



ENFORCEMENT RESPONSE PLAN FOR STORM WATER MANAGEMENT CITY OF BILLINGS, MONTANA

Last updated 6/28/2022

Introduction

In accordance with the General Permit for Storm Water Discharges Associated with Small Municipal Separate Storm Sewer System (MS4), issued by the Montana Department of Environmental Quality (DEQ), the City of Billings (the city) is required to develop and implement an Enforcement Response Plan (ERP) to ensure compliance with storm water regulations. The purpose of this ERP is to specify criteria by which city personnel can determine the enforcement action most appropriate for instances of non-compliance and communicate how the enforcement tools available to city personnel will be used to achieve compliance following violations of the city's storm water regulations. This document addresses the Montana DEQ MS4 General Permit's ERP requirements for the following Minimum Control Measures (MCM's):

- MCM 3: Illicit Discharge Detection & Elimination (Part II.A.2.d.i.)
- MCM 4: Construction Site Storm Water Management (Part II.A.3.c.iii.)
- MCM 5: Post-Construction Site Storm Water Management (Part II.A.4.c.iv.)

The enforcement actions and procedures within this plan are generally applicable to each of the three MCMs listed above; however, enforcement actions and procedures which are specific to an individual MCM are addressed within the attachments, listed as follows:

- Attachment A: Illicit Discharge Detection and Elimination
- Attachment B: Construction Site Storm Water Management
- Attachment C: Post-Construction Site Storm Water Management

The procedures within this ERP have been developed with the following objectives in mind:

- Prevent pollutants from entering the MS4 and causing environmental harm
- Communicate definitions for non-compliance
- Establish appropriate enforcement action based on the nature and severity of the violation
- Promote consistent and timely use of enforcement tools
- Ensure that violators return to compliance in a timely manner
- Recover costs incurred by the city due to operator non-compliance
- Promote compliance through education and compliance assistance and, if necessary, penalties

The City of Billings has the authority to enforce storm water regulations under the following sections of its municipal code:

Chapter 28 – Stormwater Management and Control

Article 28-300 – Discharge Prohibitions

Article 28-400 – Construction Activity

Article 28-500 – Regulations and Requirements

Article 28-700 – Inspections and Enforcement

Acronyms

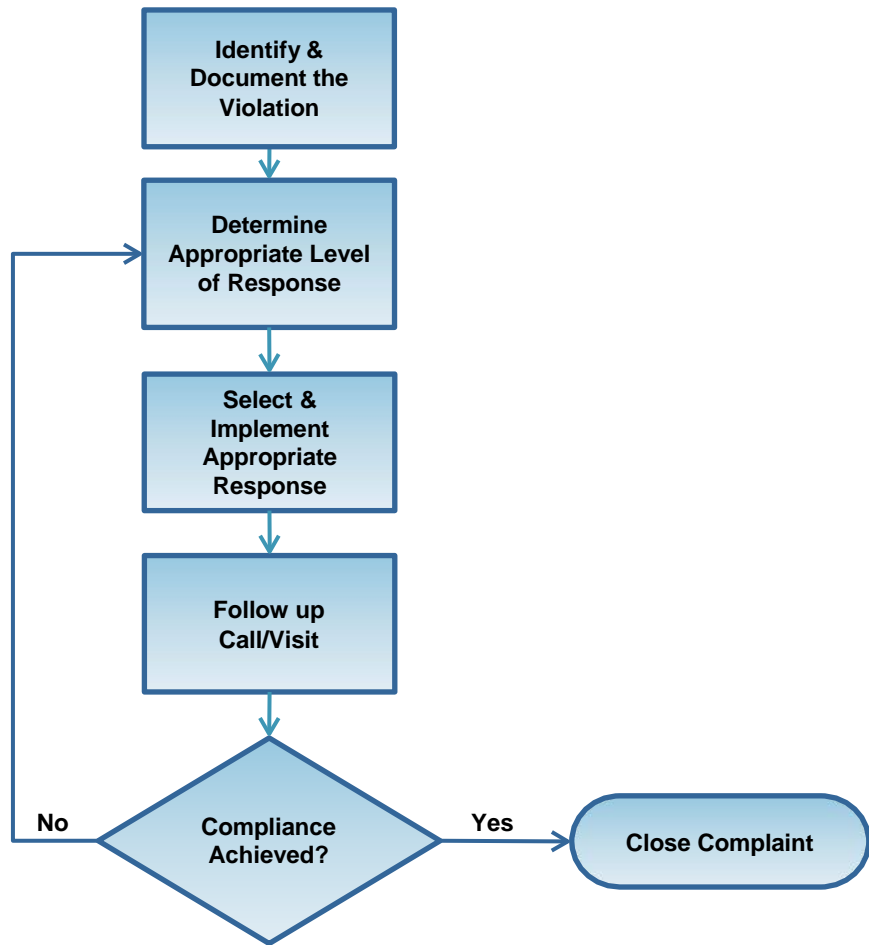
The following acronyms shall have the following meaning:

DEQ	Department of Environmental Quality
ERP	Enforcement Response Plan
MCM	Minimum Control Measure
MS4	Municipal Separate Storm Sewer System
NOV	Notice of Violation
CDO	Cease and Desist Order

Enforcement Response Plan Overview

The enforcement process consists of six basic steps beginning with identification of a violation and concluding with closing the complaint. The overall process is shown in the flowchart below and is further explained in the following sections.

**Enforcement Response Flowchart for the
City of Billings Storm Water Management Program**



1. Identifying/Investigating Non-compliance

The city may become aware of storm water non-compliance or violations in a number of ways.

- Permit required inspections or monitoring may reveal non-compliance: the city's programs include periodic or complaint-based compliance inspections of facilities subject to Construction/Post-Construction programs and routine monitoring and inspections to support the IDDE, as required by the MS4 permit.
- Staff of other city agencies may also identify illicit connections or illicit discharges during the course of performing their regular job functions.
- Complaints identified by the public.

This section discusses the city's plans for inspections in each of the three regulatory programs required by the MS4 permit: IDDE, Construction, and Post-Construction.

Illicit Discharge Detection and Elimination (IDDE)

The city may receive a complaint concerning an illicit connection or discharge through the city's website or a phone call or an illicit discharge may be observed during the course of city operations. When one of these mechanisms triggers an IDDE investigation, the city conducts appropriate in-sewer and/or surface inspection(s) to identify the source of dry weather discharge/pollutants of concern entering the MS4, consistent with applicable laws, and takes necessary enforcement action to require abatement of the discharge. When another city department/division identifies an illicit connection or discharge on their property, the department/division is responsible for tracking, eliminating, and reporting it to Environmental Affairs Division.

Construction/Post-Construction

The MS4 permit requires the city to address storm water runoff to the MS4 from new construction activities and new development and redevelopment projects that result in soil disturbance of 1 acre or more. Sites that are less than 1 acre, but the activity is part of a larger common plan of development or sale that would disturb one acre or more may also be included. Construction sites within 50 feet of a waterway are also included in addressing storm water runoff. The city inspects sites that have received a storm water permit approval under the city's MS4 construction/post-construction permitting, inspection, and enforcement program.

With respect to construction permitting, the city uses announced and unannounced inspections, in addition to inspections triggered by complaints, in accordance with applicable laws, to determine whether projects have obtained appropriate permits under the city's program and are complying with their Storm water Pollution Prevention Plan (SWPPP). The city prioritizes inspection sites most likely to have an adverse impact on water quality, based on the amount of exposed soil, the location of the site relative to a water body, and the past performance of the responsible parties.

With respect to developed sites, the city performs inspections based on complaints of discharges entering city sewers. Following the completion of construction, the city performs, on a complaint basis and periodically, compliance verification inspections of sites with Billings Storm Water Maintenance agreements to determine whether the owners are complying with their Storm Water Maintenance agreements to maintain on-site storm water facilities.

2. Determining the Appropriate Level of Response

Once a potential violation is identified, the appropriate level of response should be determined, and an appropriate response remedy should then be selected. The city has five levels of responses, each of which is briefly described below.

2.1 Level 1: No Enforcement Action

There may be situations where city personnel are made aware of a potential violation; however, sufficient evidence does not exist to prove a violation is taking place. An example of such situation may be if a complaint is received stating that a private storm water control has not been properly maintained. However, after a brief site inspection and/or verbal discussion, city staff determines the storm water

control is within compliance and no enforcement action is required. In such situations, the potential violation and response should be documented using the Enforcement Response Documentation Form (Attachment D) or other equivalent form for future reference.

2.2 Level 2: Informal Response

The city will pursue compliance with storm water violations through informal methods whenever reasonable. Informal responses include telephone notifications, verbal notices, meetings, and notices of violation (NOV) each of which is described in Section 3.1ii. These methods are appropriate for situations where education is needed, violations do not pose a significant impact to human health or the environment, or the city believes that compliance can be achieved without the use of formal measures. In addition, implementation of informal measures often establishes the documentation necessary to implement formal enforcement actions if informal measures do not result in compliance. The Environmental Engineer or designee is responsible for implementing informal responses.

2.3 Level 3: Formal Response

Formal procedures will be implemented to resolve prolonged non-compliance or immediate impacts to human health and the environment. Additionally, formal responses may be implemented immediately when the responsible party has a history of non-compliance. A history of non-compliance is defined as receiving more than 3 informal or formal responses to storm water violations in the past 2 years. Formal responses include notice to clean, cease and desist, administrative orders, compliance schedules, monetary penalties (municipal infractions), and suspended service, each of which is described within Section 3.2. The Environmental Engineer or designee is responsible for implementing a Notice of Violation or Cease and Desist. Any city enforcement agent has the authority to utilize administrative remedies. The city may enforce any violation that may be enforced by civil action brought in by the city.

2.4 Level 4: Judicial Response

A judicial response involves civil or criminal prosecution and will be implemented when a violation is significant and/or the responsible party is uncooperative throughout the city's attempts to achieve compliance using formal responses. Judicial responses include injunctive relief, consent decrees, civil penalties and criminal penalties, each of which is discussed in Section 3.3. The City Attorney is responsible for implementing judicial responses.

2.5 Level 5: Referral to Other Agencies

If formal responses prove insufficient to resolve the situation, the City of Billings may enlist the assistance of the Montana DEQ, or any other governmental agency involved. Help from the Montana DEQ may be solicited at an earlier stage of the process in the event the Montana DEQ has a vested interest in the site, has a history of dealing with the responsible party, or the violation is deemed significant enough for immediate action. The Environmental Engineer will seek referral to other agencies when necessary.

3. Selecting an Appropriate Response Remedy

Once the severity of the violation is determined, the proper response must be identified and initiated. The city's selected response remedies are described below. Each violation must be documented even if the decision is to take no action. Documentation must explain why such action was or was not taken.

3.1 Informal Remedies

i.) Verbal/Email Notice

A verbal notice will be used to obtain additional information pertaining to a potential violation or to resolve an infrequent violation. The initial contact will take place within 24 hours of determining a potential violation. At a minimum, the conversation shall be documented with the following information:

1. date/time/address of contact,
2. the city staff member who initiated contact,
3. the person contacted (responsible party),
4. statement, and

5. the content of the conversation.

The initial contact will start the enforcement timeline. In the event the call/email is not answered, the Environmental Engineer or another delegated city employee will make a site visit and leave a note on the property if feasible. If no contact is made after attempting both methods, the enforcement timeline will begin on the date of the site visit. The length of the violation will be measured beginning with the initial contact or site visit depending on the situation. If a violation is found during a city inspection, the inspection will serve as the start of the enforcement timeline.

ii.) Notices of Violation

A Notice of Violation (NOV) is an official communication from the city to the responsible party which informs the party a violation has occurred. The NOV will be issued as a warning for significant violations of the city's storm water ordinances and requirements or in cases where a verbal warning for a minor infraction has been ignored for at least 7 days. The NOV documents the initial attempts of the city to resolve the violation.

The NOV shall contain:

1. The name and address of the alleged violator;
2. The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
3. A statement setting forth the facts which constitute the violation;
4. A description of the remedial measures necessary to restore compliance with this chapter (Sec. 28-705.) and a time schedule for the completion of such remedial action;
5. A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed;
6. A statement that the determination of violation may be appealed to the public works director by filing a written notice of appeal within ten (10) calendar days of service of notice of violation; and
7. A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

The NOV's shall be sent via certified mail/return receipt or hand delivered and signed by the responsible party.

iii.) Compliance Schedule

A compliance schedule directs the responsible party to address the violation and restore compliance by a specified date. The compliance schedule will include the following:

1. the specific violation,
2. the city's previous correspondence and attempts to achieve compliance,
3. required actions to be completed by the responsible party, and
4. dates by which the actions must be completed to return to compliance.

Issuance of a compliance schedule does not necessarily relieve the responsible party of having to meet any existing storm water control commitments, nor protect the responsible party.

iv.) Meeting

A meeting will be requested with the responsible party within 2 working days (or a timeframe deemed appropriate for the situation) of the initial contact without fully mitigating the violation, or in the opinion of an Environmental Engineer or Designee, when the responsible party is not putting forth a good faith effort. The meeting will serve to educate the responsible party regarding the violation and to discuss necessary measures for correction. The meeting will be conducted by an Environmental Engineer or another delegated city employee. At a minimum, the meeting shall be documented with the following information:

1. meeting location,
2. date/time of meeting,
3. meeting attendees,
4. content of the conversation, and

5. agreements made at the meeting.

3.2 Formal Remedies

i.) Cease and Desist (CDO)

When a city enforcement agent finds that discharge has taken place or is likely to take place, the agent may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall: a) comply with the requirement; b) comply with a time schedule for compliance, and/or; c) take appropriate compliance remedial or preventive action to prevent the violation from recurring. The CDO will be issued for failure to comply with an NOV or for extreme violations of the city's construction site storm water requirements.

The CDO should also include the following information:

1. the specific violation,
2. contact information for the city personnel who must be contacted to discuss required remediation procedures,
3. the mitigation goals necessary to remove the CDO, and
4. a warning notifying the site operator of additional enforcement actions for continued noncompliance.

A CDO will not be removed until the situation is completely resolved as determined by the city enforcement agent.

ii.) Administrative Order

An administrative order is a formal enforcement document that requires the responsible party to either cease the specified activity or implement specified corrective measures. An administrative order will be issued when informal remedies have been pursued and have not resulted in compliance.

Ex.) *Notice to clean.* Whenever a city enforcement agent finds any oil, earth dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds or in close proximity to any open drain or ditch channel, which may result in an increase in pollutants entering the storm drain or a non-stormwater discharge to the storm drain, the agent may give notice to remove and lawfully dispose of such material in any manner that the agent reasonably may provide. The recipient of such notice shall undertake the activities as described in the notice within the time frames set forth therein. In the event the owner or operator of a facility fails to conduct the activities as described in the notice, the city director of public works or designee may cause such required activities as described in the notice to be performed, and the cost thereof shall be assessed and invoiced to the owner of the property. If the invoice is not paid within sixty (60) calendar days, a lien shall be placed upon and against the property.

iii.) Suspend Service

The city has the authority to suspend water service, solid waste removal, and any other city services deemed applicable. These actions will be used against a responsible party that fails to comply with previous remedies or to stop discharges considered to pose an immediate risk to the public or the environment.

iv.) Appeal

Any person notified of noncompliance pursuant to Chapter 28, BMCC, or required to perform monitoring, analysis, reporting and/or corrective action, who is aggrieved by the decision of the city enforcement agent, may appeal such decision in writing to the public works director within ten (10) business days following the effective date of the decision or written notice. Upon receipt of such request, the city administrator shall request a report and recommendations from the city enforcement agent and shall set the matter for administrative hearing at the earliest practical date. At said hearing, the city administrator may hear additional evidence and may revoke, affirm or modify the city enforcement agent's decision. Such decision will be final.

3.3 Judicial Remedies

i.) Injunctive Relief

An injunction is a court order which directs the responsible party to cease a specified action or behavior. The city will seek injunctive relief if the responsible party refuses to comply with an administrative order or if delays in filing a civil suit would result in irreparable harm to the MS4 or receiving waterbody.

ii.) Consent Decree

A consent decree is an agreement between the city and the responsible party reached after a lawsuit has been filed. A consent decree will be pursued when the city and the responsible party can reach a suitable agreement.

iii.) Municipal Infraction

A municipal infraction is a civil offense punishable by a civil penalty. An administrative fine is assessed by the Municipal Court Judge to the responsible party for a violation of the city's storm water management requirements. The fine is considered punitive in nature and is not related to any specific cost borne by the city. The amount of the fine will be proportional to the harm caused by the violation at the discretion of the Municipal Court Judge. The city may also recover damages to its MS4 or for the cost of fixing/maintaining storm water infrastructure as stated in city ordinances.

iv.) Civil Penalties

If necessary, a civil suit will be used to recover costs borne by the city in responding to the responsible party's noncompliance.

v.) Criminal Penalties

Criminal prosecution is a formal process of charging the responsible party with violations of ordinance provisions punishable by fines and/or imprisonment. Criminal prosecution will be pursued when the responsible party has ignored all previous corrective actions and, in the view of the Billings City Attorney or the State DEQ, the responsible party is not taking sufficient action to mitigate the violation. Criminal penalties may be started sooner at the discretion of the Billings City Attorney.

3.4 Additional Considerations

The following criteria will be considered to aid in determining the correct level of response:

i.) Magnitude

Incidents which may cause damage to the MS4 or pose a threat to human health and/or the environment will be considered significant and necessitate a formal enforcement action.

ii.) Duration

Violations which continue over prolonged periods of time will result in escalated enforcement actions.

iii.) Compliance History

The responsible party's compliance history will be an important factor in determining the appropriate remedy to apply. The city has the authority to issue informal or formal notices for less severe violations. However, recurring violations may lead the city to escalate the level of response in a shorter time frame than usual.

iv.) Good Faith of the Operator

Good faith is a characteristic of actions showing the responsible party intends to achieve

compliance in a timely manner. If the responsible party is attempting in good faith to correct the violation, the city’s enforcement responses may be less severe. However, potential threats to human health or the environment will always take precedence when considering the city’s level of response.

In addition, while the responsible party’s good faith in correcting its noncompliance may be a factor in determining which enforcement response is suitable, good faith does not preclude the responsible party from enforcement action.

4. Enforcement Roles and Responsibilities

The following table details the typical enforcement roles of city staff. 1st level indicates primary responsibility, 2nd level represents secondary responsibility, and NA indicates staff does not have the authority to make the decision.

Table 4-1: Staff Enforcement Roles

Enforcement Action	Environmental Engineer	Delegated City Employee	Public Works Director
Verbal/Email Notice	1 st Level	1 st Level	2 nd Level
Meetings	1 st Level	1 st Level	2 nd Level
Notice of Violation	1 st Level	1 st Level	2 nd Level
Compliance Schedule	1 st Level	1 st Level	2 nd Level
Cease and Desist	NA	NA	1 st Level
Administrative Order	NA	NA	1 st Level (City Admin.)
Pre-Citation Warning	NA	NA	1 st Level (City Admin.)
Monetary Penalty	NA	NA	1 st Level (Municipal Court)
Suspend Service	NA	NA	1 st Level (Public Works)
All Judicial Remedies	NA	NA	1 st Level (City Attorney)

All significant violations and the responses shall be reported to the Stormwater Program Manager and the Public Works Director. The Environmental Engineer or delegated city employee will be primarily responsible for informal responses to achieving compliance. If compliance is not achieved or the risk to the environment or safety and health of the community increases, the Public Works Director will take over primary responsibility for enforcement. When the situation requires a formal response, the Public Works Director will assume the responsibility for deciding the proper approach to achieve compliance. The City Attorney and the Environmental Engineer will be copied on all formal enforcement responses. The Public Works Director will consult with the City Attorney and City Administrator on judicial actions.

5. Escalation Process and Schedule for Site Violations

The common violations and enforcement response schedules differ for each MCM. Each violation has unique circumstances and concerns, and therefore, the tables below will serve as guidance only. Violations which pose a significant threat to human health and/or the environment will utilize more severe enforcement actions on a compressed timeframe in order to quickly eliminate the violation. Refer to the following attachments for this information:

- Attachment A: Illicit Discharge Detection and Elimination
- Attachment B: Construction Site Storm Water Management
- Attachment C: Post-Construction Site Storm Water Management

Table 2: Examples of Common Construction Site Storm Water Violation Responses

Example Violation	Status of Violation	Level of Response	Response Remedy
Conducting earth disturbing activities without a City Storm Water Permit, NOI, & SWPPP	<u>Operator is unaware of requirements</u>	<u>Informal</u>	Verbal/Email Notice <u>Compliance Schedule</u> Stop Work Order
	Operator is aware but has chosen not to obtain appropriate permit	Formal	
Best management practices (BMPs) not maintained/installed correctly, no off-site discharge	First Violation	Informal	Verbal/Email Notice Compliance Schedule
	Second Violation, good faith effort	Informal	Meeting
	Second Violation, no good faith effort	Formal	Notice of Violation
BMPs not maintained/installed correctly, with off-site discharge	First Violation	Informal	Verbal/Email Notice Compliance Schedule
	Repeat Violation, good faith effort	Informal	Meeting
	Second Violation, no good faith effort	Formal	Notice of Violation
	>2 Violations, no good faith effort	Formal	Cease & Desist
Improper handling of hazardous material (e.g., concrete washout, paint, or oil)	First Violation	Informal	Verbal/Email Compliance Schedule
	Second Violation	Formal	Notice of Violation
	>2 Violations, no good faith effort	Formal	Cease & Desist
Tracking soil off-site, dust blowing off-site	First Violation	Informal	Verbal/Email Notice Compliance Schedule
	Second Violation, good faith effort	Informal	Meeting
	Second Violation, no good faith effort	Formal	Notice of Violation
	>2 Violations, no good faith effort	Formal	Cease & Desist
Extreme infractions	First Violation	Formal	Notice of Violation
	Repeat Violation	Formal	Cease & Desist
Not conducting regular inspections and maintenance as specified in the permit	First Violation	Informal	Verbal/Email Notice Compliance Schedule
	Second Violation, good faith effort and no offsite discharge	Informal	Meeting
	Second Violation, off-site discharge	Formal	Notice of Violation
	Second Violation, no good faith effort	Formal	Cease & Desist
Terminated MDEQ Construction General Permit before site is stabilized	First notice that permit needs to remain_ <u>open</u>	<u>Informal</u>	Verbal/Email Notice <u>Compliance Schedule</u> Cease & Desist
	No good faith effort	<u>Formal</u>	

ATTACHMENT A

ESCALATION PROCESS AND SCHEDULE FOR ILLICIT DISCHARGE VIOLATIONS

Table's A-1 and A-2 (below) provide typical responses to common illicit discharge violations and a typical schedule for escalation of enforcement actions. Each violation has unique circumstances and concerns. Therefore, the tables below serve as guidance only. Violations which pose a significant threat to human health and/or the environment will utilize more severe enforcement actions on a compressed timeframe in order to quickly eliminate the violation, abate any damages, and prevent recurrence.

Table A-1: Examples of Common Illicit Discharge Violation Responses

Violation	Circumstances of Violation	Initial Level of Response	Initial Response Remedy
Dumping household toxins in a storm drain	Isolated Incident	Informal	Verbal Notice or NOV
	Repeat Violation	Formal	Municipal Infraction
Contractor discharging paint, concrete wash water, or other deleterious substance into a storm drain	First Incident	Informal	Verbal/Email Notice or Meeting or NOV
	Repeat Violation	Formal	Municipal Infraction
Restaurant or business discharging fat, oil, grease, or mop wash water to storm drain	Isolated Incident	Informal	Verbal Notice or Meeting or NOV
	Repeat Violation	Formal	Municipal Infraction
Direct connection of anything other than storm water or clean groundwater to a storm sewer	Isolated Incident/ Unaware of connection	Informal	Verbal Notice or Meeting or NOV
	Known issues previously ignored by the responsible party or new connection	Formal	Municipal Infraction
Discharging wastewater from RV, camper, or another source to a storm sewer	Any Instance	Formal	Municipal Infraction

Table A-2: Possible Escalation Process, Response Schedule, and Responsibilities for Illicit Discharge Violations

Response	Time Frame	Responsibility
Verbal Notification	Within 24 hours of determining a potential violation	Environmental Eng./Designee
Notice of Violation	Within 2 days of violation	Environmental Eng./Designee
Meeting	Within 3 days of violation	Environmental Eng./Designee
Compliance Schedule	Within 3 days of violation	Environmental Eng./Designee
Cease & Desist	Within 4 days of violation	Public Works Director
Administrative Order	Within 4 days of violation	Public Works Director/City Admin.
Order to Show Cause	Within 2 days of violation dispute	Public Works Director/City Admin.
Monetary Penalty	Within 10 days of violation	Municipal Court
Suspend Service	Within 6 days of violation	Public Works Director/City Admin.
Judicial Actions	As deemed appropriate by the Public Works Director	Public Works Director/City Attorney
Referral to other agencies	As deemed appropriate by the Public Works Director	Public Works Director

ATTACHMENT B

ESCALATION PROCESS AND SCHEDULE FOR CONSTRUCTION VIOLATIONS

Tables B-1 and B-2 (below) provide typical responses to common construction site violations and a typical schedule for escalation of enforcement actions. Each violation has unique circumstances and concerns. Therefore, the tables below will serve as guidance only. Violations which pose a significant threat to human health and/or the environment will utilize more severe enforcement actions on a compressed timeframe in order to quickly eliminate the violation, abate any damages, and prevent recurrence.

Table B-1: Examples of Common Construction Site Stormwater Violation Responses

Violation	Circumstances of Violation	Initial Level of Response	Initial Response Remedy
Conducting earth disturbing activities without storm water construction permit, NOI, & SWPPP	Operator is unaware of requirements	Informal	Verbal Notice
	Operator is aware but has chosen not to obtain appropriate permit	Formal	Cease and Desist
Best management practices (BMPs) not maintained or installed correctly, no runoff	First Violation	Informal	Verbal/Email Notice
	Repeat Violation	Informal	Notice of Violation
BMPs not maintained/installed, runoff	First Violation	Informal	Verbal/Email Notice
	Previously warned of deficiencies (dry or wet weather)	Formal	Notice of Violation or Cease & Desist/ Municipal Infraction
Site conditions require BMPs listed on SWPPP plans but BMPs are not installed	First Violation	Informal	Verbal/Email Notice or Notice of Violation
	Repeat Violation	Formal	Cease & Desist and/or Municipal Infraction
Tracking soil offsite, dust blowing offsite	First Violation	Informal	Verbal/Email Notice
	Repeated Violation	Formal	Notice of Violation or Cease & Desist/ Municipal Infraction
Extreme infractions	First Violation	Informal	Notice of Violation
	Second warning or history of violation	Formal	Cease & Desist
Not conducting regular inspections and maintenance as specified in the permit	First Violation	Informal	Verbal/Email Notice
	Second Violation, no discharge issues	Informal	Notice of Violation
	Second Violation, BMPs non-compliant, discharge happening, no good faith effort by responsible party	Formal	Cease & Desist and/or Municipal Infraction
SWPPP not updated when site inspected	First Violation	Informal	Verbal Notification
	Repeat Violation	Informal	Notice of Violation
	>2 Violations	Formal	Municipal Infraction
SWPPP not on site	First Violation	Informal	Verbal Notification
	Second Violation	Informal	Notice of Violation
	>2 Violations	Formal	Municipal Infraction

Table B-2: Possible Escalation Process, Response Schedule, and Responsibilities for Construction Site Stormwater Violations

Response	Time Frame	Responsibility
Verbal Notification	Within 24 hours of determining a violation	Environmental Engineer or Designee
Notice of Violation	Within 2 days of violation	Environmental Engineer or Designee
Compliance Schedule	Within 3 days of violation	Environmental Engineer or Designee
Cease & Desist	Within 7 days of notice of violation	Public Works Director
Municipal Infraction	Within 1 day of issuing the stop-work order if work is not halted	Municipal Court
Administrative Order	Within 4 days of SWO	Public Works Director/City Admin.
Judicial Actions	As deemed appropriate	Public Works Director/City Attorney
Referral to other agencies	As deemed appropriate	Public Works Director

Minor infractions to the City of Billings ordinances are infractions not causing immediate harm to the environment or the public health and safety but having a strong likelihood to do so if the weather changes. Examples of this are:

- BMPs incorrectly installed, but no runoff is occurring on site
- Contractor not following their own Stormwater Management Plan but there are no deleterious effects on the environment
- Not installing sediment control BMPs and just sweeping street as needed
- Allowing sediment to be tracked offsite during dry weather

Significant infractions to the City of Billings ordinances are infractions creating an immediate risk to the environment or public health and safety such as:

- Sediment plume from site reaches a City of Billings storm drain manhole
- Sediment has remained in city right of way for 7 days or more
- Sediment from construction site has been transported more than 50 feet offsite or to an arterial
- Dust from the site is causing a safety hazard
- Dust from site reduces visibility to less than 100 feet for any length of time
- A visible layer of dust is deposited on parked cars or impervious surfaces a quarter mile or more from the site that was observed coming from a specific construction site or there is direct evidence of the origin of the dust

Extreme infractions to the City of Billings ordinances are infractions having an immediate risk to the health and safety of the public or the environment on a large scale such as:

- Sites over 5 acres with insufficient erosion controls implemented and dust reducing visibility to less than 30 feet at any time or causing an immediate safety hazard
- Sites over 5 acres with insufficient erosion controls implemented and sediment flowing offsite to a surface water body or storm sewer drain

The length of compliance timeline will vary with the severity of the violation. Compliance schedules will be determined by city staff using the following guidelines:

- The City of Billings will determine the level of effort from the contractor that constitutes a good faith effort.
- Mitigating storm water issues is the top priority on-site infractions.

- The minimum compliance timeline will be 24 hours.
- The availability of materials can be a factor. For example, if the contractor is unable to obtain rock for a tracking pad after checking with all local suppliers, the timeline can be lengthened to accommodate this issue.
- All immediate risks to the public health and safety or the environment shall be mitigated to the point where the site is not continuing to pollute the environment within a maximum of 24 hours.

ATTACHMENT C
ESCALATION PROCESS AND SCHEDULE FOR POST-CONSTRUCTION
STORM WATER MANAGEMENT VIOLATIONS

Tables C-1 and C-2 (below) provide typical responses to common post-construction storm water management violations and a typical schedule for escalation of enforcement actions. Each violation has unique circumstances and concerns. Therefore, the tables below will serve as guidance only. Violations which pose a significant threat to human health and/or the environment will utilize more severe enforcement actions on a compressed timeframe in order to quickly eliminate the violation, abate any damages, and prevent recurrence.

Table C-1: Examples of Common Post-Construction Storm Water Management Violation Responses

Violation	Circumstances of Violation	Initial Level of Response	Initial Response Remedy
Failure to obtain a storm water maintenance agreement	First warning	Informal	Verbal/Email Notice
	Repeat Violation	Formal	Municipal Infraction and/or suspend service
Failure to submit an annual inspection for the storm water maintenance agreement	First warning	Informal	Verbal/Email Notice
	Repeat Violation	Formal	Municipal Infraction and/or suspend service
Failure to maintain a post-construction control	Isolated incident	Informal	Notice of Violation
	Repeat violation	Formal	Municipal Infraction and/or suspend service
Failure to get approval to modify a practice	First warning	Informal	Notice of Violation
	Fail to make requested changes	Formal	Municipal Infraction and/or suspend service
Failure to notify the Public Works Department of a change of ownership	First Incident	Informal	Verbal/Email Notice
	Repeat Violation	Informal	Notice of Violation

Table C-2: Possible Escalation Process, Response Schedule, and Responsibilities for Post-Construction Storm Water Management Violations

Response	Time Frame	Responsibility
Verbal Notification	Within 24 hours of determining a potential violation	Environmental Engineer or Designee
Notice of Violation	Within 2 days of violation	Environmental Engineer or Designee
Compliance Schedule	Within 3 days of violation	Environmental Engineer or Designee
Administrative order	Within 4 days of violation	Public Works Director/City Admin.
Monetary Penalty	Within 5 days of violation	Municipal Court
Suspend Service	Within 6 days of violation	Public Works Director/City Admin.
Judicial Actions	As deemed appropriate	Public Works Director/City Attorney
Referral to other agencies	As deemed appropriate	Public Works Director

**ATTACHMENT D
ENFORCEMENT RESPONSE DOCUMENTATION FORM**

City Personnel Involved Date

Description of Violation

Location of Violation (address)

() -

Responsible Party Telephone

Street City Zip

Description of Violation:

Level of Response Selected Remedy Date for Follow-Up

Additional Notes:
