



Council Agenda Report

From: Matt Thompson, Wastewater Resources Manager

Subject: Adoption of an Enforcement Response Plan Related to Sewer Use Ordinance

Date: February 6, 2018

Facts

1. On January 16, 2018, City Council introduced for first reading an ordinance to update provisions of the Municipal Code related to use of the City sewer system (Sewer Use Ordinance).
2. The Sewer Use Ordinance includes provisions to strengthen the City's industrial waste control program and enable the City to fully comply with the federal pretreatment regulations in Title 40 of the Code of Federal Regulations, Part 403.
3. In order to fully comply with these regulations, the City must develop and adopt an Enforcement Response Plan, which contains detailed procedures for how the City will investigate and respond to noncompliance by industrial users of the sewer system.
4. Staff developed the attached Enforcement Response Plan.

Options

1. Take no action;
2. Adopt the Enforcement Response Plan;
3. Amend, modify, or reject the above options.

Analysis and Conclusions

City Council has already taken the first step to adopt the Sewer Use Ordinance and strengthen the City's industrial waste control program. Adoption of the Enforcement Response Plan is an appropriate follow up to the Sewer Use Ordinance and will enable the City's program to comply with federal regulations. The procedures in the proposed Enforcement Response Plan correspond with the enforcement sections in the Sewer Use Ordinance. The Plan will not drastically change the way City staff has historically interacted with industrial users of the sewer system; it simply formalizes longstanding procedures. It would be in the City's best interest to adopt the attached Enforcement Response Plan.

Fiscal Impact

Adoption of the Enforcement Response Plan will have no fiscal impact to the City. The City is already implementing an industrial waste program, with costs paid by the Sewer Fund.

Recommendation

Adopt by motion the Enforcement Response Plan.

Attachment

1. Enforcement Response Plan



City of El Paso de Robles

ENFORCEMENT RESPONSE PLAN

February 6, 2018

LEGAL AUTHORITY

Chapter 14.10 of the City Municipal Code sets uniform requirements for discharges of domestic and industrial waste in the City sewer system to enable the City to comply with applicable effluent limitations, national pretreatment standards. The Chapter authorizes the issuance of wastewater discharge permits to Industrial Users (IUs), sets requirements for monitoring, compliance, and enforcement activities.

IDENTIFYING NONCOMPLIANCE

Routine inspections, surveillance sampling, and compliance monitoring are the primary means for identifying noncompliance. City staff documents non-compliance observed during inspections with inspection reports, supporting documents, and photographs (if applicable). Any noncompliance issues noted during the inspection is discussed with the IU representative. The IU would be instructed to take corrective measures which may include investigating the cause. Follow-up phone calls, e-mails or on-site inspections may be conducted to evaluate progress on a corrective action, and/or confirm compliance.

Complaints from wastewater collections staff, other City departments, agencies, or members of the public can also alert the City's Public Works Department staff of noncompliance issues. Investigations of complaints may involve meetings with the Industrial User, surveillance of the facility or joint inspections with other agencies. The type of investigation conducted depends on the severity, length and type of noncompliance, as well as the extent of the Industrial User's knowledge of the non-compliance. City Pretreatment staff will determine the appropriate response/action to be taken to resolve the noncompliance, per the protocol in the following chart.

ENFORCEMENT RESPONSE PLAN

The Enforcement Response Plan (ERP) outlines the protocol used by the City to deal with noncompliance by Industrial Users per 40 CFR 403.8(f)(5) and Chapter 14.10 of the City Municipal Code. The enforcement response protocol chart below outlines the typical types of escalating enforcement responses to be taken in response to violations. Violations may be noted during routine on-site inspections or inspections conducted as a result of a complaint. The rate of progression of the enforcement and escalation of steps may vary depending on the severity of the violation, the compliance history of the IU and any criminal intent.

PENALTIES

Section 14.10.590 of the City Municipal Code states that it is unlawful for any IU or person to violate any provision of Chapter 14.10, or the orders, rules, regulations and permits issued under this Chapter. Additionally, Chapter 14.10 allows the City to assess civil or criminal penalties. The City Attorney has the discretion to determine whether civil or criminal penalties will be pursued. The civil penalty may be up to \$1000.00 per violation, per day and a maximum civil penalty of \$25,000. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the

period of the violation. Criminal penalties shall not exceed \$1000.00 per violation, per day, or imprisonment for not more than one year, or both (Section 14.10.700). In the event of a second conviction the User or IU shall be punished by a fine not to exceed \$3,000 per violation, per day. The City also has the power to seek injunctive relief (section 14.10.710), terminate water service (Section 14.10.660) or revoke a permit (Section 14.10.670).

SIGNIFICANT NON-COMPLIANCE

Per 40 CFR 403.8(f)(2)(viii), the City will annually publish in a local newspaper per the public participation requirements of 40 CFR 25 any IU that in the previous 12 months meets any of the following situations:

- (1) Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of all wastewater measurements taken for the same pollutant parameter during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits as defined by 40 CFR 403.3(1);
- (2) Technical Review Criteria (TRC) violations, defined here as those in 33% or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR 403.3(1) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- (3) Any other violation of a pretreatment standard or requirement as defined by 40 CFR 403.3(1) (daily maximum, long term average, instantaneous limit, or narrative standard) that the Public Works Director determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of the POTW personnel or the general public;
- (4) Any discharge of pollutant that has caused imminent endangerment to human health, welfare or to the environment, or has resulted in the Public Works Director's use of emergency authority to halt or prevent such a discharge;
- (5) Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone contained in an industrial wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (6) Failure to provide within 45 days after the due date, any required reports, such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (7) Failure to accurately report noncompliance; or
- (8) Any other violation(s) or group of violations, which may include a violation of Best Management Practices, that the Public Works Director determines will adversely affect the operation or implementation of the local pretreatment program.

DESCRIPTION OF TERMS

E-mail: A notification sent electronically.

NOV: A notice of Violation letter that describes the violation(s), required action or correction, and time line. The NOV is the first step in the administrative and legal process to achieve compliance.

ABBREVIATIONS

- A City Attorney
- D Public Works Director
- ERP Enforcement Response Plan
- IU Industrial User
- IWM Industrial Waste Manager
- NOV Notice of Violation
- POTW Publicly Owned Treatment Works
- SNC Significant Noncompliance
- TRC Technical Review Criteria
- WQS Water Quality Specialist

ENFORCEMENT RESPONSE PROTOCOL

NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSE	CITY LEAD
Unpermitted Facilities			
Unpermitted Discharge	IU unaware of requirement; (no harm to POTW/environment)	On-site inspection, survey/application required, IU placed in the pretreatment program if applicable.	IWM WQS
	IU unaware of requirement; (harm to POTW)	On-site inspection, survey/application required, if applicable. NOV and IU responsible for costs incurred by POTW SNC Publication Civil/Criminal action	IWM IWM A
	Failure to comply	Civil/Criminal action Terminate service	A D
Failure to Submit Acceptable Industrial Discharge Survey/ Application	Failure to submit within 30 days or time noted.	Phone call NOV Site visit	IWM IWM
Failure to Monitor or Report Discharge	Failure to monitor discharge.	NOV	IWM
	Failure to submit monitoring results.	NOV	IWM

ENFORCEMENT RESPONSE PROTOCOL

NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSE	CITY LEAD
Violation of Permit Limits	Isolated, not significant	IU required to submit a written explanation with report. If no written explanation submitted, phone call/ /e-mail/ to the IU base on the severity of the violation or history of the IU.	IWM
	Isolated, significant (harm to POTW or Environment)	NOV requiring investigation of cause Increased monitoring if applicable SNC Publication Civil/Criminal action	IWM IWM IWM A
	Recurring - implement corrections & investigation, (no harm to POTW or Environment)	NOV requiring investigation of cause Increased monitoring if applicable SNC Publication	IWM IWM IWM
	Recurring - no investigation by IU or corrections implemented (no harm or harm to POTW or Environment)	NOV SNC Publication Cease and desist order Civil/Criminal Action Terminate service	IWM IWM IWM/D A D
	Failure to report violation to City within 24 hours.	NOV	
	Failure to collect and submit resample within 30 days	NOV	

ENFORCEMENT RESPONSE PROTOCOL

NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSE	CITY LEAD
Failure to Adequately Report a Violation	Report is improperly signed or certified	Phone call/e-mail/ meeting with company	IWM
	Report is improperly signed or certified after notice from POTW	Phone call/e-mail /NOV	IWM
	Report > 5 days late, isolated (not significant)	Phone call/e-mail/NOV	IWM
	Report > 30 days late	Phone call/e-mail/ NOV	IWM
	Report > 45 days late	SNC Publication	IWM
	Reports continuously late	NOV SNC Publication	IWM IWM
	Failure to report changed discharge	On-site Inspection (note violation)/Phone call/ e-mail/Application requested.	IWM IWM
	Failure for an SIU to notify the Director immediately of changes affecting the potential of a slug discharge.	On-site Inspection(note violation)/NOV/Application requested. Facility pays costs incurred by POTW if applicable SNC Publication Civil/Criminal action	IWM IWM IWM A
	Falsification	Investigation SNC Publication (If harm to the POTW or environment) Civil/Criminal action	IWM IWM A

ENFORCEMENT RESPONSE PROTOCOL

NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSE	CITY LEAD
Spill/Illegal Discharge	Failure to immediately report spill/discharge to the City	Investigation NOV	IWM IWM
	Failure to submit detailed written report pf discharge within 5 days detailing the cause and corrections	Investigation NOV SNC Publication (Depends on severity) Civil/Criminal action	IWM IWM IWM A
	Repeated failure to report spills/discharges	Investigation Permit revoked Cease and desist order SNC Publication Civil/Criminal action Terminate service	IWM IWM IWM IWM A D
Failure to Monitor Correctly	Failure to monitor pollutants as required by permit	Phone call/e-mail/ NOV/meeting with company	IWM
	Recurring failure to monitor	Compliance time schedule SNC Publication Civil/Criminal action	IWM IWM A
	Failure to take representative samples	NOV	IWM
Improper Sampling	Evidence of intent to bypass or tamper with sampling equipment.	Investigation Permit revoked Civil/Criminal action Terminate service	IWM IWM A D
	Failure to install monitoring equipment	Delay < 30 days (Depending on necessity)	On site visit
Delay > 30 days or more		NOV Compliance Schedule	IWM IWM

ENFORCEMENT RESPONSE PROTOCOL

NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSE	CITY LEAD
Exceeding Permit Effluent Limits	Isolated violation of permit effluent limits.	Phone call/e-mail/NOV	IWM
	Chronic violation of permit effluent limits. (No harm to POTW)	NOV Compliance Schedule SNC Publication Civil Action if applicable Facility pays costs incurred by POTW if applicable	IWM IWM IWM A IWM
Failure to Adhere to Compliance Schedule	Failure to submit progress report with 14 days following each task date and the final date	Phone call/e-mail/NOV	IWM
	Missed deadline > 30 days	NOV Investigation	IWM IWM
	Missed deadline > 90 days, does not respond to NOV	Civil/Criminal action Terminate service SNC Publication	A D IWM
Other Permit Violations	Wastestreams diluted in lieu of treatment (Initial Violation)	Inspection Violation/NOV	IWM
	Failure to discontinue diluting wastestreams	NOV Investigation SNC Publication Civil/Criminal action Terminate service	IWM IWM A D

ENFORCEMENT RESPONSE PROTOCOL

NONCOMPLIANCE	NATURE OF VIOLATION	ENFORCEMENT RESPONSE	CITY LEAD
	Failure to mitigate noncompliance. (No harm to POTW)	e-mail/NOV NOV	IWM IWM
	Failure to mitigate noncompliance. (Harm to POTW)	Investigation SNC Publication Civil/Criminal Action Facility pays costs incurred by POTW Terminate service	IWM IWM A IWM D
	Failure to properly operate and maintain pretreatment facility. (No harm to POTW)	Inspection/Violation/e-mail/NOV	IWM
	Failure to properly operate and maintain pretreatment facility (Harm to POTW) or bypassing pretreatment necessary to comply with permit effluent limits.	NOV Investigation SNC Publication Civil/Criminal Action Facility pays costs incurred by POTW	IWM IWM IWM A IWM
	Failure to retain records for a minimum of 3 years	Violation on inspection report NOV	IWM
	Refused Entry	NOV Obtain warrant to enter facility Terminate service	IWM IWM D