



WASHINGTON SUBURBAN SANITARY COMMISSION
REGULATORY SERVICES GROUP

FATS, OILS, AND GREASE PROGRAM

FOOD SERVICE ESTABLISHMENT

ENFORCEMENT RESPONSE PLAN

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 initial non-compliances that do not involve actual FOG discharges that have resulted in a blockage will be addressed through the issuance of a Notice of Violation (NOV). Repeat violations will subject the violator to increased steps of enforcement documents including Compliance Directives, possible fines or civil citations, and possibly ending with termination of service until corrective measures have been implemented. **In addition, a Food Service Establishment (FSE) that has repeated violations for failure to clean or maintain their relatively small, indoor, flow-based interceptor may be required to install a larger volume-based interceptor.**

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

This 2017 Modified ERP has been prepared in conjunction with the 2017 Modified FOG Program Plan required in Article Three B.5.b of the Sanitary Sewer Overflow (SSO) Consent Decree entered December 7, 2005.

I. PROCEDURES FOR INVESTIGATING/ASSESSING COMPLIANCE

1. 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 from food preparation areas into the sanitary sewer system.

All permitted FSEs were inspected at least once during the first five years following the MDE and 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:

- a. **Previous compliance history of the FSE.**
- b. **FSE proximity to a section of the public sewer system susceptible to FOG blockages (i.e., hot spots).**
- c. **FOG discharge potential due to menu, kitchen fixtures, and dishwashing practices.**
- d. **Cleaning/maintenance risk of the installed grease abatement device(s).**

Future inspection frequencies will be determined by WSSC based on these prioritization factors, which are listed in descending order of significance.

During a routine inspection, FOG Investigators verify 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 may be inspected for any signs of grease accumulation. After an inspection, the FOG Investigator inputs pertinent data from the inspection into the WSSC proprietary database system in the field using an advanced computer device. The data is then used to generate enforcement actions (as appropriate) that may be signed directly on the device, printed using mobile printers, and immediately issued to the restaurant owner or representative as applicable. All inspection related information can be uploaded to the WSSC proprietary database where it can be tracked and used to generate inspection reports or other documents. In the event of the loss of WSSC proprietary database connectivity, hard copy paper documents can be alternatively issued or mailed.

In addition to routine inspections, FSEs may be inspected as a result of a complaint, basement backup, or SSO. Investigations are performed to identify the grease generating facility that is responsible for the collection system problem. An appropriate enforcement action is then initiated utilizing the WSSC proprietary database system.

2. Tracking Compliance Status

FSE compliance status is tracked in the WSSC proprietary database. When an FSE is issued a Notice of Violation, the compliance status for that facility is changed to "noncompliance" (NCP) in the database. Conversely when the FSE returns to compliance, the status is returned to "compliance" (CMP). The WSSC proprietary database system is capable of tracking all milestone dates and activities associated

with a violation.

II. PROCEDURES FOR RESPONDING TO NONCOMPLIANCE

1. Documenting Noncompliance

Notices of Violation are usually the first level of enforcement action and are issued in the field in response to an observed violation of the WSSC Plumbing and Fuel Gas Code 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 WSSC proprietary database 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.

Notice of Violation (NOV)

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

Authority

WSSC Plumbing and Fuel Gas Code-Section 108.

Applicability

An NOV 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

An NOV may be issued by a FOG Investigator and reviewed by the FOG Manager or FOG Unit Coordinator.

Response Time Frame

An NOV may be issued within 1-30 days of determining that corrective measures are necessary.

2. Additional Enforcement Action(s)

a. Compliance Directive

A written document that usually follows an NOV, or for special directives to perform certain tasks prior to an NOV, or for establishing a schedule containing a milestone date for increments of progress towards a final compliance date.

Authority

WSSC Plumbing and Fuel Gas Code, Section 108.

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 a FOG Investigator and reviewed by the FOG Manager or FOG Unit Coordinator.

Response Time Frame

A written directive may be issued requiring completion within 1-90 days of determining that corrective measures are necessary.

NOTE: Additional Enforcement Action options (in no particular order, and remain options at the discretion of the WSSC General Counsel):

b. 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 can be \$250, \$500, \$750, and \$1,000. Each day a violation remains uncorrected is a separate infraction and subject to additional citations and fines at \$1000 per offense/civil citation issued

Authority

Annotated Code of Maryland, Public Utilities Article Title 29.

Applicability

A Civil Citation may be issued for a violation of any provision of the WSSC Plumbing and Fuel Gas Code or FSE Discharge Permit.

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:

1. personally; or by
2. 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. The civil citation will be accompanied by a separate NOV for documentation into the WSSC proprietary database. If service is made by certified mail, the person who mails the document shall file with the 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.

c. 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

Annotated Code of Maryland; Public Utilities Articles 17 and 29; WSSC Plumbing and Fuel Gas Code Section 108

Applicability

Termination of service is indicated when:

1. FSE discharges or threatens to discharge a waste which poses a threat to life, property, environment or the Commission's systems;

Required Action

A verbal request will be made by the Chief Engineer, to the Utility Services Department, 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/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.

d. 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:

1. 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;
2. 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;
3. the degree of interference with or injury to the general welfare, health, or property rights of the public;
4. the extent to which the geographic location of the system creates the potential for harm to the environment or to human health or safety;
5. the cost of cleanup and the cost of restoration of natural resources;
6. the available technology for controlling, reducing, or eliminating the conditions that caused the violation; and
7. 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.

Authority

Annotated Code of Maryland, Public Utilities Article Title 29.

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 General Counsel's 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 General Counsel's 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:

1. personally; or
2. by publication; or
3. 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.

e. 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 injunctions or other equitable remedies and/or cost recovery.

Authority

Annotated Code of Maryland, Public Utilities Article Title 29.

Applicability

Civil litigation may be pursued when:

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

Required Action

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

Response Time Frame

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

f. Cost Recovery (Compliance Determination)

The recovery of actual 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 Fuel Gas Code Section 812

Applicability

Cost recovery may be pursued:

1. to recover all costs associated with bringing a noncompliant FSE into compliance; and
2. to recover all costs associated with investigation, monitoring, analyses or enforcement resulting from violation of Commission requirements or standards.

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.

g. Cost Recovery (Damages)

The actual recovery of costs incurred by the 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 Fuel Gas Code §913.a

Applicability

Cost recovery may be pursued to recover costs associated with, but not limited to, damages to the 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 the WSSC's General Counsel's 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.

h. Injunction

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

Authority

Annotated Code of Maryland, Public Utilities Article Title 29.

Applicability

An injunction may be indicated when:

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

Required Action

Referral to the WSSC's General Counsel's 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.

i. 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:

1. 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; or
2. a spill occurs to the sanitary sewer that may create a hazardous condition or harm to human health or the environment; or
3. it appears to the WSSC that there may be criminal conduct.

Required Action

The level of FOG 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 WSSC proprietary 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 the WSSC becomes aware of the occurrence that prompted the notification.

j. Termination or Suspension of Permit

A revocation or suspension of a FSE Discharge Permit

Authority

The WSSC Plumbing and Fuel Gas Code Section 108.

Applicability

Grounds for permit suspension or termination are:

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

Required Action

The FSE will receive written notification by personal delivery or certified mail of the proposed permit termination or suspension. The written notification will indicate the reason(s) for the proposed termination or suspension and advise the permittee of the opportunity to be heard on the proposed action.

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 and may include a summary suspension of the permit pursuant to applicable state law.

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