



Enforcement Response Plan (ERP) Update

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City of Modesto

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ERP



MCC 5-6.703 allows the City to collect applicable fees in accordance with any noncompliance with Permit Conditions as required by the Enforcement Response Plan (ERP). The ERP was developed in accordance with 40 CFR 403.8(f)(5), which consists of the following elements:

- Investigation of noncompliance
- Escalation of enforcement
- Identifying responsible officials
- Ability to enforce all pretreatment requirements and standards as specified in 40 CFR 403.8(f)(1) &(2)

Background



The current approved ERP was adopted in 1991 and references the civil penalties provision for all non-compliance issues assessed by a Notice and Order.

Tetra Tech, an EPA contractor suggested that civil and criminal provisions in the current ERP should be updated and include progressive noncompliance enforcement under MMC 5-6.703, rather than MMC-1-6.404, to ensure that the penalties provisions are a sufficient deterrent.

Stakeholder Comments



City staff presented the revised ERP to stakeholders on February 21, 2019. Stakeholders were presented a copy of the revised ERP and the presentation.

Comments received from the stakeholders overwhelmingly included a request for a Warning Letter or meeting without a noncompliance fee for minor violations that are easily corrected, and where effective implementation of countermeasures are put in place to prevent reoccurrence.

The City agrees, provided that the minor violations do not compromise public or employee safety, impact the environment or the City's collection and treatment systems.

Stakeholder Comments Cont'd



Another issue raised during our first meeting was what is considered to be “Standard Enforcement” in the cost of a Wastewater Discharge Permit. A Permit Fee includes the following:

- 5 year Permit
- Annual Industrial Facility inspections and review of records
- Monthly sampling
- Monthly review of Self-Monitoring Reports and Periodic Compliance Reports
- 24-hour contact with an Environmental Compliance Inspector to respond to emergencies, notifications, questions, concerns, etc.
- Meetings with industries as needed to address possible process changes or increases, or review of requirements

Revised ERP Penalties Provision



To incorporate a first-step notification to industries without a Notice of Violation or monetary fee while also complying with the findings of the audit, the ERP has been updated to include:

- Notice of Corrective Action
- Noncompliance fees, MMC 5-6.703
- Civil penalties, MMC 1-6.304
- Criminal prosecution, MMC. 5-6.713

Propose Noncompliance Fee Schedule



Enforcement Response	Noncompliance Fee per Occurrence
Notice of Corrective Action	No noncompliance fee for minor issues that are easily corrected and where countermeasures are implemented
Notice of Violation – Tier 1	\$150 + \$15 per day for late or incomplete reports
Notice of Violation – Tier 2	\$500 + \$50 per day for late or incomplete reports of compliance
Compliance Schedule Work Plan	\$1000 + \$100 per day for late or incomplete reports or compliance
Show Cause Meeting	\$1,500
Show Cause Hearing, Cease and Desist, or Revocation of Permit and Service Terminated	\$2,000

Proposed Escalating Enforcement Response



Violation	Initial and Escalating Enforcement Responses	Noncompliance Fee Level	Personnel
Monthly Permit Limit Exceedance			
One occurrence within rolling twelve month period	NOV, Tier 1	1	ECI/ESS
Two occurrences within rolling twelve month period	NOV, Tier 2	2	ECI/ESS
Three or more occurrences within rolling twelve month period	Compliance Schedule Work Plan	3	ECI/ESS
	Show Cause Meeting	4	ECI/ESS
	Show Cause Hearing	5	ESS/ECR M
	Cease and Desist	5	UD/CA
	Revocation of Permit and Service Termination	5	UD/CA
	Administrative Civil Penalty		



Questions?

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