

City of Chattanooga
Water Quality Program/Land Development Office Stormwater Management
Enforcement Protocol

Adopted November 18, 2004

Amended: June 30, 2005; December 19, 2005; April 17, 2006; and April 16, 2007

National Pollutant Discharge Elimination System Permit Number TNS068063 authorizes the City of Chattanooga to discharge stormwater runoff in accordance with certain water quality management programs and provisions as set forth in the permit. Section II.C.7.b.v. of the permit states, “ *The permittees (Chattanooga) shall develop and put in practice enforcement procedures for the illicit discharges and improper disposal program.*” The permit further states in section II.C.9.e., “*The City shall improve its construction site inspection and enforcement procedures by carrying out the following . . . ii. Setting up clearly defined procedures for enforcing ordinances, permits and control plans.*”

In response to this requirement, the City of Chattanooga passed Ordinance Number 9942 establishing City regulation and enforcement oversight regarding stormwater quality. Sections 31-344-346 of Ordinance Number 9942 define the administrative enforcement remedies available to assure its compliance. These remedies include,

- (a) Notification of Violation;
- (b) Consent Orders;
- (c) Show Cause Hearings;
- (d) Compliance Orders;
- (e) Cease and Desist Orders;
- (f) Unlawful acts, misdemeanor;
- (g) Civil Penalties.

In order to assure fair and just enforcement to all parties involved and to provide adequate guidance to water quality/stormwater field personnel, the following protocol shall be employed in enforcement of City Ordinance Number 9942.

1. Land Disturbing Activities Without Obtaining Necessary Land Disturbing Permit

- (a) First Offense (Contractor)—Cease and Desist Order; Notice of Violation; Civil Penalty for Cost of Permit.
- (b) Second Offense (Contractor)—Cease and Desist Order, Issuance of Civil Penalty up to \$500.00 plus damages consisting of cost of permit and City expenses for enforcement of article.
- (c) Each Additional Offense (Contractor)—Cease and Desist Order; Issuance of Civil Penalty up to \$1,000.00 plus damages plus court citation for Unlawful Acts, Misdemeanor.
- (d) Failure to Properly Transfer Land Disturbing Permit—Issuance of Civil Penalty for the cost of new permit.
- (e) Failure to Request Extension of Permit—Issuance of Civil Penalty for the cost of new permit
- (f) Enforcement under this guidance is contractor specific, not site specific. For instance, if contractor A receives a Notice of Violation for a first offense, a Civil Penalty is to be issued against Contractor A for the second offense regardless of the property owner or location. Additional penalties are possible if there is a pattern of negligence among multiple sites.

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.
- (b) Second Offense—Notice of Violation issued to Land Disturbing Permit Applicant.
- (c) Each Additional Offense-Issuance of Civil Penalty against Land Disturbing Permit Applicant of up to \$250.00 per day plus City expense for enforcement of article.

- (d) Failure of the applicant to actively remove any mud, debris or construction material that is deposited in a public roadway will lead to an additional civil penalty of up to \$250.00 per incident plus City expense for enforcement of article plus three times the cost of the City expenses if City crews are required to remove it to protect the safety of the public. *Actively is defined as the continuous and/or immediate use of labor, equipment and or material to remove mud deposited on public streets and/or prevent the deposition by on-site control measures at such times when site conditions may be conducive to tracking. This includes, but is not limited to, proper utilization of construction exits; proper maintenance, including necessary extensions; use of manual labor, power sweepers or appropriately designed truck tire wash facilities; etc. Power washing of streets without collection and treatment of wash water is not acceptable.*

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. If project is exempt from obtaining a land disturbing permit, written warning is given to the 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 and 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 damages of twice the 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 up to \$100.00 per discharge point per discharge plus City expense for enforcement of article to be levied to land disturbance permit applicant. Damages of up to three times 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) Each Additional Offense-- Issuance of Civil Penalty of up to \$500.00 per discharge point per discharge to be levied to the land disturbance permit applicant. Damages of up to three times 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.

4. Failure to Properly Maintain Erosion Control Self Inspection Sheets and On-Site Erosion Control Plan

- (a) First Project Offense—Written Warning issued to Land Disturbing Permit Applicant.
- (b) Second Offense-Issuance of Civil Penalty of up to \$100.00 per inspection in which either self inspection sheets or up-to-date erosion control plans cannot be provided when asked for by the inspector.

5. Failure to Provide Proper Final Stabilization

- (a) First Offense-Written Warning issued to Land Disturbing Permit Applicant.
- (b) Second Offense—Issuance of flat rate Civil Penalty of \$50.00 if site remains unstable for longer than 7 consecutive days past the issuance date of final certificate of occupancy. An additional graduated penalty of \$25.00 per disturbed acre per day, and an additional \$100.00 per day in which rainfall totals exceed a trace will be applied.

6. Failure to Comply with Approved Stormwater Design Plans

- (a) Upon Notice of Variation of Approved Plans—Written notification to 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 Inspectors cannot authorize approval for certificate of occupancy until modifications have been submitted and approved.
- (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
 - ii. Failure to Meet Compliance Order Dates—Issuance of Civil Penalty of up to \$1,000.00 per day for each day approved plans are not met.

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

- (a) First Offense—Notice of Violation issued to responsible party for non-stormwater discharge.
- (b) Second Offense—Issuance of Civil Penalty against responsible party of up to \$1,000.00.
- (c) Each Additional Offense—Issuance of Civil Penalty against responsible party of up to \$2,500.00.
- (d) Additional damages consisting of City expenses for *monitoring, sampling, enforcement* and the cost of City expenses or contracted services to clean up illicit discharge will be passed on to violator starting with the first offense. Additional damages to include other items such as loss of income for not properly using sanitary sewer system.
- (e) An Illicit discharge properly reported as Accidental Discharges as required by Section 31-343 will be reclassified as Accidental Releases and not subject to enforcement as an illicit discharge. However, the responsible party may be held liable to damages to the City.

8. Illicit Discharges (Residential Wastewater Discharge)

- (a) First Offense—Issuance of Notice of Violation and Compliance Order to stop illicit discharge within 10-days.
- (b) Failure to comply with Compliance Order—Issuance of Court Citation for Unlawful Act, Misdemeanor. An additional request should be made to Neighborhood Services asking for condemnation of the residential unit.

9. Illicit Discharges (Residential Other than Wastewater Discharge)

- (a) First Offense— Enforcement action based on individual action. Examples: Deliberate dumping of pesticide, used motor oil or other hazardous or dangerous chemical into storm drainage system would result in Issuance of Civil Penalty including damages, raking leaves into drainage system may result in written or verbal warning.

The penalties as listed above begin at the date of the issuance of the Notice of Violation. At anytime, a Show Cause Hearing may be ordered if this protocol is unclear or inadequate to address specific violations of City Ordinance Number 9942.

This protocol does not in any way deter the Water Quality Manager or his/her designee from entering into a Consent Order to eliminate illicit discharges in lieu of other enforcement actions.

“The civil penalties set forth in the schedule above have been established by the Storm Water Regulations Board as the normal civil penalties to be assessed by the Water Quality Manager or his/her designee for certain specific violation, subject to the discretion of the manager to reduce the normal civil penalty for unusual and mitigating circumstance. The Water Quality Manager or

his/her designee may assess civil penalties in his discretion for violations of the City Code not contained in the schedule.”

Addendum to Enforcement Protocol:

10. Failure to Maintain or Repair Stormwater Post-Construction Structures/Water Quality BMPs (detention ponds, oil separators, proprietary units, etc.)

- (a) Notification Letter issued to owner(s)/user(s) of repair/maintenance need to be conducted within 30 days.
- (b) First Offense: Written Warning issued to owner(s)/user(s) for failure to respond to the Notification Letter. Repair/maintenance need to be conducted within 14 days.
- (c) Second Offense: Notice of Violation (NOV) issued to owner(s)/user(s) warning that the City is going to repair/perform maintenance on the structure and will issue the owner(s)/user(s) a civil penalty of up to three (3) times the City’s cost for repair/maintenance if the owner(s)/user(s) failed to repair or conduct maintenance within 10 days.
- (d) Third Offense: Issuance of a civil penalty of up to three (3) times the City’s cost for repair/maintenance and enforcement cost.
- (e) Future problems should be reset to the beginning (a).

***Stormwater Board Meeting
December 19, 2005
(Approved by the Board)***

Addendum to Enforcement Protocol:

11. Failure to Maintain Proper Site BMPs or Tracking Mud on Street for Single/Two Family Housing Construction

- (a) First Offense: issued to owner/building permit holder a Written Warning (on the inspection form).
- (b) Second Offense: issued to owner/contractor a Notice of Violation (NOV) with Civil Penalties (on-site on the inspection form) up to \$100 per Violation per Site. Follow up with a letter.
- (c) Third Offense: Issuance of a Compliance Order with additional Civil Penalties of \$200 per Violation per Site and up to three (3) times the City’s cost for maintaining streets and/or stormwater structures and cost of enforcement.

***Stormwater Board Meeting
April 17, 2006
(Approved by the Board)***

Policy Memorandum:
Emergency Response – Civil Penalties for Significant Spills/Discharges
Effective Date: June 30, 2005 (Approved by the Board)

NPDES Permit TNS068063 requires the City of Chattanooga to develop a program for responding to, containing, and preventing spills/accidental discharges of materials that will adversely affect the MS4 system and receiving streams. Accordingly, the City's Water Quality Program staff (5 members) maintains a 24-hour/7days per week availability for spills and emergency response (ER). These staff members respond to an average of seventy (70) incidents annually and expend labor, overhead, and occasionally material costs.

Therefore, in order to recapture Water Quality Program costs in ER, to hold responsible parties (RP) accountable for their actions, and to reduce recurrence of such events by the RP, the following policy will be adopted:

Any incident involving a "significant spill" of materials posing a risk to the City of Chattanooga's MS4, and therefore a threat to human health and the environment, in which ER staff responds for site assessment, containment, remediation supervision and/or monitoring, will be regarded as an illicit discharge under Section 31-343, Division 6, Enforcement and Abatement, Chattanooga City Code, Chapter 31, Part II and be enforced as such.

Specifically, the City will issue a Notice of Violation (NOV) which will require the RP to submit a written report within five (5) days of the date the NOV is received by the RP. The RP report will contain the following information:

- (1) the exact dates and times of the incident/spill/discharge;
- (2) a description of the incident/spill/discharge;
- (3) steps being taken to correct the discharge/spill and prevent recurrence in the future.

In addition, civil penalties will be assessed if the incident required a response by the Water Quality Program ER staff that required more than one hour's time for assessment, containment, and remediation supervision. These penalties will be computed as follows:

- a. **The civil penalty will be computed for ER personnel cost (twice the responder's hourly rate of pay (regular or overtime as appropriate) multiplied by the number of hours required for the ER). In addition to twice the cost of any supplies expended for the incident and not replaced by the RP's clean-up contractor.**
- b. **In addition to personnel and supply costs, damages to any City infrastructure or property from the incident will be determined by appropriate means and added to the civil penalty.**

The above named ordinance and the enforcement protocol approved as amended by the Stormwater Management Board authorize these steps and will be followed to include Notices of Violation, Consent Orders, Show Cause Hearings, Compliance Orders, Cease and Desist Orders, appeals and reviews.

Any civil penalties that are not collected in a timely manner by the Water Quality Program staff will be referred to the City Attorney for collection action.

By: _____

Date: _____

Mounir (Mo) Minkara, Ph.D., P.E., Water Quality Manager