

CITY OF BIG LAKE

Enforcement Response Procedures

(ERPs) for

MS4 Permit Violations

2016

Under the terms of the General NPDES/SDS Permit MNR040000, the City of Big Lake is required to develop and implement adequate enforcement authority for illicit discharges into its Municipally Separate Storm Sewer System (MS4). The purpose of these Enforcement Response Procedures is to communicate how the enforcement tools available to the City will be used to achieve compliance. The Enforcement Response Procedures also specify criteria by which City personnel can determine the enforcement action most appropriate to instances of non-compliance. This plan is a document of the City's procedure to be followed when a construction stormwater requirement, illicit discharge and post-construction violation is discovered. This plan is a guide; any of the enforcement responses may be used at the City's discretion. The City may also choose to pursue an enforcement case by skipping intermediate steps.

I. ERP Administrator and City Representative Defined

- A. The City Administrator shall authorize in writing a person or person(s) to act as the ERP Administrator(s).
- B. City Representative shall refer to any employee or consultant authorized by the ERP Administrator to act under this Enforcement Response Procedure.

II. Description of Each Type of Enforcement Response

A. Written Notices

1. Field Compliance Order

- a) Upon visiting the site, a City Representative may observe issues on non-compliance. If the non-compliance has not yet resulted in a discharge of pollution, including sediment, the City's Representative will issue a written warning, either by email or letter specifying the nature of the violation, the required corrective action and a follow-up inspection date. The Field Compliance Order will note that failure to comply resulting in a discharge of pollution is likely to result in a civil penalty.

2. Notice of Violation (NOV)/Civil Penalty/Permit Revocation

- a) If, upon a site inspection, a City Representative observes non-compliance that has resulted in a discharge of pollution, including sediment, the representative will issue:
 - (1) A Notice of Violation for discharges that can be satisfactorily corrected without evidence of property or environmental damage.
 - i) The NOV will specify the nature of the violation, the required corrective action and a follow-up inspection date.
 - ii) The NOV will require the party committing the violation (perpetrator) to submit an explanation of the violation and a plan for the satisfactory correction and prevention of the violation conditions, including specific required actions within five (5) days.
 - iii) If corrective action is not satisfactorily completed by the follow-up inspection date, the City Representative will:
 - Revoke the current building or construction permits where applicable. Revoked permits shall only be reinstated after the permittee has reapplied for the permit, complete with a permit fee and an approved plan for preventing similar pollutant discharges.
 - Issue a Civil Penalty where no building or construction permits exist.

3. Consent Orders

- a) Consent Orders are written agreements that allow the perpetrator to accept responsibility for the discharge and provide the opportunity to voluntarily clean-up and/or correct a pollutant or sediment discharge as a way to reduce the additional damage penalty associated with cleanup costs.
 - (1) Consent Orders will only be issued to perpetrators that can provide documentation verifying that the perpetrator is qualified to handle the required cleanup.
 - (2) The Big Lake ERP Administrator is empowered to enter into consent orders with the perpetrator on behalf of the City of Big Lake.
 - (3) Where the discharge and cleanup area affects private (third party) properties, Consent Orders must be approved by all parties affected.
- b) A consent order will include specific corrective actions to be taken to correct the illicit or sediment discharge together with specified time periods to finish the corrective actions.

4. Civil Penalty

- a) Civil penalty procedures established herein are intended to provide the public and the City with an informal, cost effective, and expeditious method for addressing violations.
- b) The ERP Administrator, upon determining that there has been a violation, notify the violator. Said notice shall set forth the nature, date and time of violation, the name of the official issuing the notice, and the amount of the scheduled penalty.
 - (1) Civil penalties will depend on the extent of the damages.
 - i) The minimum automatic fine shall be as set forth in the City of Big Lake Municipal Fee Schedule, except that the City may waive all or part of the financial penalty for the first offense if timely and substantial effort has been made to correct the discharge.
 - ii) Consent Orders as described herein may be accepted in lieu of damage penalties.
 - iii) In addition to civil penalties, the City may recover all damages proximately caused by the violator to the City, which may include:
 - reasonable expenses incurred in investigating violations of, and enforcing compliance with City Ordinances regulating the illicit discharge of pollutants or sediment, or any other actual damages caused by the violation.
 - The costs of the City's maintenance of stormwater facilities when the user of such facilities fails to maintain them.

- c) Once such notice is given, the alleged violator may, within five business days of the date of issuance of the notice, pay the amount set forth on the schedule of penalties for the violation, or may request a hearing in writing, as is provided for hereafter. The penalty may be paid in person or by mail, and payment shall be deemed to be an admission of the violation.
 - (1) Any person contesting a civil penalty may, within five business days of the date of issuance of the notice, request a hearing by a hearing officer who shall forthwith conduct an informal hearing to determine if a violation has occurred. The hearing officer shall have authority to dismiss the violation or reduce or waive the penalty. If the violation is sustained by the hearing officer, the violator shall pay the penalty imposed.
 - (2) The ERP Administrator shall be the hearing officer. The hearing officer is authorized to hear and determine any controversy relating to civil penalties provided for in this article.

5. Cease and Desist Order

- a) The City' Administrator may issue a Cease and Desist Order effectively stopping all work on a site where there is a clear violation, continued violation, or blatant disregard for:
 - (1) City Ordinances regulating the illicit discharge of pollutants or sediment
 - (2) Building or Construction Stormwater permit requirements
 - (3) Previously issued Field Compliance Orders, Notices of Violation, or Civil Penalty associated with the site of the illicit or sediment discharge.
- b) This order requires that the violator must comply with the order and must take appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation; including halting all operations on the site except for authorized cleanup, terminating the discharge and installing appropriate control measures.
- c) If not previously issued, all Cease and Desist Orders shall automatically include a Civil Penalty.

B. Suspension, Revocation or Modification of Permit

- 1. The City may suspend, revoke or modify any City issued permit authorizing the land development project or any other project of the applicant or other responsible person within the City.
- 2. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the Written Notice (See Section A) or has otherwise acceptably corrected the violation(s) described therein.

C. Additional Measures

- 1. Legal Action

- a) The City may bring legal action to enjoin continuing violation. Pursuant to the City's Stormwater Ordinance, Illicit Discharge Ordinance or Construction Stormwater Ordinance; the City may, through the City Attorney, petition the appropriate court(s) for issuance of preliminary or permanent injunctions to restrain or compel activities by a violator.
2. Future Permits
 - a) Contractors with outstanding Civil Penalties shall not receive any City permits until all Civil Penalties have been paid.
 - b) Contractors that have had two or more Civil Penalties within the previous 12-calendar months shall be required to deposit a cash surety equal to double the surety amount normally required for each permit obtained.
 - c) *Contractors that work without required permits or under permits obtained by others in an attempt to avoid the requirements of this section shall be subject to the provisions of this ERP including but not limited to Civil Penalties, Cease and Desist Order, Suspension and/or Revocation of related permits, and Legal Action.*

III. NPDES Permit Referrals

- A. For a known project site involving a construction activity, an industrial or illicit discharge that should also be covered by a State NPDES permit, and the City is aware that no State NPDES permit exists, the City must notify the MPCA about this discharge. The following information must be supplied to the MPCA:
 1. Project location
 2. Property owner and contractor information
 3. Nature of the discharge
- B. For a known project site involving a construction activity or an industrial stormwater discharge where the discharge should also be covered by a state NPDES permit, and the known site does not have a state NPDES permit, the City must notify the MPCA about this discharge. The following information must be supplied to the MPCA:
 1. Construction project or industrial facility location;
 2. Name of owner or operator;
 3. Estimated construction project size or type of industrial activity (including SIC code if known); and
 4. Records of communication with the owner or operator regarding filing requirements.
- C. Where the City has used progressive enforcement to achieve compliance with this chapter and in the judgment of the City has not been successful, the City may refer the violation to the MPCA. For the purposes of this provision, "progressive enforcement" shall mean two (2) follow-up inspections and two (2) Written Notices. The following information must be supplied to the MPCA:
 1. Construction project or industrial facility location;

2. Name of owner or operator;
3. Estimated construction project size or type of industrial activity (including SIC code if known)
4. Records of communication with the owner or operator regarding the violation, including at least two follow-up inspections, two warning letters or notices of violation, and any response from the owner or operator.

IV. Recordkeeping & Tracking

- A. All non-compliance instances must be tracked either electronically or using paper files. This tracking must include all records and documents related to stormwater ordinance violations at the site and should be stored in the enforcement case file.
- B. The minimum required documentation must include the following items:
 1. Name of owner/operator;
 2. Location of construction project or industrial facility;
 3. Description of violation;
 4. Required schedule for returning to compliance;
 5. Description of enforcement responses used, including escalated responses if repeat violations occur or violations are not resolved in a timely manner;
 6. Accompanying documentation of enforcement response (e.g., notices of noncompliance, notices of violation, etc.);
 7. Any referrals to different departments or agencies; and
 8. Date violation was resolved.
- C. The City shall use the non-compliance records and tracking to identify any chronic violators, and use this information to work toward reducing the rate of noncompliance relapse.
 1. This will include tracking violations, applying incentives and/or disincentives, and increasing the inspection frequency of the consistently noncompliant operator's sites.
 2. If the operator fails to take corrective actions, the City must pursue progressive enforcement and, if need be, perform the necessary work and assess against the owner the costs incurred for repairs.
- D. The City shall keep enforcement files for a minimum of three (3) years after the file is closed consistent with the MS4 General Permit conditions. However, file retention time may be longer if required by law. Files retention may be either paper or digital files.

V. Enforcement Action Matrices

- A. Construction Site Stormwater Ordinance Violations

1. See Table 1 for the enforcement action matrix for noncompliance with construction requirements. In general, the severity of the enforcement measure increases moving down the matrix.
2. For parties who fail to obtain a required permit prior to begin of land disturbance work, the initial enforcement action may be more stringent than for a project that has an approved plan but has failed to comply with the approved plan.
 - a) The City has the ability to stop project work for non-permittees. Stopping work generally includes all work on the site except for work to address the noncompliance that caused the order.
 - b) Non-permittees may be required to perform corrective actions as advised by the City and to develop the required erosion control and/or stormwater plan submittals to submit to the City for review and approval.
 - c) Once the corrective actions have been successfully completed and the submitted stormwater plan has been approved by the City, the City will issue the violator a written notice that the situation has been resolved.
 - d) If the corrective actions or the submitted plan cannot be approved, the City will issue a written notice to the violator describing what was deficient and what step(s) are needed to resolve the situation.

Table 1. Enforcement Action Matrix for Noncompliance with Construction Requirements.

Type of Violation	Failure to Obtain Permit Prior to Starting Work	Minor Violations (Failure to Install, Maintain or Upgrade Measures on Erosion and Sediment Control Plan)	Minor Violations (Failure to Install, Maintain or Upgrade Measures on Erosion and Sediment Control Plan for a Priority Area)	Major Violation (Failure to Install, Maintain or Upgrade Measures on Erosion and Sediment Control Plan that Resulted in a Sediment Release from the Project Site)	Repeat Violation by a Party (Same Site)	Repeat Violation by a Party (Different Site than initial Noncompliance Site)
Enforcement Measures For Use (Increasing Severity Moving Down the Chart)	Cease and Desist Order	Field Compliance Order	Field Compliance Order	NOV	Civil Penalty and/or Consent Order	NOV
		NOV	NOV	Civil Penalty with or without Consent Order	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit	Civil Penalty with or without Consent Order
	Legal Action	Civil Penalty with or without Consent Order	Civil Penalty with or without Consent Order	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit	Legal Action	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit
		Cease and Desist Order and/or Suspension, Revocation or Modification of Permit	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit	Legal Action		Legal Action
		Legal Action	Legal Action			

This plan is a guide; any of the enforcement responses may be used at the City's discretion and the City may choose to escalate an enforcement case by skipping intermediate steps. Penalties (Civil, Recovery of Damages and Costs, Etc.) may be assessed as described in the stormwater ordinance and as allowed by law at the City's discretion.

B. Illicit Discharge Ordinance Violations

1. See Table 2 for the enforcement action matrix for failure to remove illicit discharges.
2. The action matrix was set up to provide varying suggested degrees of response to noncompliance documented by the City.
3. In general, the severity of the enforcement measure increases moving down the matrix.

Table 2. Enforcement Action Matrix for Failure to Remove Illicit Discharges.

Type of Violation	First Violation	Repeat Violation by a Party (Same Site)	Repeat Violation by a Party (Different Site than initial Noncompliance Site)
Enforcement Measures For Use (Increasing Severity Moving Down the Chart)	Field Compliance Order	NOV	NOV
		Civil Penalty with or without Consent Order	
	NOV	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit	Civil Penalty with or without Consent Order
	Civil Penalty with or without Consent Order	Legal Action	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit
	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit		Legal Action
	Legal Action		

This plan is a guide; any of the enforcement responses may be used at the City's discretion and the City may choose to escalate an enforcement case by skipping intermediate steps. Penalties (Civil, Recovery of Damages and Costs, Etc.) may be assessed as described in the stormwater ordinance and as allowed by law at the City's discretion.

C. Noncompliance with Post-Construction Requirements

1. See Table 3 for the enforcement action matrix for noncompliance with post- construction requirements.
2. The action matrix was set up to provide varying suggested degrees of response to noncompliance documented by the City.
3. In general, the severity of the enforcement measure increases moving down the matrix.

Table 3. Enforcement Action Matrix for Noncompliance with Post-Construction Requirements

Type of Violation	First Failure to Remove Illicit Discharge	Repeat Violation by a Party (Same Site)	Repeat Violation by a Party (Different Site than initial Noncompliance Site)
Enforcement Measures For Use (Increasing Severity Moving Down the Chart)	Field Compliance Order	NOV	NOV
		Compliance Order or Consent Order	
	NOV	Civil Penalty with or without Consent Order	Civil Penalty with or without Consent Order
	Civil Penalty with or without Consent Order	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit
	Cease and Desist Order and/or Suspension, Revocation or Modification of Permit	Legal Action	Legal Action
	Legal Action		

This plan is a guide; any of the enforcement responses may be used at the City's discretion and the City may choose to escalate an enforcement case by skipping intermediate steps. Penalties (Civil, Recovery of Damages and Costs, Etc.) may be assessed as described in the stormwater ordinance and as allowed by law at the City's discretion.

SAMPLE INSPECTION AND MAINTENANCE AGREEMENT FOR PRIVATE STORMWATER MANAGEMENT FACILITIES

The term “**STORMWATER MANAGEMENT FACILITIES**” may refer to water quality and/or water quantity facilities (i.e. detention basins, retention basins, swales, pipes, oil/water separators, sand filtering devices, etc.) which are located OUTSIDE the public road right-of-way (ROW).

Property Identification (“Property”): _____ City Use: _____

Map: _____ Parcel No. _____ Land Disturbance Permit No. _____
Record Book: _____ Page No. _____

Project Name: _____

Project Address: _____

Owner(s): _____

Owner Address: _____

City: _____ State: _____ Zip Code: _____

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A.

This Inspection and Maintenance Agreement (“Agreement”) is made and entered into this ____ day of _____, of the year, 20__, by and between _____ (hereinafter called the “Owner”, whether one or more) and The City of Big Lake (hereinafter called “City”).

WITNESSETH, that

WHEREAS, the City is required by federal and state surface water quality regulations and its National Pollutant Discharge Elimination System (NPDES) permit to prevent surface water quality degradation from development or redevelopment activities within its jurisdiction, and the City has adopted surface water quality regulations as required and such regulations are contained in the Stormwater Management chapter of the City Code; and

WHEREAS, the Owner of the Property identified above has or will construct certain stormwater management facilities on the Property, and has developed a Stormwater Maintenance Plan (Plan), as may be amended from time to time for the maintenance of those facilities. The City has reviewed and approved Plan, and retains a copy in compliance with the City’s Document Retention Policy. A drawing showing the general area of the facilities covered by the Plan is attached to this Agreement for ease of identification.

NOW, THEREFORE, in consideration of the benefits received by the Owner as a result of the approval by the City the Plan, the Owner does hereby covenant and agree with the City as follows:

1. The Owner shall provide adequate long term maintenance and continuation of the stormwater control measures described in the Plan, to ensure that all stormwater facilities are and remain in proper working condition. The Owner shall perform inspection and preventive maintenance activities in accordance with the Plan.
2. The Owner shall maintain a copy of the Plan on site, together with a record of inspections and maintenance actions required by the Plan. The Owner shall document the times of inspections, remedial actions taken to repair, modify or reconstruct the system, the state of control measures and notification of any planned change in responsibility for the system. The City may require that the Owner's records be submitted to the City.
3. If it is later determined that the City's NPDES permit clearly directs Owners or the City to manage stormwater treatment systems differently than specified in the Plan, the direction of the NPDES permit shall override the provisions of the Plan.
4. The Owner hereby grants permission to The City, its authorized agents, and employees the right of ingress, egress and access to enter the Property at reasonable times and in a reasonable manner for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining or repairing the facilities. The Owner hereby grants to the City the right to install and maintain equipment to monitor or test the performance of the stormwater control system for quality and quantity upon reasonable notice to the Owner. Whenever possible, The City shall notify the Land Owner prior to entering the property and shall use its best efforts not to disturb the Land Owner's use and enjoyment of the Property while conducting said inspections.
5. In the event, the City determines that the stormwater facilities are not being maintained in good working order and gives written notice to the Owner to repair, replace, reconstruct or maintain said facilities within a reasonable time (maximum time specified will be 30 days), and the Owner fails to comply with the City's notice within the time specified, Owner authorizes the City or its agents to enter upon the Property to repair, reconstruct, replace or perform maintenance on said facilities at the Owner's expense. It is expressly understood and agreed that the City is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.
6. In the event, the City, pursuant to this Agreement, performs work of any nature, or expends any funds in the performance of said work for labor, use equipment, supplies, materials, and the like, the Owner shall reimburse the City upon demand, within forty-five (45) days of receipt of written request for reimbursement for all costs incurred by the City. If the City has not received said payment from the Owner by the end of said forty-five (45) day period,

the City may use any other remedies available by law to collect such balances plus reasonable expenses of collection, court costs, and attorney fees.

7. It is the intent of this Agreement to assure the City of proper maintenance of onsite stormwater facilities by the Owner; provided, however, that this Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or be caused by stormwater management.
8. The Owner and the Owner's heirs, executors, administrators, assigns, and any other successors in interest, shall indemnify and hold the City and its agents and employees harmless for, and defend against at its own expense, any and all damages, accidents, casualties, occurrence, claims, or attorney's fees which might arise or be asserted, in whole or in part, against the City from the construction, presence, existence, or maintenance of the storm water control facilities subject to the Plan and this Agreement. In the event a claim is asserted against the City, its officers, agents or employees, the City shall notify the Owner, who shall defend at Owner's expense any suite or other claim. If any judgment or claims against the City shall be allowed, the Owner shall pay all costs and expenses in connection therewith. The City will not indemnify, defend or hold harmless in any fashion the Owner from any claims arising from any failure, regardless of any language in any attachment of other document that the Owner may provide.
9. No waiver of any provision of this Agreement shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
10. The Owner shall record this Agreement with the Register of Deeds of County, this Agreement shall constitute a covenant running with the land, and shall be binding upon the Owner and the Owner's heirs, administrators, executors, assigns, and any other successors in interest.
11. The Owner shall have the facilities inspected in accordance with § 52-623 of the City's stormwater management ordinance and certify to the City that the constructed facilities conform and purport substantially to the approved Plan. If the constructed condition of the facility or its performance varies significantly from the approved Plan, appropriately revised calculations shall be provided to the City and the Plan shall be amended accordingly.
12. The Owner agrees that for any systems to be maintained by a property owner's association, deed restrictions and covenants for the subdivision or other development will include mandatory membership in the property owner's association responsible for providing maintenance of the system, will require the association to maintain the stormwater system, will prohibit termination of this covenant by unilateral action of the association, and provide

for unpaid dues or assessments to constitute a lien upon the property of an owner upon recording a notice of non-payment.

13. This Agreement must be re-approved and re-executed by the City if all or a portion of the Property is subdivided or assembled with other property.

Owner: _____ Date: _____
Signature by Individual

Owner: _____ Date: _____
Signature by Individual

STATE OF _____)
)
COUNTY OF _____)

Personally appeared before me, the undersigned Notary Public of the state and county mentioned, _____, with whom I am personally aquatinted (or proved to me on the basis of satisfactory evidence), and executed this Agreement (Inspection and Maintenance Agreement for Private Stormwater Management Facilities) for the purposes contained herein.

Witness my hand an official seal at office, this _____ day of _____, of the year _____.

Notary Public

My Commission Expires:

Accepted By:

For the City of Big Lake

STATE OF _____)
)
COUNTY OF _____)

Personally appeared before me, the undersigned Notary Public of the state and county mentioned, _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and executed this Agreement (Inspection and Maintenance Agreement for Private Stormwater Management Facilities) on behalf of the City of Big Lake for the purposes contained herein.

Witness my hand and official seal at office, this _____ day of _____, of the year _____.

Notary Public

My Commission Expires: