

Jurisdictional Runoff Management Program

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9.0 ENFORCEMENT RESPONSE PLAN

9.1 INTRODUCTION

The County of San Diego (County) has modified its existing enforcement procedures and grouped them under an Enforcement Response Plan (ERP) as required by the 2013 MS4 Permit. The ERP incorporates the strategies of the Water Quality Improvement Plans (WQIPs) and includes the following general components:

- General Approach to Enforcement
- Routine Illicit Discharge Detection and Elimination Enforcement Component
- Routine Development Planning Enforcement
- Routine Construction Management Enforcement
- Routine Existing Development Enforcement
- Escalated Enforcement and Reporting of Non-Compliant Sites

9.2 GENERAL APPROACH TO ENFORCEMENT

The primary objective of the ERP is to promote voluntary compliance with applicable ordinances and the National Pollutant Discharge Elimination System (NPDES) permit provisions. In cases of noncompliance, the ERP provides County staff with several enforcement tools to ensure a return to compliance in a timely manner while following due process. “Education first” is a key component of the County’s approach to improving water quality. Often a resident or facility operator may not be aware that a particular activity could generate a pollutant that contributes to water pollution. Once the responsible party understands the potential impact of an activity and the appropriate Best Management Practices (BMPs) to prevent a discharge, he or she likely will change the behavior voluntarily. While emphasizing education as the primary means of achieving compliance, the County also has the necessary authority and procedures in place to investigate and enforce in cases of continued noncompliance. The County Administrative Code, Title 1, establishes authority by which the County may use escalated enforcement measures, as described in Section 9.7.

Stormwater violations within the County are to be corrected in a timely manner with the goal of returning to compliance within 30 calendar days, after the violations are discovered, or prior to the next recorded rain event, whichever is sooner. Any correction of a County violation that is not achieved within 30 calendar days will be recorded and tracked by the County along with associated rationale explaining the factors involved with the delay. Properties and activities regulated by additional permits, such as the Industrial General Permit or the Construction General Permit, may require a return to compliance in a shorter period of time, as determined by those permits.

In the event that a violation or potential violation may endanger health or the environment, the County will forego the “education first” approach and proceed immediately to more stringent enforcement measures.

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Attachment B of the 2013 MS4 Permit requires the County to report any noncompliance that may pose a threat to human or environmental health within 24 hours of the County becoming aware of circumstances. Such oral notification must be followed up by a written report and submitted to the Regional Board within 5 calendar days of the incidence of non-compliance as required as part of Attachment B section 1.1.(6) of the 2013 MS4 Permit. For additional information on County reporting procedures, refer to Section 9.7.

9.3 ROUTINE ILLICIT DISCHARGE DETECTION AND ELIMINATION ENFORCEMENT

The County uses field observations, complaints, data and records, as well as sampling to determine the point source location and responsible parties associated with illicit discharges.

The County will carry out enforcement actions as needed to eliminate illicit discharges and connections. The County will conduct an investigation to determine the level of enforcement action necessary for compliance. Progressive enforcement is used to ensure that adequate enforcement is conducted to eliminate the illicit discharge or connection. Some of the factors that influence the selection of appropriate enforcement actions include the threat level and duration of the violation, the cooperation and willingness of the responsible party to correct the conditions, whether the incident is isolated or ongoing/recurring, and whether the violation or potential impacts will have a detrimental effect on human health or the environment. Regardless of the specific enforcement actions pursued, all responsible parties are required to implement corrective actions to address their violations. The routine progressive steps available may include various attempts to communicate measures necessary for compliance. They include:

- An advisory letter sometimes is issued when there is no evidence of an illicit discharge or connection and County staff wants to document that the resident or operator has been notified of his or her BMP responsibilities;
- Verbal warnings are used when a discharge or potential discharge can be easily corrected at the time of investigation or soon afterwards. A follow-up visit may not always be necessary. Educational and outreach materials often are provided to the responsible party.
- A Stormwater Inspection / Corrective Actions Report (CAR) is issued to provide a written notice that corrective action is necessary within a certain period of time. During inspections of regulated facilities, the Inspection Report serves as the CAR. A CAR may also be issued on County letterhead depending on the complexity of the case, e.g., if multiple responsible parties are involved. The period to return to compliance is usually 14 calendar days. Properties and activities regulated by additional permits, such as the Industrial General Permit or the Construction General Permit, may require a return to compliance in a shorter period of time, as determined by those permits. In cases of immediate threat to health or the environment, a cease-and-desist can be issued with a follow-up time of 24 hours. In less urgent cases, the responsible parties may be given 30 calendar days to comply if time is needed to properly plan and implement BMPs, e.g.,

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such as structural controls. As field staff conduct investigations, they will maintain records and a database of relevant information for each incident. This information is entered into a database that is used for annual reporting. Annually, the County will submit a summary of the prohibited non-stormwater discharges and connections investigated and eliminated within its jurisdiction.

See Section 9.7 for additional detail on escalated enforcement measures.

9.4 ROUTINE DEVELOPMENT PLANNING ENFORCEMENT

Section 67.810, 67.811 & 67.812 of the WPO establishes requirements for the review and approval of development plans, as well as the acceptable mechanisms used to ensure appropriate maintenance and performance of BMPs. Routine development planning measures used to enforce NPDES provisions include:

- Written or verbal plan-check comments to correct minor noncompliance issues on a permit application or during the design approval process.
- Bond and security deposit requirements for BMPs.
- For instances in which plan-check comments are not addressed to the satisfaction of staff, or in which appropriate financial security is not provided, the County maintains the option to deny the issuance of a construction or occupancy permit.

See Section 9.7 for additional detail on escalated enforcement measures.

9.5 ROUTINE CONSTRUCTION MANAGEMENT ENFORCEMENT

9.5.1 County Permitted (Private) Construction Projects

For County permitted construction projects, the County's inspectors will conduct enforcement of stormwater pollution prevention requirements. The County's construction management enforcement program is designed to accomplish the following goals:

- To educate the regulated community;
- To promote voluntary compliance of the laws and regulations within the regulated community;
- To penalize violators, as appropriate, and to deprive violators of any significant benefit gained from violations;
- To prevent any business from having an unfair business advantage through non-compliance; and
- To treat similar facility owners and operators equally and consistently with regard to the same types of violations.

The routine progressive enforcement steps that apply to the construction management element are:

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- **Administrative Warnings** - A common initial method of requesting corrective action and enforcing compliance is a written warning from the County's inspector to the contractor. Written warnings are often sufficient to achieve correction of the violation, often while the inspector is present at the construction site. The inspector will notify the contractor of the violation, and document the violation and the notification in the inspection file. A specific time frame for correcting the problem and a follow-up inspection date will be documented by the inspector. In judging the degree of severity, the inspector will also take into account any history of similar or repeated violations by the same contractor at this or other sites. The inspector is encouraged to contact his or her supervisor by telephone if there are questions as to the appropriateness of issuing an Administrative Warning. The inspector will notify their supervisor immediately of any documented discharges or serious erosion problems. The inspector will complete a written inspection report within two working days of the incidence of noncompliance, and must include evidence such as notes, photographs, and log sheets for use in any enforcement action. Site specific non-compliance issues are input into a database for tracking purposes.
- **Notice of Violation** - If the deficiency noted in an Administrative Warning is not corrected by the next inspection or the severity of the violation is such, that an additional written warning is not strong enough, a written Notice of Violation (NOV) will be issued describing the infraction that is to be corrected and the time frame for correction and for a follow-up inspection. A copy of the notice will be given to the owner or developer and placed in the active inspection file. If the violation has been corrected to the satisfaction of the inspector, the inspector will document compliance in the inspection file. The inspector is encouraged to contact his or her supervisor by telephone if there are questions as to the appropriateness of issuing a NOV. The inspector will notify their supervisor immediately of any documented discharges or serious erosion problems. The inspector will complete a written inspection report within two working days of the incidence of noncompliance, and must include evidence such as notes, photographs, and log sheets for use in any enforcement action. Site specific non-compliance issues are input into a database for tracking purposes.

The County of San Diego, Department of Planning and Development Services and the Department of Public Works, Watershed Protection Program (DPW WPP) will notify the Regional Water Quality Control Board (Regional Board) by e-mail at Nonfilers_R9@waterboards.ca.gov within 5 calendar days when staff becomes aware of a site that does not have a Construction General Permit.

See Section 9.7 for additional detail on escalated enforcement measures.

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9.5.2 County CIP and Other Public Construction Projects

The County of San Diego requires contractors that are hired to construct public works projects to determine and implement BMPs to maintain compliance with applicable NPDES provisions and the Watershed Protection Ordinance (WPO). Adherence with contract documents such as Erosion and Sediment Control Plans, Stormwater Pollution Prevention Plans (SWPPPs), and project specifications is confirmed by inspection staff of the department for which the construction is being done and enforced as necessary by standard payment provisions, liquidated damage clauses, and other means. Examples of standard contract documents are available for review upon request.

See Section 9.7 for additional detail on escalated enforcement measures.

9.6 ROUTINE EXISTING DEVELOPMENT ENFORCEMENT

Existing development, including municipal facilities, must meet the requirements set out in the WPO.

Industrial, commercial, municipal, and residential inspections will be conducted to identify point sources for potential pollutants that may negatively impact water quality. Field observations, complaints, and sampling are also used to determine the location of point source pollution, as well as the identity of responsible parties.

Routine existing development enforcement measures include the progressive steps outlined in Sections 9.2 and 9.3. See Section 9.7 for additional detail on escalated enforcement measures.

The DPW WPP will notify the Regional Board by e-mail at Nonfilers_R9@waterboards.ca.gov within 5 calendar days when staff becomes aware of an industrial facility that has not obtained coverage under the statewide Industrial General Permit (IGP).

9.6.1 Enforcement within Existing Residential Areas

The lead for NPDES enforcement and compliance within existing residential areas is the WPP. The routine steps available to the WPP include the education-first and progressive steps outlined in Sections 9.2 and 9.3, respectively.

Regardless of the specific enforcement actions pursued, all responsible parties are required to implement corrective actions to address their violations. See Section 9.7 for additional detail on escalated enforcement measures.

9.6.2 Enforcement of Structural BMP Performance within Existing Development Areas

The DPW WPP inspects structural BMPs and responds to complaints about structural BMPs, privately or publicly maintained. Adequate enforcement or administrative action must be utilized to ensure a return to compliance (adequate BMP maintenance and certification) by the responsible party.

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Private Sites - Structural BMPs may be deemed non-functional and not in compliance with County ordinance. In addition to “education first” measures described in Section 2, the County will utilize the following enforcement tools, where appropriate, non-compliance of privately maintained structural BMPs:

- An advisory letter sometimes is issued when there is no evidence of an illicit discharge or connection and County staff wants to document that the resident or operator has been notified of his or her BMP responsibilities;
- Verbal warnings are used when a discharge or potential discharge can be easily corrected at the time of investigation or soon afterwards. A follow-up visit may not always be necessary. Educational and outreach materials often are provided to the responsible party.
- A Stormwater Inspection Report / Corrective Actions Report (CAR) is issued to provide a written notice that corrective action is necessary within a certain period of time. A CAR may also be issued on County letterhead depending on the complexity of the case, e.g., if multiple responsible parties are involved. The period to return to compliance is usually 14 calendar days. Properties and activities regulated by additional permits, such as the Industrial General Permit or the Construction General Permit, may require a return to compliance in a shorter period of time, as determined by those permits. In less urgent cases, the responsible party may be given 30 calendar days to comply if time is needed to properly plan and implement BMPs, e.g., such as structural controls.
- Clean-up and Abatement Notices (in which the County cleans or repairs the structural BMP and then charges the Responsible Party).

As field staff conducts investigations, they will maintain records and a database of relevant information for each incident. This information is entered into a database that is used for annual reporting.

See Section 9.7 for additional detail on escalated enforcement measures.

Special District or County as Responsible Party - The WPP will prepare and issue an Administrative Report of Non-Compliance (ARNC) and submit this report to the appropriate upper management personnel of the County division with direct oversight of the BMP. The report will request a response of corrective actions, with pertinent supporting documentation, to be submitted in a timely manner to the WPP by the appropriate manager. All ARNCs must be made readily available to the Regional Board on request.

9.7 ESCALATED ENFORCEMENT AND REPORTING OF NON-COMPLIANT SITES

Escalated Enforcement is defined as the steps used to gain compliance with the NPDES permit in reducing the adverse effect of polluted run-off discharges to receiving waters. It includes any enforcement scenario in which a violation or situation of non-compliance is causing or contributing to the highest priority water quality conditions identified within the County’s

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WQIPs. In the small percentage of cases where the “education first” or other routine measures are not successful in achieving compliance, escalated enforcement may begin. Use of Administrative Citation Warnings (ACWs), Stop Work or Cease and Desist Orders, and Administrative Citations (ACs) are among the most commonly used methods for escalated enforcement.

The first step in the escalated enforcement process will begin with an ACW, and may be issued to the responsible party with clean-up and BMP requirements. An ACW can also be issued in complaint cases following non-compliance with an NOV or CAR. More than one ACW may be used during this stage of escalated enforcement depending on the details of the enforcement case. For example, if a responsible party is making progress in correcting deficiencies but needs more time to complete the corrections then another ACW may be used. Stop Work/Cease and Desist Orders are similar options available to the County for escalated enforcement.

The second step for escalated enforcement is to issue an AC with escalated fines. The escalated fines progress from \$100, \$200, \$500, and \$1000 per violation up to a total of \$10,000. More than one AC may be used during this stage of escalated enforcement depending on the details of the enforcement case. For example, if a responsible party is making progress in correcting violations but needs more time to complete the corrections then another AC may be used.

Another option for escalated enforcement in egregious situations is to issue a civil penalty that may be an alternative to the citation steps. If there is a scenario where none of these options results in compliance, the case may be referred to the Environmental Crimes Task Force for potential criminal prosecution under the State Porter Cologne Water Quality Act or the Federal Clean Water Act. The County WPO provides further detail regarding administrative, civil, and criminal options for escalated enforcement. Refer to the following:

- SEC. 67.814. Enforcement
- SEC. 67.815. Violations - Criminal Penalties
- SEC. 67.816. Violations - Public Nuisance
- SEC. 67.817. Violations - Denial of Subsequent Permits and Occupancy
- SEC. 67.818. Violations – Injunctive or Declaratory Relief
- SEC. 67.819. Violations – Civil Penalties
- SEC. 67.820. Violations – Cost Recovery
- SEC. 67.821. Notice of Ineligibility for Land Development

Depending upon land use and the County department that is responsible for enforcement, minor differences and additional options are available as progressive steps in escalated enforcement.

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the Regional Board within 5 calendar days of the incidence of non-compliance as required as part of Attachment B section 1.1.(6) of the 2013 MS4 Permit.

The County of San Diego will notify the Regional Board by e-mail within 5 calendar days of issuing escalated enforcement action against a site that poses a significant threat to water quality as a result of non-compliance with applicable permits, ordinances, or NPDES provisions.