

I. Introduction

Cookeville's Sewer Use Ordinance (SUO) is contained in Title 18-Chapter 2 of the Municipal Code. Section 18-204 allows our Industrial User (IU) permits to impose local limits as well as State and Federal Pretreatment Standards. Section 18-211 and 18-212 allows the City of Cookeville Department of Water Quality Control to enforce our SUO and assess penalties for violations as provided in the Tennessee Water Quality Control Act of up to \$10,000 per day. The SUO contains several enforcement remedies, most of which have been used in the past to bring violators into compliance.

In an effort to keep our pretreatment program up-to-date and to regulate the IU's the following personnel are available:

Title

Director/Inspector
Environmental Engineer/Inspector
Pretreatment Coordinator/Civil Engineer/Inspector
Waste Water Treatment Plant Operator
City Manager
City Attorney
Mayor

II. Provisions for Enforcement in the Sewer Use Ordinance

Section 18-204 requires that users notify the Department of Water Quality Control of discharges into the sewer system that violate any provision of the SUO.

Section 18-211 (Enforcement) and Section 18-212 (Penalties) of the SUO. Said Sections dictate this department's authority to enforce the provisions contained in the SUO and IU Permits.

Section 18-211 (2) gives the authority to send Notices of Violation notifying the user of the violation and the need for corrective action. This subsection also requires that the Notice must be sent certified mail.

Section 18-211 (4) allows this Department to issue a Cease and Desist Order forcing compliance. If compliance is not achieved service can be terminated following a show cause hearing.

Section 18-211 (5) allows an injunction to be sought to stop a discharge which is in violation or threatens to cause a condition of contamination, pollution, or a nuisance.

Section 18-211 (6) gives the Director the power to terminate service to any user in violation. In the event of a non-emergency situation a hearing must be held. In an emergency situation the Director can notify the owner or tenant and immediately terminate service. Then a hearing is required to be held within twenty-four (24) hours of the termination. The Director makes the determination as to whether it is an emergency or not.

Section 18-211 (12) allows the Department to correct any violation and recover the cost from the user.

Section 18-211 (13) allows the Department to recover cost for damage done by the users discharge.

Section 18-211 (14) gives the authority to require a time schedule from the user of specific actions to bring the user into compliance. This also gives the Director the

authority to make any modifications to the time schedule, as he deems necessary.

Section 18-211 (15) gives the user the right to appeal any decision or action made by the Director. It also outlines the appeal process and what criteria will be evaluated during the process. The powers of the appeals board are discussed.

Section 18-212 states that a violator is subject to the penalties and procedures provided for in the Tennessee Water Quality Control Act.

Section 18-212 (3) makes the falsifying of information a violation and subject to the same civil penalties as other violations.

III. Enforcement Response Guide

UNAUTHORIZED DISCHARGES (No Permit)

<u>NONCOMPLIANCE</u>	<u>NATURE OF THE VIOLATION</u>	<u>ENFORCEMENT RESPONSES</u>	<u>PENALTY¹</u>	<u>PERSONNEL²</u>
1. Unpermitted Discharge	IU unaware of requirement; no harm to POTW/environment	Phone call; NOV with application form		PC
	IU unaware of requirement; harm to POTW	- AO with penalty	\$200	PC
	Failure to apply continues after notice by the POTW	- Civil Action		D
		- Civil Action		D
2. Nonpermitted Discharge (Failure to Renew)	IU has not submitted application within 10 days of due date Failure to apply continues after NOV from POTW	Phone Call;NOV		PC
		- AO/Civil Action		PC, D
		- Criminal Investigation		D
		- Terminate Service		D
DISCHARGE LIMIT VIOLATION				
1. Exceedance of Local or Federal Standard (Permit Limit)	Isolated, not significant	Phone call; NOV		I, PC
	Isolated, significant (No Harm)	AO to develop compliance schedule		PC
	Isolated, harm to POTW or Environment	- AO with penalty	\$500	PC
		- Show cause order		PC, D
		- Civil Action		D
	Recurring, no harm to POTW/Environment	- AO with penalty	\$2000	PC
	Recurring long term, no harm to POTW/ Environment	Terminate Service		D
Recurring; significant (harm)	- AO with penalty	\$5000	PC	
	- Show Cause Order		PC, D	
	- Civil Action		D	
	- Terminate Service		D	

MONITORING AND REPORTING VIOLATIONS

<u>NONCOMPLIANCE</u>	<u>NATURE OF THE VIOLATION</u>	<u>ENFORCEMENT RESPONSES</u>	<u>PENALTY¹</u>	<u>PERSONNEL²</u>
1. Reporting Violation	Report is improperly signed or certified	Phone call or NOV		PC
	Report is improperly signed or certified after notice by POTW	- AO - Show Cause Order		PC PC, D
	Isolated, not significant (e.g., 5 days late)	Phone Call; NOV		I, PC
	Significant (e.g., report 30 days or more late)	AO to submit with penalty per additional day	\$100	PC
	Reports are always late or no reports at all	- AO with penalty - Show Cause Order - Civil Action	\$150	PC PC, D D
	Failure to report spill or changed discharge (No Harm)	- NOV		PC
	Failure to report spill or changed discharge (results in harm)	- AO with penalty - Civil Action	\$250	PC D
	Repeated failure to report spills	- Show Cause Order - Terminate Service	\$1000	PC, D D
	Falsification	- Criminal Investigation - Terminate Service		D D

MONITORING AND REPORTING VIOLATIONS (Continued)

<u>NONCOMPLIANCE</u>	<u>NATURE OF THE VIOLATION</u>	<u>ENFORCEMENT RESPONSES</u>	<u>PENALTY</u> ¹	<u>PERSONNEL</u> ²
2. Failure to monitor correctly	Failure to monitor all pollutants required by permit	NOV or AO		PC
	Recurring failure to monitor	- AO with Penalty \$250		PC
3. Improper Sampling	Evidence of intent	- Civil Action		D
		- Criminal Investigation		D
		- Terminate Service		D
4. Failure to install monitoring equipment	Delay of less than 30 days	NOV		PC
	Delay of 30 days or more	AO to install with penalty for each additional day	\$50	PC
	Recurring, violation of AO	- Civil Action		PC
		- Criminal Investigation		D
		- Terminate Service		D
5. Compliance Schedules Missed (In Permit)	Missed milestone by less than 30 days, or will not effect final milestone	NOV or AO with penalty	\$50	PC
	Missed milestone by more than 30 days, or will affect final milestone (good cause for delay)	AO with penalty	\$100	PC
	Missed milestone by more than 30 days, or will affect final milestone (no good cause for delay)	- Show Cause Order with Penalty	\$200	PC, D
		- Civil Action		D
		- Terminate Service		D
	Recurring violation or violation of Schedule in AO	- Civil Action	\$1000	D
		- Criminal Investigation		D
		- Terminate Service		D

OTHER PERMIT VIOLATIONS

<u>NONCOMPLIANCE</u>	<u>NATURE OF THE VIOLATION</u>	<u>ENFORCEMENT RESPONSES</u>	<u>PENALTY¹</u>	<u>PERSONNEL²</u>
1. Wastestreams are diluted in lieu of treatment	Initial Violation	AO with penalty	\$100	PC
	Recurring	- Show Cause Order - Terminate Service	\$250	PC,D D
2. Failure to mitigate noncompliance or halt production	Does not result in harm	NOV	\$250	PC
	Does result in harm	- AO with penalty - Civil Action	\$1000	PC D
3. Failure to properly operate and maintain pretreatment facility	See No. 2 above			

VIOLATIONS DETECTED DURING SITE VISITS

1. Entry Denial	Entry denied or consent withdrawn Copies of records denied	Obtain warrant and return to IU		I
2. Illegal Discharge	No harm to POTW or Environment	AO with penalty	\$200	PC
	Discharges causes harm or evidence of intent/negligence	- Civil Action - Criminal Investigation	\$1000	D D
	Recurring, Violation of AO	Terminate Service	\$1000	D
3. Improper Sampling	Unintentional sampling at incorrect location	NOV		I, PC
	Unintentionally using incorrect Sample type	NOV		I, PC
	Unintentionally using incorrect Sample collection techniques	NOV		I, PC

VIOLATIONS DETECTED DURING SITE VISITS (Continued)

<u>NONCOMPLIANCE</u>	<u>NATURE OF THE VIOLATION</u>	<u>ENFORCEMENT RESPONSES</u>	<u>PENALTY</u> ¹	<u>PERSONNEL</u> ²
4. Inadequate recordkeeping	Inspector finds files incomplete to missing (No Evidence of Intent)	NOV		I, PC
	Recurring	AO with Penalty	\$200	PC
5. Failure to report additional monitoring	Inspection finds additional files	NOV		I, PC
	Recurring	AO with Penalty	\$200	PC

TIME FRAMES FOR RESPONSES

- A. All violations will be identified and documented within ten days of receiving compliance information.
- B. Initial enforcement responses (involving contact with the industrial user and requesting information on corrective or preventative action(s)) will occur within 15 days of violation detection.
- C. Follow up actions for continuing or reoccurring violations will be taken within 60 days of the initial enforcement response. For all continuing violations, the response will include a compliance schedule.
- D. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.
- E. All violations meeting the criteria for significant noncompliance will be addressed with an enforceable order within 30 days of the identification of significant noncompliance.

¹ Penalty: The assessment of a penalty does not prohibit the City from making an assessment for damages.

² Personnel: A=Attorney, PC= Pretreatment Coordinator; I=Inspector; D=Director

IV. Enforcement Responses

- A. Types and Procedures for implementing the Enforcement Responses: The following is a description of the various types of enforcement measures that may be utilized by the City. Also included is the intended use of each. The personnel responsible as well as the time frame to investigating each are included in the Enforcement Response Guide (III).

Notice of Violation: The Notice of Violation (NOV) is a notice to a violator to get them to correct minor and infrequent violations. It must be written notice and may be issued immediately after a violation is discovered. It is to be used to document minor violations that are needed if escalated enforcement action is needed. NOV's may also be used as a first step toward more stringent measures. A copy of the Enforcement Response Guide (III) should be enclosed with a mailed NOV notifying the industrial user of future enforcement responses that may be taken.

Administrative Orders: Several different types of Administrative Orders may be issued. In general, one of two types of Orders would be issued as the first Administrative Order. These are the Compliance Order and Show Cause Order. In the event of a serious violation needing immediate action a Cease and Desist Order should be issued. If and when an understanding can be reached between the City and industrial user, and agreed Order will be issued.

An Administrative Order should contain the following:

1. The type of the Order being issued.
2. The legal authority under which the Order is issued.
3. Description of violations.

Other items commonly included are as follows:

4. Items to be corrected.
5. Compliance Schedule to make needed corrections.
6. Penalty Assessment.
7. Future Enforcement Responses.
8. Damage Assessment.

A Compliance Order should contain a compliance schedule and may include penalty assessments that will be levied if the dates within the compliance schedule are not met.

A Show Cause Order calls the industry into a meeting with the Director and/or his representatives to allow them to demonstrate why the City should not seek further enforcement action or penalties. Failure of the industry to attend should result in further enforcement. The most probable next stop would be Compliance Order with a penalty assessment.

A Cease and Desist Order requires the industry to cease all discharges. The industry will only be allowed to recommence discharging when violations have been remedied and the industry can demonstrate that it will comply with its permits limits.

A Consent and Agreed Order is issued when discussions lead to agreement as to what actions and time frames and penalties, if any, are needed.

Civil Penalties: An assessment may be issued against any person or industrial user responsible for a violation. An assessment should be issued through an Administrative Order. The assessment may be appealed. If an appeal is not made within thirty days after the date of the assessment it shall be final. The City may then apply to the appropriate court for a judgment and seek execution of such judgment. According to T.C.A. 69-3-125 (a) 2 (c) the court shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment. Once an appeal is made the City Attorney should be consulted to determine the appropriate avenues to pursue.

The amount of the penalty assessment should be determined using the portion of the Enforcement Response Guide titled Penalty. Compensation for the damage or deconstruction to the POTW and any penalties, cost, and attorney's fees incurred as a result of the illegal activity, as well as the expenses involved in rectifying any damages may also be assessed.

Criminal Penalties: Whenever it is determined that intentional or negligent violations exist that warrant criminal penalties the City Attorney should be consulted to determine the appropriate avenues to pursue.

Injunctive Relief: Whenever it is determined that a violation occurs that causes or threatens to cause a condition of contamination, pollution, or nuisance the Director should consult with the City Attorney and petition the Court for the issuance of an injunction.

Termination of Service: As spelled out in the Municipal Code, the Director has the authority to terminate the sewer service to an industry upon notice to the owner of tenant. Within twenty-four hours, a hearing will be held at which time the industry must present its case that it will be in compliance before sewer service will be reinstated.

If after notice they do not voluntarily cease using the sewer system, a plug will be installed in the sewer line, preferably at the monitoring manhole.

- B. Tracking Compliance: Monitoring reports shall be manually reviewed within ten days of their due date to see if they were received and to document if permit limits were met. Compliance schedule dates issued to an industry will be tracked by computer and/or a calendar dedicated to Enforcement Tracking. Any follow-up inspections or sampling visits required to determine compliance will be conducted within ten days of the corrective deadline as set forth in the compliance schedule.
- C. Assessments: The dollar amounts that will be assessed for each type of violation is included within the section entitled The Enforcement Response Guide (III).