

# Enforcement Response Plan

## A. Introduction

The Enforcement Response Plan was developed to provide a uniform application of enforcement responses based on the nature and severity of violations of Salem Revised Code (SRC), Chapter 71 (SRC 71). SRC 71 is the *Stormwater Code* chapter of the City code. The purpose of this chapter is to provide for and promote the health, safety, and welfare of the general public, prevent water quality degradation, and comply with federal, state, and local regulatory requirements. The Plan allows a range of responses to a violation while staying within requirements of the Federal Clean Water Act, the State issued National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit for the City of Salem, and Salem Revised Code. It is not intended to provide a specific response to every violation that could be encountered.

### Definitions

The following terms are defined exclusively for this Administrative Rule. Refer to the *Stormwater Code* (SRC 71) for additional definitions of terms that govern this Administrative Rule.

1. Adversely Impacting Infrastructure—damage to publicly owned infrastructure that contributes towards its impairment.
2. Code—refers to SRC 71, the *Stormwater Code*.
3. Economic Benefit—gain and/or no loss in resources.
4. Public Health Risk—risk involving the physical or social well-being of a community or environment.

## B. Enforcement Authority

Legal authority for a stormwater program is federally mandated by Chapter 40, Code of Federal Regulations, Part 122. Provisions governing the City's stormwater program are covered in SRC 71. Authority requiring treatment, monitoring, and inspection are outlined in this chapter. In addition, requirements to identify, track, and determine compliance status is presented. Civil penalty assessment is included in SRC 71 as follows:

### **SRC 71.711. Civil Penalty**

- (a) Any person who commits a violation shall be subject to a civil penalty, not to exceed \$5,000 per violation or as set forth in a schedule of penalties established by resolution of Council. Each day that a violation continues shall constitute a separate violation.
- (b) The payment of civil penalties does not relieve a person named in a Notice of Violation or Order of the duty to correct the violation.

(c) The penalty shall be assessed using the following criteria:

- (1) Does the violation pose a public health risk;
- (2) Does the violation cause environmental damage or adversely impact infrastructure;
- (3) Was the responsible party willful or knowing of the violation;
- (4) Was the responsible party unresponsive in correcting the violation;
- (5) Was there improper operation or maintenance;
- (6) Was there a failure to obtain necessary permits or approval;
- (7) Does the violation provide economic benefit for non-compliance;
- (8) Was the violation a repeat violation.

## **C. City Code Provisions**

City Code provides for the following authority:

1. To prohibit or place conditions on the discharge of pollutants to the Municipal Storm Sewer System (MS4) by users and require treatment where needed to insure NPDES permit requirements are met.
2. To require compliance with permit and code standards.
3. To inspect and monitor stormwater discharges and facilities to ensure compliance with required permit and code standards.
4. To require sites to provide and maintain treatment facilities to insure discharge limits are met.
5. To take enforcement action in cases of noncompliance to return the site to a compliant status.

Evidence needed to verify that a problem exists may be obtained by any combination of inspection, monitoring, sampling, or any other credible method. To cover program costs, Salem is developing a fee structure which will be implemented in conjunction with the adoption of stormwater codes and standards. The City also has the ability to recoup costs incurred by the City, including costs to clean or repair damage, from any party responsible for damaging, impairing, or obstructing the stormwater system.

Where a situation exists that has caused, or is likely to cause a violation of the City's NPDES permit, or violate City codes or other requirements, the City can take appropriate enforcement action as outlined in this Plan.

## **D. Identifying Violations**

Discovery of a violation, other than when the discharger reports a problem, can occur in a number of ways. Permanent in-stream monitoring equipment can detect abnormalities in stream flows and/or water quality and trigger an alarm to the Public Works field office. Alarms are referred to inspectors for investigation.

Monthly stream samples, collected and analyzed as part of the ongoing surface water program, may detect unusual conditions in streams which could trigger follow up by City staff.

City crews performing routine maintenance in City collection systems may find a prohibited discharge such as signs of grease or oil in the line, odors, or cross connections. When problems are detected they are investigated. City maps of the storm drain system are used to track flows and can help identify potential sources of a discharge.

Citizen complaints are another source of information for potential stormwater violations. Citizens can call the Public Works Dispatch Communications Center to report problems. The Dispatch Center is staffed at all times. Dispatch takes the calls, creates a service request which documents the call in a computerized database, and dispatches City staff to investigate the situation. Other agencies, such as: police and fire departments, county sheriffs, health agencies, state Department of Environmental Quality, and Fish and Wildlife, may notify the City if spills occur that can impact surface waters or storm drains. Calls regarding discharges resulting from runoff due to accidents or fire, as well as accidental or intentional dumping of pollutants, are some of the types of calls received from other agencies.

When a violation is found, the responsible party is expected to take a proactive approach to alleviate the problem. If the discharger is unable or unwilling to abate the problem, provisions in City Code allow the City to mitigate the problem and bill the discharger or responsible party for costs incurred.

## **E. Verification of Offense**

It is essential that care be taken when investigating and verifying discharges which could result in an enforcement action. The person investigating a situation must accurately document each event. Written records, including supporting evidence such as photographs, copies of monitoring charts, reports from other City crews or other agencies, and complaints from neighbors are some types of information that may be included as documentation. Samples taken must conform to approved sampling methods and analysis done in a timely manner following approved laboratory methods.

## F. Tracking

When problems are reported or found they are investigated and tracked to identify a source. If investigators are not successful in identifying a source for an initial call, records are kept that may help uncover patterns or sources useful for future reference. Computerized records are maintained in the City database and can be searched by address or line segment.

The City has technical resources available to identify discharge sources, including closed circuit cameras that can be run through lines to locate discharges. Dye and smoke testing is also done by City crews to identify line connections or sources of flow.

Information collected during a field investigation is used when the City contacts the responsible party if a discharge violation has occurred or if corrective action is needed. Contact and follow up information is entered in the City database, becoming part of the permanent record for the case.

If enforcement action is warranted, that information is also included and tracked in the database. Enforcement actions will be determined using the enforcement penalty matrix included in this Plan.

## G. Enforcement Penalty Matrix

The enforcement penalty matrix (Table 1) is comprised of a set of criteria formulated as questions for the City Manager to evaluate and answer. The City Manager uses the guidelines of Section 1.1 to determine the total points to be assessed according to the violation. Once the total amount of penalty points is determined, a rating and a corresponding penalty amount is established (Table 2).

**Table 1. Enforcement Penalty Matrix**

<b>Enforcement Evaluation Criterion</b>	<b>No (0 points)</b>	<b>Possibly (1 point)</b>	<b>Probably (2 points)</b>	<b>Definitely (3 points)</b>
Public Health Risk?				
Environmental Damage or Adversely Impacting Infrastructure?				
Willful or Knowing Violation?				
Unresponsive in Correcting Action?				
Improper Operation or Maintenance?				

Failure to Obtain Necessary Permits and Approval?				
Economic Benefit for Non-Compliance?				
Repeat Violation?				

**Table 2. Penalty Points Rating and Corresponding Penalty Amount**

<b>Rating</b>	1-2	3-4	5-8	9-11	12-14	15
<b>Penalty</b>	\$250	\$500	\$1,000	\$1,500	\$2,000	\$2,500
<b>Rating</b>	16	17	18	19	20+	
<b>Penalty</b>	\$3,000	\$3,500	\$4,000	\$4,500	\$5,000	

### 1.1 Application of Penalty Criteria

The framework below provides guidance on how to rate each criterion of the enforcement penalty matrix. The civil penalty is determined by the total score of the matrix.

1. Did the violation result in a public health risk?
  - a. Answer “no” if there is no evidence to support a claim of public health risk or adverse health effects.
  - b. Answer “possibly” if evidence supports a claim of public health risk and there is a plausible connection between this violation and health effect.
  - c. Answer “probably” if evidence supports a claim of public health risk and there is a likely connection between this violation and health effect.
  - d. Answer “definitely” if there is direct evidence linking public health risk or adverse effects with the violation.
  
2. Did the violation result in environmental damage or adversely impact infrastructure?
  - a. Answer “no” if there is no evidence to support a claim of environmental or infrastructure damage.
  - b. Answer “possibly” if environmental or infrastructure damage can be inferred from evidence or knowledge of the effects of the violation.
  - c. Answer “probably” if there is evidence to support a claim of environmental or infrastructure damage and there is a likely connection between the violation and the damage/impairment.
  - d. Answer “definitely” if there is direct evidence linking environmental or infrastructure damage with the violation.

3. Was the action a willful and knowing violation?
  - a. Answer “no” if the violator obviously did not know that the action or inaction constituted a violation.
  - b. Answer “possibly” if the violator should have known.
  - c. Answer “probably” if it is likely the violator knew.
  - d. Answer “definitely” if the violator clearly knew or was previously informed by a City inspector.
4. Was the responsible party unresponsive in correcting the violation?
  - a. Answer “no” if the violation was corrected as soon as the responsible party learned of it.
  - b. Answer “possibly” if the violation was corrected in a less timely and cooperative fashion.
  - c. Answer “probably” if the responsible person made some attempt to correct the problem, but did not correct it.
  - d. Answer “definitely” if the responsible party made no attempt to correct the violation.
5. Was the violation a result of improper operation or inadequate maintenance? (e.g., Temporary Erosion and Sediment Control Plan, Stormwater Pollution Control Plan, Operations and Maintenance Manual.)
  - a. Answer “no” if the violation was not the result of improper operation or inadequate maintenance.
  - b. Answer “possibly” if the facility has a plan or manual but it is out of date or inadequate.
  - c. Answer “probably” if there is no plan or manual and the violation would have been less severe if the plan were developed and followed.
  - d. Answer “definitely” if the facility has no plans or did not follow its plan and the violation was clearly the result of improper operation or maintenance.
6. Did the responsible party fail to obtain and comply with the necessary permits, certifications, or approvals from the agency with jurisdiction to operate at the time of the violation?
  - a. Answer “no” if the paperwork was complete and appropriate for the job or task that caused the violation.
  - b. Answer “possibly” if the responsible party obtained and received approval for some but not all of the required permit(s).
  - c. Answer “probably” if the responsible party obtained some but not all of the required permit(s) and did not receive approvals for the job or task that caused the violation.

- d. Answer “definitely” if the responsible party either did not obtain the necessary permits or did obtain permits but did not comply with their conditions.
7. Did anyone benefit economically from non-compliance?
- a. Answer “no” if it is clear that no one gained an economic benefit.
  - b. Answer “possibly” if someone might have benefited.
  - c. Answer “probably” if anyone benefited, but the benefit is not quantifiable.
  - d. Answer “definitely” if the economic benefit is quantifiable.
8. Is this violation a repeat violation<sup>1</sup>?
- a. Answer “no” to indicate that there have been no prior violations within the preceding five years.
  - b. Answer “possibly” to indicate that there has been one prior violation within the preceding five years.
  - c. Answer “probably” to indicate that there have been two prior violations within the preceding five years.
  - d. Answer “definitely” to indicate that there have been three or more prior violations within the preceding five years.

**H. Timeliness of Enforcement Actions**

The period of time before an enforcement action is taken after a violation is identified may vary with the action. The following list is used to identify the intended timelines under ideal conditions, but longer periods may be necessary due to the amount of investigation and verification needed to determine a violation has occurred.

Warning	Notice of Violation	Citation	Administrative Order	SNC Publish	Civil Penalty	Criminal Penalty	Cease and Desist Order	Terminate Service
Immediate	5 days	5 days	30 days	Annually	30 days	90 days	Immediate	5 days

<sup>1</sup> From Stormwater Code (SRC 71): Repeat violation is defined as “a prior violation of this Chapter within the preceding five (5) years that became a final order or decision of the City Manager or a court. The violation does not need to be the same nor occur on one site to be considered repeat.”