

OPERATIONAL DIVISION POLICY 2004-01-ERG

(Revised 2024)

FOG MANAGEMENT POLICY

ENFORCEMENT RESPONSE GUIDE

I. Jurisdiction

Metro Code Title 15.60 (Sewer Use Ordinance, or SUO) sets uniform requirements for Users of the Metropolitan Government of Nashville and Davidson County's (Metro) wastewater collection system and treatment works to enable Metro to comply with the provisions of the Clean Water Act and other applicable federal laws and regulations, Tennessee's Water Quality Control Act and other applicable state laws and regulations, and to provide for the public health and welfare by regulating the quality of wastewater discharged into Metro's wastewater collection system and treatment works. It provides a means for determining the setting of charges and fees, issuance of permits to certain users, establishes effluent limitations and other discharge criteria, provides that certain users shall pretreat waste to prevent the introduction of pollutants into the publicly owned treatment works, including the collection and transmission system (hereinafter referred to as POTW), which may interfere with the operation of the POTW or contaminate the sewage sludge, establishes a Wastewater Hearing Authority and establishes its duties and establishes the duties of the director of the department of water and sewerage services to ensure that the provisions of this chapter are administered fairly and equitably to all users. Metro reserves the right to establish, by ordinance or in individual wastewater discharge permits, or in general permits, more stringent standards or requirements on discharges to the POTW consistent with the purpose of this ordinance.

Section 15.60.125 explicitly states all Food Service Establishments (FSE) are required to comply with Operational Division Policy No. 2004-01: Metro Water Services Fats, Oils and Grease (FOG) Management Policy, the scope and purpose of which is to prevent sanitary and combined sewer system blockages, obstructions, and overflows due to the contribution and accumulations of fats, oils, and grease from food service establishments. Section XIV of that policy states non-compliance with any requirement and/or provision of the Metro Sewer Use Ordinance or the FOG Management Policy will result in Enforcement Action per the SUO and FSE Enforcement Response Guide. The FSE may be required to reimburse Metro for all labor, equipment, supplies, and disposal costs incurred by Metro to address the non-compliance. The charges may be remitted via cashier's check, money order, or added to the FSE's water/wastewater bill. Failure to reimburse Metro Water Services will result in termination of water service. Penalties will be issued per the FSE-ERG and SUO.

Furthermore, Metro Nashville Charter Chapter 15.04.349, pursuant to State laws TCA 11-1-101 Rule 0400-40-14-.08(6)(b)(8), and Federal laws 40 CFR 403.8(f)(2)(viii), has defined "Significant noncompliance" in part, as:

A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six- (6-) month

period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Metro Code of Laws Title §15.60.070;

D. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Director's exercise of its emergency authority to halt or prevent such a discharge;

E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or a general permit or enforcement order for starting construction, completing construction, or attaining final compliance;

F. Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

G. Failure to accurately report noncompliance; or

H. Any other violation(s), which may include a violation of Best Management Practices, which the Director determines will adversely affect the operation or implementation of the local pretreatment program.

As it pertains to FSEs, significant non-compliance could occur under provisions D-H of that definition. Metro also reserves the right to invoke provision A for FSEs with poor compliance history over the course of the past three years, as the policy requires FSEs to keep three years of grease waste maintenance records. In the event that violations occur consistently within those three years, MWS reserves the right to include compliance history beyond three years in determining penalties.

Metro Code 15.60.390 requires the Director to promulgate an enforcement response manual that establishes the procedures to be followed by the department as it enforces the provisions of this chapter. Upon approval by the hearing authority, the enforcement response manual shall be filed with the metropolitan clerk.

In summary, the Metro Water Service Environmental Compliance Section has been charged by the Director of Water Services with monitoring, reporting, and enforcing the laws known as the Sewer Use Ordinance and FOG Management Policy, and to identify Significant Noncompliance therewith. The following document constitutes the Enforcement Response Manual specifically for the FOG Management Policy.

II. Definitions

1. Administrative Order – Legal document issued by the Director of Metro Water Services that demands its recipients to undertake and/or to cease specified activities and may include a Schedule of Compliance.
2. Certification – Annual inspection performed by an approved individual that ensures a grease control device is free of defect and is in good working order.
3. Fat, Oil, and Grease (FOG) – Organic polar compounds derived from animal and/or plant sources. FOG may be referred to as “grease” or “greases” in this section.
4. FOG Discharge Permit – a five-year permit issued by MWS that allows its holder to discharge food service wastewater to the POTW under the provisions of the SUO.
5. Food Service Establishment (FSE) – Any establishment, business or facility engaged in preparing, serving or making food available for consumption.

6. Metro Water Services (MWS) – the Metropolitan Nashville Davidson County Department of Water and Sewerage Services, control authority for publicly owned treatment works in Nashville, TN.
7. Mobile Food Unit (MFU) – a Food Service Establishment that has no permanent residence or hard plumbed wastewater discharge directly to the sanitary sewer. Commonly known as food trucks, or food trailers.
8. Publicly Owned Treatment Works (POTW) – wastewater treatment facility and its entire infrastructure that is owned by a state or municipality.
9. Schedule of Compliance - List of all steps the FSE will take to become compliant with all pertinent policies. This schedule includes projected dates each step is expected to be completed (e.g. hiring a grease waste hauler within 30 days, architect will complete grease waste treatment plans, executing contracts for components, commencing construction, etc.)
10. Sewer Use Ordinance (SUO) – Metro Code of Laws Title 15.60, regulating the use of the POTW.
11. Violation – Any circumstance that, through action or neglect, either intentional or unintentional, breaks or fails to comply with the SUO or FOG Management Policy
12. Waste Water Hearing Authority (WWHA) - A panel of five members, created and empowered by Metro Code 15.60.350 to adjudicate matters related to the SUO on behalf of MWS. The hearings are recorded and open to the public.

III. Steps of Enforcement

It is the goal of Metro Water Services to work hand in hand with FSEs to ensure comprehensive policy compliance. However, occasionally a FSE may run afoul of certain policies, and thus Metro has multiple enforcement actions in place to keep our permit holders accountable. All documents, correspondence, laboratory results, and recorded testimony are admissible as evidence.

- *Step 1 – Non-Compliance Notice (NCN)*

First warnings or isolated instances of noncompliance with the FOG Policy are met with a Non-Compliance Notice. The NCN is issued by Metro Water Services inspectors (or their representatives) to whomever reports as the responsible party on-site at the time of the inspection. The NCN is a summary of the inspector's findings, provides steps for the FSE to resolve the violation, potential penalties for failure to resolve, and contact information for the enforcement agency. If the matter remains unresolved after thirty (30) days, a courtesy NCN Reminder letter is sent to the listed address via US Postal Service.

- *Step 2 – Notice of Violation (NOV)*

A Notice of Violation is issued when the FSE fails to resolve the NCN in a timely manner, or in the commission of more severe violations which amount to significant non-compliance. (These more severe violations are listed in the penalty schedule below.) The NOV is a formal communication from Metro Water Services sent by registered mail or served personally by MWS staff. The NOV contains a more thorough and detailed summary than what is listed in the NCN, including relevant inspectors' notes and timeline of non-compliance history. It provides firm deadlines for providing Metro with a schedule of compliance toward resolution. The recipient is warned that any civil penalty will be calculated from the dates stated therein. In many cases, the real estate owner receives a copy of the NOV.

- *Step 3 – Compliance Order and Penalty Assessment*

In the event that FSEs remain in noncompliance after missing deadlines set by the NOV, or if there is a lack of communication from the FSE, or the FSE outright refuses to meet compliance requirements, the Director of Metro Water Services will issue an Administrative Order, usually in the form of a Compliance Order. At this stage, the FSE is no longer allowed to propose their own schedule of compliance. The Compliance Order is served in person and witnessed by Metro staff, and receipt is confirmed by signatures on a Certificate of Service document. A copy is also sent by certified mail to the real estate owner. The Compliance Order names the parties involved, which always include the FSE (or their representatives), the real estate owner, and Metro Water Services. It states the jurisdiction and laws which empower Metro Water Services to issue such an order. It enumerates all facts regarding compliance history, and concludes with the Order itself. The Order lists exactly what steps the FSE must take to become compliant, including the remittance and dollar amount of any civil penalty.

The amount of any civil penalty is determined by Metro staff according to the penalty schedule below. The penalty schedule will be updated from time to time to reflect current market conditions in the city of Nashville. Civil penalties may be assessed in addition to reimbursement for any associated remediation costs.

In rare and extreme occasions of significant noncompliance, Metro may issue a Cease and Desist Order which demands immediate end to the noncompliant actions listed therein. Such orders are generally reserved for discharge that is causing interference, pass-through, environmental harm, damage to the collection and treatment system, endangering public health and safety, or otherwise creating an emergency. The order may be issued immediately upon discovery or following a hearing. In an emergency, the order may be given by telephone with a subsequent written order to be served by Metro as soon as possible. If the FSE fails to comply with the order, Metro may take independent action to stop the noncompliance, such as cooperating with the Sheriff's Department or other Metro agencies, or temporary revocation of the FOG discharge permit.

If the FSE wishes to appeal any Compliance Order (or any enforcement action), they may request to be put on the agenda of the Waste Water Hearing Authority.

- *Step 4 – Waste Water Hearing Authority*

Any recipient of an enforcement action may appeal to the Waste Water Hearing Authority (WWHA).

Additionally, FSEs in significant noncompliance, particularly those who fail to meet the requirements of a Compliance Order, may also receive a Show Cause Order. The Show Cause Order is another type of Administrative Order which summons the parties named to appear before the WWHHA at a certain time and place.

The parties are then required to "show cause," i.e. state their grounds and evidence for appeal or to otherwise modify the compliance actions ordered by Metro Water Services. The WWHHA has the option of granting that appeal. Likewise, the WWHHA may choose to uphold Metro's Compliance Orders, impose additional civil penalties (limited to \$10,000 statutory maximum per day per infraction), or revoke the FSE's waste water discharge permit.

Any modification made under agreement with the WWHHA results in an Agreed Order, which is another Administrative Order constituting a contract wherein the signatories agree to meet certain compliance requirements under specific conditions, such as compliance schedules with specific milestone dates, stipulated civil penalties, damages, and/or remedial actions, and signatures by the parties named therein.

Agreed Orders generally include an assumption of responsibility by the FSE for its noncompliance and a good faith willingness to correct the causes.

- *Exceptions*

1. During inspection, any FSE that has failed to use solids strainers on their discharge fixtures is subject to a \$100 penalty regardless of compliance history. The penalty will be added to the water bill under a line item including the name of the FSE responsible and the infraction. This immediate penalty is due to the relative cost and ease by which these devices can be readily acquired and utilized without the services of a professional plumber or supply house, relying upon FSE management and staff to maintain their use.
2. At their discretion, Metro Water Services staff reserve the right to immediately escalate any violation which they determine is particularly egregious or requires immediate action due to public health, safety, nuisance, or damage to the POTW. It is incumbent upon said staff to justify their actions with appropriate reasoning and documentation.

IV. Additional Provisions

Authority of Combined Sewer System

All powers granted under Metro Code 15.64.015 and 15.64.220 to the Stormwater Division are assumed by the Environmental Compliance section in the event that illicit discharge occurs within the Combined Sewer System (CSS). Certain older portions of the sewer system are combined sanitary and stormwater, the waters of which are treated at the Central Water Reclamation Facility, and do not drain to the watershed. Violations due to illicit discharge into the CSS will be enforced by the terms within this document.

Holds on Building Permits or Commissary/Service Agreements

Any FSE that is non-compliant will be prevented from pursuing a building permit, unless that building permit is to authorize work required to resolve any outstanding FOG compliance issues. Additionally, any FSE that wishes to enter into a Commissary Agreement or Service Agreement with a Mobile Food Unit (MFU) must pass inspection or otherwise be compliant with Metro FOG Policy. Metro inspectors may also determine that while a FSE is compliant as it exists, more robust grease control is required before a FSE can provide additional commissary service for a MFU or expansion of their space under a building permit; In either condition MWS will invoke this provision.

Metro Cross-Departmental Mutual Accountability

In the event an FSE commits any violation of Metro Policy or Code that is not expressly written within Operational Division Policy 2004-01 but is otherwise connected to liquid food waste/grease disposal and/or treatment, Metro Water Services will report the violation with the relevant enforcement authority. This may result in additional oversight, enforcement action, or civil penalties from other Metro Departments.

Unpermitted Violations

Any violations by a FSE operating without an appropriate FOG discharge permit are automatically escalated to Category 1 enforcement. This includes FSEs previously permitted with zero FOG Discharge

(90000 permits) that have changed their service model to include restrictions included in the FOG Management Policy.

State and Federal Referral

Metro Code § 15.60.430 states MWS may petition the State of Tennessee and/or the Environmental Protection Agency to seek criminal or additional civil penalties, injunctive relief, or such other remedies as may be provided by applicable federal or state laws. This may result in prosecution of misdemeanor or felony crimes, or further financial penalties depending on the nature of the violation.

Publication on Website

FSEs in non-compliance may be listed on a publicly accessible website until their violation is resolved.

V. Penalty Assessment Schedule

A civil penalty is a monetary penalty assessed by the Department for violations of required FOG policy standards, the Sewer Use Ordinance, and other relevant Metro Codes. Civil penalties are to be used as an escalated enforcement action and are punitive in nature, functioning both as an economic deterrent to and recovery of any economic benefit gained from illicit activity or other noncompliance.

Penalty ranges are designed to recover any economic benefit gained by the violation. Civil penalties are not an attempt to compensate Metro for specific costs associated with enforcement, adjudication, or remediating treatment costs or damages to public property; Any such compensatory damages would be assessed separately. The Director of Water Services has the right to separately assess compensatory funds under Metro Code 15.60.420.

Metro acknowledges the importance in careful determination of penalty amounts that reflect the violation's significance. If the penalty is too small, its deterrent value is lost, and the user may regard the amount as a tax or nominal charge to pollute. If the penalty is too great, it could bankrupt the FSE, making necessary investment in pretreatment equipment impossible or potentially forcing unnecessary closure of a small business.

Thus, the Department has categorized the various types of violations, and assigned a penalty range to each category. The sums attempt to combine a punitive fee in addition to the market rate the FSE would pay to resolve the violation from locally available service contractors. Accordingly, MWS reserves the right to revise the penalty sums every three years. The penalties are retroactively cumulative from the date MWS identifies the FSE became noncompliant, and has maintained consistent effort to seek resolution from the FSE as documented in the Facts timeline of its Administrative Order. Penalty categories and sums are determined by using the Enforcement Response Guide Penalty Schedule below. It is acknowledged that this schedule may not be exhaustive, and thus MWS reserves the right to assess penalties for violations not explicitly named herein on a case-by-case basis. All penalty assessments are approved and signed by the Director or their designee.



FOG MANAGEMENT POLICY - ENFORCEMENT RESPONSE GUIDE PENALTY SCHEDULE

CATEGORY 0		NO PENALTY
First offense (within three years history) of any basic violation listed on the NCN that does not require immediate action due to public health, safety, nuisance, or damage to the POTW.		
CATEGORY 1		Significant Noncompliance
		\$1.00 to \$500.00
Qualified as Failure to respond to Category 0 violation by stated deadline -OR- Second offense of a Category 0 violation within three years		
Grease trap/interceptor cleaning past due AND/OR failure to present grease trap/interceptor maintenance records		\$6.50 per day
Flow restrictor install		\$10 per day
Clogged drain line		\$15 per day
Grease trap replacement		\$30 per day
Grease trap installation (no previous grease control)		\$80 per day
Grease interceptor repair (minor repairs e.g. tee, sweep, grout)		\$10 per day
Grease interceptor replacement		\$60 per day
Grease interceptor installation (insufficient existing grease control)		\$100 per day
Grease interceptor installation (no previous grease control)		\$250 per day
Strainers missing from discharge fixtures		\$100 per inspection
Failure to present valid Grease Trap/Interceptor Certification Form		\$150 per year
CATEGORY 2		Significant Noncompliance
		\$1.00 to \$1,000.00
Third offense of a Category 0 violation within three years		Category 1 Penalty x2
Failure to respond to Category 1 penalty Administrative Order		Cited Penalty Doubled
Any violation which requires immediate action due to public health, safety, nuisance, or damage to the POTW.		\$500 in addition to its Category 1 Penalty
Discharge with purposeful bypass of grease control equipment		\$1000 per day
Dumping grease waste into Combined Sewer System		\$1000 per infraction
CATEGORY 3		Significant Noncompliance
		\$1.00 to \$10,000.00
Additional offenses (after third) of a Category 0 violation within three years		Category 1 Penalty x3
Failure to respond to Category 2 violation by stated deadline		Cited Penalty Doubled
Failure to abide by terms of Category 2 Administrative Order		Cited Penalty Tripled
CATEGORY 4		Direct Legal Action
		\$10,000 per day
Failure to respond to Category 3 violation by stated deadline will be penalized at statutory maximum and included as part of the legal action		
Any establishment in Significant Noncompliance may have their name published online.		