

WATER QUALITY ENFORCEMENT

Policies & Procedures

Policy No.: WQE-5
Initiated By: JS
Approved By: [Signature]
Effective Date: 12-1-86
Revision No.: _____
Revision Date: _____

PROCEDURES FOR FORMAL ENFORCEMENT ACTION FOR PERMITTED DISCHARGES

Intent of Procedures: The intent of these procedures is to define, to the extent possible, when a formal enforcement action is taken against a permittee. Procedures for enforcing against unpermitted entities are set forth under a separate procedural document.

Background: The bulk of all enforcement actions against permittees are driven by numeric violations of effluent limits as determined by self-monitoring data, state sampling data or annual inspections of the facilities. Noncompliance with a permit condition (e.g., compliance schedule date, required report, permit fee, etc.) comprises the remainder of the actions. Procedures used for failure to pay fees are specified under a separate document.

For noncompliance with permit conditions, a formal enforcement action usually follows only after various unsuccessful attempts have been made by the division to achieve such compliance. Attempts can include informal notice of violation letters (NOVL's) division-arranged meetings with the permittee, phone inquiries by the division, etc. in an effort to make the entity aware that the noncompliance is considered a serious problem and needs to be corrected promptly.

Procedures

I. Enforcement Action for Effluent Violations

Each permittee has an obligation under the permit to sample, analyze and report effluent data although frequency of sampling and reporting varies with individual permits. This data, as well as results of state samples, is compared against the effluent limitations in the respective permit to determine violations. Violations for conventional pollutants which are greater than 1.4 times the permit limit are deemed Significant; toxic pollutant violations are significant when they exceed the permit limit by 1.2 times. Violations in excess of the permit limit, yet less than those determined as significant violations, are termed marginal. All violations (marginal and significant) are tracked by Permits and Enforcement Section staff on an Effluent Violation Log (Attachment A) and are posted to the Enforcement and Surveillance Monthly Status Report (Attachment B). In the case of marginal violations, follow-up action is discretionary and is based upon the reviewer's determination. For all significant violations identified, the Permits and Enforcement Section takes follow-up action consisting of one or more of the following:

- requests information or investigation from Field Support Section (Field Support Section may involve the local health department),
- sends a Notice of Violation Letter (NOVL) to the entity,
- requests state samples to substantiate noncompliance.

(Attachment C contains the request forms used by Permits and Enforcement Section and the boiler plate NOVL's of which there are four types).

Per national policy by EPA, the state shall take formal enforcement action whenever any major discharger is in significant noncompliance (SNC) (Note: difference in definition from significant violation). By definition, SNC occurs whenever:

- 1) 2 significant violations of the same parameter at the same outfall are reported within six months, or
- 2) 4 marginal violations of the same parameter at the same outfall are reported within six months, or
- 3) the state believes a violation to be so serious that the state uses its discretionary powers to deem an entity in SNC.

We have expanded the SNC definition to include minor dischargers as well. Thus, with few exceptions an entity which is in SNC will have a formal enforcement action taken against it. This formal action consists of a Notice of Violation (NOV) either with or without an accompanying Cease and Desist Order (C&D). If the noncompliance at the time of issuance of the NOV is still ongoing at the site, then a C&D Order is appropriate. If the violations have ceased, then no C&D Order is necessary. (An exception to issuing an enforcement order is when the division has been in close contact with the entity and is aware of the efforts, costs, and improvements to come into compliance; this is termed "anticipated compliance").

Once a formal NOV has been issued, the entity will normally be subject to a civil penalty. The amount of penalty varies with severity of the violation incident, potential impact to classified use of receiving stream, cooperation by the entity, economic gains by failure to comply, and numerous other factors. The penalty aspects of enforcement are discussed in the division's compliance strategy.

II. Enforcement Action for Violations of Permit Conditions

Failure to comply with any permit condition can result in an enforcement action. If reasonable efforts by the division fail to get compliance with such a permit condition, then a formal enforcement action is warranted.

A. Delinquent Reports

The enforcement process is well defined in the case of delinquent discharge monitoring reports (DMR's) and is discretionary regarding most other reports required by the permit.

For delinquent DMR's, the following applies:

Facilities with delinquent reports (DMR's) will be sent a routine reminder letter (Attachment D) within 15 days after date due has passed. The letter will require submittal of the DMR within 15 days. If the entity responds, then no further action will be taken.

A. Delinquent Reports (continued)

Those entities who do not respond to routine reminders of delinquent reports will be sent a certified letter (Attachment E) requesting submittal of all delinquent reports within ten days from the date of the letter. Certified letters will be sent after routine reminders have been sent as follows:

- monthly reporters - 3 consecutive reminders
- quarterly reporters - 2 consecutive reminders
- semi-annual reporters - 2 consecutive reminders
- annual reporters - 1 reminder

This letter will inform the facility that if no reply is received within ten (10) days of the date of the letter, the division will take enforcement action and that a minimum penalty in the amount of \$250.00 per each delinquent report will be assessed.

No further action will be taken if the reports are submitted. If the entity does not respond to the certified letter, a Notice of Violation and Cease and Desist Order will be issued and penalties imposed. Entities who properly respond to the order will be penalized \$250.00 per delinquent report; entities who fail to respond will be penalized \$500.00 per delinquent report.

B. Compliance Schedule Permit Violations

Failure to meet an interim date on a compliance schedule usually does not warrant a formal enforcement action although the division may decide the slipped date is serious enough to result in an action.

Failure to meet a final date on a compliance schedule most always will result in a formal action being taken. The enforcement notice and order can take one of two forms: NOV, C&D only, for the primary purpose of proceeding with a fine, or NOV, C&D with a new compliance schedule and interim limits for the parameter of concern. Usually, a minimal penalty is indicated in the latter.

Note that a permit, by law, cannot contain a compliance schedule and interim limits to achieve compliance with any secondary treatment number or any BPT or BAT number because the statutory deadline has passed (July 1, 1977 for BPT and secondary; July 1, 1984 for BAT). An administrative order is the only remedy in these cases, unless a municipality qualifies for a 301(i) extension for secondary treatment compliance.

C. Field-Originated Enforcement

The Field Support Section regularly inspects permitted facilities. Following such inspections, items of non-compliance are identified. The inspecting agent then notifies the permittee of the deficiencies or violations either by regular mail or certified mail (See Field Support Form Letters). The letters are "boilerplated" on the Wang and are of 3 degrees of severity. When the non-compliance letters fail to result in correction of the problem, the matter, with all documentation, is then referred to the Permits and Enforcement Section for formal action.

D. Other Permit Conditions

Any violation of a permit condition is enforceable. Past enforcement actions include citing the permittee for:

- noncompliance notification violations,
- flow measuring device violations,
- failure to properly operate the treatment facility,
- bypass provision violations,
- "change in discharge" violations.

The procedure is that when an entity is in noncompliance and reasonable efforts to obtain the information or correct the problem fail, then a formal action is warranted.

ATTACHMENT B

PK .B.2. SURVEILLANCE (Continued)

Permit # & Type	Entity	County	Report Period	Parameter	Type	Action of Action	Date	Comments
23094	St Mary's Glacier	Clear Ck	2084 3084 4084	FC	M	NOVL	1/28/85	Reply 7/26/84-No further action Memo to D.E. Sample frequency & type not reported. Reply 2-11-85-Effluent ditch to be lined & baffels installed when weather permits.
			1085	TRC	S	NOVL		In compliance
			2085 3085	FC	M	NOVL		In compliance
38075	Stagecoach Sanitation	Rio Blanco	2085	PH	M	NOVL		Failed to sample per the permit requirement frequency.
26247	SIERLING, CITY, OE	Logan	Aug. 85 Sept. 85 Oct. 85	TRC	S	NOVL		Response 10/14/85 - Control problem. ENFORCEMENT SERIES - In compliance In compliance In compliance
35815	Talbott Farms	Garfield	2H82 1H83 2H83 3084 Feb. 85 Mar. 85	FC BOD TSS BOD FC TSS BOD FC BOD	AM AM AM AS AM M M M M	FTRL NOVL None None None	4/30/83 12/12/83	BOD non-compliance will be addressed via upcoming enforcement action Letter 4/19/85 Violations due to inconsistent C12 feed which resulted in clogging of pump. In compliance Failed to report no. of exc., freq. of analysis and sample type. Response 9/9/85 - Have increased aeration & weed control program.

- SAMPLE PAGE -

CONTINUED ON NEXT PAGE

ATTACHMENT C - 1

FOLLOW-UP ACTION SLIP

WANG#1568B

Please proceed with the following action on _____

FOR DMR State Sampling violations.

PERMIT NUMBER: CO

TYPIST - Please type one of the following forms of correspondence as checked by using the WANG Supercopy document number indicated below to type in WANG DAILY ENFORCEMENT DOCUMENT #0621B:

- | | <u>WANG#</u> | | <u>WANG#</u> |
|--|--------------|--|--------------|
| 1. <u>SEND-I.O.C.-to D.E. for COMMENTS</u> | 0677B | 4. <u>SEND-NOVL-2-(No Data Required)</u> | 9922A |
| 2. <u>SEND-FTRL-Failure to Report Ltr</u> | 9920A | 5. <u>SEND-NOVL-3-(No Response)</u> | 9923A |
| 3. <u>SEND-NOVL-1-(Data Requested)</u> | 9921A | 6. <u>SEND-NOVL-4-(State Sample)</u> | 9924A |

Please include the following information:

<u>Outfall Number</u>	<u>Parameter</u>	<u>Reported Result(s)</u>	<u>Permit Conditions</u>
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INFORMATION NOT REPORTED (For FTRL) OR OTHER INFORMATION
(Type directly below parameter information when combined with NOVL or as indicated):

Request by: _____ Date: _____

Slope Approval: _____ Date: _____

ATTACHMENT C (11) - 2

(individual data requested)



COLORADO DEPARTMENT OF HEALTH

Richard D. Lamm
Governor

Frank A. Traylor, M.D.
Executive Director

CERTIFIED MAIL NO. _____

Re: Notice of Violation, CDPS Permit No. CO-00
For the Period of

Dear Mr.

The self-monitoring data you have provided on your Discharge Monitoring Report for the above referenced period indicates you are in violation of the discharge permit conditions indicated below:

<u>Parameter</u>	<u>Reported Result(s)</u>	<u>Permit Conditions</u>
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It is imperative that the necessary steps be taken to maintain compliance with permit conditions at all times. Please reply to this Division, in writing, within fourteen (14) days after receipt of this letter as to what action and measures you have or will be taking to abate this condition. Along with your reply, you are to submit the individual results of all analyses performed for those parameters listed above as being in violation during the referenced period. Failure to provide an adequate response and to carry through with the necessary abatement procedures may result in further action by this Division, including imposition of civil and/or criminal penalties.

If you have any questions regarding this matter, please contact me at Extension 3740.

Sincerely,

Permits and Enforcement Section
WATER QUALITY CONTROL DIVISION

xc: District Engineer
Environmental Protection Agency
Local Health Dept
4210 EAST 11TH AVENUE DENVER, COLORADO 80220 PHONE (303) 320-8333

ATTACH. C-4

(NOVL '3")

(no response required)



COLORADO DEPARTMENT OF HEALTH

Richard D. Lamm
Governor

Frank A. Traylor, M.D.
Executive Director

CERTIFIED MAIL NO. _____

Re: Notice of Violation, CDPS Permit No. CO-00
For the Period of

Dear Mr.

This is to notify you that the self-monitoring data you have provided on your Discharge Monitoring Report for the above referenced period indicates you are in violation of the discharge permit conditions indicated below:

WEVE

<u>Parameter</u>	<u>Reported Result(s)</u>	<u>Permit Conditions</u>
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It is imperative that the necessary steps be taken to maintain compliance with permit conditions at all times. Failure to carry through with the necessary abatement procedures may result in further action by this Division.

If you have any questions regarding this matter, please contact me at Extension 3740.

Sincerely,

Permits and Enforcement Section
WATER QUALITY CONTROL DIVISION

xc: District Engineer
Environmental Protection Agency

Local Health Dept

ATTACH. C-5

(NOVL "4")
(state sample violation)



COLORADO DEPARTMENT OF HEALTH

Richard D. Lamm
Governor

Frank A. Traylor, M.D.
Executive Director

CERTIFIED MAIL NO. _____

Re: Notice of Violation, CDPS Permit No. CO-00

Dear Mr.

Results of a recent State sampling done on _____ indicates you are in violation of the discharge permit conditions(s) indicated below:

<u>Parameter</u>	<u>Sample Result(s)</u>	<u>Permit Conditions</u>
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It is imperative that the necessary steps be taken to maintain compliance with permit conditions at all times. Please reply to this Division, in writing, within fourteen (14) days after receipt of this letter as to what action and measures you have or will be taking to abate this condition. If you accepted a split of the state sample, include the analytical results of that split with your response. Failure to provide an adequate response and to carry through with the necessary abatement procedures may result in further action by this Division, including imposition of civil and/or criminal penalties.

If you have any questions regarding this matter, please contact me at Extension 3740.

Sincerely,

Permits and Enforcement Section
WATER QUALITY CONTROL DIVISION

xc: District Engineer
Environmental Protection Agency

ATTACHMENT C - 6

COLORADO DEPARTMENT OF HEALTH
Water Quality Control Division
Permits and Enforcement Section

INTER-OFFICE COMMUNICATION

TO: _____ D.E., Field Services Section
FROM: _____ Permits and Enforcement Section
DATE:
SUBJECT: _____

Your assistance is requested in evaluating the above-referenced entity.

Please visit the site

photograph the problem area

sample at _____

according to: permit

special request explained below

provide documentation as detailed below

provide specific information as detailed below

provide general comments

The circumstances regarding this entity are as follows:

Your response is needed by: _____

Signature

xc: Ginny Torrez, Permits and Enforcement Section, WQCD

WANG/#0677B/AD-0806A

ATTACHMENT D

Date

Name
Entity
Address
City, State

RE: Delinquent Discharge Monitoring Report(s)
Permit No. CO-00
_____ County

Dear Sir/Madame:

The wastewater permit issued to your facility requires that the discharge from the facility be monitored at specified frequencies and the analytical results be reported to this Department and EPA. The data is to be submitted on Discharge Monitoring Report Form 3320-1. If no discharge occurred, you are required to report "no discharge". This requirement is further defined in the permit under Part I Monitoring and Reporting.

A review of our records indicates that we have not received the _____ report(s) for the period(s) of _____. Be advised that failure to provide this information has placed your facility in violation of the permit.

We request that you submit the delinquent report(s) within fifteen (15) days to avoid further enforcement action by this Department.

If you have any questions, please contact me at 320-8333, Extension 3731.

Sincerely,

Ginny Torrez
Staff Assistant
Permits and Enforcement Section
WATER QUALITY CONTROL DIVISION

GT/dkg

xc: Compliance Assurance Section, Environmental Protection Agency
_____, D.E., Field Services Section, WQCD

#5310B/Disk 0806A

ATTACHMENT E

Date

CERTIFIED MAIL NO: P 149 900

Entity
Address
City, State

RE: Delinquent Discharge Monitoring Reports
Permit No. CO- _____
_____ County

Dear Sir/Madame:

In our letter(s) dated _____ we reminded you of your responsibility to submit Discharge Monitoring Reports. To date we have received no response as requested.

This letter is to advise you that failure to submit discharge monitoring reports constitutes a violation of the above-referenced permit and that unless the delinquent report(s) for the period(s) of _____ are received within ten (10) days after the date of this letter, it is the intent of this department to initiate enforcement action and seek civil penalties. The minimum civil penalty for delinquent Discharge Monitoring Reports is \$250 for each delinquent report.

If you have any questions, please contact me at 320-8333, extension 3731.

Sincerely,

Ginny Torrez
Staff Assistant
Permits and Enforcement Section
WATER QUALITY CONTROL DIVISION

VT/eee

xc: Cary Unkelbach, Attorney General's Office
Permits Section, Environmental Protection Agency
Local Health Department
_____, D.E., Field Services and Monitoring Section, WQCD

6054B/Disk 0797A