

| CITY OF SANTA ROSA | DEPARTMENT OF UTILITIES | |
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1.0 PURPOSE

1.1 Significant Industrial User (SIU) Enforcement Response Policy (ERP)

The purpose of this document is to set forth a policy for the application of compliance and enforcement actions taken against non-compliant Significant Industrial Users (SIUs) permitted within the Environmental Compliance Program. This policy document is a supplemental document based upon the City of Santa Rosa Enforcement Response Plan.

1.2 Policy Objectives

- a. To provide staff with a clear guideline for the consistent and equitable enforcement of permit, reporting and City Code violations associated with the Environmental Compliance Program.
- b. To ensure that enforcement responses are appropriate in relation to the nature and severity of the violation and degree of non-compliance.
- c. To provide the uniform application of enforcement responses to comparable levels in types of violations, and as a mechanism to review the appropriateness of the enforcement response.

2.0 REFERENCE

2.1 City of Santa Rosa City Code Title 15- Sewers, 40 Code of Federal Regulations 403. The Environmental Protection Agency guidance documents Guidance Manual for Calculation of Economic Benefit of Noncompliance with Pretreatment Standards and Guidance for Developing Control Authority Enforcement Response Plans.

3.0 POLICIES

3.1 SIU VIOLATIONS

Any action or lack of action which in itself or in connection with other actions causes a condition which violates requirements of Santa Rosa Code Title 15 Sewers, 40 Code of Federal Regulations 403 or Industrial Wastewater Discharge Permits.

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3.2 INFREQUENT & SIGNIFICANT NON-COMPLIANCE

Significant Non-Compliance (SNC): Pursuant to 40 CFR 403.8(f)(2)(viii) any violations meeting the following criteria will be considered SNC:

- a. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l). In the case of continuous pH monitoring, the percentage of samples out of compliance is determined by dividing the amount of time out of compliance by the total time pH was monitored;
- b. Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pre-treatment standard or requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- c. Any other violation of a pretreatment standard or requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Director of Utilities determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- d. Any discharge of pollutants that has caused imminent endangerment to human health, welfare or to the environment, or has resulted in the Director of Utilities exercise of its emergency authority to halt or prevent such a discharge;
- e. Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- f. Failure to provide within 45 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- g. Failure to accurately report non-compliance; or
- h. Any other violations or group of violations which the Director of Environmental Services determines will adversely affect the operation or implementation of the local pretreatment program.

Infrequent Non-Compliance (INC): Any measure of compliance less than 100% but less than a significant violation.

Deleted: <#>A chronic violation of wastewater discharge limits, defined here as those in which sixty-six percent or more of all the measurements taken during a six-month period exceed (by an magnitude) the daily maximum or the average limit for the same pollutant parameter.¶

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Deleted: <#>Technical review criteria (TRC) violations, defined here as those in which thirty-three percent or more of all the measurements for each pollutant parameter taken during a six month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, FOG and 1.2 for all other pollutants except pH).¶

¶ Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Director of Environmental Services determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).¶

¶ Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under City of Santa Rosa Municipal Code Title 15 Sewers.¶

¶ Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.¶

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3.3 SIU PERMIT & CODE VIOLATION(S)

Permit Violations include: Discharge Limit, Reporting, Monitoring & Other permit related Violations.

3.3.1 Discharge Limit Violation(s)

- a. Discharge of Prohibited Substance.
- b. Exceedance of local or federal permit limitations.

3.3.2 Reporting Violation(s)

- a. Failure to submit required report, certification statement, or failure to submit complete report.
- b. Failure to submit report in specified format.
- c. Failure to accurately report noncompliance.
- d. Failure to report waste stream changes, additional sampling, permit transferability, and hazardous waste discharge notifications.
- e. Failure to provide notification of a spill.

3.3.3 Monitoring Violation(s)

- a. Failure to perform required monitoring.
- b. Failure to perform analysis in accordance with 40 CFR 136.
- c. Failure to monitor in accordance with permit conditions (specified frequency, etc.)
- d. Failure to provide suitable monitoring point.

3.3.4 Other Permit Violation(s)

- a. Diluting waste streams to achieve compliance.

Deleted: Waste streams are diluted to achieve discharge limits.

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- b. Failure to maintain in good working order and properly operate, any facilities or systems of control installed to achieve compliance with terms and conditions of permit.
- c. Bypass of treatment system.
- d. Failure to dispose of sludge and spent chemicals in accordance with the Resource Conservation and Recovery Act (RCRA) and/or the Clean Water Act (CWA). Recommended Enforcement Response and Referral to Appropriate Authorities.
- e. Failure to allow right of entry.
- f. Failure to provide requested information.
- g. Failure to retain records for a minimum of three years.
- h. Failure to pay surcharge bill
- i. Failure to pay permit fee
- j. Milestone not met
- k. Milestone not met within 90 days of the scheduled date
- l. Discharger fails to abide by conditions of the discharge permit

3.3.5 Code Violation(s)

- a. Unpermitted discharge.
- b. Failure to pay civil penalty, fine or any recovery cost.
- c. Violation of terms in Administrative Order.
- d. Tampering with Commission property (sampling equipment, etc.)
- e. Theft of service
- f. False statements, representations, or certifications.

4.0 PROCEDURES

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4.1 SIU ENFORCEMENT MATRIX TEMPLATE- This demonstrates the range of fines associated within the escalating tiers of enforcement.

| Severity of SIU Violation | Enforcement Tiers | Range of Enforcement Response(s) | Recommended Administrative Fine Range | |
|---|------------------------|---|---|--------------|
| A. Minor Violation(s) Infrequent Non-Compliance (INC) | A. Tier I | Warning Notice and/or Notice Of Violation | No administrative fine assessed | |
| | A. Tier II | NOV | \$0 to \$? (*Note 1) | Deleted: III |
| | A. Tier III | NOV and/or Administrative Order (AO) | \$0 to \$? (*Note 1) | Deleted: IV |
| | A. Tier IV | AO | \$1,000 to \$25,000 (*Note 1) | Deleted: V |
| | A. Tier V | Civil/Criminal Action | Maximum Fine per day and or per occurrence and/or Termination of Services | Deleted: VI |
| B. Moderate/Major Violation(s) Significant Non-Compliance (SNC) | B. Tier I | NOV and/or AO | Fine Range \$0 to \$25,000 (*Note 1) | |
| | B. Tier II | Civil/Criminal Action | Maximum Fine per day and or per occurrence and/or Termination of Services | |

(* Note 1) - The applicable recommended administrative fines are calculated using the SIU Administrative Penalty Formula. Refer to section 4.2 SIU Administrative Penalty Formula for the applicable formula.

4.2 ADMINISTRATIVE PENALTY FORMULA

This administrative penalty formula is adopted pursuant to January 21, 2010. The policy establishes the factors to be considered and the method for calculating administrative fines.

a. General Provisions

- 1) The penalty associated with violations should reflect the seriousness, frequency, duration, and persistence of the violation(s), the economic benefit resulting from the violation, the economic impact of the penalty on the violator, the facility's compliance history, apparent good faith, and other factors as justice requires. A

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mathematical method has been developed to compute the penalty amount for pollutant violations and reporting violations. Any costs resulting from the violation(s) (such as sampling, analysis, investigation) and/or any damage to the environment or the City's sewer system is an additional charge which will be billed to the violator.

- 2) The concept of a penalty is that the violator should not be allowed to enjoy any economic benefit from having been in violation and should be caused to suffer economically. Once the penalty is computed, the amount may be increased or decreased due to recalcitrance, litigation costs, and/or ability to pay.

- 3) The Director of Utilities imposes the penalties provided herein by Administrative Order, which provides that the violator may request a hearing if a written request is made within ten (10) days of receiving the Administrative Order. The written request must specify the issues and/or grounds upon which a review hearing is requested.

b. Violations of Permit Conditions

The penalty for violation of permit conditions is a maximum fine per violation per day of \$2,500. For failure to perform an analysis required by permit, the amount should generally be double the cost saved. The following penalty amounts should be considered minimum, and represent the normal penalty for failure to do the analysis required:

- 1) Metals analysis \$200
- 2) Cyanide \$100
- 3) TTO \$1,500

c. Late reports

The penalty for a late report is as follows:

| Number of Days a Report is Late | Amount |
|---------------------------------|---------------|
| 6 – 30 | \$50 per day |
| 31 – 60 | \$100 per day |
| 61 – 90 | \$150 per day |
| 91 – 180 | \$200 per day |
| 180 | \$400 per day |

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d. Discharge Limit Violations and Reporting Violations

The base penalty for late or missing reports and violations of discharge limitations is computed from the formula:

Monetary Penalty = \$100 x (1 + Factor A + Factor B + Factor C + Factor D)

For each violation, a separate calculation is performed per day. The formula represents a base amount which shall be multiplied by a sum of factors as determined from the Magnitude of Components set forth in subparagraphs one (1) through five (5) below:

FACTOR A – SIGNIFICANCE OF VIOLATION

Factor A = 0 to 10

| % Exceedance of Daily or Slug Limit | % Exceedance of Average Limit | Factor A |
|-------------------------------------|-------------------------------|----------|
| N/A | N/A | 0 |
| 1 – 50 | 1 – 20 | 1 |
| 51 – 100 | 21 – 40 | 2 |
| 101 – 200 | 41 – 100 | 3 |
| 201 – 600 | 101 – 300 | 4 |
| 601 – 1000 | 301 – 500 | 5 |
| 1001 – 2000 | 501 – 1000 | 6 |
| 2001 – 3000 | 1001 – 1500 | 7 |
| 3001 – 4000 | 1501 – 2000 | 8 |
| 4001 – 5000 | 2001 – 2500 | 9 |
| > 5000 | > 2500 | 10 |

| pH Violations (Standard Units) | | Factor A |
|--------------------------------|---------|----------|
| 4.0 – 4.99 | | 0 |
| 3.0 – 3.99 | | 1 |
| < 3.0 | > 12.00 | 4 |

pH Violations – If the exceedance does not last for a period of 15 minutes or more cumulative per day, the Environmental Compliance Supervisor may determine what enforcement actions, if any, to take as described in this Enforcement Response Plan, provided the facility can establish

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the duration and cause of the exceedance. Any exceedance shall be reported as required by Santa Rosa City Code Title 15 Sewers, and the user's permit.

FACTOR B – HEALTH & ENVIRONMENTAL HARM OR POTENTIAL HARM

Factor B = 0 to 10

| Discharge Volume (gallons per day) | Health Effects* | Aquatic or Sludge |
|---------------------------------------|-----------------|-------------------|
| <10,001 | 0.2 | 0.1 |
| 10,001 to 25,000 | 0.4 | 0.2 |
| 25,001 to 50,000 | 0.8 | 0.4 |
| 50,001 to 100,000 | 1.2 | 0.6 |
| 100,001 to 250,000 | 2 | 1 |
| 250,001 to 300,000 | 3 | 2 |
| 300,001 to 350,000 | 4 | 4 |
| 350,001 to 400,000 | 5 | 5 |
| 400,001 to 450,000 | 6 | 6 |
| 450,000 to 500,000 | 7 | 7 |
| 500,001 to 550,000 | 8 | 8 |
| 550,001 to 600,000 | 9 | 9 |
| >600,000 | 10 | 10 |

* Applies to pH, chromium, cyanide, sulfides, residual chlorine, VOC's or any other material posing a threat to workers in the sewer system or the public.

FACTOR C – NUMBER OF VIOLATIONS

Factor C = 0 to 2.5

This factor accounts for the number of violations occurring in a given month, or frequency of the violations. For violations of both an average and daily limit(s), the same factor should be applied to each computation.

Determine the percentage of the number of days that had measurements which were in violations and multiply this percentage by 2.5. Repeat calculations for the average limit and then add the two results to arrive at a factor.

(Number of days with a violation)/ (Number of days measured in the month) x 2.5 = Factor C

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FACTOR D – DURATION OF NON-COMPLIANCE

Factor D = 0 to 5

This factor accounts for the number of violations during the previous six months. Using a rolling 6 months, this factor is the number of months in violation minus 1.

If the facility had violations for each of the previous 6 months then the factor is 5.

