



ENFORCEMENT RESPONSE PLAN
Environmental Compliance Program
PUBLIC WORKS DEPARTMENT
WASTEWATER TREATMENT FACILITY

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CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM
ENFORCEMENT RESPONSE PLAN

TABLE OF CONTENTS	PAGE
Purpose and Enforcement Authority	3
<u>Introduction</u>	4
<u>Definitions</u>	4
<u>ERP Activation</u>	8
File Review and Enforcement Analysis	9
Enforcement Procedures	12
Formal Enforcement	13
Duties of the Inspector	15
<u>Enforcement Response Guide</u>	19
Enforcement Response Guide Tables	27
<u>Enforcement Response Guide Tables for Administrative Citations</u>	31

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

Purpose

This Enforcement Response Plan (ERP) was adopted pursuant to the Federal Water Pollution Control Act as amended by the Clean Water Act of 1977, and subsequently. The Code of Federal Regulations (CFR), Title 40 Protection of The Environment, codifies the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. These laws and rules, specifically CFR Part 403, General Pretreatment Regulations For Existing and New Sources of Pollution were designed to establish responsibilities of industry and government to protect water quality by implementing National Pretreatment Standards.

Section 403.8(f)(5) of the CFR requires Publicly Owned Treatment Works (POTW) to develop and implement an Enforcement Response Plan to investigate and respond to instances of industrial user noncompliance. This ERP is a detailed enforcement procedure that lists key steps necessary to assure that wastewater discharges maintain compliance with all local, state and federal limitations.

ENFORCEMENT AUTHORITY

The City of Santa Cruz is required under federal law to have a pretreatment program. Chapter 16.08 (Sewer System) of the Municipal Code of the City of Santa Cruz provides the standards and the legal authority for enforcement of the pretreatment program. It provides a detailed procedure for implementation of 40 CFR 403.8(f)(1) and 403.8(f)(2) which create pretreatment standards. That chapter includes detailed administrative enforcement procedures and civil and criminal penalties for violations. The Laboratory/Pretreatment Manager (also known as The Laboratory/Environmental Compliance Manager) exercises the authority of the Director of Public Works Department in the implementation of the Enforcement Response Plan.

Under the plan, Environmental Compliance Inspectors (also known as Industrial Waste Inspectors) are responsible for full implementation of the inspection and documentation activities leading to the activation of penalties for non-compliance. The primary responsibilities of Environmental Compliance Inspectors, however, are to monitor, coordinate and maintain the processes necessary for regulated entities to comply fully with the City of Santa Cruz's ordinances on storm water and wastewater.

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

The ERP makes a wide range of enforcement options available based on an assessment of the nature and severity of the violation. Along with departmental enforcement officials, the City Attorney will enforce applicable municipal code requirements, including court action if required. Specific enforcement tools and their anticipated uses are detailed under Enforcement Procedures., later in the ERP.

A checklist of the specific legal authority for specific aspects of the pretreatment program is included within the Municipal Code at the Sewer Use Ordinance.

Introduction

The Enforcement Response Plan (ERP) outlines the procedures followed by Pretreatment Program staff and management to identify, document, and respond to pretreatment violations. Incorporated into the ERP are specific criteria by which Pretreatment Program staff can determine the enforcement action most appropriate to the nature of the violation. In addition, the ERP describes the duties of the Enforcement Compliance Inspector; methods used to determine compliance with applicable regulations; and procedures to review compliance data.

The Enforcement Response Guide (ERG) is a table referencing the degree of non-compliance with the type of enforcement response to be taken. The ERG lists the most common types of non-compliance and enforcement action taken.

This ERP has been prepared by following EPA's Guidance for Developing Control Authority Enforcement Response Plans.

Definitions

Administrative Citations: Enforcement actions, which assess monetary penalties for non-compliance.

Administrative Orders: Enforcement documents, which direct Industrial Users to undertake or to cease, specified activities. Administrative Orders may incorporate compliance schedules, timeframes, administrative penalties, and termination of service orders. Administrative Orders include:

- Finding of Non-compliance - a written notice instructing the Industrial User to identify and correct causes of non-compliance.
- Consent Order - documents non-compliance and includes actions required to be accomplished by specific dates. Consent Orders are developed during Compliance Meetings and both parties agree to terms.
- Compliance Order - directs the Industrial User to achieve or restore

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

compliance by a date specified in the order. A Compliance Order is often a stipulated agreement that may include a compliance schedule, the payment of monetary penalties, or cost recovery for and the imposition of fines when milestones are not met.

- Cease and Desist Order - directs a non-compliant user to cease illegal or unauthorized discharges immediately or to terminate discharge altogether.
- Termination of Service or Permit Revocation - a notice delivered to an Industrial User serving notification of the intent to revoke the Industrial User's Permit or the termination of service.

Approved Laboratory: A laboratory whose analytical procedures are approved and certified by ELAP (State of California); NELAC (National) or equivalent organization for the methods and matrix being reviewed.

Civil Action: An order, hearing, or other action by the presiding court. Such orders may include penalties.

Compliance Inspection: An inspection to determine compliance status and to identify practices, which may lead to non-compliance. Compliance inspections are normally not scheduled.

Compliance Meeting: A meeting with the Industrial User to discuss the causes of non-compliance, corrective actions to achieve compliance, and time frames for the implementation of corrective actions.

Compliance Schedule: A timetable for the implementation of corrective actions by an Industrial User in order to achieve consistent compliance.

Compliance

Consistent Compliance: No more than one parameter in violation and that value was less than twice the most stringent limit. Additionally, within 30 days of the Industrial User becoming aware of an exceedance or having been notified of the violation, the IU performs repeat sampling and analysis of the parameter, the Industrial User has identified and corrected the cause of the violation and verified this through testing for that parameter.

Inconsistent Compliance: More than one parameter in violation, or any one parameter in violation, that exceeded twice the most stringent limit and within 30 days of the date the Industrial User becomes aware of the violation, the Industrial User has been re-sampled, found to be in compliance and does not fall within the significant non-compliance classification.

Significant Non-Compliance (SNC): Significant non-compliance (as

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

defined in 40 CFR 403.8(f)(2)(viii)), is a compliance status in which one or more of the following is found:

(A) Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

(B) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TOC, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(C) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that has caused, alone or in combination with other discharges, Interference or Pass Through (including endangering the health of WWTF and WWMains personnel or the general public);

(D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the City's exercise of its emergency authority at 40CFR 403.8 (f) (1)(vi)(B) to halt or prevent such a discharge;

(E) 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, or attaining final compliance;

(F) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports (BMR), 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(G) Failure to accurately report noncompliance;

(H) Any other violation or group of violations, which may include a violation of Best Management Practices (BMP), which the City determines will adversely affect the operation or implementation of the Pretreatment program.

When any action by the Industrial User meets one or more of the criteria

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

for Significant Non-compliance (SNC) the Industrial User shall be designated SNC, and reported in the Semiannual and Annual Pretreatment Program reports, and published in the newspaper annually.

Conventional Pollutant: Any of the pollutants listed under 40 CFR 401.16 "Conventional Pollutants." This section lists the five conventional pollutants as: Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), pH, fecal coliform, and oil and grease.

Criminal Action: Similar to civil action, but the charges are for criminal neglect that may include fines and or penalties.

Fines: Monetary penalties imposed by the court or by the City for violation of discharge regulations.

Good Faith Effort: Prompt and vigorous pollution control measures undertaken by the Industrial User, which show that extraordinary efforts have been made to achieve compliance. Good faith may also be defined as the user's honest intention to remedy its noncompliance coupled with actions, which give support to this intention. (See EPA's Guidance for Developing Control Authority Enforcement Response Plans 4.1.6)

Industrial User (IU): Any non-residential user that discharges industrial wastes to the sanitary sewer system.

Interference: A discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

- 1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- 2) Therefore is a cause of a violation of any requirement of the POTW's NPDES Permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued there under (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxics Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

Notice of Violation (NOV): An official notice that a violation of discharge regulations has occurred. A written response to the Notice of Violation

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

identifying causes of the violation and corrective actions taken to prevent recurring violations is required within two weeks of the mailing date.

Significant Industrial User: Significant Industrial User (SIU) includes all industrial dischargers of wastewater or process waters into the sewer system with any one of the following characteristics:

- a. minimum or average flows of 25,000 gallons per day; or
- b. the potential to contribute process wastestream that makes up to five percent (5%) or more of the average dry weather hydraulic or organic load (TSS; TOC/COD/BOD) of the treatment plant; or
- c. the reasonable potential, in the opinion of the Director of Public Works, his designee, or other approving authority, to adversely affect the treatment plant by inhibition, pass-through of pollutants, sludge contamination, or endangerment of workers in the wastewater collection and/or wastewater treatment facility.

Toxic Pollutant: Any of the pollutants listed under 40 CFR 401.15 "Toxic Pollutants." This section lists sixty-five pollutants and their compounds as toxic pollutants.

Verbal Warning: A documented warning communicated to the Industrial User orally. The violation is usually slight or within the range of analytical error.

Warning Notice: A written notice that a violation has occurred. The Warning Notice directs the Industrial User to take actions to correct the violation, and does not require a formal response.

METHODS OF INVESTIGATION OF INSTANCES OF NONCOMPLIANCE

Environmental Compliance Inspectors shall perform random sampling and inspection of industrial users. Inspections and sampling of significant categorical and significant non-categorical industries (as defined by CFR 403) shall be conducted, at a minimum, annually. In addition, the Environmental Compliance Inspectors shall review industrial user self-monitoring reports, other required monitoring reports, and shall follow up to ensure that users are in compliance with Best Management Practices, and that compliance schedules and compliance deadlines are met.

ERP ACTIVATION

An enforcement response will be initiated when any of the following events occurs:

1. Any violation of requirements of Chapter 16.08 of the Santa Cruz Municipal

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

- Code (Sewer System).
2. Any violation of the requirements of Chapter 16.04 of the Santa Cruz Municipal Code (Storm Water System)
 3. Any violation of Wastewater Discharge Permit requirements issued by the City of Santa Cruz.
 4. Any violation of the Ground Water Discharge Permit requirements of the City of Santa Cruz.
 5. Failure of an industry to meet a compliance milestone/deadline.
 6. Failure of an industry to report a violation of its permit.
 7. Failures of an industry to keep required records and conduct self-monitoring and/or reporting activities.
 8. Violation of any Federal, State or Municipal requirements pertaining to wastewater discharge that the City of Santa Cruz has the duty to enforce.
 9. Violation of any Federal, State or Municipal requirements pertaining to storm water that the City of Santa Cruz has the duty to enforce.

FILE REVIEW AND ENFORCEMENT ANALYSIS

Upon discovery of any violation, the affected industrial user's Environmental Compliance file will be immediately reviewed. Based on the history of violations and efforts to maintain compliance, the violation will be classified as a Random Violation, a Pattern Violation or a Significant Violation.

Random Violation: any violation that exceeds a Federal, State, or City of Santa Cruz storm water or wastewater discharge limitation or compliance schedule deadline. Random violations will usually be a first or second offense and will not be severe or frequent enough to be classified as a Significant Violation or a Pattern Violation.

Pattern Violation: any violation, or set or series of random violations that is not severe or frequent enough to be classified as a Significant Violation, but which contributes to a pattern of non-compliance when viewed over a moving one (1) year period. Four (4) months, whether consecutive or not, of non-compliance due to Random Violations over a moving twelve (12) month period, shall automatically constitute a Pattern Violation.

Significant Violation: any violation, which by its impact, severity, or frequency of occurrence presents a hazard or nuisance to the publicly owned treatment works (POTW), the collection system, general public or the receiving environment. In accordance with the public participation

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

requirements of 40 CFR part 25, a list of the names of all industrial users incurring Significant Violations during the previous twelve (12) months shall be published annually in a widely circulated newspaper published in the City of Santa Cruz. Significant Noncompliance by an industrial user means any incident or incidents of non-compliance with federal, state, or local wastewater discharge regulations which meets the following criteria:

(A) Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

(B) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TOC, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(C) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that has caused, alone or in combination with other discharges, Interference or Pass Through (including endangering the health of WWTF and WWMains personnel or the general public);

(D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the City's exercise of its emergency authority at 40CFR 403.8 (f) (1)(vi)(B) to halt or prevent such a discharge;

(E) 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, or attaining final compliance;

(F) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports (BMR), 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(G) Failure to accurately report noncompliance;

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

(H) Any other violation or group of violations, which may include a violation of Best Management Practices (BMP), which the City determines will adversely affect the operation or implementation of the Pretreatment program.

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

ENFORCEMENT PROCEDURES

The City of Santa Cruz uses a progressive enforcement policy designed to maintain a fair and equitable system for enforcement of environmental laws, to ensure that fines and penalties are proportionate to the violations, to provide maximum flexibility and effectiveness in enforcement actions, and to provide a system of escalating fines and penalties to encourage prompt compliance. Generally, enforcement will follow the Informal Enforcement sequence below. However, other enforcement options may be pursued using the Formal Enforcement procedures below. Formal enforcement procedures are available through the plan of Title 4 (General Municipal Code Enforcement). This would allow for a large degree of enforcement flexibility and a wide range of enforcement options to most efficiently gain compliance. Therefore, as deemed necessary, an enforcement action may be upgraded or escalated depending on the circumstances of the case.

TYPES OF ENFORCEMENT ACTIONS *(Any enforcement action taken **must** be reviewed **and** approved by the Environmental Compliance Manager **prior** to being implemented)*

INFORMAL ENFORCEMENT (VOLUNTARY COMPLIANCE)

Whenever the Director finds that any person has violated or is violating any prohibition, limitation or requirement contained herein, or finds that any user is in significant non-compliance with wastewater discharge regulations, he, or his designated City representative, may serve upon such person:

- (1) A Verbal Warning
- (2) A Letter of Warning
- (3) A Written Notice of Violation
- (4) A Written Notice of Violation With Fines and/or Assessed Costs

Generally enforcement will follow the sequence listed above, however, depending on the severity and duration of the violation, enforcement may begin at any step.

Verbal Warning. The verbal warning can be by telephone call or in-person communication in cases of non-significant violations. The Environmental Compliance official shall keep a written record of all communications for future

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

reference. The advantages and disadvantages of telephone or verbal communication should be evaluated prior to any notification.

Letter of Warning. The Environmental Compliance official may issue a letter of warning within one (1) week after a violation is suspected or reported. The letter of warning may be used when a violation is suspected or when an actual violation occurs but is minor in nature and does not warrant a Notice of Violation. The letter of warning may also be issued to an industry in lieu of a Notice of Violation if the past record of the industry has shown strict adherence to applicable regulations and discharge limits, and there is reason to believe that the suspected violation may be due to laboratory error, typographical error, or some other unusual circumstance. The letter of warning will include specific actions that the industry must take to remove suspicion and avoid escalation of enforcement action. The Environmental Compliance official may upgrade the letter of warning to First Notice of Violation as deemed necessary.

Written Notice of Violation. The next step in the process of informal enforcement is the written Notice of Violation. In most cases when a violation is detected notice will be directed to the responsible party seeking voluntary compliance and directing a correction within no more than thirty (30) days. Generally, a second notice will be sent prior to escalating enforcement activities.

First Notice of Violation: the purpose of the First Notice of Violation is to inform the offender of the nature of the violation and establish a “self-imposed” compliance schedule which lists the events and dates on which various steps of progress shall take place. “Self-imposed” compliance schedules shall be limited so as to achieve compliance no later than thirty (30) days from date of issuance of the First Notice of Violation. The written notice will require the industrial user or alleged violator (in an appropriate case) to file a written report within seven (7) working days. The written report shall contain an explanation of the cause of the violation, a discussion of corrective actions taken to mitigate the violation and actions taken to prevent future similar violations. Written notice may be used in most cases of random violations. The Laboratory/Environmental Compliance Manager may extend the deadline up to a maximum of thirty (30) days for a total time period of sixty (60) days from the issuance date, due to extenuating circumstances or hardship. All City of Santa Cruz costs related to any violation status inspection, surveillance, sampling, laboratory analysis, and administration may be assessed directly to the offender. In addition this Notice of Violation may include civil penalties up to, but no greater than, two thousand five hundred dollars per day for each violation of Chapter 16.08, City of Santa Cruz Municipal Code.

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

Second Notice of Violation: The purpose of the Second Notice of Violation is to remind the offender of the violation and expected action. The second notice will reiterate the information in the First Notice of Violation or will include a copy of the first notice and demand compliance within two (2) weeks of the date of the Second Notice of Violation. The Second Notice of Violation will contain information as to the various enforcement options available to the City of Santa Cruz should compliance not be achieved within the deadline. All City of Santa Cruz costs related to any violation status inspection, surveillance, sampling, laboratory analysis, and administration may be assessed directly to the offender. In addition this Notice of Violation may include civil penalties up to, but no greater than, two thousand five hundred dollars per day for each violation of Chapter 16.08, City of Santa Cruz Municipal Code.

A notice of violation assessing civil penalties or imposing any other monetary assessment may be appealed to the City Council in accordance with the provisions of Chapter 1.16 of this code. The City Council decision shall be final.

Show Cause Hearing. If the violation is not corrected by timely compliance, the Director may order any person who causes or allows an unauthorized discharge to show cause before the City Manager, or his/her designated appointee (i.e.: *Enforcement Hearing Officer*), why an order should not be made directing the termination of service and imposing penalties for the noncompliance. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten days before the hearing. Service may be made on any agent or officer of a corporation.

(1) The City Manager or his/her designee shall:

- (A) Issue notices of hearings requesting the attendance and testimony of witnesses in the production of evidence relevant to any matter involved in such hearings.
- (B) Conduct the hearing.
- (C) Take evidence. Testimony must be under oath and recorded stenographically. The transcript, so recorded, will be made available to any member of the public upon payment of the usual charges therefor.
- (D) Issue an order to the party responsible for the discharge directing that:
 - (1) Following a specified time period, the sewer services be discontinued unless adequate pretreatment facilities, devices, or other related appurtenances shall have been installed or existing pretreatment facilities, devices, or other related appurtenances are properly operated, and
 - (2) The violator pay a penalty which for an industrial user violating pretreatment discharge standards may be up to two thousand five hundred dollars per day for each day of violation, and

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

(3) Such further orders and directives as are necessary and appropriate.

Emergency Termination of Discharges:

(1) If any industrial user discharges or threatens to discharge any pollutant to the City wastewater treatment system, and if such discharge presents or would present an imminent or substantial endangerment to the health or welfare of persons or to the environment, or causes or would cause interference with the operation of the POTW, and if the Director determines that immediate action is necessary to terminate or prevent such discharge, the Director may issue an order that such discharge be terminated or prevented immediately. Such order shall be personally served upon any person in charge or apparently in charge of the premises of the industrial user, and shall be effective as soon as it is so served.

(2) If after service of the order the discharge is not immediately terminated or prevented, then the Director may take any steps that may be appropriate or necessary to terminate or prevent the discharge as quickly as possible, including severance or blockage of the industrial user's facilities from the City's wastewater treatment system, or any other steps that may be appropriate under the circumstances. The cost and expenses so incurred by the City shall be paid by the industrial user upon presentation by the City of an invoice and demand for payment. If not paid within sixty days, said amounts shall become a lien on the property and shall be collected at the same time and in the same manner as local real property taxes. The City Council may take any steps, including the holding of any hearings and the adoption of any resolutions, necessary to perfect such lien.

(3) Any action taken or decision made by the Director under this subsection, including the determination that costs shall be charged to the user or that there shall be a lien upon the property, may be appealed to the City Council in accordance with the provisions of Chapter 1.16 of the Santa Cruz Municipal Code.

(4) Any user may seek review of any action by or decision of the Director to terminate, block or sever the user's facilities from the City's wastewater treatment system under this paragraph within forty-eight hours of the action or decision. The City Manager or his/her designee shall hold an informal hearing to determine whether there was sufficient cause for the action taken. The Director, the user, and any other interested person shall have an opportunity to present evidence and other information. The decision of the City Manager may be appealed to the City Council as provided in Section 1.16.030.

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

FORMAL ENFORCEMENT

(ADMINISTRATIVE AND JUDICIAL REMEDIES)

In the event of non-compliance with the verbal warning, letter of warning, or written Notice of Violation used in the Informal (Voluntary Compliance) Method, The Environmental Compliance Official (usually an Environmental Compliance Inspector) will consult with either the Environmental Compliance Manager or other department official to initiate a formal method of enforcement.

Administrative Remedies. Administrative Remedies are designed to avoid time-consuming and expensive court actions while providing appropriate due process to alleged violators and an efficient system for resolution of violations. These methods are explained in detail in Title 4 (General Municipal Code Enforcement) of the City of Santa Cruz Municipal Code and may include any of the following: mediation, facilitation, issuance and recordation of notices of violation, administrative civil penalties, administrative citations, summary abatement and administrative abatement. Fines and orders may be imposed according to bail schedules adopted by the City Council and decisions by administrative hearing officers. Fine amounts range from less than \$100.00 for first offenses to a maximum of \$2500.00 per violation per day.

Judicial Remedies: Injunctions, Criminal Citations and Civil Penalties.

Judicial remedies in the form of temporary restraining orders, injunctions and civil penalties may be sought in any case where either immediate action is required to prevent irreparable harm or the seriousness of the violation requires court action initiated by the City Attorney. Civil Penalties may be obtained in the amount of \$2500.00 per violation per day. Criminal Citations may be served, with infractions fined between \$100.00 and \$500.00, and misdemeanors punished by a fine not exceeding \$1000.00 and/or imprisonment in the county jail for up to six months. In the usual case, an infraction citation would be issued first in order to maintain the progressive nature of the enforcement policy.

Hearings and Reviews. Hearings and reviews will be conducted pursuant to Municipal Code Chapter 16.08 of the Santa Cruz Municipal Code. When informal methods are used (e.g. written notices) the Environmental Compliance Manager may conduct reviews and an informal meeting may be held to discuss violations and preventative measures for future compliance.

An administrative hearing officer, City of Santa Cruz attorney, or a judge, depending on the method initiated by the department enforcement official, may

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

review formal methods of enforcement.

Chapters 4.20 and 4.22 of the City of Santa Cruz Municipal Code govern administrative reviews in detail. Judicial review is governed by state law and will be sought by the violator or his/her attorney or by the City Attorney.

Administrative Review: Administrative Review under Title 4 requires that the appeal of an enforcement action be made in writing and filed with The Environmental Compliance Official. An appeal shall be filed within ten (10) calendar days from the date of service of the administrative action by the City. A fee set by resolution of the City Council shall accompany the appeal. After receiving the written appeal The Environmental Compliance Official shall request the Administrative Enforcement Hearing Officer to schedule a date, time, and place for the hearing. Written notice of the date, time and place of the hearing shall be served at least ten (10) calendar days prior to the date of the hearing on the person appealing the notice. The Enforcement Hearing Officer may subpoena witnesses, documents and other evidence where deemed necessary. The hearing officer may impose conditions and deadlines to correct violations, may require payment of penalties and may assess administrative costs.

Judicial Review: Judicial review of an administrative enforcement order may be sought pursuant to a writ of administrative mandamus. Other judicial review is governed by state and or federal law.

Emergency Action. Any discharge that causes an imminent danger to life or property shall be cause for the City of Santa Cruz to immediately terminate sewer service to the offending facility. Whenever an Enforcement Official determines that an imminent life or safety hazard exists, which requires immediate correction or elimination, the official may take any action appropriate under the circumstances.

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

ENFORCEMENT DUTIES OF THE LABORATORY/ENVIRONMENTAL COMPLIANCE MANAGER

The primary enforcement role of the Laboratory/Environmental Compliance Manager is to ensure that the Enforcement Response Plan is followed in a timely and consistent manner. These duties or parts thereof may be delegated to Inspectors based upon work experience. To achieve this, the Laboratory/Environmental Compliance Manager conducts the following duties:

- Reviews violations and makes a final determination on the level of enforcement to take. Ensures that compliance actions taken are consistent and timely.
- Signs routine enforcement actions. (Warning Notices and NOVs)
- Reviews Industrial User's response letters to ensure the response adequately addresses compliance issues.
- Coordinates and moderates compliance meetings and the preparation of compliance schedules.
- Reviews Industrial User compliance history reports.
- Compiles compliance reports for the semi-annual and annual pretreatment program compliance reports.
- Communicates and coordinates with tributary agencies and their respective Attorney's Office.

ENFORCEMENT DUTIES OF ENVIRONMENTAL COMPLIANCE INSPECTORS

The primary enforcement role of the Environmental Compliance Inspector is to identify violations, in a timely manner, and to assist the program with tracking of compliance issues and schedules. To achieve this, the Inspector conducts the following duties:

- Reviews monitoring results and verifies discharge violations.
- Verify Industrial User has responded, in a timely manner, to Notices of Violations, Compliance Meetings, and Compliance Schedules.
- Assists in the preparation and running of compliance meetings. Review compliance meeting schedules and ensure that deadlines are being met.
- Prepare bi-weekly compliance reports.

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

Other Duties of the Inspector

The primary duties of the inspector are to process enforcement actions in a timely manner. To achieve this, the inspector conducts the following duties:

- Review monitoring (SMR and POTW) results and identify discharge violations.
- Prepare routine enforcement actions and make recommendations to the Compliance Manager.
- Track Industrial User's response to Notices of Violations, Compliance Meetings, and Compliance Schedules.
- Review Industrial User's response letters to ensure the response adequately addresses compliance issues.
- Review compliance meeting schedules and ensure that deadlines are being met.
- Prepare non-routine compliance letters, Administrative Orders and Citations.
- Review Industrial User compliance history reports.
- Enters all enforcement actions into the Enforcement Action Database.

ENFORCEMENT RESPONSE GUIDE

The Enforcement Response Guide (ERG) lists the routine types of non-compliance and enforcement actions taken. These routine actions include Verbal Warnings, Warning Notices, Notices of Violation, Administrative Citations and Compliance Meetings. This guide is a matrix, which describes violations and indicates minimum enforcement actions.

Prior to taking **any** enforcement action, beyond Verbal Warnings, the inspector must consult with the Laboratory/Environmental Compliance Manager (program manager). The program manager will ensure that the type of enforcement action proposed is consistent with the enforcement response guide and is appropriate to the level of violation.

If multiple violations for one or more parameters occur during a calendar day, the IU will only be issued one enforcement action, and all violations will be listed. If during an inspection multiple violations are discovered, over a number of days, those violations will be grouped by day and each group of violations will be issued

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

an enforcement action.

When considering the type of enforcement action to be taken, the ERG serves as a **minimum standard**. EPA's Guidance for Developing Control Authority Enforcement Response Plans Chapter 4.1 discusses the six criteria that the Control Authority should consider when determining a proper enforcement response. Enforcement action may be **escalated** when considering the six criteria for evaluating the degree of non-compliance. When an enforcement action is increased over the minimum, written documentation will detail the reasons for the increased enforcement action. The six criteria for evaluating the degree of non-compliance are:

- **Magnitude of the violation**

Generally, an isolated instance of noncompliance can be met with an enforcement response listed in the Enforcement Response Guide. However, since even an isolated violation could threaten public health and the environment, damage public and private property, or threaten the integrity of the City's program as Control Authority, the enforcement response to this type of violation must be escalated to: 1) mitigate the violation quickly; 2) prevent a reoccurrence of violation(s); 3) provide an appropriate level of response; and 4) provide for cost recovery as appropriate.

- **Duration of the violation**

Violations (regardless of severity), which continue over prolonged periods, should subject the IU to escalated enforcement actions. The POTW's response to these situations must prevent extended periods of noncompliance from recurring.

- **Effect of the violation on the receiving water**

One of the primary objectives of the Pretreatment Program is to prevent pollutants from "passing through" the POTW and entering the receiving waters. Consequently, any violation, which results in environmental harm, will be met with an escalated enforcement response. Environmental harm will be presumed whenever an industry discharges a pollutant into the sanitary sewer which:

- Passes through the POTW
- Causes a violation of the POTW's NPDES permit limits

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

- Has a toxic effect on the receiving waters

A minimum response to these types of violations would be an administrative order and referral to the attorney. In addition, the response should ensure the recovery from the IU of any NPDES fines and penalties paid by the POTW. Termination of service may also be considered for repeat violations.

- **Effect of the violation on the POTW**

Some violations may have negative impacts on the POTW's operations or personnel. These violations can result in increased treatment cost, upsets to treatment processes, interfere or harm POTW personnel or equipment. A minimum response to these types of violations would be an administrative order and referral to the attorney. In addition, the response should ensure the recovery from the IU of any costs by the POTW to correct the problem.

- **Compliance History of the Industrial User**

When evaluating the level of enforcement action to be taken for a violation, the last twelve months compliance history of the IU shall be reviewed. If a pattern of recurring violations for the same parameter is noted, then an escalated enforcement action may be warranted. As an example: if two Verbal Warnings (VW) have been issued in the past two months for pH discharge violations, and the IU has another violation at the same level, then it would be appropriate to escalate the enforcement action to a Warning Notice (WN). If 50 % of the samples taken in the past twelve months were in violation, then it would be warranted to increase the enforcement action by one level. Any escalation of enforcement actions will be documented on the enforcement approval form. This documentation will include all details for the increased enforcement.

- **Good Faith of the Industrial User**

The IU's "Good Faith" effort in correcting its noncompliance is a factor in determining which enforcement action to take. "Good Faith" maybe defined as the user's honest intention to remedy its noncompliance, coupled with actions, which give support to this intention. However, good faith does not eliminate the necessity of an enforcement action.

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

INCREASE IN MONITORING AND RESAMPLING

Because of any discharge violation, there is a need to increase sampling and inspections to verify that the violation has been corrected. The magnitude of the violation will dictate how many follow up samples and inspections will be taken. For violations in the Verbal Warning and Warning Notice range, one follow up inspection will be conducted to verify that the violation has been corrected. Additional inspections may be conducted until the violation is corrected. One follow up sample must be taken within 30 days of first notice of the violation by the IU or the City, whichever comes first. One follow up sample will also be taken within 30 days of first notice of the violation by the IU or the City, whichever comes first, by the POTW. For violations in the Notice of Violation range, the following sampling schedule will be established: the Environmental Compliance Inspector will resample once within 30 days and again within 90 days of first notice of the violation by the IU or the City, whichever comes first. The IU will be required to sample within 30 days of first notice of the violation. If any of the follow up sampling shows violations, then this sampling frequency will continue until the IU achieves compliance. In addition to the sampling, one follow up inspection will be conducted to verify that the violation has been corrected. Additional inspections may be conducted until the violation is corrected. For violations of the Group 1 (MECL) or Group 2 limits, Appendix A in the regulations book, sets forth an IU re-sampling schedule. For violations that warrant a compliance meeting, the compliance-meeting schedule will document additional IU sampling.

CITY OF SANTA CRUZ ADMINISTRATIVE CITATIONS

Administrative Citations are issued only to dischargers when one of the City of Santa Cruz Municipal Code Chapter 16.08 Titled “Sewer System Ordinance” is violated, and is one of the code sections listed in the schedule of fines that the Santa Cruz City Council adopted in a resolution setting forth the administrative citation schedule of fines. The attached Enforcement Response Guide for Administrative Citations details which sections are cited and the amount (also see Administrative Citation Procedure # 2240).

CITY OF SANTA CRUZ SEWER SURCHARGE

The City of Santa Cruz may impose sewer surcharges subsequent to the issuance of Notices of Violation, according to the following schedule:

First Notice of Violation within a 12-month period:
No surcharge

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

Second Notice of Violation within a 12-month period:
50% of Sewer Billing

Third Notice of Violation within a 12-month period:
100% of Sewer Billing

Fourth Notice of Violation within a 12-month period:
200% of Sewer Billing

Fifth Notice of Violation within a 12-month period:
10 times sewer Billing

- Proof of compliance through five consecutive samples analyzed by the WWTF or other approved laboratory, or
- Proof of compliance through three consecutive samples analyzed by the WWTF or other approved laboratory, and installation of pretreatment equipment or pretreatment modifications, and five samples (collected using the appropriated methods) analyzed by an independent approved laboratory at discharger's expense which demonstrate compliance, or
- Proof of compliance through two consecutive samples analyzed by the WWTF laboratory and eight consecutive samples (collected using the appropriated methods) analyzed by an independent approved laboratory at discharger's expense.
- Proof of compliance with one sample if the violation was resolved by permanently discontinuing the use of the pollutant and an approved plan for disposal of the pollutant has been submitted and an inspection made to verify the absence of the pollutant. If the discharger makes a fraudulent claim, surcharges and other enforcement actions can be taken immediately.

If the surcharge has been removed and another Notice of Violation (NOV) is issued within 12 months of the last Notice of Violation, the surcharge is reinstated at the appropriate step with the consideration of the number of NOV's issued within the last 12 months.

The IU will be notified of the surcharge with the Notice of Violation. The Compliance Manager will notify the City of Santa Cruz, in writing, when the sewer surcharge is to be removed (see procedure # 2260).

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

A **Verbal Warning** is generally issued for Slight Violations. In this case, the inspector notifies the IU that a violation occurred and directs the IU to take corrective actions. This notification serves as the enforcement action. Written documentation of a Verbal Warning will be posted to the company's file. The Inspector may schedule additional inspections and/or sampling, or may elect to implement more stringent enforcement action. A more stringent enforcement action may be the issuance of a Warning Notice in place of a Verbal Warning in cases where there have been previous recent violations for the same parameter and according to the guidelines. The issuance of a Verbal Warning will be documented in the facility's file.

A **Warning Notice** is a written notice and is generally issued for a Slight or Moderate Violation depending on the criteria evaluation. (See Enforcement Response Guide starting page 19) A Warning Notice documents the type of violation that occurred and directs the Industrial User to identify and correct the cause of the violation. The Inspector may schedule additional inspections and/or sampling, or may elect to implement more stringent enforcement action. A more stringent enforcement action may be the issuance of a Notice of Violation in place of a Warning Notice in cases where there have been previous recent violations for the same parameter and according to the guidelines.

A **Notice of Violation** is generally issued for a Severe Violation (See Enforcement Response Guide starting page 19) or for recurrent violations. The Notice of Violation documents the type of violation that occurred and directs the Industrial User to identify and correct the cause of the violation. The Industrial User is required to respond in writing, within two weeks, describing the cause of the violation and the corrective actions taken.

Compliance Meetings are held when Severe Violations occur or when previous violations appear to remain uncorrected as evidenced by repeated violations. Many Notices of Violation do not require a compliance meeting. Compliance meetings are scheduled as a last step to ensure compliance before more stringent intervention such as a Cease and Desist Order is imposed on an industrial user. During a compliance meeting, a compliance schedule and timeline are established. Progress on the compliance schedule is tracked by the Environmental Inspector and Enforcement Coordinator Assistant and reported to the Laboratory/Environmental Compliance Manager. Compliance schedules are completed when all tasks are completed and consistent compliance is achieved.

A compliance meeting is generally scheduled when:

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

- The Industrial User exceeds 5 times the applicable discharge limit for any Toxic Pollutant or violates any California State Hazardous waste limit.
- The Industrial User exceeds 6 times the applicable discharge limit for any oil and grease violation.
- The Industrial User has a pH violation of less than 2 or greater than 12.5 and the duration of the violation is greater than 60 minutes.
- The Industrial User has demonstrated a Pattern of Non-compliance. A pattern of Non-compliance would include;
 1. The Industrial User has been listed as Inconsistent Local (IL) or Inconsistent Federal (IF), or both, for two consecutive quarters for the same parameter,
 2. Illegal storage and/or disposal of hazardous waste storage within City limits,
 3. An Industrial User has 4 or more Notices of Violation in a 6 month period for any code violation,
 4. Failure to respond to a Notice of Violation within 45 days of due date.

In cases of severe non-compliance, or when the Industrial User has already had two previous compliance meetings, the Industrial User's Permit may be modified to include the provisions of a compliance schedule.

Violations which occur during the implementation of a compliance schedule, and which involve the parameter(s) addressed by the compliance schedule, may be documented through enforcement actions of a lesser degree than indicated in the ERG, if short-term measures have been implemented to prevent violations. If a facility is under compliance schedule and receives an enforcement action less than what is called for in the procedures, the inspector must write the following on the enforcement action approval form:

- 1) That the enforcement action is less severe than the procedural requirement because the facility is under a compliance schedule and
- 2) Reference the specific compliance meeting.

This process allows for the documentation of all violations without over penalizing an Industrial User who is actively working to correct the violation.

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM ENFORCEMENT RESPONSE PLAN

Other Enforcement Actions

If compliance meetings fail to obtain compliance, then additional enforcement actions are initiated. These additional enforcement actions may include:

1. Cease and Desist Order:
2. Withdrawal or Modification of the Industrial User's Permit

When a compliance schedule is established, the progress on the compliance schedule is tracked by the Environmental Inspector and Enforcement Coordinator Assistant. The Industrial User's Permit may be modified to include the provisions of a compliance schedule.

In addition to the above, violations of California State Hazardous Waste limits may be referred to the County District Attorney.

Almost all cases of non-compliance are corrected by following the routine types of enforcement actions listed in the ERG. In those cases where non-compliance is not corrected, the next step in the escalation of enforcement action is the issuance of an Administrative Order (AO) (See Policy and Procedure # 2240). The types of Administrative Orders are listed under the definitions section. Additionally, the Industrial User may be referred to the District Attorney's Office for prosecution.

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM
ENFORCEMENT RESPONSE PLAN

ENFORCEMENT RESPONSE TABLE

Type of Violation	Degree of Violation	Nature of Violation	Enforcement Response
Corrosive Matter*			
• Discharge of corrosive matter - For I.U. sampling violations this section covers the enforcement response.	Severe	pH of ≤ 3.9 Or pH ≥ 12.5	Notice of Violation (NOV).
		2 NOV's in a 2 month period or Discharge pH < 2	Compliance Meeting.
• Discharge of corrosive matter - For violations reported by IU or discovered during an inspection of the IU's pH chart recorder or logs.	Moderate	pH of ≤ 3.9 Or pH ≥ 12.5 (Lasting 60 minutes or less)	Notice of Violation (NOV).
	Severe	2 NOV's in a 2 month period or Discharge pH < 2	Compliance Meeting.
		pH of 3.9 or less or greater than 12.5 for more than 60 minutes	Notice of Violation.
Discharge of Toxic Pollutants *			
• Interfering Substances (Maximum Conc.)	Slight	Less than 1.5 times the Local Limit	Verbal Warning.
• Mass Equivalent Concentration and Flow	Moderate	1.5 to 2.5 times the limit	Warning Notice.
• Average Annual Concentration Limit	Severe	Greater than 2.5 times the limit	Notice of Violation.

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM
ENFORCEMENT RESPONSE PLAN

Type of Violation	Degree of Violation	Nature of Violation	Enforcement Response
Instantaneous Maximum Discharge Limit	Moderate	1.5 to 2.5 times the Instantaneous Discharge Limit	Warning Notice.
• Average Daily Concentration Limit. - Instantaneous Maximum discharge Limit. • Federal limits	Severe	Greater than 5 times the limit	Compliance Meeting.
Pesticides Volatile Organic Compounds and Petroleum Hydrocarbons*			
• Discharge of TPH; TTO	Slight	< 2 Local Limit	Verbal Warning.
	Severe	> 4 Local limit	Notice of Violation.
		2 NOVs in a 6 month period or greater than 3x the limit	Compliance Meeting.
Submission of Discharge Reports*			
• Self Monitoring • Baseline Monitoring • Compliance Reports	Slight	Less than 30 days late	Document but no further enforcement action taken.
Failure to sample	Severe	≥30 days late	Notice of Violation SNC.
Protection from Accidental Discharge*			
• Adequate Protection Provided	Moderate	No harm to POTW or environment	Warning Notice.
• Notification Procedures Followed	Severe	Harm to POTW or environment Recurring failure to notify	Notice of Violation.

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM
ENFORCEMENT RESPONSE PLAN

Type of Violation	Degree of Violation	Nature of Violation	Enforcement Response
Diluting Waters*			
• Use of Dilution Waters	Moderate	Initial violation	Warning Notice.
	Severe	Recurring violation	Notice of Violation.
Compliance with Permit Conditions*			
• Monitoring Equipment Maintenance	Slight	Initial violation	Verbal Warning.
• Submission of Technical Reports	Moderate	Failure to correct, less than 30 days after due date	Warning Notice.
• Proper Sampling and Analysis • Failure to report a violation of permit conditions.	Severe	Failure to correct, greater than 30 days after due date	Notice of Violation.
Compliance Schedules*			
Failing to meet Compliance Schedule.	Slight	Less than 10 days late	Verbal Warning.
	Moderate	10 to 30 days late	Warning Notice.
	Severe	More than 30 days late	Notice of Violation.
		More than 90 days late	SNC.
Best Management Practices*			
• Best Management Practices are not implemented	Slight	Initial violation	Verbal Warning.
	Moderate	Recurring violation	Warning Notice or Notice Of Violation (NOV).

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM
ENFORCEMENT RESPONSE PLAN

Type of Violation	Degree of Violation	Nature of Violation	Enforcement Response
Power to Inspect*			
• Access denied	Moderate	Initial violation	Warning Notice.
• Copies of records withheld	Severe	Recurring violation	Notice of Violation Administrative Order.
Falsification of Information *			
• False statements or representations made • Wastewater diverted from monitoring devices or pretreatment equipment	Moderate	Initial violation	Notice of Violation.
	Severe	Recurring violation	Administrative Order.
Mandatory Wastewater Discharge Permits*			
• Discharge without a Permit	Moderate	Application not received within 30 days of notification	Notice of Violation.
	Severe	Discharge in violation of discharge limits which would result in an NOV being issued.	Cease and Desist Administrative Order.
Wastewater Permit Delinquent Fees*			
• Late submittal of a Wastewater Discharge permit application.*	Moderate	Up to and including 30 days delinquent	Warning Notice and a penalty of fifty percent 50% of the Industrial User's last sewer fee.

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM
ENFORCEMENT RESPONSE PLAN

	Severe	• More than 30 days but less than one year delinquent	Notice of Violation and a penalty of one hundred percent 100% of the Industrial User's last sewer fee penalty.
		• 60 days or more delinquent	Cease and Desist Letter.
		• More than one year delinquent	1000% (One thousand percent) of the Industrial User's last sewer fee penalty.
Oil and Grease Removal Devices*			
• Failure to install or maintain oil and grease removal devices	Moderate	• Initial offense	Warning Notice.
• Failure to develop and maintain records of pumping and maintenance	Severe	• Recurring offense or failure to correct first offense	Notice of Violation.

CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM
ENFORCEMENT RESPONSE PLAN

FINES AND ADMINISTRATIVE ACTIONS

Section	Offense	Administrative Citation/ Fine	When Issued
16.08.110	Limitations on Point of Discharge	\$500.00	Issued with a NOV.
16.08.030/ 16.08.040	Discharge into Storm Drain Prohibited	\$500.00	Any violation.
16.08.130	Regulation of Trucked or Hauled Waste	\$500.00	Issued with a NOV.
16.08.130(5)(d)	Protection from accidental discharge	\$500.00	Issued only if a NOV has been issued.
16.08.130(5)(c)	Pretreatment by owner	\$500.00	Issued only if a NOV has been issued.
16.08.150	Monitoring facilities	\$500.00	Issued only if a NOV has been issued.
16.08.030 16.08.040 16.08.050	Storm and other waters	\$500.00	Issued only if a NOV has been issued.
16.08.060 16.08.100 16.08.130	Obstructing or Injurious Substances	\$500.00	Issued with a NOV.
16.08.110(b)(c)	Flammable or Explosive Substances	\$500.00	Issued only if a NOV has been issued. This would also be a hazardous waste violation.
16.08.110(b)(c)	Hot Substances	\$500.00	Issued only if a NOV has been issued.
16.08.110(b)(c)	Grease, Oils, Fats	\$500.00	Issued only if a NOV has been issued.
16.08.110(b)(c)	Solid or Viscous Matter	\$500.00	Issued with a NOV.
16.08.110(b)(c)	Corrosive Matter pH less than 5.5 but greater than 2.0	\$500.00	Issued only if a NOV has been issued.
16.08.110(b)(c)	Corrosive Matter pH less than or equal to 2	\$1,000.00	Issued only if a NOV has been issued.
16.08.110(b)(c)	Toxic Gases, Vapors or Fumes	\$500.00	Issued only if a NOV has been issued.

**CITY OF SANTA CRUZ ENVIRONMENTAL COMPLIANCE PROGRAM
ENFORCEMENT RESPONSE PLAN**

Section	Offense	Administrative Citation/Fine	When Issued
16.08.110(b)(c)	Interfering Substances 2 X < limit < 10 X	\$500.00	Issued only if a NOV has been issued.
16.08.110(b)(c)	Interfering Substances $\geq$ 10 X limit	\$1,000.00	Issued only if a NOV has been issued.
16.08.110	Prohibition on Use of Diluting Waters	\$500.00	Issued only if a NOV has been issued.
16.08.110	Suspended Solids: Dissolved Matter Noxious/Malodorous	\$500.00	Issued with a NOV.
16.08.110	Radioactive Matter	\$500.00	Issued only if a NOV has been issued.
16.08.110	Colored Matter	\$500.00	Issued with a NOV.
16.08.110	Garbage	\$500.00	Issued with a NOV.
16.08.110	Oil and Grease Removal Devices	\$500.00	Issued only if a NOV has been issued.
16.08.110	Falsification of Information	\$500.00	Issued with a NOV.
16.08.110	Late Reporting (5 - 15 days late)	\$100.00	Any violation.
16.08.110	Late Reporting (16 - 30 days late)	\$250.00	Any violation.
16.08.110	Late Reporting (31 - 45 days late)	\$500.00	Any violation.
16.08.110	Mandatory Wastewater Discharge Permits	\$500.00	Issued only if a NOV has been issued.