

 <p>City of Bayport</p>	MS4 Permit Enforcement	Enforcement Response Procedures
<p>MS4 Permit Enforcement: Enforcement Response Procedures</p>		

1. Introduction and Background

This Stormwater Enforcement Response Plan (ERP) codifies enforcement procedures used by the City of Bayport (City) to enforce provisions of its National Pollutant Discharge Elimination System (NPDES) Statewide Stormwater Permit (hereafter referred to as the Municipal Separate Storm Sewer System (MS4) Permit). Under the MS4 Permit, the City is to control the release of pollutants to and discharges from the MS4 which is owned or operated by the City through rules and regulations controlling stormwater discharges. The MS4 Permit will do the following:

- Control the contribution of pollutants to the MS4 by stormwater and non-stormwater discharges associated with industrial activity and the quality of stormwater discharged from sites of industrial activity.
- Prohibit illicit discharges to the MS4.
- Control the discharge to the MS4 from spills, dumping, or disposal of materials other than stormwater.
- Require compliance with conditions in state statutes, rules, permits, contracts, and orders.
- Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the MS4.

The City's MS4 consists of a conveyance or system of conveyances owned by the City that is designed or used for collecting or conveying stormwater, which is not a combined sewer and which is not part of a publicly owned treatment works.

1.1. Purpose

This ERP describes the measures available to the City to exercise its authority. The ERP identifies enforcement procedures designed to encourage a timely response by the discharger. Implementation of the ERP will ensure a consistent response throughout the City and avoid confusion, delays, and disputes over enforcement for stormwater pollution prevention.

An effective enforcement program depends on detailed and comprehensive documentation of all contacts with the alleged violator and of all evidence establishing the violation. Investigations and enforcement actions must be handled quickly. The City is required by the permit to investigate reports of illicit discharges, initiate enforcement action to eliminate the source(s) of the discharge, and to administer a penalty to the party responsible for discharging.

1.2. Bayport's Permit History

The City's current MS4 Permit was issued by the State of Minnesota's Pollution Control Agency (MPCA) and became effective on June 15, 2017 and renewed on August 1, 2018.

1.3. Types of Enforcement Actions

The City will use ordinances, permits, and penalties to enforce illicit discharge to the City's MS4 system. The City anticipates two general types of stormwater violations: construction sites and illicit

discharges or connections to the City's MS4. Potential violators include construction contractors, businesses, industries, private citizens, and other governmental agencies which are detailed below.

1.3.1. Construction Sites

The City's construction contractors are required to obtain all required permits pertaining to land disturbance activities from various agencies. Permits could include watershed, DNR, local, or state permits.

The City is responsible for inspection oversight and must ensure that a trained person inspects construction activity at sites until final stabilization is achieved. The MS4 Permit requires the City to implement a system to monitor contracted construction activities and to enforce permit provisions. The City is required to list and describe all violations and enforcement responses taken for construction activities in the annual report submitted to the MPCA. The City's authority to take enforcement action at construction sites is derived from the ordinance along with permit language.

1.3.2. Illicit Discharges and Connections

The MS4 Permit also requires Bayport to take measures to detect and eliminate illicit discharges and connections to the City's MS4. An illicit discharge is defined as any discharge to a MS4 that is not composed entirely of stormwater, with the exception of allowable non-stormwater discharges and separately permitted discharges. Illicit connections are defined as any man-made conveyance that connects an illicit discharge directly to the MS4. The City is required to implement a program to minimize, detect, investigate, and eliminate illicit discharges and connections, including unauthorized non-stormwater discharges and spills, into the MS4 system.

2. Methods of Discovery of Non-Compliance

Reports of a stormwater violation or non-compliance may come from one of the following sources:

- City Staff – Illicit discharges and discharges of sediment or other pollutants from the construction sites, facilities, or other sources within the City's MS4 may be observed by staff as they conduct normal activities such as driving to or from job sites or when inspecting other activities. Such non-compliances could include water and wind erosion, sediment tracking onto local streets, poor housekeeping, incorrect location of concrete washouts, and failed or ineffective best management practices (BMPs).
- Permit Compliance Activities – Non-compliances may be discovered through permit-required inspections or monitoring, including construction site inspections, dry weather screening, and stormwater sampling.
- Contractor Compliance Activities – A construction contractor's failure to comply with the state's Construction General Permit requirements such as conducting and submitting inspection reports, obtaining annual certifications, preparing and implementing Stormwater Pollution Prevention Plans (SWPPPs).
- Reports from the Public – Public complaints may come directly to the City or through other local, state or federal government agencies.

3. Construction Contractor Enforcement

This section imposes the obligation for the contractor to perform their duties in an honest, diligent, and cooperative manner. The following section describes the City's authority and the mechanisms for enforcing permit provisions on construction sites within the boundaries of the City's MS4 jurisdiction.

3.1. Contractor Compliance Requirements

Compliance with stormwater permits and laws on construction projects within the City's MS4 must be enforced according to ERP.

- Contractors are to comply with the state's NPDES CGP, and City permits and ordinance requirements for regulated construction projects, including the contractor's obligation to file

a Notice of Intent and obtain authorization under the state CGP for each construction project or site. The contractor shall also file a NOI for each construction project or site, either terminating their responsibility if final stabilization has been achieved or transferring it to another contractor for completion.

3.2. Construction Contract Enforcement

When stormwater non-compliance is identified by the construction observer, City staff, or resident engineer, enforcement actions will be taken promptly. The City will take appropriate sanctions against the contractor based on the nature and severity of the situation. Non-compliances will be classified as minor or major violation. Major violations are generally those acts or omissions that lead to a discharge of pollutants to stormwater. If the major violation includes an illegal discharge to the City's MS4, the discharge must be stopped immediately. Minor violations are generally instances of non-compliance that do not directly result in such a discharge. Serious discharges or an imminent threat of discharge on a project may require an immediate escalation to a higher level of enforcement. The level of enforcement response will depend upon several of the following factors:

- Severity of the violation (duration, quality, and quantity of pollutants, and effect on public safety and the environment).
- The violator's knowledge (either negligent or intentional) of the regulations being violated.
- A history of violations and/or enforcement actions (individual or contractor).
- The potential deterrent value of the enforcement action.

The City will use a progressive enforcement policy escalating the response when a contractor fails to respond in a timely manner. If the City identifies a deficiency in the implementation of the approved SWPPP or amendments and the deficiency is not corrected immediately, the project is in non-compliance. The recommended sequence of enforcement actions is detailed below.

3.2.1. Verbal Warning

This action is a verbal exchange between an inspector or the resident engineer and the alleged violator. The information exchanged will be documented by the inspector. Typically, no letter is written if the problem is corrected immediately and the inspector or resident engineer observes the corrective action and deems it appropriate.

3.2.2. Written Warning

A warning letter may be issued if the non-compliance continues after the verbal warning is issued, if the non-compliance cannot be corrected while the inspector or resident engineer is on site, or if the non-compliance is a significant violation. The warning letter will document the reason(s) for the violation. A sample letter to violators is provided in Appendix B.

3.2.3. Stop Work Order

If the verbal and written warnings do not result in corrective action, the City may stop work (full or partial shutdown) at the construction site, and/or withhold the scheduling of building inspections and the issuance of a Certificate of Occupancy. Upon successful corrective action in response to a stop work order, a resume work order may be issued and/or building inspections and the issuance of a Certificate of Occupancy may continue. A sample stop work and resume work order are provided in Appendix C.

3.2.3.1. Temporary Suspension of Work

If immediate action is required due to an imminent threat of discharge, the City may temporarily suspend work on the project. The contractor will be responsible for all expenses related to mitigating the discharge threat.

3.2.3.2. Require Corrective Action

The City may require the permit holder to undertake corrective or remedial action to

address any release, threatened release, or discharge of the hazardous substance, pollutant or contaminant, water, wastewater, or stormwater.

3.2.3.3. Revocation of Permit

The City may revoke any permit issued to the permit holder if corrective action is not completed.

3.2.3.4. Abatement

The City may correct the deficiency or hire a contractor to correct the deficiency. The issuance of a permit constitutes a right-of-entry for the City or its contractor to enter the construction site for the purpose of correcting deficiencies in erosion control. If the City corrects the deficiency or hires a contractor to correct the deficiency, the City may require reimbursement to the City for all costs incurred in correcting stormwater pollution control deficiencies, pursuant to city ordinance 48-10 (4).

4. Illicit Discharges and Connection Enforcement

The Permit requires the City to implement and enforce a program that ensures that the City effectively prohibits non-stormwater discharges into its MS4. In addition, neighboring property owners are not allowed to occupy, use, or interfere with public right-of-way without permission. Any discharge/connection without permission is an illegal encroachment on the City's MS4 and is required to cease immediately. A discharge/connection can be discovered in two ways, either through routine inspection or due to a complaint.

Similar to the process in **Section 3.2**, notification of observed illicit connections or discharges will be carried forward to the alleged illegal connector/discharger by the inspector or observer. The City will use the following progressive enforcement policy, escalating the response when a discharger fails to respond in a timely manner.

4.1. Verbal Warning

When a routine inspection of the drainage system identifies an illegal connection/discharge to the City's MS4 system, the discharge must be stopped immediately. The inspector shall document the discharge on an Illicit Discharge Detection and Elimination (IDDE) Inspection Form, which will be provided to the Public Works Director. A sample IDDE form is included in Appendix A.

If the source of the connection is evident, the observer/inspector will contact the connector/discharger directly by phone or in person to discuss the discharge. The communication will include requesting any permits or other authorizations and providing a follow up. If the discharge is permitted or authorized (documentation is required), no further action is required; if the discharge is not authorized, it will need to be ceased immediately. Per city ordinance, a penalty could be imposed for violations.

4.2. Written Warning

If after the verbal warning the illicit connection/discharge has not been corrected, the Public Works Director will issue a Notice of Illegal Discharge and Demand for Corrective Action letter to the property owner. A sample letter is included in Appendix D. Subsequent penalties may be applied for each day that a violation exists per city ordinance. The letter will request that the connection/discharge be ceased or removed immediately. A follow up inspection will be performed by the Public Works Department or site inspector to ensure compliance. If the connection/discharge has not been corrected, the incident will be referred internally to the Public Works Director for further review.

4.3. Removal of Connection/Discharge

The City may remove the illegal connection/discharge if it has not been corrected. If the City removes

the illegal connection/discharge, the responsible party will be charged for the costs to repair/abate the illicit discharge, as well as administration fees incurred. The responsible party is also subject to civil action for damages.

4.4. Civil Action

If the illegal connection/discharge is not corrected, the City Engineer may forward the matter to one of the enforcement authorities listed below. Additional measures will be escalated as needed to achieve compliance.

4.4.1. Minnesota Pollution Control Agency (MPCA)

Authority to administer the state MS4 permit in Minnesota rests with the MPCA. The MPCA has several enforcement mechanisms for violations of NPDES rules, including fines. In compliance with the provisions of the federal Clean Water Act (CWA), as amended, (33 U.S.C. 1251 et seq); 40 CFR Parts 122, 123, and 124, as amended; Minnesota Statutes Chapters 115 and 116, as amended; and Minnesota Rules Chapter 7001 and 7090.

4.4.2. United States Environmental Protection Agency (USEPA)

Although the USEPA delegated authority for the NPDES program to the state, the USEPA reserves the authority to apply fines in addition to fines issued by the MPCA. Federal environmental regulations based on the CWA ,allow the USEPA to levy fines on dischargers of up to \$27,500 per day per violation.

5. Emergency Response Conditions

The City's MS4 Permit identifies "discharges from emergency situations where federal rules specify washing as the preferred method to assure public safety" as an authorized non-stormwater discharge. Discharges or flow from firefighting activities and other discharges authorized by the City and/or the state duty officer that are necessary to protect public health and safety are not subject to enforcement action.

6. Reporting Requirements

The City shall provide a list and description of all violations and their resolutions, including any enforcement actions taken against contractors, corporations, or other entities in the annual report to MPCA. At a minimum, the inspector should document the source of the complaint, the date, time, and location of the violation, the contact person (if any), a description of the nature of the non-compliance or illicit discharge, corrective actions, dates and type of enforcement used to compel compliance, referrals to other regulatory organizations (if any), and date of final resolution.

**Appendix A
Illicit Discharge Detection and Elimination Inspection Form**

Illicit Discharge Detection and Elimination Inspection Form (MCM 3)

General Information:

Location of Violation:		
Name of trained staff conducting inspection:	Inspection Date:	Time: AM/PM
Name of violator (if available):	Weather:	Photos taken? <input type="checkbox"/> Yes <input type="checkbox"/> No
Inspection Reason: <input type="checkbox"/> Regular Inspection <input type="checkbox"/> Complaint <input type="checkbox"/> Alleged illicit discharge	Inspection completed during dry weather condition (period of 72 or more hours of no precipitation): <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Rainfall in past 24 hours: _____ (inches) Rainfall data source: <input type="checkbox"/> on-site gauge <input type="checkbox"/> weather station w/in 1 mi	

Citizen Call-In Information (for citizen call-in incidents only):

Call Taken By:	Date of Call:	Time of Call: AM/PM	Contact Information for Caller (optional):
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Incident Location (Provide one or more below)

Outfall ID #: _____ Closest Street Address/Landmark: _____

Detection and Tracking:

Type of Discharge:

<input type="checkbox"/> Visual inspection <input type="checkbox"/> Mobile camera <input type="checkbox"/> Sample Collected <input type="checkbox"/> Other effective investigation tool: _____	<input type="checkbox"/> Illegal dumping <input type="checkbox"/> Sanitary sewer <input type="checkbox"/> Cross connection <input type="checkbox"/> Floor drain connection to storm sewer	<input type="checkbox"/> Inflow / infiltration <input type="checkbox"/> Failing septic system <input type="checkbox"/> Pump station failure <input type="checkbox"/> Other: _____
<input type="checkbox"/> Inlet (City ID # _____)	<input type="checkbox"/> Outlet (City ID # _____)	

Description of Discharge:

<input type="checkbox"/> Flow present? <input type="checkbox"/> Estimated discharge _____ <input type="checkbox"/> Water Color _____ <input type="checkbox"/> Odor _____	<input type="checkbox"/> Turbidity _____ <input type="checkbox"/> Floatables _____ <input type="checkbox"/> Sedimentation _____ <input type="checkbox"/> Oil Sheen _____
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Reporting:

Responsible Party: _____ (if identified)	Follow-up Required? <input type="checkbox"/> Yes <input type="checkbox"/> No
MN State Duty Officer Notified? <input type="checkbox"/> Yes <input type="checkbox"/> No (1-800-422-0798) Duty Officer Report # _____	Name of Staff to conduct Follow-up: _____
Enforcement used: <input type="checkbox"/> Verbal Warning Date: _____	<input type="checkbox"/> Written Warning Date: _____ <input type="checkbox"/> Stop Work Order Date: _____ <input type="checkbox"/> Other: _____ Date: _____

Corrective Actions (including completion schedule and resolution date):

**Appendix B
Non-Compliance Notice to Contractors**

CITY OF BAYPORT NONCOMPLIANCE NOTICE

FROM:

TO:

You are hereby notified that inspection on <insert date> indicates that the

Does not conform to permit/city code requirements for discharges to the city's MS4 system.

Appendix C
Stop Work Order and Resume Work Order

CITY OF BAYPORT
STOP WORK ORDER
PENALTY FOR REMOVAL OF THIS TAG

REMARKS:

ADDRESS: _____

INSPECTOR: _____

DATE: _____

CITY OF BAYPORT
RESUME WORK ORDER
PENALTY FOR REMOVAL OF THIS TAG

REMARKS:

ADDRESS: _____

INSPECTOR: _____

DATE: _____

Appendix D
Notice of Illegal Discharge and Demand for Corrective Action
NOTICE OF ILLEGAL DISCHARGE OR CONNECTION

Person or Business Name
Address
Bayport, MN 55003

Dear Property Owner:

The City of Bayport is responsible for maintaining the storm sewer system. The Minnesota Pollution Control Agency (MPCA) Municipal Separate Storm Sewer System (MS4) General Permit requires the City to control the amount of pollutants entering the drainage system. This includes the detection and elimination of illegal discharges or connections to the system that may contain pollutants or are otherwise not allowed. Left uncorrected, any pollutants entering the system will ultimately impact nearby lakes or streams as storm drainage is not treated at any sort of treatment facility. Any discharge/connection without permission is illegal and requires immediate termination of the discharge.

An inspection of the drainage system has occurred in the vicinity of your property and an illegal connection/discharge was discovered entering into the City system. The discharge/connection was discovered on <insert date> at <insert business name and address>. Indicators or Source include <insert indicator or source>.

Photographs of this discharge/connection are enclosed with this letter. In addition, I have enclosed an aerial photograph showing the location of this discharge/connection.

This discharge or connection must be ceased immediately and may be subject to a fine per the current Bayport City Code of Ordinances. A follow-up investigation will be conducted to ensure compliance. If the situation is not corrected, the City will take corrective measures, including but not limited to referring this matter to the MPCA so that enforcement action can be taken, which may include the issuance of a fine. In that instance, the City may remove the discharge/connection and bill you directly pursuant City Ordinance Chapter 48: Stormwater Management. If the illegal discharge/connection cannot be removed immediately, you do not understand this notice, or you disagree that an illegal discharge/connection exists at your property, please contact me with further details or explanation by calling 651-275-4410 or by email at publicworks@ci.bayport.mn.us.

Sincerely,

Matthew Kline
Bayport Public Works Director

Enclosure (photographs)

Cc: