

MCM 3 Plan and Standard Operating Procedure

Enforcement Response Plan

City of Brainerd
501 Laurel Street, Brainerd, MN 56401

PLAN MANAGER: City Engineer

DATE UPDATED: 04/15/2021

I. INTRODUCTION:

This Enforcement Response Plan (ERP) is to be used as a guidance document for enforcement procedures related to the Storm Water Program. This ERP is based on the City Code related to Erosion Control (Chapter IV, Section 430), Stormwater and Urban Runoff Control (Chapter VII, Section 720) and Stormwater Management (Chapter VII, Section 725). In the event of any conflict between this ERP and the ordinance/code, the ordinance/code shall govern.

II. RESPONSIBLE PARTY

City Building Department staff, Engineering Technicians and Interns, and Engineer's shall be responsible for the enforcement of these procedures.

III. PURPOSE:

As per the Brainerd City Code 720.06, No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water, except for the following related discharges:

- Firefighting activities
- Water line flushing
- Landscape and irrigation water
- Diverted stream flows
- Rising groundwater
- Uncontaminated groundwater infiltration
- Uncontaminated pumped groundwater
- Potable groundwater sources
- Foundation footing drains
- Air conditioning condensation
- Individual car washing
- Flows from riparian habitats and wetlands
- De-chlorinated swimming pool water
- Street wash water
- Any other water source not containing pollutants

Inspection by City staff occurs on a routine and reactive basis. Routine inspections generally occur on permitted sites, areas of concern, and long-term maintenance compliance sites. Reactive inspections occur following a customer or City staff concern. Most inspections result in an Informal Notice (IN) or Notice of Violation (NOV) at a minimum.

The main portion of the ERP is the Enforcement Response Guide. The Guide describes violations and indicates a range of appropriate enforcement options. The Guide best serves the following functions:

1. Defines the range of appropriate enforcement actions based upon the nature and severity of the violation and other relevant factors.
2. Promotes consistent and timely response 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 which provide for consistent and continuing enforcement procedures based on the severity of noncompliance of stormwater requirements.

Failure to comply with a notice or order from the City will subject the user to escalating enforcement actions including non-compliance inspection fees, administrative fines, stop work order, abatement, termination of services, and/or civil and criminal penalties. All enforcement actions shall document at a minimum the following:

- Name of person responsible for violations(s)
- Date and location of violation(s)
- Description of violation(s) – relevant regulatory mechanism
- Corrective action issued – with schedule
- Date and type of enforcement used to compel compliance
- Referrals to other regulatory organizations – if any
- Date of resolution

IV. DEFINITIONS

Informal Notice (IN) – Documented communication (phone call, email, site visit, meeting) notifying a customer/permittee/owner of a problem or noncompliance of very minor significance.

This notice is implemented by City staff and is usually an immediate notice, but can take up to 48 hours depending on the violation, its severity, and/or any investigative work associated with the violation.

Written Notice of Violation (NOV) – An official written notice of violation has occurred, type of violation, permit or ordinance section violated, date of violation, corrective and follow-up action required. A response to the notice of violation and corrective actions taken is required to be submitted not to exceed 7 days of the issuance date of the notice and order to correct. The notice is implemented by City staff within 48 hours of becoming aware of the problem. Enforcement may be applied at this time.

Stop Work Order (SWO) – Order issued to stop all work, except work to remedy the Stop Work Order, in the event of immediate danger to public health and safety, or the environment, or noncompliance of the Erosion and Sediment Control Ordinance (Section 430). The Stop Work Order is posted on-site and/or delivered to the owner/permittee/violator.

Criminal Penalties (CP) – Any person violating any provision of City Ordinance may be guilty of a misdemeanor. Upon conviction, the user may be fined not more than \$1,000 or by imprisonment not to exceed 90 days or both. This action will be initiated by the City Attorney.

Abatement of Violation (AB) – If necessary remedial work is not begun or completed by the violator as specified in the Stop Work Order or the Notice of Violation, the abatement of the violation will be under the discretion of the City Engineer or designee. Abatement expenses not paid will be levied against the property as a special assessment.

Referral to Another Department/Agency (RF) – Violations that may be violating other City Ordinance(s), and/or other state or federal regulations, will be referred to the appropriate City Department and/or Agency when required. This action is a response which can be used for all situations as needed and is not specifically listed as an option for all scenarios.

Non-Compliant Inspection Charge (IC) – Additional inspections caused by noncompliance billed to the property owner, violator or permittee at 2 times the base hourly salary on the inspector. Charged is served as an invoice to the property owner, violator or permittee.

Suspension of Service (SS) – Disconnecting, plugging or stopping MS4 service to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to public health or safety, the environment, or the stormwater system; or would cause the City to violate any condition of its NPDES Stormwater Permit. This notice is implemented by the City Engineer.

Illicit Discharge - Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 720.06 of the City Code.

Illicit Connections - An illicit connection is defined as either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether the said drain or connection has been previously allowed, permitted, or approved by the City. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

V. ENFORCEMENT RESPONSE GUIDE

If a prohibited discharge is found in and/or entering the City's storm water system contrary to the provisions above, the responsible party may be issued a:

- Informal Notice (IF)
- Written Notice of Violation (NOV). The letter will require that all employees be informed of the violation and that illegal dumping into the storm sewer is prohibited.
- Stop Work Order (SWO)
- Non-Compliant Inspection Charge (IC)
- Criminal Penalties (CP). If deemed appropriate.
- Referral to another Department/Agency (RF)

Violations which threaten health, property, or environmental quality are considered emergencies and may receive more immediate responses. These responses are as follows:

- Halting the Discharge
- Abatement of Violation (AB). The City holds the right to charge or assess all costs associated with the Abatement of Violation (AB).
- Suspension of Service (SS). The City holds the right to suspend or terminate service or access to the City's storm sewer system.

The City has the right to charge and assess violators for all costs to the City for damages from any discharge or other actions in violation of the City ordinance or in violation of a permit issued by the City, including reasonable attorney's fees. Administrative fines or other enforcement actions are not considered to be payment of these costs.

VI. CONCLUSION

The guidelines provided are intended as a tool to be used by the City staff as a stepped enforcement response in situations where enforcement may be necessary.

The City has the authority to revise this enforcement guideline at any time. The City also has the authority to take enforcement responses other than as indicated in this guidance plan where special circumstances justify a special response.