

I. Introduction

In accordance with the Code of Federal Regulations (CFR) Section 40 CFR 403.8 (f)(5) and Virginia's Regulation 9 VAC 25-31-800 :

The Industrial Waste Pretreatment Program (IWPP) shall develop and implement an enforcement response plan (ERP). This plan shall contain detailed procedures indicating how a IWPP will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

- (i) Describe how the IWPP will investigate instances of noncompliance;*
- (ii) Describe the types of escalating enforcement responses the IWPP will take in response to all anticipated types of industrial user alleged violations and the time periods within which responses will take place;*
- (iii) Identify (by title) the official(s) responsible for each type of response;*
- (iv) Adequately reflect the IWPP's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f)(1) and (2) and in 9 VAC 25-31-800 .*

In accordance with Chesterfield County Code Article IV, Section 18-122 to Section 18-124, the IWPP has developed an enforcement response plan for Chesterfield County.

This ERP allows for a range of responses for a typical pretreatment violation. It is not intended to provide a specific response to each individual type of event that may occur. It should be noted that violations are alleged until the violator has waived his rights to appeal.

II. Enforcement Administration

Compliance reports from industrial users and the IWPP data are reviewed by the Pretreatment Program Manager, the Senior Engineer and the Engineering Assistant(s). Non-compliance with permit limits are noted and responded to in accordance with the range of responses described herein. Most of the Non-Compliance notifications are sent to the Industrial Users by certified mail; however, some of the informal responses can include a documented phone call.

Significant Non Compliance (SNC) determination is made at the end of each quarter and appropriate enforcement action is taken. SNC determination is based on rolling quarters.

Inspection violations are noted at the time of inspection and enforcement action taken soon thereafter. In case of emergency, immediate action can be initiated to avert any potential disaster.

Any spill or slug loads are also handled as soon as reported. If the spill has the potential to enter the sewer system, wastewater treatment plants and pump stations, the director shall be notified within twenty four hour of their being aware of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume. The director will notify the appropriate agencies and personnel as the situation warrants.

Follow-up enforcement is then undertaken and shall include measures to prevent future incidences. Significant Industrial Users (SIU's) are evaluated for the requirement of a Slug Control Plan or other actions that may be necessary to control slug discharge.

III. Enforcement Strategy

Once a noncompliance situation has been identified, the IWPP will consider the following criteria when determining the level of response:

- Magnitude of the violation
- Duration of the violation
- Effect of the violation on IWPP
- Effect of the violation on the receiving waters
- Compliance history of the industrial user
- Good faith of the industrial user

Following are the types of Enforcement Action that may be undertaken by the IWPP:

- Informal Response
An informal response may be either a documented phone call, written warning, or a meeting notifying the Industrial User (IU) of minor incidences that have occurred and that need to be corrected. Repeat performance of the same incidence or escalation of the incidence will result in higher enforcement action.
- Notice of Violation (NOV)
An NOV is the initial formal enforcement action for a violation. The certified letter notifies IU's signatory authority of the violation and requires the following:
 1. Immediate corrective action or steps being taken to correct the problem;
 2. Sampling of the parameter in violation within thirty calendar days;
 3. Written response within ten business days of receipt of NOV.
- Compliance Meeting
A Compliance Meeting is when the IWPP directs the IU to achieve compliance by a certain specified date.
- Show Cause Meeting
A Show Cause Meeting is when the IU and the IWPP meet to discuss the cause and effect of the violation, as well as the enforcement action the IU will be subjected to. The IU may present its case as to why the violation occurred and why further enforcement should not be applied. Corrective actions to be undertaken by the IU can also be a part of this meeting.
- Administrative Order (AO)
An Administrative Order is notification to the IU to undertake or to cease specified activities. It is the first formal response to significant noncompliance (unless evidence permits stricter response). It contains the compliance schedule to perform specified activities. In addition, it specifies the name of the parties involved, statement of the facts, the requirement to ensure compliance and the enforcement associated with the future non-compliance.
- Compliance Schedule
A Compliance Schedule is a formal schedule established for the non-compliant IU to achieve compliance. It is established for existing IUs to meet the categorical pretreatment standards or local standards. It contains increments of progress in the form of dates for the commencement and completion of major events leading to compliance. In addition, all compliance schedules shall contain the following:
 1. Monitoring requirements with the location for monitoring;
 2. How the data will be used for evaluating compliance;
 3. Enforcement associated with non-compliance;
 4. Closure date after which IU will be considered either non-compliant with the established compliance schedule, or judged for compliance.

Compliance schedules can either be incorporated in the permit or in a separate document.

- Administrative Fines
Administrative fines will be imposed when authorized by the Director of Utilities/County Attorney and when likely to be an effective tool to force the IU to correct the violation and comply with its permit.

- Cost Recovery
In addition to administrative fines permitted by the Director of Utilities/County Attorney, the IU shall be responsible for paying the following costs incurred by the County for failure to comply with a compliance schedule and/or any other non-compliance with their permit requirements:
 1. Cost of mileage and labor incurred in detecting and correcting the violation.
 2. Laboratory analysis costs associated with detecting and correcting the violation.
 3. Additional treatment costs caused by the violation or associated with detecting and correcting the violation.
 4. Costs of any additional equipment acquired or expended by Chesterfield County for detecting or correcting the violation.
 5. Repair and/or replacement of any part of the sewerage system damaged by the violation.
 6. Any liability, damages, fines or penalties incurred by Chesterfield County as a result of the violation.
 7. Any and all expenses of outside professionals to include, but not limited to, engineers, scientists, and/or legal counsel.
 8. Other costs associated with the detecting and correcting of the violations.

- Judicial Action
Judicial Action will be taken when it is deemed necessary to force the IU to correct the violation and comply with the permit. Judicial action may consist of a civil prosecution, a criminal prosecution or an action for injunction, at the discretion of the IWPP and its counsel. As an alternative to judicial action, the IWPP and IU may agree to a voluntary zero discharge of industrial waste by the IU pending correction of the violation. The IU permit will be revised to reflect the voluntary agreement. Prior to the industry resuming discharge the IU permit will again be revised to reflect the discharging nature of the facility. The Department of Environmental Quality shall be notified and provided with an updated copy of any permit modifications within thirty calendar days of each modification.

- Termination of Service
When all other enforcement responses have failed, the IWPP may revoke the IU's permit and terminate service. Violations that threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.

IV. Definition of Noncompliance

Noncompliance is any violation of one or more of the general prohibitions described in *40 CFR 403.8 (f)(1) and (2)* and *9 VAC 25-31-800*. These may also include an isolated exceedence of discharge limits, minor sampling, monitoring or reporting deficiencies, minor spill incident, missed milestone date or any other incident that the IWPP deems minor.

V. Definition of Violations

Minor Sampling, Monitoring, or Reporting Deficiencies

- Reports/Correspondence submitted up to 10 calendar days late
- Incomplete reports and/or chain-of-custody - First offense in one calendar year
- Transcription error
- Improper sampling or analytical procedure - First offense in one calendar year
- Late notification (less than 10 days) of violation to IWPP - First offense in one calendar year
- Failure to report any operational changes which affects the discharge flow rate but does not impact the permit - First offense
- Any other violation categorized as minor sampling, monitoring or reporting deficiencies by the IWPP.

Major Sampling, Monitoring, or Reporting Deficiencies

- Reports/Correspondence late by between 11 to 45 calendar days
- Sampling point not accessible to the IWPP
- Reports, including but not limited to Quarterly reports, chain of custody, without Certification Statement
- Failure to report any operational changes which affects the discharge flow rate and impacts the permit
- Incomplete report or chain-of-custody information - Repeat offense exceeding once/one calendar year
- Failure to submit all the information that leads to the determination of a category of an IU

- Violation of State and Federal analytical procedure
- Failure to sample for a permitted parameter
- Failure to report slug load discharge, illegal discharges or spills within twenty four hours of being aware of it, with no damage to POTW
- Improper sampling or analytical procedure - repeat offense exceeding one/one calendar year
- Improper sampling or analytical procedure based on the permit requirements

Critical Sampling, Monitoring, or Reporting Deficiencies

- Reports including, but not limited to, baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports and reports on compliance with compliance schedules greater than forty five (45) calendar days late (SNC)
- Complete failure to sample, monitor, or report as per the requirements found in the facility’s permit or enforcement order for starting construction, completing construction, or attaining final compliance within ninety (90) calendar days of the scheduled date
- Any deficiency of sampling, monitoring, or reporting procedure which places IU in SNC
- Failure to respond to a Show Cause or Administrative Order within the specified time included in those documents
- Illegal or unauthorized discharge that is specified in “Damage to the POTW” section of this document
- Any violation of sampling, monitoring, or reporting procedures which directly or indirectly contributes to or is responsible for violation of IWPP’s Virginia Pollutant Discharge Elimination System (VPDES) Permit.
- Any other violation categorized as critical sampling, monitoring or reporting deficiencies by the IWPP

Unauthorized Discharge

Discharge of any pollutant(s) from a location, process, source or categorical operation that has not been previously approved, identified or permitted.

Damages to the POTW

Occurs when the discharge from an IU causes:

- Harm to the collection system, its accessories and wastewater treatment plant
- Interference with the biological operations of the plant
- Deteriorates the air quality
- Deteriorates the sludge quality
- Causes the IWPP to be in non-compliance with VPDES permit

VI. Responsible Personnel

Enforcement Response	Position
Informal response (documented)	Pretreatment Staff
Sampling responsibilities	Pretreatment Staff
Inspection responsibilities	Pretreatment Staff
Standards review meeting	Pretreatment Staff
NOV	Pretreatment Program Manager
Show cause meeting	Pretreatment Program Manager
Compliance meeting	Pretreatment Program Manager
Administrative Order	Director of Utilities
Compliance Schedule	Director of Utilities
Terminate service	Director of Utilities
Administrative Fine/Cost recovery	Director of Utilities/County Attorney
Judicial action	County Attorney

VII Violations and possible response

A. Discharge Parameter Violation

Violation	Nature or Frequency of Violation	Status	Range of Response
Exceedence of discharge limits	Isolated, non-significant	Non-compliance	NOV
	Frequent, repeat offense, non-significant exceedence of discharge limits over 50% of time.	Non-compliance	NOV with increased sampling frequency
	Exceedence of Technical Review Criteria (TRC) value by a frequency of 33% or more in six month and/or exceedence of permit limit by a frequency of 66% or more in six month span or as stated in 40 CFR 403 and 9 VAC 25-31-800.	Significant non-compliance	I. NOV, AO and Publishing in the newspaper of general circulation within Chesterfield County II. Cost recovery III. Administrative Fine IV. Judicial Action/ Zero discharge V. Terminate Services
	Any instance with POTW damage or direct cause for violation of IWPP's VPDES Permit	Significant non-compliance	I. NOV and AO to halt discharge and Publishing in the newspaper of general circulation in Chesterfield County II. Cost recovery III. Administrative Fine IV. Judicial Action/ Zero discharge V. Terminate Services
Waste stream dilution in lieu of treatment as described in Chesterfield County Code(Article IV Sec. 18-100) for Industrial Waste Discharge	Isolated, non-significant	Non-compliance	I. Informal Response II. NOV
	Frequent, repeat offense, non-significant (exceeding once/calendar year)	Non-compliance	I. NOV II. AO with publishing in the newspaper of general circulation in Chesterfield County
Slug load discharge.	Isolated - with no damage to POTW.	Non-compliance	NOV
	Frequent - more than twice/calendar year with no damage to POTW	Significant non-compliance	NOV and AO with publishing in the newspaper of general circulation in Chesterfield County and upgrading Slug Discharge Control Plan
	Any instance with POTW damage or direct cause for violation of IWPP's VPDES Permit	Significant non-compliance	I. NOV and AO to halt discharge and Publishing in the newspaper of general circulation in Chesterfield County II. Cost recovery III. Administrative Fine IV. Judicial Action/ Zero discharge V. Terminate Services

Violation	Nature or Frequency of Violation	Status	Range of Response
Unauthorized/non-permitted discharge	Any instance with no damage to POTW	Non-compliance	NOV
	Any instance with POTW damage or direct cause for violation of IWPP's VPDES Permit - SNC.	Significant non-compliance	I. NOV and AO to halt discharge and Publishing in the newspaper of general circulation in Chesterfield County II. Cost recovery III. Administrative Fine IV. Judicial Action/ Zero discharge V. Terminate Services
Illegal/ hazardous waste discharge	Any Instance	Significant non-compliance	I. NOV and AO to halt discharge and Publishing in the newspaper of general circulation in Chesterfield County II. Cost recovery III. Administrative Fine IV. Judicial Action/ Zero discharge V. Terminate Services

B. Sampling, Monitoring and Reporting Violations.

Violation	Nature or Frequency of Violation	Status	Range of Responses
Minor sampling, monitoring, or reporting deficiencies.	Isolated or infrequent	Non-compliance	I. Informal Response II. NOV
	Frequent, repeat offense, non-significant (exceeding once/calendar year)	Non-compliance	NOV
Major sampling, monitoring, or reporting deficiencies.	Isolated or infrequent	Non-compliance	I. NOV II. NOV with increased sampling frequency
	Frequent, repeat offense (exceeding once/calendar year)	Non-compliance	I. NOV with increased sampling frequency II. AO with publishing in the newspaper of general circulation in Chesterfield County
Critical sampling, monitoring, or reporting deficiencies.	Any instance.	Significant non-compliance	I. NOV and AO with publishing in the newspaper of general circulation in Chesterfield County II. Administrative Fine III. Judicial Action IV. Termination of Service
Falsification of sampling, monitoring, or reporting requirements.	Any instance	Significant non-compliance	I. Administrative fine II. Judicial action – criminal prosecution III. Termination of Service
Failure to report changed discharge	Any instance with no impact on the permit	Non-compliance	Informal Response
	Any instance with impact on the permit	Non-compliance	NOV

Violation	Nature or Frequency of Violation	Status	Range of Responses
Failure to obtain permit before discharge	Any instance	Non-compliance	NOV
Failure to inform IWPP of the ownership change within 30 calendar days	Any instance	Non-compliance	NOV
Failure to install monitoring equipment including a monitoring manhole as required	Any instance	Non-compliance	NOV with the requirement to immediately initiate the installation of equipment
Tampering with monitoring equipment	Any Instance	Significant non-compliance	I. NOV and AO with publishing in the newspaper of general circulation in Chesterfield County and administrative fine II. Judicial action

C. Other Types of Violations

Violation	Nature or Frequency of Violation	Status	Range of Responses
Entry denial.	Entry denied or consent withdrawn. Copies of records denied.	Non-Compliance	Obtain search warrant and return to IU.
Inadequate record keeping.	Incomplete or missing records	Non-Compliance	I. Informal Response II. NOV
	Repeat Offense	Non-compliance	I. NOV II. AO with publishing and fine.
Failure to properly operate and maintain pretreatment facility.	Any instance.	Non-compliance	I. Informal Response II. NOV III. AO with publishing and immediate corrective action

D. Compliance Schedule for Violation

Violation	Nature or Frequency of Violation	Status	Range of Responses
Missed milestone date.	Will not affect other milestone dates on compliance schedule.	Non-compliance	I. Informal Response II. NOV
	Will disrupt compliance schedule timetable. Violation for valid cause.	Non-compliance	I. NOV II. AO to re-establish timetable
	Will disrupt compliance schedule timetable - Violation not for valid cause.	Significant Non-compliance	I. NOV and AO with publishing in the newspaper of general circulation in Chesterfield County and fines II. Re-establish the compliance schedule
Missed final date of achieving compliance for which the schedule was established - the parameter was in violation at least once	Violation after milestone final date due to strike, act of God, national crises, etc.	Non-compliance	I. Informal Response
	Sampling or monitoring within thirty calendar days of milestone final date yielded more than one violation for the compliance schedule parameter	Significant non-compliance	NOV and AO with publishing in the newspaper of general circulation in Chesterfield County
	Sampling or monitoring after thirty calendar days and before the closure date yielded more than one violation for the compliance schedule parameter	Significant non-compliance	I. NOV and AO with publishing and fines II. Show cause III. Administrative Fine/Cost Recovery IV. Judicial Action/ Zero discharge V. Terminate Services
Failure to meet reporting requirements.	Did not submit report but did complete milestone.	Non-compliance	NOV
	Did not submit report, did not complete milestone.	Significant non-compliance	NOV and AO with publishing in the newspaper of general circulation in Chesterfield County and fine.
Reporting false information.	Any instance.	Significant non-compliance	I. Judicial Action/ criminal prosecution II. Terminate Service

VIII. Determination of Fines

Administrative fines shall have the following component:

- a) Cost Recovery which could include legal cost, replacement or repair of the infrastructure damaged by the discharge, clean up cost, operating losses and any other cost associated with restoration due to the discharge

- b) Fines can be collected on case-by-case basis. The amount shall be determined by County Ordinance. Supplemental Environmental Projects to benefit the community, as well as, clean-up can be undertaken by the IU, if the IWPP determines the action to be appropriate. Chesterfield County has the authority to assess administrative fines in the amount of at least \$1000.00 but not more than \$2500.00 per day per violation. Following factors are considered in determining administrative fines on a case-by-case basis:
- The extent of non-compliance
 - The amount, toxicity and the nature of pollutant discharged
 - The duration and the magnitude of violation
 - The effect of violation on the receiving waters
 - The effect of violation on the IWPP
 - The cost of enforcement to IWPP
 - The effect of violation on the ambient atmosphere
 - Extent of immediate steps taken by the violator to curb the violation
 - IU's compliance history
 - The degree of Willfulness or negligence of IU
 - The degree of control IU had over the occurrence of incidence
 - Willingness to participate in the Supplemental Environmental Project
 - The economic benefit achieved by non-compliance
 - Any other factor that can be used for the assessment of administrative fine

IX. Review/Response Timetable

1. Review compliance report within 5 - 7 business days of receipt.
2. Take initial action (start of the response time is when IWPP is made aware of the violation):
 - Informal response (1 - 2 business days)
 - Issue NOV's (3 - 5 business days)
 - Issue AO's (5 - 10 business days)
 - Show cause meeting (5 - 10 business days)
 - Compliance meeting (5 - 10 business days)
 - Pursue judicial action (20 - 25 business days)
 - File criminal charges (when evidence permits)
3. Take follow-up action:
 - Informal response ⇒ issue NOV or AO (10 -15 business days)
 - NOV ⇒ issue fine or AO (30 business days)
 - AO ⇒ issue fine, show cause, judicial action (30 - 60 business days)
 - Judicial action ⇒ terminate service
4. Industry response time for any initial or follow-up action: 10 - 15 business days, > 45 calendar days SNC
5. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service