

Encina Wastewater Authority
ENFORCEMENT RESPONSE PLAN
AND GUIDE



Amended February 2, 2011

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I. Introduction

The Encina Wastewater Authority's (EWA's) Enforcement Response Plan (ERP) has been developed pursuant to the requirements set forth in 40 CFR 403.8(f)(5) and in accordance with EWA's Pretreatment Ordinance, as amended from time to time. The ERP is intended to support EWA's responsibility to enforce all applicable pretreatment requirements in a consistent, fair, and timely manner for all Users. Included in the plan are: the procedures utilized for identifying violations; the types of escalating enforcement mechanisms available to EWA; the staff members responsible for initiating each level of enforcement; and guidance in the application of those measures relative to the nature and severity of the violation cited. [See Enforcement Response Guide (ERG), Appendix A] Maximum monetary fines are recommended at each enforcement level that are intended to recover the cost of enforcement, as well as address the economic benefit derived from the act(s) constituting the violation(s).

II. Definitions

Significant Industrial User (SIU) – Any User that has received or is required to obtain a Class I or II Industrial Wastewater Discharge Permit.

Significant Noncompliance (SNC) – An IU is in significant noncompliance if it incurs violations, which meet one or more of the following criteria:

1. 66% or more of all measurements taken during two consecutive calendar quarters at a given sample point exceed the daily maximum or average limit for the same pollutant parameter;
2. 33% or more of all measurements take during two consecutive calendar quarters at a given sample point equal or exceed the product of the daily maximum or average limit multiplied by the applicable Technical Review Criteria (TRC) factor (TRC = 1.4 for oil & grease and 1.2 for all other pollutants except pH);
3. 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 EWA determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of sewage treatment personnel or the general public);
4. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the exercise of emergency authority under 40 CFR 403.8(f)(1)(vi)(B), to halt or prevent such a discharge;
5. Failure to meet, within ninety days after the schedule date, a compliance schedule milestone;
6. Failure to provide within 45 days after the due date, required reports including baseline monitoring reports, self-monitoring reports, and compliance reports;

7. Failure to accurately report noncompliance;
8. Any other violation or group of violations, which may include a violation of Best Management Practices, that EWA determines will adversely affect the operation or implementation of the Pretreatment Program.

User – A source of indirect discharge or a non-domestic entity with a process onsite subject to categorical standards, whether or not such process generates a discharge.

III. Identifying Noncompliance

EWA's Pretreatment Program staff conducts various activities to identify Industrial User (IU) noncompliance. A summary of these is provided below.

Industrial User Survey – EWA gathers information to identify non-domestic dischargers in the service area that require a permit. New IUs are identified through review of monthly business license lists, surveys submitted with new construction permit applications, the telephone book, internet searches and visual inspections of the service area.

Inspections – Permitted IUs are inspected at least annually to determine compliance with applicable regulations, verify information submitted to EWA in reports and applications, and identify operational changes. Site visits typically include an inspection of process, chemical and waste storage areas and a review of documents such as operations and maintenance logs, employee training records, and hazardous waste manifests. Additional inspections are conducted in response to IU violations and to confirm the correction of deficiencies noted during annual inspections.

Monitoring – EWA performs quarterly sampling of Significant Industrial Users (SIUs) and intermittent monitoring of other permitted IUs to determine compliance with their permit discharge limitations. SIUs are also required to conduct self-monitoring at least twice a year. Additional samples are collected when violations are identified. Samples are analyzed by EWA's laboratory or another ELAP-certified contract lab in accordance with 40 CFR Part 136.

Report Review – Permitted IUs are required to submit various reports such as Baseline Monitoring Reports, semiannual Compliance Status Reports and responses to violation notices. These are carefully reviewed to verify they are: submitted on time; complete; a chain-of-custody form is included; samples collected were the appropriate type; samples were collected during the proper time period; all required constituents were monitored for; samples were analyzed using methods found at 40 CFR Part 136; samples were analyzed within the allowable holding time; sample results are in compliance with permit discharge limitations; and the required certification statements are included and signed by authorized personnel.

IV. Enforcement Mechanisms

The enforcement mechanisms available to EWA are discussed below. The Pretreatment Ordinance provides the legal authority necessary to implement any and all measures required to guarantee User compliance. Any appeal rights and procedures are set forth in EWA's Pretreatment Ordinance.

Notice of Violation - A Notice of Violation (NOV) is a written notice from EWA to the IU that:

1. Describes the violation and the basis for the violation;
2. Cites the Ordinance or permit provision violated;
3. Requires correction of the violation and/or a written explanation of the cause of the violation within a specified time frame, if applicable;
4. Sets forth any enforcement action imposed by EWA; and
5. Informs the User of its right to an administrative hearing on the matter, if applicable.

Monetary Fines - EWA's Source Control Manager may impose monetary penalties in an amount not to exceed \$1,000 per violation per day. EWA's Director of Environmental Compliance may impose monetary penalties in an amount not to exceed \$5,000 per violation per day or \$10 per gallon. In general, the fine is assessed at a level that recovers the economic benefit derived from the acts constituting the violation and is imposed in accordance with the recommendations found in the ERG.

Enforcement Costs - EWA may impose on the User additional enforcement costs incurred as a result of the User's violation. These costs are directly related to the additional EWA staff time, sampling and analysis costs, and other costs incurred by EWA as a result of the violation.

Enforcement Security - EWA may require a User to post a performance bond, letter of credit, cash or other security sufficient to secure the User's compliance.

Noncompliance Sampling – If the results of a User's self-monitoring indicate a violation has occurred, the User must repeat the sampling and pollutant analysis and submit the results to EWA within 30 days of becoming aware of the violation. In response to repeated violations, EWA may increase a User's self-monitoring frequency. EWA may also conduct additional sampling and analysis of a User's discharge to determine whether the corrective actions taken in response to a violation have returned the User to compliance.

Compliance Inspection – EWA may conduct a facility inspection in response to a violation or to confirm that specific actions have been taken to correct noncompliance. The results of the inspection shall be documented in a report. Based on the findings, EWA may resolve the violation or take further enforcement actions.

Compliance Meeting – EWA may require a User to attend a meeting when there is a pattern of noncompliance or a serious violation has occurred. The User shall be notified of the meeting through a NOV, which shall specify the date, time and location of the meeting. At the meeting, the User shall be asked to provide an explanation for the violation(s) and describe the actions taken or planned to prevent recurrence. EWA shall explain the possible enforcement actions that may apply if the noncompliance continues.

Compliance Schedule - EWA may impose a Compliance Schedule (CS), setting forth the actions necessary to comply with the Ordinance or the permit and the deadlines for completing such actions based on best professional judgment. The CS is usually imposed when a User needs to expend capital to construct, acquire or install pretreatment equipment to achieve compliance. The terms and conditions of the CS are intended to be reasonable and are directed towards achieving compliance in the earliest possible time frame.

Cease and Desist Order – EWA may issue a Cease and Desist Order when a User is found: discharging without a permit; discharging unauthorized wastestreams; or discharging wastewater that could cause interference or pass-through or otherwise create an emergency situation. In an emergency, the order to cease and desist may be given by telephone or in person; however, a subsequent written order shall be served on the User, either in person or by certified mail. The Cease and Desist Order will become effective immediately upon receipt and will indicate the steps that must be taken for discharge to resume.

Publication of Violation - EWA may require the User to notify the public and/or other Users in the Encina system of the User's violation, the User's action(s) taken to correct the violation, and any penalties imposed by EWA.

Show Cause Hearing – A Show Cause Hearing is a formal meeting requiring the User to appear, explain its noncompliance, and show cause why severe enforcement actions (e.g. permit suspension, revocation or termination of service) should not be taken. The User shall be notified of the meeting through a NOV, which shall specify the date, time and location of the meeting. EWA shall review the enforcement policies and state the grounds for the proposed enforcement action. The User has the burden of proof to show why permit suspension, revocation or termination of service is inappropriate. After review of the information presented, the Director may proceed with permit suspension, revocation or termination of service. A Show Cause Hearing does not preclude and is not a necessary prerequisite for taking other enforcement actions.

Permit Suspension, Revocation, or Termination of Service - The Director may suspend or revoke a User's permit or physically terminate service whenever the User:

1. Fails to comply with the terms of a NOV or CS;
2. Fails to make timely payments of any amount owed to EWA;

3. Fails to provide reports or other documents required by EWA;
4. Knowingly provides a false statement to EWA;
5. Fails to report a significant change in operations;
6. Refuses access to User's facility upon EWA demand;
7. Discharges any wastewater in violation of its permit or the Ordinance; or
8. Violates any other condition of the permit.

A User may petition the General Manager for a hearing on the suspension, revocation or termination order issued by the Director. The General Manager's decision is subject to appeal to the Board of Directors according to the time frame allotted in the Ordinance.

Emergency Suspension, Revocation, or Termination - The General Manager may take any action to suspend or revoke a User's permit or physically terminate service in the event of an emergency. An emergency occurs when the discharge presents or may present an imminent or substantial endangerment to the health and welfare of the public or the environment. The General Manager determines the effective date of an emergency action. All other enforcement orders pursuant to a hearing are effective on the date received by the User.

Administrative Complaint - In accordance with Government Code Section 54740.5, EWA may issue an Administrative Complaint against any User for cause.

Civil Penalties - In accordance with Government Code section 54740(b), EWA may petition the Superior Court to impose, assess, and recover from any person sums not to exceed \$25,000 a day for each violation of the Ordinance. Civil action is pursued when the User is recalcitrant or unwilling to cooperate. EWA's legal counsel initiates civil action.

Injunction - EWA may petition the superior court for a temporary restraining order, or a temporary or permanent injunction to restrain the User from continuing a discharge that is in violation of its permit, the Pretreatment Ordinance, federal, state or local law.

Referral to Other Regulatory Agencies – For violations that warrant criminal prosecution, EWA may refer the matter to any other agencies including: the San Diego County Hazardous Waste Task Force, the Regional Water Quality Control Board and/or the EPA.

Publication of Significant Noncompliance (SNC) - In accordance with 40 C.F.R. Section 403.8(f)(2)(viii), EWA will publish at least annually a list of Users who within the previous 12 months were in SNC, as defined in 40 C.F.R. Section 403.8(f)(2)(viii)(A)-(H).

V. Responsibilities

An effective enforcement program involves coordination between different staff members. The following list identifies EWA staff and their general areas of responsibility.

Industrial Waste Inspector

- Conducts IU inspections and sampling;
- Reviews IU reports;
- Screens compliance monitoring data;
- Conducts service area surveys;
- Drafts compliance schedules and other enforcement correspondence; and
- Attends compliance meetings.

Source Control Manager

- Reviews reports and correspondence drafted by Industrial Waste Inspectors;
- Recommends appropriate responses to noncompliance;
- Issues NOVs;
- Assesses penalties and enforcement costs for noncompliance;
- Reviews IU responses to enforcement actions;
- Conducts compliance meetings and Show Cause Hearings;
- Tracks enforcement response times;
- Approves compliance sampling schedules;
- Issues Industrial Wastewater Discharge Permits;
- Issues compliance schedules and cease and desist orders;
- Consults with EWA's member agencies regarding significant compliance issues with IUs in their service area;
- Refers criminal matters to the San Diego County Hazardous Waste Task Force, RWQCB and/or EPA; and
- Ensures consistency of the Pretreatment Program.

Director of Environmental Compliance

- Issues permit suspension/revocation/termination of service orders;
- Assesses penalties and enforcement costs for noncompliance;
- Consults with EWA's General Manager regarding significant compliance matters;
- Consults with EWA's General Counsel regarding potential legal action; and
- Acts as Hearing Officer for IU appeals regarding monetary fines greater than \$750 issued by the Source Control Manager and issues an Administrative Enforcement Order within 30 days after the conclusion of the hearing.

General Manager

- Acts as Hearing Officer for IU appeals regarding permits, compliance schedules, monetary fines greater than \$1,000, the suspension or revocation of a discharge permit, or a termination of service order and issues an Administrative Enforcement Order within 30 days after the conclusion of the hearing.

EWA's Board of Directors

- Hears IU appeals regarding the suspension or revocation of a discharge permit, or a termination of service order.

EWA's General Counsel

- Reviews Pretreatment Program documents and provides input regarding potential legal action against IUs as required.

IV. Enforcement Response Guidance

Selecting the Appropriate Response - Enforcement mechanisms are implemented according to a progressive enforcement philosophy. To ensure consistency of enforcement application, and to meet the requirements promulgated by 40 CFR 403.8(f)(5), the EWA has developed the Enforcement Response Guide (ERG) included as Appendix A. The guide describes violations and indicates appropriate enforcement actions based on the nature, duration, and severity of the violation.

The ERG includes recommendations for monetary fines not to exceed a specified amount for each violation scenario. When using the ERG to determine the appropriate enforcement actions for a particular noncompliance event, several factors require consideration. They are:

1. Magnitude and Duration of the Violation – EWA will evaluate the volume and strength of the discharge, and the length of time the violation continued. Violations that meet the EPA definition of SNC (based on more than one sampling event) and those that continue over prolonged periods of time will receive an escalated enforcement response.
2. Good Faith Efforts of the User – If a User, in good faith, attempts to comply with pretreatment requirements, EWA may respond with a lower level of enforcement action. A User can demonstrate good faith by: responding promptly to requests from EWA; consistently complying with permit conditions and reporting requirements; aggressively investigating and correcting violations; and demonstrating a willingness to invest the necessary resources to achieve compliance.
3. Compliance History of the User – When evaluating the level of enforcement action to take, the last twelve months' compliance history will be reviewed. If a pattern of recurring violations for the same parameter is noted, an escalated enforcement action may be warranted. In addition, EWA will also consider the effectiveness of previous enforcement actions taken.

4. Impact of the Violation – Violations that cause interference with treatment plant performance, damage to the treatment plant or collection system, NPDES or WDR permit violations, or harm to human health or the environment shall receive an escalated enforcement response. At a minimum the response shall include the assessment of penalties and enforcement costs to recover any costs incurred by EWA to correct the problem. In some cases, injunctive measures may also be appropriate.

EWA weighs each of the above factors in deciding whether to impose the maximum recommended fine or a less stringent response. Additionally, there may be violations and/or noncompliance scenarios that are not reflected in the ERG. For these instances, the general intent of the ERG should be evaluated and the enforcement response should be implemented consistent with those that would be applied to violations of similar magnitude.

Response Timeframes - To promote consistent application of the ERG, the following guidelines for enforcement are set forth below:

1. All violations should be identified and documented within fifteen (15) working days of receiving compliance information (e.g. lab results, self-monitoring data, inspections, etc.)
2. Initial enforcement mechanisms should occur within thirty (30) working days of violation detection.
3. Follow up actions for recurring violations should be taken within sixty (60) working days of the initial enforcement response.
4. Violations, which threaten health, property or environmental quality are considered emergencies and should receive an immediate response as required.

Appendix A

Enforcement Response Guide

Enforcement Response Guide (ERG)

Type of Noncompliance	Nature of Violation ^{1,2}	Response ³
Exceeding discharge limitation or prohibition	<ul style="list-style-type: none"> - Not harmful <li style="padding-left: 20px;">First occurrence <li style="padding-left: 20px;">Second occurrence <li style="padding-left: 20px;">Three or more 	<ul style="list-style-type: none"> - NOV and costs - NOV, \$250 fine and costs - NOV, \$1,000 fine and costs
	<ul style="list-style-type: none"> - Harmful <li style="padding-left: 20px;">First occurrence <li style="padding-left: 20px;">Second occurrence <li style="padding-left: 20px;">Three or more 	<ul style="list-style-type: none"> - NOV, \$5,000 fine and costs - SRT, JR injunction, \$5,000 fine, costs, PN and PV - ESRT, JR injunction, \$25,000 fine, costs, PN and PV
Slug discharge occurs; reported as required	<ul style="list-style-type: none"> - Not harmful <li style="padding-left: 20px;">First occurrence <li style="padding-left: 20px;">Second occurrence <li style="padding-left: 20px;">Three or more 	<ul style="list-style-type: none"> - NOV and costs - NOV, \$2,000 fine and costs - SRT, JR, \$5,000 fine and costs
	<ul style="list-style-type: none"> - Harmful <li style="padding-left: 20px;">First occurrence <li style="padding-left: 20px;">Second occurrence <li style="padding-left: 20px;">Three or more 	<ul style="list-style-type: none"> - NOV, \$1,000 fine and costs - ESRT, \$5,000 fine, costs, PN and PV - ESRT, JR injunction, \$5,000 fine, costs, PN and PV
Slug discharge occurs; failure to report as required	<ul style="list-style-type: none"> - Not harmful <li style="padding-left: 20px;">First occurrence <li style="padding-left: 20px;">Second occurrence <li style="padding-left: 20px;">Three or more 	<ul style="list-style-type: none"> - NOV, \$1,000 fine and costs - NOV, \$3,000 fine and costs - SRT, \$5,000 fine and costs
	<ul style="list-style-type: none"> - Harmful <li style="padding-left: 20px;">First occurrence <li style="padding-left: 20px;">Second occurrence <li style="padding-left: 20px;">Three or more 	<ul style="list-style-type: none"> - NOV, \$5,000 fine, costs, PN and PV - ESRT, JR injunction, \$5,000 fine, costs, PN and PV - ESRT, JR injunction, \$25,000 fine, costs, PN and PV
Discharge without permit or approval	<ul style="list-style-type: none"> - Not harmful - Harmful 	<ul style="list-style-type: none"> - NOV, \$1,000/day, costs and PN - JR, \$25,000/day, costs, PN and PV
Intentional dilution of wastestreams to meet discharge limitations	<ul style="list-style-type: none"> - Any occurrence 	<ul style="list-style-type: none"> - HEARING, \$25,000 fine, PN, PV and JR criminal
Unauthorized discharge to a manhole or other unpermitted location	<ul style="list-style-type: none"> - Any occurrence 	<ul style="list-style-type: none"> - \$25,000 fine and JR criminal

Enforcement Response Guide (ERG)

Type of Noncompliance	Nature of Violation ^{1, 2}	Response ³
Late report (30 days or less)	<ul style="list-style-type: none"> - First occurrence - Second occurrence - Three or more 	<ul style="list-style-type: none"> - NOV, \$100 fine and costs - NOV, \$500 fine and costs - NOV, \$1000 fine and costs
Late report (more than 30 days)	<ul style="list-style-type: none"> - First occurrence - Second occurrence - Three or more 	<ul style="list-style-type: none"> - NOV, \$250 fine and costs - NOV, \$1000 fine and costs - NOV, \$2,000 fine, costs and SRT
Incomplete report	<ul style="list-style-type: none"> - First occurrence - Second occurrence - Three or more 	<ul style="list-style-type: none"> - NOV and costs - NOV, \$500 fine and costs - NOV, \$1000 fine and costs
Failure to report additional monitoring	<ul style="list-style-type: none"> - First occurrence - Second occurrence - Three or more 	<ul style="list-style-type: none"> - NOV, \$250 fine and costs - NOV, \$1000 fine and costs - NOV, \$2000 fine and costs
Failure to properly report violations or a change in discharge	<ul style="list-style-type: none"> - First occurrence - Second occurrence - Three or more 	<ul style="list-style-type: none"> - NOV, \$100 fine and costs - NOV, \$500 fine and costs - NOV, \$1000 fine and costs
Reporting false information	<ul style="list-style-type: none"> - Any occurrence 	<ul style="list-style-type: none"> - HEARING, \$5,000 fine, costs, PN, PV and JR criminal
Improper sampling/analysis procedures	<ul style="list-style-type: none"> - First occurrence - Second occurrence - Three or more 	<ul style="list-style-type: none"> - NOV and costs - NOV, \$500 fine and costs - NOV, \$1,000 fine and costs
Complete failure to sample, monitor, or analyze after warning	<ul style="list-style-type: none"> - Any occurrence 	<ul style="list-style-type: none"> - NOV, \$1,000 fine, costs and PN
Failure to install sample points or monitoring equipment as required	<ul style="list-style-type: none"> - Any occurrence 	<ul style="list-style-type: none"> - NOV and \$500/day till task complete and approved or permit is revoked
Falsifying, tampering with, or rendering inaccurate any required monitoring device or method	<ul style="list-style-type: none"> - Any occurrence 	<ul style="list-style-type: none"> - HEARING, \$25,000 fine and JR criminal
Missed interim CS date	<ul style="list-style-type: none"> - Valid reason, won't miss other dates: <ul style="list-style-type: none"> Prior notice No notice - Valid reason, will miss other dates: <ul style="list-style-type: none"> Prior notice No notice - No valid reason 	<ul style="list-style-type: none"> - NOV and costs - NOV, \$500 fine and costs - NOV, \$250 fine and costs - NOV, \$1,000 fine and costs - NOV, \$2,000/day for each missed interim date till task complete or permit is revoked, costs and PV
Missed final CS date	<ul style="list-style-type: none"> - Because of Force Majeure - Other than Force Majeure 	<ul style="list-style-type: none"> - HEARING and costs - NOV, \$3,000/day until final compliance schedule task is complete or permit is revoked and costs

Enforcement Response Guide (ERG)

Type of Noncompliance	Nature of Violation ^{1, 2}	Response ³
Failure to develop a TOMP	- Any occurrence	- NOV and \$500/day till complete or permit is revoked
Failure to implement an approved TOMP	- Any occurrence	- NOV and \$1,000/day till complete or permit is revoked
Refusal of reasonable or timely access to premises for inspection or monitoring	- First occurrence - Second occurrence	- NOV, \$1,000 fine and costs - SRT, \$5,000 fine and costs
Failure to implement Best Management Practices	- First occurrence - Second occurrence - Three or more	- NOV and costs - NOV, \$250 fine and costs - NOV, \$500 fine, costs and requirement to obtain Class III Permit
Failure to properly design, operate or maintain pretreatment system	- First occurrence - Second occurrence - Three or more	- NOV and costs - NOV, \$250 fine and costs - NOV, \$500 fine and costs
Inadequate recordkeeping	- First occurrence - Second occurrence - Three or more	- NOV and costs - NOV, \$250 fine and costs - NOV, \$500 fine and costs
Failure to comply with other Permit conditions or Ordinance requirements	- Not harmful - Harmful	- NOV, and fines as indicated - NOV and \$1,000/day and costs

¹ Occurrences in a twelve-month period.

² Harmful means a discharge, alone or in combination with other discharges, that: causes interference or pass-through; endangers the health of POTW personnel or the public; or adversely affect the treatment plant, collection system or the environment.

³ Guidelines for imposing fines. Determined on a case-by-case basis.

Definitions

NOV - Notice of Violation

HEARING - Show Cause Hearing

ESRT - emergency suspension, revocation or termination of service

SRT - suspension, revocation or termination of service after hearing and appeal

Fine - recommended to recover economic benefit

Costs - any/and all costs incurred by the EWA as a result of discharger noncompliance

CS - compliance schedule

PN - public notice in newspaper if it meets criteria of 40 CFR 403.8 (f)(vii)

PV - publication of violation at the User's expense

JR - judicial remedy, civil and/or criminal

TOMP - Toxic Organic Management Plan

Force Majeure - natural disasters or other unforeseen, uncontrollable events