

Storm Water Enforcement Response Plan Sewerage & Water Board of New Orleans Storm Water MS4 Permit Revised February 18, 2014

Introduction

Under the requirements of CWA (33 U.S.C. 1251 et seq.), and the Louisiana Environmental Quality Act (LA. R.S. 30:2001, et seq.), the Sewerage and Water Board of New Orleans is required to develop a *Storm Water Enforcement Response Plan*. The intent of the Enforcement Plan is to provide guidance to SWBNO officials in enforcing Section 16.1 of the Sewerage & Water Board of New Orleans Plumbing Code. It should be used only as a guide since each situation is unique. Actual enforcement procedures should consider any unusual aspects of a violation or condition, as well as special characteristics of an enforcement action, in determining the proper response. Minor infractions may be resolved by a verbal notice, documented telephone call, e-mail or warning letter advising the user of the nature of the violation. If such action fails to generate an adequate response by the user, further enforcement actions as provided by Section 16.1 and 16.5 may be taken.

Enforcement Responses

The order of precedence for enforcement responses outlined in this guide should not be construed to prevent the Environmental Affairs (EA) staff from taking a stronger action without first implementing less stringent steps, if a judgment is made that a more forceful response is necessary.

Depending on the class of the violations, administrative action will occur in the following sequence:

- Documented Phone Calls or Informal Discussions
- Warning Notice of Violation
- Notice of Violation
- Consent Order
- Cease and Desist Order
- Show Cause Hearing
- Administrative Order
- Administrative Fine
- Criminal Investigation

A show cause hearing should be held prior to any enforcement action other than a telephone call, warning notice of violation, notice of violation (NOV), consent agreement and cease and desist

order. The purpose of a show cause hearing is to provide a forum for the user to present a defense to charges as outlined, or to obtain additional information.

Documented Phone Calls or Informal Discussions

In the case of the most minor violation of a permit in Section 16.1, a telephone call or informal meeting may be sufficient to obtain the desired compliance. Phone calls should be documented by contemporaneous notes. A copy of the notes should be retained in the user's master file. Likewise, if an informal discussion is held, notes should be kept summarizing the discussion. Copies of the notes should be retained in the user's master file. A follow-up to the phone call shall be an email or letter to the user outlining discussion made by phone or in person.

Warning Notice of Violation

A warning notice of violation is the lowest level of formal response to a violation. It is a verbal or written response presented to the violator shortly after a violation has been identified and is intended for minor violations that would not cause harm to the environment. A notice of violation form may be used in lieu of a letter outlining violation.

Official Notice of Violation

An NOV is an official notification to inform a non-compliant user of a violation of Section 16.1. The official NOV will be issued on SWBNO letterhead. It will include instructions for the satisfactory correction and prevention of the violation and may carry a maximum fine of \$100. Inspection to ensure performance of any corrective actions may be conducted by the EA staff at their discretion.

Consent orders

Consent orders are entered into between the SWBNO and the user to ensure compliance with specific actions to be taken by the user to correct non-compliance within a specified time period. The EA Division Chief may enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents shall include specific action to be taken by the user to correct the noncompliance within a time period specified in the document.

Cease and desist orders

Cease and desist orders may be issued when the EA Division Chief finds that a user has violated, or continues to violate, the stormwater management ordinance or order issued there under. The order shall require that the user:

- a) Comply forthwith; and
- b) Take such appropriate remedial or preventive action as may be needed or deemed necessary to properly address a continuing or threatened violation, including halting operations and terminating the discharge. Issuance of a cease and desist

order shall not be a bar against or a prerequisite for taking any other action against the user.

Show Cause Hearing

A show cause hearing shall be held prior to any enforcement action other than a telephone call, warning notice of violation notice of violation (NOV), Consent Agreement and Cease and Desist Order, . The purpose of a show cause hearing is to provide a forum for the user to present a defense to charges outlined, or to obtain additional information.

A user may waive the right to a Show Cause Hearing and agree to the recommendation of penalty from the Chief of Environmental Affairs Division. The user shall agree to correct the violation within thirty (30) days or the time outlined in either Consent Agreement or Administrative Order.

Administrative Orders

Administrative orders (AO) are enforcement documents that direct users to perform, or to cease, specific activities. Administrative orders may also invoke a penalty. There are two primary types of administrative orders: consent orders and cease and desist orders.

Administrative orders contain the following components:

1. Title - The title specifies the type of order being issued, to whom it is being issued, summarizes the purpose of the order, and contains an identification number.
2. Legal Authority - The authority under which the order is issued (the Stormwater Management Ordinance).
3. The Finding of Noncompliance - All violations must be described including the dates, the specific permit and/or ordinance provisions violated, and any damages known and attributable to the violation.
4. Required Activity - All orders should specify the required actions, such as installation of Best Management Practices (BMP), additional inspections, appearance at show cause hearings, etc.
5. Milestone Dates for Corrective Actions - When compliance schedules are appropriate, all milestone dates must be established including due dates for required written reports.
6. Supplemental Clauses - The document should contain standard clauses providing that:
 - a) Compliance with the terms and conditions of the administrative order shall not be construed to relieve the user of its obligation to comply with applicable state, federal or local law, or the permit;

- b) Violation of the administrative order itself may subject the user to additional penalties as set out in the stormwater management ordinance;
- c) No provision of the order shall be construed to limit the city's authority to issue supplementary or additional orders, or to take action deemed necessary to implement this program or ordinance;
- d) The order shall be binding upon the user, its officers, directors, agents, employees, successors, assigns, and all persons, firms or corporations acting under, through or on behalf of the user.

Administrative orders issued as a result of a violation of the stormwater management ordinance shall contain a penalty as determined using Tables A and B in this document. Administrative orders may also be used to advise a user of the need to take, or cease, certain actions, and in such case, may or may not be associated with penalties as defined in the ordinance or in this guide.

Civil Litigation

Pursuant to Section 16.1, Special Council of the Sewerage and Water Board of New Orleans may petition the appropriate court(s) for issuance of preliminary or permanent injunctions to restrain or compel activities by a user.

Penalties, Administrative or Civil

Section 16.1 authorizes assessment of penalties not to exceed \$5,000 per violation per day. Before assessment of any administrative penalty, a show cause hearing must be held with the non-compliant user.

If a violation results in conditions requiring the expenditure of public funds for mitigation of damages, a penalty shall be assessed in such amount as to offset the public funds so expended. This will in no way reduce or offset the liability of the user with respect to damages incurred.

Civil Injunction A civil injunction may be requested at any time, for any violation, if in the opinion of the Special Counsel of the Sewerage and Water Board of New Orleans, such action is justified, needed or appropriate.

Criminal Action

In cases where criminal acts are reasonably suspected, the Chief of Environmental Affairs Division and the Special Counsel shall gather information to be forwarded to the district attorney for action. Criminal prosecution, if pursued, shall be in addition to other actions authorized by Section 16.1, and all investigation documents will be turned over to Louisiana Department of Environmental Quality Enforcement Division for criminal prosecution.

Explanation of Use of Tables

This section provides an explanation on the use of Table A: Response Guide for Violation and Table B: Violation Response Guide.

Table A indicates how point values are assigned for each violation with consideration to the severity, duration, degree of harm, and compliance history of the user. All possible violations may not be listed; however, this does not preclude an appropriate enforcement response.

Table A contains three columns titled Initial Points, Repeat Value and Cumulative.

- If no history of violations is noted, the value under the column “Initial Points” may be used in conjunction with Table B to assess a typical response to the violation.
- If the user has a history of similar violations, the initial point value plus the product of the number of previous occurrences times the repeat value should be used as shown in the following formula:

Total Point Value (TP) = P + (N x R), where:

P = Initial Point Value for a single violation

N = Number of previous occurrences

R = Repeat Value from Table A

- Should more than one violation be noted at a time, the “Cumulative” column should be consulted. If violations are cumulative in nature, the sum of the individual point values should be used to judge the response. If not, the greatest individual values should be used to judge response, with the documentation for that response, however, noting all violations.

Once a point value is determined, Table B should be consulted for recommended responses. Table B provides a schedule of appropriate responses based upon the number of “points” determined by Table A.

Example:

A user violates the terms of the Stormwater Ordinance Section 16.1. This violation is considered significant and causes harm. Investigation reveals the user has been cited twice in the past for the same violation: Total Point Value (TP) = P + (N x R). Therefore: TP = 3 + (2 x 2) = 7, where:

3 = Points charged for isolated but significant discharge

2 = Number of previous occurrences; and

1 = Repeat value from Table A.

VIOLATION RESPONSE GUIDE – TABLE B

| Points | Action | Fine, maximum* |
|---------------|---|---------------------------|
| 1 | Warning Letter | \$100 |
| 2 | Notice of Violation | \$250 |
| 3 | Notice of Violation | \$400 |
| 4 | Administrative Order | \$500 |
| 5 | Administrative Order | \$600 |
| 6 | Administrative Order | \$750 |
| 7 | Administrative Order | \$1000 |
| 8+ | Criminal Investigation/Prosecution and/or Termination of Service | \$1000 |
| | | |
| | | |

***Maximum Fine is per violation per day. In addition to fine, remediation cost may be charged to violator.**

Violation of Fine Schedule Table A

| Description of Violation | Initial Points | Repeat Value | Cumulative |
|---|----------------|--------------|------------|
| Erosion Prevention and Sediment Control | | | |
| <i>Violation of a single requirement</i> | | | |
| Not significant | 1 | 1 | Yes |
| Significant but no harm | 2 | 2 | Yes |
| Significant but causes harm | 3 | 2 | Yes |
| <i>Violation of more than one requirement</i> | | | |
| Not significant | 2 | 1 | Yes |
| Significant but no harm | 3 | 2 | Yes |
| Significant but causes harm | 4 | 2 | Yes |
| Unauthorized Discharges | | | |
| <i>Illicit Discharges</i> | | | |
| User unaware of requirement, no harm | 1 | NA | No |
| User unaware of requirement, harm | 2 | NA | No |
| User aware of requirement, no harm | 2 | 2 | Yes |
| User aware of requirement, harm | 3 | 2 | Yes |
| <i>Illicit Connections</i> | | | |
| User unaware of requirement, no harm | 1 | NA | No |
| User unaware of requirement, harm | 2 | NA | No |
| User aware of requirement, no harm | 2 | 2 | Yes |
| User aware of requirement, harm | 3 | 3 | Yes |
| <i>Inspection</i> | | | |
| Entry Denied | 3 | 2 | Yes |
| Inspection Records Incomplete | 2 | 2 | Yes |
| Inspection Records Not Available | 2 | 2 | Yes |
| Maintenance | | | |
| Failure to properly operate and maintain BMPs | 2 | 2 | Yes |
| Stormwater Management | | | |
| <i>Pre-Construction</i> | | | |
| Failure to obtain NOI | 3 | 1 | Yes |
| Failure to provide SWPPP | 3 | 1 | Yes |
| Failure to provide water quality BMPs | 3 | 1 | Yes |
| <i>Post Construction</i> | | | |
| Failure to provide water quality BMPs | 3 | 2 | Yes |
| Failure to provide channel protection | 3 | 2 | Yes |
| Failure to provide downstream impact protection | 3 | 2 | Yes |