

Stormwater Enforcement Response Plan (ERP)

March 2017

INTRODUCTION

As required by the by the Arizona Department of Environmental Quality's (ADEQ) Arizona Pollutant Discharge Elimination System (AZPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) to Waters of the United States No. AZG2016-002 (Permit), the Town of Gilbert is required to develop and implement an Enforcement Response Plan (ERP). This ERP describes the Town's procedures and policies regarding enforcement of the Town's municipal ordinances relating to stormwater quality, including illicit discharges. Compliance shall be achieved through progressively stricter responses as needed. The ERP includes the following items relative to the Town's enforcement procedures:

- A description of the types of enforcement issued by the Town.
- A description of specific strategies for escalating enforcement response, where necessary, to address persistent, repeat or escalating violations.

The basis for the Town's stormwater program enforcement can be found in the following documents:

- Town Code Chapter 30 Article I
- Town Code Chapter 30 Article III

This ERP documents the policies and procedures in support of the documents noted above.

1.0 ENFORCEMENT PROCESS

The Town's enforcement of construction stormwater violations, water quality violations and illicit discharges is authorized by multiple sections of the Town's municipal code (see Attachment I of the Town's Stormwater Management Plan [SWMPP]).

1.1 NEW DEVELOPMENT

For new development and redevelopment sites, the Town issues Preliminary Plat, and Construction Permits. Permits are issued by the Development Services Department. Prior to issuing a Construction Permit, Development Services staff ensure that any other stormwater-related permits have been submitted and approved. Once construction is completed, Development Services staff ensure as-built plans have been submitted and approved before issuing a Certificate of Occupancy. If issues arise during construction, the Town will withhold Certificates of Occupancy as necessary. Withholding Certificates of Occupancy is found to be the most effective in achieving compliance.

1.2 ILLICIT DISCHARGES

The Town has a training program to educate appropriate employees on the identification of illicit discharges. Where an illicit discharge has been identified, it is routed to Environmental Compliance for investigation. The Environmental Compliance Inspector performs an inspection to identify the source and pollutant being discharged. The Environmental Compliance Inspector then determines the appropriate enforcement response.

2.0 RESPONSE CRITERIA TO CONSIDER

Upon discovery of a violation of the Town's Ordinance, the enforcement process begins by identifying the stormwater violation and determining the severity of the enforcement response. The following criteria should be considered when determining the appropriate enforcement response:

- *Effect on the Environment* - Violations that have the potential to negatively impact the Town's stormwater system, private property, or washes are urgent and require expeditious action. Such violations warrant bypassing verbal warnings and moving to more aggressive actions to gain quick compliance.
- *Compliance History of the Violator* - The violator's compliance history can affect the enforcement response. Recurring violations may indicate that an operator's treatment system is inadequate, that the operator has taken a casual approach to operating and maintaining the treatment system or that an operator does not intend to comply with the ordinance. Repeated violations by the same person or company reflects egregiousness and/or willfulness.
- *Duration* - Where a violator has been issued a verbal or written warning, the compliance clock begins. Failure to complete corrective actions within the established time may indicate that escalated enforcement actions are needed to gain compliance.
- *Good Faith of the Violator* - `Good Faith' is defined as the violator's honest intention to remedy non-compliance evidenced by actions which give support to this intention. Good faith shall be demonstrated by cooperation and completion of corrective measures in a timely manner. A violator's good faith in correcting noncompliance is a factor in determining which enforcement response is suitable.

3.0 CATEGORIES OF VIOLATIONS

There are two general categories of violations:

- *Permitted violations* - These types of violations are typically construction projects holding a Construction Permit that are in violation of permit conditions.
- *Unpermitted violations* - These violations include illicit discharges, illegal dumping, or land disturbances that begin without first obtaining an appropriate Permit.

The type of violation and severity of the violation sets the type of enforcement and aggressiveness of each enforcement steps. The sections following describe the steps.

The Public Works Director or their designee may employ any combination of the following enforcement actions, and may escalate enforcement responses where necessary to address persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm. Section 2 includes criteria that can cause an enforcement action to be escalated to gain compliance and prevent damages.

3.1 VERBAL WARNINGS

For less severe violations or for first time offenders, the Environmental Compliance Inspector, or their designee may issue verbal warnings that specify the nature of the violation, any required corrective action, and a time to comply with a documented verbal warning. Warnings are documented in the Town's Construction Inspection/IDDE tracking system, Lucity.

3.2 WRITTEN WARNING

A Corrective Order is a written warning intended for minor violations. The Public Works Director, or their designee may issue a Corrective Order to the responsible party and/or property owner where the violation has occurred. The Corrective Order typically includes:

- The description and nature of the violations to the Town's Ordinance, approved Erosion Control Plans (ECCPs), and/or construction plans.
- The location of where the violations have occurred.
- A description of the steps that must be taken to rectify the violation. Steps may include the development and submittal of Corrective Action Plans, repair of measures on a construction site, immediately ceasing illicit discharges and/or repairing any damages that occurred.
- The deadline by which the repairs or remediation work must be completed to avoid escalated enforcement.
- Signature and Title of the person issuing the Corrective Order.

3.3 NOTICE OF VIOLATION

If a Written Warning has not been addressed to the satisfaction of the Public Works Director or their designee, they may issue a Notice of Violation (NOV) to the responsible party and/or property owner where the violation has occurred. Furthermore, a Notice of Violation may be the first notice to the violator for serious violations or for repeat offenders.

The NOV does not include the specific fine or penalty amount.

The NOV requires the violator to submit a written explanation of the violation and a Corrective Action Plan within a set timeframe established in the NOV. The Corrective Action Plan must be submitted by the violator to the Public Works Director or their designee. An inspection to ensure that corrective actions have been completed is conducted by the Director, or their designee at the Director's discretion. Submission of the Corrective Action Plan in no way relieves the violator of liability for any violations occurring before or after receipt of the NOV.

The NOV includes:

- The description and nature of the violations to the Town's Ordinance, approved ECCPs, and/or construction plans.
- A description of the ordered repair or remediation work which is necessary to bring the activity or site into compliance.

- The location of where the violations have occurred.
- Requirement to submit to the Town's Public Works Director or their designee within 10 days a written Corrective Action Plan to correct the violation.
- Deadline by which the repair or remediation work must be completed to avoid escalated enforcement. This becomes the expiration date of the NOV. Note that the expiration date is based upon the violator's date of receipt of the NOV.
- Signature and Title of the person issuing the NOV.

3.4 CIVIL CITATIONS

A civil citation is a monetary penalty assessed by the Town to any person violating the Town's Ordinance or a permit. The fine is considered punitive in nature and is not related to any specific cost borne by the Town. The Town shall also recover any damages to the Town's stormwater system for actions taken by the Town to rectify a violation or for actions taken by the Town to stop illicit discharges. Civil citations are prepared and served by the Public Works Director or their designee.

Along with the civil citation, the Town may request for a written Corrective Action Plan to be submitted to the Town within the timeframe established in the citation. The Corrective Action Plan must include actions to be taken to bring a site or activity into compliance and must include a timeline to complete actions. The Corrective Action Plan must be submitted by the violator to the Public Works Director. An inspection to ensure that any corrective actions have been completed may be conducted by the Public Works Director or their designee. Submission of this plan in no way relieves the violator of liability for any violations occurring before or after receipt of the NOV.

Civil citations are generally issued after the NOV expires and when corrective actions have not been completed. The amount of the penalty is determined by the magistrate court and is typically proportional to the harm caused by the violation and the Town's cost to repair damages. The Magistrate's Court, with input from the Public Works Director or their designee, will consider the following criteria when assessing penalties:

- The amount of damage to the public health and the environment.
- The amount of effort put forth by the violator to remedy this violation.
- The economic benefit gained by the violator for not obeying the law.
- Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity.
- The amount of penalty established by ordinance or resolution for specific categories of violations.
- Any unusual or extraordinary enforcement costs incurred by the Town.

- Any equities of the situation that outweigh the benefit of imposing any penalty or damage assessment.

The Magistrate's Court, with input from the Public Works Director or their designee, may also consider these additional criteria for determining penalties of violations:

- Willingness and cooperation of the violator to remedy this violation and remediate any damage.
- Whether the violation was intentional, negligent, or accidental.
- Costs incurred by the Town for any administrative or remediation costs, including the investigative and monitoring activities. This is often computed in terms of number of man-hours necessary to deal with the problem.
- Prior violations for this violator or at this location.

3.5 CRIMINAL PENALTIES

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 willful noncompliance and when criminal negligence or intent can be proven. Some examples of these are altering or falsifying reports, tampering with samples, unauthorized discharges, and violations of administrative orders.

The criminal enforcement process begins when the Town has reason to believe crimes have been or will be committed. This information may be gathered during routine inspections or monitoring activities or in the form of reports from employees or the public. Citations may be issued by the Public Works Director or their designee when it is determined the operator's efforts, or lack thereof, to obtain compliance through less formal actions have failed. If crimes are suspected or known, the Public Works Director or their designee shall notify the Town's Attorney for proper collection of evidence.

Any person who negligently, willfully or intentionally violates any stormwater provision of the Town Ordinance shall be guilty of a misdemeanor and shall be punished subject to the penalty jurisdictional of the Magistrate's Court. Each day of a violation shall constitute a new and separate offence.

4.0 ADDITIONAL RESPONSE ALTERNATIVES FOR PERMITTED VIOLATIONS

Additional response alternatives are available for development-related violations including any one or a combination of the following:

4.1 STOP WORK ORDER

Environmental Compliance staff can initiate a Stop Work Order where the site has active Town permits, such as a Construction Permit. The Stop Work Order must include the steps necessary to bring the site in compliance with applicable permits. Where an Environmental Compliance Inspector, or their designee determines that a permit is being violated, the following steps must be taken:

- The Town's Environmental Compliance Inspector or their designee issues a Stop Work Order.
- The Environmental Compliance Inspector, or their designee notifies the Public Works Director, or their designee of the Stop Work Order.
- The Environmental Compliance Inspector or their designee re-inspects to ensure compliance before the Town releases the Stop Work order.

A Stop Work Order may be issued to the permit holder and/or property owner of a construction site to suspend work under the following circumstances:

- If a Corrective Order has not resulted in a corrective action at a Construction Site which is acceptable to the Environmental Compliance Inspector, or their designee by the expiration date of the Corrective Order.
- If work, which requires a SWPPP, has proceeded without first submitting a plan and obtaining a permit.
- Incidents which may cause damage to the MS4 and/or the health and welfare of the public and Town personnel.
- Incidents which may cause damage to the environment.
- Chronic violations and/or failures to comply with Verbal Warnings, Corrective Orders and Notices of Violation

A Stop Work Order typically includes:

- The description and nature of the violations to the Town's Ordinance or construction plans.
- The location of where the violations have occurred.
- A description of the ordered repair or remediation work necessary to comply with the Town's Ordinance
- Requirement to submit a Corrective Action Plan within 10 days of the Stop Work Order. The Corrective Action Plan must address actions that will be taken to bring the site into compliance.
- Signature and Title of the person issuing the Stop Work Order.

4.2 WITHHOLD PLAN APPROVALS

When violations are known to exist, the Public Works Director or their designee may withhold the approval of all plans the responsible party or property owner submits. The project is flagged within the Stormwater Project Tracking System (Lucity) to hold all plans until violations are resolved.

4.3 WITHHOLD RELEASE OF CERTIFICATE OF OCCUPANCY

If the post-construction BMPs are deemed inadequate, the Town may withhold the release of the Certificate of Occupancy until the site is corrected.

5.0 ADDITIONAL ACTION BY THE TOWN OF GILBERT

Where violations are not corrected in a timely manner or where the violation is damaging or has the imminent potential of damaging other properties or water bodies, the Town, or its contractor, may enter upon the lot or parcel of land and correct the violation. Where the Town completes repairs, the costs incurred by the Town and/or its contractor (including inspection, administration, labor, equipment costs) shall be from the offender through collection of bonds or directly billing the offender.

Where Gilbert is fined and/or placed under a compliance schedule by the state or federal government for violation(s) of its NPDES (AZPDES) permit, and Gilbert can identify the person(s) who caused such violations(s) to occur, the Town may pass through the penalty and cost of compliance to that business or person(s).

6.0 CORRECTIVE ACTION PLANS

With any corrective action noted above, the Town has the authority to require a violator submit a Corrective Action Plan (CAP). Some corrective actions needed at a site are straight forward, simple actions such as cleaning out sediment controls or vegetating an area. However, other actions may take more planning and thought. In those situations, the Town can require a CAP. A CAP may include any or all of the following items, depending on the violation:

- A proposed description of and design for immediate actions. Examples include installation of additional sediment controls.
- A proposed description of final actions to bring the site fully into compliance. An example could be the submittal of a detailed engineering plan.
- A proposed schedule for actions to bring the site into compliance.

When requiring a CAP, the inspector must set a deadline for submittal of the CAP for review and acceptance. If immediate measures are needed to halt damages to the Town's stormwater system, private property or a wash, those actions should be separately addressed in the enforcement action and required immediately as opposed to waiting on submittal of the CAP.