

## CHAPTER 51: ENFORCEMENT RESPONSE PLAN

### Section>

- 51.01 Introduction
- 51.02 Enforcement actions available to the town
- 51.03 Investigation of noncompliance
- 51.04 Types of violation
- 51.05 Responses; time frames, responsible officials and escalated actions
- 51.06 Enforcement chart

### § 51.01 INTRODUCTION.

(A) It is the responsibility of the Town of Liberty (WQ0003090) to enforce all applicable federal, state and local pretreatment regulations. These regulations are outlined in 40 C.F.R. pt. 403 and state regulation 15A NCAC 2H.0900 and Chapter 53 below. This Enforcement Response Plan (ERP) has been established as an element of the POTW's pretreatment program.

(B) The purpose of the ERP is to provide for fair, equitable and consistent treatment of all users for anticipated enforcement situations. In general, enforcement actions will be taken in accordance with this Enforcement Response Plan; however, the enforcement actions available are not exclusive as discussed in § 53.59(C). Therefore, any combination of enforcement actions can be taken against a non-compliant user.

(Ord. passed 9-26-2005)

### § 51.02 ENFORCEMENT ACTIONS AVAILABLE TO THE TOWN.

(A) The Director of the POTW is empowered through G.S. § 143-215.6A and Chapter 53 to take a wide variety of enforcement actions.

(B) The following is a list of those actions and the corresponding section of Chapter 53 that describes each.

Action	Chapter 53 Section
Notice of violation	53.59(A)(1)
Consent orders	53.59(B)
Show cause hearing	53.59(C)
Administrative orders	53.59(D)

Emergency suspensions	53.59(E)
Termination of permit	53.59(F)
Civil penalties	53.59(G)
Injunctive relief	53.59(G)
Water supply severance	53.59(G)

(C) In addition to the actions listed above, a user who violates the provisions of G.S. § 143-215.6B may be referred by the Director to the District Attorney for possible criminal prosecution.

(D) In determining the amount of civil penalties for a particular violation the Director shall consider the following factors from § 53.99:

- (1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
- (2) The duration and gravity of the violation;
- (3) The effect on ground or surface water quantity or quality or on air quality;
- (4) The cost of rectifying the damage;
- (5) The amount of money saved by non-compliance;
- (6) Whether the violation was committed willfully or intentionally;
- (7) The prior record of the violator in complying or failing to comply; and
- (8) The costs of enforcement to the POTW.

(E) Adjudicatory hearing procedures regarding permit decisions, civil penalties and administrative orders may be found in § 53.30(H).

(Ord. passed 9-26-2005)

### § 51.03 INVESTIGATION OF NONCOMPLIANCE.

(A) The staff of the POTW will generally investigate user compliance with permits or the provisions of Chapter 53 in 3 ways:

- (1) On-site inspections of the user to include scheduled and unscheduled visits;
- (2) Scheduled and unscheduled sampling of the users effluent; and
- (3) Review of self-monitoring data, if required, from the user.

(B) The compliance status of significant industrial users (SIU) will be evaluated at a minimum once every 6 months.

(Ord. passed 9-26-2005)

#### § 51.04 TYPES OF VIOLATION.

(A) The following is a list of different types of violations, by category. This list is not all inclusive, but serves as a general list of anticipated types of noncompliance.

(B) The user's permit, Chapter 53 and state and federal regulations serve as additional references for pretreatment requirements.

(1) Unpermitted discharges. Users are responsible for obtaining and renewing permits, if required.

(2) Permit limits. Users are responsible for maintaining compliance with all effluent limits. The POTW will evaluate the extent of the limits violation(s). In determining the extent of violation(s), significant non-compliance (SNC) as defined by state and EPA regulations will be determined.

(3) Self-monitoring violations. A user who fails to adequately conduct all the monitoring required in the permit, including monitoring frequencies and sampling methods specified, is in violation. This includes a user who does not resample per their permit when a limit violation occurs.

(4) Reporting violations. A user who fails to provide information; e.g., self-monitoring reports required in their permit or Chapter 53 in the required time-frame is in violation. Late or incomplete reports will also be considered violations. A SIU who submits a report more than 30 days late is considered in SNC.

(5) Permit conditions. Failure to apply or reapply for a permit is considered a violation. Users who violate the general or other conditions; e.g., slug loading, dilution prohibition outlined in their permits or Chapter 53 shall be considered to be in violation.

(6) 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 the POTW, shall be considered a violation. Missing a scheduled compliance milestone by more than 90 days is considered SNC.

(Ord. passed 9-26-2005)

#### § 51.05 RESPONSES; TIME FRAMES, RESPONSIBLE OFFICIALS AND ESCALATED ACTIONS.

(A) The attached Town of Liberty Enforcement Chart further outlines types of violations and specifies POTW actions (initial and escalated), time frames and the officials responsible

for completing the actions. This chart shall be considered a part of the Enforcement Response Plan.

(B) Responses to violations affecting the operation of the POTW, resulting in POTW NPDES violations, or resulting in environmental harm or endangerment to human health will be taken immediately or as soon as possible following discovery.

(C) A user may be sent a notice of violation (NOV) or notice of noncompliance (NNC) for each individual violation. Alternatively, the violations may be summarized over a period of time not to exceed 6 months. In general, NOV's in response to violations of permit limits will be taken within 30 days of discovery of the violations. Users found to be in SNC for 2 consecutive 6-month periods will be issued an enforceable order to return to compliance. In all cases, escalated or continuing enforcement action will be taken against users who do not return to compliance in a timely manner.

(D) Cases of falsifying reports, tampering with monitoring or sampling equipment or otherwise preventing the collection of representative data may be referred to the District Attorney for possible criminal investigation.

(E) Show cause hearings may be held at the Director's discretion prior to taking enforcement actions.

(Ord. passed 9-26-2005)

§ 51.06 ENFORCEMENT CHART.

(A) Unpermitted discharges. The following are unpermitted discharges.

<i>Type of Violation</i>	<i>POTW Action</i>	<i>Time Frame</i>	<i>Responsible Official</i>	<i>Expected Action From User</i>	<i>Escalated Action if Needed</i>
<b><i>Unpermitted Discharges</i></b>					
Unpermitted discharge; unaware of requirement	Notice of violation	Within 14 days of discovery of discharge	Pretreatment Coordinator	File permit application	Suspend service until permit is issued
Unpermitted discharge; aware of	Notice of violation; with penalty assessed	Within 30 days of discovery of	Director	File permit application	Suspend service until permit is

requirement		discharge			issued
Unpermitted discharge; results in NPDES violation	Order to cease process causing violation; notice of violation with recommended minimum of \$1,000 and up to \$25,000 per dy per violation penalty	Order to cease immediately; notice of violation within 7 days	Director	File permit application; steps taken to avoid violation	Suspend service until permit issued
Unpermitted discharge; results in endangerment	Suspend service; notice of violation with recommended minimum \$1,000 and up to \$25,000 per day per violation penalty	Suspend service immediately; notice of violation within 7 days	Director	File permit application; steps taken to avoid future endangerment	-

(B) Permit limits, violations. The following are permit limits and violations.

<b><i>Type of Violation</i></b>	<b><i>POTW Action</i></b>	<b><i>Time Frame</i></b>	<b><i>Responsible Official</i></b>	<b><i>Expected Action from User</i></b>	<b><i>Escalated Action if Needed</i></b>
<b><i>Permit Limits; Violations</i></b>					
Single event; minor	Notice of non-compliance or notice of violation with \$0 to \$25,000 penalty	Within 14 days of receiving data (Once in each 6-month period)	Pretreatment Coordinator	Conduct additional monitoring and return to compliance	Notice of violation with penalty
Technical review criteria	Notice of violation with \$0 to \$25,000	Within 14 days of receiving data (Once in	Pretreatment Coordinator	Conduct additional monitoring	Second notice of violation with

(TRC)	penalty	each 6-month period)		and return to compliance	increased penalty
Significant non-compliance	Notice of violation with \$0 to \$25,000 penalty	Within 30 days of receiving data	Pretreatment Coordinator	Report cause of non-compliance and steps taken to prevent violation	Enforceable schedule (AO) if not resolved by the end of second 6-month period
Violation causes NPDES violation	Order to cease process causing violation; notice of violation with recommended minimum \$1,000 and up to \$25,000 per day per violation	Order to cease immediately; notice of violation within 7 days of discovering violation (Once in each 6-month period)	Director	Report cause of non-compliance and steps taken to prevent violation	Suspend service until resolved; enforceable schedule (AO) if not resolved by the end of second 6-month period
Violation causes endangerment	Suspend service; notice of violation with a recommended minimum \$1,000 and up to \$25,000 per day per violation penalty	Suspend service immediately; notice of violation within 7 days	Director	File for re-issuance of permit	-

(C) Other violations. The following is a list of other violations.

<b><i>Type of Violation</i></b>	<b><i>POTW Action</i></b>	<b><i>Time Frame</i></b>	<b><i>Responsible Official</i></b>	<b><i>Expected Action From User</i></b>	<b><i>Escalated Action if Needed</i></b>
<b><i>Other Violations</i></b>					
Self monitoring violations	Notice of violation with a recommended minimum penalty equal or greater than cost of missed testing	Within 14 days of discovering (Once in each 6-month period)	Pretreatment Coordinator	Conduct missed sampling	Second notice of violation with penalty equal to twice cost of missed testing
Reporting violations; late report	Notice of non-compliance	Within 14 days of the report due date (Once in each 6-month period)	Pretreatment Coordinator	Submit report	Notice of violation; penalty assessed; possible SNC if over 30 days
Reporting violations; incomplete or inaccurate reports	Notice of non-compliance	Within 30 days of report submission (Once in each 6-month period)	Pretreatment Coordinator	Submit revised report	Notice of violation; penalty assessed
Reporting violations; intentional falsification	Referred to District Attorney	As soon as expected	Director	-	-
Violation of permit conditions	Notice of violation with penalty up to \$25,000 per day per	Within 30 days of discovery (Once in each 6-month	Pretreatment Coordinator or Director	Varies	Second notice of violation with increased

	violation	period			penalty
Violation of permit conditions (endangerment)	Suspend service; notice of violation with up to \$25,000 per day per violation penalty	Suspend service immediately; notice of violation within 7 days	Director	Steps taken to avoid reoccurrence	-
Violations of enforcement order; conditions or limits	Notice of violation; assess stipulated penalty and actions listed for same violation type in ERP	Within time frame listed in enforcement order or for the same type of violation in ERP	Pretreatment Coordinator or Director	Additional monitoring and steps taken to avoid recurrence	Same as escalated action for same type of violation; possible revocation of order
Failure to meet a milestone date in an enforcement order (Does not affect other dates)	Notice of violation and assess penalty stipulated in order	Within 14 days of discovery	Pretreatment Coordinator	Submit a schedule to complete the requirement	Show cause hearing
Failure to meet a milestone date in an enforcement order (Affects other dates)	Show cause hearing and assess stipulated penalties	Within 30 days of discovery	Director	Negotiate new order and abide by new conditions	Possible termination of service
Failure to meet final compliance date	Notice of violation and assess stipulated penalties	Within 14 days	Director	Document compliance	Possible termination of service

(Ord. passed 9-26-2005)