

Fats, Oils, and Grease Enforcement Response Plan

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Fats, Oils, and Grease Enforcement Response Plan

Article 1. Introduction

The Fats, Oils, and Grease Enforcement Response Plan (FOG ERP) is a statement of policy by the Municipal Authority of Westmoreland County (“Authority”). It is not a regulation, code, or statute. The Authority reserves the right to amend this policy at any time in order to more effectively implement the Authority’s rules and regulations relating to FOG. This plan has been developed for guidance and is not intended to create legal rights or obligations, or to limit the enforcement discretion of the Authority.

This FOG ERP is an effective way to ensure that the Authority takes fair, consistent, and equitable enforcement actions against affected properties for violations of the Authority’s rules and regulations relating to FOG. It should be noted that, even with a FOG ERP, judgment and flexibility will be needed at times in response to unusual instances of noncompliance. Some violations may require a response that deviates from the FOG ERP depending on the particular circumstances of the situation.

In general, enforcement actions against affected properties will be taken in accordance with this FOG ERP. However, the enforcement actions listed here are not exclusive. The Authority reserves the right to implement other enforcement responses available to it under the ordinances of the municipalities served by the Authority and Pennsylvania law, separately or in combination with these responses.

Article 2. Enforcement Actions Available

Section 2.1 Informal Enforcement Actions

2.1.1 Enforcement Meeting

An enforcement meeting is an informal meeting used to gather information concerning noncompliance, discuss steps to alleviate noncompliance, and determine the commitment level of the affected property.

2.1.2 Notice to Correct (NTC)

An NTC is a written notice that a deficiency has occurred and should be corrected. In general, NTCs are used for minor isolated deficiencies or as an initial step leading to an escalated enforcement response. NTCs are documented and kept on file.

2.1.3 Employee Training Requirement

The employee training requirement is used when the Authority feels that a violation has been caused by a lack of knowledge concerning FOG requirements on the part of employees at the affected property.

Section 2.2 Formal Enforcement Actions

2.2.1 Notice of Violation (NOV)

An NOV is a written notice to the noncompliant affected property that a violation has occurred. An NOV includes a description of the violation, the date on which it occurred, and a statement detailing the legal authority under which the Authority issued the NOV. An NOV may require a response from the affected property that details the cause of the

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violation and the corrective action taken to correct the violation and prevent similar violations from occurring again in the future. In general, an NOV is considered to be a more serious enforcement action than an NTC.

2.2.2 Civil Penalty

A civil penalty is an administrative penalty issued to an affected property that fails to comply with any provision of the Authority's rules and regulations relating to FOG. Each day that the affected property fails to comply shall be a separation violation.

2.2.3 Consent Order

A consent order is a voluntary agreement with a noncompliant affected property that includes specific actions to be taken by the affected property to correct the noncompliance within a specified time period. Consent orders may incorporate compliance schedules, administrative penalties, and/or termination of service. Such documents shall have the same force and effect as administrative orders and shall be judicially enforceable.

2.2.4 Administrative Order

An administrative order is an enforcement document that directs an affected property to undertake and/or to cease specified activities by specified deadlines. The terms of an administrative order may or may not be negotiated with the affected property. Administrative orders may incorporate compliance schedules, administrative penalties, and/or termination of service.

2.2.5 Cost Recovery

This enforcement action involves a notice to reimburse the Authority for the costs that it incurred as a result of the clean-up or decontamination of a site after the discharge of a substance into the sanitary sewer, storm sewer, or the environment caused interference, pass-through, or a sanitary sewer blockage. This includes clean-up and decontamination of all structures and areas (residential, commercial, surface waters, etc.). It also includes the cost of labor and use of the Authority's equipment.

2.2.6 Termination of Service

Termination of service is the revocation of an affected property's privilege to discharge wastewater from food preparation processes into the sanitary sewer system. Termination of service is used when the discharge from an affected property presents imminent endangerment to the health or welfare of persons or the environment or threatens to interfere with the operation of the POTW. Termination of service is also used as an escalating enforcement action when a noncompliant affected property fails to respond adequately to previous enforcement actions. Termination of service may be accomplished by shutting off the water service to an affected property, issuance of an administrative order to cease and desist, or a court ruling.

Section 2.3 Civil Penalties

The Authority reserves the right to seek relief from all available avenues for any violation. In addition to pursuit of remedies available under ordinances and statutes of the Commonwealth and the United States, the Authority may seek reimbursement for the cost of the following:

- a. legal fees;
- b. equipment repair/replacement;
- c. sampling/monitoring costs;
- d. any penalties assessed to the Authority resulting from the subject violation; and/or
- e. fees for additional inspections to monitor compliance following a violation.

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Article 3. Personnel Responsible for Enforcement Actions

The Authority's Operations Manager, through consultation with the Superintendents and Supervisors, is responsible for all enforcement actions. The Authority's solicitor may be requested to review enforcement measures prior to issuance, if deemed necessary.

Article 4. Enforcement Considerations

In determining which enforcement actions to use and the amount of any civil penalties, the Authority may consider the following:

- a. the degree and extent of the impact to the natural resources of the Commonwealth, public health, the POTW, or public or private property as a result of the violation (including effect on groundwater, surface water, or air quality);
- b. the duration and magnitude of the violation;
- c. the cost of repairing the damage to the POTW, public or private property, and/or the natural resources of the Commonwealth;
- d. whether the violation was committed negligently, grossly negligently, recklessly negligently, willfully, or intentionally;
- e. the amount of money saved by noncompliance, including the cost of continuing to discharge in noncompliance instead of stopping operations;
- f. cost incurred by the affected property in correcting the problem and the affected property's cooperation and good faith efforts to resolve noncompliance;
- g. the prior record of the affected property in complying or failing to comply with the Authority's rules and regulations or other applicable laws;
- h. the cost required (including legal fees, sampling/analytical costs, engineering/consulting fees, etc.) to take the necessary investigative and enforcement action, determine the nature and extent of damage, prevent further damage, and repair any existing damage;
- i. the cost to the Authority for any civil penalties, legal costs, and/or other costs associated with any enforcement action or legal action taken against the Authority for NPDES permit violations or other violations caused by the affected property's violation;
- j. violations resulting from vandalism or the action of third-party entities;
- k. deficiencies or violations occurring as a result of circumstances beyond the affected property's control, as determined by the Authority;
- l. any action taken by applicable regulatory agencies against the affected property; and/or
- m. the cumulative effect of violations on an affected area.

Article 5. Investigation of Compliance

The Authority will investigate compliance with the Authority's rules and regulations relating to FOG in the following ways:

- a. on-site inspection of affected properties, including scheduled and unscheduled visits;
- b. review of documentation of required cleaning/maintenance of grease traps;
- c. review of documentation of other required activities;
- d. review of procedures and implementation of enforceable Best Management Practices; and/or
- e. investigation of sanitary sewer overflows and other illegal discharges.

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Article 6. Types of Violations

Section 6.1 Minor Violations

Violation	1 st offense	2 nd offense	3 rd offense	4 th offense
Inspection hindrance (equipment related)	Tier I	Tier II	Tier III	Tier V
Failure to maintain on-site records	Tier I	Tier II	Tier III	Tier V
Failure to submit records upon request	Tier I	Tier II	Tier III	Tier V
Violation of enforceable BMP	Tier II	Tier III	Tier IV	Tier VI

Section 6.2 Intermediate Violations

Violation	1 st offense	2 nd offense	3 rd offense	4 th offense
Denial of right of entry for inspection	Tier III	Tier IV	Tier V	Tier VI
Failure to maintain necessary equipment	Tier III	Tier IV	Tier VI	Tier VII
Failure to pump grease trap or interceptor	Tier IV	Tier V	Tier VI	Tier VII

Section 6.3 Major Violations

Violation	1 st offense	2 nd offense	3 rd offense	4 th offense
Falsification of maintenance records	Tier V	Tier VI	Tier VII	Tier VII
Source of sanitary sewer blockage	Tier V	Tier VI	Tier VII	Tier VIII
Source of blockage causing sanitary sewer overflow	Tier VI	Tier VII	Tier VIII	Tier VIII

Article 7. Enforcement Tier Levels

Section 7.1 Tier Levels

Tier Level	Enforcement Action	Penalty
Tier I	NTC	None
Tier II	NOV	\$0 - \$50
Tier III	NOV	\$50 - \$100
Tier IV	NOV	\$100 - \$500
Tier V	NOV	\$500 - \$1,000
Tier VI	NOV	\$1,000 - \$10,000
Tier VII	Consent Order or Administrative Order	Stipulated Penalties
Tier VIII	Consent Order or Administrative Order and Termination of Service	Stipulated Penalties