

Central Contra Costa Sanitary District

Enforcement

Title 10: Chapter 10.16 of District Code

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10.16.010 Enforcement Mechanisms.

It is the intent of this Enforcement section to provide adequate mechanisms to achieve a maximum degree of compliance with this Ordinance by all users. These enforcement provisions apply to all classes of users to the extent such user violates any provision of this Ordinance or administrative order of the District pursuant to this Ordinance. In order to achieve the maximum degree of compliance desired, the District will use a variety of enforcement mechanisms. The enforcement mechanisms set forth range from informal administrative action to formal criminal prosecution. The District may, in its discretion, implement the use of any mechanism or the concurrent use of several mechanisms in order to enforce the provisions of this Ordinance. The enforcement mechanisms provided herein may be cumulative in respect to such other enforcement mechanisms or civil and criminal penalties as may be otherwise available under the laws of the State of California and the United States of America. Nothing in this Ordinance is intended to prevent state and/or federal regulatory agencies from undertaking enforcement actions as may otherwise be available due to a violation of this Ordinance which also constitutes a violation of federal or state statutes and regulations, such as: (1) the Clean Water Act (33 U.S.C.A. '1251, *et seq.*); (2) the California Porter-Cologne Water Quality Act (California Water Code '13000, *et seq.*); (3) the California Hazardous Waste Control Law (California Health and Safety Code '25100 - '25250); (4) the Resource Conservation and Recovery Act (42 U.S.C.A. '6901, *et seq.*); and (5) California Government Code '54739 - '54740.6. The referenced state and federal laws, along with other pertinent laws, provide authority for the District's enforcement mechanisms.

The enforcement mechanisms available to the District for violations of the provisions of this Ordinance, applicable District resolutions, and permit or permit contract provisions include the following:

- A. Informal administrative action (including NOVs and warning notices).
- B. Administrative orders.
- C. Institution of Sampling and Evaluation programs, Enforcement Compliance Schedule Agreements, and related administrative orders.
- D. Assessment of charges for obstruction or damage to District facilities or operations.
- E. Suspension or termination of services.
- F. Administrative complaints for administrative civil penalties.
- G. Civil action.
- H. Criminal action.

10.16.020 Informal Administrative Actions.

District staff may, on an informal basis, take action against a discharger for minor violations or technical or clerical shortcomings of a user or a user's compliance submittals. These informal administrative actions may include informal notices (i.e., telephone calls to the user's representative), a Notice of Violation (NOV), and informal meetings or informal warning letters. These informal administrative actions may establish a compliance schedule for the discharger to follow in order to document compliance. Such action will not prevent a subsequent or concurrent imposition of other enforcement mechanisms.

10.16.030 Administrative Orders and Compliance Schedules.

When the District finds that a user has violated the prohibitions or requirements of this Ordinance or the provisions of a wastewater discharge permit or wastewater discharge permit contract, the District may issue an administrative order directed at those users not complying with such prohibitions, limitations, requirements, or provisions to (1) cease to discharge immediately (suspension of service); (2) comply with requirements immediately; or (3) make such changes to their pretreatment facility and procedures immediately as to insure full compliance.

At its discretion, the District may later issue, after the issuance of the administrative order set forth above, an additional administrative order containing a compliance schedule or a time schedule setting forth dates by which specific corrective actions must be completed.

10.16.040 Sampling and Evaluation Programs.

A. Grounds for Instituting Sampling and Evaluation (S & E) Programs.

In addition to those grounds set forth in Section 10.12.060 A.6, grounds for instituting an S & E Program include compliance sampling or District sampling indicating a significant non-compliance (SNC). The S & E Program may consist of District sampling of the discharger's wastewater at the first opportunity convenient to the District, upon which daily samples may be taken for up to five (5) days. The District or outside laboratory will analyze these samples for the violating constituents and provide notice to the discharger in regard to the results of said sampling. Violations which may occur during the S & E Program shall constitute subsequent violations under this Ordinance or under any applicable law.

B. S & E Program Revealing Noncompliance.

If the S & E Program reveals non-compliance by the user with the prohibitions or specific pollutant limitations specified in this Ordinance or in the user's permit or permit contract:

1. The user may be assessed all costs incurred during the S & E Program for sampling and analysis, including labor, equipment, materials, outside services, and overhead.

2. The District may place the user on a compliance schedule or undertake another S & E Program. The compliance schedule shall provide for minimum required actions to be undertaken by the discharger to alleviate the violation and a schedule for completion of said actions. The compliance schedule may include interim constituent level maximums. All violations of constituent maximums or other requirements set forth in the compliance schedule, including failure to meet schedule dates shall constitute violations of this Ordinance and other applicable laws, and each day a discharger fails to meet a schedule date shall constitute a separate violation. Any constituent limit violation during the compliance schedule period shall provide grounds for the institution of an additional S & E Program.

3. The District may amend an existing permit through an Enforcement Compliance Schedule Agreement. This may be done after consultation with the user when the user has shown good faith in trying to comply but requires additional time for construction and/or acquisition of equipment related to pretreatment. The permit may be amended with the ESCA for a period of up to one hundred eighty (180) days; however, this period may be extended for a period not to exceed an additional one hundred and eighty (180) days upon determination by the General Manager/Chief Engineer that good cause exists for an additional period. No further extensions shall be granted except upon approval of the Board of Directors.

4. Any other enforcement mechanism set forth in this Ordinance or other applicable law may be commenced.

C. Continued Noncompliance After S & E Program or ESCA.

If a discharger remains in non-compliance because corrective action is not taken within a reasonable time after completion of an S & E Program or the expiration of an ESCA, an Administrative Order may be issued. Any of the other enforcement mechanisms set forth in this Ordinance or applicable laws may also be commenced.

10.16.050 Assessment of Charges for Obstruction or Damage to District Facilities or Operations.

When a user's discharge, whether due to negligence, accident, spill, or otherwise, causes an obstruction, damage, or any other impairment to the District's operation or facilities, the District may impose a charge on the user for the cost to clean or repair the facility, or costs incurred to resume normal operations. An administrative service fee of twenty-five percent (25%) of the District's costs may be added to these charges. The total amount shall be paid within forty-five (45) days of invoicing by the District. If it can be shown that the user's discharge caused or significantly contributed to the District violating its discharge requirements or incurring additional expenses or suffering loss or damage to the operation or facilities, then the user shall be responsible

for any costs or expenses, or a prorated portion of such expenses, including assessments or penalties imposed by other agencies or the court on the District.

10.16.060 Suspension or Termination of Service.

A. Suspension of Service.

The District may suspend the wastewater treatment service and/or a wastewater discharge permit or permit contract by issuance of a cease and desist order when the District makes the determination that such suspension is necessary. A suspension shall be justified in order to prevent an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of individuals or the environment, causes or may cause interference to the treatment plant or other District operations, or causes or may cause the District to violate any condition of its NPDES permit. Additionally, a permit may be suspended for any of the conditions set forth justifying revocation of permit or termination of permit contract as set forth in Section 10.16.060.B. Nothing in this paragraph will limit the rights of the District to suspend or terminate service pursuant to specific permit or permit contract conditions which may be more stringent.

Any industrial user notified of a suspension of service and/or the wastewater discharge permit or permit contract shall immediately stop or eliminate the discharge. In the event of a failure of the user to comply voluntarily with the administrative order, the District shall take such steps as deemed necessary to prevent or minimize damage to the District's facilities or endangerment to persons or the environment. The District may reinstate the wastewater discharge permit, permit contract, and/or the wastewater treatment service upon proof of the elimination of the non-complying discharge.

B. Revocation of Permit/Termination of Permit Contract.

Any user who violates the following conditions is subject to having its permit revoked or permit contract terminated:

1. Any user who knowingly gives or provides a false statement, representation, record, report, plan, or other document to the District or falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Ordinance;
2. Failure of a user to factually and completely report the wastewater constituents and characteristics of its discharge;
3. Failure of the user to report significant changes in operations or wastewater constituents and characteristics;
4. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring;

5. Failure of a user to notify the District immediately of an accidental discharge and/or take appropriate corrective action to prevent a reoccurrence;

6. Failure of a user to file a periodic compliance report or periodic compliance report in such time and in such manner as is required by this Ordinance;

7. Significant violation(s) of the permit or permit contract requirements or conditions and/or violation of this Ordinance. Any violation of the discharge standards where a constituent concentration is determined to be five (5) times the concentration standard set forth in Exhibit "A" or any series of three (3) or more violations of the same constituent within a one- (1) year period, shall constitute a significant violation;

8. Failure to pay fees and charges or penalties established pursuant to this Ordinance.

C. Immediate Termination of Discharge.

In the case of an actual or threatened discharge which reasonably appears to present an imminent danger to the health or welfare of persons, the environment, or the District or its employees or contractors, the District may, after reasonably attempting to informally notify the user, take all necessary steps to halt or prevent such discharge including, but not limited to plugging or physically disconnecting the user's access to the District wastewater system.

10.16.065 Administrative Civil Penalties.

Pursuant to the authority of California Government Code Sections 54739 to 54740.6, the District or District staff may issue administrative complaints, conduct administrative hearings, and/or impose civil penalties in accordance with the procedures set forth in these sections for violation of the District's requirements relating to pretreatment of industrial waste or the prevention of the entry of industrial waste into the District's collection system or treatment works.

These penalties shall be as follows:

A. In an amount which shall not exceed two thousand dollars (\$2,000) for each day for failing or refusing to furnish technical or monitoring reports.

B. In an amount which shall not exceed three thousand dollars (\$3,000) for each day for failing or refusing to timely comply with any compliance schedule established by the District.

C. In an amount which shall not exceed five thousand dollars (\$5,000) per violation for each day for discharges in violation of any waste discharge limitation, permit condition, or requirement issued, reissued, or adopted by the District.

D. In an amount which does not exceed ten dollars (\$10) per gallon for discharges in violation of any suspension, cease and desist order, or other orders, or prohibition issued, reissued, or adopted by the District.

Unless appealed, orders setting administrative civil penalties shall become effective and final upon issuance thereof, and payment shall be made within thirty (30) days.

As to court actions authorized by the above-referenced sections, District Counsel, or other special counsel designated by the District Board, shall institute appropriate actions to effect statutorily authorized remedies, upon order of the District Board.

10.16.070 Civil Action.

The District Board may direct District counsel or other special counsel to bring such civil actions as may be available at law or in equity in any court of competent jurisdiction to enforce the provisions of this Ordinance and to recover such charges, fees, penalties, and/or damages as may be assessed or may be incurred under the provisions of this Ordinance.

A. Injunction.

Whenever a discharge of wastewater is in violation of the provisions of this Ordinance, the District may petition the Superior Court for issuance of a preliminary or permanent injunction, or both, as may be appropriate in restraining the continuance of such discharge.

B. Civil Actions for Penalties.

Any user who violates any provision of this Ordinance, permit condition or permit contract condition, or who violates any cease and desist order, prohibition, or effluent limitation, shall be liable civilly for a penalty not to exceed twenty-five thousand dollars (\$25,000) for each day in which such violation occurs pursuant to California Government Code Section 54740. Pursuant to the authority of the *Clean Water Act*, 33 U.S.C.A. Section 1251, *et seq.* any user committing a violation of any provision of this Ordinance, which is also a violation of a pretreatment standard, effluent standard, or limitation or other applicable provision of the *Clean Water Act* shall be liable civilly for a sum not to exceed twenty-five thousand dollars (\$25,000) per violation for each day in which such violation occurs. District counsel, or other special counsel designated by the Board, upon order of the District Board, shall institute such actions as may be appropriate in the appropriate court to impose, assess, and recover such sums.

C. Other Civil Actions.

The District may require compliance with permit conditions or limitations by issuing administrative orders, including cease and desist orders and compliance schedules. Said orders are enforceable in a California court of general jurisdiction. The

District, however, may directly undertake any court action available at law or equity, including but not limited to a civil action for penalties without first seeking an administrative order or making use of a compliance schedule, and it may concurrently undertake such administrative and court actions as deemed appropriate.

10.16.080 Criminal Action.

A. General Criminal Penalties. Any person who violates any provision of this Ordinance, permit, or permit contract, or who violates any Administrative Order, prohibition, or effluent limitation, is guilty of a misdemeanor, and upon conviction is punishable by a fine not to exceed one thousand dollars (\$1,000) or imprisonment for not more than thirty (30) days in the county jail, or both. Each day a violation occurs may constitute a new and separate offense and may subject the violator to an additional full measure of penalties as set forth herein.

B. Falsifying Information. Any person who knowingly makes any false statements, representations, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Ordinance, or wastewater discharge permit, wastewater discharge permit contract, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Ordinance, shall upon conviction be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than thirty (30) days, or both. Each separate act of falsification, tampering, or knowingly rendering inaccurate any device or method, shall constitute a new and separate offense and shall be subject to the penalties contained herein.

Nothing in this section is intended to exclude the potential for prosecution under the applicable perjury statutes of the State of California to the extent such falsification was incorporated in a document signed under the penalty of perjury.

10.16.090 Notification Procedures.

A. Notification to User. Whenever the District finds that any user has violated or is violating the provisions of this Ordinance, a wastewater discharge permit, wastewater discharge permit contract, or any prohibition, limitation, or requirements contained herein, the District may serve upon such person a written notice stating the nature of the violation. Within thirty (30) days of the date of this notice, a plan for the satisfactory correction of the violation shall be submitted to the District by the user.

Whenever the District assesses a penalty or other form of enforcement action under the provisions of this Ordinance, the District shall serve upon such user a written notice stating the nature of the enforcement action being taken.

B. Notification to District. When a user discovers that it has violated or is violating a provision of the Ordinance, its wastewater discharge permit, its wastewater discharge permit contract, or any prohibition, limitation, or requirement contained therein, including a violation as may be caused by accidental discharge or spill, the user shall immediately notify the District upon discovery of such violation. Thereafter, within

five (5) days following the accidental discharge or discovery of a violation, the user shall submit to the District a detailed, written report, describing the accidental discharge or violation, and the measures taken by the user to prevent similar future occurrences. This written report regarding the violation may be included as a part of a periodic compliance report, or other report as may be required under this Ordinance, as long as the written report is provided within the five (5) days of discovery, which notification shall not relieve the user of any expense, penalty, fee, or other liability which may be incurred as a result of the violation.

10.16.100 Costs.

All costs associated with the District's undertaking of enforcement actions pursuant to this Ordinance, including attorney's fees for civil actions undertaken, shall be paid by the user. These costs may include but not be limited to the costs for termination of service, reinstatement of service, compliance sampling and analysis, and administrative activities undertaken by the District. However, if the user prevails in an appeal to the Board of Directors or a civil action taken to nullify an enforcement action pursued by the District under this Ordinance, the user shall not be responsible for the costs incurred by the District in pursuing said enforcement action.

10.16.110 Responding to Significant Noncompliance.

Any violation of pretreatment standards or requirements (limits, sampling, analysis, reporting and meeting compliance schedules, and regulatory deadlines) is an instance of noncompliance for which the industrial user is liable for enforcement including penalties. However, the District is required to identify violations or patterns of violations by industrial users that are deemed to be instances of significant noncompliance (SNC). To the extent that a violation or pattern of violations is determined to be significant noncompliance, the District shall give additional priority to enforcement actions with regard to that industrial user. Additionally, the determination of significant noncompliance shall be used as the basis for reporting same to the regulatory authorities and publishing of the list of significant noncompliers as is required of the District by law. For purposes of this provision, a Significant Industrial User (or any Industrial User that violates sections 10.16.0110 A. 3 or 4, or 10.16.0110 E.) is in significant noncompliance if its violation meets one or more of the following criteria:

A. Violations of Wastewater Discharge Limits.

1. Chronic Violations. Violations in which 66 percent or more of all the measurements taken for the same pollutant parameter during a 6 month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l)

2. Technical Review Criteria Violations. Violations in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l)

multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH).

3. Other Effluent Limit Violations. Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the District determines has caused, alone or in combination with other discharges, interference (e.g., slug loads) or pass-through (including adverse effect on any toxicity testing); or endangered the health of the sewage treatment personnel or the public.

4. Danger to Human Health or Welfare. This criterion includes any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment and has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.

B. Violation of Compliance Milestones.

Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a District permit or administrative order for starting construction, completing construction, or attaining final compliance;

C. Failure to Provide Proper Data.

Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

D. Failure to Accurately Report Noncompliance.

Failure of a user to accurately and promptly report any noncompliance. Any attempt to circumvent the reporting requirements or otherwise withhold noncompliance data from the District shall be subject to SNC status.

E. Other Violations.

Any other violation or group of violations, which may include a violation of Best Management Practices, that the District determines may adversely affect its operations or the accomplishment of the objectives of this Ordinance.