

North Carolina Model Enforcement Response Plan Discussion

The Federal Pretreatment Regulations in 40 CFR 403.8(f)(5) require Pretreatment Control Authorities to have an Enforcement Response Plan (ERP) that reflects the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards. Specifically, the ERP must:

- Describe how the POTW will investigate instances of industrial user noncompliance.
- Cover all anticipated types of industrial user violations.
- Describe types of escalating enforcement responses the POTW will take for each type of violation, including time frames for each response.
- Identify by title the official(s) responsible to each type of response.

The Division's Model ERP is constructed to comply with these requirements. It covers most compliance and enforcement situations that NC POTWs might encounter. It provides a reasonable amount of structure to ensure consistent enforcement actions and maintains flexibility to allow for consideration of special circumstances by the POTW.

Many NC POTWs may wish to adopt the ERP as it is written below. However, all NC POTWs should carefully review and consider all parts of the ERP prior to submission, especially the Chart. Once approved, the Division will expect the POTW to implement the ERP as written. Some POTWs will wish to revise the Model to one degree or another, and many have already. Alternate ERPs will be reviewed and approved on a case by case basis.

One example of the flexibility built into the Model ERP Chart are the penalty listings. In most cases when a penalty is listed as an action, a range of \$ 0 to \$ 25,000 is listed. However, industrial user violations that cause NPDES or other State issued permit or State General Statute violations, or endangerment list a range of \$1,000 to \$25,000. The Division feels all industrial user violations that cause these types of violations should receive at least some minimum penalty.

There are boxes with instructions throughout the Model. Remember to delete these boxes from your ERP prior to submission. The 2008 Model ERP Chart Revisions included:

- Revising the timeframe for POTW action to 30 days.
- Revising type of violation to read "results in NPDES violations or other State issued permit or State General Statute violations" and included the "endangerment" criteria.
- Increasing the maximum penalty range to \$25,000.

Further revisions were made in 2019 to address the dental amalgam rule (40 CFR Part 441) which requires POTWs to receive, review and retain one-time compliance reports (OTCR) from dental dischargers (DDs) subject to the rule. According to the Preamble to the rule and EPA's FAQs, "Control Authorities have discretion under the final rule to determine the appropriate manner of oversight, compliance assistance and enforcement." If your ERP follows the State model, then it applies to all Users and you may decide to use industrial user enforcement actions for dental dischargers. In that case no changes are required for your ERP. If your ERP applies only to SIUs, or if you do not wish to apply industrial user enforcement actions to dental dischargers, please review the following options and choose which actions you wish to implement.

Option 1: Implementing the 3 Rs (receive, review, retain). Add the following discretionary statement to the ERP: “Enforcement actions taken in response to the requirements of 40 CFR Part 441 will be taken/decided on a case-by-case basis.”

In the event of mercury issues at the POTW, NC DWR would require increased oversight and enforcement.

Option 2: Add a new section to the ERP only for dental dischargers. Include a discretionary statement near the beginning of the ERP referring to Section 7 of the ERP. It is expected that the majority of violations will be for late reporting, however other violations to consider may include falsification of records (e.g. the OTCR, maintenance records), failure to implement BMPs, failure to install or properly operate the amalgam separator and contributing to pass-through or interference.

Option 3: Create a stand-alone ERP to address dental dischargers. Refer to Section 7 of this model ERP for suggested enforcement chart. Include a discretionary statement near the beginning of the ERP referring to the Dental Discharger ERP.

Dental dischargers are considered industrial users and not subject to the full list of significant noncompliance criteria listed in 403.8(f)(2)(viii). Instead, only (C), (D), and (H) of that section apply. Late reporting is not considered SNC for dental dischargers.

NOTE to POTWs: POTW must insert their own POTW name in two places below and insert their NPDES permit number in one place in section 1.

NAME OF POTW Enforcement Response Plan (ERP)

1. Introduction

It is the responsibility of NAME OF POTW (NPDES NC _____) to enforce all applicable Federal, State, and local pretreatment regulations. These regulations are outlined in Federal regulation 40 CFR 403 and State regulation 15A NCAC 2H .0900, and the local SUO. This Enforcement Response Plan (ERP) has been established as an element of the POTW's pretreatment program. The purpose of the ERP is to provide for fair and equitable treatment of all Users for anticipated enforcement situations. In general, enforcement actions will be taken in accordance with this enforcement Response Plan. However, the enforcement actions available are not exclusive (NC Model SUO Section 8.4). Therefore, any combination of the enforcement actions can be taken against a non-compliant user.

Based on the option selected, input the appropriate language below and delete the other two options.
Option 1: POTW implementing the 3 Rs.

Enforcement actions taken in response to the requirements of 40 CFR Part 441 will be taken/decided on a case-by-case basis.

Option 2: Adding new section only for DDs

Enforcement actions taken in response to the requirements of 40 CFR Part 441 will be taken as described in Section 7.

Option 3: Creating stand-alone ERP for DDs

Enforcement actions taken in response to the requirements of 40 CFR Part 441 will be taken as described in the Dental Discharger ERP.

2. Enforcement Actions Available to the POTW

The Director of the POTW is empowered through North Carolina General Statute (NCGS) 143-215.6A and the local 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 local SUO that describes each. Corresponding sections from the NC model SUO are listed as well.

NOTE to POTWs: POTW must insert their own SUO Sections below.

	Local SUO Section	NC Model SUO Section
Notice of Violation		8.1(a)
Consent Orders		8.1(b)
Show Cause Hearing		8.1(c)
Administrative Orders		8.1(d)
Emergency Suspensions		8.1(e)
Termination of Permit		8.1(f)
Civil Penalties		8.2
Injunctive Relief		8.3(b)
Water Supply Severance		8.3(c)

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

In determining the amount of civil penalties for a particular violation the Director shall consider the following factors (NC model SUO section 8.2)

1. The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
2. The duration and gravity of the violation;
3. The effect on ground or surface water quantity or quality or on air quality;
4. The cost of rectifying the damage;
5. The amount of money saved by non-compliance;
6. Whether the violation was committed willfully or intentionally;
7. The prior record of the violator in complying or failing to comply;
8. The costs of enforcement to the POTW.

Adjudicatory hearing procedures regarding permit decisions, civil penalties, and administrative orders may be found in the SUO (NC Model SUO Section 10).

3. Investigation of Noncompliance

The Staff of the POTW will generally investigate User compliance with permits or the provisions of the SUO in three ways:

1. on-site inspections of the User to include scheduled and unscheduled visits;
2. scheduled and unscheduled sampling of the User's effluent, alone or in conjunction with other Users' effluents;
3. review of self-monitoring data, if required, from the User.

The compliance status of Significant Industrial Users will be evaluated at a minimum once every 6 months.

4. Types of Violations

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

Unpermitted Discharges. Users are responsible for obtaining and renewing permits, if required.

Permit Limits. Users are responsible for maintaining compliance with all effluent limits. The POTW 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.

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 resample per their permit when a limit violation occurs.

Reporting Violations. A User who fails to provide information (e.g. self monitoring reports) required in their Permit or the SUO in the required time frame is in violation. Late or incomplete reports will also be considered violations. A SIU who submits a report more than 30 days late is possibly considered in SNC.

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.

Enforcement Orders. Failure to meet the requirements of an order (e.g. interim limits, milestone dates), whether the order was entered into voluntarily or mandated by the POTW, shall be considered a violation. Missing a scheduled compliance milestone by more than 90 days is considered SNC.

5. Responses: Timeframes, Responsible Officials, Escalated Actions.

The attached chart further outlines types of violations and specifies POTW actions (initial and escalated), timeframes, and the officials responsible for completing the actions. This chart shall be considered a part of the Enforcement Response Plan.

Responses to violations affecting the operation of the POTW, resulting in POTW NPDES violations, 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) or Notice of Noncompliance (NNC) for each individual violation. Alternatively, violations over a period of time may be summarized. In general, NOV's in response to violations will be issued within 30 days of discovery of the violations. 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.

Cases of falsifying reports, tampering with monitoring or sampling equipment, or otherwise preventing the collection of representative data may be referred to the District Attorney for possible criminal investigation.

Show cause hearings may be held at the Director's discretion prior to taking enforcement actions.

Chart: Responses Applicable to SIU/CIUs and Users Not Subject to 40 CFR 441 (see #7)

Type of Violation	POTW Action	Timeframe	Responsible Official	Expected Action from User	Escalated Action if Needed
Unpermitted Discharge Unaware of Requirement	Notice of Violation	Within 30 Days of Discovery of Discharge	Pretreatment Coordinator	File Permit Application	Suspend Service Until Permit Is Issued
Unpermitted Discharge Aware of Requirement	Notice of Violation with Penalty Assessed	Within 30 Days of Discovery of Discharge	Pretreatment Coordinator	File Permit Application	Suspend Service Until Permit Is Issued
Unpermitted Discharge results in NPDES or other State issued permit or State General Statute violations	Order to Cease Process Causing Violation Notice of Violation with recommended minimum of \$1,000 and up to \$25,000/day per violation Penalty	Within 30 Days of Discovery of Discharge	Director	File Permit Application	Suspend Service Until Permit Is Issued
Unpermitted Discharge results in Endangerment	Suspend Service Notice of Violation with recommended minimum \$1,000 and up to \$25,000 per day per violation Penalty	Order to Cease Immediately Notice of Violation within 7 days	Director	File Permit Application Steps Taken to avoid violation	Suspend Service Until Permit Issued

Type of Violation	POTW Action	Timeframe	Responsible Official	Expected Action from User	Escalated Action if Needed
Permit Limits Violation Single Event Minor	Notice of non-Compliance or Notice of Violation with \$0 to \$25,000 Penalty	Within 30 days of receiving data	Pretreatment Coordinator	Conduct Additional Monitoring and Return to Compliance	Notice of Violation with Penalty
Permit Limits Violation Technical Review Criteria (TRC)	Notice of Violation with \$0 to \$25,000 Penalty	Within 30 days of receiving data	Pretreatment Coordinator	Conduct additional monitoring and return to compliance	Second Notice of Violation with Increased Penalty
Permit Limits Violation Significant non- Compliance	Notice of Violation with \$0 to \$25,000 Penalty	Within 30 days of Receiving all Data	Pretreatment Coordinator	Report cause of Non-compliance and steps taken to prevent violation	Enforceable Schedule (AO) if not resolved by end of 2nd 6-month period
Permit Limits Violation results in NPDES or other State issued permit or State General Statute violations	Order to Cease process causing Violation Notice of Violation with recommended minimum \$1,000 and up to \$25,000/ day per violation Penalty	Order to Cease Immediately Notice of Violation Within 7 days of Discovering Violation	Director	Report cause of Non-compliance and steps taken to prevent violation	Suspend Service Until resolved Enforceable Schedule (AO) if not resolved by end of 2nd 6-month period
Permit Limits Violation results in Endangerment	Suspend Service Notice of Violation with a recommended minimum \$1,000 and up to \$25,000 per day per violation Penalty	Suspend Service Immediately Notice of Violation within 7 days	Director	File for Reissuance of Permit	

Type of Violation	POTW Action	Timeframe	Responsible Official	Expected Action from User	Escalated Action if Needed
Self Monitoring Violations	Notice of Violation with a recommended Minimum Penalty Equal or Greater Than Cost of Missed Testing	Within 30 Days of Discovery	Pretreatment Coordinator	Conduct Missed Sampling	Second Notice of Violation with Penalty equal to Twice Cost of Missed Testing
Reporting Violations Late Report	Notice of Non-Compliance	Within 30 days of the Report Due Date	Pretreatment Coordinator	Submit Report	Notice of Violation Penalty Assessed Possible SNC if over 30 days
Reporting Violations Incomplete or Inaccurate Reports	Notice of Non-Compliance	Within 30 days of Report Submission	Pretreatment Coordinator	Submit Revised Report	Notice of Violation Penalty Assessed
Reporting Violations Intentional Falsification	Referred to District Attorney	As soon as suspected	Director		
Violation of Permit Conditions	Notice of Violation with Penalty up to \$25,000 per day per violation	Within 30 Days of Discovery	Pretreatment Coordinator or Director	Varies	Second Notice of Violation with Increased Penalty
Violation of Permit Conditions results in NPDES or other State issued permit or State General Statute violations or Endangerment	Suspend Service Notice of Violation with up to \$25,000 per day per violation Penalty	Suspend Service Immediately Notice of Violation Within 7 days	Director	Steps taken to Avoid Reoccurrence	

Type of Violation	POTW Action	Timeframe	Responsible Official	Expected Action from User	Escalated Action if Needed
Violations of Enforcement Order Conditions or Limits	Notice of Violation assess Stipulated Penalty and Actions listed for same violation type in ERP	Within Time frame listed in Enforcement Order or For the Same Type of Violation in ERP	Pretreatment Coordinator or Director	Additional Monitoring and Steps taken to avoid recurrence	Same as Escalated Action for Same Type of Violation Possible Revocation of Order
Failure to Meet a Milestone Date in an Enforcement Order (Does not Affect Other Dates)	Notice of Violation and Assess Penalty Stipulated in Order	Within 14 days of Discovery	Pretreatment Coordinator	Submit a schedule to complete the Requirement	Show Cause Hearing
Failure to Meet a Milestone Date in an Enforcement Order (Affects Other Dates)	Show Cause Hearing and Assess Stipulated Penalties	Within 30 days of Discovery	Director	Negotiate new Order and Abide by New Conditions	Possible Termination of Service
Failure to Meet Final Compliance Date	Notice of Violation and Assess stipulated penalties	Within 14 days of Discovery	Director	Document Compliance	Possible Termination of Service

Option 2: Adding new section to ERP only for dental dischargers. This is a suggested outline provided as guidance. You may propose other POTW actions, timeframes, responsible official, actions expected from the User and escalated actions. Other types of violations that you may want to consider including in the Chart: failure to implement BMPs, failure to install or properly operate and maintain amalgam separator, contribute to pass-through or interference, falsification of records.

6. Chart: Responses Applicable to Dental Dischargers Subject to 40 CFR 441

Type of Violation	POTW Action	Timeframe	Responsible Official	Expected Action from User	Escalated Action if Needed
Failure to submit one-time compliance report	Reminder via phone, email or letter	Within 60 days of deadline (10/12/2020)	PT Coordinator	Submit report within 45 days	NOV; require report within 30 days
Continued failure to submit one-time compliance report	2 nd NOV with Notice of Intent (to issue penalty) (Recommend certified mail)	Within 30 days of most recent due date	PT Coordinator	Submit report within 10 days	Issue penalty up to an amount equal to the cost of installing an amalgam separator
Continued failure to submit report or pay penalty	Turn over to POTW attorney for collection				

Enforcement actions taken in response to the requirements of 40 CFR Part 441 not listed above will be taken/decided on a case-by-case basis.