

TOWN OF SMYRNA ENFORCEMENT RESPONSE PLAN

Introduction

The intent of this document is to provide guidance to town officials in enforcing the Stormwater Management Ordinance (SWM 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 director in determining an appropriate response.

While the purpose is to provide guidance for administration of the SWM 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. Regardless of the severity of the violation to the SWM Ordinance, the Stormwater Program will initiate a complaint investigation within seven (7) days of being notified of the violation. All enforcement responses, regardless of stringency, should be documented as soon as possible into the program's violation tracking table.

Enforcement Responses

Violations of the SWM Ordinance that may require Enforcement Responses, include, but are not limited to: grading permits, illicit discharges (as per EPA-approved IDDE Guidance Manual, 2004), detention ponds and devices, as well as free standing grease receptacles.

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

A show cause hearing should 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 show cause 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 into the program's violation tracking table. Likewise, if an informal discussion is held, it should be entered onto the Stormwater Program'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 NOV is an official notification to inform a non-compliant owner of a violation of the SWM 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 director. Inspection to ensure performance of any corrective actions may be conducted by the director at their discretion. Submission of this plan in no way relieves the owner of liability for any violations occurring before or after receipt of the NOV.

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Stop Work Order

A Stop Work Order may be issued when the director finds that an owner has violated, or continues to violate, the SWM 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 orders (AO) are enforcement documents which direct owners to perform, or to cease, specific activities. AOs may also invoke a penalty. There are three (3) primary types of AOs: consent orders; compliance orders; and cease and desist orders.

Consent orders are entered into between the town 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 director may enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with 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 Section 14-610.

Compliance orders may be issued when the director 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 director finds that an owner has violated or continues to violate and section of this article, or a permit or order issued under this article, the director 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 director finds that an owner has violated, or continues to violate, the SWM 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.

AOs 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 (SWM Ordinance).

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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 SWM 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, directors, agents, employees, successors, assigns, and all persons, firms or corporations acting under, through or on behalf of the owner.

Administrative orders (AO) issued as a result of a violation of the SWM Ordinance may contain a penalty pursuant to Section 14-611 of the SWM Ordinance. AOs 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 14-611 of the SWM Ordinance, the director may, through the town 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 SWM Ordinance authorizes assessment of penalties not to exceed \$5,000 per violation per day. Additionally, Section 14-611 of the ordinance authorizes the director to assess a civil penalty for actual damages incurred by the town. Before assessment of any administrative penalty, a show cause hearing must be held with the non-compliant owner.

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.

Cease and Desist Order

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

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Criminal Action

In cases where criminal acts are suspected by the director, after consultation with the town 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 SWM 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. TDEC may also be consulted for violations that have not been satisfactorily addressed by the owner.

While the purpose is to provide guidance for administration of the SWM Ordinance, it is not intended to limit the judgment and flexibility of the director 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
4	Administrative Order
5	Administrative Order with up to \$500 Penalty
6	Administrative Order with up to \$1000 Penalty
7	Administrative Order with up to \$2000 Penalty
8	Administrative Order with up to \$3000 Penalty
9	Administrative Order with up to \$5000 Penalty