

***Appendix XIII. Enforcement Response Plan***

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## ***Appendix XIII City of San Diego Enforcement Response Plan***

The City of San Diego (City) ensures that pollution prevention methods, also known as best management practices (BMPs) are implemented by enforcing its Municipal Code, including the Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code Sections 43.0301 to 43.0312) (Storm Water Ordinance) (see Appendix I). In accordance with Section E.6 of the Regional Water Quality Control Board, San Diego Region (RWQCB) Order No. R9-2013-0001, as amended by Order No. R9-2015-0001 (Municipal Permit or Permit), compliance with the storm water-related provisions of the Municipal Code will be assessed through a variety of means, including inspections, responses to hotline calls, and the routine municipal separate storm sewer system (MS4) outfall monitoring. Where violations of the Municipal Code are observed, the enforcement actions and procedures described in this section will be employed to enforce storm water requirements (San Diego Municipal Code Section 12.0102).

The City typically employs a tiered, escalating enforcement system. However, as an important aspect of the City's prosecutorial discretion the City reserves the right to use whatever tools the enforcement official deems most appropriate for a given situation, as dictated by the specifics of each case.

Examples of enforcement and escalated enforcement actions can be found in the following sections. It should be noted that experience and professional judgment of City staff are important in guiding the appropriate response to a violation. Escalated enforcement actions will continue to increase in severity, as necessary, to compel compliance as soon as possible. The City's enforcement efforts will continue to escalate as warranted by changing regional and statewide regulations related to water use and drought conditions.

### **1.0 Administrative Enforcement Actions**

The various administrative enforcement measures employed by the City, in order of increasing severity, are discussed below.

#### **Internal Enforcement**

If the responsible City staff member or department/division does not perform the necessary corrective actions in response to the direction of their immediate superior, escalated enforcement action will be taken by involving higher ranking representatives within the responsible department or division, who may enact internal disciplinary procedures, until the deficiencies are resolved.

### **Written and Verbal Warnings**

A written or verbal warning is typically the City's first level of enforcement action when a violation of the City's Storm Water Ordinance is observed such as illicit discharges and illicit connections. Written warnings can be given using a variety of methods including the following:

- Notice of Violation (NOV) (San Diego Municipal Code Section 12.0103)
- Cease and desist orders (San Diego Municipal Code Sections 12.0801-12.0810).
- Notice and order to clean, test, or abate (San Diego Municipal Code Sections 12.0801-12.0810).

A bond or other security to assure the violation is corrected may be required by the authorized enforcement official. Notice and orders to clean, test, or abate may be issued to perform any act required by the City's Municipal Code. When written warnings are issued, the violation is noted, a time frame to correct the violation is given, and a follow-up date is scheduled. City inspectors will continue to follow-up with sites as necessary to determine if compliance has been achieved.

### **Public Nuisance Abatement**

Violations deemed to be a threat to public health, safety, and welfare may be identified as a public nuisance. Costs for pollution detection and abatement must be paid in full by the discharger, in addition to any other penalties, or a lien may be filed against the property in accordance with the abatement procedure. San Diego Municipal Code Sections 12.0204, 12.0601-12.0614, 13.0301- 13.0308.

### **Enforcement of Contracts**

The City may use the provisions within the contract for enforcement of non-compliance. Such contract provisions may allow the City to refuse payment, stop work (without time penalties), and/or terminate contracts if contractors performing activities do not comply with all appropriate permits, laws, regulations, and ordinances.

### **Stop Work Notices**

Whenever any work is being done contrary to the City's Municipal Code, or other laws or ordinances, an authorized enforcement official may order the work stopped by notice in writing to any person engaged in doing or causing such work to be done. Any person receiving a Stop Work Notice is required to immediately stop such work until approved by the authorized enforcement official to proceed with the work.

For enforcement of required BMPs at construction sites, the City can issue a Stop Work Notice which are typically given if written warnings have been issued and the violation has not been corrected, or if an observed violation poses a significant threat to water quality. Stop Work Notices prohibit further activity until the problem is resolved. The Stop Work Notice will describe the infraction and specify what corrective action must be taken. A copy of the Stop

Work Notice will be given to the owner or contractor and placed in the site's active inspection file. To restart work once a Stop Work Notice has been issued, the responsible party must request that a City inspector re-inspect the site to verify that the deficiencies have been satisfactorily corrected. Once the inspector verifies that the appropriate corrections have been implemented, activities may resume. San Diego Municipal Code Sections 121.0205, 121.0301-121.0312.

### **Permit Suspension or Revocation**

Violations of the City's Municipal Code may be grounds for permit and/or other city license suspension or revocation. City permits, licenses, or other approvals may be revoked after notice and an opportunity for a hearing. For instance, in severe cases of non-compliance, or significant discharges relating to development and/or construction activities, the City may revoke the building or grading permits that a contractor is working under for the project or deny future permits on the project. The responsible party will then need to re-apply for permits and meet the requirements the City may have placed on the project before resuming the project. San Diego Municipal Code Sections 121.0313-121.0316.

### **Administrative Citations or Penalties**

The City's inspectors or Code Enforcement staff may issue storm water field citations for violations of the City's Municipal Code or the Municipal Permit (San Diego Municipal Code Section 12.0102). The penalty for a storm water infraction will be relatively minor for a first offense, but repeated violations will result in escalating fines or misdemeanor charges.

Administrative civil penalties are assessed pursuant to San Diego Municipal Code sections 43.0301 through 43.0309 and shall be assessed at a maximum rate of \$10,000 per day per violation. The maximum amount of administrative civil penalties shall not exceed \$100,000 per parcel or structure for any related series of violations.

There is no requirement that administrative enforcement procedures be pursued before judicial enforcement actions are filed. San Diego Municipal Code Sections 12.0202, 12.0801-12.0810.

### **Hearing and Appeals**

When any of the above administrative enforcement actions are taken, a violator may request a hearing to contest the enforcement official's determination that a violation of the City's storm water requirements has occurred. Details on the City's hearing and appeals process can be found in the San Diego Municipal Code Sections 12.0401-12.0413, 121.0313-121.0316.

## **2.0 Judicial Enforcement Actions**

In addition to administrative enforcement procedures, the City may take the judicial enforcement actions described below.

### **Civil Penalties and Remedies**

The City Attorney is authorized to file criminal and civil actions and to seek civil penalties and/or other remedies to enforce the City's ordinances. The penalty for a storm water infraction may be relatively minor for a first offense, but repeated violations will result in escalating fines or misdemeanor charges.

### **Injunctive Relief**

The City may pursue enforcement by judicial action for preliminary or permanent injunctive relief for violations of its ordinances or when the violation threatens to cause a condition of contamination, pollution, or nuisance. San Diego Municipal Code Sections 12.0202, 12.0801-12.0810.

### **Arrest or Issue Citations**

Any designated Enforcement Official is authorized to arrest without a warrant any person whenever the Enforcement Official has reasonable cause to believe that the person has committed a violation of the Municipal Code, including the Storm Water Ordinance, or applicable state codes in his or her presence. Pursuant to Penal Code Section 836.5, the Enforcement Official can only arrest a person by issuing a misdemeanor field citation. San Diego Municipal Code Section 12.0105.

### **Criminal Violations – Misdemeanors and Infractions**

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of the San Diego Municipal Code, including the Storm Water Ordinance. A violation of any of the provisions or failing to comply with any of the mandatory requirements of the Municipal Code shall constitute a misdemeanor; except that notwithstanding any other provision of the Municipal Code, any such violation constituting a misdemeanor under the Municipal Code may, in the discretion of the City Attorney, be charged and prosecuted as an infraction. San Diego Municipal Code Section 12.0201.

## **3.0 Enforcement Documentation**

During each investigation, all observed non-compliance activity is documented. The following information, where applicable, is recorded in a database for use in administrative and judicial enforcement actions:

- Chronology of events
- Case summary
- Time and expense log
- Inspection reports
- Complaints
- Phone conversation records
- Correspondence
- Maps and diagrams
- Photographs
- Reports from regulatory agencies
- Witness list
- Explanation of the violations

- Request-to-file form
- Field notes
- Emergency incident reports
- Lab results
- Chain-of-custody for samples
- Permit applications
- Sampling plans
- Other supporting documents

#### 4.0 Enforcement Plans by Department

The City utilizes various enforcement measures to require compliance with its ordinances, permits, contracts, and orders. In addition to the measures described in Sections 1 and 2, specific enforcement plans are also developed based on activities described in different sections of the Jurisdictional Runoff Management Plan (JRMP). Sections with additional enforcement plans, and departments responsible for enforcement are listed in Table 1.

##### Internal Enforcement

If the responsible City staff member or department/division does not perform the necessary corrective actions in response to the direction of their immediate superior, escalated enforcement action will be taken by involving higher ranking representatives within the responsible department or division, who may enact internal disciplinary procedures, until the deficiencies are resolved.

**Table 1. Enforcement Plan Sections and Responsible Parties**

<b>JRMP Section Number</b>	<b>JRMP Section Title</b>	<b>Department/Division Responsible for Enforcement</b>	<b>Summary</b>
3.6	Illicit Discharge Detection and Elimination	Transportation & Storm Water Department, Storm Water Division	City Code Compliance Officers generally follow an established enforcement system to abate the violation and get the responsible party into compliance that range from distribution of education materials to referral to the City Attorney's Office for criminal prosecution.
4.4.3	Development Planning	Development Services Department	<b>Permanent Post-Construction BMP Construction/Installation:</b> The primary enforcement mechanism for ensuring that structural BMPs are properly constructed is the withholding of approvals. Escalated enforcement actions include Administrative Citations and Civil Penalties.

<b>JRMP Section Number</b>	<b>JRMP Section Title</b>	<b>Department/Division Responsible for Enforcement</b>	<b>Summary</b>
4.5.3	Development Planning	Transportation & Storm Water Department, Storm Water Division	<b>Treatment Control BMP Maintenance Verification:</b> Inspectors issue Notices of Deficient Maintenance for deficiencies found during inspections. Notices of Violation are issued for continued non-compliance. Escalated enforcement actions include Administrative Citations.
5.5.4.1	Construction	Development Services Department	<b>Development Services Department:</b> If DBC&S issued a DS-3 for BMP deficiencies during an initial inspection, an inspector will return for a second inspection and assess a re-inspection fee if deficiencies are not corrected, resulting in the withholding of all non-storm water inspections until corrective measures are implemented. Repeat offenders may be referred to the Code Enforcement Division, which has the authority to issue Administrative Citations. Further non-compliance may result in the City issuing a Stop Work Notice.
5.5.4.2	Construction	Public Works Department – Field Engineering Division	<b>Field Engineering Division:</b> The Field Engineering Division uses a variety of enforcement actions including Correction Notices, Notices of Violation, Stop Work Warning Letters, and Stop Work Notices. Their procedures ensure that enforcement actions are escalated until deficiencies are resolved, and they also provide mechanisms for requiring immediate action in the case of violations that cause an immediate threat to water quality.



<b>JRMP Section Number</b>	<b>JRMP Section Title</b>	<b>Department/Division Responsible for Enforcement</b>	<b>Summary</b>
6.5	Industrial and Commercial	Transportation & Storm Water Department, Storm Water Division; Public Utilities Department, Wastewater Division	If the City inspector observes a significant and/or immediate threat to water quality, action will be taken to require the business owner and/or operator to immediately cease and correct the discharge or activity. Less immediate concerns are resolved through follow-up actions, with a goal of resolution within 30 days, or prior to the next rain event, whichever is sooner. Mobile businesses additionally may be required to obtain appropriate cleanup materials or tools prior to being allowed to resume operations. Depending on the severity of the infraction, enforcement actions range from verbal and written warnings to civil or criminal prosecution.
7.3.1.3	Airports	Real Estate Assets Department, Airports Division	If as a result of any inspection, the Airports Division determines that improvements to its BMPs are required, they will perform the action (e.g., repair a structural BMP), and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.
7.3.2.3	Buildings/ Parking/ Landscaping	General Services Department, Facilities Maintenance Division; Purchasing and Contracting Department; Library Department; Office of the City Treasurers; City Planning and Community Investment Department, Homeless Services Division; Customer Services Department	If as a result of any inspection, the respective department or division determines that improvements to its BMPs are required, they will perform the action (e.g., repair a structural BMP), and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.

<b>JRMP Section Number</b>	<b>JRMP Section Title</b>	<b>Department/Division Responsible for Enforcement</b>	<b>Summary</b>
7.3.3.3	City-Owned Leased Properties	Transportation & Storm Water Department	Enforcement on City-owned leased properties is conducted through the industrial and commercial, or residential, inspection programs, as applicable. See sections 6.5 and 8.4.5 for details.
7.3.4.3	Environmental Services	Environmental Services Department	If as a result of any inspection, the ESD determines that improvements to its BMPs are required, they will perform the action (e.g., repair a structural BMP), and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.
7.3.5.3	Fire-Rescue Activities	Fire-Rescue Department	If as a result of any inspection, the Fire-Rescue Department determines that improvements to its BMPs are required, they will perform the action (e.g., repair a structural BMP), and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.
7.3.6.3	Non- Emergency Police Activities	Police Department	If as a result of any inspection, the Police Department determines that improvements to its BMPs are required, they will perform the action (e.g., repair a structural BMP), and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.
7.3.7.3	Public Utilities - Wastewater Collection	Public Works Department, Wastewater Collection Division	If as a result of any inspection, the MWWD Collection Division determines that improvements to its BMPs are required, they will perform the action (e.g., repair a structural BMP), and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.
7.3.8.3	Public Utilities - Wastewater Treatment	Public Utilities Department, Treatment and Disposal Division	If as a result of any inspection, the divisions determine that improvements to BMPs are required, they will perform the action (e.g., repair a structural BMP), and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.

<b>JRMP Section Number</b>	<b>JRMP Section Title</b>	<b>Department/Division Responsible for Enforcement</b>	<b>Summary</b>
7.3.9.3	Public Utilities - Water System Operations, Construction, and Maintenance	Public Utilities Department, Water System Operations and Water Construction and Maintenance Divisions	If as a result of any inspection, the Divisions determine that improvements to BMPs are required, they will perform the action (e.g., repair a structural BMP), and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.
7.3.10.3	Qualcomm Stadium	Qualcomm Stadium management and employees, and any lessees or vendors who operate at Jack Murphy Field	If as a result of any inspection, the Stadium determines that improvements to its BMPs are required, they will perform the action (e.g., repair a structural BMP), and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.
7.3.11.3	Recreational Lands and Facilities	Park and Recreation Department	If as a result of any inspection, the Park and Recreation Department determines that improvements to its BMPs are required, they will perform the action (e.g., repair a structural BMP), and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.
7.3.12.3	Special Events	Transportation & Storm Water Department	If as a result of any inspection, the T&SW Department determines that improvements to Special Event BMPs are required, they will generally require that corrections be performed immediately, but at a minimum prior to the next rain event, and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.
7.3.13.3	Storm Drain Conveyance System Operations and Maintenance	Transportation & Storm Water Department, Storm Water Division	If as a result of any inspection, the T&SW Department determines that improvements to its BMPs are required, they will perform the action (e.g., repair a structural BMP), and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.

<b>JRMP Section Number</b>	<b>JRMP Section Title</b>	<b>Department/Division Responsible for Enforcement</b>	<b>Summary</b>
7.3.14.3	Streets	Transportation & Storm Water Department, Street Division	If as a result of any inspection, the T&SW Department determines that improvements to its BMPs are required, they will perform the action (e.g., repair a structural BMP), and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.
7.3.15.3	Fleet Services	General Services Department, Fleet Services Division	If as a result of any inspection, Fleet Services determines that improvements to its BMPs are required, they will perform the action (e.g., repair a structural BMP), and subsequently conduct a follow-up inspection to verify that the original issues have been resolved.
8.4.6	Residential Areas	Transportation & Storm Water Department, Street Division; Public Utilities Department	The education component of the residential program is intended to make residents aware of any updated BMP requirements, such as eliminating discharges from irrigation runoff and vehicle washing. During investigations of incidents reported to the hotline, or discovered during routine MS4 outfall monitoring, that are associated with a residential source, City staff will address issues of storm water concern, and provide education during investigations of incident reports and routine monitoring. Enforcement measures may range from education to Administrative Citations depending on the nature and severity of the violation.