

CITY OF ESCONDIDO

**JURISDICTIONAL RUNOFF
MANAGEMENT PROGRAM**

ENFORCEMENT RESPONSE PLAN



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TABLE OF CONTENTS

I. INTRODUCTION..... 3

II. ACRONYMS AND DEFINITIONS 3

III. TIMEFRAME FOR RESOLUTION..... 5

IV. ESCALATED ENFORCEMENT 5

V. REPORTING REQUIREMENTS..... 5

VI. ILLICIT DISCHARGE DETECTION & ELIMINATION ENFORCEMENT 5

VII. DEVELOPMENT PLANNING ENFORCEMENT..... 6

VIII. CONSTRUCTION SITE ENFORCEMENT 9

IX. EXISTING DEVELOPMENT ENFORCEMENT11

I. INTRODUCTION

This Enforcement Response Plan describes the options and approaches when enforcing the requirements of the City of Escondido (“City”) Jurisdictional Runoff Management Plan (JRMP) and the Escondido Municipal Code. The Code contains provisions regulating the discharge of storm water in the City and authorizes enforcement of approved ordinances. The complete EMC is available online at <http://www.qcode.us/codes/escondido/>. Applicable chapters and articles include but are not limited to the following:

- Chapter 1A: Administrative Remedies
- Chapter 6: Building Ordinance
- Chapter 22: Wastewaters, Storm Waters, and Related Matters
- Chapter 31: Water (Article 5 - Water Conservation Plan)
- Chapter 33: Zoning (Article 55 - Grading and Erosion Control, Article 62 - Water Efficient Landscape Regulations)

The City may use the enforcement measures and remedies described below to compel compliance with the City’s regulations. The ERP consists of four components that address various stages and subject matters related to the City’s enforcement of its stormwater regulations. The first component addresses enforcement approaches for illicit discharge detection and elimination. The second component outlines the enforcement approaches to ensure compliance with development and planning requirements. Next, the ERP addresses the enforcement approaches regarding active construction sites. Finally, the ERP outlines the enforcement approaches for ensuring continued compliance of existing development. Each of these components includes protocols for Escalated Enforcement.

II. ACRONYMS & DEFINITIONS

Administrative Citation. When a violation of one or more provisions of the City’s Ordinance has occurred or continues to exist, administrative citations may be issued; fines are often imposed in association with this level of enforcement in accordance with Municipal Code.

BMP. Best Management Practices.

BMP Design Manual. These development planning guidelines will replace the Standard Urban Stormwater Mitigation Plan (SUSMP) by 2016.

CGP. Construction General Permit. Statewide permit for linear projects and construction sites over 1 acre in size.

EMC. Escondido Municipal Code.

ERP. Enforcement Response Plan.

Escalated Enforcement. Escalated Enforcement means enforcement actions or other available remedies used in increasing severity to compel compliance in a timely manner.

IDDE. Illicit Discharge Detection and Elimination. This program is described in Chapter 3 of the Jurisdictional Runoff Management Plan (JRMP)

IGP. Industrial General Permit. Statewide permit for industrial facilities.

JRMP. City of Escondido Jurisdictional Runoff Management Program

NOV. Notice of Violation.

PDP. Priority Development Project

RWQCB. Regional Water Quality Control Board (San Diego Region).

Stop Notice. A Stop Notice is applicable to construction sites and lists the specific corrections required and a date for compliance. Work will not be allowed to continue until the issue is resolved. Recommencement of work is authorized in writing by the City.

Structural BMPs. Post-construction treatment control devices (e.g. inlet filters, swales, vortex separators, retention basins, etc.) which are required by the SUSMP or BMP Design Manual to be installed and maintained to treat runoff prior to discharge to the street or MS4.

SUSMP. Standard Urban Stormwater Mitigation Plan. These development planning guidelines, last updated in 2011, will be replaced by the BMP Design Manual by 2016.

WQIP. Water Quality Improvement Plan. The City of Escondido is party to two WQIPs: San Dieguito Watershed and Carlsbad Watershed.

WQTR. Water Quality Technical Report

III. TIMEFRAME FOR RESOLUTION

Violations of the City's stormwater regulations must be corrected in a timely manner. In general, a violation should be corrected within 30 days after the violation is discovered, or if a discharge is likely to occur, prior to the next predicted rain event, whichever is sooner. Required response and correction times may vary depending on the nature and severity of the violation, and the nature of the corrective action required. In cases where the violation cannot be resolved within the appropriate timeframe, the reason additional time was needed for case resolution will be documented in the City's database.

IV. ESCALATED ENFORCEMENT

This ERP establishes the enforcement actions that are appropriate in particular circumstances, including established protocols for Escalated Enforcement as applicable to the particular violation. Specific actions and procedures for Escalated Enforcement are outlined in each component.

V. REPORTING REQUIREMENTS

The City must provide written notification to the Regional Water Quality Control Board regarding observations related to statewide issued permits. Should the City become aware of a person failing to enroll in a required Construction General Permit (CGP) or Industrial General Permit, the City will email notice to the appropriate RWQCB staff within 5 days. The City also will notify the appropriate RWQCB staff when Escalated Enforcement action is issued to a construction site that poses a significant threat to water quality. The notification must be sent in writing, within 5 days.

VI. ILLICIT DISCHARGE DETECTION & ELIMINATION (IDDE) ENFORCEMENT

The City's IDDE Program is explained in JRMP Chapter 3. If a verified complaint is received about an illicit discharge, City staff may conduct a field investigation to verify whether an illicit discharge occurred. If an illicit discharge is detected, the City shall respond as outlined in the JRMP. The enforcement approach for identified violations will depend on whether the illicit discharge is an emergency or non-emergency spill.

A. Enforcement Approach

Emergency spill procedures require the responsible party to immediately clean-up the discharge. If the responsible party is unavailable or otherwise unresponsive to City requests to implement clean-up procedures, the City may conduct the clean-up and require reimbursement from the responsible party. For non-emergency spills, the City may perform follow-up inspections to verify the violation has been corrected. Documentation and photos

may be required as part of the follow-up inspection to ensure the corrective action is effective.

B. Escalated Enforcement

Should the responsible party fail to respond to a verbal or written warning to correct an emergency spill, the City may issue a NOV, an Administrative Citation, or seek to recover the City's clean-up costs should the City conduct the clean-up. If a non-emergency discharge is continuing, has not been cleaned up properly, or the proper Best Management Practices (BMPs) are not in place, Escalated Enforcement may be used when necessary to compel compliance based on factors such as the severity of the violation, the threat to human or environmental health, site-specific circumstances, and past compliance history. This could include the issuance of a NOV, an Administrative Citation, or other civil remedies. Should the responsible party continue the violation, the matter may be referred to the City Attorney's office to take appropriate action based on the legal opinion and recommendations of counsel. This may include, but is not limited to, seeking a lien on real property, seeking recovery of costs for cleanup, bringing a nuisance abatement action, seeking injunctive relief, calling on the surety of a bond to complete improvements, or bringing a criminal action.

VII. DEVELOPMENT PLANNING ENFORCEMENT

The City's Development Planning Program is described in Chapter 4 of the JRMP. The Community Development and Engineering Departments work closely with applicants throughout the design of their project to ensure the proper storm water controls are included in project plans. This proactive approach and cooperation avoids inefficiencies and encourages compliance before a project is approved or even submitted. In addition, Structural BMPs are inspected prior to occupancy and ongoing maintenance is verified by the City.

A. Development Planning.

1. Enforcement Approach.

All proposed projects must follow the City's SUSMP or BMP Design Manual, whichever is in effect. When plans and application materials are submitted, City staff use the plan check checklist and a pre-building submittal check-off sheet to ensure all appropriate considerations have been made for storm water. The following steps are taken:

- a. An analysis is done to determine whether the development is a PDP or requires hydromodification management.

- b. If applicable, an applicant must submit a WQTR required to demonstrate on-site treatment capacity and planned post-construction drainage patterns, including Structural BMPs.
- c. For PDPs, Engineering reviews the WQTR together with the project layout for compliance with required post-construction BMPs. A PDP is only deemed a complete submittal by the Engineer when the WQTR and site plan demonstrate compliance with stormwater requirements. The Engineer requires that the post-construction treatment control BMPs be presented on the engineering plans showing sufficient information, such as dimensions and detail, to ensure that the BMPs are properly constructed and can be readily verified by a Field Engineering Inspector.
- d. The Improvement Plan Checklist addresses various runoff-related engineering specifications including drainage and storm drains.
- e. If the project, including the WQTR, is satisfactory and meets all requirements, the condition of approval is granted by the Project Engineer and the project is referred to the Field Engineering Division for the issue of a grading permit and monitoring during the construction phase.
- f. For public projects, the selected design consultant will prepare the WQTR for the City to review, and if compliant, approve. The design consultant will be asked to prepare the bid documents for construction. The bid documents will include plans incorporating the necessary BMPs. The plans are not approved until the City Engineer has reviewed and signed the plans.
- g. Field Engineering staff are trained to verify that Structural BMPs have been constructed per plan and to send documentation to Environmental Programs staff for incorporation into the Structural BMP inventory.

Project applicants must incorporate required storm water designs into their plans or they are not considered complete and cannot be approved. Should the City become aware of changes from originally approved plans during the construction phase, then the developer will be required either to obtain approval for an amendment, or reinstall the BMPs according to plan.

The City's plan check process monitors the implementation of development requirements during construction, as described in JRMP Chapter 4. Since all Structural BMPs are required to be shown on the project's plans, inspectors check to make sure these BMPs have been correctly installed during their routine inspections. If any mistakes in BMP installation are noted during plan checks, the City requires the project to promptly correct these errors until BMP installation is consistent with the specification on the approved plans. Once Structural BMPs are constructed and approved, they are added to the City's inventory and inspected by City staff as required.

2. Escalated Enforcement.

If the deficiencies noted above have not been addressed within the specified timeframe after written notice, then a NOV may be issued by the City. The NOV states the outstanding items, a timeframe in which compliance is required, and that a Stop Notice may be issued or permits may be denied or revoked if the responsible party does not comply.

Should an NOV fail to compel compliance, a Stop Notice may be issued. This notice requires all engineering and construction related activities to halt until corrective actions are completed. The compliance date and required actions are listed directly on the Stop Notice.

If a Stop Notice is not effective, the City may revoke and deny building permits until the violation is corrected. An Administrative Citation may also be levied for violations of storm water regulations.

Should the responsible party continue the violation, the matter may be referred to the City Attorney's office to take appropriate action based on the legal opinion and recommendations of counsel. This may include, but is not limited to, seeking a lien on real property, seeking recovery of costs for cleanup, bringing a nuisance abatement action, seeking injunctive relief, calling on the surety of a bond to complete improvements, or bringing a criminal action.

B. Structural BMP Maintenance.

1. Enforcement Approach.

In an effort to promote efficiency where possible, inspection and enforcement of Structural BMP maintenance occurs during the course of regular storm water inspections. Annual certifications of maintenance are also used to track Structural BMP maintenance.

If an inspector finds maintenance deficiencies with any Structural BMPs at a site after occupancy, he or she first attempts to explain the deficiencies and necessary corrective actions to the responsible party, if available at the time of inspection. If the responsible party provides certification of necessary corrective actions promptly in response to the verbal explanation from the inspector, the case is closed, and the resolution is documented. Otherwise, a written notice is issued to the responsible party. The notice indicates the type and location of each BMP and describes the deficiencies observed by the inspector as well as the required corrective actions. Responsible parties are required to perform the corrective actions and demonstrate that all necessary

maintenance activities were completed through a re-inspection with the City inspector or through certification of correction including photographs.

The maintenance condition of Structural BMPs are determined through an annual self-certification program where the City requires reports from authorized parties demonstrating proper maintenance and operation of Structural BMPs. If the responsible party fails to provide the annual certification, the City will send written notice requiring the responsible party to provide the certification within a given timeframe.

2. Escalated Enforcement.

If a responsible party fails to sufficiently respond to a notice from the City by the response deadline, the City may issue a NOV. Follow-up inspections conducted as a result of Structural BMP deficiencies will be performed. All enforcement actions will be documented appropriately in the development project's database file. If the responsible party still fails to perform the necessary corrective actions, the City may issue an Administrative Citation.

If a development site receives frequent citations or is not responsive to previously issued enforcement actions, escalated enforcement actions such as the issuance of a NOV or an Administrative Citation may be used.

Should the responsible party continue the violation, the matter may be referred to the City Attorney's office to take appropriate action based on the legal opinion and recommendations of counsel. This may include, but is not limited to, seeking a lien on real property, seeking recovery of costs for cleanup, bringing a nuisance abatement action, seeking injunctive relief, calling on the surety of a bond to complete improvements, or bringing a criminal action.

VIII. CONSTRUCTION SITE ENFORCEMENT

The City's Construction Site Management Program is described in JRMP Chapter 5. Construction sites are overseen by Field Engineering Inspectors according to the risk level assigned through established processes described in that chapter. Inspections cover engineering aspects of construction as well as storm water BMPs. Building inspectors are also trained to identify and report potential violations. Where applicable, evidence of filing a Notice of Intent to comply with the CGP is required before permits can be issued. The City requires that the developer provides such a bond to ensure certain improvements of the development which can be used to address the implementation and maintenance of BMPs, or to take other corrective action as needed. These bonds are not released until the project has been granted occupancy.

A. Enforcement Approaches.

For minor corrective actions encountered during the course of an inspection, the inspection form denotes that correction is required. This written notice restates the violation and sets a timeline for re-inspection of the site, if applicable. Certain issues may be corrected during the course of inspection. Written notices may be issued:

- Whenever a discharge of pollutants is imminent or the potential exists, but the discharge has not yet entered the storm water conveyance system.
- Whenever a construction BMP is not effective, there are no BMPs in place, or there are better alternatives available.
- When additional BMPs are required to reduce the potential of a discharge reaching the storm water conveyance system.

If the items listed in the written notice have not been addressed within the specified timeframe, then a NOV may be issued by the City. The NOV states the outstanding items, a timeframe in which compliance is required, and that a Stop Notice may be issued if the responsible party does not comply. A NOV may also be issued if a significant violation is observed at a construction site which has previously received a Stop Notice for noncompliance with storm water requirements. A NOV may be issued if the responsible party obstructs an inspection or the Field Engineering Inspector observes any discharge from the site to the storm drain system.

B. Escalated Enforcement.

Should an NOV fail to compel compliance, a Stop Notice may be issued. This notice requires all engineering and construction related activities to halt until corrective actions are completed. The compliance date and required actions are listed directly on the Stop Notice. In more severe cases, this notice may be used in conjunction with an Administrative Citation. The City may also seek recovery of costs when there has been a need to mobilize staff to address a discharge or address other emergency situations resulting from site work, BMPs, or lack thereof.

If a Stop Notice is not effective, the City may revoke and deny building permits until the violation is corrected. An Administrative Citation may also be levied for violations of storm water regulations.

Should the responsible party continue the violation, the matter may be referred to the City Attorney's office to take appropriate action based on the legal opinion and recommendations of counsel. This may include, but is not limited to, seeking a lien on real property, seeking recovery of costs for cleanup, bringing a nuisance abatement action,

seeking injunctive relief, calling on the surety of a bond to complete improvements, or bringing a criminal action.

IX. EXISTING DEVELOPMENT ENFORCEMENT

There are several programs the City uses to enforce the EMC regarding existing development. This includes the JRMP Industrial & Commercial Program (Chapter 7), Municipal Component (Chapter 6), and Residential Program (Chapter 8). A property-based inspection program will cover certain focus areas within the City draining to outfalls with persistently flowing discharges as identified in the WQIP. Tracking and follow-up or enforcement will be managed separately based on the type of existing development.

A. Enforcement Approaches.

This City conducts regular inspections of existing developments for proper implementation of storm water best management practices. Generally, high priority industrial or commercial facilities are inspected twice per year. Businesses such as office parks, retail stores, and medical offices are visually inspected at a lower rate.

Existing residential developments are visually inspected. Some residents may not be aware of storm water requirements and violations, so the City educates residents to raise awareness and encourage BMPs. Success with residential sources is more likely to be achieved through creating new norms in behavior and removing real or perceived barriers to compliance.

Existing municipal facilities are addressed in Chapter 6 of the City's JRMP. If storm water violations are observed during inspections of municipal areas or facilities, immediate actions are taken to ensure compliance, including disciplinary measures for responsible staff as appropriate. The City's standard agreements contain language which specifically mentions the municipal stormwater permit and requires contractors to remain informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations, and rules in effect during the term of the agreement.

For minor corrective actions encountered during the course of an inspection, a verbal or written warning may be issued. The written notice states the violation and a date when the violation must be resolved or sets a timeline for re-inspection of the site. A copy of the written notice is provided to the responsible party. A written notice is issued:

- Whenever a discharge of pollutants is imminent or the potential exists, but the discharge has not yet entered the storm water conveyance system or the sanitary sewer system.
- Whenever a Structural BMP is not effective, or there are no required BMPs in place.

- When additional BMPs are required to reduce the potential of a discharge reaching the storm water conveyance system. If maintenance of any structural treatment control BMPs is required.

B. Escalated Enforcement

A NOV may be issued to the responsible party when every reasonable attempt has been made to bring the property into compliance by issuing verbal or written notice regarding the violation. The NOV includes a set deadline for corrective actions to occur.

An Administrative Citation may be issued in the event that the responsible party has not complied with the NOV. An established compliance time frame will be established, depending on the severity of the violation and the level of effort required to bring the property into compliance.

If the responsible party does not respond to an Administrative citation, the City may revoke an existing permit or license. The City may also deny renewal or application for a license or permit from the responsible party.

Where appropriate the Utilities Department can terminate water or sewer service, for example to stop the source of an ongoing discharge. An administrative citation can also be used in conjunction with Cost Recovery. This effort is used to stop the violation, attempt to recover any expenses incurred from the investigation, and require proof that the violation has ceased.

Should the responsible party continue the violation, the matter may be referred to the City Attorney's office to take appropriate action based on the legal opinion and recommendations of counsel. This may include, but is not limited to, seeking a lien on real property, seeking recovery of costs for cleanup, bringing a nuisance abatement action, seeking injunctive relief, calling on the surety of a bond to complete improvements, or bringing a criminal action.