

Stormwater Enforcement Response Plan

1.0 PURPOSE OF ENFORCEMENT RESPONSE PLAN

City of Surprise staff will follow this Enforcement Response Plan (ERP) to identify, document, and respond to potential and/or actual water quality violations. In addition, the ERP describes the duties of the enforcement staff and the tools available to help ensure compliance with applicable regulations. A goal of this ERP is to assist staff in taking consistent actions needed to achieve effective and timely compliance with the City's stormwater-runoff pollution-prevention ordinance and other enforcement authorities allowed by the Surprise municipal code.

This ERP is established in part to satisfy the following objectives:

- Enforcement Measures and Tracking;
- Illicit Discharge Detection and Elimination;
- Construction Site Inspection and Enforcement;
- Operation and Maintenance of Post-Construction Storm Water Management Measures;
- Post-Construction Best Management Practice Condition Assessment.

This ERP outlines the various enforcement options available to City staff and provides guidelines as to their application. The selection of an appropriate enforcement action and the escalation of enforcement are based on the seriousness of the violation and its resulting threat to water quality, human health, and the environment. If previous violations have occurred before, the violator's response to the agency's previous attempts to achieve compliance can influence the type of enforcement pursued. Other additional factors that can affect the response include:

- Violation magnitude and/or duration;
- History of violations;
- Effect of violation on receiving waters;
- Violator's response and good-faith efforts to correct the situation; or
- Follow-up inspection results.

The nature of a specific violation may require tailoring of the timeframes for correction and/or the use of temporary measures to promptly address a violation before a permanent solution is implemented. It may be appropriate to refer violations to another local, state, or federal agency for additional enforcement.

The City has authority to enforce stormwater requirements under sections 58-456 through 548 of the Surprise Municipal Code.

2.0 COORDINATION WITH OTHER AGENCIES

The nature and circumstances of particular discharges or violations often involve other entities and agencies that have primary enforcement authority. The City will work collaboratively to identify which entity or agency will determine enforcement action. The entities and agencies include, but are not limited to, those listed in Table 2:

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Table 1. Agencies with primary authority to enforce laws related to particular discharge or violation types.

Agency	Role	Contact
Arizona Department of Environmental Quality (ADEQ)	Role: Administers the Arizona National Pollutant Discharge Elimination System (AZPDES) Permit for Municipal Separate Storm Sewer System (MS4) Phase II permittees.	602-771-2300
Arizona Department of Water Resources (ADWR)	Role: Administers the Flood Warning and Floodplain Management program; Operates and maintains the statewide flood warning website.	602-771-8500
Arizona Game and Fish Department (AG&F)	Role: Oversees Fish Consumption Advisories for urban areas (urban runoff pollution-discharges that may result in harm to human, health or the environment).	602-942-3000
City of Surprise Fire Department.	Role: Implements the City’s Hazardous Materials Area Plan including flammable liquid incidents. Also staffs the HazMat Team within the City.	623-222-5000
Maricopa County Environmental Services Department (MCESD)	Role: Implements the county’s health, safety, and general welfare programs for citizens, including the prohibition of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law.	602-506-5557

3.0 TYPES OF ENFORCEMENT ACTIONS AND THEIR USE

The municipal code provides a range of alternatives for responding appropriately to a given situation or violation. Factors that may enter into a determination of an enforcement option include magnitude of the violation, the duration and history of non-compliance, the good faith efforts of the violator to achieve compliance, and whether the violation may interfere with the municipality’s compliance with the Phase II Permit. An enforcement action may be escalated depending on the circumstances of the case. Actions range from technical assistance through criminal prosecution.

Table 3 lists and describes available enforcement actions. The examples provided are instructional in nature and are not intended to limit the use of any particular enforcement option. In addition to the range of enforcement actions authorized in the Municipal Code, the City may also deny local permits and approvals and may refer violators to the Arizona Department of Environmental Quality (ADEQ) or another regulatory agency with jurisdiction over the violation.

A compliance meeting may be arranged—at the City’s sole discretion—to discuss the nature of a violation with the responsible party prior to initiation of a more formal enforcement action. At these meetings, information submitted by the responsible party (such as a written plan, and

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monitoring data) will be reviewed and the enforcement options discussed. The meeting may be held informally at the responsible person's place of business, a City facility, or other mutually agreed location.

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Table 2. Enforcement Actions Overview

Actions	Use	Time Schedule to Achieve Compliance
Technical Assistance and/or Outreach and Education	<ol style="list-style-type: none"> 1. Use where inspector observes a situation that poses a potential water quality threat and the responsible party is unaware of the requirement and agrees to address the issue in a timely manner. 2. Most commonly used with residents or businesses and activities that are not specifically regulated. 	The goal is to correct the situation and behavior to protect water quality. The compliance timeframe should be short and will depend on the nature of the potential water quality threat. Compliance should be achieved within seventy-two (72) hours.
Verbal Warning	<ol style="list-style-type: none"> 1. Use for threatened violations due to inadequate housekeeping, lack of appropriate BMPs to prevent pollution, or threatened non-stormwater discharges disallowed by Phase II Permit. Typically would be issued during an inspection. 2. Use when technical assistance/education and outreach was not effective in achieving compliance. This enforcement approach is consultative in nature. 	Correction should be achieved within 30 days. Shorter time periods may also be specified, such as before the next inspection or before the next predicted rain event.
Written Warning Letter and Order to Abate Pollution	<ol style="list-style-type: none"> 1. Issue for minor violations due to failure to implement BMPs, inadequate BMPs, or spilled materials that do not enter MS4 or receiving waters, when there is no significant harm. 2. Use when verbal warning was not effective in achieving compliance. 	Require correction of spilled materials or illicit discharges within 72 hours. Require correction of BMPs within 30 days or before the next predicted rain event.
Warning Letters with requirements to submit written reports	<ol style="list-style-type: none"> 1. Issue for minor violations due to failure to have up-to-date plans, or where a more detailed corrective action plan is required, or where supplemental information is needed and there is no significant harm. 2. Use when verbal warning or earlier written warning letter was not effective in achieving compliance. 	Require correction of spilled materials or illicit discharges within 72 hours. Require submission of required reports. Inspector can specify the timeframe for the reports as appropriate for the situation.

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Table 2. Enforcement Actions Overview

Actions	Use	Time Schedule to Achieve Compliance
Notice of Violation (NOV)	<ol style="list-style-type: none"> 1. Use for violations that result in a discharge of pollutants to the MS4 or receiving water or for knowing disregard of BMP requirements. 2. Use when written warning was not effective in achieving compliance. 3. Use when responsible party fails to respond to written warning. 	<p>Require correction of spilled materials or illicit discharges within 72 hours.</p> <p>Inspector can specify shorter timeframe as appropriate for the situation.</p>
Stop Work Order	<ol style="list-style-type: none"> 1. Use for construction sites for serious violations with immediate risk to public, property, or environment. 2. Use for construction sites after ongoing unsuccessful enforcement efforts when there is a continued presence of serious violations. 	<p>Effective immediately, all work, except work to remedy non-compliant situation, must cease.</p>
Civil Action	<ol style="list-style-type: none"> 1. Use for violations that cause significant harm. 2. Use when response to written warnings for NOV is inadequate or the responsible party fails to respond. 	<p>The time schedule for compliance will be determined based on case-specific information. Consult with City Attorney.</p>
Criminal Action	<ol style="list-style-type: none"> 1. Use for the most serious violations, typically involving a responsible party who knowingly violates the requirement. 2. Use when responsible party makes false statements. 	<p>Consult with City Attorney and/or City Prosecutor; may be referred to County Attorney or U.S. Attorney’s office depending on severity of violation.</p>
Referrals	<ol style="list-style-type: none"> 1. Sites that fail to obtain state industrial or construction permits. 2. Sites that fail to comply with municipal enforcement actions. 3. Sites that discharge waste or hazardous wastes to receiving waters. 	<p>NA</p>
Denial of Local Permits and Approvals	<ol style="list-style-type: none"> 1. Use when sites and facilities fail to meet stormwater ordinance requirements 	<p>NA</p>

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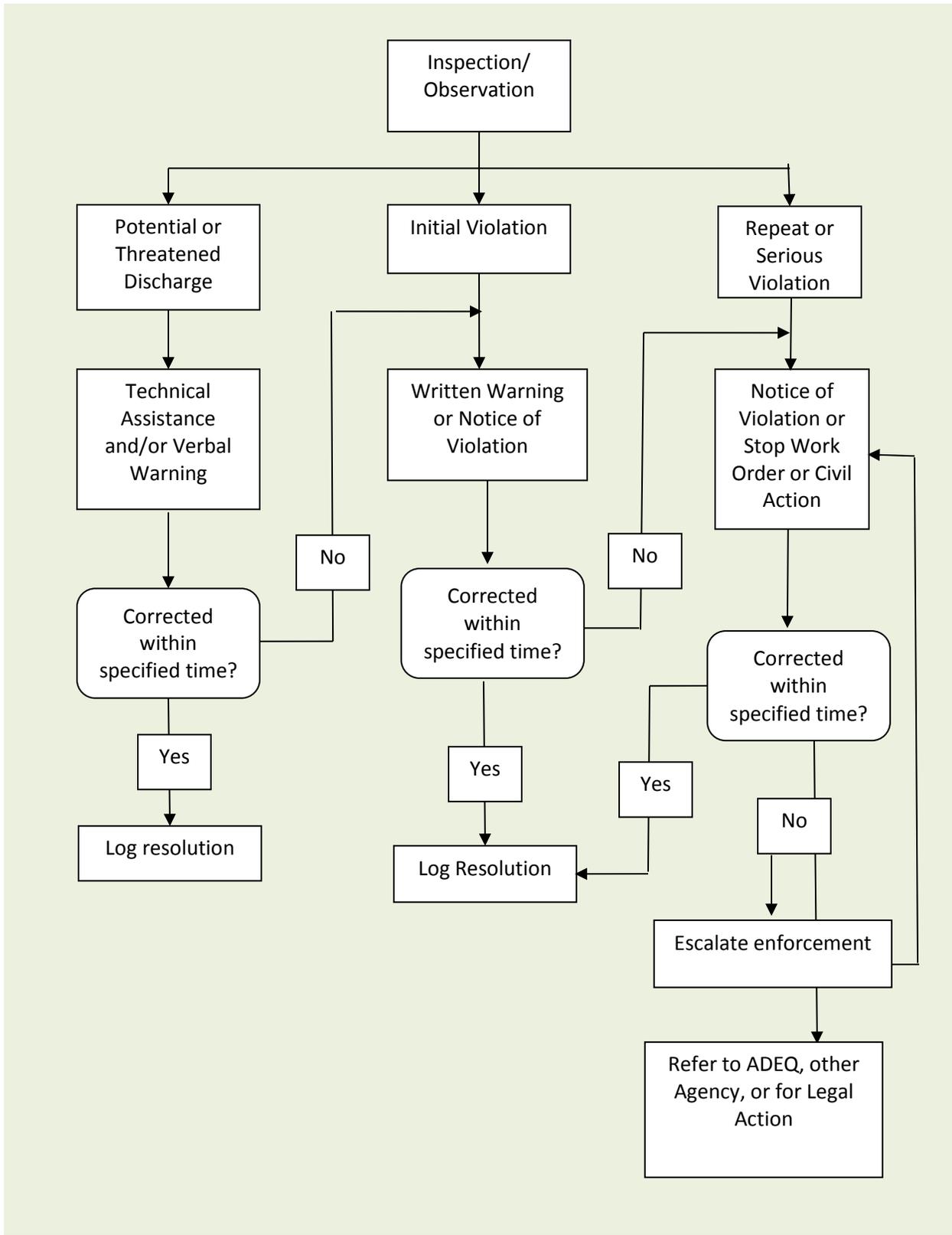


Figure 1. Flow Chart of Progressive Enforcement Process

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4.0 ESCALATION OF ENFORCEMENT ACTIONS

The City implements a progressive enforcement response process that is designed to maintain a fair and equitable system for enforcement to ensure that actions are proportionate to the scale and effect of violations. This process allows the City to escalate enforcement actions to encourage prompt compliance. An enforcement action may be escalated depending on the circumstances of the case. In any situation, the City can select the most appropriate enforcement action for the situation; it is not necessary to start at the lowest level action if the situation warrants a higher level response. A flow chart showing examples of the enforcement escalation process is provided in **Figure 1**.

5.0 REFERRALS TO OTHER AGENCIES

As required by the Phase II Permit, the City will make a good faith effort to compel compliance with the municipal code by exercising its progressive enforcement authorities.

- The Phase II Permit requires the City to refer non-filers under the State Industrial General Permit and Construction General Permit within 30 days of making the determination that the facility has not obtained appropriate permit coverage. Referrals will be submitted to the Arizona Department of Environmental Quality (“AZDEQ”) complaint website at: <http://www.azdeq.gov/complaint-form>
- The Phase II permit requires the City to refer responsible parties with on-going violations to AZDEQ following at least two documented attempts to compel compliance through enforcement of the municipal code.

Notwithstanding the good-faith-effort requirements identified above, the City reserves the right to refer violators to other regulatory agencies at any point in the enforcement process, especially in cases of discharges that may result in harm to human health or the environment. Referral may be made to any federal, state, or local agencies with appropriate jurisdiction. When warranted or requested, the City will cooperate with other agencies on joint violation or incident responses or compliance inspections.

6.0 COST RECOVERY

The responsible party will be liable for public costs and expenses incurred by the City in connection with the enforcement and abatement. Recoverable costs include costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, costs of suit, salaries, attorney’s fees, expert fees, equipment and materials, testing and monitoring expenses, costs for clean-up or mitigating actions taken by the City, and other expenses recoverable under state law.

7.0 ROLES AND RESPONSIBILITIES

The response to stormwater violations occurs at several levels and requires coordination and communication between staff to ensure resolution or appropriate escalation. City staff will assume the necessary roles to perform inspections and coordination to ensure enforcement of the City’s municipal code sections which provide legal authority to control pollutant discharges

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into and from its MS4 and to meet the requirements of the Phase II Permit. The City's Water Resource Management Director or his or her designee will perform the role of Enforcement Official. General responsibilities are detailed in the sections below.

7.1 Duties of Staff Performing Inspections:

Assigned staff will perform inspections to identify and respond to stormwater-related complaints and violations in a timely manner.

The City's Stormwater Program Analyst will either conduct or delegate routine inspections and investigate illicit discharge incidents and complaints.

The City's Public Works Department oversees public and private land-disturbing construction projects requiring a permit including inspections for erosion control, sediment control, and good housekeeping Best Management Practices (BMPs) and abatement of illicit discharges from the construction site.

The City's Water Resource Management Stormwater Division is responsible for verifying inspection of regulated project post-construction BMPs (e.g., bioretention facilities) following the completion of said projects and in accordance with Phase II Permit.

Table 4 provides a summary of inspection staff title and duties.

As necessary to comply with the Phase II Permit, assigned staff will perform the following inspection-related duties:

- Conduct inspections and reviews documentation to identify discharge violations;
- Educate the responsible party regarding the potential harm of the discharge, appropriate BMPs that may be used to abate the discharge, and penalties for non-compliance;
- Issue Verbal Warnings, Written Warnings, Notices of Violation, and Administrative Citations to responsible parties;
- Review compliance history reports;
- Prepare, maintain, and log all inspection reports and enforcement actions;
- Assist in the preparation of and implementation of compliance meetings;
- Review compliance schedules and tracks deadlines;
- Verify responsible party has responded, in a timely manner, to enforcement actions;
- Prepare compliance reports;
- Report spills that pose an immediate threat to human health or the environment immediately to #911. The Arizona Department of Environmental Quality Emergency Response is on call 24-hours/day, 7 days a week: 602-771-2330. A spill of any quantity that impacts a waterway within Arizona must be reported. If in doubt, report the spill;
- Conduct informal meetings with owners and/or contractors to encourage compliance and provide education concerning requirements.

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Table 3. Inspection Staff Titles and Duties

Inspector Type	Department	Inspection Target
Civil Construction Inspector	Public Works	City and private permitted construction projects
Stormwater Utility Program Analyst (Performs or delegates role of Illicit Discharge Inspector)	Water Resource Management	Reports of illicit discharges/ non-stormwater discharges.
Stormwater Utility Program Analyst (Performs or delegates role of Post-Construction Inspector)	Water Resource Management	Verifies inspections to ensure ongoing O&M of permanent post-construction BMPs at permitted projects.

7.2 Duties of Staff Performing/Coordinating Enforcement

Assigned staff will perform and coordinate enforcement tasks in a timely and consistent manner. To achieve compliance, City staff will typically conduct the following duties:

- Review violations when compliance has not yet been obtained and make a determination on the level of enforcement to take. Ensure that compliance actions taken are consistent and timely;
- Coordinate and moderate compliance meetings and the preparation of compliance schedules;
- Review compliance reports and schedules prepared by City staff to ensure that appropriate enforcement actions are taken and compliance goals are met;
- Compile compliance reports for annual reporting.

City enforcement staff may issue an order to cease and desist from the discharge, practice, operation, or other activity causing or likely to cause a violation of the City’s stormwater ordinance. Such order shall be directed to those persons in violation of the ordinance stating clearly and concisely the nature of the violation, the requirements for compliance, a timetable for compliance, and such other remedial and/or preventative action as may be deemed necessary. Upon the violator’s failure to comply with such order, the City shall take further enforcement action as specified in this plan, or in accordance with any other appropriate provision of local, state, or federal law. At the discretion of the agency, orders to cease and desist may take the form of any of the enforcement actions shown in Table 3.

To achieve compliance, the enforcement staff typically performs the following duties:

- Reviews responsible party’s response letters to ensure the response adequately addresses compliance issues;

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- Coordinates and moderates compliance meetings and the preparation of compliance schedules;
- Reviews responsible party's compliance history reports;
- Compiles compliance reports for the annual report;
- Keeps a record of all costs and expenses incurred in conjunction with enforcement;
- Communicates and coordinates with resource agencies; and
- Testifies as required if case goes to court.

7.3 Duties of the Enforcement Official

The role of the Enforcement Official is to supervise the enforcement response program. The Enforcement Official is the Water Resource Management Director or his or her designee.

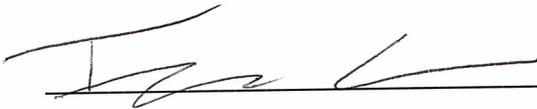
7.4 Other Municipal Staff

All City employees are encouraged to report possible stormwater violations to Water Resource Management. All reports are investigated by an inspector.

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This Enforcement Response Plan (ERP) is intended to be used as a guidance document by the City of Surprise Water Resource Management Stormwater staff for enforcement procedures pertaining to the Stormwater program. This ERP describes the violations and indicates a range of appropriate enforcement options. The ERP serves the following functions:

1. Defines the range of appropriate enforcement actions based on the nature and severity of the violation and other relevant factors.
2. Promotes consistency and timely use of enforcement remedies, in addition to eliminating uncertainty and confusion concerning enforcement. This consistency lessens the likelihood of a successful legal challenge based on charges of “selective enforcement” or harassment.
3. Establishes an escalating enforcement response for violations in a stepped fashion, which provides for consistent and continuing enforcement procedures based on the severity of noncompliance of stormwater requirements.



12/17/18

Date

Terry Lowe, Deputy City Manager