

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

THE UNITED STATES OF AMERICA and )  
 )  
THE STATE OF ILLINOIS )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
THE CITY OF ROCKFORD, ILLINOIS, )  
 )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. 3:15cv50250

**CONSENT DECREE  
APPENDIX L**



## **City of Rockford Stormwater Division Enforcement Response Plan**

### **Introduction**

The intent of this document is to provide guidance to City officials and staff in enforcing the stormwater management ordinance. It should be used only as a guide while recognizing that each situation is unique. The provisions of this enforcement response plan are not intended to limit the judgment and flexibility of the administrator in determining an appropriate response.

While the purpose is to provide guidance for administration of the stormwater management ordinance, actual enforcement procedures should consider any unusual aspects of a violation or condition, as well as special characteristics of an enforcement action, in determining the proper response.

Minor infractions may be resolved by a verbal notice, telephone call, or warning letter advising the owner/operator/person of the nature of the violation. If such action fails to generate an adequate response by the owner/operator/person, further enforcement actions as provided by the ordinance may be taken.

### **Inspections**

The Stormwater Division completes the inspections that are incorporated and required under the City's National Pollutant Discharge Elimination System (NPDES) permit. This includes the following categories of the NPDES permit:

1. Structural Controls
  - a. Private detention ponds including the structures and drainage easements
  - b. Creeks located through private property
2. Erosion and Sediment Control
  - a. Construction Site Runoff
  - b. Post Construction Maintenance
3. Flood Control/Floodplain Management
4. Pesticide, Herbicide and Fertilizer Applications
5. Illicit Discharges and Improper Disposal
6. Industrial and High Risk Runoff

Inspections for the above categories shall be completed in accordance with their corresponding standard operating procedures. After inspection is completed and the properties are found in non-compliance of the City's stormwater management ordinance this document provides the enforcement responses as needed or required.

### **Enforcement Responses**

The order of precedence for enforcement responses outlined in this guide should not be construed to prevent the administrator from taking a stronger action without first implementing less stringent steps, if in his opinion, a more forceful response is necessary.

A code enforcement hearing shall be held prior to any enforcement action other than a telephone call, warning letter, notice of violation (NOV), or stop work order. The purpose of a code enforcement hearing is to provide a forum for the owner to present a defense to charges as outlined, or, to obtain additional information.



### **Documented Phone Calls or Informal Discussions**

In the case of the most minor violation of a permit or the ordinance, a telephone call or informal meeting may be sufficient to obtain the desired compliance. Phone calls should be documented onto the division's violation tracking table. Likewise, if an informal discussion is held, it should be entered onto the division's violation tracking table.

### **Warning Letter**

A warning letter is the lowest level of formal response to a violation. It is intended for minor violations which would not cause harm to the environment.

### **Notice of Violation**

A notice of violation (NOV) is an official notification to inform a non-compliant owner of a violation of the stormwater management ordinance. Within ten (10) days of receipt of this notice, a written explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the owner to the administrator. Inspection to ensure performance of any corrective actions may be conducted by the administrator at his discretion. Submission of this plan in no way relieves the owner of liability for any violations occurring before or after receipt of the notice of violation.

### **Stop Work Order**

A Stop Work Order may be issued when the administrator finds that an owner has violated, or continues to violate, the stormwater management ordinance or order issued thereunder. The order shall require that the owner:

- (a) Comply forthwith; and
- (b) Take such appropriate remedial or preventive action as may be needed or deemed necessary to properly address a continuing or threatened violation, including halting operations and terminating the discharge.

### **Administrative Orders**

Administrative code hearing findings, decision and orders (AO) are enforcement documents which direct owners to perform, or to cease, specific activities. These administrative orders may also invoke a penalty. There are three (3) primary types of administrative code hearing orders: consent orders; compliance orders; and cease and desist orders. These administrative orders are issued by the Code Hearing Officer as a result of a code enforcement hearing.

**Consent orders** are entered into between the City and the owner to assure compliance as to specific actions to be taken by the owner to correct non-compliance within a specified time period. The code hearing officer may officially enter such consent orders, assurances of voluntary compliance or other similar documents establishing an agreement between the City and any owner responsible for noncompliance. Such documents shall include specific action to be taken by the owner to correct the noncompliance within a time period specified in the document. Such documents shall have the same force and effect as orders issued pursuant to Chapter 109 Article 13.

**Compliance orders** may be issued when the code hearing officer finds that an owner has violated, or continues to violate, the ordinance or an order issued thereunder. It is similar to a consent order except that the consent of the owner is not implied in its issuance. When the code hearing officer finds that an owner has violated or continues to violate a section of this article, or a permit or order issued under this article, the code hearing officer may issue an order to the owner responsible for the violation directing that the owner come into compliance within a specified time, and such order may include assessment of a penalty to be paid if the owner does not come into compliance within the time provided. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and



management practices designed to minimize the amount of pollutants discharged offsite. A compliance order does not relieve the owner of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against or a prerequisite for taking any other action against the owner.

**Cease and desist orders** may be issued when the administrator or code hearing officer finds that an owner has violated, or continues to violate, the stormwater management ordinance or order issued thereunder. Issuance of a cease and desist order shall not be a bar against or a prerequisite for taking any other action against the owner.

Administrative orders contain the following components:

1. Title - The title specifies the type of order being issued (see below), to whom it is being issued, summarizes the purpose of the order, and contains an identification number.
2. Legal Authority - The authority under which the order is issued (the stormwater management ordinance).
3. The Finding of Noncompliance - All violations must be described including the dates, the specific permit and/or ordinance provisions violated, and any damages known and attributable to the violation.
4. Required Activity - All orders should specify the required actions, such as installation of BMPs, additional inspections, appearance at show cause hearings, etc.
5. Milestone Dates for Corrective Actions - When compliance schedules are appropriate, all milestone dates must be established including due dates for required written reports.
6. Supplemental Clauses - The document should contain standard clauses providing that:
  - (a) Compliance with the terms and conditions of the administrative order shall not be construed to relieve the owner of its obligation to comply with applicable state, federal or local law, or the permit;
  - (b) Violation of the administrative order itself may subject the owner to additional penalties as set out in the stormwater management ordinance;
  - (c) No provision of the order shall be construed to limit the town's authority to issue supplementary or additional orders, or to take action deemed necessary to implement this program or ordinance;
  - (d) The order shall be binding upon the owner, its officers, administrators, agents, employees, successors, assigns, and all persons, firms or corporations acting under, through or on behalf of the owner.

Administrative orders issued as a result of a violation of the stormwater management ordinance may contain a penalty pursuant to Chapter 109-13:03 of the stormwater management ordinance. Administrative orders may also be used to advise an owner of the need to take, or cease, certain actions, and in such case, may or may not be associated with penalties as defined in the ordinance or in this guide.

### **Civil Litigation**

Pursuant to Section 109-13:03 of the stormwater management ordinance, the administrator may, through the city attorney, petition the appropriate court(s) for issuance of preliminary or permanent injunctions to restrain or compel activities by an owner.

### **Penalties, Administrative or Civil**

The stormwater management ordinance authorizes assessment of penalties not to exceed \$750 per violation per day. Additionally, Section 109-13:03 of the ordinance and state statutes authorize the administrator to assess a civil penalty for actual damages incurred by the City.



If a violation results in conditions requiring the expenditure of public funds for mitigation of damages, a penalty shall be assessed in such amount as to offset the public funds so expended. This will in no way reduce or offset the liability of the owner with respect to damages incurred. Mitigation of damages may include, but not limited to, maintenance and repairs to the structural controls, implementation of erosion and sediment control measures, illicit discharge and high risk runoff cleanup and the labor and equipment utilized for such efforts.

#### **Cease and Desist Order**

A civil injunction may be requested at any time, for any violation, if in the opinion of the administrator in consultation with the city attorney, such action is justified, needed or appropriate.

#### **Criminal Action**

In cases where criminal acts are suspected by the administrator, after consultation with the city attorney, information shall be gathered and forwarded to the district attorney of the appropriate county for action. Criminal prosecution, if pursued, shall be in addition to other actions authorized by ordinance.



**TABLE A**

**ENFORCEMENT RESPONSE GUIDE**

**ESCALATION OF RESPONSES**

The following table outlines a recommended course of action for violations of the stormwater ordinance. When enforcement actions involving a specific site, a common operator or owner include multiple or successive violations then the severity level may be increased.

While the purpose is to provide guidance for administration of the stormwater management ordinance, it is not intended to limit the judgment and flexibility of the administrator in determining an appropriate response.

<u>SEVERITY OF VIOLATION</u>	<u>ACTION</u>
1	Informal Phone Call/Discussion
2	Written warning
3	Notice of Violation
4	Stop Work Order
5	Administrative Order
6	Administrative Order with up to \$750 per day Penalty