



Standard Operating Procedure – ESCCA – 0005.446 Name : CPFUA Enforcement Response Plan	Corresponding Requirements: ISO Standard: 4.4.6
Prepared By: William Roy, Environmental Compliance Manager	Revision #: 2 Revision Date: 05/23/16
Approved By: Beth Eckert, EMD Director	Effective Date: 12/13/2013
Signature: 	Page 1 of 14

Cape Fear Public Utility Authority (CFPUA) Enforcement Response Plan

1.0 Purpose

- 1.1 Federal and State pretreatment regulations, as well as Part IV (D) (9) of CFPUA's NPDES permits requires CFPUA to take timely and effective enforcement actions against industrial users (IUs) for failing to comply with pretreatment standards and requirements. Federal and State regulations also require each Publicly Owned Treatment Works (POTW), with an approved pretreatment program, to develop and implement an Enforcement Response Plan (ERP). By regulation, this plan must:
 - 1.1.1 Describe how the POTW will investigate instances of noncompliance.
 - 1.1.2 Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of violations and the time periods within which responses will take place.
 - 1.1.3 Identify the official(s) responsible for each type of response.
 - 1.1.4 Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards as detailed in 40 CFR 403.8 (f) (1) and (f) (2).
- 1.2 The purpose of CFPUA's Enforcement Response Plan is to protect the wastewater treatment plant, the collection system and the receiving waters. The plan: 1) ensures compliance with Federal and State regulations, 2) ensures that there is timely enforcement of pretreatment standards and requirements and 3) ensures that all industries are treated in a fair and equitable manner.
- 1.3 Violations of CFPUA's regulations will be assessed points based upon their severity and number of occurrences as described in the Enforcement Response Guide. Point assessments will be managed in accordance with the Point Assessment Criteria. The Enforcement Response Timetable provides maximum time frames for initiation of enforcement actions by CFPUA.

2.0 Associated Equipment

2.1 N/A

3.0 Associated Reference Material

- 3.1 NPDES permits NC0023965 and NC0023973.
- 3.2 Appendix D of the CFPUA Utility Regulations and Ordinance.
- 3.3 Civil Penalty Assessment Form ESCCA-0005.446B
- 3.4 Federal Water Pollution Control Act (also known as the Clean Water Act).

CONTROLLED DOCUMENT DISTRIBUTION PER DOCUMENT CONTROL MATRIX

3.5 40 CFR Part 403.

3.6 North Carolina Administrative Code Chapter 15A, Subchapter 2H, Section .0900.

4.0 Enforcement Actions Available to CFPUA

4.1 Section 8 of CFPUA's Sewer Use Ordinance (SUO) gives the Executive Director the authority to take a wide range of enforcement actions. Each of these actions has degrees of punitiveness. The ERP utilizes all of the enforcement tools available to the Executive Director that outlines escalating enforcement actions dependent upon the nature of the violation and the cooperativeness, or recalcitrance, of the violator. The following is a list of remedies authorized by the SUO as well as a Notice of Deficiency listed in the ERP. It is presented in order of punitiveness with the least punitive first.

- 4.1.1 Notice of Deficiency {Sec.8.1 (a)}. Issued for minor violations (i) resulting in no harm to the environment or public health, (ii) are of minor duration and gravity, (iii) are not committed willfully or intentionally, and (iv) often represent the first offense committed by the violator. A Notice of Deficiency may be issued in the form of a written letter or an email.
- 4.1.2 Notice of Violation {Sec. 8.1 (b)}. Whenever the Executive Director or designee finds that any user has violated or is violating the SUO, wastewater permit, or any prohibition, limitation or requirements contained therein or any other pretreatment requirement, the Executive Director or designee may serve upon such a person a written notice stating the nature of the violation. Within 30 days from the date of this notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to CFPUA by the user. Submission does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.
- 4.1.3 Consent Order {Sec. 8.1 (c)}. The Executive Director or designee is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to section 8.1(d), below.
- 4.1.4 Show Cause Order/ Hearing {Sec. 8.1 (d)}. The Executive Director or designee may order any user who causes or is responsible for an unauthorized discharge, has violated this ordinance or is in noncompliance with a wastewater discharge permit to "show cause" why a proposed enforcement action should not be taken. In the event the Executive Director or designee

determines that a show cause order should be issued, a notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation. The Executive Director or designee shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate. A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under section 8.2 nor is any action or inaction taken by the Executive Director or designee under this section subject to an administrative appeal.

- 4.1.5 Administrative Order {Sec. 8.1 (e)}. When the Executive Director or designee finds that an industrial user has violated or continues to violate this ordinance, permits or orders issued, or any other pretreatment requirement the Executive Director or designee may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:
- 4.1.5.1 Immediately comply with all requirements;
 - 4.1.5.2 Comply in accordance with a compliance time schedule set forth in the order;
 - 4.1.5.3 Take appropriate remedial or preventive action in the event of a continuing or threatened violation;
 - 4.1.5.4 Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.
- 4.1.6 Emergency Suspension {Sec. 8.1 (f)}. The Executive Director or designee may suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the POTW or causes the POTW to violate any condition of its NPDES or Non-discharge permit. Any user notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the Executive Director or designee shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The Executive Director or

designee shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Executive Director or designee prior to the date of the above-described hearing.

4.1.7 Termination of Service (Permanent) {Sec. 8.1 (g)}. The Executive Director or designee may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:

4.1.7.1 Failure to accurately report the wastewater constituents and characteristics of his discharge;

4.1.7.2 Failure to report significant changes in operations, or wastewater constituents and characteristics;

4.1.7.3 Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or,

4.1.7.4 Violation of conditions of the permit or permission to discharge, conditions of this ordinance, or any applicable State and Federal regulations.

Noncompliant users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under section [8.1] of this ordinance why the proposed action should not be taken.

4.2 In addition to the enforcement actions listed above, the SUO authorizes the Executive Director or designee to assess civil penalties of up to \$25,000.00 per day per violation. Civil penalties are normally used in conjunction with one of the seven actions listed above.

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

4.4 Adjudicatory hearing procedures regarding permit decisions, civil penalties, and administrative orders may be found in Section 10 of the Sewer Use Ordinance.

5.0 Noncompliance Determinations

5.1 The Environmental Compliance Staff will generally investigate compliance by but not limited to:

5.1.1 On-site inspections including scheduled and unscheduled visits.

5.1.2 Review of the dischargers self-monitoring data.

5.1.3 Review of monitoring data collected by CFPUA.

5.1.4 Inspections of potential violations as reported.

6.0 Unpermitted Discharges

6.1 Unpermitted discharges can result from several activities.

6.1.1.1 A user fails to obtain a permit prior to discharging to the wastewater treatment plant.

6.1.1.2 A user discharges to a point in the collection system not identified in their permit.

6.1.1.3 A user discharges a pollutant that was previously identified as absent by the user.

6.1.1.4 A user continues to discharge when its permit has expired.

6.2 Unpermitted discharges may be discovered during an inspection. A CFPUA Environmental Compliance Officer will be responsible for determining the severity of the violation during the inspection. The severity will normally depend on whether the unpermitted discharge 1) poses an immediate threat to the POTW or the environment and 2) whether the user was unaware of the requirements and/or was seeking to avoid the regulations.

7.0 Permit Noncompliance

7.1 Noncompliance with a pretreatment permit falls into the following areas:

7.1.1 Permit Limit Noncompliance

7.1.1.1 Permit limit violations are when limits listed in the permit are exceeded. The severity of the violation depends on whether it is considered Significant Noncompliance (SNC) as defined in North Carolina's General Pretreatment Regulations {15A NCAC 2H.0903 (b)(34)}. It is the Senior Environmental Compliance Officer's responsibility, with the Environmental Compliance Manager's oversight, to evaluate compliance with permit conditions each time data is received and at the end of each semi-annual reporting period.

7.1.2 Self-Monitoring Noncompliance

7.1.2.1 Noncompliance with monitoring occurs when a user fails to conduct all of the self-monitoring required in its pretreatment permit. The severity of the violation depends on the amount of self-monitoring actually completed.

7.1.2.2 Each time a self-monitoring report is received from a permitted user, it is the responsibility of the Senior Environmental Compliance Officer, with the Environmental Compliance Manager's oversight, to compare the report to the permit requirements and to evaluate compliance with monitoring requirements.

7.1.3 Reporting Violations

7.1.3.1 Reporting violations occur when a permitted user fails to provide information that is required in the permit within the time period stated in the permit or when the information is incomplete or false. Reports required by the permit include self-monitoring reports, spill prevention plans, baseline monitoring reports, ninety-day compliance reports, and sludge handling plans. In the case of late or incomplete reports, the severity of the violation depends on the length of time the report is late. If a complete report from a SIU is not submitted within 45 days of the due date, the violation is considered SNC. Knowingly submitting false information is considered a significant violation.

7.1.3.2 It is the Senior Environmental Compliance Officer's responsibility, with oversight from the Environmental Compliance Manager, to track the report due dates included in the pretreatment permits and to evaluate compliance in terms of the tardiness and completeness of the submission.

7.1.4 Violations of other Permit Conditions

7.1.4.1 The pretreatment permits issued by CFPUA contain several conditions that do not fall into the category of limits, monitoring or reporting requirements. For example, the pretreatment permit prohibits slug loads and requires the permitted user to properly operate its pretreatment facility. Violations of these conditions would normally be discovered as part of an inspection or in conjunction with another enforcement action. The Senior Environmental Compliance Officer, with oversight from the Environmental Compliance Manager, is responsible for evaluating compliance with these requirements.

7.1.4.2 It is the Environmental Compliance Manager's responsibility to track compliance and to assess penalties. The Environmental Compliance Manager will determine whether violations are so severe as to warrant escalated enforcement.

7.1.5 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 CFPUA, shall be considered a violation.

8.0 Response to Noncompliance

8.1 Appendix A will be used to ensure that CFPUA is taking timely, consistent, effective and escalating enforcement actions.

Name – Number: CPFUA Enforcement Response Plan –
ESCCA – 0005.446

Revision #: 2
Revision Date: 05/23/16
Effective Date: 12/13/2013

Page 7 of 14

8.2 Notices of Violations and civil penalties up to \$1,000.00 are delegated to the Environmental Compliance Manager. Issuance of civil penalties over \$1,000.00 is delegated to the Environmental Management Director.

9.0 Deviations from this procedure must be documented by completing a Corrective / Preventative Action Form EMS-0005.453A

10.0 Revision History:

Revision		C/PAR #	Reason for Revision	Description of Revision
Date	#			
3/18/15	1	N/A	Approval signature was incorrect	Changed approval
04-29-16 whr	2	571	To correct invalid references.	Corrected invalid references and revised some of the enforcement responses.

APPENDIX A

ENFORCEMENT RESPONSE GUIDE

POINT ASSESSMENT CRITERIA

For the purpose of managing point assessments, the following shall apply:

- A. Points for IU civil penalty assessments shall be accumulated on a 180-day (semi-annual) basis: January 1 - June 30 and July 1 - December 31. Civil penalties shall be assessed based on points accumulated during a semi-annual period.
- B. Civil penalties for Food Service Establishments and noncompliant users will be assessed as the violations are discovered and points are assigned.
- C. Point assessments shall be determined by the Environmental Compliance Manager, Environmental Management Director or designee.
- D. When the total number of points equals or exceed 12 points during the semi-annual period, the Environmental Management Director or their designee shall determine appropriate enforcement actions that may include assessment of fines, revocation of the permit, and/or termination of service.
- E. Enforcement and damage related costs may be assessed in addition to penalties and fines.
- F. When a permit is modified to reflect a change in ownership, all accumulated points are automatically transferred to the new owner.
- G. Deficiencies or violations occurring as a result of circumstances beyond the Permittee's reasonable control as determined by CFPUA will not be assessed points.
- H. Significant Non Compliance shall be as defined in Appendix D of the CFPUA Utility Regulations and Ordinance, CFR Part 403 (f) (2) (vii) and the North Carolina Administrative Code Chapter 15A, Subchapter 2H, Section .0900.

- I. The term “days” or “day” shall be defined as the “due date” and shall be a business day. If the “due date” falls on a weekend or a CFPUA recognized holiday, the next business day becomes the legal “due date”.
- J. The term “report” shall be defined as any required submission as specified in Appendix D of the CFPUA Utility Regulations and Ordinance.

ENFORCEMENT RESPONSE

Administrative Violations

Enforcement Response

<u>1</u>	Late submittal of required reports/records as listed in permit	1 st occurrence	NOD
	Each occurrence thereafter within 180 day window	2 nd occurrence	1 pt. & NOV
		4 pts. & NOV	
<u>2</u>	SIU failure to provide, within 45 days after the due date, required reports/records such as baseline monitoring reports, 90-day compliance reports, self-monitoring reports and reports on compliance with compliance schedules	3 pts., NOV & SNC	
<u>3</u>	Failure to submit complete report	1 st occurrence	NOD
	Each occurrence thereafter within 180 day window	2 nd occurrence	1 pt. & NOV
		2 pts. & NOV	
<u>4</u>	Failure to report spill or new/changed discharge		
	No harm or evidence of intent	1 st occurrence	NOD
		2 nd occurrence	2 pts. & NOV
	Each occurrence thereafter within 180 day window	5 pts. & NOV	
	Results in harm, no evidence of intent	3 pts. & NOV	
	Evidence of intent (with or without harm)	5 pts. & NOV	
<u>5</u>	Intentional falsification of required report/records	10 pts., NOV & SNC	
<u>6</u>	Inadequate record keeping		
	Isolated records are missing	NOD	
	Failure to provide requested records within required timeframe	NOV	
	Failure to maintain required records	4 pts. & NOV	
<u>7</u>	Late submittal of compliance schedule and/or required milestone updates		
	Less than or equal to 45 days from due date	2 pt. & NOV	
	More than 45 days from due date	4 pts., NOV & SNC	
<u>8</u>	Failure to meet compliance schedule milestone		
	SIUs & IUs Not within 90 days of deadline	8 pts., NOV & SNC	
	FSEs	3 pts. & NOV	
<u>9</u>	Late response to NOV or other official notification	2 pt. & NOV	
	Late response – second and each occurrence thereafter within 180 day window	4 pts. & NOV	
<u>10</u>	Failure to report a permit violation within 24 hours of becoming aware of it		
	No harm	3 pts. & NOV	
	Harm	5 pts. & NOV	
<u>11</u>	Failure to apply for permit	NOD	
	Failure to apply for permit after notice	2 pts. & NOV	
	Failure to apply for permit or permit modification after receiving NOV	6 pts. & NOV	
<u>12</u>	Failure to submit permit renewal request within required timeframe	4 pts. & NOV	

Technical Violations

Enforcement Response

1	Failure to correct deficiency within timeframe as required, SIU only.	4 pts. & NOV
2	Failure to sample or analyze/reanalyze/measure required parameters by the proper test method per sampling frequency; IUs will not be penalized for both not sampling and not analyzing for the same parameter.	
	First Occurrence	2 pts. & NOV
	Second and each occurrence thereafter	3 pts. & NOV
3	Failure to install or properly maintain sampling point, monitoring and/or metering equipment	
	Isolated occurrence; due diligence to repair	NOD
	Second and each occurrence thereafter within 180 day window	3 pts. & NOV
4	Food Service Establishment failure to maintain pretreatment equipment	NOD
	Food Service Establishment failure to maintain pretreatment equipment after NOD	NOV
	Food Service Establishment failure to maintain pretreatment equipment after NOV	4 pts., NOV & Civil Penalty
	Food Service Establishment failure to maintain pretreatment equipment after Civil Penalty	7 pts., NOV & Civil Penalty
	Food Service Establishment failure to maintain pretreatment equipment after second Civil Penalty	Revoke Permit/Suspend Service
5	Entry denial, limited access and/or refusal to present records	
	Without notification; no impact	2 pts. & NOV
	Without notification; with impact	4 pts. & NOV
	With notification	8 pts., & NOV
6	Failure to mitigate noncompliance or halt production	
	No harm caused	4 pts. & NOV
	Harm caused	8 pts. & NOV
7	Illegal discharge	
	No harm caused; no intent; 1 st occurrence	NOD
	No harm caused; no intent; 2 nd occurrence	1 pt. & NOV
	No harm caused; each occurrence thereafter	2 pts. & NOV
	Harm caused; no intent	4 pts. & NOV
	No harm caused; evidence of intent	6 pts. & NOV
	Harm caused; evidence of intent	8 pts. & NOV
8	Failure to follow special conditions section of Permit	
	First occurrence	2 pt. & NOV
	After NOV	4 pts. & NOV
9	For each permit monitoring limit exceeded per monitoring month; the terms "Chronic" and "Technical Review Criteria" (TRC) are defined in the CFPUA's Sewer Use Ordinance	
	Non-TRC Isolated; no harm caused	2 pts. & NOV

Non-TRC Isolated; harm caused	8 pts. & NOV
Non-TRC Chronic	5 pts. & NOV
TRC; isolated; no harm caused	3 pts. & NOV
TRC; isolated; harm caused	8 pts. & NOV
TRC; chronic	5 pts. & NOV

Any permit violation not specified above is subject to the Environmental Management Director's or Environmental Compliance Manager's discretion for point assessment.

ENFORCEMENT RESPONSE TIMETABLE

Enforcement Response

Timetable *

NOTICE OF DEFICIENCY	14 DAYS
NOTICE OF VIOLATION	14 DAYS
SHOW CAUSE NOTICE	30 DAYS
COMPLIANCE SCHEDULE	30 DAYS
CIVIL PENALTY	60 DAYS
REVOKE PERMIT/SUSPEND SERVICE	60 DAYS

* Indicates the maximum amount of time in which CFPUA shall have to initiate enforcement action after detection or knowledge of the deficiencies or violation(s). Violation(s) or deficiencies that endanger health, property or the environment are considered emergencies and shall receive immediate attention.

Notice of Violation letters will include a summary of point(s) assessed.

CIVIL PENALTY SCHEDULE

The following is a civil penalty schedule CFPUA will follow when judging compliance for IUs, FSEs and/or other noncompliant users. Civil penalty assessments will begin once 4 points have accrued. The Civil Penalty Assessment Form ESCCA-00005.446B will be used to calculate and document the Civil Penalty monetary amount. Penalties will be assessed within the proposed ranges, taking into account the particular circumstances of each violation and the timeliness of the actions to achieve compliance in accordance with Section 8.2 (b) of Appendix D of the CFPUA Utility Regulations and Ordinance.

<u>Points</u>	<u>Civil Penalty Monetary Range</u>
4	\$100 - 1,000
5	\$100 - 1,500
6	\$100 - 2,000
7	\$100 - 2,500
8	\$500 - 4,000
9	\$500 - 6,000
10	\$500 - 8,000
11	\$1,000 – 10,000
12	\$2,000 – 12,000
13	\$2,500 – 13,000
14	\$2,500 – 14,000
15	\$2,500 – 15,000

16	\$2,500 – 16,000
17	\$3,000 – 17,000
18	\$3,000 – 18,000
19	\$3,000 – 19,000
20	\$3,000 – 20,000
>20	\$3,500 up to \$25,000/day/violation as determined by the Executive Director or designee

The Executive Director or designee may require a "Show Cause Hearing" if deemed necessary.