



Rev. June 26, 2023

Stormwater Permit Enforcement Response Plan

1. Introduction

In accordance with the General Permit for Stormwater Discharges Associated with Small Municipal Separate Storm Sewer System (MS4), issued by the Montana Department of Environmental Quality (DEQ), the City of Missoula (City) is required to develop and implement an Enforcement Response Plan (ERP) to ensure compliance with stormwater regulations. The purpose of this ERP is to specify criteria by which City personnel can determine the most appropriate enforcement action for violations. This ERP also helps the City communicate how the enforcement tools available to City personnel will be used to achieve compliance following violations of the City's stormwater regulations. This document addresses the Montana DEQ MS4 General Permit's ERP requirements for Minimum Control Measure (MCM) 4: Construction Site Stormwater Management (Part II.A.3.c.iii).

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

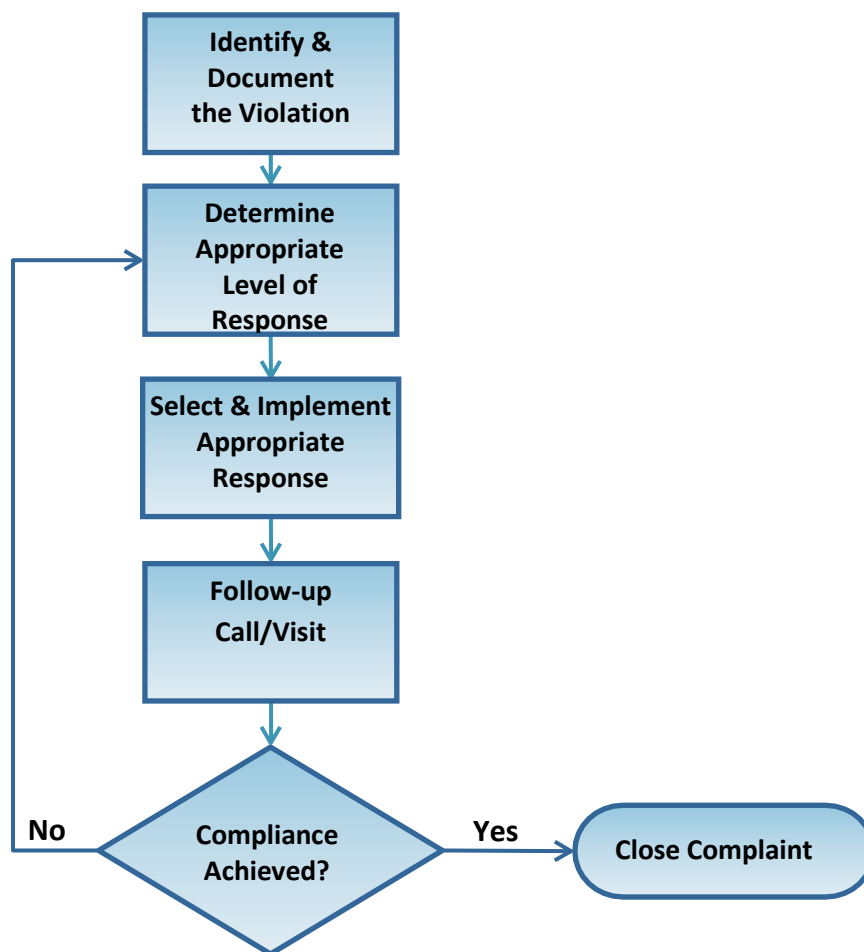
- Prevent pollutants from entering the MS4 and causing environmental harm;
- Communicate definitions for violations;
- Establish appropriate enforcement action based on the nature and severity of the violation;
- Promote consistent and timely use of enforcement tools;
- Ensure that violators return to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

The City of Missoula has the authority to enforce stormwater regulations under Missoula Municipal Code Chapter 13.27 Stormwater Management (Ordinance 3580, 2016; Ordinance 3659, 2020; Ordinance 3716, 2023).

2. 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.

Figure 1: Enforcement Response Flowchart for the City of Missoula Stormwater Permit



3. Identifying/Investigating Violations

The City may become aware of stormwater violations in a number of ways.

- Permit-required inspections or monitoring may reveal violations: the City’s programs include periodic or complaint-based compliance inspections of facilities subject to City permits and routine monitoring and inspections, as required by the MS4 permit.
- Staff of other City divisions or departments may also identify and report violations during the course of performing their regular job functions.
- Staff may receive complaints from the public.

3.1. Construction Site Stormwater Management

The MS4 Permit Part II.A.3 requires the City to address stormwater runoff to the MS4 from new construction activities and redevelopment projects that result in soil disturbance of 1 acre or more. The City does this by requiring stormwater permits and compliance with the City’s stormwater regulations. Sites that are less than 1 acre, but where the activity is part of a larger common plan of development or sale that would disturb one acre or more, are also covered by the City’s permitting and regulatory system. Further, the City adopted local regulations for projects that result in the disturbance of 2,500 square feet or more. The City



inspects construction sites for compliance with the conditions in their Stormwater Permit, under the City's permitting, inspection, and enforcement program.

With respect to construction permitting, the City uses announced and unannounced inspections, in addition to inspections triggered by complaints to determine whether projects have obtained appropriate permits under the City's program and are complying with their Stormwater Permit and their DEQ Stormwater Pollution Prevention Plan (SWPPP), when applicable. The City prioritizes inspection sites most likely to have an adverse impact on water quality, based on the amount of exposed soil, proximity to a waterbody, maximum proposed slope, and the past performance of the responsible parties.

4. Evaluating the Violation

Once a potential violation is identified, the appropriate level of response should be evaluated in order to select the most appropriate response remedy. The City has five levels of response, each of which is briefly described below. All actions shall be documented in the permit record in the City's permitting software using the Enforcement Response Documentation Form (Attachment A) or other equivalent form. Relevant additional records should also be attached to the record, such as a pdf of email correspondence or phone record, for future reference.

4.1. Level 1: No Enforcement Action

There may be situations where City personnel are made aware of a potential violation, but either sufficient evidence does not exist to prove a violation is taking place or there is simply no violation occurring at the time of the inspection. An example of such situation may be if a complaint is received stating that a private stormwater control has not been properly maintained. However, after a brief site inspection and/or verbal discussion, City staff determines the stormwater control is within compliance and no enforcement action is required.

4.2. Level 2: Informal Response

The City's intent is to pursue compliance with stormwater violations through informal methods whenever reasonable. Informal responses include telephone notification, email/verbal notice, agreement for a compliance schedule, or meetings, each of which is described in Section 5.1 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

4.3. Level 3: Formal Response

Formal procedures are appropriate to resolve prolonged or repeated violations or immediate impacts to human health and the environment. Additionally, formal responses may be implemented immediately when the responsible party has a history of violations. A history of violations is defined as a permittee receiving 3 or more informal or formal responses to stormwater violations in the past two years. When an informal response has not effectively achieved consistent and proactive compliance, an EPEI may issue a re-inspection fee for a failed inspection to offset the costs incurred by the City to ensure compliance and reinspect the site. The Stormwater Superintendent or their designee is responsible for implementing a



Notice of Violation or Stop Work Order. The Public Works Director implements administrative orders, and the City Attorney issues Pre-Citation Letters. Formal responses are described in Section 5.2.

4.4. *Level 4: Judicial Remedies*

A judicial remedy involves civil enforcement or criminal prosecution and may be implemented when a violation is significant, ongoing, or the responsible party is uncooperative throughout the City's attempts to achieve compliance using less formal responses. The City Attorney is responsible for seeking judicial remedies. Judicial responses include seeking injunctive relief, consent decrees, civil penalties, and criminal penalties, each of which is discussed in Section 5.3.

4.5. *Level 5: Referral to Other Agencies*

If formal responses prove insufficient to resolve the situation, the City may enlist the help of the Montana DEQ or any other applicable governmental agency. 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 Stormwater Superintendent or their designee will seek referral to other agencies when necessary.

5. *Selecting an Appropriate Response Remedy*

Once the severity of the violation is evaluated, the proper response should be identified and initiated. The City's available response remedies are described below. Each violation must be documented with the permit in the City's permitting software, even if the decision is to take no action. Documentation should explain why such action was or was not taken and include relevant background documents.

5.1. *Informal Responses*

5.1.1. Verbal/Email Notice

A verbal/email notice of potential violation will be used to obtain additional information pertaining to a potential violation or to resolve an infrequent violation by identifying needed corrective action. The initial contact should take place within 24 hours of determining a potential violation exists. At a minimum, the conversation should be documented in the following manner:

1. date/time of contact;
2. the City staff member who initiated contact;
3. the person contacted (responsible party); and
4. the content of the conversation.

The initial contact will start the enforcement timeline, to establish the length of time it takes to address the violation. Per MMC 13.27.530.F., any person convicted of violating any provision in MMC 13.27 may be charged with a misdemeanor. The maximum fine imposed shall be \$1000 per day that the violation occurs. In the event the call/email is not answered, the EPEI 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.



5.1.2. Compliance Schedule

A compliance schedule directs the responsible party to address the violation and come into compliance with the permit terms and applicable regulations by a specified date:

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. date(s) by which the action(s) 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 stormwater control commitments, nor does it protect the responsible party from further enforcement, especially where they do not comply with the terms of the compliance schedule.

5.1.3. Meeting

A meeting should be requested with the responsible party within 2 working days (or a timeframe deemed appropriate for the situation) of the initial contact where the permitting has not fully mitigated the violation. A meeting may also be appropriate where, in the opinion of the EPEI, the responsible party is not putting forth a good faith effort to resolve the violation. The meeting will serve to educate the responsible party regarding the violation and to discuss necessary measures for correction. The meeting should be conducted by the EPEI or another delegated City employee. City staff should document the following elements of any meeting:

1. meeting location;
2. date/time of meeting;
3. meeting attendees;
4. content of the conversation; and
5. agreements made at the meeting.

5.2. **Formal Responses**

5.2.1. Re-inspection Fee

When an informal response is elevated to a formal response, a re-inspection fee may be charged to the permittee if the site fails an inspection. The re-inspection fee is equal to the permit fee and is intended to cover the additional costs incurred by the City to reinspect the site. Failure to pay the re-inspection fee shall result in a hold of any new City permits to the permittee and/or a hold on the Certificate of Occupancy until the fee is paid. If a site fails a re-inspection or if the permittee fails to pay the re-inspection fee, a Notice of Violation may be issued.

5.2.2. Notice 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 stormwater ordinance and requirements or in cases where a verbal/email notice for a minor infraction has been ignored for at least 7 days, or when minor infractions occur repeatedly. The NOV documents the initial attempts of the City to resolve the violation and other details including:

1. the specific violation;
2. photos (if possible);
3. timeframe and actions required to return to compliance; and



4. a warning that further enforcement action may be taken for failure to comply.

The NOV may include an investigation fee equal to the permit fee. Failure to pay the investigation fee shall result in a hold on the issuance of any new City permits to the permittee and/or hold on the Certificate of Occupancy until the fee is paid.

5.2.3. Stop Work Order

A Stop Work Order is a notice which informs the construction site operator of an ongoing stormwater management violation and requires a cessation of work until the matter is resolved. No work shall be allowed onsite during a stop work order except for the maintenance and installation of best management practices, or other work related to coming into compliance with the applicable regulations or permit terms. No City permits, payments, or approvals of any kind will be issued for any project the owner or contractor is involved with as long as the Stop Work Order is in effect. The Stop Work Order will be issued for failure to comply with an NOV or for extreme violations of the City's construction site stormwater requirements.

The Stop Work Order should 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 stop work order, and
4. a warning notifying the site operator of additional enforcement actions for continued noncompliance.

A Stop Work Order will not be removed until the situation is substantially resolved, as determined by the issuer of the Stop Work Order.

5.2.4. 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.

5.2.5. Pre-Citation Warning Letter

An Pre-Citation Warning Letter is issued by the City Attorney's Office and requires the responsible party to explain their noncompliance and show cause why more severe enforcement actions, including criminal sanctions, should not be pursued. A Pre-Citation Warning Letter should be issued when an administrative order or other enforcement remedy has not resulted in compliance.

5.3. **Judicial Remedies**

5.3.1. 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 associated with litigating a civil suit would result in irreparable harm to the MS4 or state waters (§75-5-103(34a), MCA).

5.3.2. 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.

5.3.3. Municipal Infraction

A municipal infraction is a civil offense punishable by a civil penalty of not more than \$300, or not more than \$500 for a repeated violation. A municipal infraction is assessed after a proceeding in front of a municipal court judge where the court enters judgement against the party responsible for a violation of the City's stormwater management requirements. The penalty is not related to any specific cost borne by the City, and does not prevent the City from seeking alternative relief, including response costs. The amount of the penalty sought by the City 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 stormwater infrastructure as stated in City ordinances.

5.3.4. Criminal Penalties

Criminal prosecution is a formal process of charging the responsible party with violations of ordinance provisions punishable by fines. Criminal prosecution will be pursued when the responsible party has ignored previous orders to take corrective actions for at least 2 weeks; and in the view of the City Attorney or Montana DEQ, the responsible party is not taking sufficient action to mitigate the violation. Criminal penalties may be started sooner at the discretion of the City Attorney.

5.4. ***Additional Considerations***

Several criteria will be used to aid in determining the correct level of response:

5.4.1. 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.

5.4.2. Duration

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

5.4.3. 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.

5.4.4. 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. While the responsible party's good faith in correcting its violations may be a factor in determining which enforcement response is suitable, good faith does not preclude the responsible party from enforcement action.

6. **Enforcement Roles and Responsibilities**



Table 1 details the typical enforcement roles of City staff: ① indicates primary responsibility, ② represents secondary responsibility, and NA indicates staff does not participate at that response level or does not have the authority.

Table 1: Staff Enforcement Roles

| Enforcement Action | EPEI | Stormwater Superintendent | Public Works Director | City Attorney |
|--|------|---------------------------|-----------------------|---------------|
| Level 1: No Enforcement | | | | |
| No action required | ① | ② | NA | NA |
| Level 2: Informal | | | | |
| Verbal/Email Notice | ① | ② | NA | NA |
| Compliance Schedule | ① | ② | NA | NA |
| Meeting | ① | ② | NA | NA |
| Level 3: Formal | | | | |
| Re-inspection Fee | ① | ② | | |
| Notice of Violation | ① | ② | NA | NA |
| Investigation Fee | ① | ② | | |
| Stop Work Order | NA | ① | ② | NA |
| Administrative Order | NA | NA | ① | ② |
| Pre-Citation Warning | NA | NA | NA | ① |
| Level 4: Judicial | | | | |
| All Judicial Remedies | NA | NA | NA | ① |
| Level 5: Referral to Other Agencies | | | | |
| All Referrals | NA | ① | ② | NA |

All significant violations and the responses shall be reported to the Stormwater Superintendent and the Public Works Director. The Stormwater Superintendent 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 Stormwater Superintendent will be copied on all formal enforcement responses. The Public Works Director will consult with the City Attorney’s Office when judicial remedies may be sought.

7. Escalation Process and Schedule for Site Violations

Tables 2 and 3 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 a 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 2: Examples of Common Construction Site Stormwater Violation Responses

| Example Violation | Status of Violation | Level of Response | Recommended Response Remedy |
|--|---|--------------------------|---|
| Conducting earth disturbing activities without a City Stormwater Permit | Operator is unaware of requirements | Informal | Verbal/Email Notice Compliance Schedule |
| | Operator is aware but has chosen not to obtain appropriate permit | Formal | Stop Work Order |
| 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 | Re-inspection Fee (Notice of Violation) |
| BMPs not maintained/installed correctly, with 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 | Re-inspection Fee (Notice of Violation) |
| | >2 Violations, no good faith effort | Formal | Stop Work Order |
| Improper handling of hazardous material (e.g., concrete washout, paint, or oil) | First Violation | Informal | Verbal/Email Compliance Schedule |
| | Second Violation | Formal | Re-inspection Fee (Notice of Violation) |
| | >2 Violations, no good faith effort | Formal | Stop Work Order |
| 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 | Re-inspection Fee (Notice of Violation) |
| | >2 Violations, no good faith effort | Formal | Stop Work Order |
| Extreme infractions | First Violation | Formal | Re-inspection fee (Notice of Violation) |
| | Repeat Violation | Formal | Stop Work Order |
| 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 off-site discharge | Informal | Meeting |
| | Second Violation, off-site discharge | Formal | Re-inspection fee and/or (Notice of Violation) |
| | Second Violation, no good faith effort | Formal | Stop Work Order |
| Terminated MDEQ Construction General Permit before site is stabilized | First notice that permit needs to remain open | Informal | Verbal/Email Notice Compliance Schedule |
| | No good faith effort | Formal | Investigation Fee Stop Work Order |



Table 3: Possible Escalation Process, Response Schedule, and Responsibilities for Construction Site Stormwater Management Violations

| Response | Time Frame | Responsibility |
|----------------------------|--|--|
| Verbal/Email Notice | Within 24 hours of determining a violation | EPEI or designee |
| Compliance Schedule | Within 2 days of violation | EPEI or designee |
| Notice of Violation | Within 2 days of violation or when verbal/email notice has been ignored for at least 7 days (or same day when there the responsible party has a history of violations) | EPEI or Stormwater Superintendent |
| Stop Work Order | Within 7 days of Notice of Violation (or same day when there are immediate impacts to public health and the environment or when the responsible party has a history of violations) | Stormwater Superintendent or Public Works Director |
| Administrative Order | Within 4 days of Stop Work Order | Public Works Director or City Attorney |
| Judicial Remedies | As deemed appropriate | City Attorney |
| Referral to other agencies | As deemed appropriate | Stormwater Superintendent or Public Works Director |

7.1. Violations

7.1.1. Minor Violations

Minor violations of City ordinances do not cause immediate harm to the environment or the public health and safety, but have a strong likelihood to do so if the weather changes. Examples include,

- BMPs incorrectly installed, but no runoff is occurring on site;
- Trash or other debris not adequately contained;
- Contractor not following their own Erosion Control Site Plan but there are no deleterious effects on the environment;
- Not installing sediment control BMPs and just sweeping street as needed; or
- Allowing sediment to be tracked off-site during dry weather.

7.1.2. Significant Violations

Significant violations of City ordinances create an immediate risk to the environment, state waters, or public health and safety. Examples include,

- Sediment plume from site reaches a City storm drain;
- Sediment has remained in City right-of-way for 7 days or more;
- Sediment from construction site has been transported more than 50 feet off-site;
- Dust from the site is causing a safety hazard;
- Dust from site reduces visibility to less than 100 feet for any length of time; or
- 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.

7.1.3. Extreme Violations

Extreme violations of City ordinances create an immediate risk to the environment or public health and safety on a large scale. Examples include,

- 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; or
- Sites over 5 acres with insufficient erosion controls implemented and sediment flowing offsite to a surface water body or storm sewer drain.

7.2. ***Compliance Timeline***

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 will determine the level of effort from the contractor that constitutes a good faith effort.
- Mitigating stormwater issues is the top priority on-site.
- When computing working days, the weekend (Saturday and Sunday) will only be counted as one working day.
- 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 public health and safety or the environment shall be mitigated to the point where the site is not polluting the environment within a maximum of 24 hours.



**ATTACHMENT A
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: