



City of Cleveland
Stormwater MS4 Phase II Management
Enforcement Protocol

National Pollutant Discharge Elimination System Permit Number TNS075213 authorizes the City of Cleveland to discharge stormwater runoff in accordance with certain water quality management programs and provisions as set forth in the permit.

Section 4.2.4.1 titled “Permit Requirement” provides that the City of Cleveland must develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to Cleveland’s MS4.

The City of Cleveland passed Ordinance Number 2004-41 establishing city regulation and enforcement oversight regarding stormwater management. This Ordinance, as amended by Ordinance Number 2005-38, is codified in the Cleveland Municipal Code in Sections 18-301 through 18-313.

Section 18-310 of the Cleveland Municipal Code outlines the administrative enforcement remedies available to the Stormwater Program Manager and other City staff to assure compliance with the City’s stormwater ordinance. Penalties for violations are prescribed by Section 18-311, and Section 18-311(4) authorizes the Stormwater Regulations Board to adopt an enforcement protocol to aid City staff in enforcing the provisions of the City’s Stormwater Ordinance.

Under Sections 8-310 and 8-311 of the Cleveland Municipal Code, enforcement mechanisms include,

- (a) Notification of Violation;
- (b) Consent Orders;
- (c) Show Cause Hearings;
- (d) Compliance Orders;
- (e) Cease and Desist Orders;
- (f) Civil Penalties;
- (g) Recovery of Damages and Costs.

In order to assure fair and just enforcement to all parties involved and to provide adequate guidance to City stormwater field personnel, the following protocol shall be employed in enforcement of the City’s stormwater ordinance.

1. Land Disturbing Activities Without Obtaining Necessary Land Disturbing Permit

- (a) First Offense (Property Owner and Contractor): Cease and Desist Order; Notice of Violation; Civil Penalty equal to Cost of Permit. The Penalty shall be in addition to the land disturbance permit fee.



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- (b) Second Offense (Property Owner and/or Contractor): Cease and Desist Order, Issuance of Civil Penalty of \$500.00 plus damages consisting of cost of permit and salary costs of enforcement of article.
- (c) Third or Subsequent Offense (Property owner and/or Contractor): Cease and Desist Order; Issuance of Civil Penalty of \$1,000.00 plus damages consisting of cost of permit and salary costs of enforcement of article.
- (d) Failure to Properly Transfer Land Disturbing Permit: Issuance of Civil penalty equal to the cost of new permit. The Penalty shall be in addition to the land disturbance permit fee.
- (e) Failure to Request Extension of Permit: Issuance of Civil Penalty equal to the cost of new permit. The Penalty shall be in addition to the land disturbance permit fee.
- (f) Note: Enforcement under this subsection is contractor and property owner specific, not site specific. Therefore, if a contractor receives a Notice of Violation for a first offense, the civil penalty for a second offense is to be issued against the Contractor for the second offense, regardless of the property owner or location of the property.

2. Failure to Install, Maintain or Use Proper Construction Entrance (Tracking Mud on Street)

- (a) First Offense: Written Warning Issued to Land Disturbing Permit Applicant. Copies to General Contractor and Property Owner.
- (b) Second Offense: Notice of Violation issued to Land Disturbing Permit Applicant.
- (c) Third or Subsequent Offense: Issuance of Civil Penalty against Land Disturbing Permit Applicant of \$250.00 per day, plus salary costs of enforcement of article.
- (d) Note: Failure of a Land Disturbance Permit applicant to aggressively remove any mud, debris or construction material that is deposited in a public roadway after receiving a Written Warning or a Notice of Violation will result in an additional civil penalty of \$250.00 per incident, plus the salary costs of enforcement of article, plus the cost of the city's expenses if city crews are required to remove mud, debris or construction material to protect the safety of the public.

3. Failure to Install, Maintain or Use Proper Structural Erosion or Sediment Controls (Sediment Discharge)

- (a) First Project Offense: Written Warning issued to Land Disturbing Permit Applicant. Copies to Property Owner if different than applicant. If project is exempt from obtaining a land disturbing permit, written warning is given to the



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property owner. Issuance of Civil Penalty for cost of damages for city expenses if City crews are required to clean up sediment discharged into City Streets, right-of-way or stormwater structures.

- (b) Second Offense: Notice of Violation issued to Land Disturbing Permit Applicant or Property Owner; Cease and Desist Order until necessary erosion and sedimentation controls are installed or maintained; Compliance Order to Submit Self-Inspection Documentation on Monthly Basis; Permit Exempt projects required to obtain Land Disturbing Permit. Issuance of Civil Penalty for cost of city expenses if City crews are required to clean up sediment discharged into City Streets, right-of-way or stormwater structures.
- (c) Third Offense: Issuance of Civil Penalty of \$100.00 per discharge point per discharge plus salary costs of enforcement of article to land disturbance permit applicant plus damages equal to the cost of city expenses if City crews are required to clean up sediment discharged into City Streets, right-of-way or stormwater structures. Cease and Desist Order until necessary erosion and sedimentation controls are installed or maintained.
- (d) Fourth or Subsequent Offense: Issuance of Civil Penalty of \$500.00 per discharge point per discharge to land disturbance permit applicant. Damages for the cost of city expenses if City crews are required to clean up sediment discharged into City Streets, right-of-way or stormwater structures. Cease and Desist Order until necessary erosion and sedimentation controls are installed or maintained.
- (e) Failure to Properly Maintain Erosion Control Self Inspection Sheets and On-Site Erosion Control Plan: Issuance of Civil Penalty of \$100.00 per inspection in which self inspection sheets or up-to-date erosion control plans cannot be provided when asked by inspector.
- (f) Failure to Provide Proper Final Stabilization: Issuance of Civil Penalty of \$250.00 per day issued against Property Owner for each day past issuance date of final certificate of occupancy.

4. Failure to Comply with Approved Stormwater Design Plans

- (a) Upon Notice of Variation of Approved Plans: Written notification to Property Owner, Design Engineer, General Contractor and Land Disturbing Permit Applicant that construction does not match approved plans and that if modifications are to be made, revised plans must be submitted for review and approval.
- (b) Failure to Submit Revised Plans: Stormwater Management Inspectors cannot authorize approval for certificate of occupancy until modifications have been submitted and approved.



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(c) Failure to Implement Approved Stormwater Design Plan (Previously Occupied)

- i. Notice of Violation and Compliance Order: A Notice of Violation and Compliance Order shall be issued to the property owner giving a maximum of thirty days to install all required stormwater infrastructure.

Note: This protocol does not in any way deter the Stormwater Manager from entering into a Consent Order to eliminate illicit discharges in lieu of other enforcement actions.

- ii. Failure to Meet Compliance Order Deadline: Issuance of Civil Penalty of \$1,000.00 per day for each day approved plans are not met.

5. Illicit Discharges (Non-residential, Non-accidental)

- (a) First Offense: Notice of Violation issued to responsible party for non-stormwater discharge. Additional damages consisting of salaries and the cost of all city crew or contracted services to clean up illicit discharge will be assessed to the responsible party. Additional damages may include other items such as loss of income for not properly using sanitary sewer system
- (b) Second Offense: Issuance of Civil Penalty against responsible party of \$1,000.00. Additional damages consisting of salaries and the cost of all city crew or contracted services to clean up illicit discharge will be assessed to the responsible party. Additional damages may include other items such as loss of income for not properly using sanitary sewer system
- (c) Third or Subsequent Offense: Issuance of Civil Penalty against responsible party of \$2,500.
- (d) Note: An Illicit discharge properly reported as an accidental discharge as will be reclassified as Accidental Releases and not subject to a Civil Penalty as an illicit discharge. However, the responsible party may still be held liable to damages to the City. Additional damages consisting of salaries and the cost of all city crew or contracted services to clean up accidental release will be assessed to the responsible party.

6. Illicit Discharges (Residential Wastewater Discharge)

- (a) First Offense: Issuance of Notice of Violation and Compliance Order to stop illicit discharge within 10-days.



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- (b) Failure to comply with Compliance Order: Enforcement action based on individual action. Enforcement may include investigation by City Code enforcement seeking input on condemnation of the residential unit for non-compliance with Order.

- (c) Note: An Illicit discharge properly reported as an accidental discharge as will be reclassified as Accidental Releases and not subject to a Civil Penalty as an illicit discharge. However, the responsible party may still be held liable to damages to the City. Additional damages consisting of salaries and the cost of all city crew or contracted services to clean up accidental release will be assessed to the responsible party.

7. Illicit Discharges (Residential Other than Wastewater Discharge)

- (a) First Offense: Enforcement action based on individual action. More serious violations, such as deliberate dumping of pesticide, used motor oil or other hazardous or dangerous chemical into a storm drainage system, would result in Issuance of Civil Penalty plus recovery of actual costs of enforcement and/or damages. A less serious violation, such as raking leaves into drainage system, may result in written or verbal warning.

- (b) Note: An Illicit discharge properly reported as an accidental discharge as will be reclassified as Accidental Releases and not subject to a Civil Penalty as an illicit discharge. However, the responsible party may still be held liable to damages to the City. Additional damages consisting of salaries and the cost of all city crew or contracted services to clean up accidental release will be assessed to the responsible party.

8. Issuance of Show Cause Order:

Pursuant to Cleveland Municipal Code Section 18-310, a Show Cause Hearing may be ordered if this protocol is unclear or inadequate to address any violation of the City's Stormwater Ordinance as codified in the Cleveland Municipal Code, Sections 18-301 through 18-313.