

Stormwater Enforcement Response Plan

For Industrial/Commercial Site Control Program

San Mateo County

October 2020

In accordance with:

California Regional Water Quality Control Board

San Francisco Bay Region

Municipal Regional Permit

Order # R2-2015-0049

NPDES Permit #CAS612008



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Appendix A Enforcement Response Guide

1.0 Introduction

Pursuant to Order Number R2-2015-0049, the San Francisco Bay Regional Water Quality Control Board (Water Board) has issued NPDES Permit Number CAS612008 (herein referred to as the Municipal Regional Permit, or MRP) for the discharge of stormwater runoff from municipal separate storm sewer systems (MS4s) for 76 agencies (Permittees), which includes the unincorporated portions of the County.

The MRP allows the County to operate stormwater drainage systems that capture stormwater and discharge it to local surface water bodies, such as creeks, rivers, and engineered drainages under the applicable provisions of the MRP.

This document provides guidance to County staff to assist them in taking consistent actions needed to achieve effective and timely compliance with the municipality's stormwater ordinance and other enforcement authorities allowed by the local municipal code. The ERP was developed to comply with the following section of the MRP:

- Industrial and Commercial Site Controls – ERP (Provision C.4.c);

The selection of an appropriate enforcement action and the escalation of enforcement are based on the seriousness of the violation and the responsible party's response to the agency's previous attempts to achieve compliance. The ERP includes suggested amounts of time to allow for the correction of violations based on the goal stated in the MRP¹. The nature of a specific violation may require tailoring of the timeframes for correction and/or the use of temporary measures to promptly address a violation before a permanent solution may be implemented. As required by the MRP, this ERP also describes when it may be appropriate to refer violations to another agency, such as City Code Enforcement, or the Water Board, for additional enforcement.

1.1 Purpose

The purpose of this ERP is to outline the County's methods for complying with the requirements of the MRP. Specifically, this plan describes enforcement actions that will be taken by the County and serves as a guide for inspectors when enforcement action is required to achieve timely and effective compliance for all commercial and industrial facility operations with potential and actual non-stormwater discharges. The County will implement and update the ERP, as needed.

1.2 Regulatory Requirements

The MRP includes specific requirements for Permittee's implementation of a stormwater pollution prevention inspection program for industrial and commercial facilities. The MRP requires that the County develop, implement and update its ERP, as needed. The ERP shall be used as a reference document for inspection staff to take consistent actions to achieve timely and effective compliance from all industrial and commercial facilities.

¹ The MRP states that violations must be corrected in a timely manner with a goal of correction before the next rain event, but not longer than 10 business days after discovery unless agency staff document in the agency's database or equivalent reasons why a longer period is acceptable.

The MRP specifies that the ERP shall contain the following elements:

1. Enforcement procedures;
2. Enforcement tools and field scenarios;
3. Timely correction of potential and actual non-stormwater discharges; and
4. Referral and coordination with other agencies.

The MRP eliminated reference of potential and actual non-stormwater discharges as “violations,” however, during the May 25, 2016 Stormwater Program Compliance Audit, Water Board staff indicated that Permittees, may continue to identify potential and actual non-stormwater discharges as violations, unless exempted through an NPDES permit or described as exempted or conditionally exempted outlined in Provision C.15 of the MRP. For the purposes of the ERP, the County defines “potential” violations as instances where observations identify inadequate best management practices (BMPs) to prevent non-stormwater discharges (e.g. liquid drum left open would result in a non-stormwater discharge if accidentally tipped or liquid drum not in secondary containment would result in a non-stormwater discharge if the drum develops a leak in the future) or potential for pollutant exposure (e.g. if it were raining at the time of the observation rainfall and/or runoff would convey pollutants to surface waters).

2.0 Applicable County Stormwater Inspection Programs

The Sustainability Department (SD) is responsible for ensuring that the County meets the requirements of the MRP. Specific provisions of the MRP are implemented through the County’s Department of Environmental Health, Planning and Building Department, Department of Public Works, and Parks Department. The County also participates in San Mateo Countywide Water Pollution Prevention Program (SMCWPPP) – a partnership with the City/County Association of Governments (C/CAG) and each incorporated city and town in the county. Through SMCWPPP, the County receives additional MRP compliance support and ensures standardization across municipalities when practical.

This ERP is designated for violations identified by County Department of Environmental Health (CEH) inspection staff during routine inspections and illicit discharges associated with industrial and commercial facilities. Enforcement procedures for other inspection activities, such as construction site controls or general illicit discharges not associated with industrial and commercial facilities are addressed in a separate ERP.

2.1 Program Implementation

The CEH implements stormwater discharge enforcement in conjunction with violations discovered during industrial and commercial inspections identified in the BIP and for complaint-generated investigations. Pollution prevention activities, including industrial and commercial Enforcement Actions, are only conducted as part of CEH’s facility inspections in the unincorporated area.

The CEH implements the industrial and commercial site control program and conducts industrial and commercial inspections throughout unincorporated County. This includes the coastal communities, excluding incorporated portions of Pacifica and Half Moon Bay, and infill areas within incorporated cities

and towns including, but not limited to, North Fair Oaks, Broadmoor, and unincorporated infill within Redwood City, Menlo Park, Portola Valley, and San Carlos.

3.0 Roles and Responsibilities

The County's SD is the lead agency responsible for overall compliance with the MRP, however, implementation of industrial and commercial site controls (Provision C.4) is managed by CEH. Additionally, CEH addresses illicit discharges (Provision C.5) related to industrial and commercial facilities. Illicit discharges that are initially investigated by CEH, but are determined to originate from sources that are not commercial/industrial are referred to the Code Enforcement division of the Planning and Building Department.

This section details the roles and responsibilities of staff responsible for implementing the industrial and commercial site control ERP for the County.

An organizational chart of the roles within CEH is provided in Figure 3.0.

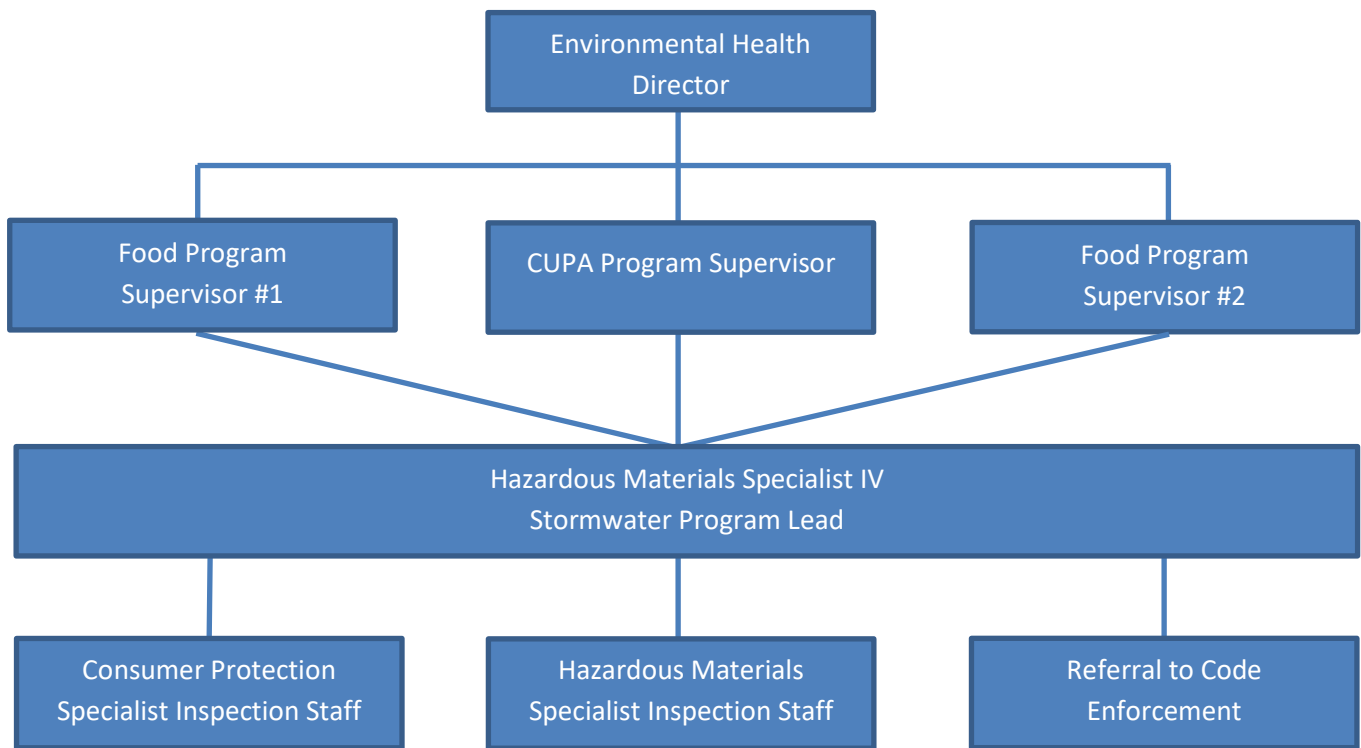


Figure 3.0 San Mateo County Environmental Health Roles for Implementation Enforcement Actions Related to Enforcement Response Plan Requirements

3.1 Unincorporated County Enforcement Responsibilities

The industrial and commercial ERP is enforced by CEH. Within CEH, the Director has delegated enforcement authority to the Stormwater Program Lead and to the Consumer Protection Division and Hazardous Materials Division. The following is a description of each role’s responsibilities.

CEH Director Duties

The Director oversees all of the programs managed by CEH and is the Authorized Enforcement Official. The Authorized Enforcement Official, or his/her designees, is authorized to enforce the provisions of Ordinance 4.100.

Consumer Protection Division and Hazardous Materials Division Supervisor Duties

Expertise from multiple units within CEH is utilized to implement the ERP. The primary role of the Supervisor is to ensure that inspection staff is implementing the ERP in a consistent and timely manner. To accomplish this goal, the Supervisor focuses on the following duties:

- Communicate with the Program Lead to ensure that program goals are being met;
- Ensure that Inspection staff have sufficient training to successfully implement the ERP; and
- Communicate with the Director about resource opportunities.

Stormwater Program Lead Duties

The primary role of the Program Lead is to ensure that the ERP is followed in a timely and consistent manner. To achieve compliance, the Program Lead generally performs the following duties:

- Communicate with the Supervisors to ensure that program goals are being met;
- Guide Inspection Staff on appropriate enforcement actions;
- Coordinate and moderate compliance meetings and preparation of compliance schedules;
- Review compliance reports and schedules to ensure that appropriate enforcement actions are taken, and compliance goals are met;
- Compile compliance data for the annual report;
- Communicate and coordinate with State and Federal agencies;
- Communicate and coordinate referrals to State and Federal agencies;
- Coordinate referrals to cities and towns;
- Communicate and coordinate with the District Attorney's Office and/or County Counsel's Office for administrative and civil penalties;
- Communicate with the Supervisors and Director about resource opportunities; and
- Assign appropriate inspector for illicit discharge complaints.

Inspector Duties

The primary role of the Inspector is to identify violations and to assist the Program Lead with compliance issue tracking and follow-up. The Inspector generally conducts the following duties:

- Conduct routine, follow up and complaint driven facility inspections and reviews documentation to identify potential or actual non-stormwater discharge violations;
- Issue Enforcement Actions (verbal warnings, warnings notices, notices of violation, administrative orders, or administrative penalties) to responsible parties;
- Enter inspection reports and enforcement actions into the electronic database;
- Assist in the preparation and facilitation of compliance meetings. Review outstanding violation reports, compliance meeting schedules, and ensures that deadlines are being met;
- Verify that responsible parties have responded in a timely manner to verbal warnings and warning notices, compliance meetings, and other enforcement actions;
- Close outstanding violations in the electronic database when compliance has been confirmed;
- Escalate Enforcement Actions and inspection frequency anniversaries when outstanding violations were not corrected in a timely manner or for repeated noncompliance; and
- Prepare compliance reports.

4.0 Enforcement Procedures

A range of enforcement mechanisms are available and include informal responses, such as in-person, email, or over the telephone contacts, distribution of educational materials, or written warnings and/or formal responses, such as notices of violation, administrative orders (with or without penalties) that may include mitigation and judicial actions. The appropriate enforcement action can be determined by using the Enforcement Response Guide (ERG) in Appendix A. The ERG reflects the following concepts:

- The facility is notified when a violation is found at the preliminary inspection.
- If the facility is re-inspected, or if adequate documentation is provided to demonstrate that the violation has been corrected, no further response may be necessary.
- For most violations, a follow up inspection will be conducted to ensure that the violation has been corrected.
- For most violations, the County requires an explanation and, as appropriate, a plan for the facility to correct the noncompliance within the time period specified on the inspection report. This plan could be as simple as verbal or email communication but should be commensurate to the magnitude of the violation.
- If the violation remains unresolved, noncompliance persists, or the explanation and the mitigation plan are not adequate, the County response will become more formal and commitments (or schedules, as appropriate) for compliance will be established in a documented enforcement action.
- The enforcement response selected should reflect the seriousness of the violation and the enforcement response will be escalated if compliance is not achieved in a timely manner that maximizes protection of the storm drain system and stormwater quality. A serious violation may require immediate formal enforcement action.
- For violations discovered at facilities within the jurisdiction of cities and towns, the enforcement will be referred to the applicable city or town.

By incorporating criteria for evaluating noncompliance and determining the appropriate enforcement action, the ERG provides a level of response appropriate to the violation. Additional criteria, which are not “built- in” to the ERG can be used to establish an appropriate enforcement action, which may be more or less stringent. Noncompliance may range from relatively minor violations, such as inconsistent use of appropriate BMPs, to major violations, such as an unauthorized discharge to a storm drain inlet or waterway. The enforcement response to each violation event is based on the severity and duration of the violation, the enforcement history of the facility, the good- faith or culpability of the facility, and the potential or actual harm caused by the violation. The enforcement procedures are designed to ensure that the proper enforcement response will be selected after considering these factors.

5.0 Enforcement Tools and Scenarios (Enforcement Actions)

5.1 Enforcement Tools

The following Enforcement Tools, or Enforcement Actions, are utilized to respond to stormwater noncompliance. A flowchart that depicts the progression of enforcement action is provided in Figure 5.0 and an overview of these tools is provided in Appendix A.

Distribution of Education / Outreach Materials

Education / outreach materials for BMPs and verbal instruction are provided for new businesses and/or for existing facilities that need to improve their BMPs. Generally, education/outreach materials are not a strict enforcement tool, but rather are used to help new businesses learn what BMPs may be needed for their facility and to supplement the enforcement tools below.

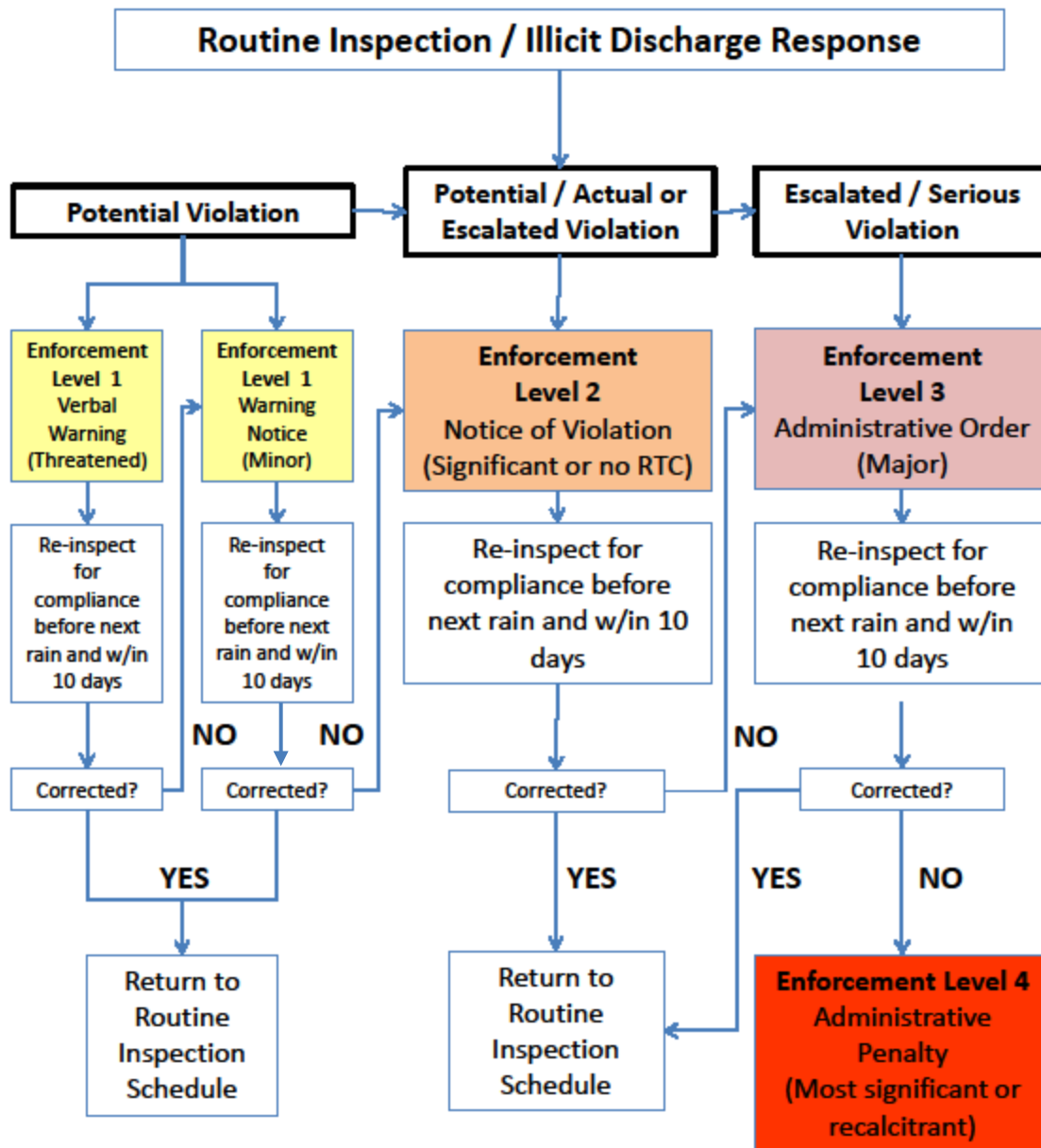
If the responsible party for an illicit discharge cannot be identified, distributing educational materials to all potential dischargers in the area is pursued.

Verbal Warning (Level 1)

Verbal Warnings are issued if the facility has a relatively minor potential discharge (e.g., an open dumpster lid, trash on the ground) or potentially more significant discharge scenarios that are marginal, based on the site-specific conditions (e.g., indoor wash activities that are not getting outside, but could conceivably get outside if operational conditions increased or changed slightly). Verbal Warnings may also be used to address BMP issues that are observed in the dry season and do not indicate that an actual discharge would occur (e.g., knocking over an open container or the addition of rainwater is not considered to reasonably cause the material to enter the storm drain system). A Verbal Warning is documented on the inspection form. Proof of compliance may be accomplished through re-inspection or by documentation (e.g., submittal of invoices, photographs, or other proof of remedy resources).

Warning Notice (Level 1)

A Warning Notice is an official notice of noncompliance that is documented. Warning Notices are typically given in instances of minor violations and/or if the corrective actions taken are immediate. A Warning Notice is documented on the inspection form or may be a separate written document sent to the facility. Proof of compliance may be accomplished through re-inspection or by documentation (e.g., submittal of invoices, photographs, or other proof of remedy resources).



Note: Inspectors shall follow the standard progression of enforcement as shown in this table, and are authorized as such. There may be a need to use an enforcement level beyond the standard progression based on the magnitude/duration of the violation, effect of violation on receiving water, and compliance history and level good faith effort of the property owner.

Figure 5.0. Standard Enforcement Level Progression Flow Chart

Notice of Violation (Level 2)

A Notice of Violation (NOV) is an official notice issued when a significant violation of stormwater regulations has occurred. A written response to the NOV identifying causes of the violation and corrective actions taken to prevent recurring violations is required. An NOV is documented on the inspection form and a separate written document is sent to the facility owner.

Administrative Order (Level 3)

Administrative Orders are enforcement documents that direct responsible parties to undertake or to cease specified activities by specified deadlines. The terms of an Administrative Order may or may not be negotiated with the responsible parties. Administrative Orders may incorporate compliance schedules, administrative penalties, reimbursement for corrective actions taken by the County, and termination of service orders.

Administrative Orders may include:

- Notice to Comply – Directs the responsible party to achieve or restore compliance by the date specified in the order. A Notice to Comply is often a stipulated agreement that may include a compliance schedule, the payment of monetary penalties or cost recovery, and imposition of fines when milestones are not met.
- Cease and Desist Order – Directs the responsible party to cease illegal or unauthorized discharges immediately or to terminate its discharge altogether.

Administrative Penalty / Legal Action (Level 4)

An Administrative Penalty is a punitive monetary charge assessed by the District Attorney's Office and/or County Counsel. The purpose of the penalty is to recover the economic benefit of noncompliance and to deter future violations.

5.1.1 Enforcement Action Escalation

The Enforcement Actions incorporate a progressive enforcement response policy that is designed to maintain a fair and equitable system for enforcement to ensure that Enforcement Actions are proportionate to the violations, to provide maximum flexibility and effectiveness of Enforcement Actions, and to provide a system of escalating Enforcement Actions to encourage prompt compliance and deter repeat violations.

An Enforcement Action may be escalated depending on the circumstance of the case. However, at a minimum, escalation of Enforcement Actions occurs under the following conditions:

1. The initial Enforcement Action begins at an escalated level that is commensurate to the circumstances of the violation;
2. Failed to implement corrective action in the time frame specified; or
3. The facility has a history of actual and/or potential discharges (e.g., has not demonstrated an effort to prevent non-stormwater discharges).

The inspection frequency established in the BIP for the subject facility will also be escalated one level (e.g., from low to medium or from medium to high) until a full cycle of compliance is achieved.

5.2 Field Scenarios

Example field scenarios including, but not limited to, potential discharges (e.g., housekeeping issues, evidence of actual non-stormwater discharges, lack of BMPs, inadequate BMPs, and inappropriate BMPs), actual non-stormwater discharges, non-compliance with previous enforcement actions, and sites with a history of potential and/or actual non-stormwater discharges, are provided in Appendix A with the appropriate Enforcement Action and/or escalation indicated.

6.0 Timely Correction of Potential and Actual Non-stormwater Discharges

The County assigns a due date for corrective action and assigns the appropriate initial Enforcement Action at the time the violation is discovered. The MRP requires that active non-stormwater discharges cease immediately. Corrective Action shall be implemented before the next rain event, but no longer than 10 business days after violation discovery. Corrective actions can be temporary and the MRP allows for longer timeframes for permanent corrective action. If a longer time frame is deemed as “reasonable” by the County to achieve permanent compliance (e.g., a permit is required and/or the responsible party needs to hire a contractor), a rationale shall be recorded on the inspection report and in the County’s electronic database specified in Provision C.4.d.ii.(2).

If the source of the non-stormwater discharge cannot be readily identified, the facility is directed to take the following actions immediately:

1. Terminate the discharge with appropriate temporary measures;
2. Identify a plan for source identification; and
3. Provide a reasonable timeline to permanently mitigate the discharge.

The County may also request assistance from Public Works or the appropriate wastewater treatment or collection agency, if applicable.

7.0 Referral and Coordination with Other Agencies

The MRP states that where enforcement tools are inadequate, the violations should be referred to the Regional Water Board, District Attorney’s Office, County Counsel’s Office, or other relevant agencies for additional enforcement (Provision C.4.c.ii.(4)). Referrals may also be made to the California Department of Fish and Wildlife (DFW), the Water Board, California Department of Toxic Substances Control (DTSC), and possibly to the U.S. Environmental Protection Agency (USEPA).

If the County receives a complaint of a discharge in an incorporated city, the inspector or Program Lead will refer the issue to the designated illicit discharge coordinator at the city.

7.1 Joint Compliance Inspections

In some situations, it is appropriate to conduct joint compliance inspections with other agencies, based on the nature of the violation or because the violation(s) are ongoing or repeated and stormwater pollution prevention may benefit from the enforcement options provided by other environmental statutes. Using the resources of a joint compliance inspection, the regulatory agencies will be able to decide how to most efficiently achieve compliance.

8.0 Revision History

Date	Changes Made
January 2018	Edits made to reflect County termination of contracts with cities to conduct C.4 inspections
October 2019	Edits made to reflect referral to Code Enforcement for illicit discharge complaints that come to CEH but do not originate from a commercial or industrial operation.
October 2020	Annual review – minor grammar edits and some clarifying language

APPENDIX

APPENDIX A

Enforcement Response Guide

Enforcement Response Guide

Enforcement Level	Enforcement Action	Use	Examples		Suggested Time to:	
			Industrial/Commercial Business	Illicit Discharge	Achieve Compliance	Follow up Inspection
1	Verbal Warning	For <u>threatened violations</u> due to inadequate housekeeping, lack of appropriate BMPs to prevent pollution, or threatened non-stormwater discharges disallowed by MRP.	Best management practices (BMPs) that are almost effective, but do not achieve the maximum extent practicable standard, for the pollutant generating activity they are intended to control, such as minor spillage around a grease drum or lids on dumpster being left open. Minor housekeeping issues.	A wash area is present where washwaters may flow to Municipal Storm Sewer System (MS4) during a significant rainfall, based on the configuration, operational procedures, or evidence of a possible discharge.	Potential: 10 business days or prior to the next rain event, whichever is first, unless more timely compliance is feasible or other exceptions apply.	10 business days or prior to the next rain event, whichever is first.
1	Warning Notice	Issue for <u>minor violations</u> or inadequate response to a verbal warning. A Warning Notice may be in the form of a written inspection report, (e.g., a completed Standard Storm water Facility Inspection Report Form); letter; or checklist that describes violations, expected corrections, and schedule for correction.	Inappropriate storage of material outdoors with the potential to contribute to stormwater pollution during a significant rainfall, or inadequate or lacking BMPs.	A non-stormwater discharge that is not specifically allowed by the MRP, but might be if adequate documentation and procedures had been followed to verify the adequate control of pollutants and obtain necessary approvals.	Actual: Cease actions immediately (for minor actual discharges) Potential: 10 business days or prior to the next rain event, whichever is first, unless more timely compliance is feasible or other exceptions apply.	10 business days or prior to the next rain event, whichever is first and business inspection frequency escalates one level.

Enforcement Level	Enforcement Action	Use	Examples		Suggested Time to:	
			Industrial/Commercial Business	Illicit Discharge	Achieve Compliance	Follow up Inspection
2	Notice of Violation	Issue for inadequate response to a Verbal Warning or Warning Notice or for <u>significant violations</u> . An NOV is a written (official) notice that requires a written response with corrective actions to be taken.	No BMPs or BMPs that are ineffective for the pollutant generating activity they are intended to control. Failure to cease an actual discharge immediately; failure to implement permanent corrective actions to mitigate potential discharges; or repeated history of noncompliance	Negligent dumping or unmitigated non-stormwater discharge that is not specifically allowed by the MRP or has a significant impact on stormwater quality. Discharge of non-stormwater discharges to MS4 that contain soap or other pollutants.	Actual: Cease actions immediately Potential: 10 business days or prior to the next rain event, whichever is first, unless more timely compliance is feasible or other exceptions apply.	10 business days or prior to the next rain event, whichever is first and business inspection frequency escalates one level if haven't already.
3	Administrative Order	Issue for <u>major violations</u> or if the response to written warning is inadequate. A notice to comply may be in the form of a cease and desist order, notice to comply, notice to abate, or a letter that describes violations, expected corrections, and schedule for correction. Cost recovery may be required for administrative penalties, additional	Deliberate or negligent dumping or unmitigated non-stormwater discharge that is not specifically allowed by the MRP or has a significant impact on stormwater quality. Continued failure to cease an actual discharge; continued failure to implement permanent corrective actions to mitigate discharges; or repeated recalcitrance.	Deliberate or negligent dumping or unmitigated non-stormwater discharge that is not specifically allowed by the MRP or has a significant impact on stormwater quality.	Actual: Cease actions immediately Potential: 10 business days or prior to the next rain event, whichever is first, unless more timely compliance is feasible or other exceptions apply. A longer compliance schedule may be approved if more time is needed than provided above or requiring the immediate cessation of	10 business days or prior to the next rain event, whichever is first and business inspection frequency escalates one level if haven't already. Long-term compliance schedules may require progress confirmation inspections.

Enforcement Level	Enforcement Action	Use	Examples		Suggested Time to:	
			Industrial/Commercial Business	Illicit Discharge	Achieve Compliance	Follow up Inspection
		inspection time, and emergency corrective action activities.			pollutant or illicit discharge generating activities until long-term remedies may be implemented.	
4	Administrative Penalty / Legal Action	Pursue for the most serious violations including where recalcitrance or where the response to the Administrative Order is inadequate. These types of violations are referred to the County District Attorney's Office or County Counsel's Office for civil prosecution.	Significant actual discharges and lack of BMPs for pollutant generating activity, such as storing wastes in a way that allows pollutants to be mobilized by rainfall and stormwater runoff.	Prolonged discharge of hazardous wastes to MS4 or failure to implement timely corrective action.	The compliance schedule will need to be determined based on case-specific information. This information will be documented as required by the MRP.	10 business days or prior to the next rain event, whichever is first and business inspection frequency escalates one level if haven't already. Long-term compliance schedules may require progress confirmation inspections.