

**METROPOLITAN SEWERAGE DISTRICT OF
BUNCOMBE COUNTY, NORTH CAROLINA**

ENFORCEMENT RESPONSE PLAN

I. Introduction

This document has been prepared as a part of Metropolitan Sewerage District of Buncombe County's ("MSD") pretreatment implementation responsibilities requiring the development of control mechanisms. These mechanisms will assist MSD in controlling discharges to its sewer system and meet the goals 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 MSD 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 MSD reserves the right to implement other enforcement responses available to it under the SUO and North Carolina law separately or in combination with these responses.

II. Enforcement Actions Available to MSD

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

<u>Action</u>	<u>SUO Section</u>	<u>N.C. General Statutes</u>
Notice of Violation	14.01.01	
Consent Orders	14.01.02	
Administrative Orders	14.01.03	
Emergency Suspensions	14.01.04	
Termination of Permit	14.01.05	
Civil Penalties	14.02	143-215.6A (j)
Show Cause Hearing	14.03.01	
Injunctive Relief	14.04.02	162A-81
Water Supply Severance	14.04.03	

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 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 on 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, recklessly 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. The cost to the POTW, including attorney's fees, sampling costs, cost of additional laboratory analysis, cost of engineering and consulting fees necessary, in the opinion of the District, to take necessary enforcement action, determine the nature and extent of damage, prevent further damage and repair any damage.

III. Investigation of Noncompliance

The Staff of the MSD 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 MSD.

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 MSD 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 MSD 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 considered to be in violation.
- f. Enforcement Orders: Failure to meet the requirements of a Consent Order (e.g., interim limits, milestone dates), shall be considered a violation.

- g. Emergency Violation: A violation which the General-Manger or Industrial Waste Section determines to be a significant danger to the public health, the MSD Sewerage System, or MSD personnel. The General-Manager or Industrial Waste Coordinator shall issue an order to immediately terminate the discharge or other violation; 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.

VI. Enforcement Response Guide

This guide further outlines types of violations, the nature of the violation, enforcement responses, and the MSD personnel involved. The guide is considered a part of MSD'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
IU	Industrial User or User
GM	General Manager of MSD
IWC	Industrial Waste Coordinator
IWS	Industrial Waste Section
POTW	Publicly Owned Treatment Works ("The MSD Wastewater Treatment Plant")
SCO	Show Cause Order
SNC	Significant Non-Compliance

Responses to violations affecting the operation of the MSD, resulting in violations of MSD's NPDES Permit, or resulting in environmental harm or endangerment to 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. Alternatively, the violations may be summarized over a period of time not to exceed 6 months. Users found to be in SNC for two (2) consecutive 6 month periods will be issued an enforceable order to return to compliance. In all cases, 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 Noncompliance	First Occurrence	Second Occurrence
1. Effluent violation	Tier 1	Tier 2
2. Effluent violation \geq 3.0 ppm or pound above limit for Metals and CN only	Tier 1	Tier 3
3. Effluent violation \geq 5.0 ppm or pound above limit for Metals and CN only	Tier 1	Tier 4
4. Effluent violation \geq 33 % (excluding metals, CN & pH)	Tier 1	Tier 3
5. Effluent violation \geq 66 % (excluding metals, CN & pH)	Tier 1	Tier 4

(On the third or greater occurrence for Items 2 and 3 above, MSD reserves the right to issue a penalty of \$100.00 per ppm or pound above the effluent limit.)

B. Reporting Violations

1. Report not submitted on time with notification to MSD		
Less than 30 days	No Action	No Action
More than 30 days	No Action	Tier 1
2. Report not submitted on time without notification to MSD		
Less than 30 days	Phone Call	Tier 1
More than 30 days	Tier 2	Tier 3
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		
With no violation(s)	Tier 1	Tier 2
With violation(s)	Tier 1	Considered Falsification
6. Report falsification	Tier 4	Tier 5
7. Reports improperly signed	Tier 1	Tier 2
8. Failure to respond to NOV or other official notification within required timeframe	Tier 2	Tier 3

C. Technical Violations

1. Failure to obtain required sample(s)	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 Noncompliance	First Occurrence	Second Occurrence
1. Inadequate record keeping		
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
5. Failure to mitigate noncompliance or halt production	Tier 4	Tier 6
6. Failure to meet milestone dates of compliance schedules		
Less than 30 days without sufficient cause	Tier 3	N/A
More than 30 days without sufficient cause	Tier 4	Tier 5 (60 days)
Final milestone date delayed without sufficient cause	Tier 5	N/A

E. Unauthorized Discharges

1. Non-permitted discharge (Permitted Facilities)		
No harm causes 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 unaware 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 submitted 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

VII. Administrative Penalty Structure & Responsible Officials

A. Administrative Penalty Structure

The Administrative Penalty Structure is a seven 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 industry, the magnitude of the violation, the potential for harm to the environment or MSD, or where the subject violation caused MSD to violate a condition of its NPDES 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 MSD or the environment or in other extraordinary cases, one or more tiers may be skipped in order to bring the User into compliance.

Tier 1	No Civil Penalty; Notice of Violation (NOV)
Tier 2	\$50.00 to \$100.00 Civil Penalty; NOV
Tier 3	\$100.00 to \$500.00 Civil Penalty; NOV; Consent Agreement
Tier 4	\$500.00 to \$1000.00 Civil Penalty; NOV; Consent Order or Administrative Order
Tier 5	\$1000.00 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; Termination of Services

These penalties are in addition to assessed reimbursement costs as specified in Section 14.02.03.08 of the Sewer Use Ordinance for legal fees, equipment repair or replacement, any additional monitoring the MSD is required to do and any penalties assessed to the MSD resulting from the subject violation. The MSD reserves the right to assess the maximum penalty for any violation.

B. Responsible Officials

Industrial Waste Coordinator – Tiers 1, 2, and 3
General Manager – Tiers 3, 4, 5, 6, and 7

VIII. Enforcement Responses & Time Frames

A. Enforcement Responses

1. Phone calls and Verbal warnings may to be used immediately upon the recognition of a violation in an attempt expedite correction of the violation at the lowest level possible. These actions shall be documented in the User's file.
2. Notices of Violation 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 Verbal Warnings do not obtain results. They shall be held at the District office with an Industrial Representative, the General Manager and pretreatment personnel present.
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. 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 also be used as an enforcement tool.
6. Show Cause Orders will be issued to initiate actions leading to formal hearings in cases of continued significant noncompliance or where the General Manager determines that emergency enforcement actions are necessary.
7. Civil Action will be used in cases of continued significant noncompliance or where the General Manager determines that emergency actions are necessary.
8. Criminal Action will be used where there is evidence of criminal intent or in extreme recurring cases.

9. Service Termination will be used in recurring or emergency cases where there is damage to the MSD or the environment.

B. Time Frames

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