

Enforcement Response Plan

FOG Program

Enforcement Response Plan

1.0 General

The purpose of the City of Fort Smith Enforcement Response Plan (ERP) is to provide guidance for City staff in all phases of enforcement related to the City's FOG Program. Ordinance 89-16 provides general guidance. The ERP is subject to the provisions of Ordinance 89-16.

2.0 Enforcement Response Plan

Ordinance 89-16 implements the City of Fort Smith FOG Program mandated by the Consent Decree. The ordinance provides limitations on discharges in Section 25-239 for FOG Generators and for enforcement actions in Section 25-246. The enforcement philosophy is progressive; that is, problems are addressed at the lowest level and with the least formality possible consistent with the specific problem. No enforcement procedure is contingent upon the completion of any less formal procedure. The procedures provided in the ERP are for general guidance of the City staff; its procedures are not jurisdictional and are not a basis for defense to action taken by the City as a result of a violation of Ordinance 89-16, a permit or other applicable law.

Section 25-240 of Ordinance 89-16 requires that all FOG Generators obtain a FOG wastewater discharge permit as a condition of discharge. Permits may be for a period as long as two years, and may limit wastewater constituents and flows, may require installation of appropriate grease control device(s), ensure operation of sampling and monitoring facilities, and establish compliance schedules and require submission of periodic reports and notices as needed. The FOG wastewater discharge permit represents the City's first means of controlling the wastewater discharge by FOG Generators since, if permit requirements are met by the permittee, no further enforcement activity should be required.

3.0 Staff Responsibilities

The ERP is administered by the Environmental Monitoring Supervisor under the general supervision of the Management Team and in close coordination with Legal Counsel. The Management Team consists of the Environmental Quality Program Manager, Deputy Director of Operations, and the Director of Utilities. The Environmental Monitoring Supervisor may delegate certain tasks to subordinates. The Environmental Monitoring Supervisor shall maintain records of activities conducted as part of the ERP and render periodic reports to the Management Team at such frequency and in such detail as the Management Team shall determine. Table 3.1 shows the enforcement response and the personnel who have a role in each response. The bolded "X" indicates the person who has primary responsibility for that enforcement response.

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Table 3.1: Personnel Involved in Enforcement Response

Enforcement Response	Legal Staff	Director of Utilities	Deputy Director of Operations	Environ. Quality Program Manager	Environ. Monitoring Supervisor	FOG Coord.	FOG. Insp.
Notice of Deficiency					X	X	X
Notice of Violation					X	X	X
Final Notice of Violation					X	X	X
Review Meeting				X	X	X	
Standards Meeting			X	X	X	X	
Admin. Order			X	X	X	X	
Admin. Penalties			X	X	X	X	
Show Cause Hearing		X	X	X	X	X	
Judicial Actions	X	X	X	X	X	X	
Termination of Permit or Service	X	X	X	X	X	X	

Note: The bolded “X” means that person has primary responsibility for that enforcement response.

3.1 FOG Inspector(s)

The FOG Inspector(s) is responsible for all sample collection, flow analysis, and conducts site inspections/audits of all FOG Generators currently permitted. The FOG Inspector reviews and logs all data into the City Lucity Computer Database and notifies the appropriate staff of any violations found during those activities. In the event a permit compliance violation is found, the FOG Inspector also notifies the FOG Coordinator.

The FOG Inspector(s) also reviews and logs all data obtained from FOG hauler permits and manifests and if a violation is found, produce the notice of violation for the appropriate staff to sign.

3.2 FOG Coordinator

The FOG Coordinator oversees the day-to-day operations of the City’s FOG program. When informed of a violation, the FOG Coordinator reviews and verifies the violation, and produce the Notice of Violation for the appropriate staff to sign. The FOG Coordinator tracks all violations and the responses to those

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violations to ensure all responses are received in a timely manner.

The FOG Coordinator also conducts site inspections/audits of all FOG Generators currently under informal and formal enforcement actions as well as a portion of those is compliance to ensure proper inspections/audits protocol is followed and to look for way to better the inspections/audits procedures. As part of that inspection/audit a report is generated which contains both required actions by the FOG generator and recommended actions by the user.

The FOG Coordinator is responsible for producing all informal enforcement actions (i.e. Notice of Deficiency, Notice of Violation, Final Notice of Violation, Review Meetings, etc.)

3.3 Environmental Monitoring Supervisor

The Environmental Monitoring Supervisor is responsible for the day-to-day operations of the City's FOG Program. The Environmental Monitoring Supervisor signs all informal enforcement actions (i.e. Notice of Deficiency, Notice of Violation, Final Notice of Violation, Review Meetings, etc.) The Environmental Monitoring Supervisor also keeps the Environmental Quality Program Manager informed about all informal enforcement actions.

The Environmental Monitoring Supervisor also conducts annual site inspections/audits of FOG Generators currently under formal enforcement actions.

The Environmental Monitoring Supervisor is responsible for producing low-level formal enforcement actions (i.e. Standards Meetings, Administrative Orders, and Penalties).

3.4 Environmental Quality Program Manager

The Environmental Quality Program Manager is ultimately responsible for the day-to-day administration of the City's FOG program. The Environmental Quality Program Manager signs all low-level formal enforcement actions (i.e. Standards Meetings, Administrative Orders, and Administrative Penalties). The Environmental Quality Program Manager also keeps the other members of the Management Team informed about all formal enforcement actions.

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The Environmental Quality Program Manager is responsible for producing mid-level formal enforcement actions (i.e. Compliance Schedules and Consent Orders) as well as organizes evidence and documentation for high-level formal enforcement actions (i.e. Show Cause Hearings, Judicial Actions, and Termination of Permit, Services and Sewer Bans).

3.5 Deputy Director of Operation

The Deputy Director of Operations is responsible for the administration of both the wastewater treatment plants and Environmental Quality Program. The Deputy Director of Operations chair all Standards Meetings and Show Cause Hearings, and review Administrative Orders and Administrative Penalty assessments.

The Deputy Director of Operations will review all evidence and documentation for high-level formal enforcement actions (i.e. Show Cause Hearings, Judicial Actions, and Termination of Permit, Services and Sewer Bans), to determine if those steps should proceed.

3.6 Director of Utilities

The Director of Utilities will review all evidence and documentation for high-level formal enforcement actions (i.e. Show Cause Hearings, Judicial Actions, and Termination of Permit, Services and Sewer Bans), and will make the final decision to move forward with the high-level formal enforcement actions. The Director of Utilities will chair any meeting held with the FOG Generator prior to such action being taken.

3.7 Legal Staff

The Legal Staff will review all evidence and documentation for high-level formal enforcement actions and advise the Director of Utilities if such actions are warranted and legal. If the Legal Staff deems the actions are not warranted or legal, the Legal Staff will make recommendation on how to proceed based on Ordinance 89-16 and the ERP.

4.0 Collection and Dissemination of Information

For each FOG Generator, the Environmental Monitoring Supervisor shall determine what data is required or needed to determine compliance with applicable FOG standards as well as when and how it can be obtained. The Environmental Monitoring Supervisor shall specify reporting requirements for each FOG Generator in its permit as required by the United States Environmental Protection Agency (EPA) and shall then track the submission of reports. If information submitted is deficient or late, the FOG Generator shall be notified and required to complete the submission as detailed in the appropriate enforcement response.

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Inspection/audit reports, 90-day compliance reports, reports required by compliance directives and continuing compliance reports as received shall be retained for at least three years under the provisions of 40 CFR, 403.12(o).

The Environmental Monitoring Supervisor shall report the results of City inspections, sampling and analysis to FOG Generators. The Environmental Monitoring Supervisor will provide feedback to FOG Generators on compliance status and inform FOG Generators of their compliance with City's enforcement requirements and City's general responses to instances of noncompliance.

5.0 Sampling and Inspection of FOG Generators

The FOG Coordinator shall prepare and update, as required, an inspection plan for field investigations including sample collection, facility inspections and flow monitoring. Field investigations shall be used to verify compliance status, to monitor FOG Generator self-monitoring activities, to collect samples, to initiate emergency or remedial action and to gather additional information. City personnel may conduct routine compliance monitoring or special monitoring in response to violations, technical problems or support for permit modifications. Routine inspections, audits, and wastewater sampling shall be conducted for each FOG Generator at least once per permit cycle.

The Environmental Monitoring Supervisor shall further develop such checklists and procedures for routine inspections as are necessary to assure that the results of each visit are documented and notify FOG Generators of any deficiencies found during any inspection.

6.0 Compliance Screening and Evaluation

Using all available information, the FOG Coordinator and Environmental Monitoring Supervisor, or their designated agent, shall conduct an initial compliance review or screening process to determine and assess compliance with schedules, reporting requirements and applicable FOG standards. Reviews completed under this section is designed to identify compliance issues.

During the screening process, the reviewer shall verify that any required reports are submitted on schedule, cover the proper time period, include all information required in the particular report and are properly signed. As part of this process, the reviewer will compare the information supplied with the requirements in the FOG generator's permit. Any discrepancy shall be

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considered to be a violation of the ERP. To the extent possible, the FOG Generator will be required to correct such discrepancies immediately upon their discovery.

7.0 Significant Noncompliance (SNC)

After completion of the compliance screening, violations will be characterized and a determination made as to whether the user is in Significant Noncompliance (SNC). Certain instances of noncompliance are not of sufficient impact to justify extensive enforcement actions. However, certain violations or patterns of violations are significant and must be identified as such. Such SNC may be on an individual or long-term basis of occurrence.

Categorization of FOG Generators as being in SNC allows the City to establish priorities for enforcement action and provides a means for reporting on the FOG Generator performance summary.

7.1 Determining SNC

Instances of SNC are FOG Generator violations that meet one or more of the following criteria (From 40 CFR Part 403.8 (f)(2)(viii)):

- A. Any other violation of a FOG Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);
- B. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of the above cited CFR, to halt or prevent such a discharge;
- C. Failure to meet, within ninety (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;
- D. Failure to provide, within forty-five (45) days after the due date, required reports such as baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

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- E. Failure to accurately report non-compliance;
- F. Any other violation or group of violations that the City determines will adversely affect the operation or implementation of the local pretreatment program.
- G. Actions that are directly responsible for a FOG related SSO, which the City is able to track it solely to a specific generator.

7.2 When a FOG Generator is in SNC, the City shall address the SNC through appropriate enforcement action.

8.0 Enforcement Evaluation

Violations and discrepancies identified during the compliance screening process will be evaluated by the Environmental Monitoring Supervisor, or his/her designated agent, to evaluate the type of enforcement response required. The “Enforcement Response Plan Guide” attached to the ERP will be used for this determination.

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9.0 Means of Enforcement

The enforcement philosophy of the City's ERP is progressive; that is, problems are addressed at the lowest level and with the least formality possible consistent with the specific problem. However, no enforcement procedure is contingent upon the completion of any less formal procedure. Enforcement is based on the level of severity of the violation.

The ERP Enforcement Actions are broken into two (2) categories, informal and formal. This allows the City to work with the FOG Generators to achieve compliance, yet gives the tools required to bring FOG Generators into compliance when needed.

9.1 Informal Enforcement Actions

Informal enforcement actions consist of the following:

- Notice of Deficiency;
- Notice of Violation;
- Final Notice of Violation; and
- Review Meeting.

A description of the informal enforcement actions is given in the succeeding paragraphs. No informal action is a prerequisite for instituting formal enforcement procedures.

9.1.1 Notice of Deficiency

A Notice of Deficiency is a written notice to the FOG Generator that the City has noted a minor computational or typographical error on a submitted report and expects the error to be corrected. The Notice of Deficiency shall state that additional enforcement action may be pursued if corrections are not accomplished in a timely manner. Notices of Deficiency shall be sent by mail or e-mail with copies maintained in the FOG Generator's file.

9.1.2 Notice of Violation

A Notice of Violation(s) is a written notice to the FOG Generator that the City has observed a violation of FOG standards or requirements and expects the non-compliance to be corrected. The Notice of Violation shall state that additional enforcement action may be pursued if corrections are not accomplished in a timely manner. A notice of violation shall also state that an explanation of the violation does not excuse it or any previous violations. Notices of violation shall be sent by e-mail and certified mail, return receipt requested, with copies maintained in the FOG Generator's file.

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9.1.3 Final Notice of Violation

A Final Notice of Violation shall be issued upon the instance of a repeat violation as determined by repeat inspection/sampling. The Final Notice of Violation shall have the same content as a Notice of Violation. However, if said compliance is not achieved in a timely manner, the City shall proceed with other methods as outlined in other sections of this document. Final Notice of Violation shall be sent by e-mail and certified mail, return receipt requested, with copies maintained in the FOG Generator's file.

9.1.4 Review Meeting

Where further violations continue to occur, the FOG Generator shall be notified by the Environmental Monitoring Supervisor in writing as to the particulars of the violations and be called for a voluntary meeting with the FOG Generator. Review meetings are intended to provide a voluntary means of preventing future violations of the City's FOG Program. The notice sent to the FOG Generator shall be sent by e-mail and certified mail, return receipt requested, with copies maintained in the FOG Generator's file, and shall be entitled "Notice of Review".

Neither the Notice of Violation nor Final Notice of Violation is a precondition for calling a review meeting.

9.2 Formal Enforcement Actions

Formal enforcement actions consist of the following:

- Standards Meeting;
- Administrative Order;
- Administrative Penalties;
- Show Cause Hearing;
- Judicial Actions; and
- Termination of Permit, Service, and Sewer Ban.

A description of the formal enforcement actions is given in the succeeding paragraphs. No informal or formal action is a prerequisite for instituting a higher level of formal enforcement procedures.

9.2.1 Standards Meeting

Standards Meetings are called in cases where, following a review meeting, continued violations occur or where violations of themselves are either of significant magnitude or duration, an FOG Generator may be required by

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the City through a “Notice of Standards Meeting” to attend a “Standards Meeting.”

Notice of such a meeting shall be sent by e-mail and certified mail, return receipt requested. Attendance is mandatory by the FOG Generator and failure to comply with such a notice may result in other formal action. The Standards Meeting shall establish procedures, investigations and studies as the Environmental Quality Program Manager deems necessary and desirable to determine the cause of such violations and methods to correct them. The Deputy Director of Operations shall chair the Standards Meeting and minutes shall be kept.

9.2.2 Administrative Orders

Administrative Orders (AOs) are enforcement documents that direct FOG Generators to undertake or to cease specified activities. Administrative orders are the first formal response to significant non-compliance, and may incorporate compliance schedules, administrative penalties, and termination of service orders. Compliance with the terms and conditions of the AO will not be construed to relieve the user of its obligation to comply with applicable Federal, State or local law. Violation of the AO itself may subject the user to all penalties available under the Ordinance 89-16. No provision of the order will be construed to limit the City's authority to implement its FOG program. The provisions of the order shall be binding upon the user, its officers, directors, agents, employees, successors, assigns, and all persons, firms, and corporations acting under, through, or on behalf of the FOG Generator.

The AO shall be sent to the FOG Generator by e-mail and certified mail, return receipt requested, with copies maintained in the FOG Generator's file, and shall be entitled “Administrative Order to Comply”.

9.2.3 Administrative Penalties

Notwithstanding any other section of this ERP, any user who is found to have violated any provision of Ordinance 89-16, or FOG regulation, requirement, or permits and orders issued, may be fined using a flat rate schedule with escalation not to exceed one thousand dollars (\$1,000.00) per violation.

Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation. The fine schedule for violations of FOG discharge permits shall begin at one hundred dollars (\$100.00) per violation and increases by \$100.00 increments for each subsequent violation to a maximum of \$1,000.00 per violation. If the user remains in full compliance for a period of one year, the cycle

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begins anew and subsequent fines are assessed at \$100.00 and increased by \$100.00 increments.

The City shall notify the FOG Generator when administrative penalties are assessed and the amount of the administrative penalty. This will be done by mail or e-mail for each fine assessed during a month. At the end of the month a formal notice of all administrative penalties assessed during the month and the total administrative penalties amount for that month for that FOG Generator shall be sent by e-mail and certified mail, return receipt requested, with copies maintained in the FOG Generator's file, and shall be entitled "Administrative Penalties Assessed". The administrative penalties will then be sent to City's Finance Department and the administrative penalties will be added on to the FOG Generator's monthly sewer bill.

The City may allow a non-compliant FOG generator who voluntarily comes under a consent order to redirect the collection of a portion of the administrative penalty funds into physical environmental improvements at the FOG generator user's facility. This will allow the FOG Generator to reinvest the funds rather than be purely punitive in nature and bring the FOG Generator back into compliance. This option shall be a onetime venture and approval shall be at the discretion of the City.

9.2.4 Show Cause Hearing

The City may order any FOG Generator who causes or allows an unauthorized discharge into the City's sanitary sewer system or violates the City's FOG program to show "cause" why the City should not revoke the FOG Generator's wastewater discharge permit or take such other enforcement action as is dictated by the facts of the case. The City shall issue such a notice for Show Cause Hearing specifying the time and place of a hearing to be held by the City. Such notice shall state the reasons why the action is to be taken and the proposed enforcement action. Such notice shall direct the FOG Generator to show cause before the City why such action should not be taken. Following such hearing, the City may take such action as it deems appropriate. The notice of the Show Cause Hearing shall be served personally or by certified or registered mail, return receipt requested, with copies maintained in the FOG Generator's file.

Subsequent to a Show Cause Hearing, appropriate actions may include the following:

- a. Consent Order. The Consent Order is an agreement between the City and the FOG Generator containing: (1) compliance schedules; (2) stipulated fines or remedial actions; and (3) signatures of the City and FOG Generator representatives.
- b. Judicial Actions.

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- c. Termination of permit, service, and sewer ban.

The Utilities Director shall chair the Standards Meeting and minutes shall be kept.

9.2.5 Judicial Actions

If any person discharges sewage, FOG/industrial wastes, or other wastes into the City's sanitary sewer system contrary to provisions of Ordinance 27-16 and 89-16, its wastewater discharge permit or order, or any applicable State or Federal law, the City, through legal counsel, may commence an action for appropriate legal and/or equitable relief, including recovery of civil penalties assessed by the City, in the appropriate court in Sebastian County, subject to the provisions of Section 25-246 of Ordinance 87-16.

9.2.5.1 Injunctive Relief

Whenever a FOG Generator has violated or continues to violate the provisions of Ordinance 89-16, its wastewater discharge permit or order, or any applicable State or Federal law, the City through legal counsel may petition the Court for the issuance of a preliminary or permanent injunction or both (as may be appropriate) which restrains or compels the activities on the part of the FOG Generator.

9.2.5.2 Civil Penalties

Whenever a FOG Generator has violated or continues to violate the provisions of Ordinance 89-16, its wastewater discharge permit or order, or any applicable State or Federal law, the City through legal counsel may commence an action for appropriate legal and/or equitable relief, including recovery of civil penalties assessed by the City, in the appropriate court in Sebastian County, subject to the provisions of Section 25-246 of Ordinance 89-16.

9.2.6 Termination of Permit, Service, and Sewer Ban

Any user who violates the conditions of Ordinance 89-16, or a wastewater discharge permit or order, or any applicable State and Federal law, is subject to permit termination. The City shall have legal authority to immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appear to present an imminent endangerment to the health or welfare of persons, or to the environment, or which threatens to interfere with the POTW's operation.

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Assuming other enforcement responses are unsuccessful, the types of violations warranting termination of service are:

- Unpermitted discharge(s) which violate the POTW's NPDES permit or which create a dangerous situation threatening human health, the environment, or the treatment plant.
- Discharge(s) that exceed local or categorical discharge limits and result in damage to the environment.
- Slug loads causing interference, pass through, or damage to human health, the environment, or the treatment plant.
- Failure of the FOG Generator to notify the City of effluent limit violations or slug discharge which resulted in environmental or POTW damage.
- Complete failure of the FOG Generator to sample, monitor, or report as required by an Administrative Order.
- Failure of the FOG Generator to install required monitoring equipment per the condition of an Administrative Order.
- Major violation of a permit condition or Administrative Order accompanied by evidence of negligence or intent.

Termination would include turning off water service to the user, the physical disconnection of the user's service lateral, and forbidding reconnection to the sewer.

10.0 Affirmative Defenses

FOG Generators may at any time request an informal meeting or a Review Meeting with the City. These meetings can be used to clarify permit or violation issues. All FOG Generators have the right to defend themselves by presenting evidence when violations are issued. The two (2) affirmative defenses recognized are "Treatment Upset" and "Treatment Bypasses", however, certain conditions must be met to use these affirmative defenses.

10.1 Treatment Upset

Any FOG Generator which experiences an upset in operations that places it in a temporary state of noncompliance, which is not the result of operational error, improperly designed treatment devices, inadequate treatment devices, lack of preventative maintenance, or careless or improper operation, shall inform the Environmental Monitoring Supervisor thereof immediately upon becoming aware of the upset. Where such information is given orally, a written report thereof shall be filled by the user within five (5) days. The report shall contain:

- a) A description of the upset, its cause(s), and impact on the discharger's compliance status;

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- b) The duration of noncompliance, including exact dates and times of noncompliance and if the noncompliance is continuing, and the time by which compliance is reasonably expected to be restored; and
- c) All steps taken or planned to reduce, eliminate, and prevent recurrence of such an upset.

A FOG Generator which complies with the notification provision of this section in a timely manner shall have an affirmative defense to any enforcement action brought by the City for any noncompliance with Ordinance 89-16, or an order or permit issued hereunder by the user, which arises out of violations attributed to and alleged to have occurred during the period of the documented and verified upset.

10.2 Treatment Bypasses

A bypass of the treatment system is prohibited unless all of the following conditions are met:

- a) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- b) There was no feasible alternative to the bypass, including the use of auxiliary treatment or retention of the wastewater; and
- c) The FOG Generator properly notified the Environmental Monitoring Supervisor as described in the paragraph below.

FOG Generators must provide immediate notice to the Environmental Monitoring Supervisor upon the discovery of an unanticipated bypass. Where such information is given orally, a written report thereof shall be filled by the user within five (5) days. The report shall contain:

- a) An explanation of the cause(s) and nature of the bypass;
- b) The duration of the bypass, including exact dates and times of bypass and if the bypass is continuing, and the time by which bypass is reasonably expected to be ended; and
- c) All steps taken or planned to reduce, eliminate, and prevent recurrence of such a bypass.

A FOG Generator may allow a bypass to occur which does not cause FOG standards or requirements to be violated, but only if it is for essential maintenance to ensure efficient operation of the treatment system. FOG Generators anticipating a bypass must submit a written notice to Environmental Monitoring Supervisor at least ten (10) days prior to the bypass. The Environmental Monitoring Supervisor may only approve the anticipated bypass if the circumstances satisfy those set forth in this paragraph.