



MEMORANDUM

City of Fort Smith
Internal Audit

TO: Lance McAvoy, Utility Department Head

FROM: Tracey Shockley

DATE: July 21, 2022

SUBJECT: Fats, Oils, and Grease (FOG) Remediation

The Management & Culture Audit from 2018 identified that the Utilities Department was not assessing fees for the FOG Generator Permits and Inspections. The burden to cover the FOG Program costs that was required by the Consent Decree is therefore absorbed by the residents of the City Utilities department expenses, through increased water and sewer rates. As of 1/23/2018, 355 FOG devices had been identified and the permits are renewed every two (2) years for which inspections would be completed during the 2-year cycle.

IA inquired with the Utilities FOG Coordinator regarding the current process, and relayed that when the establishments are inspected and violation(s) identified, a notice of violation is provided to the owner. If upon return, the violation has not been corrected, a final notice of violation is provided to the owner.

On the third inspection and thereafter, if the violation still has not been corrected the owner receives the following:

- \$100 violation for each individual violation.
- \$200 violation for each individual violation not corrected after the \$100 violation
- \$300 violation for each individual violation not corrected. Each individual violation increases in \$100 increments up to \$1000. Moreover, every individual violation ticket issued after it reaches \$1000 is thereafter \$1000 until the owner corrects that particular issue.

However, it was noted that no penalties are assessed to the owner (i.e. business closed, water shut off, etc...) for not correcting the violation and/or paying the violation(s). Violations were issued in 2021 and not sent to the Finance Accounts Receivable Specialist until February 2022 to be billed. In February 2022 the FOG Coordinator began sending weekly a spreadsheet identifying the violations to be billed. As of 6/30/2022, Munis has \$7,700 violations invoiced (billed). As of 7/14/2022, there has been \$2,500

payments received, and \$5,100 still outstanding (one violation for \$100 was voided after billed in the system).

Additionally, IA could not identify where the violations are reconciled after speaking with the Utilities Department and the Finance Department. IA researched Munis (financial system) and identified invoices sent to the establishments for their violations, however Utilities does not reconcile what violations were issued were entered into Munis. Moreover, all monies received for violations are entered into account 2101 Penalties and Fines as general billing and not coded to Utilities and identified as consent decree for tracking purposes. Currently no permits are being assessed to the establishments.

IA recommends the following:

- Permits be assessed to the establishments
- Utilities should reconcile issued violations to Munis to ensure all violations have been entered and billed to the establishment.
- Violations not paid by the establishment timely should be penalized (i.e. business closed, water shut off, etc...) until violations and penalties are paid in full.

Managements Responses

The memorandum is in response to your memorandum dated July 21, 2022, and received via email on July 29, 2022, regarding recommendations to the fats, oil, and grease (FOG) program. Management thanks Internal Audit for their time and diligence in reviewing the FOG Program and suggesting ways to make the Program better and sustainable.

Internal Audit stated that under the “Management & Culture Audit” performed in years prior to the new management of the Department, it was identified that the Utility Department was not assessing fees for permits and inspections. This is correct and is still the case. The Board of Directors were against fees for FOG at the time the ordinance establishing the FOG Program was passed. The Department, at the direction of the City Administrator, is currently reviewing all of the fees that are being assessed by as well as those which are not being assessed (i.e. fees related to the FOG Program). The fees will then be presented to the Board of Directors for them to determine the fees to be charged and the structure of those fees. This should be completed near the end of 2022 or shortly after the beginning of 2023.

There is a statement in the memorandum that management would like to clarify. The first statement is the FOG Program is funded by “...increased water and sewer rates.” This is partially correct in that sewer rates were increased in 2015, 2016, and 2017 to fund the CMOM portion of the Consent Decree. The FOG Program is part of the CMOM. However, water rates have not been increased since 2011.

Three recommendations were made to the Utility Management about the FOG Program.

1. Permits be assessed to the establishments.

Permits are issued to each food service establishment. This is a requirement of the Consent Decree and the City has been compliant with this requirement the entire time the City has been under the Consent Decree.

2. Utilities should reconcile issued violations to Munis to ensure all violations have been entered and billed to the establishment.

The Department/FOG Program will work with Finance to ensure Finance properly places the assessed and collected violations money in the proper revenue account. This will be done after the upgrade of the Munis system and before the end of 2022. The upgrade should make it easier to run reports and track billing and receivables.

3. Violations not paid by the establishment timely should be penalized (i.e. business closed, water shut off, etc...) until violations and penalties are paid in full.

The staff works with different businesses to help them to come into compliance. Violations are the main tool used by many of the regulatory programs to force the permittee back into compliance. It is important to note that staff follows the current Enforcement Response Guide which provides due process before termination of service. This ERG has been approved by EPA and ADEQ. To deviate from it would be arbitrary and capricious, and open the City to possible litigation from the permitted establishments and EPA/ADEQ.

Please contact me should the Board of Directors or Internal Audit have any questions.

Internal Audit's Assessment of Management's Responses numbered based on the response number.:

1. The Utilities Director contacted Internal Audit on August 1, 2022 regarding the permits and explained that while the permits are issued to the establishments, the establishment is not assessed for the permit. Therefore, IA continues to recommend that permits be assessed to the establishments. The Utilities Director stated the Board of Directors made that decision to not assess a fee to the establishment for the permit. IA requested the Utilities Director to provide the Board Meeting date so that it could be corroborated and added in the memo. IA could not locate where the Board announced that the establishments would not be assessed a fee for the permit and none was provided in management's response.
2. IA agrees with Managements responses and reiterates the importance of all monies received for violations are entered, coded to Utilities, and identified as consent decree monies for tracking purposes and not into account 2101 Penalties and Fines as general billing.
3. Management stated that the staff works with the different businesses to help them come into compliance and violations are the main tool used to force the permittee back into compliance. However, it was noted that there are several establishments that have not come into compliance and the violation fees have compounded and fees as of the review have not been paid, as well as some establishments have paid their violation fees.

For example one FOG permit holder had two separate violations in 9/2021, the same two violations again 2/7/2022 (compounding to \$200 each), and then a third violation in 6/2022. However, IA noted that the third violation was not compounded correctly, and the permit holder should have received a violation for \$300 for the third repeated offense.

Establishment	Date of Violation	Violation	Amount	Comment

Permit Holder FOG00018	9/15/21	Pumping Frequency	\$100	
Permit Holder FOG00018	9/15/21	100 MG/L Limit	\$100	
Permit Holder FOG00018	2/7/22	Pumping Frequency	\$200	Repeat violation - compounded
Permit Holder FOG00018	2/7/22	100 MG/L Limit	\$200	Repeat violation - compounded
Permit Holder FOG00018	6/7/22	100 MG/L Limit	\$200	Should have been \$300

Several other establishments have incurred compounded violation and have not paid. Additionally, there was an establishment that incurred compounded violations and new violations. When IA informed the Utilities Director about the violation fees were entered under account 2101 Penalties and Fines in a department meeting, the Utilities Director stated the City was not issuing violation fees and IA explained that it started last year and documentation could be provided to support they were being collected. Management did not provide support that EPA and ADEQ had approved the ERG. Additionally, IA reviewed the City of Fort Smith's



Enforcement Response Plan dated 2017 , (IA noted that the Utilities Director identified in management's responses that the employees follow the Enforcement Response Guide, but the document is titled FOG ERP, Enforcement Response Plan). This plan identifies that the Deputy Director of Operations and the Director of Utilities "will review all evidence and documentation for high-level formal enforcement actions (i.e. Show Cause Hearings, Judicial Actions, and Termination of Permit, Services and Sewer Bans)." However, the Utilities Director did not attach support to show where they are taking these actions, and stated in management's responses "to deviate from it would be arbitrary and capricious, and open the City to possible litigation from the permitted establishments and EPA/ADEQ". IA recommendations aligns with the actions stated in the plan.

The Utilities Director should attach any cited and/or the area highlighted to support his response when the response contradicts the finding.

Lastly, management responses have a clarification regarding the background information of the FOG program. It should be noted that the findings and recommendations are related to the permits and violations.

cc:
Audit Advisory Committee
City Board of Directors