

SCOTT COUNTY REGIONAL SEWER DISTRICT
ENFORCEMENT RESPONSE GUIDE (ERG)

INTRODUCTION

This document represents the Enforcement Procedures for the Scott County Regional Sewer District (SCRSD or District) in Scott County, Indiana. The SCRSD institutes enforcement actions under Ordinances of the District.

It is to be understood that if a user continues to violate District regulations after notification by the SCRSD that the Indiana Department of Environmental Management (IDEM) may proceed to enforce directly against the user and/or the District. The IDEM may also take its own enforcement action when the District has not taken timely action or has failed to impose adequate sanctions against a violator.

Action taken by the District may be preferable to actions taken by IDEM. The US EPA retains authority to take its own enforcement action where the state or local municipality is not willing to take timely or appropriate enforcement.

This Guide has been tailored as recommended by EPA to include a range of enforcement responses available to the District. It addresses a broad range of violations. It is not intended to cover all types of violations. It has been developed for guidance and is not intended to limit the enforcement discretion of any of the administering agencies.

If users appear to be attempting, in good faith, to comply with requirements of the SCRSD, the District's enforcement actions would be on a more cooperative level than if the user does not appear to be attempting to comply in good faith. If a user appears to be acting in good faith to comply, the District may choose an enforcement response that is not as coercive as one would choose against a facility not acting in good faith.

It should be noted however, that good faith must be measured against the violation. Congress clearly expressed in the Clean Water Act that, extraordinary efforts, are required by the user of wastewater facilities to comply with federal, state and local requirements.

USER INVENTORY

There is no single reliable source for identification of new users of the District's facilities. Therefore, discovery of new users occurs as a result of varied activities and from diverse areas. The following list includes a number of resources used by the District for identifying new users:

1. Telephone listings (Yellow Pages);
2. Previous survey results;
3. Tenant lists;
4. Sewer connection permits;
5. Referrals from other agencies (Scott County Board of Health, etc.);
6. Site visits;
7. Reports from other users;
8. Citizen reports;
9. Contact from potential users;
10. Observations by sampling, surveillance/inspection/field personnel;
11. Newspaper articles/trade journals/business magazines; and
12. Chamber of Commerce.

COMPLIANCE MONITORING PROCEDURES

Compliance monitoring activities conducted by the District are necessary to identify and document violations that can be presented as admissible and irrefutable evidence in administrative actions and legal proceedings. User compliance with applicable regulations is determined and evaluated through:

1. Self-monitoring data from users;
2. Inspections conducted by the District;
3. Surveillance sampling and analysis conducted by the District; and
4. Evaluation by the District of application information.

Inspections by the District are conducted to verify compliance and to identify and potential problems or violations.

IDENTIFICATION OF VIOLATIONS

The identification of a violation of District requirements, regardless of the severity, will initiate the enforcement process. Discovery of a violation may occur as a result of any number of activities. The list below represents the most common sources of identifying violations:

1. Review of District surveillance sampling results;
2. Review of user self-monitoring results;
3. Spill/accidental discharge reports from users;
4. Site visits/inspections by District personnel;
5. Observations by field personnel;
6. Information provided by the public or private citizens;
7. Review of compliance schedule requirements;
8. Review of agreed judgment requirements; or
9. Information provided by other agencies (IDEM, County Board of Health, etc.).

Once violations are identified, it is the responsibility of the District's Superintendent to implement the appropriate enforcement response. When determining an appropriate response, particularly one which includes the imposition of penalties and/or fines, the specific procedures outlined in the Enforcement Response Section must be followed. Additional criteria may be used in determination of the response, including:

1. Magnitude of the violation;
2. Duration of the violation;
3. Effect of the violation on the POTW's receiving stream;
4. Effect of the violation on POTW personnel, processes, and equipment;
5. Compliance history of the user;
6. Good faith of the user; or
7. Pollutants of particular importance to the POTW.

ENFORCEMENT RESPONSE DISCUSSION

Generally, all violations identified by the District are reviewed, evaluated, and addressed by the appropriate enforcement response. The responses fall within the guidelines of the Enforcement Response Guide.

The majority of enforcement actions begin with issuance of an initial Letter of Violation (LOV). The LOV describes the nature of the violation and informs the user that any additional violations may result in escalated enforcement action.

Once the user has been notified of a violation or has knowledge of a condition which is a violation, the user may be allowed up to thirty (30) calendar days to correct the noncompliance before escalation of the enforcement process occurs. This thirty (30) day period applies only to an initial violation. Any violations occurring after this period will be evaluated according to the plan procedures. (NOTE: A repeat occurrence does not necessarily indicate the same parameter, condition, or procedural requirement was found in violation.) A user receiving results of self-monitoring or District surveillance sampling which are in violation has thirty (30) days to correct whatever condition exists or existed which contributed to the violation. Thereafter, each violation is evaluated for enforcement action. In addition, if a violation occurred during the thirty (30) day correction period, the user must demonstrate good faith was exercised to prevent or mitigate further violations during that period.

INSPECTIONS

Inspections or site visits are conducted according to need. Users operating under a compliance schedule are given priority for follow-up visits to verify progress and to document that required activities are being accomplished. Inspections of these users may take place at regular intervals by noting inspection dates in a planning log well in advance. Inspections may also be scheduled at the request of a user to verify compliance with certain requirements or to identify potential problems.

Most inspections will not be scheduled in advance, but are conducted as a result of a spill, accidental discharge, District surveillance sampling, or other extraordinary events. These are often referred to as demand inspections and are accomplished as the need arises.

ENFORCEMENT PROCEDURES

Users found to be out of compliance with federal, state, or local requirements are subject to the conditions of the District's Enforcement Response Guide. The Superintendent conducts informal enforcement actions, verbal telephone notices, and letters of violation, site visits, administrative orders, enforcement compliance schedules and administrative fines. Enforcement actions, which require legal action, are made by the SCRSD Board upon the recommendations of the Superintendent of the District.

Violations and discrepancies that have been identified will be evaluated as to the type of enforcement response necessary by the District. In order to ensure equitable treatment of violators and provide a stronger basis for selection of appropriate responses to violations, the Enforcement Response Guide should normally be followed, unless mitigating circumstances can be shown.

The Enforcement Response Guide indicates the type of noncompliance, the circumstances which might dictate the type of response, and the range of responses for that particular category of noncompliance. The Enforcement Response Guide has been developed with the intention of serving the following four main purposes:

1. It recommends enforcement responses that are appropriate in relation to the nature and severity of the violation and the overall degree of noncompliance; and
2. It provides a guide to encourage a uniform application of enforcement responses to comparable levels in types of violations; and
3. It can be used as a mechanism to review the appropriateness of the response.

The Enforcement Response Guide groups various types of violations into the following four categories:

1. Violations of discharge limitations;
2. Violations of compliance schedules;
3. Violations of sampling, monitoring, and reporting; and
4. Violations detected through inspection or field investigations by the District.

TYPES OF ENFORCEMENT RESPONSE

In order to provide a concise manual in a usable format, acronyms have been used for several of the types of response. Definitions of the acronyms are as follows and are listed in increasing order of severity:

1. **VTN** – Verbal Telephone Notice – Is meant to describe a response to a very minor type of violation, which is normally conveyed verbally to the contact person at the user and no further follow up normally is usually expected. This is utilized when there is a very minor infraction.
2. **SV** – Site Visit – A visit to the user to discuss and observe the problem. This can be a substitution for VTN or LOV. The SV can also be made in conjunction with a Letter of Violation. The SV also can require a response within ten (10) days, indicating a reason for the noncompliance and what steps are being taken to eliminate any future violations of this nature.
3. **LOV** – Letter of Violation – Is the most widely used and is a written notification to the user indicating the type of apparent violation and requesting a response within ten (10) days, indicating a reason for the noncompliance and what steps are being taken to eliminate any future violations of this nature.
4. **SCH** – Show Cause Hearing – Is a meeting to show cause why a proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. Whether or not the user appears as ordered, immediate enforcement action may be pursued following the hearing date. A show cause hearing shall not be a prerequisite for taking any other action against the other.
5. **AO** – Administrative Order – An Administrative Order would be in such cases where the District believed the user was committed to providing necessary corrective measures to correct previous violations, and would utilize the Administrative Order to

- outline minor compliance schedules, along with other conditions that might be required, such as additional monitoring, more reporting, etc. The order would normally contain a short time-frame of above one (1) month to six (6) months.
6. **ECS – Enforcement Compliance Schedule** – This is a Formal Enforcement Compliance Schedule signed by both the District and the user. This control mechanism is used when serious or long term violations occur. Usually the time-frame will be six (6) months to one (1) year. Violations of the ECS can result in the next step, consisting of administrative fines.
 7. **AF – Administrative Fine** – An administrative fine would be in such cases where all lower types of enforcement responses have failed and or where deemed appropriate by the Superintendent, because of the nature and/or intent of the violation. The next response step is court action. The administrative fine step exists to try to prevent court activity and yet to correct the problem and or show the seriousness of the problem to the user involved. The maximum fine is \$2,500.00 per violation with each day being considered a separate violation. The administrative fine may also be part of an (AO), Administrative Order, (ECS) Enforcement Compliance Schedule, or may be instituted as the next step above an (AO).
 8. **LIT – Litigation** – Litigation is utilized to define several courses of action, including civil suits for injunctive relief, civil penalties, termination of service, or other appropriate remedy. These types of actions would all involve the courts and the District legal department and would follow the procedures necessary for due process.

Utilizing the Enforcement Response Guide, the Superintendent will initiate the appropriate response and see that the files have been updated to show the type of action being taken and the response date, if one is so indicated, and the type of action taken. The Superintendent will initiate any field sampling which he feels appropriate to substantiate previous data received, or to double check, the response of a user to the action which they have indicated that they have taken.

ERG Flow Chart

