

[REDACTED]

[REDACTED]

ENVIRONMENTAL SERVICES STORMWATER COMPLIANCE POLICY

July 2010

This document augments [REDACTED] Municipal Code Section [REDACTED] *Enforcement Procedures*

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Attachments:

- Stop Work Order template
- Recommendation for Enforcement (RFE) template

Introduction

This Stormwater Compliance Policy provides procedures for investigating and responding to instances of noncompliance with federal, state, or local pollution prevention regulations as they pertain to discharges to [REDACTED] municipal sewer system, ground waters, or receiving waters within or contiguous to the [REDACTED] limits. To help accomplish this task, this Stormwater Compliance Policy (SCP) describes the tools available and provides guidance as to the type and level of enforcement that Environmental Services staff may take when investigating and responding to an instance of non-compliance with the [REDACTED] Municipal Code ([REDACTED]) and how to properly administer and track enforcement actions.

When Environmental Services staff identifies a source or situation that may constitute a violation of the [REDACTED] [REDACTED] will take appropriate action in accordance with its ordinances to control the source or situation. [REDACTED] will cooperate with other municipalities or governments that discharge stormwater into [REDACTED] system or into whose systems [REDACTED] discharges stormwater. Such cooperation will include notification and coordination of response actions as are appropriate to the circumstances.

[REDACTED] 8.30.140.D (Public Nuisances) authorizes a first civil penalty of \$250, and \$500 for second and subsequent violations. The civil penalty authority in [REDACTED] [REDACTED] authorizes the [REDACTED] to impose up to \$5,000 per day, per violation. [REDACTED] 12.08.675.D also authorizes the [REDACTED] to assess a civil penalty of up to \$5,000 for each day a person fails to comply with a corrective order.

In deciding what authority to use to address violations you should consider: (1) which code chapter best addresses the harm or environmental impact you are attempting to correct; (2) whether there will be an advantage proceeding under Chapter [REDACTED] 8.30 rather than [REDACTED] [REDACTED] based on the evidence you have gathered - this question needs to be evaluated with Legal Department input; (3) whether you are intending to assess a civil penalty and if so, how much; and (4) whether you are intending to issue a corrective action order. For most cases involving surface water problems, it's going to be easier to tailor an administrative order under [REDACTED] [REDACTED] rather than under the abatement provisions of [REDACTED] Chapter 8.30.

This guidance is intended for Environmental Services staff. It should be emphasized that the procedures described in this Stormwater Compliance Policy are guidelines, not rules. It is not intended, nor should it be relied upon, to create any rights, substantive or procedural, enforceable by any party in litigation with the [REDACTED] of [REDACTED]. It is understood that departure from these guidelines will sometimes be appropriate, justified, and acceptable. Deviations must be approved by the person having signature authority for the action. This guidance is effective until modified or revoked.

1.1 Goals of [REDACTED] Stormwater Management Program (SWMP)

The [REDACTED] surface water management priorities were established in 1999 under the first NPDES Municipal Stormwater Permit and remain essential elements of the Stormwater Management Program (SWMP) today. The [REDACTED] priorities include the following:

- Protect the health, safety and welfare of the public.
- Manage stormwater to minimize flooding and erosion.
- Manage runoff from developed properties and those being developed.
- Manage stormwater to minimize contact with contaminants.
- Mitigate the impacts of increased runoff due to urbanization.
- Correct or mitigate existing water quality problems.
- Restore and maintain the chemical, physical and biological integrity of the waters in the [REDACTED] for the protection of beneficial uses.
- Educate the public about what they can do to help keep our waters clean.

2.0 Legal Authority

SWMP operates under authority of (Ordinance No. 23240, passed August 28, 1984 and subsequent amendments) of the Municipal Code.

The enforcement components described in this Policy are based upon of the Pursuant to Section 12.08.007 (A) and (B), the Director of Public Works is authorized to implement or interpret the provisions of the including the Stormwater Compliance Policy.

3.0 Definitions

The following definitions apply to this Policy. Other terms used in this Policy shall have the meaning given to them in as it may be amended, except where otherwise defined, and unless, where used, the context thereof clearly indicates to the contrary.

Discharger - shall refer to "Commercial and/or industrial discharger" as defined in and in addition shall include any property owner, business owner, multi-family residential property owner, tenant, residential homeowner or homeowner's association/representative group, or any other individual or company residing and/or conducting business within that discharges directly or indirectly to municipal sewer system and receiving waters.

Illicit Discharges (ID) - Any non-permitted direct or indirect non-storm water discharge or spill to stormwater drainage system, ground waters, or receiving waters within or contiguous to limits. In addition to discharges of pollutants, illicit discharges include, but are not limited to, discharges of industrial process water, or discharges from sanitary sewer connections, interior floor drains, car washing, and gray water systems.

Municipal Sewer System - The system of conduits, pumps, treatment plants, structures, and properties including, without limitation, all properties, interests, physical and intangible rights of every kind or nature owned or held by the and all appurtenances thereto including but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, however acquired, insofar as they relate to or concern drainage, transportation, storage or treatment, in any manner whatsoever, of waste matter or stormwater and surface water of any nature now or hereafter permitted by this chapter to enter the Municipal Sewer System. Sanitary sewers and storm drains, separately and in combination, are, without limitation, included in the Municipal Sewer System.

Noncompliance is any violation of of *Wastewater and Surface Water Management - Regulation and Rates*, which does not qualify as Significant Noncompliance.

Significant Noncompliance - Storm - Significant Noncompliance with requirements for discharges to the storm drainage system, ground water, or receiving water exists when an instance of noncompliance or violation meets one or more of the following criteria:

- (1) Any discharge or potential discharge of a pollutant that has caused or may cause a threat to human health, public safety or the environment, or that has resulted in the exercise of emergency authority to halt or prevent such a discharge;
- (2) Failure to complete a required corrective action within 30 days after the scheduled date required in a Notice of Violation, Corrective Action, or other enforcement document.

- (3) Any other violation or group of violations that the Director determines will adversely affect the operation and implementation of the [REDACTED] Stormwater Management Program or its NPDES permit.

4.0 Elements of [REDACTED] Stormwater Management Program

This Policy provides guidance for investigation and enforcement of actual and potential violations of [REDACTED] [REDACTED] with respect to the discharge of pollutants to stormwater, ground water, or receiving water. Environmental Services staff shall be primarily responsible for investigating instances of known or alleged non-compliance with the [REDACTED]. Various conditions and activities may cause a violation, including but not limited to, accidental spills, illicit discharges, improper storage, dewatering activities, erosion of soils, improper herbicide and/or fertilizer use, and other pollution-causing activities. In some instances, Environmental Services staff may refer investigation and enforcement to other [REDACTED] divisions, or local, state or federal agencies, or may coordinate investigation and enforcement actions with them, as appropriate.

The [REDACTED] of [REDACTED] promotes compliance with the [REDACTED] by, among other things:

- Inspection programs
- Investigation of non-compliance reports and complaints
- Technical assistance site inspections
- Plan review and inspections of new and redevelopment projects

4.1 Inspection Programs

To assure compliance, Environmental Service's staff regularly conducts inspections of industrial, commercial, and residential sites, which include private stormwater and drainage systems. Inspections will be conducted that cover, as appropriate, all water quality and quantity structures within the [REDACTED] limits. Inspections on private property must always be by permission of the property owner, which in some cases may be granted by a permit issued by the [REDACTED].

Commercial and Industrial Sites - Commercial and industrial sites include businesses and publicly owned facilities. The focus of inspections at these sites is to assure that adequate source control measures are in place and to educate the operators of these facilities through technical assistance about best management practices (BMPs) to prevent prohibited discharges. If violations of the [REDACTED] are observed, appropriate enforcement actions are taken in accordance with the guidance provided in this document.

Residential Sites - Environmental Services staff will also inspect all privately owned, residential, stormwater and drainage systems, including but not limited to, single-family residential sites, residential subdivisions, multi-family residential properties, and condominiums. This category of inspections may incorporate a procedure for self-inspection by the owner or operator or their agent and for self-certification of compliance.

Environmental Services staff conducts all inspections to determine compliance with [REDACTED] [REDACTED] including standards that are incorporated by reference from the [REDACTED] Stormwater Management Manual pursuant to Section 12.08.090 and/or maintenance standards per the manufacturer's recommendations. If violations are found, appropriate response actions are taken following the guidance provided in this document.

5.0 Investigation of Instances of Noncompliance

5.1 Procedures

The Environmental Compliance Section of Environmental Services investigates all instances of Noncompliance and Significant Noncompliance as defined above. Compliance data can be collected through inspections and direct sampling by Environmental Services staff. Investigations also involve response to complaint calls from businesses, referrals from the public, or from other public agencies regarding water quality (including spills and erosion) or flooding.

During inspections any instance of non-compliance will be noted in the field with documentation appropriate to the nature of the instance of non-compliance. Inspection results will be compared with Environmental Service's relevant historical compliance records or incident reports and with maintenance and service records where available. The appropriate documentation will be completed and maintained by Environmental Services staff. Serious discharge violations detected during a facility inspection can warrant immediate facility shutdown in accordance with the provisions of [REDACTED] E. All violations will be noted in a facility inspection report written by the inspector and sent with a letter of transmittal to the Discharger.

Instances of non-compliance or violations that pose an immediate threat to public health or safety that are detected during an inspection may warrant immediate response or corrective action. If, in the inspector's best professional judgment, an immediate response action is warranted, the inspector shall take such actions, or require the owner to take such actions, as are allowed by the [REDACTED]

When immediate response or corrective action is warranted, the inspector shall make every effort to provide advance notice to the property owner, resident, or representative in charge of the need and basis for the immediate action.

In addition to immediate response or corrective action, Environmental Services may notify Ecology in the event of serious instances of non-compliance detected during an inspection or observation.

The Stormwater Compliance Policy will be consulted to determine the appropriate enforcement response. The scope and timing of all enforcement actions will be appropriate to the nature of the threat posed by the instance of non-compliance or violation. Informal enforcement response will be taken within fifteen (15) days of the review and, if warranted, formal enforcement response will be taken within thirty (30) days of the review unless there are extenuating circumstances.

5.2 Documentation

For each inspection, the inspector may complete a Field Inspection Report, a copy of which may be left on the premises at the time of the inspection. The inspection report will be signed in the field by the inspector and by the owner, agent, or representative of the owner or operator of the inspected premises or facility ("person in charge"), where practicable. If the person in charge chooses not to sign the Field Inspection Report when requested to do so, a note regarding the lack of signature will be made on the notice. Field inspection documentation, such as field notes or notes to the file, may be produced and maintained by Environmental Services for drive-by inspections or other less formal inspections.

The inspector shall determine whether sampling should be conducted, and shall determine what additional information must be gathered to complete the response that is appropriate to the nature of the potential violation. Standard Chain-of-Custody procedures are followed for any sampling event that may be used for enforcement actions.

The inspector also shall determine whether the inspection and response should be referred to another division or regulatory agency, and shall make the referral promptly. The inspector shall document the referral in a Field Inspection Report or other field notes that shall be maintained by Environmental Services and/or in the spill complaint/business inspection data base.

Because of the potential for enforcement actions to be appealed, complete documentation of all circumstances and activities related to a violation and enforcement action is essential. At a minimum, documentation shall include information on the discharge and the Discharger, and shall clearly state the nature of the violation, including the specific code alleged to be violated, the date on which the violation was noted, and the circumstances of the violation. Information to be gathered for documentation may include current and previous violations, previous enforcement actions and results, and an estimate of the type and level of awareness of the violation including intent and/or negligence and the discharger's response to the violation.

Such documentation may also include observation reports or complaints, telephone logs, memoranda confirming conversations, meeting memoranda or minutes, maps, e-mails, sampling data, inspection reports, photographs, facility drawings, statements from witnesses, and any other relevant correspondence.

Discharger compliance data is tracked manually. A computerized data management system may be implemented to supplement the manual system. The data is evaluated for all instances of noncompliance including non-discharge violations such as failure to meet reporting requirements or compliance schedule milestone dates. The evaluation is performed by the Environmental Services staff responsible for overseeing the Discharger.

The inspector, or other staff, shall enter the inspection information into the appropriate Environmental Services data base used for tracking inspections.

5.3 Recommendation for Enforcement

Documentation for formal enforcement actions should be compiled into a Recommendation for Enforcement (RFE) format. The RFE is used by investigators/inspectors to recommend an enforcement action to their supervisors and to the signature authority for Environmental Services. The RFE must present a clear picture of the violation and the proof of the violation.

The Recommendation for Enforcement should include;

- The name and address of the responsible party
- The location of the violation(s)
- The date and time of the violation(s)
- The observations of the inspector
- History of previous technical assistance and enforcement actions
- Detailed description of the violation(s)
- The citation and detailed description of the code or permit condition violated
- The Penalty Assessment Matrix
- An analysis of the seriousness of the violation(s)

The Recommendation for Enforcement is not appealable. However, RFE's are often referenced in appeals of formal enforcement actions. The RFE and any drafts, if kept, are open for public disclosure and discovery once the enforcement action is issued. Many well documented pollution violation cases have been lost or compromised due to a poorly written RFE, therefore they must be concisely written.

The boilerplate for Recommendation for Enforcement is organized into nine sections;

- I. "Against." Enter the name and mailing address of the person or entity the action is directed to. Make sure that you are addressing the correct responsible person and that their name(s) are spelled correctly.
- II. "Location." Enter a description of the site location where the violation occurred. This may be a street address, legal description, parcel number or other exact description of where the violation occurred.
- III. "Type of Action." This section refers to the type of enforcement action being recommended and reference is made to the appropriate authorizing [redacted] Municipal Code.
- IV. "Nature of Violation(s)." This refers to the exact water quality law and or regulation that has been violated. It is very important that the inspector/investigator cite all of the laws and or regulations that apply.
- V. "Name of Watercourse Involved." This is intended to give the reader an exact indication of the class and location of the stream or waterbody that the violation occurred in. This section may be used to indicate the description of the portion of the [redacted] system that was affected.
- VI. "Executive Summary." This section is to succinctly summarize the extensive "Case History"

- which describes the details of the inspection/investigation.
- VII. "Case History." This section documents the details of the inspection/investigation, including past technical assistance and enforcement actions that are pertinent to the enforcement. References to other documents such as "field reports" or "letters" should be included in an attachment to the RFE.
- VIII. "Evidence Obtained." Note any evidence that was used to document the occurrence of the violation. Include references to lab reports, photographs, letters, or any other physical documentation that supports the demonstration a violation occurred.
- IX. "Violations and Penalty." Clearly indicate the supporting [REDACTED] Municipal Code references that are pertinent to the request for an enforcement action. The actual violation(s) that occurred and the associated actions or penalties requested as part of the enforcement must be clearly stated. If used, the Penalty Assessment Matrix may be inserted as part of this section to demonstrate the justification for the penalty amount.

The Recommendation for Enforcement will be signed by the appropriate signature authorities. Generally, the first page will be signed by the enforcement staff and/or the inspector/investigator. The Assistant Division Manager and Division Manager will sign the RFE in support of the request to the Public Works Director's office, as necessary.

6.0 Enforcement Policies

Based upon compliance screening by Environmental Services staff, Environmental Services will determine appropriate enforcement action(s) to resolve non-compliance in a timely, fair, and consistent manner. The actions may be informal or formal as described below:

6.1 Notification of Enforcement Action

No enforcement action should come as a surprise to the recipient of the enforcement action. The regulated party should be made aware that an action is coming, and understand our reasons for issuing it. For significant actions, the [REDACTED] Community Relations Office should be alerted so they can respond to public information requests. For Notices of Violation and Civil Penalties of \$10,000 or greater, Environmental Services may request a news release be issued.

6.2 Publicizing Penalties

The purpose of publicizing penalties is:

- To ensure that the public is being actively and accurately informed about environmental violations and penalties in their communities.
- To ensure that [REDACTED] about violations and penalties is handled in a fair, consistent manner by the [REDACTED] of [REDACTED]
- To serve as a deterrent against environmental violations by facilities in the [REDACTED] of [REDACTED]
- To ensure that [REDACTED] of [REDACTED] Community Relations Office has sufficient time to prepare staff members who will be points of contact for the media, to coordinate the [REDACTED] response to media questions, and to draft and obtain necessary review and approval of news releases

For penalties with actual or estimated monetary values of less than \$10,000, or for noteworthy formal enforcement actions, the Community Relations Office will determine the need for a news release after consulting with appropriate Environmental Services staff. News releases should be issued for these actions when there has been prior or ongoing media coverage of the situation/event, or when there is significant immediate threat to human health, property, or the environment.

The [REDACTED] of [REDACTED] Community Relations Office should issue a news release for any penalty that has an actual or estimated monetary value of \$10,000 or greater. The news release should be issued within 48 hours after Environmental Services, or the appropriate [REDACTED] representative, has confirmed that the alleged violator has received the penalty or has been notified in person or via telephone.

6.3 Informal Enforcement Actions

- Informal notice to the discharger or property owner such as verbal notification upon inspection, telephone call with responsible parties, technical assistance, and distribution of educational materials (handouts, BMPs, web sites)
- Informal meetings
- Written Field Inspection Reports
- Warning Letters
- Combination of any or all of the above

6.4 Formal Enforcement Actions

- Notice of Violation (NOV)
- Notice of Violation with Civil Penalties
- Recovery of Supplemental Charges for Maintenance Activities
- Invoice and Demand for Payment of Investigation and Abatement Costs
- Notice of Violation with Corrective Action Order and/or Compliance Schedule
- Stop Work Order (Red Tag)
- Revocation of Permit/Termination of Service
- Referral of Criminal Prosecution to [REDACTED] Attorney or appropriate State or Federal Agency
- Combination of any or all of the above

6.5 Time Frame for Enforcement Response

Enforcement actions should be taken in a manner that is timely considering the nature of the violation. Violations which, in the judgment of the inspector or other staff, threaten human health, property or environmental quality are considered emergencies and will receive an immediate response. Enforcement response may be taken against any Discharger that may at any time cause or contribute to the contamination or recontamination of [REDACTED] municipal sewer system and receiving waters. Informal enforcement actions shall be taken in 15 days or less from the date of detection of the violation. Initial formal enforcement actions shall be taken as soon as possible but no later than 30 days from the date of detection of the violation, unless there are extenuating circumstances.

7.0 Environmental Services Response to Non-Compliance

Each incident of non-compliance or violation requires a response appropriate to the nature of the violation. Enforcement actions include an assessment of the need for any corrective action, which may include an appropriate penalty. Enforcement response levels are assigned based on an evaluation of the incident including but not limited to these criteria: severity, duration, repetitiveness, impact on the environment, area in which non-compliance occurs (i.e., critical/sensitive areas), intent, history, willingness to cooperate, responsiveness, extenuating circumstances, and/or perceived or actual economic benefit. The seven levels of response are as follows (which may be used in combinations):

- Level 1 - Informal notice such as a meeting, telephone call, distribution of educational materials, or Field Inspection Report
- Level 2 - Warning letter
- Level 3 - Notice of Violation (NOV) or Stop Work Order (Red Tag)
- Level 4 - NOV/Civil Penalties
- Level 5 - NOV/Corrective Action Order
- Level 6 - NOV/Corrective Action Order with Compliance Schedule, may include additional civil penalties
- Level 7 - Emergency Suspension/Termination of service and/or referral to [REDACTED] Attorney for criminal prosecution with penalties

7.1 Discretionary Factors

A variety of discretionary factors may be considered in determining whether immediate response action is required, in determining the appropriate level of response, and/or in determining the appropriate penalty for a violation. Those factors include, but are not limited to:

- Severity, Duration, and Impact of the Violation(s) – Did the violation result in an actual or potential threat to human health and the environment as well as an impact to the municipal sewer system and receiving waters? What were the type and volume of pollutants discharged?
- Responsible Party Actions – was the violation intentional, what was the degree of negligence involved, and what precautions, if any, were taken to prevent the violation?
- Compliance History – Is there a pattern of previous violations, whether the same or of a different nature, that indicate a disregard for compliance with the [REDACTED] Code, or other environmental laws and regulations?
- Economic Benefit – Did the responsible party receive an economic benefit from their non-compliant behavior?
- Responsiveness – How did the responsible party respond once the violation was discovered or documented? Did they cooperate; did they act in good faith to respond to the violation in a timely manner?
- Circumstances of the Violation – Are there any mitigating factors outside the person's control that contributed to the violation?

- "Acts of God" with respect to extreme rainfall events, or other unpredictable natural events.
- Past Technical Assistance Efforts - Have there been past technical assistance efforts by Environmental Services staff to educate or acquaint the responsible party with applicable requirements?

The level of the recommended enforcement response shall be based upon the enforcement discretion of the inspector, and in accordance with this guidance. Nothing that is said, initiated, implied, or documented by Environmental Services staff in the field precludes Public Works personnel from elevating the enforcement level, or from taking a formal enforcement action without having first exhausted informal ones.

7.2 Enforcement Response Level Descriptions

Level 1 - Informal notice such as meeting, telephone call, distribution of educational materials, or Field Inspection Report

- The informal notice is the minimal level of enforcement response and is prepared and tracked by the Environmental Services staff responsible for case management and enforcement follow-up. The Environmental Services staff will make contact with the responsible party to discuss the pertinent details of the violation and remedies to preclude a reoccurrence. Minutes, notes, telephone logs, or other documentation of this enforcement action will be retained in the appropriate case file. A follow-up letter, signed by the Environmental Compliance Support Assistant Division Manager may be sent to the violator to confirm the contents of any meetings or telephone calls resulting from this enforcement action within 5 days of the action.
- The Field Inspection Report level of enforcement response is prepared by inspectors in the field, and tracked by Environmental Services staff. The contents of the field inspection notice will include a description of the time, date, place and circumstances of each instance of non-compliance. The Field Inspection Report may provide a time frame for the correction of the violation or explain the next enforcement response that will occur should non-compliance continue. The Field Inspection Report will be signed in the field by the inspector and may be signed by the owner, agent, or representative of the owner or operator of the inspected premises or facility ("person in charge"), where practicable. If the person in charge chooses not to sign the Field Inspection Report when requested to do so, a note regarding the lack of signature will be made on the report. A copy of the report will be left with the person in charge.

Level 2 - Warning Letter

- The Warning Letter is prepared and tracked by the Environmental Services staff responsible. The contents of the letter will include a description of the time, date, place, and circumstances of each instance of non-compliance. A requirement may be included for the Discharger in question to respond within five (5) calendar days of receipt of the Warning Letter to explain each instance of non-compliance and, as appropriate, their remedy to prevent further non-compliance. The Warning Letter will explain the next enforcement response that will occur and its severity, should non-compliance continue. Warning Letters are signed by the Environmental Services Science & Engineering Assistant Division Manager and can either be hand delivered or sent by Certified Mail, Returned Receipt Requested.

Level 3 - Notice of Violation (NOV) / Stop Work Order (Red Tag)

- Notice of Violation - The NOV is an escalated enforcement response used for securing compliance following recurring violations, intentional violations, or for violations that result in harm to [REDACTED] municipal sewer system or the receiving waters. This level of enforcement response is prepared and tracked by the Environmental Services staff responsible after a field inspection. The decision to proceed with this enforcement action is made with the concurrence of Environmental Services management. The contents of the NOV will include a description of the time, date, place, and circumstances of each violation charged, and a description of the specific [REDACTED] Code or permit condition that was violated. The NOV will also include a description of future enforcement response which will result should the non-compliance continue. The NOV is signed by the Environmental Services Science & Engineering Division Manager and can either be hand delivered or sent Certified Mail, Return Receipt Requested.
- Stop Work Order "Red Tag" - This enforcement option is available to Environmental Services field personnel who witness a non-compliance situation while in the field under [REDACTED] 12.08.007.E. The Stop Work Order /"Red Tag" allows Environmental Services and other inspection staff to provide immediate response, education, cleanup orders, and to more accurately document the non-compliance event. The decision to proceed with this type of enforcement action is made with the concurrence of the Environmental Services supervisory staff and other appropriate program managers. [REDACTED] 12.08.007.E **requires that the Stop Work Order must be issued in writing.** The Stop Work Order should be followed up with a letter, to summarize the situation, inspection findings, and history of events as well as a timeline for correction of the violation. The letter will also include a description of future enforcement response which will result should the non-compliance continue. The letter is signed by the Environmental Services Science & Engineering Division Manager and can be either hand delivered or sent by Certified Mail, Return Receipt Requested, within 5 business days of when the Stop Work Order – Red Tag enforcement response is made. An example of a Stop Work Order is attached to this document.

Level 4 – NOV / Civil Penalties

- In addition to the contents and requirements of the Notice of Violation (NOV) stated in Enforcement Response Level 3, Level 4 will include a civil penalty as provided for in [REDACTED] [REDACTED]. The purpose of issuing a civil penalty is not to punish a responsible party but to deter future violations by providing economic motivation for a responsible party to change their compliance behavior. Included in the NOV/Civil Penalty are instructions for payment of the penalty and the time frame and procedures for appealing the action. This enforcement action is prepared and tracked by the Environmental Services staff responsible and is reviewed by Environmental Services supervisory staff before it is signed by the Director of Public Works. The NOV with Penalty is either hand delivered by Environmental Services staff or sent by Certified Mail, Return Receipt Requested. A penalty assessment matrix is attached to this policy for penalty assessment guidance.

Level 5 - NOV/Corrective Action Order

- The NOV/Corrective Action Order is an escalated enforcement response used for securing compliance following recurring violations, intentional violations, or for violations which result in harm to the receiving waters. The Environmental Services staff responsible tracks and prepares this level of enforcement action. The decision to proceed with this enforcement action is made with the concurrence of Environmental Services supervisory staff after a thorough examination of all discharger violations and/or their responses to previous enforcement actions. The contents of this action mirrors that of the NOV and will contain each and every instance of non-compliance leading to the action and a statement as to further enforcement escalation should non-compliance continue. Also included in the NOV/Order

are the time frame and procedures for appealing the action. The NOV/Order is signed by the Director of Public Works and is either hand delivered by Environmental Services staff or sent by Certified Mail, Return Receipt Requested.

Level 6 - NOV Corrective Action Order with Compliance Schedule, may include additional civil penalties

- This is an escalated level of enforcement response that includes the elements of the Level 5 response with a compliance schedule as part of a Corrective Action Order. This level of response requires the non-complying discharger to accomplish certain tasks (such as installation of pretreatment and/or monitoring equipment) and report on their progress following specific milestone dates. Civil penalties may be included in the Order and instructions for payment of any penalty and the time frame and procedures for appealing the action are included. The Order specifies that progress reports must be submitted on time and that failure to accomplish the tasks by the milestone date may be met with escalated enforcement. The compliance schedule is enforceable as a stand alone document. This action is prepared by the Environmental Services staff responsible. The decision to proceed with this enforcement action is made with the concurrence of Environmental Services supervisory staff after a thorough examination of all discharger violations and/or their responses to previous enforcement actions. The NOV/Order with Compliance Schedule is signed by the Director of Public Works and is either hand delivered by Environmental Services staff or sent by Certified Mail, Return Receipt Requested.

Level 7 - Emergency Suspension / Termination of Service and/or Criminal Prosecution with Penalties

- This is the severest enforcement response level available to the Environmental Services Compliance Support. The need for this level is reached when all other previous attempts to bring a Discharger into compliance with [REDACTED] [REDACTED] have failed, or when a discharge presents or threatens an imminent or substantial danger to the health or welfare of persons, or substantial danger to the environment, or threatens to interfere with the operation of the Municipal Sanitary Sewer System or causes the [REDACTED] to violate its NPDES permit.
- For termination of service action, the Environmental Services staff responsible will prepare the enforcement action document(s) for review by Environmental Services supervisory staff. This level of enforcement response can be initiated on an emergency basis [REDACTED] [REDACTED] and 12.08.190 provisions for Emergency Suspension of Service and Revocation of Discharge Permits and Prohibited Practices; Termination of Treatment Services. [REDACTED] Attorney approval is recommended before proceeding with this level of enforcement. The enforcement action document(s) will contain data relevant to the instances of non-compliance leading to this level of enforcement action. Upon approval, Environmental Services staff will hand deliver the appropriate document(s) while being accompanied by an Environmental Services Maintenance crew, which will be responsible for physically disconnecting the service.
- The decision to pursue criminal enforcement for alleged violations of the [REDACTED] Code shall be made in coordination with the [REDACTED] Attorney's Office. In the event that alleged criminal violations of the [REDACTED] Code may also constitute criminal violations of the Pierce County Code, the Revised Code of Washington, or the United States Code, Environmental Services staff shall consult with the [REDACTED] Attorney's Office before forwarding information regarding potential environmental criminal violations to county, state, or federal environmental officials and legal staff. Decisions regarding criminal enforcement will be made on a case by case basis in coordination with the [REDACTED] Attorney's Office.

- For criminal prosecution with penalties, Environmental Services Compliance Support Division staff will work with the [REDACTED] Attorney's staff to collect and prepare case evidence as appropriate. The requirements of criminal prosecution law will dictate the manner for proceeding with this level of enforcement response.

7.3 Supplemental charges for maintenance activities and invoice and demand for payment of investigations and abatements performed by the [REDACTED]

Where the [REDACTED] performs investigation, maintenance or emergency activities as a result of an instance of non-compliance or violation, it may recover the cost of those activities from the property owner under [REDACTED] 12.08.610 Property owner liability- Supplemental Charges, [REDACTED] 12.08.615 Invoice and demand for payment of investigation abatement, and correction costs.

Where emergency action is necessary, the [REDACTED] shall make every effort to provide advance notice to the property owner or representative in charge, of the need and basis for the immediate action. Where practicable, the [REDACTED] shall allow the owner to undertake the necessary emergency action. Where notice and the opportunity to perform necessary emergency or corrective action was given to the owner, Environmental Services may seek recovery of its costs if the owner fails to respond.

A situation may arise that threatens human health, the environment, or [REDACTED] municipal sewer system, and will have to be acted upon quickly in order to control any further damage. Advance notice is not required in order to recover the cost of containment, cleanup, injury, death or other liability or damage, including third party liability.

The assessment of supplemental charges or an invoice and demand for payment is prepared and tracked by the Environmental Services staff responsible. The decision to assess these charges is made with the concurrence of Environmental Services management after an examination of all of the facts and circumstances relevant to the particular discharger or after a review by Environmental Services management of the emergency response action initiated as a result of an inspector's best professional judgment.

If work is done that results in assessed charges, a letter will be sent informing the discharger of the emergency situation, the work done, any supporting documentation, the final costs, as well as the request for payment and appeal information in accordance with [REDACTED] 12.08.678. The letter also will include a time within which payment is required and information as to the consequences of late or nonpayment. These may include, but are not limited to, escalated enforcement such as Notices of Violation, liens upon properties owned by the violator, referring the account to a collections agency, or having [REDACTED] water services terminated as provided in [REDACTED] 12.08.600.

Cost recovery shall include, but not be limited to costs incurred for time, materials, personnel, administration, contractors, expert witnesses, sampling and laboratory costs.

7.4 Signature Authority

Environmental Services staff is responsible for inspections, identifying non-compliance, and initiating enforcement actions. The Environmental Services Science & Engineering management staff authorizes correspondence relating to response Level 1 through 2. The Director of Public Works as well as the [REDACTED] Attorney's office authorizes Levels 3 through 7 either directly or through delegated authorities.

Table 7.5 Enforcement Response Schedule for All Dischargers

The following schedule is a guide for implementing the above response levels. Environmental Services staff may deviate from the suggested response level based upon discretionary factors. Each incident will be evaluated based on the factors outlined in Section 7.1 Discretionary Factors. The following chart provides a suggested response level based upon the circumstances of the instance of non-compliance.

Enforcement Level: Enforcement Type:	1 Informal Notice	2 Warning Letters	3 Notice of Violation (NOV)	4 NOV with Civil Penalties	5 NOV with Corrective Action Order	6 NOV with Corrective Action Order & Compliance Schedule	7 Termination of Service and/or Referral for Criminal Prosecution
Nature of Noncompliance							
Violations of ██████████ Matter Excluded from Storm Drains or Stormwater Program Requirements:							
<ul style="list-style-type: none"> Discharger unaware of requirement; no harm to municipal sewer system/receiving water. 	X	X					
<ul style="list-style-type: none"> Discharger unaware of requirement; harm to municipal sewer system/receiving water 			X	X			
<ul style="list-style-type: none"> Failure to comply with above enforcement requirements resulting in a condition of SNC 				X	X	X	X
Violation of Reporting Requirements:							
<ul style="list-style-type: none"> Report is completed improperly 	X						
<ul style="list-style-type: none"> Incomplete or inaccurate report of maintenance activities 	X	X					
<ul style="list-style-type: none"> Report is completed improperly after notice by ██████ 		X	X	X			
<ul style="list-style-type: none"> Single Late Report, not SNC 	X	X					
<ul style="list-style-type: none"> Consistently Late Reports or SNC reporting time limit exceeded 			X	X	X	X	
<ul style="list-style-type: none"> Failure to report in accordance with maintenance schedule 	X	X					
<ul style="list-style-type: none"> Failure to Report an Illicit Discharge or Spill 		X	X	X			
<ul style="list-style-type: none"> Recurring Failure to Report Spills, SNC 			X	X	X	X	
<ul style="list-style-type: none"> Falsification, SNC 					X	X	
Violation of Monitoring Requirements:							
<ul style="list-style-type: none"> Failure to monitor all pollutants as required 	X	X					

• Recurring Failure to Monitor			X	X	X	X	
• Evidence of Negligence or intent to Ignore Required Monitoring Requirements, SNC					X	X	
Enforcement Level: Enforcement Type:	1 Informal Notice	2 Warning Letters	3 Notice of Violation (NOV)	4 NOV with Civil Penalties	5 NOV with Corrective Action Order	6 NOV with Corrective Action Order & Compliance Schedule	7 Termination of Service and/or Referral for Criminal Prosecution
Nature of Noncompliance							
Violation of Compliance Schedules:							
• Missed Interim Date (without approval for extension)		X	X				
• Continual violation of compliance schedule, SNC			X	X	X	X	X
Violations Detected During Site Visits:							
• Entry by ESCS staff denied by Discharger or entry withdrawn during inspection		Inspector will obtain guidance from [REDACTED] Attorney, warrant for entry may be secured and Discharger returned to for inspection completion.			X	X	X
Failure to Implement Best Management Practices (BMPs):							
• No BMPs present	X	X	X	X	X	X	X
• Poorly Maintained BMPs	X	X	X				
• Misuse of BMPs	X	X	X				
Illicit Discharges:							
• Isolated event, no harm to municipal sewer system/receiving water	X	X	X	X			
• Recurring event		X	X	X	X	X	X
• Illegal Dumping	X	X	X	X	X	X	X
• Discharge causes harm to municipal sewer system/receiving water, SNC			X	X	X	X	
• Evidence of Intent or Negligence, SNC			X	X	X	X	X
• Recurring Violation following Notice of Violation			X	X	X	X	X
Pretreatment Equipment:							
• Improper installation of pretreatment equipment	X	X	X	X	X	X	X
• Lack of Maintenance	X	X	X	X	X	X	X
• Improper operation or maintenance of pretreatment equipment		X	X	X	X	X	X
• Continual or recurring pretreatment equipment failures resulting in violations			X	X	X	X	X

8.0 Penalty Assessment Matrix

If the Director finds a violation of [REDACTED] 12.08 has occurred or is occurring, a Notice of Violation may be issued to the responsible party and a Civil Penalty may be assessed. The Civil Penalty attached with the Notice of Violation shall be determined using the enforcement penalty matrix described in this section. In cases of "significant noncompliance" as defined in [REDACTED] the Director may waive the Enforcement Penalty Matrix and impose civil penalties for each separate violation per day in an amount not to exceed \$5,000 in accordance with [REDACTED] 12.08.675.

Both the Courts and the Environmental Hearings Boards have ruled that civil penalties are not "punitive." Rather, they are enforcement tools that provide an economic motivation to change behavior and ensure compliance with the law. Such actions are aimed at securing correction of environmental regulatory violations and to deter future violations. It is not the function of a civil penalty to punish the violator.

8.1 Enforcement Penalty Matrix

TABLE 1
Enforcement Penalty Matrix

	NO (0)	POSSIBLY (1)	PROBABLY (2)	DEFINITELY (3)
1. Public Health Risk?	_____	_____	_____	_____
2. Environmental Damage or Adversely Impacting Infrastructure?	_____	_____	_____	_____
3. Willful or Knowing Violation?	_____	_____	_____	_____
4. Unresponsive in Correcting Violation?	_____	_____	_____	_____
5. Improper Operation or Maintenance?	_____	_____	_____	_____
6. Failure to Obtain Necessary Permits or Approvals?	_____	_____	_____	_____
7. Economic Benefit from Noncompliance?	_____	_____	_____	_____
8. Repeat Violation?	_____	_____	_____	_____

Total Rating Points _____ See 8.2 Application of Penalty Criteria for guidance

8.2 Application of Penalty Criteria

The framework below provides guidance on how to rate each criterion of the enforcement penalty matrix. The civil penalty is determined by the total score of the matrix

1. Did the violation result in a public health risk?

Answer "no" if there is no evidence to support a claim of public health risk.

Answer "possibly" if a public health risk can be inferred from evidence and knowledge of the effects of the violation.

Answer "probably" if evidence supports a claim of public health risk and there is a plausible connection between this violation and the health or effect.

Answer "definitely" if there is direct evidence linking public health risk or adverse effects with the violation.

2. Did the violation result in environmental damage or adversely impact infrastructure?

Answer "no" if there is no evidence to support a claim of environmental or infrastructure damage.

Answer "possibly" if environmental or infrastructure damage can be inferred from evidence and knowledge of the effects of the violation.

Answer "probably" if evidence supports a claim of environmental or infrastructure damage or impairment or if there is a plausible connection between this violation and the damage or impairment.

Answer "definitely" if there is direct evidence linking environmental or infrastructure damage with the violation.

3. Was it a knowing violation?

Answer "no" if the violator did not know that the action or inaction constituted a violation.

Answer "possibly" if it is likely the violator knew that the action or inaction constituted a violation.

Answer "probably" if the violator should have known.

Answer "definitely" if the violator clearly knew. If the answer is "definitely", consider consulting with the environmental crimes unit.

4. Was the responsible party unresponsive in correcting the violation?

Answer "no" if the violation was corrected as soon as the responsible person learned of it.

Answer "possibly" if the violation was corrected in a less timely and cooperative fashion.

Answer "probably" if the responsible person attempted to correct the problem but did not correct it.

Answer "definitely" if the responsible person made no attempt to correct the violation.

5. Was the violation the result of improper operation and/or maintenance?

Answer "no" if the violation was not the result of improper operation or inadequate maintenance.

Answer "possibly" if the facility has an O&M manual, Pollution Prevention Plan, Spill Plan or Best Management Practices manual that is out of date or inadequate.

Answer "probably" if there is no O&M manual, Pollution Prevention Plan, Spill Plan or Best Management Practices manual developed for the facility.

Answer "definitely" if the facility has no plans or is not following its plan AND the violation was clearly the result of improper operation or maintenance.

6. Did the facility obtain necessary permits and approvals to operate?

Answer "no" if the paperwork was complete and appropriate for the job or task that caused the violation.

Answer "definitely" if the facility did not have all the required permits and approvals for the job or task that caused the violation.

7. Did the facility benefit economically from non-compliance?

Answer "no" if it is clear that no one obtained an economic benefit.

Answer "possibly" if the facility might have benefited.

Answer "probably" if the facility benefited, but the benefit is not quantifiable.

Answer "definitely" if the economic benefit is quantifiable.

8. Is this a repeat violation?

Answer "no" if this is not a repeat of a previously cited violation.

Answer "definitely" if this is a repeat of a previously cited violation.

TABLE 2
Gravity Component Penalty

Rating	1-2	3-4	5-8	9-11	12-14	15
Penalty	\$500	\$600	\$700	\$800	\$900	\$1000

Rating	16	17	18	19	20
Penalty	\$1500	\$2000	\$3000	\$4000	\$5000