



Enforcement Response Plan



November 2014

Prepared for:

Contra Costa Clean Water Program
Management Committee

Prepared by:

Program Staff
Contra Costa Clean Water Program
255 Glacier Drive
Martinez, California 94553
(925) 313-2360

Table of Contents

List of Tables	ii
List of Appendices	ii
Acronyms and Abbreviations	iii
Definitions..	iv
Section 1. Introduction	1
1.1. Municipal Code	1
1.2. Compliance With Best Management Practices	2
1.3. Legal Authority	2
Section 2. Response and Enforcement Actions	6
2.1. Levels Of Enforcement	6
2.2. Penalties	9
2.3. Recordkeeping.....	10
Table 1: Flowchart of Tiered Enforcement Response	11
Appendix A: Database of Enforcement Actions and Incidents	12
Appendix B: Municipal Regional Permit (MRP) Provisions C.4, C.5 and C.6 ...	13

List of Tables

Table 1 Flowchart of Tiered Enforcement Response

List of Appendices

Appendix A Database of Enforcement Actions and Incidents

Appendix B Municipal Regional Permit (MRP) Provisions C.4, C.5, and C.6

Acronyms and Abbreviations

BMP	Best Management Practice
CCCSD	Central Contra Costa Sanitary District
CCCWP	Contra Costa Clean Water Program
CCWD	Contra Costa Water District
CWA	Clean Water Act
DDSD	Delta Diablo Sanitary District
EBMUD	East Bay Municipal Utility District
EPA	Environmental Protection Agency
ERP	Enforcement Response Plan
MRP	Municipal Regional Permit
MS4	Municipal Separate Storm Sewer
NOI	Notice of Intent
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
RWQCB	Regional Water Quality Control Board
SWPPP	Stormwater Pollution Prevention Plan
WN	Warning Notice

Definitions

Cease and Desist

Order A cease and desist (also called C & D) is an order or request to halt an activity, or else face legal action. The recipient of the cease-and-desist may be an individual or an organization

Construction Site Any project, including projects requiring coverage under the General Construction Permit, that involves soil disturbing activities including, but not limited to, clearing, grading, paving, disturbances to ground such as stockpiling, and excavation. Construction sites are all sites with disturbed or graded land area not protected by vegetation, or pavement, that are subject to a building or grading permit

Erosion The diminishing or wearing away of land due to wind, or water. Often the eroded debris (silt or sediment) becomes a pollutant via stormwater runoff. Erosion occurs naturally, but can be intensified by land disturbing and grading activities such as farming, development, road building, and timber harvesting

General Permits Waste Discharge Requirements or NPDES Permits containing requirements that is applicable to a class or category of dischargers. The State of California has general stormwater permits for construction sites that disturb soil of 1 acre or more; industrial facilities; `Phase II smaller municipalities (including nontraditional Small MS4s, which are governmental facilities, such as military bases, public campuses, and prison and hospital complexes); and small linear underground/overhead projects disturbing at least 1 acre, but less than 5 acres (including trenching and staging areas)

Grading The cutting and/or filling of the land surface to a slope or elevation

Illicit Discharge Any discharge to a municipal separate storm sewer (storm drain) system (MS4) that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term *illicit discharge* includes all non-stormwater discharges not composed entirely of stormwater and discharges that are identified under Section A. (Discharge Prohibitions) of the MRP (please refer to

Provision C.5.a.ii of the MRP for a list of discharges). The term illicit discharge does not include discharges that are regulated by an NPDES permit (other than the NPDES permit for discharges from the MS4) or authorized by the Regional Water Board Executive Officer

MS4 A system of conveyances that include catch basins, curbs, gutters, ditches, man-made channels, pipes, tunnels, or storm drains that discharge into waters of the United States.

National Pollutant Discharge Elimination System (NPDES) A national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.*

Notice of Intent (NOI) The application form by which dischargers seek coverage under General Permits, unless the General Permit requires otherwise

Stop Work Order Used for construction site control; an inspector issues a Stop Work Order when construction work creates an active non-point source or non-stormwater pollutant discharge that violates the local stormwater ordinance, and is identified during an inspection and is not abated. The contractor will be in violation of the building permit if work is continued before the stormwater issue is addressed.

SWPPP Stormwater Pollution Prevention Plan used for facilities or sites documenting their site-specific stormwater pollution prevention BMPs and any other stormwater regulation requirements issued by State General Permits if said permit is required.

Section 1. Introduction

The purpose of this Enforcement Response Plan (ERP) is to provide standard enforcement response protocol for illicit discharges and potential illicit discharges into the storm drain system. This ERP is a guidance document to outline consistent enforcement actions by the City of Brentwood that will reactively control illicit discharges and proactively eliminate potential illicit discharges to insure compliance with all state and local stormwater related pollution prevention laws. This ERP applies to private businesses, property owners or tenants, construction sites, and contracted mobile companies providing services to public and privately owned businesses and land. This ERP also satisfies the Municipal Regional Permit (MRP) for an ERP document in Provision C.4 Industrial and Commercial Site Controls, Provision C.5 Illicit Discharge Detection and Elimination, and Provision C.6 Construction Site Control.

1.1. MUNICIPAL CODE

This ERP document utilizes the City of Brentwood Municipal Code (“BMC”) Chapter 14.20 Stormwater Management and Discharge Control for stormwater regulation. In the event that stormwater regulatory law (NPDES permits or other) are more stringent regarding enforcement action against illicit discharges or potential illicit discharges, the more stringent enforcement law will be abided by the City of Brentwood. Any discharge that would result in or contribute to a violation of the City of Brentwood’s NPDES permit or municipal code separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge, and such person shall defend, indemnify and hold harmless the City of Brentwood in any administrative or judicial enforcement action relating to such discharge.

1.2. COMPLIANCE WITH BEST MANAGEMENT PRACTICES

Where best management practice (BMP) guidelines or requirements have been adopted by the Federal Government, California State, MRP or NPDES permits, or the City of Brentwood, for any activity, operation or facility which may cause or contribute to unlawful discharges, every person undertaking such activity or operation or owning or operating such facility shall comply with such guideline or requirement. Such guidelines include the California State General Industrial permit and the California State General Construction permit.

1.3. LEGAL AUTHORITY

The City of Brentwood is responsible for conducting stormwater inspections for the City of Brentwood. The primarily person for overseeing the inspection program for the City of Brentwood is Jagtar Dhaliwal and their number is (925) 516-5128.

The City of Brentwood has the legal authority to prohibit and control illicit discharges and escalate stricter enforcement to achieve expedient compliance with stormwater law and regulation. The City of Brentwood has the legal authority to inspect and eliminate illicit discharges to the storm drain system and illicit connections to the waters of the state including:

- Illicit connections to the waters of the state;
- Privately owned septic systems;
- Spills;
- Illegal dumping and disposal of materials other than stormwater to the storm drain;

- Discharges of wash water from exterior surfaces and pavement, equipment and facilities;
- Discharges of runoff from material storage areas, including containing chemicals, fuels, vehicle related fluids, and other potentially polluting or hazardous materials;
- Discharges of pool, spa or fountain water (including backwash water) containing chlorine, biocides, or other chemicals;
- Ongoing, large-volume landscape irrigation runoff to the storm drain system;
- Discharges of sediment, pet waste, vegetation clippings, or other landscape or construction-related wastes; and
- Discharges of food-related wastes (e.g., grease, fish processing, and restaurant kitchen mat and trash bin wash water, etc.).

The City of Brentwood is not required to inspect or take enforcement action against local entities with their own NPDES permit and subject to existing federal and state regulatory compliance programs including publicly owned systems. These local entities and their regulatory bodies include:

- Sanitary/Sanitation Agencies:
 - Byron Sanitation District (Central Valley Regional Water Quality Control Board)
 - Delta Diablo Sanitation District (DDSD) (Central Valley Regional Water Quality Control Board)
 - Discovery Bay Community Services District (Central Valley Regional Water Quality Control Board)
 - East Contra Costa County Irrigation District (Central Valley Regional Water Quality Control Board)
 - Iron House Sanitation District (Central Valley Regional Water Quality Control Board)
- Potable Water Agencies:

- City of Brentwood Water Department (Central Valley Regional Water Quality Control Board)
- Contra Costa Water District (CCWD) (regulated by the San Francisco Regional Water Quality Control Board)
- Diablo Water District (Central Valley Regional Water Quality Control Board)
- Discovery Bay Community Services District (Central Valley Regional Water Quality Control Board)
- EBMUD (regulated by the San Francisco Regional Water Quality Control Board)
- Public School Districts:
 - Liberty Union High School District
 - Brentwood Union School District
- Fire Departments:
 - California Department of Forestry and Fire
 - Contra Costa County Fire Protection District
 - East Contra Costa Fire Protection District

In addition, the City of Brentwood is not required to enforce compliance requirements of the Industrial General NPDES Permit on industrial facilities that are required to file a Notice of Intent (NOI) for coverage under the Industrial General Permit; nor is the City of Brentwood required to enforce compliance requirements of the Construction General NPDES Permit on construction or linear projects that are required to file a NOI for coverage under the Construction General Permit. All conditions of these State General Permits are regulated by the appropriate Water Board region and are not the responsibility of the City of Brentwood. The City of Brentwood is responsible for enforcing their own municipal code on NOI facilities, inspecting and checking

construction and industrial NOIs for the presence of a SWPPP, ensuring that BMPs are properly implemented and maintained to prevent discharges in violation of the City of Brentwood municipal code, checking for monitoring data to insure no polluted discharges have left the site/facility that would impact the City of Brentwood stormwater system, and notifying the appropriate Water Board region if a site/facility has not filed for coverage under a General Permit for which it is required to file for coverage.

The following unpolluted discharges are exempt from prohibition of non-stormwater discharges in the City of Brentwood NPDES MRP effective December 1, 2009:

- Flows from riparian habitats or wetlands;
- Diverted stream flows;
- Flows from natural springs;
- Rising ground waters;
- Uncontaminated and unpolluted groundwater infiltration;
- Single family homes' pumped groundwater, foundation drains, and water from crawl space pumps and footing drains;
- Pumped groundwater from drinking water aquifers; and
- NPDES permitted discharges (individual or general permits).

The non-stormwater discharges listed above are exempted unless they are identified by the City of Brentwood or the Executive Officer of the Regional Water Quality Control Board as sources of pollutants to receiving waters.

Section 2. Response and Enforcement Actions

Section 2 includes response, enforcement actions, and timeframes for correction of potential and actual non-stormwater discharges. This ERP provides guidelines on when to employ the range of regulatory responses from verbal warnings, written notices, citations, clean-up and cost recovery, to administrative or criminal penalties. For further information on the City of Brentwood's individual program, BMPs, and compliance with specific requirements in the MRP provisions for illicit discharges, commercial/industrial inspections, and construction inspection programs, please refer to the City of Brentwood individual plans/documents/records for each program.

2.1. LEVELS OF ENFORCEMENT

There are a variety of enforcement tools available to address potential and actual non-stormwater discharges observed during inspections and surveillance of illicit discharges within the jurisdiction of City of Brentwood. The City of Brentwood can use but is not limited to the enforcement options listed in this ERP. The enforcement options listed in this ERP include verbal warnings, a written Warning Notice (WN), Notice of Violation (NOV), Administration Citation, Stop Work Orders, Cease and Desist Orders, and referrals to other agencies. This ERP provides guidance for the minimum procedures of compliance and enforcement. Generally, these enforcement procedures are applied in escalating steps or a tiered response, although the City of Brentwood may skip steps, as appropriate in egregious cases. **Table 1** provides a flowchart of the tiered response of enforcement actions.

The minimum tiered response levels of enforcement are as follows:

Level I: Verbal Warning/Warning Notice/Education

First time observance of a potential non-stormwater discharge (e.g., pollutant exposure, evidence of a historical pollutant discharge, or a stated business practice that has a

potential to pollute the storm drain system) will result in issuance of a verbal warning or written notice (WN) with education in the form of verbal and material outreach. A verbal warning and WN is a proactive enforcement action design to prevent a potential non-stormwater discharge from occurring, and does not constitute a violation. However, the inspector will document in the site inspection report all verbal warnings and WNs, and communicate the issue to the discharger or representative of the facility/site. The inspector and the facility/site representative will discuss the verbal warning or WN, appropriate BMPs, and establish a schedule to eliminate the potential problem. Education will be used to communicate a general understanding by the discharger or representative of the facility/site of the stormwater program, its regulations, and its purpose. The inspector will conduct a follow-up inspection and/or require a response from the discharger to confirm correction of the potential discharge during a thirty (30) day period after the potential non-stormwater discharge was observed. If corrective action has not been achieved by the next inspection, then enforcement will escalate to Level II. In the case of a facility denying entry to the City of Brentwood stormwater inspector, the City of Brentwood will procure an inspection warrant to enact their legal authority to enforce the City of Brentwood's stormwater inspection program.

Level II: Notice of Violation

An active non-stormwater pollutant discharge that violates the local stormwater ordinance, and is identified during an inspection is considered a violation and will result in issuance of a Notice of Violation (NOV). The inspector and facility/site representative will discuss the violation and potential solutions to correct the violation. A written NOV will be issued and a remediation schedule will be approved by the inspector who will follow-up to ensure that the discharge has been eliminated. The inspector may also recommend implementation of appropriate BMPs. Businesses/sites that fail to comply with Level I enforcement procedures will also receive an NOV and be subject to timely corrective action and follow-up inspection. At this stage the City of Brentwood or

authorized representative may also employ Cease and Desist Orders, Stop Work Orders, Orders to Clean and Abate, Notices to Clean or any other similar notification outlined in

the stormwater ordinance that identifies an illicit discharge and requires correction or abatement but does not assess fines.

All violations will be corrected before the next rain event but no longer than ten (10) business days after the violations are discovered. If more than ten (10) business days are required for compliance, a rationale shall be recorded in the electronic database or equivalent system. Immediate correction can be temporary and short-term if a long-term, permanent correction will involve significant resources and construction time.

Level III: Formal Enforcement (Administrative Penalties, Cost Recovery)

A gross violation of the local stormwater ordinance that cannot be resolved through the WN or NOV enforcement actions is considered a major violation and will trigger a formal enforcement action. Formal enforcement actions will result in penalties being assessed in the form of citations, agency cost-recovery, and/or formal negotiated settlement. Such actions will be coordinated by the City of Brentwood's Stormwater Representative.

Gross violations include a pattern of non-compliance after issuance of a NOV, with repeat violations, failure to adequately address previous violations or notices, and/or directly discharging hazardous materials into the storm drain system. The City of Brentwood's Stormwater Representative has the discretion to determine that any serious violation(s) warrants this level of enforcement so long as there is documentation and/or evidence available to support this action.

All violations will be corrected before the next rain event, but no longer than ten (10) business days after the violations are discovered. If more than ten (10) business days are required for compliance, a rationale shall be recorded in the electronic database or equivalent system. Immediate correction can be temporary and short-term if a long-term, permanent correction will involve significant resources and construction time.

Level IV: Legal Action and/or Referral to State and Federal Agencies

Inadequate measures taken by facility manager(s) to satisfy Level III enforcement violations will result in the Stormwater Representative referring the case to the City Attorney or Contra Costa County District Attorney. If a stormwater violation posing an

imminent threat to human health and/or the environment is identified during an inspection, the City of Brentwood may refer the violation to qualified emergency response personnel, the District Attorney, the Regional Water Quality Control Board (RWQCB), the California Department of Fish and Game, and/or the U.S. Environmental Protection Agency. The City of Brentwood will follow up with the referral to resolve the case to the extent practicable when working with the State and Federal agencies with the ability to enforce the appropriate fines and penalties to achieve compliance with stormwater regulation.

2.2. PENALTIES

The violation of the City of Brentwood Stormwater Ordinances or failure to comply with any of its mandatory requirements may constitute a misdemeanor or infraction. The violator may be charged and prosecuted for an infraction or a misdemeanor or be issued an Administrative Citation per BMC Sections 14.20.120; 1.08.010 and/or 1.12.020.

A conviction of an infraction of this Code shall be punishable by:

\$100 for the first violation

\$200 for the second violation within one year

\$500 for each additional violation in one year

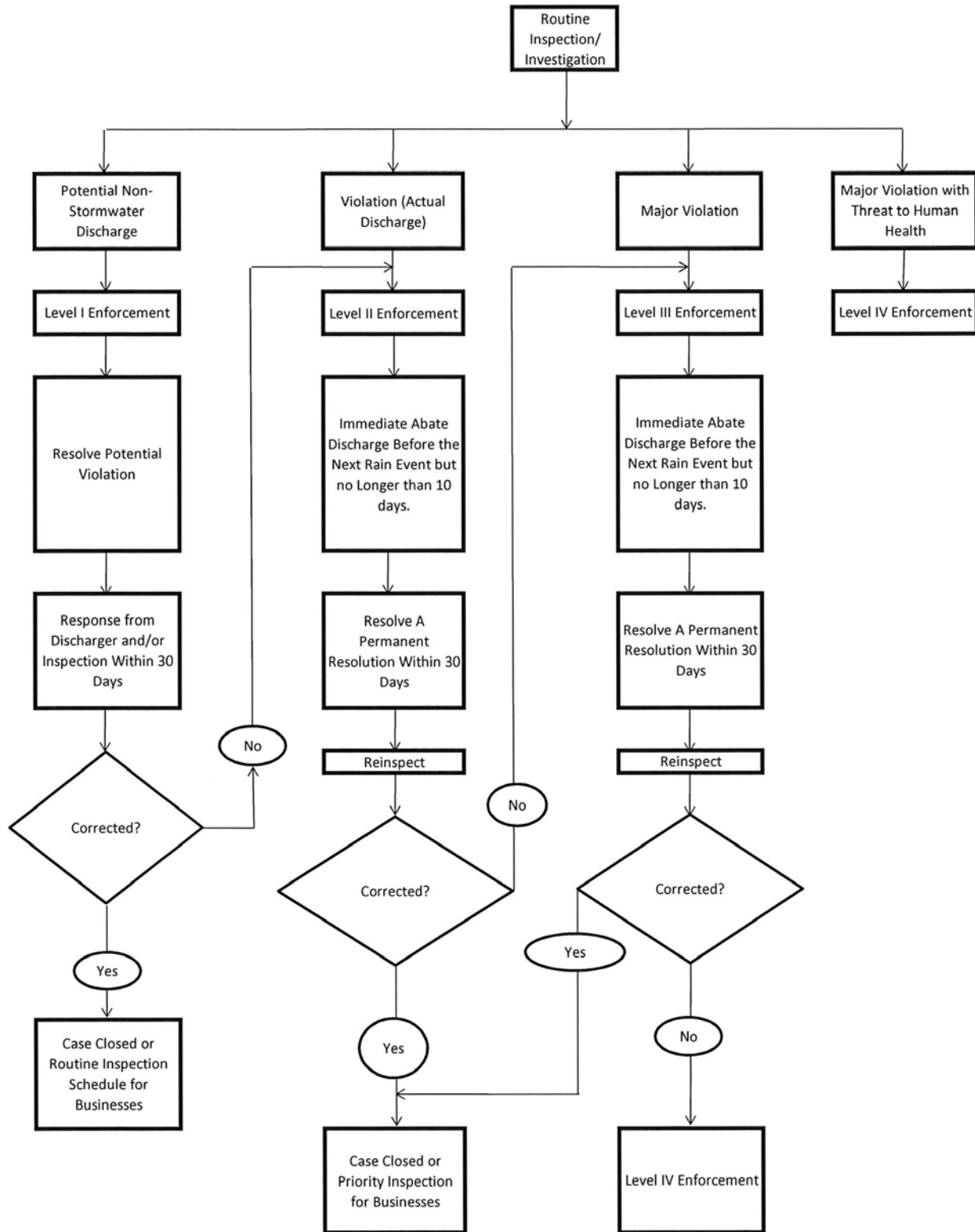
Any person convicted of a misdemeanor under the City of Brentwood is punishable by a fine of not more than that allowed for an infraction pursuant to Government Code Section 36900. Pursuant to Government Code Sections 36901 and 36903, the penalty for any person found guilty of a misdemeanor shall be a fine not to exceed one thousand (\$1000) dollars and/or imprisonment in the County Jail not to exceed six (6) months (BMC 14.20.130).

2.3. RECORDKEEPING

The City of Brentwood will maintain a record/database of all enforcement actions, follow-up actions, and facilities/sites inspected for illicit discharges related to business inspection, construction inspection, and illicit discharge programs.

The City of Brentwood will include all tracking and case follow-up information in the database listed in Provisions C.4, C.5, and C.6 of the MRP. The database of enforcement actions and incidents will be included as an appendix to this ERP document.

TABLE 1: FLOWCHART OF TIERED ENFORCEMENT RESPONSE



APPENDIX A:

**DATABASE OF ENFORCEMENT ACTIONS AND
INCIDENTS**

APPENDIX B:

MUNICIPAL REGIONAL PERMIT (MRP) PROVISIONS

C.4, C.5 AND C.6