



**Storm Water Management  
Enforcement Response Policy  
2016**

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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 for construction activity that takes place within the boundaries of the MS4. The purpose of this Enforcement Response Policy is to communicate how the enforcement tools available to the City will be used to achieve compliance. The Enforcement Response Policy also specifies criteria by which City personnel can determine the enforcement action most appropriate to instances of non-compliance. This policy is a document of the City's procedure to be followed when a construction stormwater violation is discovered.

The procedures are developed with the following objectives in mind:

- Enforce the TPDES Construction General Permit
- Prevent pollutants from entering the MS4 and causing environmental harm.
- Ensure that violators return to compliance in a timely manner.
- Take enforcement action for non-compliant construction site operators for violations.
- Provide equitable and consistent enforcement actions to the extent possible.
- Deter non-compliance through education and compliance assistance first and, if necessary, penalties second.

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**

The following acronyms shall have the following meaning:

CCA	City Corrective Action
IN	Informal Notice
MS4	Municipal Separate Storm Sewer System
TPDES	Texas Pollutant Discharge Elimination System
NOV	Notice of Violation
NONC	Notice of Non-Compliance
STOP	Stop Work Order
SWPM	Storm Water Program Manager
SWP3	Storm Water Pollution Prevention Plan

# ENFORCEMENT RESPONSE POLICY

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

This guide serves two main functions:

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

The enforcement process consists of three basic steps:

- Identify the violation
- Determine if the violation is significant or non-significant.
- Select the appropriate response.

**Section 2** explains how to determine whether a violation is significant or non-significant.

**Section 3** outlines the types of responses.

**Section 4** discusses the various enforcement responsibilities for the City personnel.

**Section 5** describes the type of violations and ranges of enforcement actions for each.

**Section 6** summarizes the time frames associated with various aspects of violations and enforcement actions.

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

The enforcement process begins by identifying a construction site operator's violation. Once a violation is identified it must be determined whether the violation should be considered significant or non-significant. Next, the most appropriate response is determined. Each violation must be documented even if the decision is to take no enforcement action. Documentation must explain why such action was/was not taken.

To determine if a violation is significant or non-significant the following criteria will be considered:

### **2.1 Magnitude**

**Non-significant** - Generally, a minor instance of non-compliance can be considered non-significant and dealt with by informal responses, such as an Informal Notice (IN) by e-mail, phone conversation or Notice of Non-Compliance (NONC).

**Significant** - Some incidents may cause damage to the MS4 and/or the health and welfare of the public and city personnel. Situations like these would be significant to necessitate a formal enforcement action such as a Notice of Violation (NOV), Stop Work Order (STOP) and/or citation.

### **2.2 Duration**

The construction site operator will be subject to escalated enforcement actions if violations, regardless of severity, continue over prolonged periods of time. Chronic violations and/or failures to comply with informal and formal notices will be considered significant violations and may result in enforcement actions including, but not limited to, stop work orders, citations, and/or judicial proceedings.

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

One objective of City's Code of Ordinances, Chapter 22.11 is to prevent pollutants from entering the MS4 and/or entering a receiving waterbody and causing environmental harm. Environmental harm will be presumed whenever a construction site directly discharges pollutants into an adjacent receiving waterbody or allows sediment to leave the site and enter the City's MS4. These violations will be considered significant.

At a minimum, responses to these circumstances require issuance of a Notice of Violation (NOV) and possible issuance of Stop Work Orders (STOP) and/or citations.

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

The compliance history will be an important factor in determining the appropriate remedy to apply. The City has the authority to issue informal notices for the less severe violation if the violator has a good compliance history.

Chronic compliance problems such as no site notice posted, failure to install BMP's prior to land disturbance and missing compliance deadlines indicate a uncooperative attitude and the possibility of future significant violations.

### **3.0 TYPES OF RESPONSES**

There are three types of enforcement responses:

**Informal** - email notification, telephone contact, personal contact, a notice of non-compliance (NONC) when violations are non-significant or when the construction site operator is cooperative in resolving the problem. All informal response will be recorded.

**Formal** - a written Notice of Violation (NOV) or Stop Work (STOP) when a construction site operator does not promptly undertake corrective actions or has recurring violations.

**Judicial** - Civil or criminal prosecution when a violation is significant and/or the construction site operator is uncooperative.

The enforcement response selected must be appropriate to the violation. For example, emails or telephone calls are appropriate for late submission of inspection reports or BMPs that need maintenance, but failure to receive approval for construction activity or failing to install BMPs would require a more immediate and stringent response. Knowledge of requirements and complete disregard by the construction site operator should be considered when determining the severity of the action to be taken.

#### **3.1 Informal**

The City will pursue compliance assistance through multiple, informal methods whenever reasonable and possible. These methods are appropriate for situations where education is needed, violations do not pose a significant danger to human health or the environment, or the City believes that compliance can be achieved by the measures described below. Use of informal measures often establishes the documentation trail necessary for formal enforcement action and should therefore be sufficient to support the burden of proof.

##### **3.1.1 Informal Notice (IN)-Email/Telephone/Personal Notification**

Emails, telephone contact and/or personal contact with the construction site operator may be chosen to obtain information and resolve isolated or infrequent deficiencies and/or violations. The contact will take place within **24 hours** of determining a deficiencies and/or violations. It is an effort to help to deter future deficiencies and/or violations. At a minimum, the conversation shall be documented with the pertinent information: date/time call placed; the person contacted, and the substance of the conversation.

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

The NONC is an official communication from the City to the non-compliant construction site operator which informs the party that a violation has occurred. It is issued for relatively minor or infrequent violations of the ordinance standards and requirements.

The NONC will provide the construction site operator with an opportunity to correct non-compliance. It is a prompt response to violations and documents the initial attempts of the City to resolve the non-compliance.

The NONC shall contain the following information:

- The specific violation that has occurred,
- Specific actions required to return to compliance, and
- Warning that further enforcement action may be taken for failure to comply.

## 3.2 Formal

When required to address continued non-compliance or disregard by a construction site operator or immediate threats to human health and/or the environment, the formal procedures described below can be taken to resolve construction stormwater non-compliance.

### 3.2.1 Notice of Violation (NOV)

The NOV is an official communication from the City to the non-compliant construction site operator which informs the party that a violation has occurred. It is issued for disregard or more serious or frequent violations of the ordinance standards and requirements.

The NOV will provide the construction site operator with City determined timeline to correct the non-compliance.

The NOV shall contain the following information:

- The specific violation that has occurred,
- Specific actions required to return to compliance, and
- Warning that further enforcement action may be taken for failure to comply.

### 3.2.2 Stop Work Order (STOP)

The STOP is a notice posted by the City on the construction site which informs the operator that a violation is ongoing and no work is allowed to continue until it is resolved. It is the last tool available to the City before judicial enforcement actions are taken. The STOP is posted for failure to respond to a NOV or for relatively moderate/significant violations of the ordinance, standards or requirements that require immediate action.

For a Stop Work Order that is issued in relation to a stormwater violation, the construction site operator will be required to contact the Storm Water Program Manager (SWPM) for explanation as to what must be completed before work is allowed to continue. The STOP may not be removed by anyone other than a designated representative of the City. This STOP will also include a stop work by all other City departments until the violation is resolved.

The STOP shall contain the following information:

- The ordinance that has been violated,
- Contact information of the SWPM,
- Contact the SWMP within 3 business days from date of "Stop Work" issuance, and
- Warning that failure to comply will result in judicial enforcement actions

The operator is responsible for contacting the SWPM once the violation(s) are corrected for re-inspection of the site. Otherwise, the site will be re-inspected every 4<sup>th</sup> business day. On the 12<sup>th</sup> business day, if the violation(s) are still not corrected then a citation will be issued for failure to comply. Any time during this process if a Level 4 or above is determined, then citations will be issued.

### **3.2.3 City Corrective Action (CCA)**

If a resolution to a significant violation is not completed by the construction site operator, then City Corrective Action (CCA) will be used to remedy the violation that poses an immediate risk to the health and safety of the public and /or waterbody. The City will seek reimbursement for all expenses incurred. This will include:

- Documented Plan of Action,
- City Corrects issue/lien filed

## **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 Citations**

The citation is a judicial communication from the City to the non-compliant construction site operator which informs the party that a violation has occurred. It is issued for willful disregard or more serious or frequent violations of the ordinance standards and requirements. Citations may be issued where it is determined the operator's efforts, or lack thereof, to obtain compliance through less formal actions have failed.

The citation will provide the construction site operator with detailed information of non-compliance. The citation must be addressed by the operator at City of Lubbock Municipal Court. The non-compliant issue at the construction site still needs to be corrected immediately while the citation is being addressed.

### **3.3.2 Civil Litigation**

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

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

### **3.3.3 Criminal Prosecution**

Criminal prosecution is a formal process of charging individuals and 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 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, in the form of reports from employees or the public.

If crimes are suspected or known, the Public Works Director shall notify the City Attorney's office for proper collection of evidence.



#### **4.0 ENFORCEMENT RESPONSIBILITIES**

When a construction site operator violation is discovered, the City Inspector shall be responsible for actions such as:

- Identifying and documenting the violation
- Informal Notification inspection report
- Notice of Non Compliance inspection report
- Notice of Violation inspection report
- Follow up inspections.

All significant violations and the responses shall be reported to the Storm Water Program Manager and/or the Storm Water Engineer.

The Storm Water Engineer will notify the City Engineer and the Director of Public Works of any City Corrective Action and/or Civil Litigation or Criminal Prosecution.

## **5.0 VIOLATIONS AND RANGE OF ACTIONS**

The recommended Enforcement Response Policy, under a typical situation, is described in five levels of urgency. If the violation is not addressed then enforcement will progress to the next level until the violation is corrected.

- Level 1** Informal Notice
- Level 2** Notice of Non-Compliance
- Level 3** Notice of Violation
- Level 4** Stop Work Order and/or Citation
- Level 5** City Corrective Action and Civil Litigation or Criminal Prosecution.

**Level 1** – Administrative issues with relatively low/minor environmental risk and an infrequent record of violations by the construction site operator.

**Level 2** – Record keeping and site conditions that pose a relatively moderate/significant environmental risk to discharge pollutants and/or sediment into the MS4 or adjacent receiving waterbody, *i.e. potential risk for discharge.*

**Level 3** – Site conditions that demonstrate a moderate/significant environmental risk by discharging pollutants and/or sediment to the MS4 or adjacent receiving waterbody, *i.e. there is a discharge.*

**Level 4** – Any immediate threat to human health safety and/or environment *or* demonstrated willful non-compliance by a construction site operator, *i.e. documented pattern of systematic violations.*

**Level 5** – Any immediate threat to human health safety and/or environment that is not addressed by the construction site operator.

**Table 5.1** identifies the most common violations and indicates the enforcement response associated with each violation.

**Table 5.1 Construction Stormwater Violations**

CIRCUMSTANCES OF VIOLATION	Level of Enforcement Responses
No TCEQ permit, operator unaware of requirements	1
No SWP3 to City, operator unaware of requirements	
SWP3 or contents of SWP3 not made readily available to City	
BMP issue, improperly installed	2
Trash and/or debris	
BMPs installed, non-significant discharge	
BMPs installed, not adequately maintained, non-significant discharge	
BMPs installed, damaged, non-significant discharge	
TCEQ Permit, modification requirements (i.e. NOC, NOT, pending NOI)	
Off-site vehicle tracking, non-significant	
BMPs installed, significant discharge	3
BMPs installed, not adequately maintained, significant discharge	
BMPs installed, damaged, significant discharge	
Off-site vehicle tracking, significant	
Land disturbance, operator aware but does not prepare or maintain SWP3	
No construction site notice posted	
No BMPs installed, active construction site	4
Illicit discharges that may cause adverse impacts to water quality	
Documented pattern of systematic violations of stormwater regulations and/or permit requirements. The City will consider violations on a project by project basis and an operator basis when determining awareness and good faith efforts.	

- Level 1** Informal Notice
- Level 2** Notice of Non-Compliance
- Level 3** Notice of Violation
- Level 4** Stop Work Order and/or Citation
- Level 5** City Corrective Action and Civil Litigation or Criminal Prosecution.

### 6.0 TIME FRAMES FOR ENFORCEMENT ACTIONS

Every violation or non-compliance issue must be evaluated to determine the appropriate enforcement response. Initial enforcement responses involving contact with the construction site operator and requesting information or corrective or preventative action will occur within in a timely manner. If the operator shows "good faith" in correcting the violation the City can avoid formal enforcement procedures.

**Table 6.1** lists the enforcement responses, the maximum response time, and the person responsible to pursue or be informed of the action taken.

**Table 6.1 Enforcement Responses**

RESPONSE	TIME FRAME	COMMUNICATION CHAIN
<p><b>NONC</b> Notice of Non-Compliance (Potential discharge)</p>	Up to 7 days from initial failed inspection	<ol style="list-style-type: none"> <li>1. Storm Water Inspector;</li> <li>2. Senior Storm Water Inspector;</li> <li>3. SWPM</li> </ol>
<p><b>NOV</b> Notice of Violation (Discharge present)</p>	Up to 5 days from NONC failed inspection	<ol style="list-style-type: none"> <li>1. Senior Storm Water Inspector;</li> <li>2. SWPM;</li> <li>3. Storm Water Engineer</li> </ol>
<p><b>STOP</b> Stop Work Order</p>	<p>After NOV OR Immediate (Case by Case)</p>	<ol style="list-style-type: none"> <li>1. SWPM;</li> <li>2. Storm Water Engineer</li> </ol>
<p><b>CITATION</b></p>	<p>After STOP OR Immediate (Case by Case)</p>	<ol style="list-style-type: none"> <li>1. Storm Water Inspector;</li> <li>2. Senior Storm Water Inspector;</li> <li>3. SWPM;</li> <li>4. Storm Water Engineer</li> </ol>

NOTE: Time frames stated are **business days** and depending on the severity of the violation, shorter time frames may be required on the inspection report. Also, time frames for the civil litigation or criminal prosecution are established outside of this policy and are determined by others.

## GLOSSARY OF TERMS

**Civil Litigation** - A lawsuit filed in a civil court. If the court rules that the defendant construction site 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 or Progress** - Prompt and vigorous pollution control measures undertaken by the discharger which shows that extraordinary efforts (not a “business-as-usual” approach) have been made to achieve compliance. Good faith effort does not eliminate the construction site operator from enforcement action.

**Informal Notice** – Emails, telephone contact, and/or personal contact with the construction site 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).

**Notice of Non-Compliance** - A City document notifying a construction site operator that it has violated stormwater standards and requirements. 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 usually within 30 days or less.

**Notice of Violation** - A City document notifying a construction site operator that it has violated stormwater standards and requirements. Generally used when the violation is relatively minor and the City expects the violation to be corrected within a short period of time.

**Stop Work Order** - A notification posted by the City at the construction site of non-compliance that warns the non-compliant operator that work is not allowed to continue until the terms of the Notice of Violation have been fulfilled. The Stop Work Order typically precedes judicial enforcement action by the City.

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