

# Enforcement Response Procedures (ERPs)

for

MS4 Permit Violations

City of North Mankato, Minnesota

2016

Under the terms of the General NPDES/SDS Permit MNR040000, the City is required to develop and implement adequate enforcement authority for illicit discharges into its Municipal Separate Storm Sewer System (MS4). The purpose of these Enforcement Response Procedures is to communicate how the enforcement tools available to the City will be used to achieve compliance. The Enforcement Response Procedures also specify criteria by which City personnel can determine the enforcement action most appropriate to instances of non-compliance. This plan is a document of the City's procedure to be followed when a construction stormwater requirement, illicit discharge and post-construction violation is discovered. This plan is a guide; any of the enforcement responses may be used at the City's discretion. The City may also choose to pursue an enforcement case by skipping intermediate steps.

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## I. City Representative

- A. The City's designated MS4 coordinator shall act as the City Representative as described herein.
- B. All full-time Public Works, Parks, Police, and Fire Department Staff shall be authorized to perform the field duties of the City Representative.
- C. The City Council, City Administrator, or City's Public Works Director may authorize additional City Staff or the City's Consultant Engineer to temporarily fulfill the duties of the City Representative.

## II. Civil Penalty

- A. Civil penalty procedures established herein are intended to provide the public and the City with an informal, cost effective, and expeditious method for addressing violations.
- B. Civil penalties will depend on the extent of the damages.
- C. The monetary fine amounts shall be as set forth in the City Municipal Fee Schedule, except that the City may waive all or part of the financial penalty for the first offense if timely and substantial effort has been made to correct the discharge.
- D. Consent Orders as described herein may be accepted in lieu of damage penalties.
- E. In addition to civil penalties, the City may recover all damages proximately caused by the violator to the City, which may include:
  - 1. Reasonable expenses incurred in investigating violations of, and enforcing compliance with City Ordinances regulating the illicit discharge of pollutants or sediment, or any other actual damages caused by the violation.
  - 2. The costs of the City's maintenance of stormwater facilities when the user of such facilities fails to maintain them.
- F. The alleged violator shall, within ten (10) business days of the date of issuance of the notice, pay the amount set forth on the schedule of penalties for the violation, or submit an appeal as is provided for hereafter. The penalty may be paid in person or by mail, and payment shall be deemed to be an admission of the violation.

## III. Description of Each Type of Enforcement Response

- A. Written Notices
  - 1. Notice of Correction (NOC)
    - a) Upon visiting the site, a City representative may observe issues on non-compliance. If the non-compliance has not yet resulted in a discharge of pollution, including sediment, the City's representative will issue a written warning, either by email or letter specifying the nature of the violation, the required corrective action and a follow-up inspection date. The Notice of Correction will note that failure to comply resulting in a discharge of pollution is likely to result in a civil penalty.
  - 2. Notice of Violation (NOV)/Civil Penalty/Permit Revocation
    - a) If, upon a site inspection, a City representative observes non-compliance that has resulted in a discharge of pollution, including sediment, the representative will issue:
      - (1) A Notice of Violation for discharges that can be satisfactorily corrected without evidence of property or environmental damage.
        - i. The NOV will specify the nature of the violation, the required corrective action and a follow-up inspection date.

- ii. The NOV will require the party committing the violation (perpetrator) to submit an explanation of the violation and a plan for the satisfactory correction and prevention of the violation conditions, including specific required actions within five (5) days.
- iii. If corrective action is not satisfactorily completed by the follow-up inspection date, the City Representative will:
  - Revoke the current building or construction permits where applicable. Revoked permits shall only be reinstated after the permittee has reapplied for the permit, complete with a permit fee and an approved plan for preventing similar pollutant discharges.
  - Issue a Civil Penalty where no building or construction permits exist.

### 3. Consent Orders

- a) Consent Orders are written agreements that allow the perpetrator to accept responsibility for the discharge and provide the opportunity to voluntarily clean-up and/or correct a pollutant or sediment discharge as a way to reduce the additional damage penalty associated with cleanup costs.
  - (1) Consent Orders will only be issued to perpetrators that can provide documentation verifying that the perpetrator is qualified to handle the required cleanup.
  - (2) The City Administrator or his/her designee is empowered to enter into consent orders with the perpetrator on behalf of the City.
  - (3) Where the discharge and cleanup area affects private (third party) properties, Consent Orders must be approved by all parties affected.
- b) A consent order will include specific corrective actions to be taken to correct the illicit or sediment discharge together with specified time periods to finish the corrective actions.

### 4. Cease and Desist Order

- a) The City Representative may issue a Cease and Desist Order effectively stopping **all** work on a site where there is a clear violation, continued violation, or blatant disregard for:
  - (1) City Ordinances regulating the illicit discharge of pollutants or sediment
  - (2) Building or Construction Stormwater permit requirements
  - (3) Previously issued Notices of Compliance Orders, Notices of Violation, or Consent Orders associated with the site of the illicit or sediment discharge.
- b) This order requires that the violator must comply with the order and must take appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation; including halting all operations on the site except for authorized cleanup, terminating the discharge and installing appropriate control measures.
- c) If not previously issued, all Cease and Desist Orders shall automatically include a Civil Penalty.

### B. Suspension, Revocation or Modification of Permit

1. The City may suspend, revoke or modify any City issued permit authorizing the land development project or any other project of the applicant or other responsible person within the City.

2. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the Written Notice (See Section A) or has otherwise acceptably corrected the violation(s) described therein.
- C. Additional Measures
1. Legal Action
    - a) The City may bring legal action to enjoin continuing violation. Pursuant to the City's Ordinance; the City may, through the City Attorney, petition the appropriate court(s) for issuance of preliminary or permanent injunctions to restrain or compel activities by a violator.
  2. Future Permits
    - a) The City may withhold permits from Contractors with outstanding Civil Penalties until all Civil Penalties have been paid.
    - b) Contractors that have had two or more Civil Penalties within the previous 12-calendar months shall be required to deposit a cash surety equal to double the surety amount normally required for each permit obtained.
    - c) Contractors that work without required permits or under permits obtained by others in an attempt to avoid the requirements of this section shall be subject to the provisions of this ERP including but not limited to Civil Penalties, Cease and Desist Order, Suspension and/or Revocation of related permits, and Legal Action.
  3. Sites Without A Permit
    - a) For parties who fail to obtain a required permit prior to begin of land disturbance work, the initial enforcement action may be more stringent than for a project that has an approved plan but has failed to comply with the approved plan.
      - (1) The City has the ability to stop project work for non-permittees. Stopping work generally includes all work on the site except for work to address the noncompliance that caused the order.
      - (2) Non-permittees may be required to perform corrective actions as advised by the City and to develop the required erosion control and/or stormwater plan submittals to submit to the City for review and approval.
      - (3) Once the corrective actions have been successfully completed and the submitted stormwater plan has been approved by the City, the City will issue the violator a written notice that the situation has been resolved.
  4. If the corrective actions or the submitted plan cannot be approved, the City will issue a written notice to the violator describing what was deficient and what step(s) are needed to resolve the situation.
- D. Where the City has used progressive enforcement to achieve compliance and in the judgment of the City has not been successful, the City may refer the violation to the MPCA. For the purposes of this provision, "progressive enforcement" shall mean a minimum of two (2) Enforcement Responses and two (2) follow-up inspections.

## IV. NPDES Permit Referrals

- A. For a known project site involving a construction activity, an industrial stormwater discharge, or an illicit discharge that should be covered by a state NPDES permit, and is known not to have a state NPDES permit, the City shall notify the property owner in writing of the missing permit.

- B. If the property owner fails to respond to the City notice within ten (10) business days the City will issue an Enforcement Response and refer the site to the MPCA for further review.

## **V. Recordkeeping & Tracking**

- A. All non-compliance instances shall be tracked either electronically or using paper files. This tracking will include all records and documents related to stormwater ordinance violations at the site and be stored in the enforcement case file.
- B. The City shall use the non-compliance records and tracking to identify any chronic violators, and use this information to work toward reducing the rate of noncompliance relapse.
- C. The City shall keep enforcement files in compliance with the City's records retention policy.

## **VI. Appeals**

- A. To contest an Enforcement Action the property owner may file a written appeal with the City Administrator. This appeal must be submitted within ten (10) business days of receipt of the notice.
- B. The City Administrator or his/her designee shall review the appeal and issue a finding sustaining, altering, or waiving the penalty.
- C. The property owner may request review by the City Council of the appeal finding. This request shall be made in writing within five (5) business days of notification of the appeal findings and will be considered at the next available regularly scheduled City Council Meeting.

## **VII. Enforcement Action Matrices**

- A. These Enforcement Action Matrices are a guide; any of the enforcement responses may be used at the City's discretion and the City may choose to escalate an enforcement case by skipping intermediate steps.
- B. The City may at its discretion escalate by moving down the appropriate Enforcement Action Matrices for each repeat violation either on the same site or by the same party on a different site.
- C. Construction Site Stormwater Ordinance Violations
  - 1. See Table 1 for the enforcement action matrix for noncompliance with construction requirements. In general, the severity of the enforcement measure increases moving down the matrix.
  - 2. These Enforcement Actions shall apply to both permittees and non-permittees.
  - 3. Minor Violation shall be defined as failure to install or maintain adequate erosion and sediment control that has not yet resulted in a sediment release from the site.
  - 4. Major Violation shall be defined as failure to install or maintain adequate erosion and sediment control that has resulted in a sediment release from the site.
  - 5. If the corrective actions are inadequate, the City will issue a written notice to the violator describing what was deficient and what step(s) are needed to resolve the situation.

<b>Table 1. Enforcement Action Matrix for Noncompliance with Construction Requirements.</b>				
<b>Type of Violation</b>	<b>Failure to Obtain Required Permit Prior to Starting Work</b>	<b>Minor Violation</b>	<b>Major Violation</b>	<b>Repeat Violation by a Party (Different Site than initial Noncompliance Site)</b>
<b>Enforcement Measures For Use (Increasing Severity Moving Down the Chart)</b>	Cease and Desist Order	Notice of Correction	NOV	NOV
		NOV	Civil Penalty with or without Consent Order	Civil Penalty with or without Consent Order
	Legal Action	Civil Penalty with or without Consent Order	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit
		Cease and Desist Order and/or Suspension, Revocation or Modification of Permit	Legal Action	Legal Action
		Legal Action		

**D. Illicit Discharge Ordinance Violation**

1. See Table 2 for the enforcement action matrix for failure to remove illicit discharges. In general, the severity of the enforcement measure increases moving down the matrix.
2. If the corrective actions are inadequate to address the illicit discharge, the City will issue a written notice to the violator describing what was deficient and what step(s) are needed to resolve the situation.
3. MN State Statute 115.061 requires notification of the State Duty Officer of discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of waters of the state, and the responsible person shall recover as rapidly and thoroughly as possible such substance or material and take immediately such other action as may be reasonably possible to minimize or abate pollution of waters of the state caused thereby. Illicit discharge discovered by the City shall be reported by the City to the State Duty Officer.
4. If the illicit discharge has been reported by the property owner to the State Duty Officer and has not been reported to the City, the City may at its discretion consider the illicit discharge as a repeat violation.

**Table 2. Enforcement Action Matrix for Failure to Remove Illicit Discharges.**

Type of Violation	Failure to Correct Illicit Discharge	Repeat Violation by a Party (Different Site than Initial Noncompliance Site)
Enforcement Measures For Use (Increasing Severity Moving Down the Chart)	Notice of Correction	NOV
	NOV	Civil Penalty with or without Consent Order
	Civil Penalty with or without Consent Order	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit
	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit	Legal Action
	Legal Action	