

Stormwater Enforcement Response Plan

Town of Cave Creek

Stormwater
Enforcement Response
Plan November 2019

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Acronyms

ADEQ	Arizona Department of Environmental Quality
AZPDES	Arizona Pollutant Discharge Elimination System
EPA	Environmental Protection Agency
ERP	Enforcement Response Plan
MS4	Municipal Separate Storm Sewer System
NOV	Notice of Violation

I. Introduction

The Town of Cave Creek (the “Town”) has developed this Enforcement Response Plan (ERP) to identify procedures for instances of stormwater code noncompliance. To promote compliance, the Town must have a series of enforcement actions available. These enforcement actions range from written Notices of Violations to Emergency Orders and Suspension of discharge access. The requirements related to stormwater enforcement are found in Chapter 54 of the Town Code.

II. Identification of Violations

Violations will be identified during site inspections, either as a part of regular inspections conducted as required by the Town’s Municipal Separate Storm Sewer System (MS4) permit or inspections conducted in response to reports from the public or municipal employees.

A. Discovery during a regular inspection

The Town’s MS4 permit requires stormwater inspections of construction sites by either the Town’s Building Department or Engineering Department. Construction sites may be inspected for stormwater pollution prevention at several different points during construction. These inspections are conducted by either a Building Department or Engineer/Public Works Director. This inspector may, during the course of an inspection, identify violation of the Town Code that would initiate the ERP process.

B. Discovery in response to a reported discharge

The Town is open Monday – Thursday 7 AM to 5 PM. During business hours the receptions may receive a telephone call regarding potential of an illicit discharge. After hours, recorded messages may also be received which will be followed up immediate during regular Town business hours. Upon receipt of a credible notification by a member of the public or a municipal employee, the Building Department inspector or Engineer/Public Works Director will conduct an inspection for evidence of ongoing or prior discharges. If evidence of a discharge is identified, the ERP process will be initiated.

III. Enforcement Actions

Once a violation of the Town Code is identified, the respective Town inspector or authorized representative will proceed with the one or more of the following enforcement actions:

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A. Level 1 - Verbal Notice

Within this action there is a verbal exchange between an inspector and the alleged violator. The alleged violator should be informed of the violation, the action(s) required to correct, and the probable date of a re-inspection to document the correction. All information exchanged is documented on a report form and transferred to a computer database in the office as soon as possible after the inspector returns to the office. If the violator corrects the problem immediately and the inspector observes the corrective action and deems it appropriate, no re-inspection is required.

B. Level 2 – Written Notice

An alleged violator may receive this written notice if the violation could not be repaired while the Inspector was onsite, if the violation has not been corrected at the time of re-inspection, or if the violation is serious enough to warrant a written notice at time of discovery. The notice is issued by the authorized representative and identifies the nature of the violation, corrective actions required, the timeframe for corrective action and potential re-inspection date, and the penalties for continued non-compliance. The notice shall inform the owner or occupant that failure to pay penalties will result in a lien against the property. One copy of the Compliance Notice will be given to the site/facility operator and one copy will be given to the Town Engineer/Public Works Director or Compliance Coordinator for entry into the stormwater compliance database.

The notice may require the violator to:

1. Submit a corrective action plan to the Town which indicates the cause of the violation, corrective actions to prevent recurrence, and a proposed compliance schedule;
2. Pay all costs of sampling and analysis, as well as costs for laboratory sample analysis;
3. Clean-up any material that has left the property or has the potential to impact stormwater runoff, ensure that the clean-up has been completed, and make changes in operations to prevent future releases;
4. Obtain and pay for the services of a qualified person to oversee and certify that corrective actions needed to resolve the violation have been completed;
5. Prepare and implement a Best Management Practices Plan to prevent stormwater pollution, regardless of AZPDES/NPDES requirements;
6. Stop work on clearing, dredging, grading, excavating, storing, transporting, and/or filling of land, new construction, improvements, alterations, or additions;

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7. Stop any activity that is in violation of this chapter;
8. Abate, within the time specified in the notice, any condition that is in violation of this chapter; and
9. Abate immediately any condition in violation of this chapter, if the Town Engineer/Public Works Director determines that such condition presents an immediate threat to public health, safety, or the environment.

C. Civil Offenses

In the event the alleged violation fails to take the remedial measures set forth in Chapter 54.102 of the Town Code or otherwise fails to cure the violations described therein within five (5) days, or such greater period as the Town shall deem appropriate, after the Town has taken one or more of the actions described above, the Town may impose a penalty not to exceed \$2,000.00 for the 12 month period the violation remains un-remedied after receipt of the notice of violation issued by the Town Marshall or their authorized personnel.

D. Criminal Penalties

If a violation is an immediate threat to public health safety, welfare and/or environment, the enforcement action may be automatically escalated to criminal penalties bypassing levels 1 through 3 in civil offenses. The Town may seek immediate civil action to abate, enjoin or otherwise compel the cessation of such nuisance. The Town may recover all attorney fees, court costs, and other expenses with the enforcement of the stormwater ordinance.

E. State Law Penalties

If the Town discovers a condition that is likely to cause or is causing a discharge that threatens public health, safety, welfare and/or the environment, mitigation may include an immediate cessation of activity and abatement.

If a civil action under the Arizona Rules of Civil Procedure is required to abate, enjoin, or otherwise compel cessation of such nuisance, the Town shall seek remedies available under any applicable federal, state or local law and shall be within the Town's discretion to seek cumulative remedies. The Town may recover all attorney fees, court costs, and other expenses with the enforcement of the stormwater ordinance, including but not limited to sampling and monitoring expenses.

F. Re-inspections

The respective Town inspector or authorized representative shall retain the authority to conduct onsite re-inspections for all enforcement Levels..
Re-

inspections are conducted as frequently as the Town Engineer/Public Works Director deems necessary to monitor progress on corrective actions or to verify corrective actions.

G. Closure Letter

A Closure Letter applies to all enforcement. If all elements of the Enforcement Action are met, a Closure Letter is issued by the Town Engineer/Public Works Director or Compliance Coordinator to notify the owner/operator that the enforcement action is complete. The letter informs the owner/operator that their facility/site is considered in compliance with the Town Code and reminds them that further non-compliance may result in further enforcement action. A copy of the letter is maintained by the Town Engineer/Public Works Director or Compliance Coordinator as record of the incident and final outcome.

IV. Response Times for Enforcement Actions

Actions must be taken in a timely manner if the enforcement is to be effective. Actions are initiated by the Town no more than thirty (30) days from the date the violation is identified. Follow-up compliance activities begin within 30 to 45 days after the initial Action is taken. If the violation persists or there is no progress being made, the Department will take additional action. This additional action will be taken within ninety (90) days of the initial action. Although these timelines are general guides, the entire process, from identification of violation to closure letter, should be completed within one year.

V. Enforcement Responsibilities

To accomplish proper enforcement, the Department must utilize staff at various levels.

- A. Inspectors are required to collect data and determine compliance of MS4 requirements. Inspectors will keep records and submit reports to the Town Engineer/Public Works Director or Compliance Coordinator. Inspectors issue Compliance Notices and monitor progress toward compliance. Inspectors recommend actions to the Town Engineer/Public Works Director and obtain concurrence on actions taken, including when re-inspections are warranted.
- B. The Town Engineer/Public Works Director or Compliance Coordinator shall monitor the activities of the inspectors, provides support to the inspectors, and initiates enforcement actions when necessary.
- C. The Town Attorney provides legal advice on Enforcement Actions and takes whatever legal action necessary to halt a violation or enforce civil penalties.

VI. Selecting Appropriate Enforcement Action

The Town Engineer/Public Works Director or Compliance Coordinator must evaluate a violation before selecting the proper enforcement action to take, based on the following criteria:

- i. Magnitude of the violation;
- ii. Frequency of the violation;
- iii. Effect of the violation on stormwater quality;
- iv. Compliance history of the alleged violator; and,
- v. Good faith of the alleged violator.

Based on these criteria, the appropriate enforcement action is chosen and implemented.

ILLICIT DISCHARGE REPORT

	DESCRIPTION
LOCATION OF DISCHARGE:	
ESTIMATED VOLUME OF DISCHARGE:	
DESCRIPTION OF DISCHARGE:	
ESTIMATED DURATION OF DISCHARGE:	
METHOD OF DISCOVERY OF DISCHARGE:	
DATE OF DISCOVERY OF DISCHARGE:	
DATE OF ELIMINATION OF DISCHARGE:	
ENFORCEMENT ACTION:	
RESPONSIBLE PARTY (IF KNOWN):	

REPORT PREPARED BY:

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SITE INSPECTION FORM

I. <u>GENERAL INFORMATION</u>		
INSPECTOR NAME:		
INSPECTOR TITLE:		
DATE OF INSPECTION:		
SITE LOCATION & SIZE OF AREA DISTURBED:		
PHASE OF CONSTRUCTION		
WEATHER CONDITION: (Check All That Apply)	<input type="checkbox"/> Clear/Sunny; <input type="checkbox"/> Partly Cloudy; <input type="checkbox"/> Rain Event < 72 Hours; <input type="checkbox"/> Rain Event > 72 hours	
BEST MANAGEMENT PRACTICE	YES	NO
Are there any spills, releases or staining present /observable?		
Comment: Action Taken (if any):		
Are general good housekeeping practices in use?		
Comment: Action Taken (if any):		
Is waste/garbage properly stored and disposed?		
Comment: Action Taken:		
Are sands, aggregate and other materials prevented from entering stormwater drainageways?		
Comment: Action Taken:		
Any other visible stormwater issues of concern present (sediment/floatables) ?		
Comment: Action Taken (if any):		
Is this a re-inspection of previous noncompliance issue?		
Comment: Action Taken (if any):		
Is this case closed?		

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