

STORMWATER ENFORCEMENT RESPONSE PLAN

(ERP)



City of Lodi
May 2016



Storm Water Enforcement Response Plan

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Storm Water Enforcement Response Plan

I. ENFORCEMENT RESPONSE PLAN REVISIONS

Revision No.	Date	Revised By	Reason for Revision	Sections Revised
0	4/20/16	KMG	Initial Preparation	All New

II. TERMS AND ABBREVIATIONS

BMPs	Best Management Practices
C&DO	Cease and Desist Orders
CGP	Construction General Permit
CVRWQCB	Central Valley Regional Water Quality Control Board
CWA	Clean Water Act
EPA	Environmental Protection Agency
ERP	Enforcement Response Plan
ESCP	Erosion and Sediment Control Plan
HARM	Harm indicates potential pollutant reaches the municipal storm drain system and/or surface water body
IGP	Industrial General Permit
MS4	Municipal Separate Storm Sewer System
NOC	Notice of Correction
NOI	Notice of Intent
NOT	Notice of Termination
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
PRIORITY AREA	Priority areas are those drainage areas whose watershed drains directly or indirectly (via pump station) to a surface water body such as Lodi Lake or the Mokelumne River
SWPPP	Stormwater Pollution Prevention Plan
WDID	Waste Discharge Identification



1. INTRODUCTION

1.1. PURPOSE AND APPROACH

The City of Lodi (City) is subject to the State Water Resources Control Board's (SWRCB) National Pollution Discharge Elimination System (NPDES) Water Quality Order for Small Municipal Separate Storm Sewer Systems (Phase II MS4 Permit). As a result, in compliance with Section E.6.c, the City is required to develop and implement an Enforcement Response Plan.

The City adopted the existing Storm Water Ordinance, Lodi Municipal Code (LMC) Chapter 13.14, on June 3, 2015, which incorporates several enforcement mechanisms that can be employed to escalate the level of enforcement depending on the circumstances, including: notices of violation; cease and desist orders; abatement; administrative citations; civil enforcement; and criminal prosecution.

The purpose of this document is to formally establish consistency with the City's enforcement procedures and follow-up actions for non-compliance with the City's Storm Water Ordinance, LMC Chapter 13.14. This plan describes how the City will address repeat and continuing violations by implementing escalating enforcement responses as necessary to achieve compliance. LMC Chapter 13.14 and this Enforcement Response Plan (ERP) may be used for NPDES violations, seasonal, and recurrent nuisances, and emergency orders and abatements. The enforcement actions denoted may be used independently depending on the nature and type of the violation(s).

The City's approach to ensuring compliance with the LMC and this ERP is based on progressive enforcement. In general, the City will initially use the least stringent enforcement action available for the subject violation, with each successive enforcement action based on the violator's responsiveness and the type of violation. In some cases the City may need to escalate the enforcement actions noted in the ERP based on the severity of violation, history of violations, and responsiveness of the violator. The enforcement official noted herein means the Public Works Director for the City of Lodi or designee, or any agent of the City authorized to enforce the LMC.

2. ENFORCEMENT RESPONSES

2.1. VERBAL / WRITTEN WARNINGS (NOTICE OF CORRECTION)

The City will issue verbal and/or written warnings as an optional first level of enforcement response. City staff has the discretion to issue either a verbal warning or a written notice of correction, depending on the circumstances. Verbal warnings are primarily consultative in nature and specify the nature of the violation and required corrective action.



Triggers	Enforcement Action	Implementation Description
<ul style="list-style-type: none"> • First-time violator (minor environmental violations or threat). • No active or imminent threat of significant contamination to the storm drain system or the environment. • Ability for violator to immediately correct situation. • Conditions that may result in a violation of LMC Chapter 13.14 due to poor housekeeping or management practices. • Violator is cooperative and willing to remedy situation. 	Verbal / Written Warnings (Notice of Correction)	<ul style="list-style-type: none"> • Specify the nature of the violation(s) or potential violation(s), document and photograph. • Specify required corrective actions. • Recommend (on the spot) appropriate BMPs to correct or prevent violation(s). • Follow up with written inspection summary, and photograph. • Violator shall take all reasonable steps to comply with required corrective actions and recommendations. • City will conduct a follow-up inspection within four weeks to verify corrections, document in writing, and photograph.

2.2. WRITTEN NOTICES (NOTICE OF VIOLATION)

The City will issue written notices as a typical first level of enforcement response to minor violations with minimal environmental impact. City staff will have the discretion to determine whether a written notice is appropriate for the scenario and whether escalated enforcement measures should be used.

Triggers	Enforcement Action	Implementation Description
<ul style="list-style-type: none"> • First-time violators (moderate threat or isolated incident). • Failure to implement appropriate BMPS after receiving a verbal/written warning. • Minor infractions with minimal impact on the storm drain system and the environment. • Seasonal and recurrent non-storm water nuisance flows onto public right of way. • Violator is cooperative and willing to remedy situation. 	Written Notices (Notice of Violation, Cease and Desist Order) LMC §13.14.420(A) LMC §1.10.120	<ul style="list-style-type: none"> • Issue written NOV. Complete NOV specifying code section violations, corrective actions and compliance dates. Include photographs. • City will impose deadlines for violator to comply with specified corrective actions. • Follow service procedure in LMC §1.10.120. • Conduct follow-up inspection after compliance deadline; document in writing, and photograph. • Violator shall submit a written explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall include specific corrective actions to be taken, to the Enforcement official within the time prescribed in the notice and order per LMC §13.14.420(A)1. • Violator may appeal the notice and order within 10 days per LMC §13.14.450.



2.3. ESCALATED ENFORCEMENT MEASURES

Escalated enforcement measures may be required in order to achieve compliance and/or adequate mitigation when violations pose a significant impact on the storm drain system and environment, or violators are uncooperative and fail to comply with written notices. The City has established legal authority, pursuant to LMC Chapter 13.14, enacted June 3, 2015, establishing different methods of enforcement actions, which allow the City to escalate enforcement responses when necessary to correct persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm. The City Enforcement official will have the discretion to determine the appropriate level of enforcement based on the nature and type of violation.

Triggers	Enforcement Action	Implementation Description
<ul style="list-style-type: none"> • Failure to comply with Notice and Order to Abate. • Failure to submit discharge abatement plan. • Violations with significant impacts on the storm drain system and the environment. • Violator economically benefits from the violation. • Violator is non-cooperative or minimally cooperative to remedy situation. 	Administrative Civil Citation LMC §13.14.420 (A)12	<ul style="list-style-type: none"> • Issue administrative civil citation. • Follow service procedure in LMC §1.10.120. • Conduct follow-up inspection after deadline to implement corrective actions; document, photograph concerns. • Violator may appeal the notice and order per LMC §13.14.450.
<ul style="list-style-type: none"> • Failure to respond appropriately to written notices. • Failure to comply with notice and order and/or citations. • Violator is not cooperative. • Activities when, in the opinion of the enforcement official, cause an illicit discharge or cause or potentially cause uncontrolled pollutants to enter the stormwater conveyance system and present an imminent danger to the public health, safety, welfare or environment, or a violation of a NPDES permit. 	Stop Work Orders LMC §13.14.420(D)	<ul style="list-style-type: none"> • Notify Violator of unsafe condition, if possible. • Immediate cessation of any activities causing pollutants to enter the storm water systems that present imminent danger to the public health, safety, welfare, environment or that could violate an NPDES permit per LMC §13.14.420(D). • Conduct follow-up inspection after completion date for corrective actions; document, photograph concerns prior to allowing cessation to be lifted.



Storm Water Enforcement Response Plan

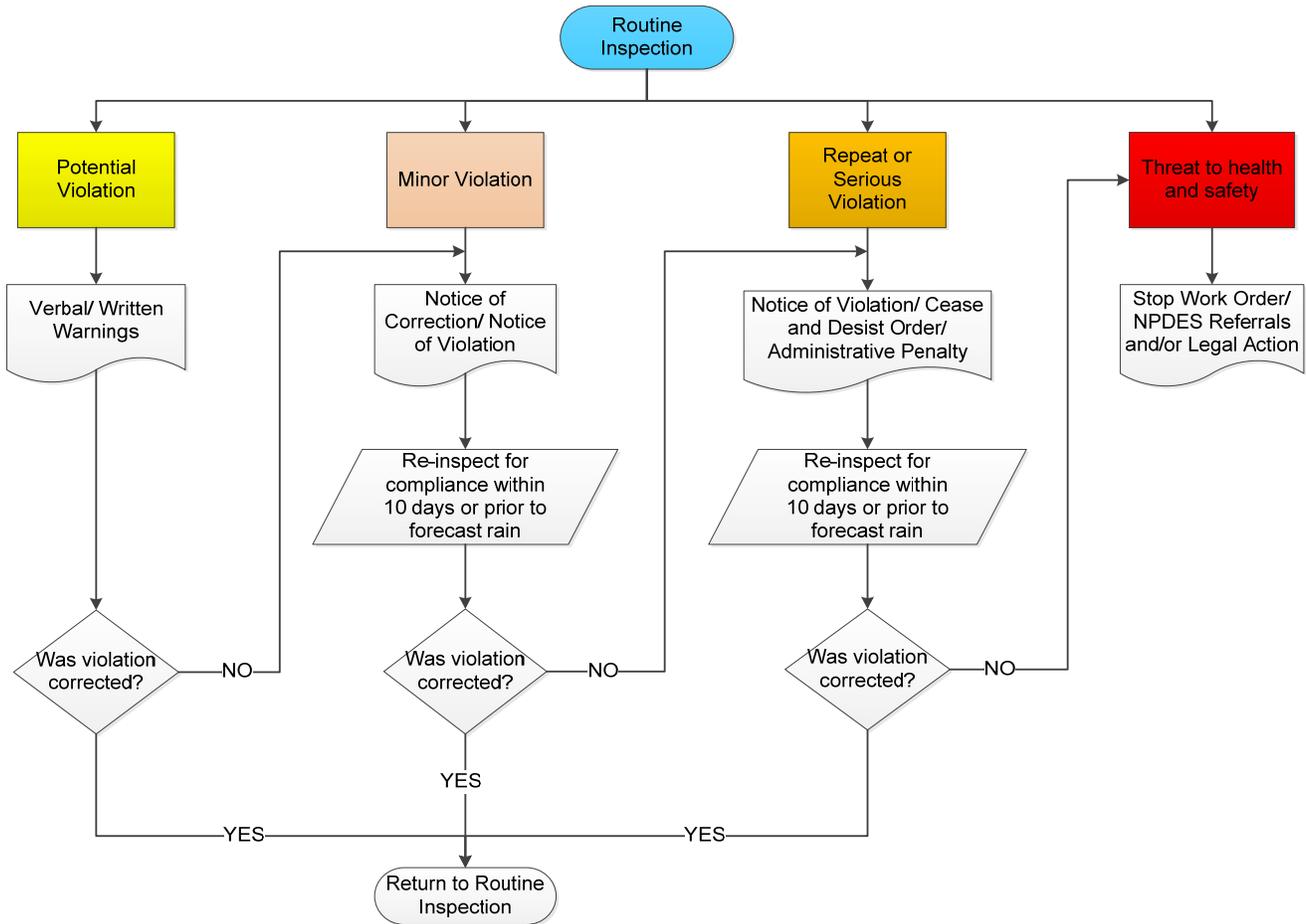
Triggers	Enforcement Action	Implementation Description
<p>Any violation of LMC Chapter 13.14, including, but not limited to:</p> <ul style="list-style-type: none"> • Failure to respond appropriately to written notices. • Failure to comply with notice and order and/or citations. • Violator is not cooperative. • Multiple offenses of similar nature. • Minor to moderate infractions with minimal to moderate impact on the storm drain system and the environment. • Third serious violation within a 12-month period. • Ongoing discharges of pollutants to the storm drain system or to the roadways, including flooding over a city roadway. 	<p>Criminal Prosecution or Civil Action</p> <p>LMC §13.14.420</p> <p>LMC §13.14.420(B)</p> <p>LMC §1.10.120</p>	<ul style="list-style-type: none"> • Any violation of LMC Chapter 13.14 is a misdemeanor offense per LMC §13.14.420(A)(7), and violators may be referred to City Attorney for criminal prosecution per LMC §13.14.420(C). • A civil injunction may be sought at any time, for any violation of LMC Chapter 13.14.
<ul style="list-style-type: none"> • Discharge causes or threatens to cause a condition that presents an imminent danger to the public health, safety, welfare or environment. • Discharge causes or threatens to cause a violation of a NPDES permit. • Major violations of LMC §13.14.420(D) (e.g. large spills, gross negligence in housekeeping or management practices) possibly requiring emergency spill response. • Ongoing discharges of pollutants to the storm drain system or to the environment. • Significant impact to the environment caused by violation requiring immediate abatement to protect. • Emergency situation where the property owner or other responsible party is unavailable. 	<p>Emergency Orders and Abatements</p> <p>LMC §13.14.420(D)</p> <p>LMC §1.10.120</p>	<ul style="list-style-type: none"> • Notify violator of unsafe condition, if possible. • Follow service Procedure in LMC §1.10.120. • Abatement may require the cleanup of spills, illicit discharges, and dumping to the City’s storm drainage system within 72 hours of notification, or sooner, for high risk spills per LMC §13.14.420(D)1. Cost of abatement billed to owner and recording of a lien on property per LMC §§13.14.420(A)9 & (D). • Owner may file appeal contesting costs LMC §13.14.450. • Immediate cessation of any activities causing pollutants to enter the storm water systems that present imminent danger to the public health, safety, welfare, environment or that could violate an NPDES permit per LMC §13.14.420(D)4.
<ul style="list-style-type: none"> • Failure to comply with the City building, planning, and/or construction requirements. • Failure to comply with abatement orders to lift a stop work order. 	<p>Withholding Plans, Approvals & Authorizations</p> <p>LMC §13.14.420</p>	<ul style="list-style-type: none"> • Building and Planning Department to withhold authorization to proceed on all projects until all construction and post-construction measures have been satisfactorily addressed. • The City will not lift a cessation of activities order until verification of mitigation has occurred.



Triggers	Enforcement Action	Implementation Description
<ul style="list-style-type: none"> Relapse into non-compliance after successfully demonstrating compliance, abating a violation or completing a compliance schedule. 	<p>Recidivism Reduction</p> <p>LMC §13.14.420</p>	<ul style="list-style-type: none"> Require the implementation and ongoing use of Best Management Practices as part of each enforcement action. Establish elements of a Stormwater Pollution Prevention Plan (SWPPP) at applicable businesses and require adoption and implementation of the plan as part of each enforcement action. Conduct a minimum of two inspections during the year following the successful abatement or completion of a compliance schedule, to ensure that the use of Best Management Practices and / or adherence to the SWPPP is ongoing.
<ul style="list-style-type: none"> If a project is issued two consecutive Notice of Violations, or a previously issued Notice of Violation remains uncorrected, the City will assign the project an elevated "Risk Level," thereby increasing inspection frequency as set forth in LMC §13.14.120(B)(3)(c). 	<p>Recidivism Reduction via Elevated Inspection Frequency (Construction Projects)</p> <p>LMC §13.14.120</p>	<ul style="list-style-type: none"> The City uses water quality threat levels that correspond to the project's CGP "Risk Level". The City's initial storm water compliance inspection frequency at construction sites based on project's threat to water quality as set forth in LMC §13.14.120(B)(3). Frequency of inspections shall increase from the baseline level for projects which incur two consecutive violation or corrective notices, or a previously issued NOV remains uncorrected after the compliance deadline set by the City.
<p>For construction projects or industrial facilities subject to the State's Construction General Permit (CGP) or Industrial General Permit (IGP):</p> <ul style="list-style-type: none"> Non-filers (i.e., those facilities that cannot demonstrate that they obtained permit coverage). Ongoing violations, after progressive enforcement efforts to achieve compliance have been unsuccessful. 	<p>NPDES Permit Referrals</p> <p>LMC §13.14.420</p>	<ul style="list-style-type: none"> Sites that are unable to demonstrate that they have obtained applicable IGP or CGP coverage will be referred to the CVRWQCB within 30 days of making the non-filer determination. The City will refer ongoing violators to the CVRWQCB for those still in non-compliance after the City's attempts to achieve compliance through the use of progressive enforcement methods have been unsuccessful. City will issue at least two warning letters or notices of violation, and make at least two follow-up inspections, prior to referring violators to the CVRWQCB.



2.4. ENFORCEMENT FLOW CHART



3. SERVICE OF NOTICES, AND ENFORCEMENT TRACKING

3.1. METHOD OF SERVICE

The enforcement official, shall cause the NOV and/or administrative civil citation to be served on the person(s) owning or occupying the premises, or upon the person(s) responsible for or committing the violation. Service of the notice and order to abate may be made in the following manner:

1. By personal service; or
2. By registered or certified mail.

3.2 ENFORCEMENT TRACKING

Implementation of the enforcement actions identified in this plan will be tracked electronically in the City’s Storm Water Management database. Each enforcement action will be documented with the following information being recorded:

1. Name of owner/operator;



2. Location of construction project or industrial facility;
3. Property APN number;
4. Description of violation;
5. Required schedule for returning to compliance;
6. Description of enforcement response used, including escalated responses if repeat violations occur or violations are not resolved within the time specified in the enforcement action;
7. Accompanying documentation of enforcement response (e.g., notice of noncompliance, notice of violations, etc.); and
8. Any referral(s) to other city departments or outside agencies.

4. ASSESSMENT OF ADMINISTRATIVE PENALTIES

4.1. ASSESSMENT METHODOLOGY

The stormwater management and discharge control ordinance authorizes the assessment of penalties to be derived per this Plan. Pursuant to LMC § 13.14.420(12)(C), the penalty amounts shall be derived as outlined in this Stormwater Enforcement Response Plan and in determining the amount of penalty to be assessed, consideration will be given to the following:

- i. The extent to which the owner or person responsible for the violation had knowledge or reasonably should have known that the action taken was a violation of this chapter;
- ii. The magnitude of the violation;
- iii. The extent to which the owner or person responsible for the violation derived a financial benefit from the violation;
- iv. Any prior history of related violations by the same person on the subject property or on other parcels within the city; and
- iv. Any corrective action, or lack thereof, taken by the owner or person responsible to eliminate the violations, and any other mitigating circumstances justifying a reduction of the amount of the penalties.

To determine the amount of the penalties, the following formula will be used. Penalties noted below are separate from any applicable cost recovery.

$$\text{Administrative Penalty} = V + (N * R)$$

Where:

- V = First Violation Points
- N = Number of Prior Violations
- R = Repeat Violation Points



4.2. ADMINISTRATIVE PENALTY SCHEDULE

Description	First Violation Points	Repeat Violation Points
Failure to obtain encroachment permit prior to ground disturbance (if applicable)	1	N/A
Failure to obtain approved permit prior to ground disturbance (if applicable)	2	N/A
Failure to implement ESCP requirements (prior to ground disturbance or during project)	1	2
Failure to obtain WDID number prior to ground disturbance (if applicable)	2	N/A
Failure to implement SWPPP requirements (prior to ground disturbance or during project)	2	2
Failure to properly install and/or maintain BMPs	1	2
Discharge in PRIORITY AREA – no HARM	2	2
Discharge in PRIORITY AREA – HARM	3	4
Discharge outside PRIORITY AREA – no HARM	1	2
Discharge outside PRIORITY AREA – HARM	2	3
Illicit connection	2	1
Failure to remove BMPs after NOT	1	2

Total Points

Action

1 - 2	Verbal/Notice of Correction
3 - 4	Written Notice of Violation
5	Administrative Penalty \$100
6	Administrative Penalty \$200
7	Administrative Penalty \$500
8	Administrative Penalty \$750
9	Administrative Penalty \$1,000
10	Administrative Penalty \$1,500
11+	Administrative Penalty \$2,000