

ATTACHMENT C

SEWER USE REGULATION ENFORCEMENT MANAGEMENT STRATEGY (Effective May 20, 2019)

This Enforcement Management Strategy has been developed by Renewable Water Resources (ReWa) as a comprehensive and effective enforcement response plan in coordination with the Federal and State requirements and with ReWa's Sewer Use Regulation. The intent is to give guidance to the staff regarding the methods and manner of enforcement and to provide information to Users who may become subject to enforcement proceedings.

1. **Purpose of the Plan**

ReWa desires to make its staff and the public aware of its enforcement response plan by; 1) describing how instances of non-compliance will be investigated; 2) stating the type of escalated enforcement actions for violations and the general time period for action; and 3) reflecting its primary responsibility to enforce applicable pretreatment standards and other requirements of its Sewer Use and Pretreatment Regulation. The plan also contains guidelines and/or requirements for inspections, sampling, monitoring, other reports, hearings, permitting, suspensions, revocations, sanctions, fines and penalties.

This plan will strengthen internal management, enhance ReWa's reputation as a responsible public agency, standardize enforcement outcomes and involve other public and regulatory agencies in coordinated efforts in health, sanitation and environmental concerns.

2. **Duties**

The Chief Executive Officer (CEO) has been empowered to enforce compliance with permits and regulations. Acting under the CEO is the Regulatory Services Manager. The Regulatory Services Manager is responsible for implementing the Pretreatment Program as well as overseeing the sampling and analysis required in wastewater discharge permits to be performed by ReWa. Analyses not performed by the laboratory staff shall be performed by a South Carolina Department of Environmental Control Certified Laboratory. The Regulatory Services Manager shall inform the CEO or designated representative of any violations of discharge limitations. The Regulatory Services Manager is responsible for enforcing requirements applicable to Industrial Users. The Regulatory Services Manager is responsible for all administrative actions such as the submissions of reports, industrial inspections, periodic survey update, and issuing permits. The Regulatory Services Manager will periodically evaluate the Enforcement Program to assure it is effective and reasonable. A report on the findings of the evaluation will be given to the CEO or designated representative.

3. **Enforcement Procedures**

In response to non-compliance by a User of the ReWa system, the Regulatory Services Manager may require additional monitoring to verify that the noncompliance and any related impacts have

ceased. The Regulatory Services Manager will notify the User of any violations identified by ReWa and of any intended enforcement regarding the violation.

- A. The Warning of Minor Violation (WOMV) will typically be in the form of a written Summary of Violations labeled Warning of Minor Violation. A WOMV shall be sent to the User and retained for record by the User. A WOMV does not require a response to ReWa but should prompt the User to take corrective action to address minor noncompliance.
- B. The Notice of Violation (NOV) will typically be in the form of a letter sent to the User within fifteen days after the violation is noted. The User shall respond, if required, within fifteen days of receipt to the NOV and state (1) the cause of the violation; and (2) what corrective action will be taken to prevent future violations. If the Regulatory Services Manager does not receive a response or receives an inadequate response to an NOV for which a response was required, a Notice of Significant Noncompliance will be issued.
- C. A Notice of Significant Noncompliance (NOSN) shall be sent to the User by certified mail. The User shall respond within fifteen days of receipt of the NOSN and state (1) the cause of the violation; and (2) what corrective action will be taken to prevent future violations. The Regulatory Services Manager may also require the User to propose and submit a schedule of compliance. If the User indicates that corrective action will take longer than 90 days, the Regulatory Services Manager may elect to issue a compliance order or into a Consent Agreement.
- D. If a User fails to respond to a Notice of Significant Noncompliance, the Regulatory Services Manager shall issue a Rule to Show Cause for an Adjudicatory Hearing and give notice of any injunctive relief, Administrative Civil Penalties through an Adjudicatory Enforcement Order, expenses, costs and fees to be sought at the Adjudicatory Hearing.
- E. If the violation is caused by a discharge that is of imminent danger to public health, or has resulted in observed damage to the wastewater system or receiving stream then a Notice of Revocation (NOR) shall be sent immediately and may include a requirement to immediately cease the discharge. A hearing shall be held within fifteen days from the date the User receives the NOR.

4. Classification of Violations

The classification of violations under these regulations and permit are as follows:

- A. A Warning of Minor Violation (WOMV) will normally be appropriate for any violation not meeting the criteria triggering a Notice of Violation.
- B. A Notice of Violation (NOV) will normally be appropriate for any violation not meeting the criteria triggering a Notice of Significant Noncompliance (NOSN).
- C. A Notice of Significant Noncompliance (NOSN) indicates a greater violation, including but not limited to, those violations set out in paragraph 11.1.

- D. A Notice of Revocation (NOR) shall be given orally if time does not permit written notice. However, such oral notice shall be subsequently documented as time is available. When practical, written notice shall be given. A NOR is generally appropriate when a violation of a permit condition or limitation, or a violation of these regulations threatens to cause an interference with, or have an adverse impact upon, the operation of the facilities; or danger to human health, welfare, or the environment is imminent. Any User notified of revocation of permission to discharge shall immediately stop or eliminate its discharge if so ordered in the NOR. A hearing shall be held within fifteen days of the User's receipt of the NOR to determine whether the suspension may be lifted or the User's permit terminated. Prior to the date of the hearing the User shall submit to ReWa a detailed written statement describing the causes of the violations and the measures taken to prevent any future violations. In the event the User fails to comply voluntarily with the Order, the CEO shall take such steps as deemed necessary including immediate severance of the sewer connection. The CEO may reinstate permission to discharge upon proof of elimination of the violations and compliance with any other requirements imposed by ReWa as a condition of reinstatement of the User's permit.

5. Revocation or Termination of Permit

- A. Any User who violates the conditions of this Regulation, per applicable State and Federal regulations, is subject to having his permission to discharge terminated. The CEO may terminate a permit for the following reasons:
1. Failure to factually report the wastewater constituents and characteristics of the discharge.
 2. Failure to report significant change in operations, or wastewater constituents and characteristics;
 3. Refusal of reasonable access to the User's premises for the purpose of inspection and monitoring;
 4. Violation of conditions of an individual discharge permit or general permit;
 5. Tampering with, or deliberately altering, monitoring equipment;
 6. Falsifying self-monitoring reports;
 7. Changes in POTW NPDES permit, receiving stream water quality standards, POTW treatment plant process, sludge disposal practices or requirements, or other modifications of a similar nature that impact ReWa's ability to accept industrial wastewater;
 8. Causes necessitating an emergency suspension;
 9. Discharge of wastewater prohibited by this Regulation;
 10. Significant noncompliance with schedules, Pretreatment Standards or Requirements, or with any terms of the individual wastewater discharge permit or general permit or regulation; or
 11. Non-payment of sewer User charge or other charges, fines, costs and expenses.

A User whose permission to discharge has been revoked may re-apply for permission to discharge and shall pay all delinquent fees, charges, penalties, any impact fees which may be established by ReWa and be effective at the date of the reapplication, and such other sums as may be due to ReWa.

6. Informal Conference Prior to Hearing Date

Upon request, the Regulatory Service Manager will schedule an information conference with the User and attempt to negotiate an enforceable Consent Agreement to address the noncompliance. The Consent Agreement may contain such terms and conditions as appropriate, including but not limited to, provisions for additional monitoring, full or partial cessation of discharge, interim limits, submittal of technical reports, addition of or modification of pretreatment facilities, payment of all administrative costs, expenses, attorney's fees and civil penalties.

7. Failure to Comply with Consent Agreement

If a User fails to comply with a Consent Agreement, this failure shall constitute a separate and new violation and give rise to additional costs, fines and penalties, as well as grounds to seek other and different relief than that consented to in the original Consent Agreement.

8. Publication of List of Significant Violators

Pretreatment Regulations require ReWa to publish, at least annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by ReWa, a list of Users which were in Significant Noncompliance with applicable pretreatment standards and requirements during the previous twelve months. The procedure for compiling the list of such Users is as follows:

- A. The Regulatory Services Manager shall prepare a compliance history from ReWa records for each individual Significant Industrial User (SIU), or other User.
- B. The compliance history so obtained for each SIU or other User shall be reviewed to determine if a pattern of noncompliance exists or if the industry has been, or continues to be, in SNC. To the extent that an industry meets these criteria, it will be placed on the list for publication.

9. Adjudicatory Hearings

Adjudicatory Hearing shall mean a hearing that is held pursuant to this regulation. Adjudicatory Hearings are trial-type contested case proceedings pursuant to the power of ReWa.

Requests for an Adjudicatory Hearing shall be served on ReWa within fifteen days following the User's receipt of any final administrative decision by ReWa on an application, permit, certificate or other licensing matter, or any final action by ReWa regarding permit noncompliance.

Requests for Adjudicatory Hearings shall include the name of the requestor, his interest and the names of parties which he represents, the reasons for the request, the major issues which are purposed to be contested at the hearing, and a statement by the requestor agreeing to be subject to examination and cross-examination and to make any employee or consultant of such requestor, or other person represented by the requestor, available for examination and cross-examination at the expense of the requestor. The CEO may grant or deny a request for an

Adjudicatory Hearing on the basis of a consideration of whether the person making such a request has standing to seek a determination under the law and whether such request is a matter subject to an Adjudicatory Hearing under these regulations.

The procedures to be used in Adjudicatory Hearings are specified in the Regulation and S.C. Code Ann. § 6-11-285, although the parties to an Adjudicatory Hearing may agree to simplified procedures. However, generally for the purpose of a request by a User for an Adjudicatory hearing, an initial pleading as used herein shall refer to the document by which an Adjudicatory Hearing may be commenced. A request may be considered an initial pleading. Every initial pleading shall, at a minimum, contain the following:

- A. A title which indicates the nature of the proceeding and the parties involved therein;
- B. The complete name and address of the party filing the pleadings and, if applicable, the organization or interest whom he represents;
- C. The legal authority and the jurisdictional basis for the hearing;
- D. A clear and concise statement of the issues upon which the pleading is maintained and identification of the particular regulation, standard, guideline, or provision of law which is the subject of the hearing. If the party is unable to state the matters in detail at the time of the initial pleading or other notice is served, such initial pleading or other notice may be limited to a simple statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished to all parties;
- E. A prayer setting forth the relief sought;
- F. If the party filing the pleading is represented by counsel, the name and contact information of the attorney;
- G. A statement by the requestor agreeing to be subject to examination and cross-examination and to make any employee or consultant of such requestor available for examination and cross-examination at the expense of such requestor, or such person upon the request of the hearing examiner on his own motion, or on the motion of any party.

An answer to the initial pleading shall be served on the requestor within ten days after service of the document to which the answer is directed unless additional time is required pursuant to provisions of this section. Allegations contained in said initial pleading which are not specifically admitted by the party filing an answer are deemed denied. The answer shall contain, but not be limited to, the following:

- H. A clear and concise statement identifying the party filing the answer and the matter to which the answer relates.
- I. A clear and concise statement of all matters upon which the party filing the answer relies. There shall be no replies other than an answer.

Leave to file amendments to any pleading may be allowed or denied provided, however, leave to amend shall be freely given when justice requires it.

A party desiring to withdraw a pleading filed with ReWa or the hearing examiner shall file a motion for withdrawal. If any party has an objection thereto, he shall, within ten days after the receipt of the motion, serve a statement on the hearing examiner setting forth the reasons for his objection and serve a copy of the same on each part. In the absence of objections or a request for a hearing, a motion of withdrawal shall, within ten days after filing thereof, be deemed allowed. The hearing examiner shall then file an order of dismissal, with or without prejudice.

Service by ReWa of initial pleadings, complaints, orders, decisions, pleadings, motions, processes, and other documents shall be by personal delivery or by first-class mail. Service on ReWa shall be by servicing and filing two copies of the paper with the Renewable Water Resources, 561 Mauldin Road, Greenville, SC 29607, by personal service or by first-class mail upon all parties to the proceedings. A certificate of service shall accompany all papers when filed by any party and shall be filed within ten days after service is made.

The hearing examiner may, on motion, at any time during the course of any proceeding, permit such substitutions or additions of parties as justice may require. Third party intervenors should meet the same standards as required of those intervening in matters before the Court of Common Pleas.

The hearing examiner shall observe the rules of evidence observed by the Court of Common Pleas, with the exception that hearsay evidence may be admissible provided that it is deemed necessary to ascertain facts not reasonably susceptible of proof without such evidence and the hearsay evidence is properly identified as such and is given appropriate consideration in reaching a determination. The hearing examiner shall exclude hearsay evidence when such testimony would violate fundamental fairness.

All testimony shall be taken under oath and all parties shall have the right to cross-examination of the witness.

The hearing examiner and all other parties, through the hearing examiner, shall have the right to issue subpoenas requiring the attendance and testimony of witnesses and the production of any documents in question in the proceeding; provided, however, that where the issuance of such a subpoena is resisted or contested, the hearing examiner shall rule on the availability of the subpoena in that particular case.

A party may file a motion for the production or view of any object which relates to the subject matter of any proceeding then pending before the hearing examiner. The motion shall be granted where justice requires.

Anytime during the course of the proceeding, the hearing examiner may order that testimony of a witness be taken by deposition. Application to take testimony by deposition shall be made by motion directed to the hearing examiner. Such motion shall set forth the reasons for desiring the deposition, the time when, the place where, the name and address of each witness, and the

subject matter concerning which each witness is expected to testify. The hearing examiner shall allow the motion only upon showing that circumstances are such that the witness to be deposed cannot appear before the hearing examiner without substantial hardship being caused. If such hardship is financial in nature, any party may agree to reimburse the witness for expenses, including loss of wages incurred by appearing. In such cases, the motion to allow taking of a deposition shall therefore be denied. Motions for the taking of depositions shall not be allowed if the depositions result in any undue burden to another party or in any undue delay of the proceeding. If the motion is allowed, the hearing examiner shall give at least five days notice of the taking of the depositions to all parties. Depositions shall be taken orally before a person having power to administer oaths. Each witness testifying upon deposition shall be duly sworn, and the adverse party shall have the right to cross-examine.

Objections to questions shall be in short form stating the grounds of objections relied upon. The questions asked, the answers thereto, and all objections shall be reduced to writing certified by the officer before whom the deposition is taken. Said officer shall forward the deposition to the hearing examiner. Subject to appropriate rulings on evidence, the testimony taken as deposition shall be included in the record of the Hearing as if the testimony contained therein had been given by the witness in the presence of the hearing examiner. After notice is served for taking a deposition, upon motion of the party to be examined, made prior to the date set, the hearing examiner may, for good cause shown, order that the deposition shall not be taken; that certain matters shall not be inquired into; or that the scope of the examination shall be limited to certain matters. The hearing examiner may make any other order necessary to protect the party or witness from harassment or oppression.

The parties may file a written stipulation with the hearing examiner at any stage of the proceeding. At the hearing a stipulation may be orally read into the record. Contested cases may be resolved by informal disposition through means of stipulation, agreed settlement, consent order (with or without a financial penalty), or default.

On the basis of the evidence presented, the hearing examiner shall issue the determination. The hearing examiner shall deliver by certified mail to the parties a copy of the decision.

Any appeal from the determination of the hearing examiner in any enforcement proceeding shall be submitted to the Court of Common Pleas in which ReWa is located pursuant to S.C. Code Ann. §6-11-285 (F).

When the time prescribed in these rules for doing any act expires on a Saturday, Sunday or a legal holiday, such time shall extend to and include the next succeeding day that is not a Saturday, Sunday or legal holiday. ReWa or the hearing examiner may grant reasonable extensions of time to meet the filing deadlines specified herein.

10. Administrative Civil Penalties

In addition to other penalties, charges, sanctions or restrictions, revocations or limitations as may be provided in the Sewer Use Regulation, a User may be fined up to two thousand dollars

(\$2,000.00) for each offense through an Adjudicatory Enforcement Order. Each day on which a violation occurs or continues shall be deemed a separate and distinct offense. In case of a monthly or long-term average discharge limits, the Administrative Civil Penalty may be assessed for each day during the period of violation. For example, violation of a monthly average effluent limitation will constitute thirty (30) individual days of violation for a month with 30 days. ReWa shall have such remedies for the collection of such assessments as it has for collection of other service charges.

11. Ranges of Enforcement Response

ReWa will choose the response appropriate to the violation and in the context of the user's prior violations.

ReWa will consider the following criteria when determining a proper response:

1. Magnitude of the violation;
2. Duration of the violation;
3. Effect of the violation on the receiving water;
4. Effect of the violation on the POTW;
5. Compliance history of the industrial users;
6. Good faith of the industrial user.

11.1 Magnitude of the Violation

Generally, an isolated instance of noncompliance can be met with an information response or a NOV. However, where even an isolated violation could threaten public health and the environment, damage public and private property, or threaten the integrity of ReWa's program (e.g., falsifying a self-monitoring report), EPA recommends that ReWa respond to any "significant noncompliance" with an enforceable order (to the extent the non-compliance is ongoing) that requires a return to compliance by a specific deadline. EPA has defined significant noncompliance as violations which meet one or more of the following criteria:

1. Violations of wastewater discharge limits
 - a. Chronic violations. 66% or more of all the measurements taken for the same pollutant parameter in a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits.
 - b. Technical Review Criteria (TRC) violations. 33% or more of the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil and grease and 1.2 for all other pollutants except pH).
 - c. Any other violation of a Pretreatment Standard or Requirement including Daily Maximum Limit, Monthly Average Limit, Instantaneous Limit, or narrative

standard that ReWa believes has caused, alone or in combination with other discharges, interference or pass-through including endangering the health of ReWa 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 ReWa's exercise of its emergency authority to halt or prevent such a discharge.
2. 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.
3. Failure to provide within 45 days after the due date, standards required reports such as self-monitoring reports and reports on compliance schedules.
4. Failure to accurately report noncompliance.
5. Any other violation or group of violations, which may include a violation of Best Management Practices, ReWa determines will adversely affect the operation or implementation of the local pretreatment program.

11.2 Duration of the Violation

Violations (regardless of severity) which continue over prolonged periods of time should subject the industrial user to escalated enforcement actions. For example, an effluent violation which occurs in two out of three samples over a six-month period or a report which is more than 45 days overdue is considered significant; while a report which is two days late would normally not be deemed significant unless it reflects chronic tardy reporting.

ReWa's response to these situations must prevent extended periods of noncompliance from recurring. EPA recommends issuance of administrative orders for chronic violations. If the User fails to comply with the Enforcement Order, ReWa may assess Administrative Civil Penalties or initiate judicial action. If the prolonged violation results in serious harm to the POTW, ReWa may also consider terminating service or obtaining a court order to halt further violations as well as to recover the costs of repairing the damage.

11.3 Effect on the Receiving Water

One of the primary objectives of the National Pretreatment Program is to prevent a "pass through" of pollutants which enter the receiving stream. Consequently, any violation which results in environmental harm should be met with a severe response. Environmental harm should be presumed whenever a User discharges a pollutant into the sewerage system which:

- Causes Pass Through
- Causes or contributes to a violation of the WRRF's NPDES permit (including water quality standards)

- Has a toxic effect on the WRRF or receiving waters (i.e., fish kill)
- Causes Interference

At a minimum, responses to these circumstances may include an Adjudicatory Enforcement Order and an Administrative Civil Penalty. In addition, the response may ensure the recovery from the noncompliant user of any NPDES fines and penalties paid by ReWa. Where authorized, ReWa may also pursue damages for the destruction or harm to local natural resources. If a User’s discharge causes repeated harmful effects, ReWa may terminate service to the User.

11.4 Effect on the POTW

Some of the violations may have negative impacts on the POTW itself. For example, they may result in significant increases in treatment costs, interfere or harm POTW personnel, equipment, processes, operations, or cause sludge contamination resulting in increased disposal costs. These violations may be met with an Administrative Civil Penalty and an order to correct the violation in addition to recovery of additional costs and expenses to repair the POTW. For example, when the industrial user’s discharge upsets the treatment plant, damages the collection system through pipe corrosion, causes an obstruction or explosion, or causes additional expenses (e.g. to trace a spill back to its source), the POTW’s response may include cost recovery, civil penalties, and a requirement to correct the condition causing the violation.

11.5 Compliance History of the User

A pattern of recurring violations (even of different program requirements) may indicate either that the User’s treatment system is inadequate or that the User has taken a casual approach to operating and maintaining its treatment system. These indications will alert ReWa to the likelihood of future significant violations. Accordingly, Users exhibiting recurring compliance problems may be strongly dealt with to ensure that consistent compliance is achieved. Compliance history is an important factor for deciding which of the two or three designated appropriate remedies to apply to a particular violator. For example, if the violator has a good compliance history, ReWa may decide to use the less severe option.

11.6 Good Faith of the User

The User’s “good faith” in correcting its noncompliance is a factor in determining which enforcement response to invoke. “Good faith” may be defined as the User’s honest intention to remedy its noncompliance coupled with actions which give support to this intention. Generally, a User’s demonstrated willingness to comply may predispose ReWa to select less stringent enforcement responses. However, good faith does not eliminate the necessity of an enforcement action. Good faith is typically demonstrated by cooperation and completion of corrective measures in a timely manner (although compliance with previous Enforcement Orders is not necessarily good faith).