



CLEANWATERSoCAL PRETREATMENT COMMITTEE

Enforcement Response Plan Drafting

September 24, 2026

ERP Update Goals



1. Effective and efficient compliance
2. Address enforcement deficiencies (boots on the ground)
3. Provide IUs clear, firm, and fair enforcement expectations
4. Useful tool
5. Stress test
6. Legally defensible

Considerations Before Drafting

- ERP is part of the POTW's approved Pretreatment Program
- 40 CFR § 403.18 – Modifications to Program
 - Substantial vs. non-substantial
 - Unless EPA or Regional Board finds revised ERP "could have a significant impact," "increase in pollutant loadings," or "result in less stringent requirements," the revised ERP is **likely** a non-substantial modification.
 - Both require EPA or Regional Board approval
 - Substantial: Not effective until approval
 - Non-substantial: 45-day limit to approve or disapprove, no response=approved

Update Ordinance?

Before revising the ERP, determine whether the ordinance adequately addresses:

- Adequate enforcement responses
- Administrative penalties
- Cost recovery
- Latest terminology
- Lessons learned, latest audit



Prescriptive v. Discretionary

Pretreatment staff have a wide-range of enforcement tools. How should they be deployed?

PRESCRIPTIVE: "SHALL"

- Narrative or flowchart prescribing enforcement responses
- Requires staff to follow the progressive/escalated enforcement
- Pros: Clear guidance for staff and IUs
- Cons: not always one-size-fit-all, deviations questioned on appeal

DISCRETIONARY: "MAY"

- Laundry list of enforcement responses
- Allow staff to exercise best professional judgment
- Pros: select the right tool to achieve compliance
- Cons: that is not always easy, inconsistent enforcement

Hybrid

Using qualitative or quantitative factors to categorize violation and select enforcement response.

- Minor, Moderate, Major Violations (SWRCB Enforcement Policy)
- Factors: harm, economic benefit, nature/persistence, length of time, corrective action (Gov. Code, § 54740)
 - Qualitative or quantitative scoring
- Assign potential enforcement response based on categorization, allow deviation to address circumstances

Who bears the cost of enforcement?

- Large POTWs can incur significant enforcement costs
- Sophisticated IUs bring lawyers in, increasing legal costs
- Unless violation results in significant damage to POTW, cost recovery action in court is cost prohibitive
- Spread enforcement costs through rates/charges?
- Collect from violators through fees or penalties?

Fees and Penalties

Fee

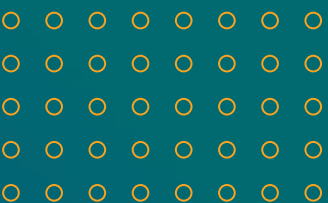
- Sampling fee, inspection fee, NOV/order fee, appeal fee
- Prop 26 – capped at reasonable cost
- Adopted by governing body
- Periodically updated
- Subject to appeal?

§ 53069.4

- Ordinance violation
- Infraction max:
 - \$100, \$200, \$500
- Misdemeanor max?
- No administrative complaint
- Subject to appeal

§ 54740.5

- Specific violations:
 - Technical reports: \$2000/day
 - Compliance schedule: \$3000/day
 - Discharge: \$5000/day or \$10/gal
- Requires administrative complaint
- Hearing 60 days after service unless waived



Questions?

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