

Storm Water Enforcement Response Plan

City of Glendale

November 2, 2011

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I. Introduction

On August 27, 2010, the Arizona Department of Environmental Quality (ADEQ) issued a Municipal Separate Storm Sewer System (MS4) permit to the city of Glendale (the 'city'), replacing the permit issued by the Environmental Protection Agency in 1999. The MS4 permit specifies requirements the city needs to implement to comply with federal storm water standards. Glendale is required to reduce pollutants in its storm water discharges to waters of the United States (U.S.) to the maximum extent practicable. Waters of the U.S. in Glendale include Bonsall Park Lake, New River, Skunk Creek, the Agua Fria, and Salt River Project canals (the Arizona and Grand Canals). Tributaries to these waters are also considered waters of the U.S.

The MS4 permit requires the city to establish and maintain the legal authority to comply with the permit. Specifically, the city must have legal authority to:

- Control discharges of pollutants to the storm drain system from industrial activities and construction activities;
- Prohibit illicit connections and discharges to the storm drain system;
- Control discharges to the storm drain system from spills, dumping, and disposal of materials other than storm water;
- Require compliance with ordinances, permits, contracts or orders;
- Perform inspections, surveillance, and monitoring necessary to determine compliance; and
- Establish requirements for post-construction storm water controls.

Historically, the city used separate sections of its City Code to manage and enforce storm water requirements. The MS4 permit received by the city in 2010 requires that the city adopt a comprehensive storm water ordinance and prepare and implement a Storm Water Enforcement Response Plan. The Ordinance was adopted on October 11, 2011 (Ordinance No. 2785). This Storm Water Enforcement Response Plan describes a set of procedures and the framework for progressive enforcement actions. The purpose of the Storm Water Enforcement Response Plan is to provide an overview and summary of the city's storm water compliance and enforcement program.

II. Timeframes for Enforcement Responses

There are strict timeframes for enforcement actions. The Glendale MS4 permit (Appendix A, Section III.E) requires that all illicit discharges must be investigated as follows:

- Within 3 business days of detection or report (where there is no obvious discharges that indicate the pollutants are in or potentially threatening storm water);

- Investigation of obvious wastewater discharges (such as sewage, sudsy water, colored waters, etc.) that are flowing at the time of inspection shall be initiated immediately upon detection; and
- Corrective action shall be initiated within 60 days of identification of the source of an illicit discharge.

In instances where a violation of the city ordinance has occurred that has not resulted in an illicit discharge to the city storm water system, e.g., when best management practices have not been implemented properly, enforcement actions will be taken promptly, but in no event later than 10 days following the identification of the non-compliance

An illicit discharge is defined as any discharge to the city's storm sewer system that is not composed entirely of storm water. Discharges pursuant to a federal or state agency discharge permit (i.e., NPDES or AZPDES permit) and discharges resulting from fire fighting activities are not considered illicit discharges (MS4 permit, Section 10). Additionally, Section 33-300(c) of the storm water ordinance allows certain non-stormwater discharges such as landscape irrigation, individual residential car washing, air conditioning condensation. A complete listing of the allowable non-stormwater discharges can be found at Section 33-300(c) of the storm water ordinance.

III. Enforcement Criteria

The city will take action based upon the nature and severity of the situation. Non-compliance with the city's storm water ordinance is either classified as minor or major violation. Minor violations are generally instances that do not directly result in an illicit discharge, or in some cases, involving violations that can be immediately remedied upon finding. Major violations are generally those acts or omissions that lead to a discharge of pollutants to storm water.

The enforcement action will depend on several factors:

- Severity of the violation; including the duration, type and amount of pollutants discharged, and the impact on public safety/health and the environment.
- The violator's knowledge (either negligent or intentional) of the regulations being violated.
- The history of violations and/or enforcement actions involving the site, business, or individual.
- The effect the enforcement action has as a deterrent.
- Whether there was a good faith effort to comply with applicable requirements.
- The economic benefit to the violator resulting from the violation.

IV. Methods of Discovery of Illicit Discharges and Compliance Issues

An illicit discharge is any discharge to the city storm water system that is not composed entirely of storm water except discharges that are exempt by federal and state laws and regulations. Additionally, other scenarios may be encountered that do not result in an Illicit discharge but are not in compliance with the storm water ordinance, e.g. a facility that does not implement best management practices to keep pollutants from mixing with storm water and entering the city storm drain system. The methods by which the city discovers or identifies illicit discharges and other non-compliance issues will depend on the type of incident. Examples include:

- a. Reports from city staff, residents, businesses, visitors
- b. Reports from water providers and irrigation districts
- c. Reports from local, state, or federal agencies
- d. During maintenance of wastewater, storm, or water systems
- e. During proactive inspections, such as:
 - i. Commercial/industrial facilities
 - ii. Construction sites
 - iii. Residential areas
 - iv. Outfalls and the storm drain system

Enforcement procedures for non-compliance issues and illicit discharges will follow those outlined in sections V.a, V.b, or V.c of this Storm Water Enforcement Response Plan, depending on the nature of the illicit discharge.

V. Storm Water Inspections and Enforcement Actions

The city's storm water permit requires that the city have an inspection and enforcement program. The city will provide storm water awareness and public education. The city will work cooperatively with residents, businesses, and property owners in conducting inspections and in gaining compliance. The city will use enforcement actions when necessary.

The city will utilize progressive enforcement which applies more stringent enforcement actions concurrent with the frequency and severity of the level of non-compliance. City enforcement actions range from issuing verbal warnings, notice of violations, consent orders, assurances of voluntary compliance, negotiated settlement agreements, cease and desist order, and civil or criminal penalties (City Code, Chapter 33, Article VI, Division IV).

In some cases involving serious and intentional violations of Federal, State, and local laws and regulations, the city may seek the assistance of the Environmental Protection Agency, the State or County.

The city's inspection and enforcement program includes the following components.

a. Residential Inspections and Enforcement

Most residential inspections are conducted by the Code Compliance Department and typically include activities such as weed control, using a leaf blower to blow debris into the right-of-way, draining swimming pool water, gray water discharge, and dumping, spilling, or disposing of materials that may impact the storm drain.

The Code Compliance Department has Operating Procedures for conducting inspections and issuing enforcement actions to ensure compliance with city codes. These Operating Procedures will be used to achieve compliance with storm water requirements:

1. Field Inspections – Complaint and Pro-active
2. Repeat / Non-Compliant Offender / Probation Violations

Compliance timelines and enforcement processes are contained in the Operating Procedures.

b. Industrial and Commercial Inspections and Enforcement

The city's Pretreatment Division of the Water Services Department is responsible for ensuring compliance of industrial and commercial facilities pertaining to the city's wastewater pretreatment requirements. The Pretreatment Division is also responsible for developing and implementing the city's storm water inspection and enforcement program for industrial and commercial facilities. This plan only details the Pretreatment Division's enforcement policy with respect to enforcement of the storm water ordinance.

Industrial and commercial facilities that are determined to potentially impact storm water quality based on the activities that occur at the facility will be placed in the city's storm water inspection program. During a site inspection, the city's Pretreatment Inspector will assess whether the facility is in compliance with city storm water requirements. City Pretreatment Inspectors will only enforce the storm water provisions in city ordinance and will not enforce federal or state laws or regulations specific to storm water, such as the state Multi-Sector General Permit (MSGP) provisions. However, the City Inspector may refer findings/issues to outside regulatory agencies when potential violations of federal or state laws are observed.

The city's inspection and enforcement program for industrial and commercial facilities includes the following progressive enforcement practices:

1. Verbal Warning

Verbal warnings may be given by city inspectors when non-compliance is relatively minor and can be immediately corrected at the time of inspection. The verbal warning will be documented on the inspection form and transferred to a computer database. Typically, no further action by the city is taken if the problem has been corrected immediately.

2. Corrective Action Notice (Warning Letter)

The city will issue a Corrective Action Notice when non-compliance is minor and can be quickly corrected. The Corrective Action Notice will outline the areas on non-compliances and reference applicable portion(s) of the city ordinance. The letter will specify a timeframe for compliance. The inspector will typically provide the alleged violator up to 10 calendar days to resolve the issue and provide proof of compliance. A Notice of Violation (NOV) will be issued in cases where corrective actions are not completed.

3. Notice of Violation

The city will issue a Notice of Violation (NOV) when: 1) non-compliance is major; 2) compliance actions require some time to implement; or 3) a corrective action notice is not addressed in the specified timeframe. An NOV is a written notification that action is required by the recipient (e.g., the owner/operator of a facility) to resolve a non-compliance situation. The recipient of an NOV will typically have up to 10 calendar days to resolve the issue and provide proof of compliance. Deadline extensions will be considered by the city for extenuating circumstances when requested in writing by the violator. Deadline extensions may be granted by the inspector with supervisor approval if the facility operator provides a written explanation of the violation and a plan for correction and actions to be taken to prevent future violations.

4. Compliance Status Review Meeting

A compliance status review meeting may be requested by the recipient of an NOV or initiated by the city when the fine amount exceeds \$300. Recipients of an NOV must request the meeting from the administrator in writing prior to the compliance deadline specified in the NOV. The administrator shall schedule the meeting within 30 calendar days from receipt of the written request. The meeting notice will be provided to the facility that will contain the date, time, and location for the compliance status meeting between the violator and the city. The city may have an attorney present at the compliance status review meeting.

The purpose of the meeting is to present evidence of a company's non-compliance and to provide an opportunity for the violator to present pertinent information. Based upon the information presented, an attempt will be made to reach a settlement agreement on the type of needed compliance activities and the amount of civil sanctions per the city's Storm Water Penalty Calculation Policy.

5. Closure Letter

When all compliance conditions are met, a closure letter will be sent by the City to the facility representative. This letter will inform the facility that they are considered "in compliance" with the city of Glendale storm water code.

6. Industrial and Commercial Program Civil and Criminal Penalties

Civil Penalties will be assigned in accordance with Chapter 13 of the City Code or per Storm Water Penalty Calculation Policy included in Appendix C. Factors affecting the penalty assigned to the violation are included in Section III.

In some circumstances, criminal penalties may be required to gain compliance. In these instances, the code department or police department will be notified to investigate.

c. Construction Site Inspections and Enforcement

Inspections of construction sites (typically greater than 1 acre) are conducted by the city Engineering Department for all facilities that require a Construction General Permit issued by the Arizona Department of Environmental Quality. The Engineering Department will use the following progressive enforcement practices to address noncompliance issues:

1. Verbal Warning--Minor Violation

Verbal warnings will be given by city construction site inspectors to the facility operator at the time of an inspection. A verbal warning is a notification to correct a non-compliant issue.

The city will document or record the verbal warning in a computer database as soon as possible. Typically, no further action is taken if the problem has been corrected immediately. In some instances, the inspector may provide the construction site up to 10 calendar days to attain and provide proof of compliance.

2. Second Notice of Violation or Significant Violation

For more serious violations or at sites where compliance has not been demonstrated following previous warnings or when there is an imminent threat or actual discharge to the city's storm water system, a full or partial stop work order or notice of violation will be issued. Upon issuance of the full or partial stop work order, the operator will cease activities until compliance is achieved. The city will document or record the violation and subsequent resolution in a computer database as soon as possible.

3. Civil or Criminal Penalties

In some circumstances, civil or criminal penalties may be required to gain compliance. In these instances, the code department or police department will be notified to investigate.

VI. Reporting Requirements

The city shall provide a list and description of all verbal warnings and written violations and their resolutions, including any enforcement actions taken in the annual report to ADEQ. At a minimum, the inspection should document the source of the complaint, the date, the time, the contact person (if any), a description of the nature of the non-compliance or illicit discharge, and actions taken.

VII. Appendix A – Abbreviations and Definitions

Abbreviations:

ADEQ – Arizona Department of Environmental Quality

AZPDES – Arizona Pollutant Discharge Elimination System

BMP – Best Management Practice

EPA - Environmental Protection Agency

ERP – Storm Water Enforcement Response Plan

MS4 Permit – Municipal Separate Storm Sewer System Permit

NPDES – National Pollutant Discharge Elimination System

Definitions:

Administrator: The City Manager or a duly authorized designee.

Arizona Department of Environmental Quality (ADEQ): The state agency charged with enforcement of environmental laws and regulations.

Arizona Pollutant Discharge Elimination System (AZPDES) storm water permit: A permit issued by ADEQ which authorizes the discharge of storm water pursuant to Arizona Administrative Code R18-9-A902.

Best Management Practices (BMPs): Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to storm water. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from outdoor storage areas.

Clean Water Act: The federal water pollution control act, as amended, 33 United States Code § 1251 et seq.

Discharge: Any spilling, leaking, pumping, pouring, emitting, emptying, injecting, placing, releasing, leaching, dumping, or disposing into or on any land in a manner that may cause pollution.

Environmental Protection Agency (EPA): The federal agency charged with enforcement of environmental laws and regulations.

Illicit discharge – any discharge to a MS4 that is not composed entirely of storm water except discharges pursuant to a NPDES or AZPDES permit (other than the NPDES or AZPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities. [40 CFR 122.26(b)(2)]

Municipal Separate Storm Sewer System (MS4) – a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

1. Owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a approved management agency under Section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a Publically Owned Treatment Works (POTW) as defined at A.R.S. §49-255.

National pollutant discharge elimination system (NPDES) storm water permit: A permit issued by EPA which authorizes the discharge of storm water pursuant to the Clean Water Act § 402 (33 U.S.C. § 1342).

Person: Any individual, partnership, co-partnership, firm, company, corporation, limited liability company, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns.

Pollutant: Fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.

Pollution: The presence of a pollutant(s) on land or in storm water.

Premises: Any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Public storm drain system: All or any part of the publicly-owned and maintained roads, streets, catch basins, curbs, gutters, ditches, man-made channels, storm drains, and dry wells located within public easements, right-of-way, parks, common areas, retention areas, or other publicly-owned or maintained real property designed or used for collecting, holding, or conveying storm water.

Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, placing, leaching, dumping, or disposing into or on any land in a manner that can cause pollution.

Storm water: Storm water runoff, surface runoff, and drainage.

VIII. Appendix B – Example of Violation Notice -



GLENDALE
 Industrial Pretreatment Program
 Utilities Department
 (623) 930-4758 FAX (623) 877-6452

No.: **00232**

Notice of Violation of the Glendale City Code, Chapter 33

To the Owner, Lessee, Manager or other person having charge of the following premises:

Name of Industry or Business: _____ Address: _____ Phone: _____

Date of Violation: _____ Quarter Section: _____

Time of Violation: _____ Interceptor/Trap Size: _____

You are hereby notified to discontinue the violation of the City of Glendale Code in the manner of discharge of wastewater from your premises into the City sewer, storm drain or channel as indicated below:

- | | |
|---|---|
| <input type="checkbox"/> Solid or viscous pollutants causing obstruction | <input type="checkbox"/> Discharge of polluted waters to natural outlet |
| <input type="checkbox"/> Improper maintenance of trap/interceptor | <input type="checkbox"/> Flammable or explosive substances |
| <input type="checkbox"/> Inadequate protection against accidental discharge | <input type="checkbox"/> pH not within acceptable limits |
| <input type="checkbox"/> Other _____ | |

Section(s) of Glendale City Code Cited: _____

You are therefore directed to:

- | | |
|--|--|
| <input type="checkbox"/> Cease and desist from further discharge immediately | <input type="checkbox"/> Repair/replace trap/interceptor by ____/____/____ |
| <input type="checkbox"/> Clean trap/interceptor by ____/____/____ | <input type="checkbox"/> Install trap/interceptor by ____/____/____ |
| <input type="checkbox"/> Other _____ | |

Warning: Violation of the City Code is a misdemeanor and may result in further enforcement action that may include criminal and civil penalties as well as discontinuance of water or sewer service to your facility. Contact Industrial Pretreatment at (623) 930-4758 when required actions have been completed.

Action Verification Inspection

Notice Served To: _____

Title: _____

Receipt Acknowledged: _____
(Signature)

Name of Owner/Manager: _____

(Pretreatment Inspector Print Name)

Pretreatment Inspector Signature/Date

Required Actions Completed: _____
Date

Further Action Required: _____

Further Action Completed _____
Date

Pretreatment Inspector Signature

Date

PINK COPY - Owner Manager

YELLOW COPY - For Further Action To Owner/ Manager

WHITE COPY - File

1/04 4019

IX. Appendix C – Storm Water Penalty Calculation Procedure

Storm Water Penalty Calculation Procedure

The storm water ordinance authorizes assessment of penalties not to exceed \$2,500 per violation per day. Additionally, Section 33-313 of the ordinance authorizes the administrator to assess a civil penalty for actual damages incurred by the city. Before assessment of any administrative penalty under this procedure, a Compliance Status Review Meeting shall be held with the non-compliant facility representative.

If a violation results in conditions requiring the expenditure of public funds for mitigation of damages, the funds expended shall be collected separate of any penalty issued for the violation.

Explanation of Use of Tables

This guide is based primarily on the use of two tables; “A”, and “B”. Table “A” indicates how point values are assigned for each violation, considering the severity, duration, degree of harm, and compliance history of the owner. All possible violations may not be listed; however, this does not preclude an appropriate enforcement response.

In Table “A”, three columns are associated with each listed violation – the “Initial Points” column, the “Repeat Value” column, and the “Cumulative” column. If no history of violations is noted, the value in the “Initial Points” column may be used in conjunction with Table “B” to assess a typical response to the violation.

If the user has a history of similar violations within the past 24 months, the repeat point value times the number of previous occurrences times should be used as shown in the following formula: Total Point Value (TP) = (N x R), where:

N = Number of previous occurrences
R = Repeat Value from Table “A”

Should more than one violation be noted at a time, the cumulative column should be consulted. If violations are cumulative in nature, the sum of the individual point values should be used to judge the response. If not, the greatest individual values should be used to judge response, with the documentation for that response, however, noting all violations.

Once a point value is determined, Table “B” should be consulted for recommended responses. Table “B” provides a schedule of appropriate responses based upon the number of “points” determined by Table “A”. Table “B” represents the penalty amount for each day of violation, thus would be multiplied by the total number of days the violation occurred for the total penalty amount.

Example

An owner violates the terms of the storm water management ordinance with an unauthorized discharge. This violation is considered significant and causes harm. Investigation reveals the owner has been cited twice in the past 24 months for the same violation: Total Point Value (TP) = (N x R). Therefore: TP = (5 x 2) = 10, where:

5 = Points charged for repeat, significant discharge from Table "A"

2 = Number of previous occurrences

Resulting options: Civil injunction or administrative order with up to \$2,500.00 per day penalty.

TABLE "A"
Response Guide for Violation

DESCRIPTION OF VIOLATION	<u>INITIAL POINTS</u>	<u>REPEAT POINTS</u>	<u>CUMULATIVE</u>
EROSION PREVENTION AND SEDIMENT CONTROL			
Violation of a single requirement:			
Not significant	1	1	Yes
Significant, no harm	2	3	Yes
Significant, causes harm	4	5	Yes
UNAUTHORIZED DISCHARGES			
Illicit Discharges:			
Owner unaware of requirement, no harm	1	2	No
Owner unaware of requirement, harm	2	3	No
Owner aware of requirement, no harm	2	3	Yes
Owner aware of requirement, harm	4	5	Yes
Illicit Connections:			
Owner unaware of requirement, no harm	1	2	No
Owner unaware of requirement, harm	2	3	No
Owner aware of requirement, no harm	2	3	Yes
Owner aware of requirement, harm	4	5	Yes
INSPECTION			
Entry denied	2	2	Yes
Inspection Records			
Incomplete	1	2	No
Not available	1	2	No
MAINTENANCE			
Failure to properly operate and maintain BMPs	1	2	Yes

TABLE "B"
VIOLATION RESPONSE GUIDE

POINT TOTAL ACTION

- 1 Administrative Order with up to \$300 Penalty
- 2 Administrative Order with up to \$600 Penalty
- 3 Administrative Order with up to \$900 Penalty
- 4 Administrative Order with up to \$1500 Penalty
- 5 Administrative Order with up to \$2000 Penalty
- 6 or more - Administrative Order with up to \$2500 Penalty

The administrator has the discretion to reduce the penalty amount for good cause, as described in the Storm Water Enforcement Response Plan, Section III.