
HRSD

Cleaning wastewater every day for a better Bay.

Pretreatment & Pollution Prevention

ENFORCEMENT RESPONSE PLAN

Effective July 1, 1992

Revised July 1, 2012

PREAMBLE

This Enforcement Response Plan (ERP) was developed in accordance with Section 601 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 Penalty Schedule outlines the assessment of penalties 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	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, 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.
- 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 voidance 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	NOD
	First occurrence within the calendar year	
	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 503(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

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

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
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 504 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

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PRETREATMENT & POLLUTION PREVENTION CIVIL PENALTY SCHEDULE

The following is a Civil Penalty 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 penalties based on various types of administrative and technical violations in accordance with the Enforcement Response Plan.

Civil Penalties will be assessed within the listed ranges and the following factors may be considered:

- ◆ **The severity of the violation(s)**
- ◆ **The extent of any potential or actual environmental harm or facility damage**
- ◆ **The compliance history of the user**
- ◆ **Any economic benefit realized from the noncompliance**
- ◆ **The ability of the user to pay the penalty.**

No Enforcement Order assessing a Civil Penalty shall be issued until after the Discharger has been provided an opportunity for a hearing, except with the consent of the Discharger. Notice of the hearing shall be served either personally or by registered or certified mail, return receipt requested, on any duly authorized representative of the Discharger at least 30 days prior to the hearing. The notice shall specify the time and place of the hearing, facts and legal requirements related to the alleged violation, and the amount of any proposed penalty. The hearing shall be before a Hearing Officer. At the hearing the Discharger may present evidence including witnesses regarding the occurrence of the alleged violation and the amount of the penalty, and the Discharger may examine any witnesses for HRSD. A verbatim record of the hearing shall be made. Within 30 days after the conclusion of the hearing, HRSD shall make findings of fact and issue the Enforcement Order on such terms as may be appropriate or withdraw the Enforcement Order.

If the discharger does not consent to the proposed penalty, an Enforcement Order shall inform the Discharger of his right to review before the Commission as provided in section 701 of the Industrial Wastewater Discharge Regulations, and his right to judicial review as provided in Va. Code section 15.2-2122 (10.c).

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

Point Value	Civil Penalty 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

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.