

FATS, OILS, AND GREASE ENFORCEMENT RESPONSE PLAN

June 2010

Introduction

The purpose of this Fats, Oils and Grease (FOG) Enforcement Response Plan (ERP) is to establish general responsibilities for enforcement of Stockton Municipal Code Chapter 13.40 (FOG Ordinance). This ERP is a statement of policy by the City of Stockton. It is not a regulation, code or statute and the City has the authority to amend this policy at any time in order to more effectively implement the FOG Control Program. This plan has been developed for guidance and is not intended to create legal rights or obligations, or to limit the enforcement discretion of the Director of Municipal Utilities or the City of Stockton.

This ERP is an effective way to ensure that the City of Stockton takes fair, consistent and equitable enforcement actions against food service establishments (FSEs) for violations of the FOG Ordinance. It should be noted that, even with the ERP, judgment and flexibility will be needed at times in response to unusual instances of noncompliance. Some violations may require a response that deviates from the ERP depending on the particulars of the situation.

The enforcement philosophy of the City of Stockton is progressive, in that problems are addressed at the lowest level and with the least formality possible consistent with the specific violation. However, no enforcement procedure is contingent upon the completion of any "lesser" activity.

In general, enforcement actions against FSEs will be taken in accordance with this ERP, however, the enforcement actions listed here are not exclusive and the City of Stockton reserves the right to implement other enforcement responses available to it under the FOG Ordinance and California law, separately or in combination with these responses.

Enforcement Procedures

Generally, all violations identified by the City of Stockton are reviewed, evaluated, and addressed by the appropriate enforcement response. The majority of enforcement actions begin with issuance of an initial Notice of Violation. This notice describes the nature of the violation and informs the FSE that any additional violations may result in an escalated enforcement action. Once the FSE has been notified of a violation or has knowledge of a condition which is a violation, the FSE may be allowed a specified time period to correct the noncompliance before escalation of the enforcement process occurs. Emergency conditions require immediate correction of noncompliance.

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Identification of Violations

The identification of a violation of FOG requirements, regardless of the severity, will initiate the enforcement process. Discovery of a violation may occur as result of any number of activities which may include:

1. On-site inspections of FSEs by the City of Stockton;
2. Review of FSE records, reports, manifests, maintenance logs, etc;
3. Review of FSE implementation of Best Management Practices (BMPs);
4. Review of FSE sampling results;
5. Review of compliance schedule requirements;
6. Notification of a violation by FSE;
7. Spill and/or accidental discharge reports from FSE;
8. Investigation of sanitary sewer overflows, spills and illegal discharges;
9. Review of City of Stockton surveillance and/or sampling results;
10. Observations of field personnel;
11. Information provided by other agencies; and
12. Information provided by the public or private citizens.

Once violations are identified, it is the responsibility of City of Stockton to implement the appropriate enforcement response required in the ERP. In determining which enforcement measure(s) to use and the amount of any administrative penalties, the City may consider the following:

1. The degree and extent of the impact and/or harm to the sanitary sewer system, Publicly Owned Treatment Works (POTW), public or private property, and/or the natural resources of the State as a result of the violation;
2. The duration and magnitude of the violation;
3. The cost of repairing the damage to the sanitary sewer system, POTW, public or private property, and/or the natural resources of the State;
4. Whether the violation was committed negligently, grossly negligently, recklessly negligently, willfully or intentionally;
5. The amount of money saved, if any, by noncompliance, including the cost of continuing to discharge in noncompliance instead of stopping operations;

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6. Costs incurred by the FSE in correcting the problem and FSE cooperation and good faith effort to resolve noncompliance;
7. The prior record of the FSE in complying or failing to comply with the requirements of the FOG Ordinance, or other applicable laws or regulations;
8. The cost to the City (including legal fees, sampling and analytical costs, engineering and consulting fees, etc.) required, in the opinion of the City, to take necessary investigative and enforcement actions, determine the nature and extent of damage, repair any damage and prevent further damage;
9. The cost to the City for any civil penalties, fines, legal costs and/or other costs associated with any enforcement action or legal action taken against the City for violations caused by the FSE;
10. Violations resulting from vandalism or the action of third-party entities; and
11. Deficiencies or violations occurring as a result of circumstances beyond the FSE's control as determined by the Director of Municipal Utilities.

Enforcement Actions

Enforcement actions available to the City include the following:

1. Notice to Clean (NTC) – This is a formal written notice to the FSE that a clean-up is required to prevent an illicit discharge to the stormwater system or a FOG discharge to the sanitary sewer system. The order will require specified clean-up measures within a specified time frame to achieve compliance. The text of the order will include a statement that additional enforcement actions may be pursued if corrective actions are not achieved as required;
2. Correction Order (CO) – This is a formal written notice to the FSE that corrections are necessary to correct or prevent a violation of the FOG Ordinance. The order will require corrective actions within a specified time frame to achieve compliance. The text of the order will include a statement that additional enforcement actions may be pursued if corrective actions are not achieved as required;
3. Notice of Violation (NOV) – This is a formal written notice to the FSE that it has committed a violation of the local FOG ordinance. The NOV will require corrective actions within a specified time frame to achieve compliance. The text of the NOV will include a statement that additional enforcement actions may be pursued if corrective actions are not achieved as required;
4. Cease and Desist Order (C&D) – This is a formal written notice to the FSE issued for major violations of the FOG ordinance (e.g. large spills, gross negligence), or for violations that have a potential for significant impact to the environment, sanitary sewer system or POTW. The order will require the actions which are causing the violation to cease within a specified time frame to achieve compliance. The text of the order will include a statement that additional enforcement actions may be pursued if corrective actions are not achieved as required;

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5. Administrative Citation with Fine (ACF) – The City may issue an administrative citation with a fine in response to major violations, or when violations have not been brought into compliance after a Notice of Violation, or if the responsible party is a repeat offender, or if violations are intentional or a result of gross negligence. The text of the order will include a statement that additional enforcement actions may be pursued if corrective actions are not achieved as required.

As set forth in Chapter I of the Stockton Municipal Code fines are imposed per violation in the amount of two hundred dollars (\$200.00) for the first Administrative Citation and five hundred dollars (\$500.00) for each subsequent reinspection during which it is noted that the violation has not been corrected. Payment of the fine shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the City;

6. Administrative Order (AO) – The City may issue an administrative order requiring an FSE to comply with requirements of the FOG Ordinance by undertaking and/or ceasing specified activities in a specified time frame. Administrative Orders may incorporate compliance time schedules, administrative civil penalties and/or suspension/termination of service;
7. Compliance Time Schedule (CTS) – The City may require an FSE to submit a compliance time schedule indicating corrective actions with milestone dates to achieve compliance. The City may accept, reject or require modifications to the schedule as necessary. The FSE shall adhere to the compliance schedule in accordance with the Administrative Order;
8. Civil Action (CA) – The City Attorney may pursue civil action against an FSE for failing to comply with requirements of the FOG Ordinance;
9. Civil Penalty (CP) – The City may issue an administrative civil penalty to an FSE who fails to comply with any provision of the FOG Ordinance. The City of Stockton Municipal Code authorizes penalties of up to one thousand dollars (\$1,000.00) per day per violation; and
10. Suspension of Service (SOS) or Termination of Service (TOS) – The City may suspend or terminate service to an FSE to prevent any actual or threatened discharge to the sanitary sewer system that may endanger the public health or environment, or cause damage to the sanitary sewer system or POTW. SOS or TSS may also be used as an escalating enforcement action when a noncompliant FSE fails to respond adequately to previous enforcement actions. SOS or TOS may be accomplished by physical severance of the FSE's connection to the collection system, suspending or terminating water service to the FSE, issuance of an Administrative Order which compels the FSE to immediately terminate its discharge, or a court ruling.

Appeals

Any FSE or property owner affected by a decision, action, or determination, including suspension, revocation, refusal or termination of wastewater service, cease and desist order, or imposition of civil penalties issued by the Director, or any other action of the Director in

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interpreting or implementing the provisions of the Stockton Municipal Code, may file with the Director a written request for reconsideration within ten (10) days of such decision, action, or determination, setting forth in detail the facts supporting the request for reconsideration. The Director shall provide a written decision regarding the request for reconsideration within thirty (30) days following the filing of the request for reconsideration. The Director shall serve the written decision upon the affected FSE and/or property owner by either personal service, facsimile, overnight courier or regular mail.

Any FSE or property owner aggrieved by the decision of the Director regarding a request for reconsideration specified above may appeal said decision and request an administrative hearing and decision in accordance with the procedures set forth in Title 1, Chapter 1.44, Section 1.44.070 of the Stockton Municipal Code by filing with the Director a written appeal within ten (10) days of such action setting forth in detail the facts supporting the appeal. The administrative hearing shall be conducted in accordance with procedures set out in Chapter 1.44 of the Stockton Municipal Code and the administrative order shall be final.

Staff Responsibilities

FOG Inspectors – Inspectors will be responsible for conducting compliance monitoring and FSE inspections. Inspectors will:

1. Provide outreach and educational assistance to FSEs;
2. Determine compliance with the FOG ordinance through on-site inspections;
3. Prepare inspection reports;
4. Identify instances of noncompliance;
5. Issue enforcement notices;
6. Prepare enforcement documents for issuance by the Director of Municipal Utilities;
7. Participate in enforcement meetings as deemed necessary by the Director of Municipal Utilities or City Attorney; and
8. Provide compliance assistance as appropriate.

FOG Program Manager – The FOG Program Manager will be responsible for ensuring fair and consistent implementation of FOG control requirements in compliance with the FOG Ordinance. The Manager will:

1. Review all violations;
2. Review all documents prepared by inspectors;
3. Recommend appropriate response(s) to violations;
4. Promptly notify the Director of Municipal Utilities of significant instances of noncompliance;
5. Conduct compliance meetings;
6. Develop and oversee compliance monitoring schedules;
7. Track enforcement compliance schedules;
8. Ensure consistency of the FOG control program;
9. Initiate administrative orders with compliance schedules;
10. Initiate suspensions or terminations of service;
11. Consult with City Attorney on all legal issues; and
12. Coordinate enforcement with other governmental agencies as appropriate.

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Director of Municipal Utilities – The Director of Municipal Utilities will be responsible for the appropriate application of enforcement standards to FOG Ordinance violations. The Director will:

1. Issue formal enforcement actions;
2. Conduct compliance meetings;
3. Consider appeals of enforcement actions; and
4. Approve suspensions and terminations of service.

City Attorney – The City Attorney’s office will:

1. Provide legal assistance as necessary.

Enforcement Action Levels

Level	Enforcement Action
1	Notice to Clean (NTC) Correction Order (CO) Notice of Violation (NOV) Cease and Desist Order (C&D)
2	Administrative Citation with \$200 Fine (ACF)
3	Administrative Citation with \$500 Fine (ACF)
4	Administrative Order (AO) Compliance Time Schedule (CTS)
5	Civil Action (CA) Civil Penalty (CP)
6	Suspension of Service (SOS) Termination of Service (TOS)

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Enforcement Response Guide

SMC Sec.	Compliance Issue	Enforcement Action Levels		
		Initial inspection finds failure to comply, or: First violation in a twelve month period	First follow-up inspection finds failure to comply, or: Second violation in a twelve month period	Second or more follow-up inspections find failure to comply, or: Three or more violations in a twelve month period
13.40.040	FOG Discharge Limitation	1 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.050	Sanitary Sewer Overflow	1 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.060	Kitchen BMP Requirements	1 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.070	FOG Prohibitions	1 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.080	FOG Control Requirements	1 and 4 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.100	Grease Interceptor Requirements	1 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.120	Recordkeeping Requirements	1 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.130	Waiver of Interceptor Requirements	1 and 4 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.140	Facilities Monitoring and Right of Entry	1 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.150	Monitoring and Reporting Conditions	1 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.160	Inspections and Sampling Conditions	1 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.190	Falsifying Information / Tampering w/Process	1 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.200	Notification of Spill	1 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.210	Notification of Planned Changes	1 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.
13.40.220	Harmful Discharge	1, 4 and 6 required. 2, 3, 5 if necessary.	1, 2, 4 and 6 required 3, 5 if necessary.	1, 3, 4 and 6 required 5 if necessary.
13.40.230	Failure to Comply with FOG Regulations	1, 4 and 6 required. 2, 3, 5 if necessary.	1, 2, 4 and 6 required 3, 5 if necessary.	1, 3, 4 and 6 required 5 if necessary.
13.40.240	Compliance Time Schedule	1 required. 2 thru 6 if necessary.	1 and 2 required. 3 thru 6 if necessary.	1 and 3 required. 4 thru 6 if necessary.

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Notes

The required enforcement action levels specified in the Enforcement Response Guide are the minimum enforcement responses and shall be administered as indicated unless specific findings are determined that would justify not taking such action.

The enforcement remedies specified in this document are not exclusive. The City may take all combination of actions specified in the Stockton Municipal Code against a noncompliant FSE, as well as any other enforcement remedies that the City may have available.

Enforcement responses may be escalated as needed and the City of Stockton is empowered to take more than one enforcement action against any non-compliant FSE.

The Director of Municipal Utilities reserves the right to assess the maximum penalty for any violation.

Violations that threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge of the FSE.

Reimbursement costs are in addition to any administrative civil penalties assessed.

The FSE and property owner(s) shall be jointly and severally liable for compliance with all requirements of Stockton Municipal Code Chapter 13.40 (FOG Ordinance). All references in this Enforcement Response Plan to FSEs shall also include the property owner(s) as having joint and several liability.

Glossary of Acronyms

ACF	Administrative Citation with Fine
AO	Administrative Order
BMP	Best Management Practices
CA	Civil Action
C&D	Cease and Desist Order
CO	Correction Order
CP	Civil Penalty
CTS	Compliance Time Schedule
ERP	Enforcement Response Plan
FOG	Fats, Oils, and Grease
FSE	Food Service Establishment
NOV	Notice of Violation
NTC	Notice to Clean
POTW	Publicly Owned Treatment Works
SOS	Suspension of Service
SSO	Sanitary Sewer Overflow
TOS	Termination of Service