

PRETREATMENT TOOLBOX ENFORCEMENT RVIPA 2023

How to Make Friends in Awkward Situations



QUIDDITY

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Project Engineer

GOALS OF PRETREATMENT ENFORCEMENT

- Goal is return to compliance
- Compliance is achieved through cooperation between the Control Authority and Industrial User
- Consistent and fair responses to violations fosters cooperation.



TO BE COVERED



- 40 CFR 403 Requirements
- Legal Authority (Waste Order)
 - POTW Responsibilities
 - SIU Responsibilities
- Available Noncompliance Responses
- Enforcement Response Plan and Guide

LEGAL AUTHORITY



40 CFR 403.8(f) - The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307 (b) and (c), and 402(b)(8) of the Act. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements



40 CFR 403.8(f)(vi) - Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement.

LEGAL AUTHORITY



The “Legal Authority” (Industrial Waste Order); Provides the POTW the authority to conduct

- Compliance Monitoring
- Inspections
- Sampling
- Permitting
- Enforcement activities


Actions taken by the POTW must be in the Industrial Waste Order or other “Legal Authority”



LEGAL AUTHORITY



- The “Legal Authority” (Industrial Waste Order) Establishes Industrial User Requirements
 - General Use Requirement
 - Prohibited Discharges
 - National Categorical Pretreatment Standards
 - Local Limit
 - Pretreatment
 - Reporting Requirements
- Specific Industrial User Requirements are placed in a Permit


FORT BEND COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 2
INDUSTRIAL USER SELF-MONITORING FORM

Name: _____
 Address: _____
 Attention: _____
 Permit No: _____ Monitoring period: 01-01-14 to 01-01-14
 Monitoring point: 20-13 to 20-13

RECEIVED
JUN 23 2023
By: Y. Chiu, JP

Parameter	Sample Measurement	Minimum	Average	Maximum	Units	No. of Violations	Sample type	Sample Frequency
Days of Process Discharge	Sample Measurement: -- -- 31					0	grab	1 day
	Permit Requirement: -- -- 31							
Process Flow	Sample Measurement: -- 2540 12000				gpm/day	0	meter	1 day
	Permit Requirement: -- -- --				gpm/day	0	meter	1 day
pH	Sample Measurement: 6.84 -- 7.3				std. Units	0	grab	1 month
	Permit Requirement: 5.0 min -- 10.0 max				std. Units	0	grab	1 month
BOD	Sample Measurement: -- 48.27 71.22				mg/L	0	composite	1 month
	Permit Requirement: -- 75 75				mg/L	0	composite	1 month
TSS	Sample Measurement: -- 3.62 7.08				mg/L	0	composite	1 month
	Permit Requirement: -- 15 15				mg/L	0	composite	1 month
NO3-N	Sample Measurement: -- 0.33 1.28				mg/L	0	composite	1 month
	Permit Requirement: -- 4.0 4.0				mg/L	0	composite	1 month
Oil & Grease	Sample Measurement: -- 24.63 49.7				mg/L	0	grab	1 month
	Permit Requirement: -- 200 200				mg/L	0	grab	1 month
	Sample Measurement:							
	Permit Requirement:							
	Sample Measurement:							
	Permit Requirement:							
	Sample Measurement:							
	Permit Requirement:							
	Sample Measurement:							
	Permit Requirement:							

Comments: conducted BOD values

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature of Industrial User: Dennis Vanc Signature of District Employee: Dennis Vanc Telephone number: 713-988-2100 Date: 23-06-2023

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COMPLIANCE IS DETERMINED THROUGH



- Inspections
- POTW Monitoring
- SIU Monitoring and Self-Reporting



RESPONSES AVAILABLE

- Informal notice (phone call or email)
- Notice of violation
- Administrative penalties
- Administrative order
- Civil suit for injunctive relief and/or civil penalty
- Criminal suit



ADMINISTRATIVE ORDER

A-09-19
April 10, 2019

SUBJECT: RELOCATION OF DRY CHEMICAL/FOAM APPARATUS 6-2-5

I. PURPOSE

This Order:

- A. Relocates Dry Chemical/Foam Apparatus 6-2-5.
- B. Becomes effective immediately.

II. PROCEDURE

Effective immediately, Dry Chemical/Foam Apparatus 6-2-5 will be relocated from Engine 16's quarters located at 53 E. Pershing Road to Engine 46's quarters located at 3027 E. 93rd Street.

III. RESPONSE

The response of Dry Chemical/Foam Apparatus 6-2-5 shall be at the request of the Incident Commander.

BY ORDER OF:

Richard C. Ford II
Fire Commissioner

**TO BE READ AT FOUR (4) ROLL CALLS AND POSTED
Distribution: A**



PHONE CALL OR EMAIL

FORT BEND COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 2
INDUSTRIAL USER SELF-MONITORING FORM

Name: _____
Address: _____
Attention: _____

Permit No: _____
Monitoring point: _____
Rev. 9/1/2022

RECEIVED
JUN 23 2023
BY: REVISION VP

Monitoring period: 01-May 2023 to 31-May 2023

Parameter	Sample Measurement	Minimum	Average	Maximum	Units	No. of violations	Sample type	Sample frequency
Days of Process Discharge	Sample Measurement	--	--	31	days	--	--	--
	Permit Requirement	--	--	--	days	--	--	--
Process Flow	Sample Measurement	--	2548	12000	gallons/day	--	meter	1/day
	Permit Requirement	--	--	--	gallons/day	--	totalizer	once/day
pH	Sample Measurement	6.84	--	7.3	std. Units	0	grab	4/month
	Permit Requirement	5.0 min	--	10.0 max	std. Units	--	grab	1/month
BOD	Sample Measurement	--	46.27	71.22	lb/day	0	composite	4/month
	Permit Requirement	--	75	75	lb/day	--	composite	1/month
TSS	Sample Measurement	--	3.62	7.08	lb/day	0	composite	4/month
	Permit Requirement	--	15	15	lb/day	--	composite	1/month
NH3-N	Sample Measurement	--	0.33	1.29	lb/day	0	composite	4/month
	Permit Requirement	--	4.0	4.0	lb/day	--	composite	1/month
Oil & Grease	Sample Measurement	--	24.93	49.7	mg/l	0	grab	4/month
	Permit Requirement	--	200	200	mg/l	--	grab	1/month
	Sample Measurement							
	Permit Requirement							
	Sample Measurement							
	Permit Requirement							
	Sample Measurement							
	Permit Requirement							
	Sample Measurement							
	Permit Requirement							
	Sample Measurement							
	Permit Requirement							

Comments:
CORRECTED BOD VALVES

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

<i>Dennis Yang</i> Signature of Principal Executive Officer or Authorized Agent	<i>Dennis Yang</i> Printed Name of Principal Executive Officer or Authorized Agent	713-908-2700 Telephone Number	23-06-2023 Date
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Page 1 of 1

- Used for minor violations
 - Reporting violation
 - Minor violations noticed during inspection
- Email is preferred since it includes documentation

PHONE CALL OR EMAIL



- Always include a deadline in email.
- For paperwork violations, a short deadline is appropriate because the error can be fixed right away. Remember that new signature is needed.
- Keep a copy of the email to prove that you notified the IU of the error and gave the IU additional time to comply

NOTICE OF VIOLATION (NOV)



Appropriate for

- Discharge limit violations
- 24-hour reporting violations
- Unresolved paperwork violations
- Serious violations noted during inspection



NOTICE OF VIOLATION (NOV)



Outline of NOV

Legal basis – inform the IU of the requirement that is not being met

- Permit limit or requirement
- Industrial Waste Order requirement
- Administrative Order requirement
- 40 CFR 403

A sample permit document from the New York State Department of Health. The document is titled "PERMIT To Operate a Restaurant" and is issued to "JOHN DOE, INC." for the operation of "JOHN DOE'S RESTAURANT" at "1234 JOHN DOE LANE" in the "CITY of OLEAN in CATTARAUGUS County". The permit is granted in compliance with the provisions of Subpart 14-1 of the State Sanitary Code and under the following conditions: (1) This permit is granted subject to any and all applicable State, Local and Municipal Laws, Ordinances, Codes, Rules and Regulations. THIS INCLUDES, BUT IS NOT LIMITED TO, COMPLIANCE WITH THE NYS CLEAN INDOOR AIR ACT. The permit is effective from January 01, 2015, to December 31, 2015, and is non-transferable. It is signed by Kevin D. Watkins, M.D., M.P.H., the Permit Issuing Official. The document also includes the facility code "SAMPLE", permit number "SAMPLE", and operation ID "780371". The document is framed by a blue border and features the official seal of the New York State Department of Health in the background.

PERMIT
To Operate a
Restaurant
This is to certify that
JOHN DOE, INC.
the operator of
JOHN DOE'S RESTAURANT
at
1234 JOHN DOE LANE
Located in the **CITY of OLEAN** in **CATTARAUGUS** County
is granted permission to operate said establishment in compliance with the provisions
of **Subpart 14-1 of the State Sanitary Code** and
under the following conditions:
(1) This permit is granted subject to any and all applicable State, Local and Municipal Laws,
Ordinances, Codes, Rules and Regulations.
THIS INCLUDES, BUT IS NOT LIMITED TO, COMPLIANCE WITH THE NYS CLEAN INDOOR AIR ACT.

Effective Date **January 01, 2015**
Permit is **NON-TRANSFERABLE** Kevin D Watkins M.D., M.P.H.
Permit Issuing Official
This permit expires on **December 31, 2015** and may be revoked or suspended for cause.
THIS PERMIT SHOULD BE POSTED CONSPICUOUSLY
Facility Code **SAMPLE** Permit Number **SAMPLE** Operation ID **780371**

NOTICE OF VIOLATION (NOV)



Outline of NOV

Explanation of violation

- Might be a simple table
 - Date of sample
 - Parameter violated
 - Reported value
 - Permit Limit
- Might be a narrative



NOTICE OF VIOLATION (NOV)



Outline of NOV

SIU Response

- Cause of violation
- Action to eliminate and prevent recurrence
- Resampling



ADMINISTRATIVE FINES

- Flat Rate regardless of nature of violation
- Flat Rate with Escalation for Recurring Violations
 - (clearly define “recurring violation”)
- Fine Calculated Using Matrix
 - points for magnitude of violation
 - potential impact on POTW
 - culpability
 - frequency



ADMINISTRATIVE FINES

- Fine in Addition to Cost Recovery
- Fine Based on Economic Benefit of Noncompliance
 - deliberate noncompliance
 - see the Guidance Manual for Calculation of Economic Benefit of Noncompliance with Pretreatment Standards (1989).



ADMINISTRATIVE ORDERS



To undertake or to cease specified activities

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



CONSENT ORDER



An agreement between the Control Authority and the industrial user normally containing three elements:

1. Compliance schedules
2. Stipulated fines or remedial actions
3. Signatures of Control Authority and industrial representatives.



CONSENT ORDER



Advantages of the Consent Order

- Easiest order to draft
- Preserves constructive Control Authority/industrial user relationships.
- Fosters cooperation
- May also be the fastest means to attain compliance.



CONSENT ORDER



Disadvantages of the Consent Order

- Final terms may compromise the Control Authority's desire for stringent enforcement.
- The Control Authority may delay implementing additional enforcement measures while negotiating terms of the consent order.



SHOW CAUSE ORDERS

- Directs the user to appear before the Control Authority to explain noncompliance and show cause why enforcement actions should not go forward.
- The hearing officer or review board determines whether further action is warranted and if so, its nature and extent.



SHOW CAUSE ORDERS

Advantages of the Show Cause Order

- Places the burden of proof on the user
- Promotes communication



SHOW CAUSE ORDERS

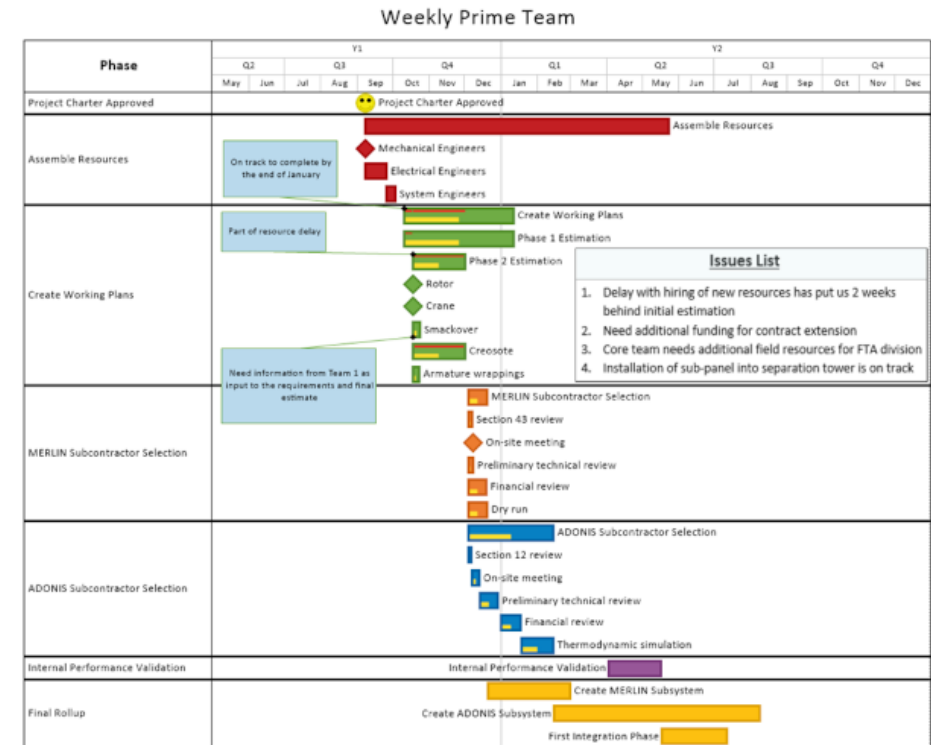
Disadvantages of the Show Cause Order

- Involves a greater amount of time and a greater expenditure of resources



COMPLIANCE ORDERS

- Directs the user to achieve or restore compliance by a date specified in the order.
- Issued unilaterally
- Suitable when noncompliance cannot be resolved without construction, repair, or process changes.
- States required actions to be accomplished by specific dates.



COMPLIANCE ORDERS

Advantages

- Effective means of ensuring necessary corrections are implemented according to a schedule

Disadvantages

- The compliance schedule designed by the Control Authority may not be feasible.
- Considerable time and effort may be required to enforce milestone dates



CEASE & DESIST ORDER



- Order to cease illegal or authorized discharges immediately
- Used in emergency situation
 - Interference
 - Pass through
 - Damage to POTW or public health
- May be given by telephone with a subsequent written order
- If the user fails to comply with the order the Control Authority may take independent action

CEASE & DESIST ORDER



Advantages

- Immediate halting the noncompliance and removing any threat to the POTW or receiving stream.

Disadvantages

- Damages municipal/industrial relationships
- Forces an industry to halt production before being given an opportunity to solve the problem

CIVIL LITIGATION



Appropriate enforcement response following situations:

- Emergency situations where injunctive relief is necessary to halt or prevent discharges
- To impose civil penalties and recover losses incurred due to the noncompliance.

CIVIL LITIGATION



Consent Decrees

Court supervised agreements between the Control Authority and the industrial user

Injunctions

Court orders which direct parties to do something or refrain from doing something.

CRIMINAL PROSECUTION



The formal process of charging individuals and/or organizations with violations of ordinance provisions that are punishable, upon conviction, by fines and/or imprisonment.

Appropriate when

- Evidence shows criminal intent
- Cases involve repeated violations
- Aggravated violations (such as discharges which endanger the health of treatment plant employees)



SUPPLEMENTAL ENFORCEMENT RESPONSES



- Public Notices
- Performance Bond / Liability Insurance
- Contractor Listing Program



SUPPLEMENTAL ENFORCEMENT RESPONSES



- Increased Monitoring and Reporting
- Short Term Permits
- Case Referral to Approval Authority



ENFORCEMENT RESPONSE PLAN & GUIDE

The guide identifies **types of responses** that are appropriate, which is based on:

- Nature of the violation
- Duration of the violation
- Frequency of the violation (isolated or recurring)
- Potential impact of the violation
- Attitude of the violator

ENFORCEMENT RESPONSE PLAN & GUIDE



The guide should reflect the following concepts:

- Notify the industrial user when a violation is found.
- If the industrial user repeats the analysis for an effluent violation, and no further noncompliance is identified, no further Control Authority response may be necessary.
- For most violations, the Control Authority should receive an explanation and a plan to correct the violation

ENFORCEMENT RESPONSE PLAN & GUIDE



The guide should reflect the following concepts:

- If the violations persist become more formal
- The enforcement response selected should be related to the seriousness of the violation
- Enforcement response should be escalated if compliance is not achieved expeditiously
- A serious initial violation may require a formal enforcement action.

ENFORCEMENT RESPONSE PLAN & GUIDE



Establishes Responsibilities of Control Authority Personnel

- Inspector / Field Personnel / Administrative Assistant
- Pretreatment Coordinator
- POTW Director / Superintendent
- Control Authority Attorney

ENFORCEMENT RESPONSE PLAN & GUIDE



Timing

- Control Authority response and SIU action
- Control Action respond quickly
- Deadline for SIU action should consider action to be taken
- Be flexible if SIU is cooperative

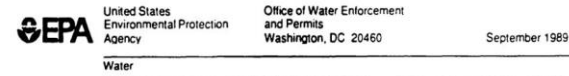
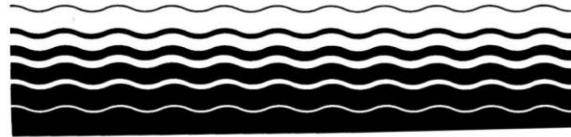
ENFORCEMENT RESPONSE PLAN & GUIDE



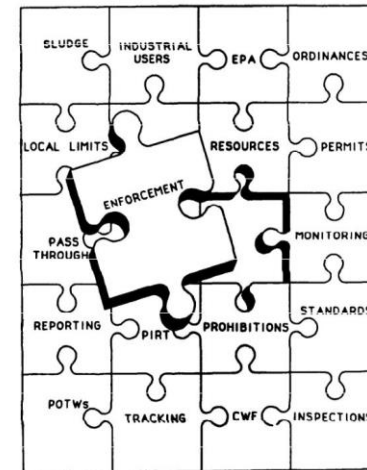
Benefits of an enforcement response guide

- Promotes consistent and timely use of enforcement remedies
- Eliminates uncertainty and confusion concerning enforcement
- Lessens the likelihood of a successful legal challenge based on charges of “selective enforcement” or harassment.

RESOURCES



Guidance for Developing Control Authority Enforcement Response Plans



Printed on Recycled Paper

Pretreatment Compliance Monitoring and Enforcement Guidance
(EPA, July 1986)

Guidance for Developing Control Authority Enforcement Response Plans (EPA, September 1989)



You can attract for flies with honey than vinegar.

You don't have to make friends with everyone,
but at least you can **be friendly**.



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