

Enforcement Response Plan for Provision C.5 Illicit Discharge Detection and Elimination

June 2017

Revised April 2018



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1.0 Introduction

Pursuant to Order Number R2-2015-0049, the San Francisco Bay Regional Water Quality Control Board (Water Board) has issued National Pollutant Discharge Elimination System (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 unincorporated San Mateo County (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.

MRP Provision C.5 contains requirements for implementing an Illicit Discharge Detection and Elimination (IDDE) program to detect and eliminate illicit discharges into the MS4 that are not otherwise controlled under Provisions C.4- Industrial and Commercial Site Controls and C.6- Construction Site Controls.

Provision C.5.b requires the County to develop an Illicit Discharge Detection and Elimination Enforcement Response Plan (IDDE ERP) for illicit discharges. This ERP was developed to comply with Provision C.5.b and to serve as a reference document for staff so that consistent enforcement actions can be taken to detect and eliminate illicit discharges.

1.1 Definitions

An **illicit discharge** is defined as any discharge to an MS4 that is prohibited under local, State, or Federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non-stormwater discharges not composed entirely of stormwater and discharges that are identified under Section A. (Discharge Prohibitions) of the MRP. The term illicit discharge does not include discharges that are regulated by an NPDES permit (other than the NPDES permit for discharges from the MS4) or authorized by the Regional Water Board Executive Officer.

The County's **municipal separate storm sewer systems (MS4)** is defined as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by the County and designed or used for collecting or conveying stormwater.

1.2 Purpose

The purpose of this ERP is to outline the County's methods for complying with the requirements of the Municipal Regional Permit (MRP). Specifically, this plan describes enforcement actions that will be taken by the County and serves as a guide for County staff when enforcement action is required to achieve timely and effective compliance for illicit discharges. The County will implement and update the ERP, as needed.

This Illicit Discharge Detection and Elimination (IDDE) ERP is separate from the County's other ERPs. The County has additional ERPs to address:

- Provision C.3 (Stormwater Treatment Operations & Maintenance);
- Provision C.4 (Industrial/Commercial Site Control); and
- Provision C.6 (Construction Site Control).

1.3 Regulatory Requirements

The Municipal Regional Permit (MRP) includes specific requirements for Permittee’s implementation of an Illicit Discharge Detection and Elimination (IDDE) program. The MRP requires that the County develop, implement and update its ERP, as needed.

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

1. Enforcement procedures;
2. Enforcement tools and field scenarios; and
3. Timely correction of potential and actual non-stormwater discharges.

1.4 Legal Authority

The County has authority to enforce municipal stormwater control requirements including, but not limited to Chapter 4.100 of the San Mateo County Ordinance Code, Stormwater Management and Discharge Control.

The County has the legal authority to prohibit and control illicit discharges and escalate stricter enforcement to achieve expedient compliance with stormwater law and regulation. The County also has the legal authority to inspect and eliminate illicit discharges to the storm drain system and illicit connections to the waters of the state.

2.0 Roles and Responsibilities

The County’s Office of Sustainability (OOS) is the lead department responsible for overall compliance with the Municipal Regional Permit (MRP) and manages implementation of Illicit Discharge Detection and Elimination (IDDE) with support from Department of Public Works (DPW), County Environmental Health (CEH), and Planning and Building Department (P&B).

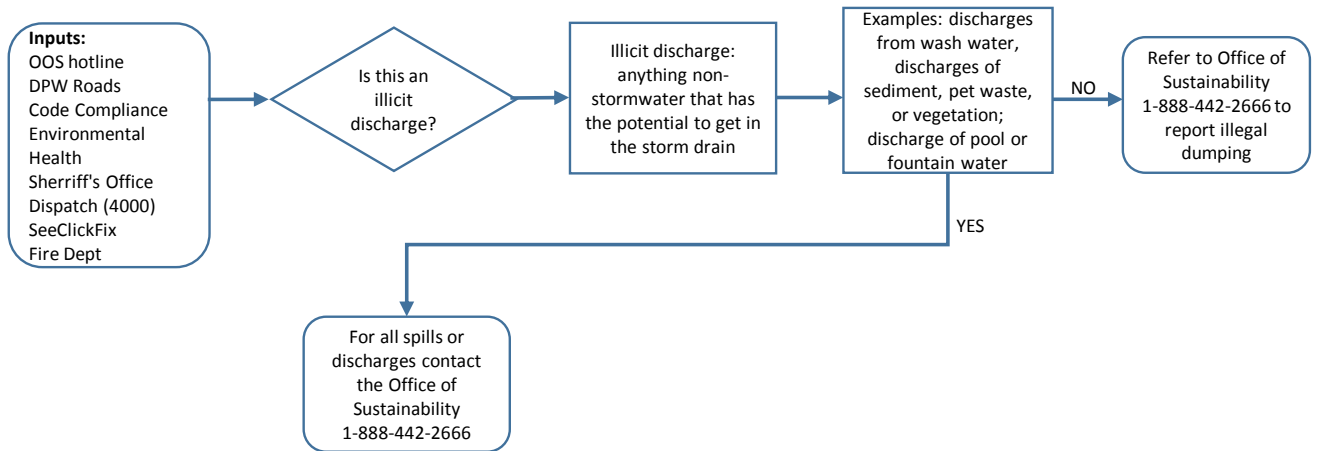
Reports of illicit discharges or potential illicit discharges to the County’s storm drain system may be received from the public in a variety of different ways, including but not limited to the County’s OOS hotline, DPW, P&B, CEH, the Sheriff’s Office, Dispatch, the Fire Department, and Report It! SMC. After County staff receive an illicit discharge report, staff forward the report to OOS staff who then forward the report to the responsible County department, or in the cases where a discharge is occurring in an area owned by another agency, OOS staff will refer the case to the appropriate agency.

OOS is responsible for facilitation and coordination of IDDE. OOS is the central point of contact for the public and staff for spills, dumping, and complaints. OOS manages illicit discharge reports that citizens report through Report It! SMC and delegates those cases to the appropriate department (DPW, P&B, or CEH) to investigate. The appropriate department investigates cases to confirm a potential or actual illicit discharge, selects and issues appropriate enforcement actions, escalates enforcement actions, conducts follow up inspections, confirms implementation of corrective actions, and drafts letters for cost recovery from responsible parties as needed. OOS manages a shared tracking system to record follow-up and response through problem resolution. OOS also refers cases to the County Counsel, District Attorney, the Water Board, or other relevant agencies when appropriate.

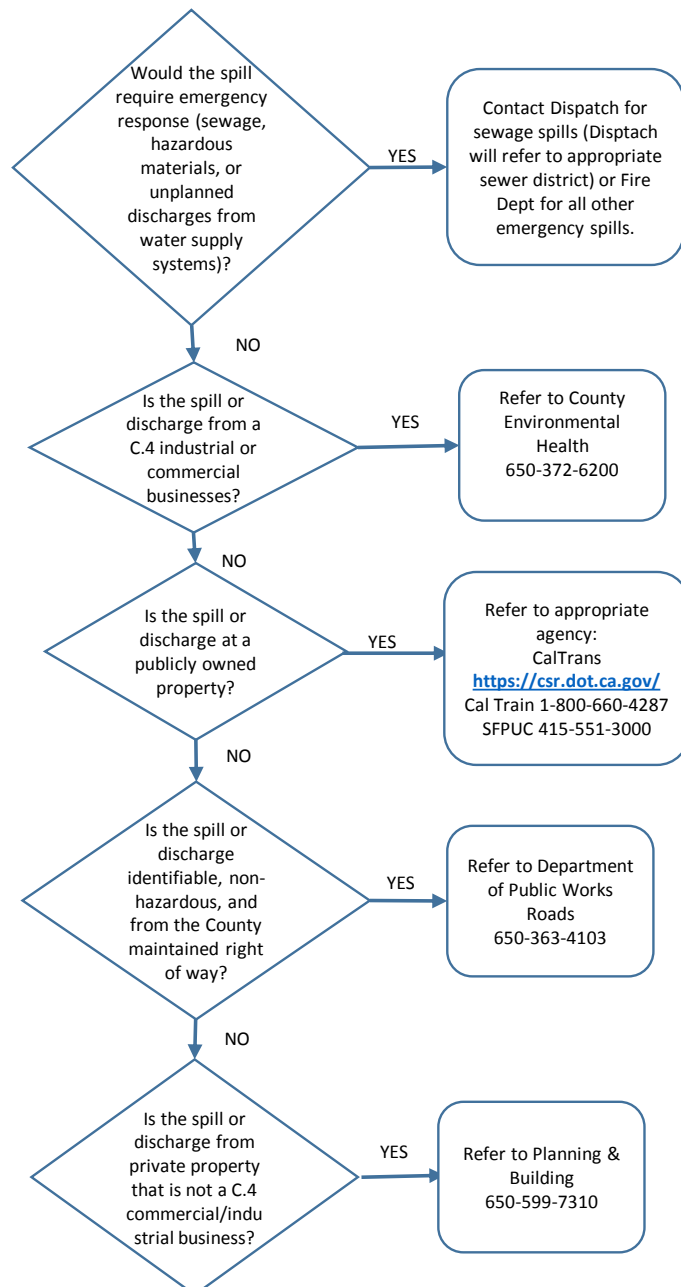
Figure 1 outlines the process for how a complaint may be received and the actions that will then be taken to direct the case to the County department(s) that is/are responsible for investigation, enforcement, and follow up.

Figure 1: Illicit Discharge Response Flow Chart

Illicit Discharge Response



OOS Internal Response



3.0 Enforcement Procedures

3.1 General Guidance for Enforcement Actions and Escalation

Enforcement actions are taken if a responsible party can be identified. The selection of an appropriate enforcement action and the escalation of enforcement actions are based on the magnitude and duration of the violation, the effect of the violation on the receiving water, the good faith efforts of the responsible party, and the responsible party's response to the County's previous attempt(s) to achieve compliance. Based on Municipal Regional Permit (MRP) requirements, the Illicit Discharge Detection and Elimination (IDDE) ERP sets a goal of correction **before the next rain event, but no longer than 10 business days** after the potential and/or actual discharges are discovered, unless a rationale is provided for requiring a longer time period to come into compliance. Active discharges shall be required to cease immediately. 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 IDDE ERP also describes when it may be appropriate to refer violations to another agency, such as the Water Board, for external enforcement action.

3.2 Types of Violations

Table 1 (below) describes the three types of violations and lists examples of each violation type.

Table 1: Types of Violations and Examples

Violations	Definition	Examples
Threatened Violations	Potential non-stormwater discharge, which has not entered a storm drain or receiving water and has not caused perceptible harm to the environment.	Absorbent material left over on roadway from cleaning up a spill, spilled paint on a roadway, uncovered dumpster, vehicle leaking auto fluid.
Minor Violations	An actual non-stormwater discharge to a storm drain or receiving water that has not caused significant environmental harm or public safety concerns. A threatened violation may be escalated to a minor violation if the response to a written warning is inadequate.	Grass clippings, vehicle washwater, or excessive irrigation runoff that has entered a storm drain or receiving water.
Serious Violations	An actual non-stormwater discharge that results in significant environmental harm and/or contains pollutants of concern or hazardous waste. A serious violation is also a failure by a responsible party to respond to efforts to resolve or abate a violation, a history of violations on the subject property and/or several different properties, or multiple or repeat violations on the subject property.	Discharge of sewage into a storm drain, discharge of chemicals into a storm drain.

4.0 Enforcement Tools and Field Scenarios

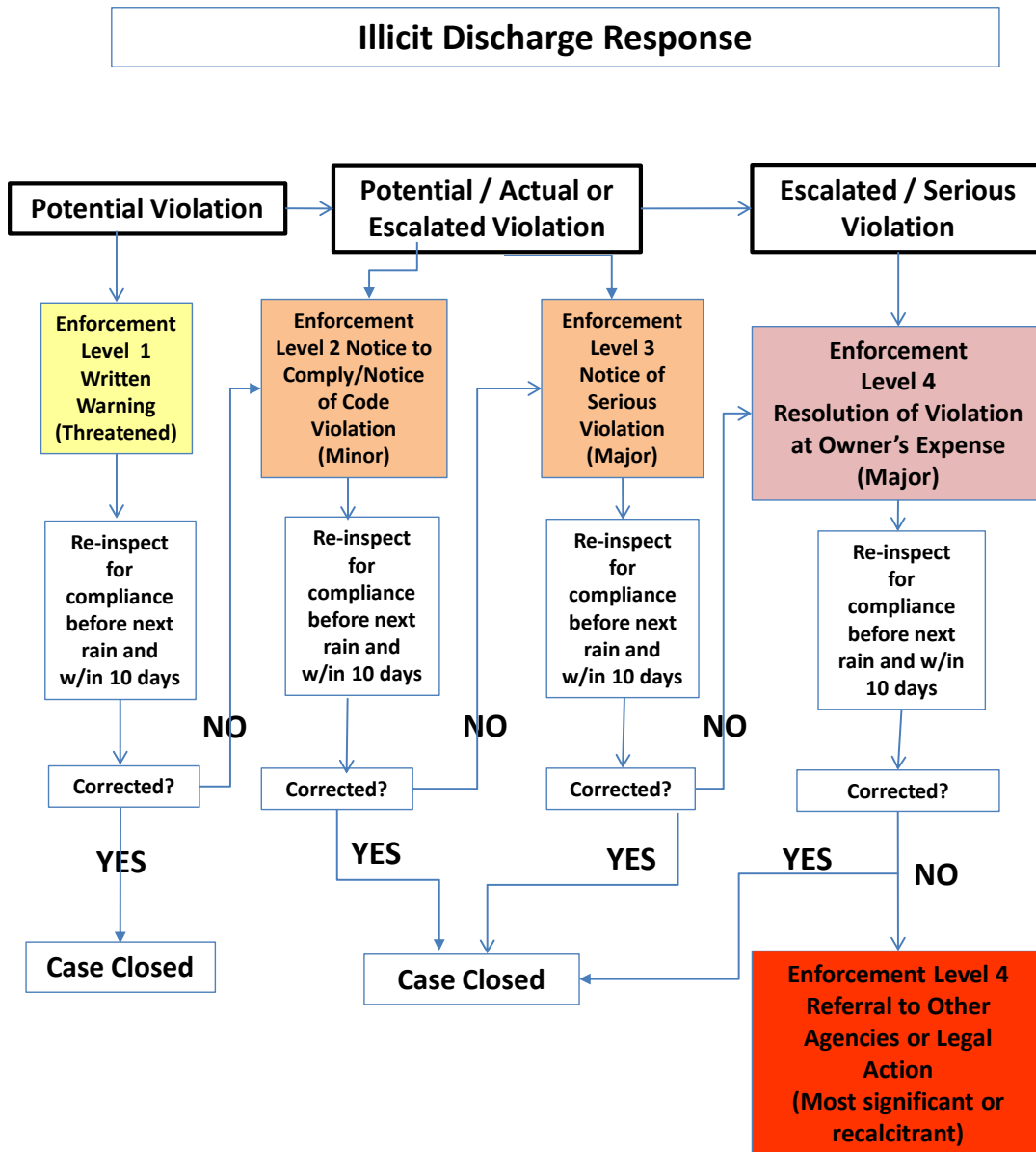
This Illicit Discharge Detection and Elimination (IDDE) ERP describes a range of enforcement options available for use to encourage the responsible party to promptly correct any violations and to prevent conditions that pose a threat or cause future violation(s). This section provides guidance to staff to choose the appropriate enforcement action based on the magnitude of the violation, the duration and history of non-compliance, and the good faith efforts of the responsible party to achieve compliance. The range of enforcement actions applicable to Threatened, Minor and Serious stormwater violations are shown in Table 2, along with specified time schedules for compliance. Figure 2 shows the standard enforcement level progression.

Table 2: Type of Enforcement Actions

Enforcement Actions	Description	Applicable Violations	Documentation	Time Schedule to Achieve Compliance
Written Warning (Level 1)	Written warnings are applicable to threatened violations and are provided to the owner on an inspection form for documentation.	Threatened Violations	Inspection Form	Re-inspection or adequate photo documentation to confirm compliance required before the next rain event, but no longer than within 10 business days unless more timely compliance is feasible or other exceptions apply. If not in compliance, escalate to Enforcement Level 2.
Notice to Comply and/or Notice of Code Violation (Level 2)	Issue for minor violations that have not caused significant environmental harm or public safety concerns, is a first offense, and has resulted because the responsible party was not aware of the requirements. In addition to a “Notice to Comply”, a “Notice of Code Violation” may be issued if the violation involves the Code Compliance Section. It notifies owners and/or contractors of municipal code violations, including Stormwater Management and Discharge Program violations (Section 8605.1). A threatened violation may be escalated to a minor violation if the response to a written warning is inadequate.	Minor Violations	Inspection Form	Active discharges shall be required to cease immediately. Re-inspection or adequate photo documentation to confirm compliance required before the next rain event, but no longer than within 10 business days, unless more timely compliance is feasible or other exceptions apply. If not in compliance, escalate to Enforcement Level 3.

Enforcement Actions	Description	Applicable Violations	Documentation	Time Schedule to Achieve Compliance
Notice of Serious Violation (Level 3)	Issue for serious violations that result in significant environmental harm. A serious violation is also a failure by a responsible party to respond to efforts to resolve or abate a violation, a history of violations on the subject property and/or several different properties, or multiple or repeat violations on the subject property.	Serious Violations	Inspection Form	Active discharges shall be required to cease immediately. Re-inspection to confirm compliance required before the next rain event, but no longer than within 10 business days unless more timely compliance is feasible or other exceptions apply. If not in compliance, escalate to Enforcement Level 4.
Resolution of the Violation by the County at the Expense of the Property Owner (Level 4)	Pursue for emergency purposes for the most serious violations in order to prevent/minimize further illicit discharge (i.e., in the instance of illicit discharge to a storm drain inlet). The Property Owner will be charged for staff time, equipment, and materials used in these efforts.	Escalation of Serious Violations	Letter from District Attorney; Letter from Director of Planning and Building or Director of Public Works	The time schedule for compliance will need to be determined and documented based on case-specific information. Active discharges shall be required to cease immediately.
Referral to Other Agencies or Legal Action (Level 4)	May be pursued for serious violations, including where the response to previous enforcement actions is inadequate. The MRP states that when all other enforcement tools have been exhausted, the violations <i>should</i> be referred to the State Water Resources Control Board. Violations may be referred to the Office of the County Counsel, District Attorney, or other relevant agencies for additional enforcement without exhaustion of other enforcement tools.	Escalation of Serious Violations	Letter of Referral to Water Board (only when all other enforcement tools have been exhausted)	The time schedule for compliance will need to be determined and documented based on case-specific information. Active discharges shall be required to cease immediately.

Figure 2: Standard Enforcement Level Progression Flow Chart



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.

4.1 Internal Escalation of an Enforcement Action

The Municipal Regional Permit (MRP) requires municipalities to take progressively stricter responses to achieve compliance if site owners/operators do not implement appropriate corrective actions in the time frame specified, or if violations repeat. This ERP incorporates an 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 and effective, and to provide a system of escalating enforcement actions to encourage prompt compliance.

In some cases, escalated enforcement over the standard may be necessary. When an enforcement action is escalated beyond the standard enforcement level progression, written documentation will detail the reasons for the increased enforcement action. See Figure 2 for a flowchart of enforcement responses, including escalation. The five criteria for evaluating the degree of noncompliance are:

1. **Magnitude of the Violation:** Generally an isolated instance of non-compliance can be met with an enforcement response listed in Table 2. However, even an isolated violation may threaten public health and the environment or damage public and/or private property. The enforcement response to this type of violation may be escalated to: (1) mitigate the violation immediately, (2) prevent a reoccurrence of violation(s), (3) provide an appropriate level of follow-up and (4) provide for cost recovery as appropriate. Vector Control may also be of assistance if there is a mosquito or other vector issue.
2. **Duration of the Violation:** Violations (regardless of severity) that continue over prolonged periods of time will subject the responsible party to escalated enforcement actions. The County's response will be to prevent extended periods of non-compliance from recurring.
3. **Effect of the Violation on the Receiving Water:** One of the primary objectives of the County's Stormwater Program is to prevent pollutants from entering waters of the State. Consequently, any violation that results in significant environmental harm will be met with an escalated enforcement response. A minimum response to these types of violations would be a Notice of Serious Violation (NSV). The James V. Fitzgerald Area of Special Biological Significance (ASBS) is located in unincorporated San Mateo County approximately seven miles north of the City of Half Moon Bay on the coast. The enforcement response to potential and actual discharges to this sensitive water body and other sensitive receiving waters will be escalated. In emergency situations, the County may choose to install measures to prevent/ minimize further illicit discharge at the expense of the Property Owner (i.e., in the instance of illicit discharge to a storm drain inlet). In addition, the County may pursue civil action to recover from the responsible party any fines and penalties paid. The O&M Agreement can be used to receive reimbursement from the Property Owner through direct payment, a lien on the property, or an assessment on the property tax rolls.
4. **Compliance History:** When evaluating the level of enforcement action to be taken for a violation, the compliance history of the responsible party shall be reviewed. If a pattern of recurring violations is noted, then an escalated enforcement action may be warranted.
5. **Good Faith Effort:** The responsible party's "good faith" effort in correcting its non-compliance is a factor in determining which enforcement action to take. "Good faith" may be defined as the responsible party's honest intention to remedy its non-compliance, coupled with actions that

give support to this intention. However, good faith does not eliminate the necessity of an enforcement action. The Enforcement Coordinator shall use their best judgment in selecting the appropriate level of enforcement action in the event of “good faith efforts.”

5.0 Timely Correction of Potential and Actual Non-stormwater Discharges

The County assigns a due date for corrective action and assigns the appropriate Enforcement Action at the time the violation is discovered in relevant cases. The Municipal Regional Permit (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 in the County’s electronic database.

If the source of the non-stormwater discharge cannot be readily identified, the responsible party 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.