

HRSD



Pretreatment & Pollution Prevention

ENFORCEMENT RESPONSE PLAN

Effective July 1, 1992

Revised July 1, 2010

PREAMBLE

This Enforcement Response Plan (ERP) was developed in accordance with Section 501 of HRSD's Industrial Wastewater Discharge Regulations, requirements of HRSD's VPDES Permits (9 VAC 25-31-800 F 5), and with requirements of the Clean Water Act (40 CFR Part 403.8)(f)(5). The Plan outlines enforcement mechanisms for violations of HRSD's Industrial Wastewater Discharge Regulations. It is based on the Virginia Water Control Board's Compliance Auditing System (CAS) which is used for enforcement of Virginia Water Control law and the VPDES Permit system.

Violations of HRSD's Regulations will be assessed points in accordance with their severity and number as described in the Enforcement Response Guide (pages 4-7). Enforcement Point assessments will be managed in accordance with the Enforcement Point Assessment Criteria (page 3). The Enforcement Response Timetable (page 2) is an indication of maximum time frames for initiation of enforcement actions by HRSD. The Civil Charge Schedule outlines the assessment of charges based on various types of administrative and technical violations (page 8).

INVESTIGATION OF NONCOMPLIANCE

The Pretreatment & Pollution Prevention Division staff will generally investigate Industrial User (IU) compliance with permits or the provisions of HRSD's Industrial Wastewater Discharge Regulations in several ways including:

- ◆ On-site inspections of the Industrial User to include scheduled and unscheduled visits;
- ◆ Scheduled and unscheduled sampling of the Industrial User's effluent;
- ◆ Review of self-monitoring data from the Industrial User.

ENFORCEMENT RESPONSE TIMETABLE

The table lists the maximum amount of time that HRSD shall take to initiate enforcement action after confirmation of the deficiencies or violation(s). Violations or deficiencies, which endanger health, property or the environment, are considered emergencies and shall receive immediate attention.

Enforcement Response

Timetable

Problem Notification Form (PN Form)	Issued on-site
Notice of Deficiency (NOD)	30 days
Notice of Violation (NOV)	30 days
Compliance Letter	30 days
Show Cause Notice	30 days
Civil Penalty or Civil Charge	60 days
Revoke Permit/Suspend Service	60 days

ENFORCEMENT POINT ASSESSMENT CRITERIA

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

- A. Points shall be accumulated on a running 180-day basis based on the violation date.
- B. When the total number of points equals or exceeds four (4) points during a 180-day period, the General Manager or assigned designee shall determine appropriate enforcement actions which may include civil penalties or civil charges, revocation of the Permit, and/or termination of service. In the case of not-for-profit public agencies, an additional enforcement action may include the option of entering into an enforcement agreement. Assessment of penalties/charges shall be submitted to the Commission for approval, the Commission retains enforcement discretion.
- C. When a Permit is modified to reflect a change in ownership, all accumulated points do not transfer to the new owner; unless the modification only reflects a name change or an attempt to evade the Permit requirements or enforcement actions. Determination of the suitability of point avoidance shall be at the sole discretion of HRSD.
- D. All the above are in addition to those steps outlined in Appendix B of HRSD's Industrial Wastewater Discharge Regulations.
- E. Deficiencies or violations occurring as a result of circumstances beyond the Permittee's reasonable control as determined by HRSD will not be assessed points.
- F. The term "harm caused" shall be defined as "Damage to public or private property; injury to any person(s); POTW process upset/inhibition/disruption of normal operation and/or adverse change in POTW effluent characteristics/concentrations; adverse change in POTW sludge (biosolids) characteristics/concentrations; and/or adverse impact on the environment."
- G. The terms "significant", "mitigate", "imminent risk", and "sufficient cause" are as determined by HRSD.
- H. The term "days" or "day" shall be defined as the "due date" and shall be a calendar day. If the "due date" falls on a weekend or legal holiday, the next business day becomes the legal "due date" (Virginia Code Section 1-13.3:1).
- I. The term "report" shall be defined as any submission required by HRSD.
- J. A single operational upset, which leads to simultaneous violations of more than one pollutant parameter, may be treated as a single violation for point assessment, provided there is no harm caused.

ENFORCEMENT RESPONSE GUIDE

Administrative Violations/Deficiencies

Enforcement Responses

1.	Report requiring authorized signature is improperly signed	
RIS1	- First occurrence (unauthorized agent)	0.2 pt., NOV
RIS2	- Repeated occurrence within 180 days	0.5 pt., NOV
2.	LSR24 Failure to provide 24-Hour notification of self-monitoring violation	0.5 pt., NOV
3.	Late submittal of required report(s)	
LSR	- Less than 30 days with no technical violations First occurrence within the calendar year	NOD
LSR1	- Less than 30 days	0.5 pt., NOV
LSR2	- More than 30 days	1.0 pt., NOV
LSR3	- Reports are repeatedly (third occurrence in 180 days) late or not received	2.0 pts., NOV, Compliance Letter
4.	FRS1 Failure to report slug discharge	1.0 pt., NOV and refer to technical violation 11
5.	LSR5 Failure to submit 5-Day letter for slug discharge	0.5 pt., NOV
6.	Failure to report new/changed discharge	
FRD	- Late notification (in excess of 30-day requirement)	NOD
FRD1	- Discovered by HRSD inspector	1.0 pt., NOV and refer to technical violation 11
7.	FAL1 Falsification of required report(s)	4.0 pts., NOV, refer to Enforcement Point Assessment Criteria, Item B
8.	Failure to report results of all wastewater analyses from the permitted or designated sampling point(s) within required timeframes in accordance with paragraph 403(g) of the HRSD Industrial Wastewater Discharge Regulations.	
FRR1	- First occurrence	1.0 pt., NOV
FRR2	- Repeated occurrence within 180 days	3.0 pts., NOV, Show Cause Meeting
9.	Failure to properly maintain logs, inspections or other reports as required (BMP and non-permitted facilities)	
FM	- First occurrence	NOD
FM1	- After NOD	1.0 pt., NOV
FM2	- Repeated occurrence within 180 days after NOV	2.0 pts., NOV, Compliance Letter
10.	IR1 Failure to maintain records for 3 years	1.0 pt., NOV
11.	RPR1 Refusal to provide records	3.0 pts., NOV, Show Cause Meeting

ENFORCEMENT RESPONSE GUIDE (Cont'd)

Administrative Violations/Deficiencies

12. Compliance schedule milestone actions
CSM1 - Less than or equal to 30 days delayed without sufficient cause
CSM2 - More than 30 days delayed without sufficient cause
CSM3 - Final milestone delayed without sufficient cause
13. Late response to NOV, NOD, Administrative Order milestone update or other official notification(s)
FTR1 - Less than or equal to 30 days
FTR2 - Greater than 30 days
14. Inadequate Permitting Requirement Submittal
PAR1 - Permit application, reapplication or request for addendum not received within required timeframe
PAR2 - Permit application, reapplication or request for Addendum not submitted after receiving NOV
15. FPB1 Failure to pay any and all costs as determined by HRSD

Technical Violations/Deficiencies

1. Failure to correct deficiency (NOD) within timeframe required by HRSD
FCD1 - First occurrence
FCD2 - Repeated (same deficiency)
2. Improper sampling techniques (per sample type); and/or improper analytical techniques (per test method)
IST1 - First occurrence
IST2 - Repeated occurrence within 180 days
3. Failure to sample/resample or analyze/reanalyze any required parameters
FAP1 - First occurrence
FAP2 - Repeated occurrence within 180 days
4. FIS1 Failure to install or properly maintain required sampling point(s), monitoring and/or metering equipment
5. Access denial
ELR1 - First occurrence
ELR2 - Repeated occurrence

Enforcement Responses

- 1.0 pt., NOV
3.0 pts., NOV, Show Cause Meeting
4.0 pts., NOV, refer to Enforcement Point Assessment Criteria, Item B
- 1.0 pt., NOV
2.0 pt., NOV
- 1.0 pt., NOV
3.0 pts., NOV, Show Cause Meeting
- 1.0 pt., NOV plus Possible Suspension of Discharge Privileges

Enforcement Responses

- 1.0 pt., NOV
2.0 pts., NOV, Compliance Letter
- 0.2 pt., NOV
1.0 pt., NOV
- 1.0 pt., NOV
2.0 pts., NOV, Compliance Letter
- 3.0 pts., NOV, Show Cause Meeting
- 3.0 pts., NOV, Show Cause Meeting
4.0 pts., NOV, refer to Enforcement Point Assessment Criteria, Item B

ENFORCEMENT RESPONSE GUIDE (Cont'd)

Technical Violations/Deficiencies

Enforcement Responses

6.	Access Delay	
	RA1 - First occurrence	1.0 pts., NOV
	RA2 - Repeated occurrence	3.0 pts., NOV, Show Cause Meeting
7.	FCM1 Failure to calibrate required flow measuring equipment	1.0 pt., NOV
8.	Diluting waste streams in lieu of pretreatment	
	DOW1 - No evidence of intent	1.0 pt., NOV
	DOW2 - Evidence of intent	4.0 pts., NOV, refer to Enforcement Point Assessment Criteria, Item B
9.	FMH1 Failure to mitigate discharge(s) in accordance with paragraph 404 of HRSD's Industrial Wastewater Discharge Regulations	4.0 pts., NOV, refer to Enforcement Point Assessment Criteria, Item B
10.	Failure to properly operate and maintain pretreatment equipment	
	FPM1 - First occurrence	1.0 pts., NOV
	FPM2 - Repeated occurrence of same failure	3.0 pts., NOV, Show Cause Meeting
11.	Unauthorized discharge (Permitted & Non-Permitted Facilities)	
	UD - No harm caused, no evidence of intent, and self reported	NOD
	UD1 - No harm caused, no evidence of intent	1.0 pt., NOV
	UD2 - No harm caused and evidence of intent	4.0 pts., NOV, refer to Enforcement Point Assessment Criteria, Item B,
	UD3 - Harm caused	4.0 pts., NOV, refer to Enforcement Point Assessment Criteria, Item B,
12.	Failure to follow special conditions section of Permit	
	FSC1 - First occurrence	0.5 pt., NOV
	FSC2 - Repeated occurrence of same failure within two (2) years	2.0 pts., NOV, Compliance letter
13.	HRSD permit limitation exceeded (per calendar month) or violation of the HRSD Industrial Wastewater Discharge Regulations	
	EPL1 - Isolated, no harm caused	1.0 pt., NOV
	EPL2 - Isolated, harm caused	4.0 pts., NOV, refer to Enforcement Point Assessment Criteria, Item B
	EPL3 - Chronic violation (3 occurrences within 180 days, excluding BMR monitoring), no harm caused	3.0 pts., NOV, Show Cause Meeting
	EPL4 - Chronic violation, harm caused	4.0 pts., NOV, refer to Enforcement Point Assessment Criteria, Item B
14.	Removing non-potable water (NPW) from HRSD facilities	
	NPW1 - First occurrence	3.0 pts., NOV Show Cause meeting
	NPW2 - Repeated occurrence	4.0 pts., NOV, refer to Enforcement Point Assessment Criteria, Item B,

ENFORCEMENT RESPONSE GUIDE (Cont'd)

Technical Violations/Deficiencies

- 15. Failure to follow requirements of the BMP
 - BMP - First occurrence
 - FFB - After PN Form
 - FFB1 - After NOD
 - FFB2 - After NOV

Enforcement Responses

- PN Form
- NOD
- 1.0 pts., NOV
- 2.0 pts., NOV, Compliance Schedule

HRSD PRETREATMENT & POLLUTION PREVENTION DIVISION

PERSONNEL RESPONSIBLE FOR ENFORCEMENT RESPONSES

- Chief of Pretreatment & Pollution Prevention**
- Pretreatment & Pollution Prevention Managers**
- Administrative Technician**
- Pretreatment & Pollution Prevention Coordinator**
- Administrative Assistants**
- Pretreatment & Pollution Prevention Supervising Specialists**
- Water Quality Specialists**
- Water Quality Technicians**

MAILING ADDRESS & CONTACT INFORMATION

P.O. Box 5902
Virginia Beach, VA 23471-0902

Phone: (757) 460-7045
Fax: (757) 464-3985

PRETREATMENT & POLLUTION PREVENTION CIVIL CHARGE SCHEDULE

The following is a Civil Charge Schedule for facilities which accumulate four or more points within a 180-day timeframe under HRSD's Pretreatment & Pollution Prevention Enforcement Response Plan. This schedule assesses charges based on various types of administrative and technical violations in accordance with the Enforcement Response Plan.

Civil charges will be assessed within the proposed and the following factors may be considered:

- ◆ The degree and extent of the harm to public health or public/private property resulting from the violation
- ◆ The duration and gravity of the violation
- ◆ The cost to rectify the damage
- ◆ The amount of money saved by the Industrial User's non-compliance
- ◆ Whether the violation was committed with intent
- ◆ The prior record of the violator in complying or failing to comply
- ◆ All other costs incurred by HRSD (directly or indirectly)
- ◆ Any other expenses which may be incurred as a result of the violation
- ◆ The timeliness of the Industrial User's actions to achieve compliance
- ◆ The Industrial User's status under an Administrative Order or after completion of an Administrative Order
- ◆ Any other factors as determined by HRSD

Where the civil charge amount exceeds the minimum of the appropriate range, additional justification will be provided to the Commission for approval. Civil charge amounts are based on whether or not an Industrial User is considered "significant" as required by Federal Law (see definition below).

Point Value	Civil Charge Ranges	
	Non-Significant Industrial User	Significant Industrial User*
0.2	\$100 – 200	\$200 - 400
0.5	\$250 – 500	\$500 - 1,000
1.0	\$500 - 1,000	\$1,000 - 2,000
2.0	\$1,000 - 2,000	\$2,000 - 4,000
3.0	\$1,500 - 3,000	\$3,000 - 6,000
4.0	\$2,500 - 5,000	\$5,000 - 10,000

These civil charges may also be assessed by HRSD via a Consent Agreement. A civil penalty not to exceed \$32,500 per violation may be assessed by HRSD if issued through a court in accordance with the Code of Virginia 1950, § 62.1-44.32 et seq.

*Significant Industrial User - An Industrial User which: (1) is subject to categorical pretreatment standards; (2) discharges an average of 25,000 ¹gallons per day or more of process wastewater to a POTW; (3) contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW; or (4) is designated by HRSD on the basis that the industrial user has a reasonable chance for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

¹HRSD may categorize industries in this flow range (except Categorical industries) as a "Non Significant Industrial User" if it is determined that the industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.