

Enforcement Response Plan (ERP)



ENGINEERING - STORMWATER
CLEAN WATER | HEALTHY COMMUNITIES

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I. **Purpose**

The intent of this document is to provide guidance in enforcing the City of Gallatin Municipal Code, Chapter 18, Stormwater Ordinance, and to help eliminate illicit discharges to the City's stormwater system. This plan provides consistent enforcement responses for similar violations and circumstances. This document 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.

II. **Background**

Pursuant to Section 4.5 of the Small MS4 General NPDES Permit, the City of Gallatin has developed an Enforcement Response Plan (ERP) that outlines the enforcement actions to be taken for noncompliance and addresses repeat violations through progressive enforcement, as needed, to achieve compliance. These incidents include actions to be taken for common violations associated with the Construction Program, the Illicit Discharge Detection and Elimination Program, and the Post-Construction Program; all of which are components of the City of Gallatin Stormwater Management Program.

In addition to meeting the requirements of Section 4.5 of the Small MS4 General NPDES Permit, the ERP serves as a guidance document for City Engineering Division staff when addressing the variety of different noncompliance incidents that may be encountered. The City must have the legal ability to employ progressive enforcement actions and to escalate enforcement responses where necessary to address persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm. The ERP must allow for the maximum penalties per day for each day of violation as specified in [TCA §68-221-1106](#)

Article 11 of the Stormwater Ordinance states:

(1) General

In order to enforce the provisions of this ordinance, the City of Gallatin shall have the Authority to issue Notices of Violation, Stop Work Orders suspending construction activities, suspend issuance of building permits, withhold approval of plans, and impose Civil Penalties as outlined in the City's Enforcement Response Plan (ERP).

The ERP should be used only as a guide, while recognizing that each situation is unique. The provisions of this ERP are not mandatory. 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. Guidance will be given for the different enforcement responses available, actions to address general permit non-filers, when and how to refer violators to the state, and how to track enforcement actions.

III. Enforcement Response Plan

The ERP designates several enforcement options for each type (or pattern) of noncompliance. The intent of the ERP is to provide direction for appropriate enforcement response and to ensure consistent enforcement for similar violations and circumstances. Factors that will be evaluated when determining the appropriate response are as follows:

- 1) The harm done to the public health or the environment;
- 2) Whether the civil penalty imposed will be substantial economic deterrent to the illegal activity;
- 3) The economic benefit gained by the violator;
- 4) The amount of effort put forth by the violator to remedy this violation;
- 5) Any unusual or extraordinary enforcement costs incurred by the municipality;
- 6) The amount of penalty established by ordinance or resolution for specific categories of violations; and
- 7) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

Escalating Enforcement Response

Escalating enforcement response will be used for recurring violations and failure to achieve compliance subsequent to informal or formal enforcement. A recurring violation is one in which the same type of violation occurs on a project or on multiple projects by the same operator, or any other pattern of noncompliance is shown.

Violations falling under more than one Category

Violations that fall under more than one category in the enforcement response plan will be addressed through the more severe enforcement response. All alleged violations will be included in the more severe response.

Recovery of Damages and Costs

In addition to assessing and collecting civil penalties, the City may recover:

- All damages proximately caused by the violator to the City, which may include any reasonable expenses incurred in investigating violations, and enforcing compliance, 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.

Timeframes for Enforcement Responses

- Violations will be identified and documented within 10 days of receiving compliance information.
- Initial enforcement responses (informal or formal) will occur within 15 days of identifying a violation.
- Follow up actions for continuing or recurring violations will be taken within 5 days of the initial enforcement response.
- Violations which threaten health, property, or environmental quality are considered emergencies and will receive immediate response such as the issuance of a stop work order.

Requirements for Chronic Violators

Chronic violators shall be defined as any person that repeats violations of the Stormwater Ordinance at least three times in a one year period. The violations are tied to the person rather than a project or site, meaning that the violations do not have to occur on the same project. The violations do, however, need to be of a similar nature, such as all violations of construction standards or all violations involving illicit discharges.

Once an operator has been labeled as a chronic violator they will remain as such until they have operated for a one year period with no documented violations of the Stormwater Ordinance. Chronic violators will be treated differently than other operators. The Engineering Division will inspect all projects on which chronic violators are involved at a higher frequency than other projects. The Engineering Division will also double the civil penalties issued to chronic violators, as long as it can do so and stay within the maximum penalty allowed by the Ordinance and T.C.A. The Engineering Division will also escalate enforcement responses for chronic violators. This means that for a given violation that would normally result in just a Notice of Violation, the chronic violator will likely receive a civil penalty or at least be called in for a Show Cause Hearing.

A violator that meets the criteria of this section will be notified of such in the Notice of Violation or other enforcement documentation that is sent to the violator for the third and qualifying violation.

IV. **Identifying and Investigating Instances of Non-Compliance**

There are many activities associated with the identification and investigation of noncompliance. A brief description of these activities is provided in this ERP. The activities that facilitate the identification and investigation of noncompliance are as follows:

- 1) ***Routine Permit Inspections*** – The City issues land disturbance permits for certain construction activities taking place within the city limits of Gallatin. Once a permit is issued for a project, routine compliance inspections are conducted of the project to assure that the provisions of the permit, the ordinance, and the stormwater pollution prevention plan (SWPPP), if applicable, are being met. Any violations documented during routine inspections will initiate enforcement activities.
- 2) ***Complaint Investigations*** – The City investigates all stormwater related complaints. Complaints are received in a number of ways. Complaints are received via phone calls, via the City’s stormwater web page, and are often called in by other city departments. Violations documented as a result of complaint investigations will initiate appropriate enforcement activities.

V. **Description of Enforcement Actions**

1. Informal Notice:

- **Verbal Notification:** Verbal notifications by telephone or in person provide an immediate notification of violations. In general, verbal notifications are used for minor isolated violations or as an initial step leading to an escalated enforcement response. All verbal notifications related to enforcement or the investigation of suspected violations are documented on an inspection report and placed in the respective project file.
- **Written Notification:** Written notification may include the copying of an inspection report to a site operator. This could be accomplished by simply leaving a copy of the inspection report at the site (within a safe location) for the operator to find, handing a copy of the report to the

operator or a representative that is present at the site, or forwarding a copy of the report to the operator by e-mail. The inspection report will document any compliance issues that need to be addressed at the site. This written notification may or may not be followed up with a more formal means of notification, such as a Notice of Violation.

2. *Notice of Violation:*

- A Notice of Violation (NOV) is a written notice to the noncompliant operator that a stormwater violation has occurred. A NOV includes a statement detailing the legal authority under which the City issued the NOV, a description of the violation(s), and the date(s) the violation(s) occurred. The NOV may require a response from the Operator that details the causes of the violation(s), and the corrective actions taken to correct the violation and to prevent similar violations from occurring. A NOV is used to notify the Operator and document the violation. The NOV may assess civil penalties or a damage assessment and may require a specific remedial action of the user.

3. *Show Cause Hearing*

- A Show Cause Hearing is a formal meeting requiring the Operator to appear, explain its noncompliance, and show cause as to why more severe enforcement actions against the user should not go forward. The meeting may also serve as a forum to discuss corrective action and compliance schedules. An example of when a Show Cause Hearing will be utilized would be when a requirement is not completed on time and a civil penalty is being considered. The City is not, however, required to hold a Show Cause Hearing prior to assessing a civil penalty.

4. *Stop Work Order*

- A Stop Work Order is an order issued to the Operator by the City requiring that all work at the site cease until such time as the violation is corrected. The stop work order can be posted at the site or can be sent as part of a Notice of Violation. A stop work order will generally be utilized when the nature of the violation is such that it is imperative that the correction of the violation take place prior to any further work being conducted on the site or as an escalation option when an NOV is disregarded or violation(s) have not been corrected.

5. Civil Penalties

- A civil penalty is a punitive monetary charge assessed by the City rather than a court. The penalty amount must be authorized in the stormwater ordinance. The purpose of the penalty is to recover the economic benefit of noncompliance and to deter future violations. The range of penalties allowed by the Gallatin Stormwater Ordinance and by [TCA §68-221-1106](#) is a minimum of fifty dollars (\$50.00) to a maximum of five thousand dollars (\$5,000) per day of violation. When assessing a civil penalty the following factors are considered:
 - I. The harm done to the public health or the environment;
 - II. Whether the civil penalty imposed will be substantial economic deterrent to the illegal activity;
 - III. The economic benefit gained by the violator;
 - IV. The amount of effort put forth by the violator to remedy this violation; Any unusual or extraordinary enforcement costs incurred by the municipality;
 - V. The amount of penalty established by ordinance or resolution for specific categories of violations; and
 - VI. Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

VI. Construction Noncompliance

All sites that require a Land Disturbance Permit (LDP), TDEC General Construction (CGP) coverage, or TDEC Aquatic Resource Alteration Permit (ARAP) coverage are subject to the enforcement actions outlined in this section. Article III of the City of Gallatin Stormwater Ordinance and the City of Gallatin Land Disturbance Permit Standard Operating Procedure (SOP) outline the requirements for application, applicability, and coverage under a Land Disturbance Permit. Two noncompliance situations are addressed: permit non-filers and permit violations.

Permit Non-Filers

Any site that falls under the requirements of obtaining a LDP, a TDEC CGP Notice of Coverage (NOC), or TDEC ARAP are required to have the approved permit on site. If it is found the site has not obtained proper coverage, a Stop Work Order will be issued immediately. Before any further work, with the exception of stabilization of the site, is performed, proper permit coverages must be obtained. In the event the violator does not stop work immediately, the violator will be assessed penalties as outlined above and the local TDEC Environmental Field

Office (EFO) will be notified. The project location, owner/operator, project size, and records of communication will be provided to the local TDEC EFO in Nashville, TN.

Permit Violations

Any site covered under a LDP, a TDEC CGP, or a TDEC ARAP will be subject to inspections as outlined in the City of Gallatin Land Disturbance Permit SOP. Inspections will be performed evaluating compliance with the permits listed above. If non-compliance is noted, it will be documented on the Erosion and Sediment Control Inspection Form.

In cases of minor violation(s), a call to the site contact will be made, informing them of the violation and outlining a timeline for correction. After the given timeline has expired, and no corrective action has been taken, a Notice of Violation (NOV) will be issued. Once an NOV is issued, a timeline, usually 5 days, will be given for compliance. A SWO may be issued and when determined appropriate by the Engineering Division. If substantial progress is not made toward compliance, Civil Penalties will be assessed, as outlined above.

In cases of major violation(s), a NOV and/or SWO will be issued immediately. Once an NOV or SWO is issued, a timeline, usually 5 days, will be given for compliance. If substantial progress is not made toward compliance, Civil Penalties will be assessed, as outlined above.

In cases of violations that require immediate action to prevent major damages to Tennessee Waters of the State, and/or if the contractor is unable to take immediate action, the expenditure of public funds for prevention and/or mitigation of damages shall be compensated in such amount as to offset the public funds expended. This will in no way reduce or offset the liability of the owner with respect to damages incurred.

If the City is unable to bring an NPDES permitted discharge into compliance using its enforcement mechanisms and protocol, the local TDEC EFO in Nashville, TN will be notified and provided the project location, owner/operator information, project size, and records of communication, including along with a summary and copies of escalated enforcement actions taken.

VII. Illicit Discharge Noncompliance

Pursuant to the City's Small MS4 General NPDES permit, non-stormwater discharges into the City's MS4 are defined as illegal, except those listed in Article 9, Section 3, of the City of Gallatin Stormwater Ordinance. The City has developed a program to address these illicit discharges. The components of this program that involve enforcement response are Outfall Screening through Visual Stream Assessments, Hotspots, Stormwater Hotline, and Stream Testing. For further information regarding these components of the Illicit Discharge, Detection, and Elimination Program, refer to the Mapping and Inspection of Outfalls SOP and Identification and Education of Hotspots SOP.

Outfall Screening

If at the time of inspection of an outfall, the facility/property is found to be in non-compliance with the City of Gallatin Illicit Discharges ordinance, a verbal warning will be issued with suggested corrective action. The owner of the facility/property will be given a specified timeline to bring the site into compliance. After the time specified in the timeline has expired, a re-inspection will take place. If the owner has not brought the site into compliance, the City will issue a Notice of Violation.

Upon issuance of the Notice of Violation, the owner/operator of the property/facility may be subject to fines and/or remediation costs outlined above and in Article 12 of the Stormwater Ordinance.

In cases where inspection reveals an illicit discharge that poses an immediate threat to public health or the environment, the City will issue a Notice of Violation and call necessary agencies/personnel to assist with correcting the violation. The owner may be subject to repayment to the City for costs involved with the corrective action.

Hotspots

If at the time of inspection, the facility/property is not in compliance with Article 9 of the City of Gallatin Stormwater Ordinance, a verbal warning will be issued with suggested corrective action. The owner of the facility/property will be given a specified timeline to bring the site into compliance. After the time specified in the timeline has expired, a re-inspection will take place. If the owner has not brought the site into compliance, the City will issue a Notice of Violation, as outlined above.

Upon issuance of the Notice of Violation, the owner/operator of the property/facility will be subject to fines and/or remediation costs outlined above and in Article 12 of the Stormwater Ordinance.

In cases where inspection reveals an illicit discharge that poses an immediate threat to public health or the environment, the City will issue a Notice of Violation and call necessary agencies/personnel to assist with correcting the violation. The owner may be subject to repayment to the City for costs involved with the corrective action. Documented illicit discharges shall be responded to no more than 7 days from detection, and eliminated as soon as possible.

Hotline

The Stormwater Hotline is the Engineering Division's main line (615) 451-5965 as well as online on the [City's website for FixIt Complaint](#) or email the Stormwater Division under the [Contact US links](#). As reports are received on water resource issues, they are inventoried in the Stormwater Hotline Log. All calls are responded to within 48 hours. If the report is verified by the Engineering Division as an Illicit Discharge, the site is inspected and added to the Hotspot Inventory Map. Procedures will then be performed as outlined above for Hotspots.

Stream Testing

As the City performs analytical monitoring of impaired streams as required in Section 5.1 of its Small MS4 General NPDES permit, any pollutant loadings that can be traced back to hotspots or outfalls will be addressed as outlined in the above procedures.

VIII. Post Construction Non-Compliance

Pursuant to Section 4.2.5 of the City's Small MS4 General NPDES permit, discharges from new development and redevelopment sites must be managed such that post-development hydrology does not exceed pre-development hydrology. The permanent stormwater management program must require New Development Projects to be designed to remove pollutants to the MEP. SCMs that rely on infiltration, evapotranspiration, or capture/reuse of the water quality treatment volume (WQTV), as defined in sub-section 4.2.5.2.2, are practices that approach 100% pollutant removal and constitute MEP where site-specific conditions allow.

Best Management Practices (BMP's) also called Stormwater Control Measures (SCMs) are used to meet this requirement. BMP/SCM review/approval,

BMP/SCM implementation, and BMP/SCM maintenance enforcement responses are outlined below.

BMP/SCM Review/Approval

Prior to any new development or redevelopment plan approval, a comprehensive review is performed by all City departments. Procedures for approval are available on the City website under the [Current Planning Department page](#). The Engineering Division is responsible for making sure the requirements of the City's Small MS4 General NPDES permit are addressed. BMP/SCM design and supporting calculations to meet the Water Quality Treatment Volume (WQTV) as specified in Section 4.2.5.2.2 of the MS4 permit are reviewed by the Engineering Division Staff for compliance with the performance standards outlined in the City of Gallatin Stormwater Ordinance and Subdivision Regulations. Prior to approval, these standards must be addressed.

BMP/SCM Implementation

Once a plan and its BMPs/SCMs are approved, and an Inspection and Maintenance Agreement for Stormwater Facilities has been recorded, the Engineering Division Staff monitors the construction to ensure proper installation of BMPs/SCMs. Before the plan is approved, a site and/or subdivision surety is posted by the developer to ensure completion of all improvements shown on the approved plan. Prior to release of the surety and/or prior to issuance of a Certificate of Occupancy, all BMPs/SCMs are inspected to ensure they are working as designed. Any modifications to the approved post-construction BMPs/SCMs must be reviewed for compliance with City performance standards, and approved by Engineering Division staff.

BMP/SCM Maintenance

Prior to approval of any site plan and/or plat that will have any permanent stormwater BMP/SCMs, an *Inspection and Maintenance Agreement for Stormwater Facilities* is required to be executed and recorded. This agreement outlines the maintenance and inspection responsibilities of the owner and enforcement actions if these requirements are not met.