



Fayetteville Public Utilities

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FOOD SERVICE ESTABLISHMENT ENFORCEMENT RESPONSE GUIDE

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Signature: 

This Food Service Establishment Enforcement Response Guide (FSE-ERG) was developed to ensure a consistent response to all food service establishments that cause, or have the potential to cause, interference, obstruction, sanitary sewer overflows, bypasses or storm water inflow to the Fayetteville wastewater collection system and wastewater treatment plant. Food Service Establishments (Users) are nondomestic facilities and are monitored by the Fayetteville Public Utilities' Pretreatment Section. Also, included in this FSE-ERG is the *Enforcement Response Plan for Multi-Dwelling Units – Grease Related Overflows and Obstructions*. Refer to the Fayetteville Public Utilities' Fats, Oils & Grease Management Policy for additional information on the FOG management program.

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Abbreviations:

AO	Administrative Order
BOD	Biochemical Oxygen Demand
FOG	Fats, oils and grease
FSE	Food Service Establishment
GCE	Grease Control Equipment
MDU	Multi Dwelling Unit
NCN	Noncompliance Notification
NOV	Notice of Violation
POTW	Publicly Owned Treatment Works
SCO	Show Cause Order
SPS	Sewage Pumping Station
TSS	Total Suspended Solids
T	Pipe to convey a fluid substance
WWTP	Wastewater Treatment Plant

SIGNIFICANT NONCOMPLIANCE OF WASTEWATER DISCHARGE LIMITS

The E.P.A. has defined "significant noncompliance" as violations that meet one or more of the following criteria:

1. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66%) percent or more of all of the measurements taken during a six-month period exceed the daily maximum limit or the average limit for the same pollutant parameter;
2. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33%) percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily average maximum limit, or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH). The following compatible pollutants are exempt from TRC consideration if they exceed the surcharge level but do not exceed upper ceiling: BOD, TSS, FOG;
3. Any other violations of a pretreatment effluent limit that the Control Authority (Fayetteville Public Utilities) determines has caused, alone or in combination with other discharges, interference or pass-through, including endangering the health of POTW personnel or the general public;
4. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge;
5. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, and attaining final compliance;
6. Failure to provide, within 30 days after the due date, 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;
8. Any other violation or group of violations that the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

Generally, an isolated instance of noncompliance or a Category 0 violation can be met with an informal response or Noncompliance Notification (NCN). Any Category 1 to Category 4 violations should be responded to with an escalation in enforcement that requires a return to compliance by a specific deadline.

NONCOMPLIANCE NOTIFICATION (NCN)

Generally issued by the inspector/field personnel, the Noncompliance Notification (NCN) is an official communication from the Fayetteville Public Utilities to the non-compliant User that deficiencies have been identified. Most NCN's allow the non-compliant facility a 30 day period to respond to the deficiencies. Failure to respond to an NCN will result in the issuance of a Notice of Violation. NCNs may be issued to food service establishments for the following deficiencies:

- Grease Interceptor Effluent (outlet) T not acceptable
- Grease Interceptor Effluent (outlet) T not visible or accessible for inspection
- Grease Interceptor mid-wall baffle or side walls indicates deterioration of concrete
- Grease Interceptor FOG and food solids layer are greater than 25% of the capacity of the interceptor tank, or interceptor was not pumped within last 180 days
- FOG evident in downstream sewer line from this facility
- Facility has no grease control equipment installed
- No records of interceptor or trap maintenance available at the facility
- Sewer cleanout covers missing or damaged, allowing rainfall inflow to sanitary sewer
- FOG on ground, around recycle bin or dumpster, causing storm water impact

NOTICE OF VIOLATION (NOV)

Generally issued by the inspector/field personnel, the Notice of Violation (NOV) is an official communication from the Department (Fayetteville Public Utilities) to the non-compliant User that informs the facility that the pretreatment violation has occurred. The NOV is issued for relatively minor or infrequent violations of pretreatment standards and requirements and should be issued within five (5) working days of the identification of a violation. A NOV does not contain assessment of penalties or cost recovery. The NOV provides the User with an opportunity to correct the noncompliance on its own initiative rather than according to a schedule of actions determined by the Department. The NOV documents the initial attempts of the Department to resolve the noncompliance. Authenticated copies of NOV's may serve as evidence in judicial proceedings.

SCHEDULE OF COMPLIANCE

A Schedule of Compliance is a detailed list of the steps to be taken by a non-compliant facility whereby compliance with all pretreatment regulations will be achieved. This schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standards.

ADMINISTRATIVE PENALTIES

An administrative penalty is a monetary penalty assessed by the Department for violations of pretreatment standards and requirements. Administrative penalties are to be used as an escalated enforcement action and are punitive in nature and are not related to a specific cost born by the Department. Instead, the amount of the penalty should recapture any economic benefit gained by noncompliance and/or deter future violations. An Administrative Order is to be used to assess an administrative penalty.

ADMINISTRATIVE ORDERS

Administrative Orders (AO) are to be issued by the Pretreatment Coordinator, or the CEO / General Manager of Fayetteville Public Utilities. Administrative Orders are enforcement documents that direct Users to undertake and/or to cease specified activities. Administrative Orders are to be used as the first formal response to significant noncompliance, and may incorporate compliance schedules, administrative penalties, assessments for costs incurred during investigation and/or enforcement, attorney's fees, assessments for damages and termination of service. The Department has adopted four (4) general types of AOs: Compliance Orders, Show Cause Orders, Cease and Desist Orders, and Agreed Orders.

1. **COMPLIANCE ORDER** - A Compliance Order directs the User to achieve or restore compliance by a specified date and is the primary means of assessing penalties and costs. The Compliance Order will document the noncompliance and state required actions to be accomplished by specific dates and is issued by the Department.
2. **SHOW CAUSE ORDER** - An Order to Show Cause directs the User to appear before the Department, explain its noncompliance, and show cause why more severe enforcement action should not be pursued. The hearing is open to the public and may be formal or informal. The results of all hearings, along with any data and testimony submitted as evidence, are available to the public and may serve as evidentiary support for future enforcement actions.
3. **CEASE and DESIST ORDER** - A Cease and Desist Order directs a noncompliant User to cease illegal or unauthorized discharge immediately or to terminate discharge altogether. To preserve the usefulness of this order in emergency situations, penalties should not be assessed in this document. A Cease and Desist order will be used in situations where the discharge is causing interference, pass through, environmental harm, or otherwise creating an emergency situation. The order may be issued immediately upon discovery of an emergency situation or following a hearing. In an emergency, the order to cease and desist may be given by telephone with a

subsequent written order to be served by the Department before the close of business on the next working day. If the User fails to comply with the order, the Department may take independent action to halt the discharge.

4. **AGREED ORDER** - The Agreed Order is an agreement between the Department and the User. The Agreed Order normally contains three elements: (1) compliance schedules with specific milestone dates; (2) stipulated penalties, damages, and/or remedial actions; and (3) signature by the Department and the User representative. An Agreed order is appropriate when the User assumes the responsibility for its noncompliance and is willing (in good faith) to correct the causes.

PENALTY ASSESSMENT

Determining a penalty amount that reflects the violation's significance is extremely important. If the penalty is too small, its deterrent value is lost and the User may regard the amount as a tax or nominal charge to pollute. If the penalty is too great, it could bankrupt the business (making necessary investment in pretreatment equipment impossible or potentially forcing unnecessary closure). The Department has categorized the various types of violations, and assigned a penalty range to each category. Penalty categories are determined by using the Enforcement Response Table (page 7). All penalty assessments will be approved and signed by the Department or their designee. Penalty amounts are considered to be an economic deterrent to the illegal activity. Penalty ranges have been designed to recover any economic benefit gained by the violator through non-compliance.

1. **CATEGORY 0** = No penalty
2. **CATEGORY 1** = \$50.00 to \$500.00 penalty
3. **CATEGORY 2** = \$50.00 to \$1,000.00 penalty
4. **CATEGORY 3** = \$50.00 to \$10,000.00 penalty
5. **CATEGORY 4** = **DIRECT LEGAL ACTION** - Any penalties and/or costs to be assessed at the maximum penalty allowable by applicable law and included as part of the legal action.

Assessments for damages or destruction of the facilities of the POTW, and any penalties, costs, and attorney's fees incurred by the pretreatment agency as the result of the illegal activity, as well as the expenses involved in enforcement, are not part of this penalty assessment procedure and would be in addition to any penalties assessed as described above.

**FAYETTEVILLE PUBLIC UTILITIES FOOD SERVICE ESTABLISHMENT
ENFORCEMENT RESPONSE**

<u>Incident</u>	<u>Category Level</u>	<u>Action Taken</u>
1. Failure to install grease control equipment, grease interceptor structural failure (baffle wall collapsed, walls deteriorated, tank leaking, infiltration/inflow in tank), failure to install proper effluent (outlet T), or no access to effluent (outlet T) to determine compliance		
a. 1 st Notification – Noncompliance Notification of problem	0	Issue NCN – 30 day deadline for response
b. 2 nd Notification – Failure to comply with NCN	1	Issue NOV – 15 day deadline for response
c. 3 rd Notification – Failure to comply with NOV	2	Issue AO \$500 penalty – 30 day deadline for response
d. 4 th Notification – Failure to comply with AO	3	Issue \$250/day penalty
2. Facility contributing FOG to downstream manhole, SPS, or WWTP – classify degree of impact for appropriate response		
a. Slight FOG impact (slight coating of FOG in POTW less than ¼” coverage – ½ of pipe)	0	NCN – 30 day deadline for response NOV – 30 day deadline for response; reimburse cleaning cost to
b. Moderate FOG impact (moderate coating FOG in POTW, less than ½” coverage – ½ of pipe)	2	Department, require interceptor mid-wall sweep Reimburse cleaning cost to Department & AO -
c. Heavy FOG impact (heavy coating FOG in POTW causing obstruction and/or interference in sewer line)	3	\$1,000 penalty; require interceptor mid-wall sweep
d. Heavy FOG impact (facility’s discharge caused bypass or sanitary sewer overflow)	4	Direct Legal Action
3. Grease Control Equipment not maintained (pumped or cleaned)		
*Interceptor has >25% FOG and solids, or >180 days		
*Trap cleaned >monthly		
a. 1 incident within 24 month period	0	Issue NCN – 30 day deadline for response
b. 2 incidents within 24 month period	1	Issue NOV – 15 day deadline for response

<u>Incident</u>	<u>Category Level</u>	<u>Action Taken</u>
c. 3 incidents within 24 month period	2	Issue NOV - \$500 penalty
d. 4 incidents within 24 month period	3	Issue SC - \$1,000 penalty
e. 5 incidents within 24 month period	3	Department pumps GCE & Charges FSE \$1,000 penalty
4. Failure to respond to any notification letter within 30 days	Escalation of Enforcement	
5. No records of grease control equipment maintenance or cleaning at facility		
a. 1 incident within 24 month period	0	Issue NCN
b. 2 incidents within 24 month period	1	Issue NOV
e. 3 incidents within 24 month period	2	Issue NOV - \$100 penalty
d. 4 incidents within 24 month period	3	Issue NOV - \$250 penalty
e. 5 incidents within 24 month period	3	Issue NOV - \$500 penalty
6. Failure to allow access for inspectors to adequately assess grease control equipment	4	Show Cause Order
7. Safety hazard at grease control equipment area (i.e. missing manhole cover, manhole cover damages or not made of material of suitable strength)		Notify Health Department/City Codes Department and issue NCN
8. Facility in violation of numerical FOG limit		
a. FOG concentration in excess of limit but less than 2x limit	1	Issue NOV - \$100 penalty
b. FOG concentration between 2x -4x limit	1	Issue NOV - \$250 penalty
c. FOG concentration in excess of 4x limit	2	Issue NOV - min. \$300 - \$500 penalty
9. Facility using additives or chemicals that emulsify or otherwise cause FOG to be discharged to the City sewer system	3	Show Cause Order
10. Failure of new facility or existing establishment that upgrades their facility, to notify Department, or submit <i>Grease Control Equipment Inquiry</i> or <i>FOG Plan</i> information	1	Issue NOV & require GCE
11. Missing or damaged sewer cleanout covers, or any rainfall inflow to Department sewer		

<u>Incident</u>	<u>Category Level</u>	<u>Action Taken</u>
a. 1 st Notification	0	Issue NCN – 30 day deadline for response
b. 2 nd Notification	1	Issue NOV – 15 day deadline for response
c. 3 rd Notification (repeat fine after every 15 days if unresolved)	3	Issue NOV - \$500 penalty

ENFORCEMENT RESPONSE PLAN FOR MULTI-DWELLING UNITS/GREASE-RELATED SEWER OVERFLOWS AND OBSTRUCTIONS

Fayetteville Public Utilities regulates grease management through their State approved Pretreatment Program under Fats, Oils, & Grease (FOG) Management. The Department has made great strides reducing the commercial grease-related overflows to the low single digits annually. Grease-related overflows caused by residential customers are now the source of most of the grease restrictions. Single family residential customers are identified and educated on proper grease disposal. The multi-dwelling units (MDUs), including apartment buildings, however must be addressed through the property management or owners.

Since the MDU owns the private infrastructure and the private sewer services, they must be held responsible for the restriction in the Publicly Owned Treatment Works (POTW). The Fayetteville Sewer Use Ordinance states:

Prohibited Pollutants

1. No person shall introduce into the publicly owned treatment works any of the following pollutants which, acting either alone or in conjunction with other substances present in the POTW, interfere with the operation of the POTW as follows:
2. Solid or viscous pollutants in amounts which cause obstruction to the flow of the sewers, or other interference with the operation of or which cause injury to the POTW, including waxy or other materials which tend to coat and clog a sewer line or other appurtenances thereto;

Therefore, the Department will actively pursue repeat violators under this Code. The Enforcement Response Plan (ERP) will proceed as follows (all offenses within a 5 year period);

- 1st Offense – Require MDU to distribute educational flyers (i.e. grease, roots, etc.) on prohibitive discharges and proper maintenance to all present tenants and new tenants as lease is signed. Must provide Fayetteville Public Utilities with a sample copy.
- 2nd Offense – Order & Assessment issued with a \$200.⁰⁰ penalty plus cost of restriction/overflow removal* charged to MDU.
- 3rd Offense – Order & Assessment issued with a \$400.⁰⁰ penalty plus cost of restriction/overflow removal* charged to MDU.
- 4th Offense – Order & Assessment issued with an \$800.⁰⁰ penalty plus cost of restriction/overflow removal* charged to MDU.
- 5th Offense – Order & Assessment issued to install pretreatment equipment to prevent continuation of Non-compliance.

Failure to comply with an ERP will result in escalation of enforcement under the Pretreatment Program which may include monetary penalties up to \$10,000/day and/or termination of services.

*Cost of restriction/overflow may include some or all actions involved in investigation and resolution of the flow restriction.