Enforcement Penalty Matrix

[redacted]

NOV Issued to: _____

NOV #: 2018_XXX

Case Summary:

See case summary in NOV 2018_XXX

1. Did the violation pose a public health risk?

a. "no" - there is no evidence to support a claim of public health risk or adverse health effects.

b. "possibly" - evidence supports a claim of public health risk and there is a plausible connection between this violation and health effect.

c. "probably" - evidence supports a claim of public health risk and there is a likely connection between this violation and health effect.

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

Answer =

NOTES:

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

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

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

c. "probably" if there is evidence to support a claim of environmental or infrastructure damage and there is a likely connection between the violation and the damage/impairment.

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

Answer =

NOTES:

3. Was the action a willful and knowing violation?

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

b. "possibly" if the violator should have known.

c. "probably" if it is likely the violator knew.

d. "definitely" if the violator clearly knew or was previously informed by the probing inspectors.

Answer =

NOTES:

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

a. "no" if the violation was corrected as soon as the responsible party learned of it.

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

c. "probably" if the responsible person made some attempt to correct the problem, but did not correct it.

d. "definitely" if the responsible party made no attempt to correct the

Answer =

NOTES:

5. Was the violation a result of improper operation or inadequate maintenance?
(i.e. TESC1 plans, PPP2, O&M3 manual, DCP4).

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

b. "possibly" if the facility has an O&M, DCP, PPP, or TESC plan or manual but it is out of date or inadequate.

c. "probably" if there is no O&M, DCP, PPP, or TESC plan or manual and the violation would have been less severe if the plan were developed and followed.

d. "definitely" if the facility has no plans or did not follow its plan AND the violation was clearly the result of improper operation or maintenance.

Answer =

NOTES:

6. Did the responsible party fail to obtain and comply with the necessary permits, certifications and approvals from the agency with jurisdiction to operate at the time of the violation?

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

b. "possibly" if the responsible party obtain and received approval for some but not all of the required permit(s).

c. "probably" if the responsible party obtained some but not all of the required permit(s) and did not receive approvals for the job or task that caused the violation.

d. "definitely" if the responsible party either did not obtain the necessary permits or did obtain permits but did not comply with their conditions.

Answer =

NOTES:

7. Did anyone benefit economically from non-compliance?

a. "no" if it is clear that no one gained an economic benefit.

b. "possibly" if someone might have benefited.

c. "probably" if anyone benefited, but the benefit is not quantifiable.

d. "definitely" if the economic benefit is quantifiable.

Answer =

NOTES:

8. Is this violation a repeat violation[2] ?

a. "no" to indicate that there have been no prior violations.

b. "possibly" to indicate that there has been one prior violation.

c. "probably" to indicate that there have been two prior violations.

d. "definitely" to indicate that there have been three or more prior violations.

Answer =

NOTES:

	Enforcement Evaluation Criterion	SCORE
1	Public Health Risk?	NA
2	Environmental Damage or Adversely Impacting Infrastructure?	NA
3	Willful or Knowing Violation?	NA
4	Unresponsive in Correcting Action?	NA
5	Improper Operation or Maintenance?	NA
6	Failure to Obtain Necessary Permits and Approval?	NA
7	Economic Benefit to Non-Compliance?	NA
8	Repeat Violation?	NA

Total Score: **0**

Penalty Points Rating and Corresponding Penalty Amount

Rating	Penalty
1-2	$250
3-4	$500
5-8	$1,000
9-11	$1,500
12-14	$2,000
15	$2,500
16	$3,000
17	$3,500
18	$4,000
19	$4,500
20	$5,000

Penalty Amount: **#N/A**

Enforcement Penalty Matrix Guidance

1. Did the violation result in a public health risk?
   a. "no" - there is no evidence to support a claim of public health risk or adverse health effects.
   b. "possibly" - evidence supports a claim of public health risk and there is a plausible connection between this violation and health effect.
   c. "probably" - evidence supports a claim of public health risk and there is a likely connection between this violation and health effect.
   d. "definitely" - there is direct evidence linking public health risk or adverse effects with the violation.

   Answer "a" if there was no discharge or because the violation has no apparent health effects.

   Answer "b" if there is a general understanding that the violation could cause a public health risk, even if direct evidence is not available. Answer b if the violation has not left the private system.

   Answer "c" is there is evidence that contact or exposure to the violation could result in public health effects. Answer c of the violation has impacted the public drainage system.

   Answer "d" if there is evidence that the violation is causing a definite health risk. Answer d if the violation is evident at the outfall or surrounding area (e.g. beach closure).

2. Did the violation result in environmental damage or adversely impact infrastructure?
   a. "no" if there is no evidence to support a claim of environmental or infrastructure damage.
   b. "possibly" if environmental or infrastructure damage can be inferred from evidence or knowledge of the effects of the violation.
   c. "probably" if there is evidence to support a claim of environmental or infrastructure damage and there is a likely connection between the violation and the damage/impairment.
   d. "definitely" if there is direct evidence linking environmental or infrastructure damage with the violation.

   Answer "a" if there is no evidence to say that environmental or infrastructure damage occurred or if the violation has no environmental impact or impact on infrastructure.

   Answer "b" if the violation has the potential to impact the environment or infrastructure. There does not have to be evidence of damage to support b, but rather a general understanding that the violation could affect the environment or infrastructure. Note: Having to clean out the infrastructure quantifies as damage to it. Answer b if the violation did not leave the private system.

   Answer "c" if there is evidence that environmental or infrastructure damage occurred that was likely due to the violation. For example, if there was extensive cleaning done to the system or if structures had to be repaired as a result of the violation. Answer c if the violation entered the public drainage system.

   Answer "d" if there is direct evidence of environmental or extensive infrastructure damage due to the violation. For example, if DNR has established that a fish kill was the result of spill or if there was permanent infrastructure damage that required structural repair. Answer d if the violation is evident at the outfall or surrounding area.

3. Was the action a willful and knowing violation?
   a.“no” if the violator obviously did not know that the action or inaction constituted a violation.
   b.“possibly” if the violator should have known.
   c."probably” if it is likely the violator knew.
   d.“definitely” if the violator clearly knew or was previously informed by the probing inspectors.

Answer “a” if the violator obviously did not know that the action was a violation (note: Inspector should use best professional judgment in applying this criteria).

Answer “b” if the violator is a business owner for whom wastewater disposal is a primary or routine activity, (such as carpet cleaning) even if they have not been visited before.

Answer “c” if the violator likely knew that the violation was illegal. For example, if they have been visited before, but there is not documentation regarding that specific violation addressed in the file.

Answer “d” if there is documentation of a previous correspondence with the business documenting the specific violation
<u>or</u> if the violation is so egregious that a reasonable person would understand that it’s illegal, such as disposing of hazardous waste into a toilet or drain, rather than paying for disposal.

4. Was the responsible party unresponsive in correcting the violation?
   a.“no” if the violation was corrected as soon as the responsible party learned of it.
   b.“possibly” if the violation was corrected in a less timely and cooperative fashion.
   c.“probably” if the responsible person made some attempt to correct the problem, but did not correct it.
   d.“definitely” if the responsible party made no attempt to correct the violation.

Answer a if the violator was timely and cooperative in resolving the violation.

Answer b if ultimately, the violation was resolved, but was done in a less timely and cooperative manner than requested by the Inspector.

Answer c if the violation was not fully resolved. For example, if the violator cleaned part, but not all of the drainage system.

Answer d if the violator made no attempt to resolve the violation. For example, if the City had to perform the work at the violator’s expense (in which case a cost recovery should also be done).

5. Was the violation a result of improper operation or inadequate maintenance?
(i.e. TESC1 plans, PPP2, O&M3 manual, DCP4).
   a.“no” if the violation was not the result of improper operation or inadequate maintenance.
   b."possibly" if the facility has an O&M, DCP, PPP, or TESC plan or manual but it is out of date or inadequate.
   c.“probably” if there is no O&M, DCP, PPP, or TESC plan or manual and the violation would have been less severe if the plan were developed and followed.
   d."definitely" if the facility has no plans or did not follow its plan AND the violation was clearly the result of improper operation or maintenance.

Note: [redacted] does not issue permits or require O&M plans, TESC plans, etc. When ranking this criteria, [redacted] should consider procedures, BMP maintenance, spill plans, etc.

Answer a if the discharge had nothing to do with routine maintenance or improper operation,

Answer b if the facility has or plans in place, they were out of date or inadequate to address the violation.

Answer c if there are no or plans in place on site to address the violation, or there is no routine maintenance plan for the site and the violation would have been less severe if there had been, such as routine drainage system cleaning or BMPs on site.

Answer d if there are no plans or BMP's in place and the violation was a direct result of no BMP's or plans.

6. Did the responsible party fail to obtain and comply with the necessary permits, certifications and approvals from the agency with jurisdiction to operate at the time of the violation?

a."no" if the paperwork was complete and appropriate for the job or task that caused the violation.
b."possibly" if the responsible party obtain and received approval for some but not all of the required permit(s).
c."probably" if the responsible party obtained some but not all of the required permit(s) and did not receive approvals for the job or task that caused the violation.
d."definitely" if the responsible party either did not obtain the necessary permits or did obtain permits but did not comply with their conditions.

Note: [redacted] does not issue permits. This question relates to necessary permits, certifications and approvals that would affect stormwater BMPs and/or drainage work.

Answer a if there are no permits that correspond to the violation.

Answer b if the site did not get all permits necessary and the violation was a result of this.

Answer c if the responsible party didn't get all the necessary permits and work was done outside the scope of the permit or they didn't receive approvals for the job or task.

Answer d if there were no permits and work was done that caused a violation. For example, if the builder did not get permits and the site has an illicit connection.

7. Did anyone benefit economically from non-compliance?

a."no" if it is clear that no one gained an economic benefit.
b."possibly" if someone might have benefited.
c."probably" if anyone benefited, but the benefit is not quantifiable.
d."definitely" if the economic benefit is quantifiable.

Answer a if the violation had no economic benefit to the responsible party, such as an unknown illicit connection. .

Answer b if the responsible party could have benefitted financially from operating improperly.

Answer c if it is clear there are benefits to operating improperly, but they are difficult to quantify (because there are no bids or paper trail to quantify).

Answer d if there is a distinct quantifiable benefit. Answer d for issues such as drainage maintenance work, or improper waste disposal, where the benefits are distinctly quantifiable and the responsible party may have received bids to facilitate their decision.

8. Is this violation a repeat violation ?
   a."no" to indicate that there have been no prior violations.
   b."possibly" to indicate that there has been one prior violation.
   c."probably" to indicate that there have been two prior violations.
   d."definitely" to indicate that there have been three or more prior violations.

Note: In this context, violation = Stormwater Code related NOV. Inspectors should check Hanson or with DPD, especially when issuing an NOV to a contractor.

Answer a if there have been no prior NOVs within the last 5 years.

Answer b if there has been one prior NOV within the last 5 years.

Answer c if there have been two prior NOVs within the last 5 years.

Answer d if the responsible party has been issued multiple NOV's within the last 5 years.