



**Stormwater Compliance Department**

**INDUSTRIAL ENFORCEMENT RESPONSE POLICY**

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## **INTRODUCTION**

Under the terms of the Texas Pollutant Discharge Elimination System (TPDES) Municipal Separate Storm Sewer System (MS4) Permit Part III. E., the City of Lubbock (City) is required to have enforcement authority and to develop and implement adequate oversight over industrial facilities that operate within the boundaries of the MS4. Industrial facilities are those that are required by TCEQ to seek coverage under the TXR050000 Multi Sector General Permit (MSGP). The purpose of this Industrial Enforcement Response Policy (ERP) is to communicate how the enforcement tools available to the City will be used to achieve compliance among MSGP-regulated industrial facilities. The ERP also specifies criteria by which City personnel will determine the enforcement response most appropriate to instances of non-compliance found at MSGP-regulated facilities. This policy is a document of the City's procedures to be followed when a stormwater violation is discovered.

These procedures are developed with the following objectives in mind:

- Enforce the TPDES Multi Sector General Permit;
- Prevent pollutants from entering the MS4 and causing environmental harm;
- Deter non-compliance through education, compliance assistance, and encouraging voluntary compliance;
- Take appropriate enforcement action against non-compliant industrial facility operators for violations;
- Ensure that violators return to compliance in a timely manner;
- Provide equitable and consistent enforcement action to the maximum extent practicable.

Nothing in this policy shall affect the City's authority to bring enforcement actions for violations pursuant to any portion of the City's Code of Ordinances.

## **ACRONYMS**

BMPs	Best Management Practices
MS4	Municipal Separate Storm Sewer System
MSGP	Multi Sector General Permit
NEC	No Exposure Certification
NEM	Numeric Effluent Monitoring
NOI	Notice of Intent
NONC	Notice of Non-Compliance
NOV	Notice of Violation
SWP3	Stormwater Pollution Prevention Plan
SWPM	Stormwater Program Manager
TCEQ	Texas Commission on Environmental Quality
TPDES	Texas Pollutant Discharge Elimination System
PPT	Pollution Prevention Team



## ***1.0 FUNCTIONS OF POLICY***

This policy serves two main functions:

- Provide strategy for appropriate and effective enforcement action based on the nature and severity of the violation;
- Promote consistent and timely use of enforcement actions.

The enforcement process consists of four basic steps:

- Identify the violation;
- Determine the nature and severity of the violation;
- Issue appropriate enforcement response;
- Follow through with enforcement response procedure until compliance is achieved.



## ***2.0 CRITERIA TO DECIDE TYPE OF VIOLATION***

The enforcement process begins by identifying a violation. Once a violation is identified, its nature and severity must be determined. Then, the most appropriate enforcement action will be taken. Each violation must be documented, even if the nature and severity of the violation requires no enforcement action to be taken. Documentation must explain why an enforcement action was or was not taken.

To determine the nature and severity of a violation, the following criteria will be considered:

### **2.1 Specific MSGP Criteria Violated**

There are two routes a facility can take to achieve compliance with the MSGP: the No Exposure Certification (NEC) and the Notice of Intent (NOI).

Facilities that hold a No Exposure Certification have no administrative obligations beyond applying for and maintaining the NEC. However, they must operate at all times under strict physical conditions that ensure contaminants are never exposed to stormwater.

Facilities that hold a Notice of Intent have many administrative responsibilities, as well as the physical responsibility of preventing or remedying the exposure of contaminants to stormwater.

Because the two types of permit coverage have differing requirements, any violation must be evaluated to determine what specific MSGP criteria are not being met. These can be grouped into two main categories:

*Minor Administrative or Physical* – Non-physical, administrative violations can be dealt with by informal actions, such as informal notice by e-mail, phone conversation, or personal notification, or a Notice of Non-Compliance (NONC). Minor physical issues (such as isolated exposure at NEC facilities) may also be dealt with by informal actions.

*Major Administrative or Physical* – Violations that show a broad failure to follow MSGP requirements or that may cause damage to the MS4 and/or the health and welfare of the public would necessitate a formal enforcement action such as a Notice of Violation (NOV) and/or judicial proceedings.

### **2.2 Duration**

The facility operator will be subject to escalating enforcement actions if violations, regardless of severity, are not corrected within the time frame prescribed by the appropriate enforcement action. Chronic violations and/or failures to comply with informal or formal enforcement actions will be considered major violations and may result in enforcement actions including, but not limited to, citations, judicial proceedings or referral to regional TCEQ authorities.



### **2.3 Effect on the Environment**

One objective of the City's Code of Ordinances, Chapter 22.11, is to prevent pollutants from entering the MS4 and/or a receiving water body and causing environmental harm.

Environmental harm will be presumed whenever an industrial facility directly discharges pollutants into an adjacent receiving water body or knowingly allows a pollutant to leave the site and enter the City's MS4.

At a minimum, these circumstances require the issuance of a Notice of Violation (NOV).

### **2.4 Compliance History of the Operator**

The compliance history of the industrial operator will be considered when determining the appropriate enforcement response to a violation. Compliance history and demonstrated good faith effort to remain in or come into compliance will be taken into account when evaluating the severity of a violation and the subsequent time frame for required remedial action.

Chronic compliance problems, such as repeated violation of No Exposure Certification (NEC) conditions, failure to maintain Stormwater Pollution Prevention Plan (SWP3) records, or missing compliance deadlines demonstrate a lack of good faith effort and will be considered when determining the level of enforcement response to any violation.



### **3.0 TYPES OF ENFORCEMENT ACTIONS**

There are four types of enforcement actions:

**Informal** – Suitable when violation(s) are administrative or when the facility operator demonstrates good faith effort in correcting the violation(s). Informal enforcement actions include: email notification, telephone or personal contact, and/or written Notice of Non-Compliance (NONC).

**Formal** – Suitable when a facility operator fails to undertake corrective actions within the time frame of an issued enforcement response; has recurring violations; or has one or more major physical violations on-site. Formal enforcement action is the issuance of a written Notice of Violation (NOV).

**Judicial** – Civil or criminal prosecution, suitable when a violation is major and/or the facility operator is willfully uncooperative.

**Referral to TCEQ** – Referral of the violation to regional TCEQ authorities, suitable when informal, formal and/or judicial enforcement actions are found to be ineffective or inappropriate.

The enforcement action selected must be appropriate to the violation. For example, informal actions are appropriate for minor SWP3 documentation issues, while failure to obtain permit coverage or failure to prevent the discharge of pollutants off-site would require more immediate and stringent action. Knowledge of requirements and demonstration of good faith effort (or lack thereof) by the facility operator will be considered when determining the level of the enforcement action to be taken.

#### **3.1 Informal**

The City will pursue compliance through multiple informal methods whenever reasonable and possible. These methods are appropriate for situations where education is needed, violations are minor, violations do not pose a significant danger to human health and/or the environment, and/or the City believes that compliance can be achieved by one or more of the measures described below.

##### **3.1.1 Informal Notice**

Emails, telephone calls and/or personal contact with the facility operator may be used to obtain information and resolve isolated or infrequent deficiencies and/or minor violations. The informal notice will take place within a timely manner after determining a deficiency and/or minor violations. The informal notice is an effort to help deter future deficiencies and/or minor violations. At a minimum, the informal notice shall be documented with the following information: date/time of notice, the person contacted, and the substance of the conversation or correspondence.



### **3.1.2 Notice of Non-Compliance (NONC)**

The NONC is an official communication from the City to the non-compliant facility operator which informs the party that a violation has occurred. It is issued for minor or infrequent violations of the MSGP or City Ordinance.

The NONC will provide the facility operator with sufficient opportunity to correct non-compliance.

The NONC will provide the facility operator with a City-determined time frame to correct the non-compliance. Deadline extensions may be considered for extenuating circumstances if requested in writing by the violator.

The NONC shall contain the following information:

- The specific violation(s) that has occurred;
- Specific actions required to return to compliance;
- Time frame to remedy violation(s); and
- Warning that failure to comply may result in further enforcement action.

## **3.2 Formal**

When required to address continued non-compliance, lack of good faith effort by a facility operator, major violation(s), and/or immediate threats to human health and/or the environment, the formal procedures described below can be taken to resolve industrial stormwater non-compliance.

### **3.2.1 Notice of Violation (NOV)**

The NOV is an official communication from the City to the non-compliant facility operator which informs the party that a violation(s) has occurred. It is issued for repeated violations, failure to address a Notice of Non-Compliance within the specified time frame, and/or major violations of the MSGP and/or City Ordinance.

The NOV will provide the facility operator with a City-determined time frame to correct the non-compliance. Deadline extensions may be considered for extenuating circumstances if requested in writing by the violator.

The NOV shall contain the following information:

- The specific violation(s) that has occurred;
- Specific actions required to return to compliance;
- Time frame to remedy violation(s); and
- Warning that failure to comply may result in further enforcement action.





### **3.3 Judicial**

A judicial action is a formal enforcement action that involves a court. The action may be civil litigation, criminal prosecution, or both.

#### **3.3.1 Citation**

The citation is a judicial communication from the City to the non-compliant facility operator which informs the party that a violation has occurred. It is issued for willful disregard of federal, state and local regulations; one or more major violations; frequent violations; and/or immediate dangers to human health and/or the environment. Citations may be issued where it is determined the operator has failed to obtain compliance after the use of other informal or formal enforcement actions.

The citation will provide the facility operator with detailed information of non-compliance. The citation must be addressed by the facility operator at the City of Lubbock Municipal Court. The violation(s) for which a citation is issued must be corrected within the time frame specified by the City.

#### **3.3.2 Civil Litigation**

Civil litigation will be used as an appropriate enforcement action to the following situations:

- Injunctive relief is necessary to halt or prevent activities or non-stormwater discharges that threaten human health, safety, the environment, or the MS4;
- Efforts to restore compliance through other formal enforcement actions have failed;
- The facility operator fails to pay assessed fines;
- The City determines it needs to recover losses due to the facility operator's non-compliance.

#### **3.3.3 Criminal Prosecution**

Criminal prosecution is a formal process of charging individuals and/or organizations with violations of ordinance provisions that are punishable, upon conviction, by fines and/or imprisonment.

Criminal prosecution is an appropriate enforcement action when there is evidence of intentional non-compliance and when criminal negligence or intent can be proven. Some examples of these are altering or falsifying reports, tampering with samples, and unauthorized non-stormwater discharges.



The criminal enforcement process begins when the City has reason to believe crimes have been committed. This information may be gathered during routine inspections, monitoring/sampling activities, or in the form of reports from employees or the public.

If crimes are suspected or known, the City Engineer or his or her designee shall notify the City Attorney's office for proper collection of evidence.

### **3.4 Referral to TCEQ**

Referral of the violation to regional TCEQ authorities is appropriate when informal, formal and/or judicial enforcement actions are found to be ineffective or inappropriate. The City of Lubbock Stormwater Compliance Department retains the authority to notify the local TCEQ representative if the operator of an industrial facility is in gross negligence and is unable or unwilling to obtain compliance with the MSGP.



#### ***4.0 ENFORCEMENT RESPONSIBILITIES***

When a violation at an industrial facility is discovered, the Environmental Compliance Specialist or City Inspector shall be responsible for the following actions:

- Identifying and documenting the violation(s) during inspection;
- Issuing inspection report to facility operator;
- Giving informal notice of violation to facility operator, if appropriate;
- Issuing Notice of Non-Compliance to facility operator, if appropriate;
- Issuing Notice of Violation to facility operator, if appropriate;
- Issuing a Citation to facility operator, if appropriate;
- Conducting follow up inspections to ensure required corrective actions have been taken.

All formal enforcement actions taken shall be reported to the Stormwater Program Manager.

The Stormwater Program Manager will notify the City Engineer of any Civil Litigation or Criminal Prosecution.



### 5.0: Levels of Enforcement Actions

#### Nature and Severity of Violation: Facilities with Notices of Intent

CIRCUMSTANCES OF VIOLATION	Level of Enforcement Response
No TCEQ permit, operator unaware of requirements	1
No SWP3, operator unaware of requirements	
Minor issues with SWP3 (update PPT, gaps in rain gauge records, etc.)	
Improperly conducting visual monitoring (72-hour rule, first 30 minutes rule)	
Issues with SWP3 – insufficient explanation of BMPs, housekeeping, etc.	2
Issues with SWP3 – missing some inspection/monitoring records	
BMPs poorly implemented	
Minor physical issues on-site (some open or mislabeled drums, some trash, etc.)	
Major issues with SWP3 – lacking explanation of BMPs, housekeeping, etc.	3
Major issues with SWP3 -- missing most or all inspection/monitoring records	
Major physical issues on-site – many open or mislabeled drums, lack of secondary containment, extremely poor housekeeping, etc.	
Improperly claiming hazardous metals monitoring waiver	
Failure to perform hazardous metals or benchmark monitoring; failure to meet NEM/benchmark standards	
Lack of dry spill clean-up materials if chemicals are present on site	
No TCEQ permit, operator aware of requirements	
Inadequate or no BMPs implemented, active facility	4
Illicit discharges that may adversely impact environmental and/or human health	
Repeated failed inspections, lack of good faith effort to comply, insufficient remedial actions taken in response to NONCs/NOVs issued	

- Level 1** Informal Notice
- Level 2** Notice of Non-Compliance
- Level 3** Notice of Violation
- Level 4** Citation



Nature and Severity of Violation: Facilities with No Exposure Certifications

CIRCUMSTANCES OF VIOLATION	Level of Enforcement Responses
Lack of No Exposure Certification, operator unaware of requirements Physical issues that can be corrected during inspection (dumpster lids open, etc.)	1
Lack of dry clean up materials, if chemicals are present on site	
Physical issues that cannot be corrected during inspection (open/mislabeled drums, etc.) BMPs poorly implemented	2
Major physical issues on-site – many open or mislabeled drums, lack of secondary containment, extremely poor housekeeping, etc.	
Lack of No Exposure Certification, operator aware of requirements	3
Inadequate or no BMPs implemented, active facility	
Illicit discharges that may adversely impact environmental and/or human health Repeated failed inspections, no good faith effort to comply, insufficient remedial actions taken in response to NONCs/NOVs issued.	4

- Level 1** Informal Notice
- Level 2** Notice of Non-Compliance
- Level 3** Notice of Violation
- Level 4** Citation

*Note: The City of Lubbock Stormwater Compliance Department retains the authority to notify the local TCEQ representative if the operator of an industrial facility is in gross negligence and is unable or unwilling to obtain compliance with the Multi Sector General Permit.*



**6.0: Time frames for Enforcement Response**

Remedial Response Time frame: Facilities with Notices of Intent

RESPONSE	REMEDIAL PERIOD	COMMUNICATION CHAIN
<p><b>NONC</b> Notice of Non-Compliance</p>	<p>90 to 180 days from issuance of NONC  (one full quarter to correct administrative/SWP3 issues)</p>	<p>1. Environmental Compliance Specialist; 2. SWPM</p>
<p><b>NOV</b> Notice of Violation</p>	<p>30 to 60 days from issuance of NOV</p>	<p>1. Environmental Compliance Specialist; 2. SWPM</p>
<p><b>CITATION</b></p>	<p>1 to 7 days from issuance of citation  (Case by Case)</p>	<p>1. Environmental Compliance Specialist; 2. SWPM</p>

Remedial Response Time frame: Facilities with No Exposure Certifications

RESPONSE	REMEDIAL PERIOD	COMMUNICATION CHAIN
<p><b>NONC</b> Notice of Non-Compliance</p>	<p>30-60 days from issuance of NONC</p>	<p>1. Environmental Compliance Specialist; 2. SWPM</p>
<p><b>NOV</b> Notice of Violation</p>	<p>10-30 days from issuance of NOV</p>	<p>1. Environmental Compliance Specialist; 2. SWPM</p>
<p><b>CITATION</b></p>	<p>1 to 7 days from issuance of citation  (Case by Case)</p>	<p>1. Environmental Compliance Specialist; 2. SWPM</p>



## ***GLOSSARY OF TERMS***

**Best Management Practices** – Schedules of activities, prohibitions of practices, maintenance procedures, and other techniques to control, prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spills or leaks, sludge or waste disposal, or drainage from raw material storage areas.

**Civil Litigation** – A lawsuit filed in a civil court. If the court rules that the defendant (facility operator) violated the law the court may impose civil penalties, injunctions, or other equitable remedies and/or cost recovery.

**Criminal Prosecution** – A criminal charge brought by the City against an accused violator. The alleged criminal action may be a misdemeanor or a felony and is defined as willful, negligent, knowing, and/or intentional violations. Upon conviction, punishment may include a monetary penalty, imprisonment, or both.

**Good Faith Effort** – Prompt and vigorous measures undertaken by the violator which shows that extraordinary efforts (not a “business-as-usual” approach) have been made to achieve compliance. Good faith effort will be taken into consideration, but does not preclude potential enforcement action.

**Informal Notice** – Email, telephone and/or personal contact with the facility operator to obtain information and resolve isolated or infrequent violations.

**Judicial Action** – An enforcement action that involves a court. (The action may either be civil or criminal in nature, and includes citations.)

**Notice of Non-Compliance** – A City document notifying a facility operator that stormwater standards and requirements have been violated. The first informal notification by the City generally used when the violation is relatively minor and the City expects the violation to be corrected within a reasonable period of time.

**Notice of Violation** – A City document notifying a facility operator that stormwater standards and requirements have been violated. Generally used when the violation(s) is more severe.

**SWP3 Component** – The individual components to be included in a SWP3, as required by the MSGP. Examples include: Pollution prevention measures and controls, routine facility inspections, quarterly visual monitoring, employee training, benchmark monitoring, numeric effluent monitoring, etc.

*Additional definitions may be found in the City of Lubbock Code of Ordinances, Chapter 22.11.*