
HRSD

Cleaning wastewater every day for a better Bay.

Pretreatment & Pollution Prevention

ENFORCEMENT RESPONSE PLAN

Effective July 1, 1992

Revised July 1, 2022

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 (9VAC25-31-800 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. This ERP is guidance. Although the ERP will be followed and used in making all enforcement decisions, it does not abrogate HRSD's enforcement discretion.

Violations of HRSD's Regulations will be assessed points in accordance with their severity and number as described in the Enforcement Response Guide (pages 4-8). 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 9).

INVESTIGATION OF NONCOMPLIANCE

The Pretreatment & Pollution Prevention Division staff will generally investigate Industrial User (IU) compliance with permits, best management practices (BMPs), or equivalent control mechanisms 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.

Reference

U.S. Environmental Protection Agency (USEPA). 1989. "Guidance for Developing Control Authority Enforcement Response Plans."

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 (PN)	Issued on-site
Non-Compliance Notification (NCN)	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

PERSONNEL RESPONSIBLE FOR ENFORCEMENT RESPONSES

Administrative Assistant
Chief
Manager
Specialist
Supervising Specialist
Technician

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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 and sampling location as defined in the control mechanism.
- B. When the total number of points equals or exceeds three (3) points during a 180-day period, the Industrial User may be required to attend a Show-Cause meeting to review the violations and identify actions to be taken to prevent recurrence.
- C. 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, enforcement action may include the option of entering into an enforcement agreement.
- D. 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.
- E. Non-conformance resulting in a Notice of Deficiency (NOD) will not be assessed points.
- F. A Notice of Violation (NOV) issued for circumstances beyond the Industrial User's reasonable control, as determined by HRSD, will not be assessed points.
- G. 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."
- H. The terms "significant", "mitigate", "imminent risk", and "sufficient cause" are as determined by HRSD.
- I. The term "report" shall be defined as any submission required by HRSD.
- J. A single operational upset, occurring as a result of circumstances beyond the Permittee's reasonable control as determined by HRSD, 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.
- K. If multiple technical violations occur within the same calendar month, points may only be assessed for the first occurrence per parameter for each sampling location.
- L. Point assessments are at the sole discretion of HRSD.

ENFORCEMENT RESPONSE GUIDE

Administrative Violations/Deficiencies

Code	Description	Points Assessment	HRSD's Enforcement Response
CSM1	Compliance schedule milestone actions <i>Less than or equal to 30 days delayed without prior approval</i>	1.0	NOV
CSM2	Compliance schedule milestone actions <i>More than 30 days delayed without prior approval</i>	3.0	NOV Show Cause Meeting
CSM3	Compliance schedule milestone actions <i>Final milestone delayed without prior approval</i>	4.0	NOV Refer to Item C on Page 3
ESA1	Failure of Responsible Official (RO) to follow Terms & Conditions of Electronic Signature Agreement (ESA)	1.0	NOV
FAL1	Falsification of required report(s)	4.0	NOV Refer to Item C on Page 3
FM1	Failure to properly maintain records to include logs, inspections, or other reports as required <i>First occurrence</i>	1.0	NOV
FM2	Failure to properly maintain records to include logs, inspections, or other reports as required <i>Repeat of same failure within 360 days</i>	2.0	NOV
FPB1	Failure to pay any and all costs as determined by HRSD	1.0	NOV Possible Suspension of Discharge Privileges
FRD	Failure to report new/changed discharge <i>Late notification (in excess of 30-day requirement)</i>	0.0	NOD
FRD1	Failure to report new/changed discharge <i>Discovered by HRSD inspector</i>	1.0	NOV and refer to technical UD - UD3 violations
FRR1	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 <i>First Occurrence</i>	1.0	NOV
FRR2	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 <i>Repeated occurrence within 180 days</i>	3.0	NOV Show Cause Meeting

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Code	Description	Points Assessment	HRSD's Enforcement Response
FRS1	Failure to report slug discharge	1.0	NOV and refer to technical UD-UD3 violations
FTR1	Late or no response to NOV, NOD, Administrative Order milestone update or other official notification(s) <i>Less than or equal to 30 days</i>	1.0	NOV
FTR2	Late or no response to NOV, NOD, Administrative Order milestone update or other official notification(s) Greater than 30 days	2.0	NOV
LSR	Late submittal of required report(s) <i>Less than or equal to 30 days with no technical violations within the report (First occurrence within the calendar year)</i>	0.0	NOD
LSR1	Late submittal of required report(s) <i>Less than or equal to 30 days</i>	0.5	NOV
LSR2	Late submittal of required report(s) <i>Greater than 30 days</i>	1.0	NOV
LSR3	Late submittal of required report(s) <i>Reports are repeatedly (third occurrence in 180 days) late or not received</i>	2.0	NOV
LSR5	Failure to submit 5-day written statement for unauthorized and/or slug discharge	0.5	NOV
LSR24	Failure to provide 24-Hour notification of self-monitoring violation	0.5	NOV
PAR1	Permit application, reapplication or request for amendment not received within required timeframe	1.0	NOV
PAR2	Permit application, reapplication or request for amendment not submitted within required timeline after receiving NOV	3.0	NOV Show Cause Meeting
RIS1	Report requiring authorized signature is improperly signed (including electronic) <i>First occurrence (unauthorized signatory)</i>	0.2	NOV
RIS2	Report requiring authorized signature is improperly signed (including electronic) <i>Repeated occurrence within 180 days</i>	0.5	NOV
RPR1	Refusal to provide records	3.0	NOV Show Cause Meeting

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Technical Violations/Deficiencies

Code	Description	Points Assessment	HRSD's Enforcement Response
DEF	General deficiency – Action required	0.0	NOD
DOW1	Diluting waste streams in lieu of pretreatment No evidence of intent	1.0	NOV
DOW2	Diluting waste streams in lieu of pretreatment <i>Evidence of intent</i>	4.0	NOV Refer to Item C on Page 3
ELR1	Access Denial <i>First occurrence</i>	3.0	NOV Show Cause Meeting
ELR2	Access Denial <i>Repeated occurrence within two (2) years</i>	4.0	NOV Refer to Item C on Page 3
EPL1	HRSD permit limitation exceeded (per calendar month) <i>Isolated, no harm caused</i>	1.0	NOV
EPL2	HRSD permit limitation exceeded (per calendar month) <i>Isolated, harm caused</i>	4.0	NOV Refer to Item C on Page 3
EPL3	HRSD permit limitation exceeded (per calendar month) <i>Chronic violation (3 occurrences within 180 days, excluding BMR monitoring), no harm caused</i>	3.0	NOV Show Cause Meeting
EPL4	HRSD permit limitation exceeded (per calendar month) <i>Chronic violation, harm caused</i>	4.0	NOV Refer to Item C on Page 3
FAP1	Failure to sample/resample or analyze/reanalyze any required parameters <i>First occurrence</i>	1.0	NOV
FAP2	Failure to sample/resample or analyze/reanalyze any required parameters <i>Repeated occurrence within 360 days (per parameter)</i>	2.0	NOV
FC1	Failure to correct deficiency/violation <i>First occurrence</i>	1.0	NOV
FC2	Failure to correct deficiency/violation <i>Repeated (same deficiency/violation) within two (2) years</i>	2.0	NOV

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Code	Description	Points Assessment	HRSD's Enforcement Response
FCM1	Failure to certify/calibrate required monitoring and/or metering equipment	1.0	NOV
FFB	Failure to follow requirements of the BMP <i>First occurrence</i>	0.0	NOD
FFB1	Failure to follow requirements of the BMP <i>After NOD</i>	1.0	NOV
FFB2	Failure to follow requirements of the BMP Repeat of same failure within two (2) years	2.0	NOV
FIS1	Failure to install or properly maintain required sampling point(s), monitoring and/or metering equipment	3.0	NOV Show Cause Meeting
FMH1	Failure to mitigate discharge(s) in accordance with paragraph 504 of HRSD's Industrial Wastewater Discharge Regulations	4.0	NOV Refer to Item C on Page 3
FPM1	Failure to properly operate and maintain pretreatment equipment <i>First occurrence</i>	1.0	NOV
FPM2	Failure to properly operate and maintain pretreatment equipment <i>Repeat of same failure within two (2) years</i>	3.0	NOV Show Cause Meeting
FSC1	Failure to follow requirements or conditions of Permit <i>First occurrence</i>	1.0	NOV
FSC2	Failure to follow requirements or conditions of Permit <i>Repeat of same failure within two (2) years</i>	2.0	NOV
IST1	Failure to meet all sampling, method, accreditation, and quality control requirements. <i>First occurrence</i>	0.5	NOV
IST2	Failure to meet all sampling, method, accreditation, and quality control requirements. <i>Repeat of same failure within 180 days</i>	1.0	NOV

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(continued)

Code	Description	Points Assessment	HRSD's Enforcement Response
NPW1	Removing non-potable water (NPW) from HRSD facilities <i>First occurrence</i>	3.0	NOV Show Cause Meeting
NPW2	Removing non-potable water (NPW) from HRSD facilities <i>Repeated occurrence within two (2) years</i>	4.0	NOV Refer to Item C on Page 3
RA1	Access Delay <i>First occurrence</i>	1.0	NOV
RA2	Access Delay <i>Repeated occurrence within two (2) years</i>	3.0	NOV Show Cause Meeting
REG1	Violation of the HRSD Industrial Wastewater Discharge Regulations <i>No harm caused</i>	1.0	NOV
REG2	Violation of the HRSD Industrial Wastewater Discharge Regulations <i>Repeated (same violation) within two (2) years, no harm caused</i>	2.0	NOV
REG3	Violation of the HRSD Industrial Wastewater Discharge Regulations <i>Harm caused</i>	4.0	NOV Refer to Item C on Page 3
UD	Unauthorized and/or slug discharge <i>No harm caused, no evidence of intent, and self-reported</i>	0.0	NOD
UD1	Unauthorized and/or slug discharge <i>No harm caused, no evidence of intent</i>	1.0	NOV
UD2	Unauthorized and/or slug discharge <i>No harm caused and evidence of intent</i>	4.0	NOV Refer to Item C on Page 3
UD3	Unauthorized and/or slug discharge <i>Harm caused</i>	4.0	NOV Refer to Item C on Page 3

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.**

A Civil Penalty shall not be issued within thirty (30) days from receipt of Notice of Violation unless written consent from the discharger is given to HRSD. Should a discharger consent to an assessed Civil Penalty, written consent must be provided to HRSD. If no written response is received after thirty (30) days from receipt of the Notice of Violation, consent is understood, and an Enforcement Order will be issued.

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 Responsible Official 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 their 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	
	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.