



**WASHINGTON SUBURBAN SANITARY COMMISSION
REGULATORY SERVICES GROUP**

FATS, OILS, AND GREASE PROGRAM

ENFORCEMENT RESPONSE PLAN

EFFECTIVE: December 19, 2006

INTRODUCTION

The Enforcement Response Plan (ERP) contained herein provides a framework for determining the appropriate response for violations of the Washington Suburban Sanitary Commission's (WSSC's) Regulations pertaining to the control of Fats, Oils, and Grease (FOG) discharges. This ERP is not intended to cover all violations or responses.

As a general rule, all noncompliances will be addressed through the issuance of a Notice of Violation (NOV). Repeat violations will subject the violator to WSSC citations carrying fines of \$250, \$500, \$750, or \$1,000, increasing in cost with each continuing violation until corrective measures have been implemented. Continued violations will result in escalated enforcement action.

In those instances where standard enforcement responses are ineffective in compelling compliance, a referral will be made to the WSSC's Legal Office or to the appropriate state or federal law enforcement agency for appropriate legal action.

This ERP has been prepared in conjunction with the Modified FOG Program Plan required in Article III, Section B.5 of the Sanitary Sewer Overflow (SSO) Consent Decree entered December 7, 2005. The Modified FOG Program Plan was subsequently approved by the Environmental Protection Agency (EPA) and the Maryland Department of the Environment (MDE) on December 19, 2006.

I. PROCEDURES FOR INVESTIGATING/ASSESSING COMPLIANCE

A. Scheduling of Investigations

A Food Service Establishment (FSE) is defined as a restaurant, cafeteria, hotel kitchen, church kitchen, school kitchen, hospital cafeteria, bar, or any other commercial or industrial operation that discharges grease laden wastewater.

All permitted FSEs will be inspected at least once during the first five years following EPA approval of WSSC's Modified FOG Program as required by the Consent Decree. The FSEs will subsequently be prioritized based on the following factors:

- Type and method of food preparation;
- Type and quantity of grease abatement systems;
- Size and grade of mainline sewer the FSE discharges to;
- History of grease blockages or SSOs downstream of the FSE;
- Inspection/Compliance history

Future inspection frequencies will vary from twice annually for high priority facilities, to once every two years for lower priority facilities. The lowest priority facilities will not be permitted or receive routine inspections.

During a routine inspection, FOG Investigators verify, at a minimum, that all required kitchen fixtures are served by a grease abatement system, that the grease abatement system is adequately sized and is in operating condition, and that FSEs are implementing Best Management Practices (BMPs) as required in their permit. In addition, the sewer system is inspected for any signs of grease accumulation. After an inspection, the FOG Investigator inputs pertinent data from the inspection into the PACS 2000 database system in the field using a tablet PC. The data is then used to generate enforcement actions that are signed directly on the tablet, printed using mobile printers, and immediately issued to the restaurant owner or representative. All inspection related information is then uploaded to the PACS 2000 database where it can be tracked and used to generate other documents, such as inspection reports.

In addition to routine inspections, FSEs may be inspected as a result of a complaint, basement backup, or SSO. Investigations are performed in an effort to identify the grease generating facility that is responsible for the blockage. An appropriate enforcement action is then initiated utilizing the PACS 2000 system.

B. Tracking Compliance Status

FSE noncompliance is tracked in the PACS 2000 database. When an FSE is issued a Notice of Violation, the compliance status for that facility is changed to “noncompliance” in the database. Conversely when the FSE returns to compliance, the status is returned to “compliance”. The PACS 2000 system is capable of tracking all milestone dates and activities associated with a violation.

II. PROCEDURES FOR RESPONDING TO NONCOMPLIANCE

A. Documenting Noncompliance

Notices of Violation are issued in the field in response to an observed violation of the WSSC Plumbing and Gasfitting Regulations or FSE Discharge Permit. These notices cite the specific code or permit violation and will usually contain requirements for the implementation of corrective measures. All Notices of Violation are periodically uploaded from the tablet PCs into the PACS 2000 system where the documents as well as signatures of the FOG Investigator and FSE representative are stored electronically. Typically, hard copies of all enforcement actions are also printed and filed.

B. Additional Enforcement Action

- **Administrative Orders**

Administrative Orders are enforcement documents issued in conjunction with a Complaint which direct FSEs to undertake or to cease specified activities. An administrative penalty may be assessed up to \$1,000 for each violation stated in the Administrative Order or Complaint, not to exceed \$50,000. Penalty assessments will be made with consideration given to:

- the extent to which the existence of the violation was known to the violator, but uncorrected by the violator, and the extent to which the violator exercised reasonable care;
- any actual or potential harm to human health or to the environment, including injury to or impairment of the WSSC sewage collection and treatment systems or the natural resources of the State;
- the degree of interference with or injury to the general welfare, health, or property rights of the public;
- the extent to which the geographic location of the system creates the potential for harm to the environment or to human health or safety;

- the cost of cleanup and the cost of restoration of natural resources;
- the available technology for controlling, reducing, or eliminating the conditions that caused the violation; and
- the extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

The WSSC has the authority to subpoena any person or evidence that is essential for proper consideration at an administrative hearing.

Authority

Article 29, § 18-104.3, Annotated Code of Maryland.

Applicability

An Administrative Order may be issued when:

- a violation is persistent and more severe enforcement needs to be taken

Required Action

An Administrative Order will be drafted by the FOG Unit Coordinator and forwarded to the Regulatory Services Group Leader for review. Once reviewed internally, a draft will be sent to the WSSC's Legal Office for review. The MDE may request joint review and WSSC must forward the requested draft within 30 working days of the MDE's request. If comments are not received from the MDE within 30 working days, the draft Order may be forwarded to the FSE. If the MDE does not request a joint review and the WSSC's Legal Office has reviewed the Order, then the draft Order may be forwarded to the FSE.

Any Complaint or Order issued by WSSC will be served upon the person to whom the Complaint or Order is directed. This is to be accomplished in the following manner:

- personally; or
- by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the person's last known address as shown on WSSC's records.

A WSSC employee or an agent acting on behalf of the WSSC may serve any Complaint or Order.

Response Time Frame

Response time frames may vary depending on the urgency of the situation; however, drafting an Order should not exceed 30 days from determining that an Order is warranted.

Once a determination is made to issue an Administrative Order, the WSSC may cite any and all unresolved violations in the content of the Complaint and Order.

The person being served may request, in writing, a hearing; however, the request must be made within 10 days after service of the Order. This right may be waived if the FSE enters into an agreement or Consent Order.

- **Civil Citation**

A citation issued by the WSSC and enforced by a court of competent jurisdiction, commanding a person named to appear on a day to answer charges of a violation or pay a fine. Associated fines are \$250, \$500, \$750, and \$1,000. Each day a violation remains uncorrected is a separate infraction and subject to additional citations and fines.

Authority

Article 29, § 18-104.2, Annotated Code of Maryland.

Applicability

A civil citation may be issued for a violation of any provision of the WSSC Plumbing and Gasfitting Regulations or FSE Discharge Permit, including but not limited to:

- Failure to correct a violation within the time period specified in a Notice of Violation (typically 30 days).
- An FSE violating any provision of the WSSC Plumbing and Gasfitting Regulations or FSE Discharge Permit where such a violation presents an imminent threat to the public health, welfare, environment or safety of WSSC's workers.

Required Action

A civil citation will be drafted by the individual responsible for identifying the violation, or their supervisor, and served upon the person to whom the citation is directed. This is to be accomplished in the following manner:

- personally; or
- by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the person's last known address as shown on WSSC's records.

An authorized WSSC employee may serve a civil citation. If service is made by certified mail, the person who mails the document shall file with WSSC verified proof of mailing.

Response Time Frame

Response time frames may vary depending on the urgency of the violation; however, issuance of a citation should not exceed 10 days from the date of determining a violation exists.

- **Civil Litigation**

The process of filing a lawsuit against a FSE in a civil court. If the court rules that the defendant violated the law, the court may impose civil penalties, injunctions, or other equitable remedies and/or cost recovery.

Authority

Article 29, § 1-201, Annotated Code of Maryland.

Applicability

Civil litigation may be pursued when:

- all reasonable means have been exhausted to seek reimbursement for costs or potential costs incurred by WSSC; or
- all reasonable means to compel compliance by the FSE have been exhausted.

Required Action

The Regulatory Services Group will refer the matter to WSSC's Legal Office, which will take the appropriate action.

Response Time Frame

Referral to WSSC's Legal Office within 90 days of becoming aware of a violation meeting the applicability criteria listed above.

- **Cost Recovery (Compliance Determination)**

The actual recovery of costs incurred by the WSSC for actions associated with noncompliance. These actions may be, but are not limited to, investigation, sampling, enforcement actions, reviewing reports, and conducting research.

Authority

WSSC Plumbing and Gasfitting Regulations, §.

Applicability

Cost recovery may be pursued:

- to recover all costs associated with bringing a noncompliant FSE into compliance; and
- to recover all costs associated with determining continued compliance status on a prescribed frequency.

Required Action

As needed, a detailed breakdown of all costs accumulated will be requested from the Accounting Group. After reviewing and approving the charges and costs accumulated, the FOG Unit Coordinator will authorize the Accounting Group to generate an invoice for payment to the affected industry.

Response Time Frame

A request will be made to the Accounting Group as needed.

- **Cost Recovery (Damages)**

The actual recovery of costs incurred by WSSC for any work or repair made necessary by the neglect or action of a property owner, tenant, or FSE resulting from the discharge of Fats, Oils, and Grease.

Authority

WSSC Plumbing and Gasfitting Regulations, §

Applicability

Cost recovery may be pursued to recover costs associated with, but not limited to, damages to WSSC's property, sewer cleaning costs, and reimbursement for property damages paid by WSSC.

Required Action

The Regulatory Services Group will prepare a package containing necessary evidence and documentation identifying the contributing source(s) and forward it to WSSC's Legal Office.

Response Time Frame

Investigation into the source of damages will take place as soon as possible following notification that damages exist. Preliminary findings will be compiled within 90 days.

- **Injunction**

A court order directing a party to perform or refrain from performing a certain action.

Authority

Article 29, § 18-104.3(g) and 18-105, Annotated Code of Maryland.

Applicability

An injunction may be indicated when:

- all appropriate administrative remedies have been exercised and the violation continues;
- irreparable injury, loss, damage, or an immediate or threatened violation of WSSC regulations occurs; or
- any violation of an Administrative Order.

Required Action

Referral to WSSC's Legal Office by the Regulatory Services Group Leader accompanied by supporting documentation.

Response Time Frame

Response time frames may vary depending on the urgency of the matter; however, referral should not exceed 90 days from the date of the occurrence that prompted the action.

- **Notification to Appropriate Authorities**

A notification including, but not limited to, the following authorities: Environmental Protection Agency, Regional Waste Management Division Director; MDE, Waste Management Administration; County Health Departments; Environmental Crimes Task Forces; and organizational units within the Commission.

Applicability

The appropriate authorities may be notified when:

- an FSE is discharging wastes or wastewater directly to the waters of the State or to a stormwater conveyance system without possessing the appropriate permit or discharging in violation of existing regulations;
- a spill occurs to the sanitary sewer that may create a hazardous condition or harm to human health or the environment; or
- it appears to WSSC that there may be criminal conduct.

Required Action

The level of Unit personnel that respond will depend on the agency and level of notification required. All verbal contact with an outside agency, pertaining to a violation, will be documented in the PACS 2000 database. Suspected criminal offenses may be referred to the Environmental Crimes Task Forces.

Response Time Frame

The response time frame will depend on the urgency of the matter; however, notification should not exceed two weeks from the date WSSC becomes aware of the occurrence that prompted the notification.

- **Termination or Suspension of Permit**

A revocation or suspension of a FSE Discharge Permit

Authority

WSSC Plumbing and Gasfitting Regulations, §; FSE Discharge Permit, §.I.B.7

Applicability

Grounds for permit suspension or termination are:

- violation of any terms or conditions of the permit;
- misrepresentation or failure to disclose fully all relevant facts during the permit application process or subsequent to permit issuance; or
- information indicating that the permitted discharge poses a threat to the collection treatment system, WSSC personnel, or the receiving waters.

Required Action

The FSE will receive written notification by personal delivery or certified mail of permit termination. The written notification will indicate the reason(s) for termination, the effective date and time for termination, and will expressly state that no industrial discharges will occur beyond the effective date of the termination.

Response Time Frame

The Regulatory Services Group will send out notification within 30 days of determining that termination or suspension is warranted. If an imminent endangerment exists, notification will occur as soon as possible after the action is taken.

- **Termination of Service**

The physical disconnection or plugging of a sewer line from the collection system. Termination of service may also include, or be replaced by, the termination of water service.

Authority

Article 29, § 9-101(a)(2)(i), Annotated Code of Maryland; WSSC Plumbing and Gasfitting Regulations, §

Applicability

Termination of service is indicated when:

- a FSE discharges or threatens to discharge a waste which poses a threat to human health, the environment, or the POTW;
- all appropriate administrative remedies have been exercised and the violation continues;
- a FSE fails to comply with the conditions of a final Administrative Order.

Required Action

A verbal request will be made by the Engineering and Construction Team Chief, to the Customer Care Support Services Group to terminate water or sewer service and followed-up with a written request. FSEs will be given notice and an opportunity to respond prior to termination except in the case of immediate endangerment to the health or welfare of persons, in which case informal notice will be provided.

Response Time Frame

If termination of service is necessary to halt or prevent the discharge of a waste capable of creating a dangerous situation, action should be taken immediately or as soon as practical. Otherwise, action should occur within 30 days of becoming aware of a violation meeting the applicability criteria listed above.

- **Verbal Directive**

An official statement of orders or instructions given orally to the noncompliant FSE and followed-up with a NOV. .

Authority

WSSC Plumbing and Gasfitting Regulations, §.

Applicability

A verbal directive may be issued when a minor violation exists, to be followed-up with a NOV.

Required Action

An FOG Investigator may issue a verbal directive at the time the violation is detected. A NOV must be filed in the FSE's file of any verbal directive.

Response Time Frame

A verbal directive shall be given at the time the violation is identified and followed-up within 30 days with a NOV.

- **Compliance Directive**

A written document establishing a schedule containing a milestone date for increments of progress towards a final compliance date.

Authority

WSSC Plumbing and Gasfitting Regulations, §

Applicability

A compliance directive may be issued when a compliance date is necessary to ensure that the FSE implements corrective measures or takes other required action in a timely manner.

Required Action

A compliance directive may be issued by an FOG Investigator and reviewed by the Senior FOG Investigator or FOG Unit Coordinator.

Response Time Frame

A written directive may be issued within 30 days of determining that corrective measures are necessary.

GLOSSARY OF ACRONYMS

ERP	Enforcement Response Plan
FOG	Fats, Oils, and Grease
FSE	Food Service Establishment
MDE	Maryland Department of the Environment
NOV	Notice of Violation
POTW	Publicly Owned Treatment Works
SSO	Sanitary Sewer Overflow
WSSC	Washington Suburban Sanitary Commission
WWTP	Wastewater Treatment Plant