

FATS, OILS, AND GREASE
ENFORCEMENT RESPONSE PLAN
Bureau of Water Quality, Muncie Sanitary District

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INTRODUCTION

The Fats, Oils, and Grease (FOG) Enforcement Response Guide (ERG) is intended to be used by the Bureau of Water Quality and local Food Service Establishments. This document serves as a guide for determining the appropriate level of enforcement action taken in the event of violations of the Muncie Sanitary District (MSD) FOG Pretreatment Ordinance. The FOG Enforcement Response Guide has been developed with the intention of serving the following four main purposes:

- A. Recommending enforcement responses that are appropriate in relation to the nature and severity of the violation and the overall degree of noncompliance;
- B. Encouraging the uniform application of enforcement responses to comparable levels in types of violations;
- C. Aiding in reviewing the appropriateness of the response to violations; and
- D. Reinforcing the importance of the FOG pretreatment program.

DEVELOPMENT OF USER INVENTORY

The FOG Pretreatment Ordinance requires the Bureau of Water Quality to identify potential Food Service Establishments subject to the requirements of the FOG Pretreatment Program and to identify the volume and character of pollutants discharged by these users.

In order to implement an effective FOG Enforcement Response Guide, all Food Service Establishments subject to FOG pretreatment regulations must be identified and controlled. Therefore, the Bureau of Water Quality has developed a systematic approach to identifying new Food Service Establishments and has begun its implementation. This process, rather than being conducted on an annual basis, requires the continuation of ongoing activities to remain current with the Food Service Establishments community.

Initially, all questionnaires, survey results, and test results collected during the development of the Muncie FOG Pretreatment Program were reviewed. After screening this information, potential Food Service Establishments were either contacted by telephone or sent an informational letter. The Food Service Establishments remaining after this screening process were contacted to arrange a site visit to determine if a discharge application was needed. If so, a Fats, Oil, and Grease Discharge Application was provided, along with a date for submission to the Bureau of Water Quality. Food Service Establishments identified through ongoing activities will be evaluated by the same procedures.

There is no single reliable source for identification of new Food Service Establishments. Therefore, discovery of new Food Service Establishments occurs as a result of varied activities

and from diverse areas. The resources used by the Bureau for identifying new Food Service Establishments include:

- A. Telephone listings (Yellow Pages);
- B. Health Department contacts;
- C. Previous survey results;
- D. Industrial directories;
- E. Industrial Park tenant lists;
- F. Sewer connection permits;
- G. Referrals from other agencies (Delaware County Board of Health, etc.);
- H. Site visits;
- I. Reports from other Food Service Establishments;
- J. Citizen reports;
- K. Contact from potential FOG Users;
- L. Observations by sampling/surveillance/inspection/field personnel;
- M. Newspaper articles/trade journals/business magazines; and
- N. Chamber of Commerce.

All new Food Service Establishments subject to FOG pretreatment requirements shall be issued a Food Service Establishment Authorization to Discharge and be added to the master list of regulated facilities. New Food Service Establishments will be added to the master list as they are discovered.

An additional requirement associated with the Food Service Establishments Inventory is maintaining an accurate characterization of the type, volume, and quality of the discharge from the regulated users. This is accomplished by completion of ongoing activities including:

- A. Scheduled biennial inspections for each user;
- B. Unscheduled inspections of the user;
- C. User's requirement to report significant changes in operation;

- D. Observations from field personnel;
- E. Information submitted on Food Service Establishment's Applications; and
- F. Review of self-monitoring and/or surveillance sampling data.

Updated information collected as part of the Bureau's Food Service Establishments inventory activities is recorded in the Bureau files. The Director, Pretreatment Coordinator, and Surveillance Section assume the majority of inventory responsibilities.

COMPLIANCE MONITORING PROCEDURES

Compliance monitoring activities conducted by the Bureau of Water Quality are necessary to identify and document violations that can be presented as admissible and irrefutable evidence in administrative actions and legal proceedings. Food Service Establishments with applicable regulations are determined and evaluated through:

- A. Inspections conducted by the Bureau of Water Quality;
- B. Self-monitoring data from users;
- C. Surveillance sampling and analysis conducted by the Bureau of Water Quality; and
- D. Evaluation by the Bureau of Water Quality of application information.

Inspections by Bureau personnel are conducted to verify compliance and to identify any potential problems or violations. A standard inspection form is used to ensure all areas are evaluated. The form is signed and dated by the inspector. Any noncompliance situations are noted, either on the inspection form or on a separate report, and the Food Service Establishment is notified.

Sampling and analysis conducted by the Bureau of Water Quality may be required for compliance monitoring. Therefore, it requires strict adherence to standard procedures and proper QA/QC procedures. Trained sampling and inspection personnel collect user samples and complete a field chain-of-custody form, which accompanies each sample. This form follows the sample through the analytical process to maintain its identity and to assign to it the proper results. Each person receiving custody of the sample is required to sign the chain-of-custody form.

Information submitted by the Food Service Establishment for the FOG Discharge Application must also be evaluated for compliance with regulations. The Director must also determine if the Food Service Establishment has failed to document information necessary to complete the application. Failure to disclose vital information is a violation of the discharge application program. The application form contains a statement attesting to the accuracy and completeness of the information submitted which must be signed by an authorized representative of the Food Service Establishment.

IDENTIFICATION OF VIOLATIONS

The identification of a violation of FOG pretreatment requirements, regardless of the severity, will initiate the enforcement process. Discovery of a violation may occur as a result of any number of activities. The most common sources of identifying violations are:

- A. Site visits/inspections by Bureau personnel;
- B. Review of Bureau surveillance sampling results;
- C. Review of establishment self-monitoring results;
- D. Spill/accidental discharge reports from users;
- E. 24-hour notification of violations by the Food Service Establishment to the Bureau;
- F. Other information provided by the establishment employees;
- G. Observations by field personnel;
- H. Information provided by the public or private citizens;
- I. Review of compliance schedule requirements;
- J. Review of agreed judgment requirements; or
- K. Information provided by other agencies (IDEM, County Board of Health, etc.).

Once violations are identified, it is the responsibility of the Director to implement the appropriate enforcement response required in the plan. When determining an appropriate response, particularly one which includes the imposition of penalties and/or fines, the specific procedures outlined in the FOG Enforcement Response Section must be followed. However, additional criteria may be used in determination of the response, including:

- A. Magnitude of the violation;
- B. Duration of the violation;
- C. Effect of the violation on the MWPCF and/or collection system;
- D. Effect of the violation on MWPCF personnel, processes, and equipment;
- E. Compliance history of the Food Service Establishment;
- F. Good faith of the Food Service Establishment; or

G. Pollutants of particular importance to the MWPCF.

ENFORCEMENT RESPONSE DISCUSSION

Generally, all violations identified by the Bureau are reviewed, evaluated, and addressed by the appropriate enforcement response. The responses fall within the guidelines of the FOG Enforcement Response Guide.

The majority of enforcement actions begin with issuance of an initial Verbal Notification (VN) or Letter of Violation (LOV). The VN or LOV describes the nature of the violation and informs the Food Service Establishment that any additional violations may result in escalated enforcement action.

Once the Food Service Establishment has been notified of a violation or has knowledge of a condition which is a violation, the Food Service Establishment may be allowed up to thirty (30) calendar days to correct the noncompliance before escalation of the enforcement process occurs. This thirty (30) day period applies only to an initial violation. Any violations occurring after this period will be evaluated according to the plan procedures. (NOTE: A repeat occurrence does not necessarily indicate the same parameter, condition, or procedural requirement was found in violation.) A Food Service Establishment receiving results of any self-monitoring or from Bureau surveillance sampling which are in violation has thirty (30) days to correct whatever condition exists or existed which contributed to the violation. Thereafter, each violation is evaluated for enforcement action. In addition, if a violation occurred during the thirty (30) day correction period, the Food Service Establishment must demonstrate good faith was exercised to prevent or mitigate further violations during that period.

SCHEDULING ESTABLISHMENT INSPECTIONS

Each Food Service Establishment permitted under the Muncie FOG Pretreatment Program must be inspected at least biennially as a minimum. However, Food Service Establishments may receive numerous inspections/visits during a given year to track compliance schedule activities, verify changes in discharge or processes, maintain a regulatory presence, or scrutinize facilities with discharges most likely to impact the MWPCF and/or its collection system.

Scheduling regular biennial inspections is done on a random basis by reviewing the current Food Service Establishment list and noting a day and time in a monthly planning log for the facilities to be inspected. Depending on the Food Service Establishment, advance notice by letter or telephone may be given of the impending inspection. As all Food Service Establishments are inspected, the date shall be noted in the tracking system to ensure each facility is inspected at least once during the two year time frame as dictated by program requirements.

Other inspections or site visits are conducted according to need. Food Service Establishment operating under a compliance schedule are to be given priority for follow-up visits to verify progress and to document that required activities are being accomplished. Inspections of these

facilities may take place at regular intervals by noting inspection dates in a planning log well in advance. Inspections may also be scheduled at the request of the Food Service Establishment to verify compliance with certain requirements or to identify potential problems.

Some inspections will not be scheduled in advance, but are conducted as a result of a spill, accidental discharge, Bureau surveillance sampling, or other extraordinary events. These are often referred to as demand inspections and are accomplished as the need arises.

At the beginning of the fourth quarter of each calendar year, the current Food Service Establishment list will be reviewed to determine if all facilities have been inspected or are scheduled for an inspection during the two year time frame.

ENFORCEMENT PROCEDURES

Food Service Establishments found to be out of compliance with Federal, State, or local requirements are subject to the conditions of the Bureau of Water Quality's, MSD, FOG Enforcement Response Guide. The Director determines informal enforcement actions, verbal notices, verbal telephone notices, letters of violations, site visits, administrative orders, enforcement compliance schedules and administrative fines. Enforcement actions which require legal action are made by the Muncie Sanitary District Board of Commissioners upon the recommendations of the Director of the Bureau of Water Quality, MSD.

Violations and discrepancies that have been identified during the review process are to be evaluated as to the type of enforcement response necessary by the Director of the Bureau of Water Quality, MSD. In order to ensure equitable treatment of violators and provide a stronger basis for selection of appropriate responses to violations, the FOG Enforcement Response Guide should normally be followed, unless mitigating circumstances can be shown.

The FOG Enforcement Response Guide groups various types of violations into the following categories:

- A. Violations detected through inspection or field investigations by the Bureau;
- B. Failure to install and/or maintain grease control equipment and/or unauthorized use of chemicals or additives into grease control equipment;
- C. Violations for failure to utilize Best Management Practices;
- D. Violations of compliance schedules; and
- E. Violations of discharge limitations, sampling, monitoring, and reporting.

TYPES OF ENFORCEMENT RESPONSE

In order to provide a concise manual in a usable format, acronyms have been used for several of the types of responses. Definitions of the acronyms are as follows and are listed in increasing order of severity:

VN/ VTN - *Verbal Notice/Verbal Telephone Notice*. A response to a violation, which is conveyed verbally to the contact person at the Food Service Establishment; can require a response within ten (10) days, indicating a reason for the noncompliance and what steps are being taken to eliminate any future violations of this nature. This is utilized for minor infractions, such as a report being received one or two days late.

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SV - *Site Visit*. A visit to the Food Service Establishment site to discuss and observe a problem. This can be a substitution for VN, VTN or LOV. The SV can also be made in conjunction with a Verbal Notice, Verbal Telephone Notice, or Letter of Violation. The SV also can require a response within ten (10) days, indicating a reason for the noncompliance and what steps are being taken to eliminate any future violations of this nature. The Bureau will complete a site visit sheet following each Site Visit.

LOV - *Letter of Violation*. Written notification to the Food Service Establishment indicating the type of apparent violation and requesting a response within ten (10) days, indicating a reason for the noncompliance and what steps are being taken to eliminate any future violations of this nature.

SCH - *Show Cause Hearing*. A meeting to show cause why a proposed enforcement action should not be taken. Notice shall be served on the Food Service Establishment specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the Food Service Establishment. Whether or not the user appears as ordered, immediate enforcement action may be pursued following the hearing date. A show cause hearing shall not be a prerequisite for taking any other action against the user.

AO - *Administrative Order*. An Administrative Order would be used in such cases where the Bureau believed the Food Service Establishment was committed to providing necessary corrective measures to correct previous violations, and would utilize the Administrative Order to outline minor compliance schedules, along with other conditions that might be required, such as additional monitoring, more reporting, etc. The order would normally contain a short time-frame of one (1) month to six (6) months.

ECS - *Enforcement Compliance Schedule*. A Formal Enforcement Compliance Schedule signed by both the Bureau of Water Quality and the Food Service Establishment involved. This control mechanism is used when serious or long term violations of discharge limits occur that require the design and installation of new or additional pretreatment equipment. Usually the time-frame will

be six (6) months to one (1) year. Violations of the ECS can result in the next step, consisting of administrative fines.

AF - Administrative Fine. An administrative fine would be in such cases where all lower types of enforcement responses have failed and/or where deemed appropriate by the Director, because of the nature and/or intent of the violation. The next response step is court action. The administrative fine step exists to try to prevent court activity and yet to correct the problem and/or show the seriousness of the problem to the Food Service Establishment involved. The maximum fine is \$1,000.00 per violation with each day being considered a separate violation. The administrative fine may also be part of an (AO), Administrative Order, (ECS) Enforcement Compliance Schedule, or may be instituted as the next step above an (AO).

TER - Termination. Termination of service would be utilized as the final course of action in enforcement cases that have escalated to this final step in all BWQ Fats, Oils, and Grease Enforcement Response Guide enforcement actions. This control mechanism is used only when the most serious or long-term violation has occurred.

Utilizing the FOG Enforcement Response Guide, the Director will initiate the appropriate response and see that the files have been updated to show the type of action being taken and the response date, if one is so indicated. The Director will initiate any field sampling which he feels appropriate to substantiate previous data received, or to double check, the response of a Food Service Establishment (FSE) to the action which they have indicated that they have taken.

TIME FRAMES FOR RESPONSES

- A. All violations will be identified and documented within five (5) working days of receiving compliance information.
- B. Initial enforcement responses (involving contact with the FOG user and requesting information on corrective or preventative action(s)) will occur within thirty (30) days of violation detection.
- C. Follow up actions for continuing or reoccurring violations will be taken within thirty (30) days of the initial enforcement response. For all continuing violations, the response will include a compliance schedule.
- D. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service to the MWPCF collection system.

ENFORCEMENT RESPONSES GUIDE FOR FATS, OILS, AND GREASE VIOLATIONS

A. Absence of approved Bureau of Water Quality Best Management Practices:

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|---|--|
| 1. First offense within 12 month period | Verbal Notice |
| 2. Second offense within 12 month period | Letter of Violation, Site Visit |
| 3. Third offense within 12 month period | Administrative Order, Compliance Schedule |
| 4. Fourth offense within 12 month period | Administrative Fine |
| 5. More than four (4) offenses within 12 month period | Mandatory \$1000.00 fine for each offense thereafter |
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B. Bureau of Water Quality approved Best Management Practices not being utilized:

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|---|--|
| 1. First offense within 12 month period | Verbal Notice |
| 2. Second offense within 12 month period | Letter of Violation, Site Visit |
| 3. Third offense within 12 month period | Administrative Order, Compliance Schedule |
| 4. Fourth offense within 12 month period | Administrative Fine |
| 5. More than four (4) offenses within 12 month period | Mandatory \$1000.00 fine for each offense thereafter |
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C. Facility contributing FOG to downstream Sanitary Sewer collection systems, Storm Sewer collection systems, or the MWPCF:

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|---|--|
| 1. First offense within 12 month period | Verbal Notice |
| 2. Second offense within 12 month period | Letter of Violation and Site Visit |
| 3. Third offense within 12 month period | Administrative Order, Compliance Schedule |
| 4. Fourth offense within 12 month period | Administrative Fine, reimbursement of all cleanup costs incurred |
| 5. More than four (4) offenses within 12 month period | Mandatory \$1000.00 fine for each offense thereafter |
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D. Facility causing MWPCF bypass, causing sanitary or storm sewer overflow, or exceeding the local limit for Fats, Oils, and Grease:

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|--|---|
| 1. First offense within 12 month period | Letter of Violation, Site Visit |
| 2. Second offense within 12 month period | Administrative Order, Compliance Schedule |
| 3. Third offense within 12 month period | Administrative Fine, reimbursement of all cleanup costs |
| 4. Fourth offense within 12 month period | Termination of Service |

E. Failure to install all required Grease Control Equipment:

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|---|--|
| 1. First offense within 12 month period | Verbal Notice |
| 2. Second offense within 12 month period | Letter of Violation, Site Visit |
| 3. Third offense within 12 month period | Administrative Order, Compliance Schedule |
| 4. Fourth offense within 12 month period | Administrative Fine |
| 5. More than four (4) offenses within 12 month period | Mandatory \$1000.00 fine for each offense thereafter |

F. Failure to properly maintain, pump-out, or clean Grease Control Equipment:

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|---|--|
| 1. First offense within 12 month period | Verbal Notice |
| 2. Second offense within 12 month period | Letter of Violation, Site Visit |
| 3. Third offense within 12 month period | Administrative Order, Compliance Schedule |
| 4. Fourth offense within 12 month period | Administrative Fine |
| 5. More than four (4) offenses within 12 month period | Mandatory \$1000.00 fine for each offense thereafter |
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G. Grease Control Interceptor having solids greater than 25 percent:

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|---|--|
| 1. First offense within 12 month period | Verbal Notice |
| 2. Second offense within 12 month period | Letter of Violation, Site Visit |
| 3. Third offense within 12 month period | Administrative Order, Compliance Schedule |
| 4. Fourth offense within 12 month period | Administrative Fine |
| 5. More than four (4) offenses within 12 month period | Mandatory \$1000.00 fine for each offense thereafter |

H. No records for maintenance or cleaning of the grease control equipment:

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|---|--|
| 1. First offense within 12 month period | Verbal Notice |
| 2. Second offense within 12 month period | Letter of Violation, Site Visit |
| 3. Third offense within 12 month period | Administrative Order, Compliance Schedule |
| 4. Fourth offense within 12 month period | Administrative Fine |
| 5. More than four (4) offenses within 12 month period | Mandatory \$1000.00 fine for each offense thereafter |

I. Facility using additives or chemicals that emulsify or otherwise cause FOG to be discharged to any Sanitary Sewer collection systems, Storm Sewer collection systems, or the MWPCF:

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|---|--|
| 1. First offense within 12 month period | Verbal Notice |
| 2. Second offense within 12 month period | Letter of Violation and Site Visit |
| 3. Third offense within 12 month period | Administrative Order and Compliance Schedule |
| 4. Fourth offense within 12 month period | Administrative Fine |
| 5. More than four (4) offenses within 12 month period | Mandatory \$1000.00 fine for each offense thereafter |
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J. Failure to allow Bureau personnel access to the facility in a reasonable time to adequately assess or inspect grease control equipment:

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|--|--|
| 1. First offense within 12 month period | Letter of Violation, Site Visit |
| 2. Second offense within 12 month period | Administrative Order, Compliance Schedule |
| 3. Third offense within 12 month period | Administrative Fine, reimbursement of all cleanup costs incurred |
| 4. Fourth offense within 12 month period | Termination of Service |

K. No outside renderable grease containers, improperly located renderable grease containers, or uncovered and exposed renderable grease containers:

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|---|--|
| 1. First offense within 12 month period | Verbal Notice |
| 2. Second offense within 12 month period | Letter of Violation, Site Visit |
| 3. Third offense within 12 month period | Administrative Order, Compliance Schedule |
| 4. Fourth offense within 12 month period | Administrative Fine |
| 5. More than four (4) offenses within 12 month period | Mandatory \$1000.00 fine for each offense thereafter |

L. Grease Interceptor structural failure (baffle wall collapse, wall deterioration, tank leaking, infiltration/inflow into tank, inlet/outlet tees not in place or working, etc.):

- | | |
|--|--|
| 1. First offense within 12 month period | Administrative Order and Compliance Schedule |
| 2. Second offense within 12 month period | Administrative Fine, reimbursement of all cleanup costs incurred |
| 3. Third offense within 12 month period | Termination of Service |
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M. Failure to notify the Bureau of any grease control equipment upgrades, increases of 20 percent or greater in seating capacity, change in menu selections and/or food service production processes:

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|---|--|
| 1. First offense within 12 month period | Verbal Notice |
| 2. Second offense within 12 month period | Letter of Violation and Site Visit |
| 3. Third offense within 12 month period | Administrative Order and Compliance Schedule |
| 4. Fourth offense within 12 month period | Administrative Fine |
| 5. More than four (4) offenses within 12 month period | Mandatory \$1000.00 fine for each offense thereafter |

N. Discharging without the Bureau of Water Quality's written approval from the Director:

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|--|---|
| 1. First offense within 12 month period | Letter of Violation and Site Visit |
| 2. Second offense within 12 month period | Administrative Order and Compliance Schedule |
| 3. Third offense within 12 month period | Administrative Fine and Publication of Legal Notice |
| 4. Fourth offense within 12 month period | Termination of Service |

O. The reporting of false information, without intent:

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|--|--|
| 1. First offense within 12 month period | Letter of Violation and Site Visit |
| 2. Second offense within 12 month period | Administrative Order and Compliance Schedule |
| 3. Third offense within 12 month period | Administrative Fine |
| 4. Fourth offense within 12 month period | Termination of Service |

P. The reporting of false information, with intent:

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|---|------------------------|
| 1. First offense within 12 month period | Termination of Service |
|---|------------------------|
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Q. Failure to respond to any Notification Letter within thirty (30) days:

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|--|---|
| 1. First offense within 12 month period | Letter of Violation and Site Visit |
| 2. Second offense within 12 month period | Administrative Order and Compliance Schedule |
| 3. Third offense within 12 month period | Administrative Fine |
| 4. Fourth offense within 12 month period | Administrative Fine and Publication of Legal Notice |
| 5. Fifth offense within 12 month period | Termination of Service |

R. Failure to respond to all Compliance Schedule interim dates and Compliance Schedule final dates within thirty (30) days:

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|--|---|
| 1. First offense within 12 month period | Letter of Violation and Site Visit |
| 2. Second offense within 12 month period | Administrative Order and Compliance Schedule |
| 3. Third offense within 12 month period | Administrative Fine |
| 4. Fourth offense within 12 month period | Administrative Fine and Publication of Legal Notice |
| 5. Fifth offense within 12 month period | Termination of Service |
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