

Enforcement



Why Enforce

- ◆ Return IU to compliance
- ◆ To protect POTW and collection system
- ◆ To be consistent and fair in implementing program – local and federal regulations
- ◆ To protect City and IU from State, EPA, and third party suits

Economics of noncompliance

- ◆ Economic benefit of noncompliance for violating IU
- ◆ Economic impact for POTW
- ◆ Economic disadvantage for competing industries

Enforcement Legal Authority

◆ 40 CFR § 403.8(f)(1)(vi)(A)

◆ Local Regulations

- ◆ Obtain remedies for noncompliance by any IU
- ◆ Seek injunctive relief for noncompliance
- ◆ Seek or assess penalties in at least \$1,000 a day for each violation

You and Your ERP

◆ Enforcement Response Plans

[40 CFR § 403.8(f)(5)]

- ◆ reflect POTW's responsibility to enforce pretreatment requirements & standards
- ◆ identify how the POTW will investigate noncompliance
- ◆ specifies officials responsible for each type of enforcement
- ◆ specifies types of and time frames for taking escalating enforcement for anticipated types of violations

Can you live with your ERP?

- ◆ Don't put it in the ERP if you aren't willing to implement it
- ◆ Review to ensure effective
- ◆ Changes must be approved



Key Points in Enforcement

- ◆ Compliance tracking
- ◆ Keep it timely
- ◆ Keep files organized and complete
- ◆ Violation log
- ◆ Keep up with milestones and due dates
- ◆ Document, document, document

Factors to Consider for Appropriate Enforcement Response

- ◆ **Magnitude and duration of violation**
- ◆ **Nature of violation**
- ◆ **Effect on POTW**
- ◆ **Effect on receiving stream**
- ◆ **Pattern of past violations/success of previous enforcement actions**
- ◆ **Attitude of industrial user**

- ◆ All violations require some type of response
- ◆ If IUs response is not adequate, city should become more formal
- ◆ For repeat violations – enforcement must escalate

Significant Noncompliance (SNC)

- ◆ **Chronic violations** - 66% of measurements in 6 months exceeds allowable limits.
- ◆ **Technical Review Criteria (TRC) violations** - 33% of measurements in 6 months equal or exceed allowable limits multiplied by 1.4 (conventional) or 1.2 (all others)
- ◆ **Failure to meet, within 90 days, a compliance schedule milestone**
- ◆ **Failure to submit a report within 45 days of the due date**

SNC (continued)

- ◆ **Violation that causes pass-through or interference**
- ◆ **Discharge that causes imminent endangerment**
- ◆ **Failure to accurately report noncompliance**
- ◆ **Other violations that adversely affect the POTW Pretreatment Program**

Chronic and TRC SNC Calculations

- ◆ Calculate SNC quarterly
- ◆ Evaluate daily maximums and long-term averages
- ◆ “But I only collected one sample for the month”

SNC Calculations

Metal Finishing PSES		<i>Started Jan 2000</i>		
Cadmium - Monthly Ave. = 0.07		TRC = 1.2(0.07) = 0.084		
Month	Self Monitoring	<i>Second Quarter</i> <i>Jan-Jun</i>	<i>Third Quarter</i> <i>Apr-Sep</i>	<i>Fourth Quarter</i> <i>Jul-Dec</i>
Jan	0.05	SNC (TRC)	Not SNC	SNC (Chronic)
Feb	0.06			
Mar	0.09			
Apr	0.1			
May	0.04			
Jun	0.04			
Jul	0.08			
Aug	0.04			
Sep	0.03			
Oct	0.08			
Nov	0.08			
Dec	0.08			
Jan	0.02			
Feb	0.02			
Mar	0.02			
Apr	0.12			
May	0.11			
Jun	0.02			
Jul	0.09			
Aug	0.03			
Sep	0.03			

How about helping with the rest?

Violations

Unauthorized Discharges

Prohibited Standards

Permit Limits

Monitoring Requirements

Reporting Requirements

Permit Conditions

Compliance Schedule Deadlines

Enforcement Orders/Actions

Enforcement Actions

Informal Notice

Notice of Violations

Administrative Fines

Show Cause Orders

Consent Orders

Compliance Orders

Cease and Desist Orders

Injunctive Relief

Civil Penalties

Criminal Prosecution

Supplement Enforcement

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Informal Notice

- ◆ Verbal warnings
- ◆ Reminder letters
- ◆ Telephone calls
- ◆ Informal meetings

**MUST DOCUMENT ALL INFORMAL
ACTIONS**

Notice of Violation

- ◆ **Initial POTW response**
- ◆ **Official notice**
- ◆ **Provides IU opportunity to correct deficiency**
- ◆ **Provides consistency**

Administrative Orders

- ◆ Show cause orders
- ◆ Consent orders
- ◆ Compliance orders
- ◆ Cease and desist

Administrative Fines

- ◆ Issued at POTW's discretion
- ◆ Punitive in nature
- ◆ Deterrent for future violations

Civil Litigation

◆ Why?

◆ Remedies available:

- ◆ Consent decree

- ◆ Injunctions

- ◆ Civil penalties & cost recovery

Criminal Prosecution

- ◆ **Acted in violation of the law**
- ◆ **Criminal intent/negligence**
- ◆ **Results in fines and/or imprisonment**
- ◆ **Each violation, each day, a separate offense**

Supplemental Enforcement

- ◆ **Public notice**
- ◆ **Water service severance**
- ◆ **Termination of sewer service**
- ◆ **Performance bond/liability insurance**
- ◆ **Increased monitoring/reporting**

Approval Authority Oversight

- ◆ EPA or the State WILL review your files (and will expect the files to make sense and present a clear picture of the chronology of events)
- ◆ Expect each violation (reporting and discharge) to be noted with POTW/IU response
- ◆ Anything less will complicate the review

Approval Authority Oversight

Region 9 Expectations of Regional Board Staff

- ◆ Respond to 45-day notices from POTWs
- ◆ Act on approvals of new POTW programs and modifications
- ◆ Survey and inventory SIUs at POTWs without pretreatment programs
- ◆ Assess need for new pretreatment programs at POTWs

Approval Authority Oversight

Region 9 Expectations of Regional Board Staff (cont'd)

- ◆ Take enforcement actions against dischargers and POTWs for pretreatment violations
- ◆ Build capacity for increased pretreatment implementation (application of Performance Measures)
- ◆ Maintain open line of communication with EPA and SWRCB.

EPA Enforcement Strategy

- ◆ Region 9 focusing on industrial users
 - ◆ Insure proper classification
 - ◆ Insure POTWs issue correct permits
 - ◆ Identifying POTWs with compliance issues
- ◆ Impact of New Administration