	CM
Minor sampling, monitoring, or reporting deficiencies (computational or typing errors).	Isolated or infrequent.	Phone Call, LOV and/or NOV.	CM
Minor sampling, monitoring, or reporting deficiencies (computational or typing errors).	Previous deficiency remains uncorrected 30 days or more or continued or recurring	NOV, OE, OSC and/or MCI.	CM
Major or gross sampling or reporting deficiencies (missing information, late reports, etc.).	Isolated or infrequent	NOV, ISM and/or OSC.	CM
Major or gross sampling or reporting deficiencies.	Previous deficiency remains uncorrected 30 days or more or continued or recurring.	MCI, OSC, OE-ICD and/or OE-TERM	CM
Reporting false information; tampering with sampling/monitoring equipment.	Any instance.	NOV, ISM, MCI, OSC, OE-ICD and/or OE-TERM. Request CI if willful/knowing.	CM

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NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSE*	RESPONSIBLE PERSONNEL
<i>COMPLIANCE SCHEDULES</i>			
Missed NOV interim date.	Will not cause late final or other interim dates	Phone Call, LOV and/or NOV, and/or if no response within 10 days, MCI and/or OSC.	CM
Missed interim date.	Will result in other missed interim dates. Violation for good or valid cause.	NOV, MCI and/or OSC, OE-ICD, OE-TERM.	CM
Missed interim date	Will result in other missed interim dates. No good or valid cause.	MCI and/or OSC, OE-ICD, OE-TERM	CM
Missed final date.	Violation for good or valid cause.	LOV, NOV, require documentation of reason for violation, ISM and/or OSC	CM
Missed final date.	Failure or refusal to comply without good cause.	MCI, OSC, OE-ICD and/or OE-TERM.	CM
Missed final date.	Failure or refusal to comply without good valid cause. 90 days or more outstanding.	MCI, OE-ICD and/or OE-TERM.	CM
Failure to install monitoring equipment.	Delay of less than 30 days	LOV, NOV, ISM, OSC.	CM
Failure to install monitoring equipment.	Continued (over 30 days)	MCI, OSC, OE-ICD and/or OE-TERM.	CM
Reporting false information	Minor Violation	NOV, ISM, MCI, OSC, Request CI if willful/knowing.	CM
Reporting false information	Major Violation	MCI, OSC, OE-ICD and/or OE-TERM. Request CI if willful/knowing.	CM

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NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSE*	RESPONSIBLE PERSONNEL
<i>EFFLUENT LIMITS</i>			
Exceeding limits (final)	Isolated violations (no harm)	Phone Call, LOV and/or NOV.	CM
Exceeding limits (final)	Continuing or recurring violations (no harm)	NOV, MCI, OSC.	CM
Exceeding limits (final)	Isolated violations, harm to POTW or environment	NOV, MCI, OSC, OE-ICD, and/or OE-TERM.	CM
Exceeding limits (final)	Continuing or recurring violations, harm to POTW or environment	MCI, OSC, OE-ICD, OE-TERM	CM
Reported slug load	Isolated without known harm to POTW or environment.	Phone Call, LOV and/or NOV. OSC.	CM
Reported slug load	Recurring without known harm to POTW or environment.	NOV, MCI, OSC, OE-ICD.	CM
Reported slug load.	Isolated with known harm to POTW or environment.	NOV, MCI, OSC, OE-ICD, and/or OE-TERM	CM
Reported slug load.	Recurring with known harm to POTW or environment.	NOV, MCI, OSC, OE-ICD, OE-TERM	CM
Discharge without a Discharge Permit or other approval.	One time without known harm to POTW or environment.	Phone call, NOV, with application form	CM
Discharge without a Discharge Permit or other approval.	One time with known damage to POTW or environment.	NOV, MCI, OSC, and/or OE-ICD	CM
Discharge without a Discharge Permit or other approval.	Continuing or recurring violations, harm to POTW or environment	NOV, MCI, OSC, OE-ICD, and/or OE-TERM. Request CI if willful/knowning.	CM

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NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSE*	RESPONSIBLE PERSONNEL
<i>NONCOMPLIANCE DETECTED THROUGH INSPECTION / FIELD WORK</i>			
Failure to properly operate and maintain pretreatment facilities.	Minor Violation	Phone Call, LOV and/or NOV.	CM
Failure to properly operate and maintain pretreatment facilities..	Major Violation	NOV, ISM, MCI, OSC, OE-ICD, and/or OE-TERM	CM
Diluting discharge in lieu of Treatment	No evidence of intent.	Phone call and NOV, ISM.	CM
Diluting discharge in lieu of Treatment.	Continued or evidence of negligence or intent.	NOV, MCI, OE-ICD and/or OE-TERM.	CM
Failure to mitigate problem or halt production	Minor Violation.	LOV, NOV, OSC and/or OE-ICD. Immediate correction required.	CM
Failure to mitigate problem or halt production	Major Violation.	NOV, MCI, OSC, OE-ICD, OE-TERM. Request CI if willful/knowning.	CM
Refusal to permit access to premises, records, samples, etc.	Any instance	Obtain warrant and return, ISM, MCI, OSC, OE-ICD and/or OE-TERM.	CM

* This Table is intended as a guide. Nothing in this Table shall be construed to limit the City's enforcement options in any particular circumstances. Further, the City may also require non-compliant users to implement Best Management Practices (BMPs), Best Management Practices Plans (BMPPs), Pollutant Reduction Plans (RPs) as an additional enforcement tool in any case determined necessary and appropriate by the City Manager (see Sections 19-16.99 and 19-6.30(C)). All remedies for violations provided by the Sewer Use Ordinance are cumulative. The imposition of a single penalty, fine, order, damage, or surcharge upon any person for a violation of the Sewer Use Ordinance, or of any permit, order, notice or agreement issued or entered into under the Sewer Use Ordinance, does not preclude the imposition by the City or a court of competent jurisdiction of a combination of any or all of those sanctions and remedies or additional sanctions and remedies with respect to the same violation, consistent with applicable statutory limitations on penalty amounts. A criminal citation and prosecution of a criminal action against a person is not dependent upon or held in abeyance during any civil, judicial, or City administrative proceeding, conference, or hearing regarding the person.