

# **Construction Site Stormwater Runoff Control (MCM 4)**

## **Program Overview**

**and**

## **Emergency Response Procedures**

**for**

## **MS4 Permit Violations**

**and**

## **Non-Compliance Investigations**

Updated – 2022

Under the terms of the General NPDES/SDS Permit MNR040000, the City is required to develop and implement adequate enforcement authority for Construction Site Stormwater Runoff Control.

The purpose of this program overview and these Enforcement Response Procedures is to communicate how the enforcement tools available to the City will be used to achieve compliance.

The Enforcement Response Procedures also specify criteria by which City personnel can determine the enforcement action most appropriate to instances of non-compliance. This plan is a document of the City's procedure to be followed when a construction stormwater requirement, illicit discharge and post-construction violation is discovered. This plan is a guide; any of the enforcement responses may be used at the City's discretion.

- A. Program Overview.
  - i. Projects that disturb more than 20,000 Square Feet will be required to adhere to the City's Stormwater Compliance Program.
  
- B. Site Plan Reviews
  - i. Prior to allowing earth disturbing activities, the City will require that Applicants submit a Site Plan for review by City staff. City Staff will utilize a standard checklist for confirming that the Erosion and Sediment Control Plan / SWPPP is in conformance with City requirements.
  
- C. Financial Security
  - i. A financial security will be obtained prior to a permit being released which authorizes the earth disturbing activities. The financial security (and ability to utilize it to correct deficiencies) is crucial in some Enforcement Responses.
  
- D. Description of the Enforcement Response.
  - i. MS4 Inspection Form (Notice of Violation)
    - 1. Upon visiting a site, a City Representative will perform an inspection to ensure that all Best Management Practices (BMPs) are being met. BMP's referenced in 10-82-05. Minimum stormwater pollution prevention measures and related items for all sites. A-H or the standards listed below, whichever is stricter.
      - a. Construction Entrance - Rock Driveway (Entrance 6" Minimum, Depth of 1" to 2" crushed rock. - 30' Max Width and 40' Minimum Length)
      - b. Perimeter Controls (ex. Silt Fence, two layers of BMP is necessary within 50' of a pond/river)
      - c. Appropriate Stock Pile Locations (Needs separate Erosion Control: Silt fence)
      - d. Storm Sewer Inlet Protection
      - e. Adjacent Property Protected from Erosion, Flooding, etc.
      - f. Catch Basins (ex. Bio rolls)
      - g. Culvert
      - h. Vegetative Cover in Absence of Grading Activities
      - i. Post Construction

- E. If the City Representative observes non-compliance that has resulted in a discharge of pollution, including sediment, the representative will issue the Inspection Violation Form to the Permittee (builder, developer, home owner, etc.).
- i. The Inspection Violation Form will specify the nature of violation, the required corrective action and a follow-up inspection date.
    1. At the time of 2<sup>nd</sup> Inspection, if all duties have been complied with, record and document.
      - a. If they have NOT complied, give the Permittee a set timeframe to comply, usually 24-48 hours (depending on the nature of the violation) to get the action(s) completed.
    2. At the time of the 3<sup>rd</sup> Inspection, if everything has been complied with, record and document.
      - a. If there is blatant disregard for the erosion control work to be completed or repaired, we will give the Inspection Violation Form to the Permittee with the clear message that after a specified date/time (which could be immediate), the City will be issuing a Stop Work Order, due to blatant non-compliance.
        - i. Withhold the scheduling of inspections and/or the issuance of a Certificated of Occupancy.
    3. Where the City has used progressive enforcement to achieve compliance with this chapter and in the judgement of the City has not been successful, (should only be used in extreme cases) the City may refer the violation to the MPCA. For the purposes of this provision, "progressive enforcement" shall mean three (3) Follow-Up Violation Inspections. The following information shall be supplied to the MPCA:
      1. Construction project or industrial facility location;
      2. Name of owner or operator;
      3. Estimated construction project size or type of industrial activity (including SIC code, if known)
      4. Records of communication with the owner or operator regarding the violation, including at least three follow-up inspections and any response (if any) from the owner or operator.
  - ii. Notification of failure of the stormwater pollution prevention plan.
    1. Notification by the City. The initial contact will be to the party or parties listed on the application and/or the Stormwater Pollution Prevention Plan. 48 hours after notification by the City or 72 hours after the failure of erosion control measures, whichever is less, the City at its discretion, may begin corrective work.
    2. Erosion Off-Site. If erosion breaches the perimeter of the site, the applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-entry from the adjoining property owner, and implement the cleanup and restoration plan within 48 hours of obtaining the adjoining property owner's permission. In no case, unless written approval is received from the City, shall more than seven (7) calendar days lapse without corrective action being taken. If in the discretion of

the City, the applicant does not repair the damage caused by the erosion, the City may do remedial work required and charge the cost to the applicant.

3. Erosion into Streets, Wetlands or Water Bodies. If eroded soils (including tracked soils from construction activities) enter or appear likely to enter streets, wetlands or other water bodies, prevention strategies, *cleanup and repair must be immediate*. The applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.
4. Failure to Do Corrective Work. When an applicant fails to conform to any provision of this policy within the time stipulated, the City may take the following actions:
  - a. Withhold the scheduling of inspections and/or the issuance of a Certificated of Occupancy.
  - b. Revoke any permit issued by the City to the applicant for the site in question or any other of the applicant's sites within the City's jurisdiction.
  - c. Direct the correction of the deficiency by the City or by a separate contract. The issuance of a permit constitutes a right of entry for the City of its contractor to enter upon the construction site for the purpose of correcting deficiencies in erosion control.
  - d. If there is an insufficient financial amount, in the applicant's financial securities as described in the Part to cover the costs incurred by the City, then the City may assess the remaining amount against the property. As a condition of the permit, the owner shall waive notice of any assessment hearing to be conducted by the City, concur that the benefit to the property exceeds the amount of the proposed assessment, and waive all rights by virtue of Minnesota Statutes, Sec. 429.081 to challenge the amount or validity of assessment.

F. The City may recover all damages proximately caused by the violator to the City, which may include:

- i. Reasonable expenses incurred in investigating violations of, and enforcing compliance with City Ordinances regulating the illicit discharge of pollutants or sediment, or any other actual damages caused by the violation(s).
- ii. All costs incurred by the City in correcting stormwater pollution control deficiencies must be reimbursed by the applicant. If payment is not made within 30 days after costs are incurred by the City, payment will be made from the applicant's financial securities as described in City Code 10-82-09 - Securities.
  1. The applicant should provide security for the performance of the work described and delineated on the approved grading plan involving the Stormwater Pollution Prevention Plan related remedial work. This security must be available prior to commencing the project.
  2. Action Against the Financial Security. The City may act against the financial security if any of the conditions listed below exist. The City

shall use funds from this security to finance a remedial work undertaken by the City, a private contractor hired by the City, or to reimburse the City for all direct costs incurred in the process of remedial work including but not limited to, staff time, consultant time, and attorney's fees.

- a. The applicant ceases land disturbing activities and/or filling and abandons the work site prior to completion of final stabilization.
- b. The applicant fails to conform to the grading plan and/or Stormwater Pollution Prevention Plan as approved by the City.
- c. The permanent stormwater control measures required by this section fail within one year of site final stabilization.
- d. The applicant fails to reimburse the City for corrective action taken under this section.

#### G. Recordkeeping & Tracking

- i. All non-compliance instances shall be tracked either electronically or using paper files. This tracking will include all records and documents related to stormwater ordinance violations at the site and be stored in the enforcement case file.
- ii. The minimum required documentation will include the following items:
  1. Name of owner/operator;
  2. Location of construction project;
  3. Description of violation;
  4. Required schedule for returning to compliance;
  5. Description of compliance procedures used, including escalated responses if repeat violations occur or violations are not resolved in a timely manner;
  6. Accompanying documentation of compliance response (e.g., any correspondence such as inspection notices of noncompliance, emailed written notification of violations and responses, and anything sent via U.S. Mail, etc.)
  7. Date of violation was resolved.
- iii. The City will use the non-compliance records and tracking to identify any chronic violators. These records will be used to reduce the rate of noncompliance relapse.
  1. This will include tracking violations, applying incentives and/or disincentives, and increasing inspection frequency (ex. shortening up timeframes between inspections) of the consistently non-compliant operator's sites.
- iv. The City shall keep enforcement files in compliance with the City's records retention policy, but no less than a minimum of three (3) years after the file is closed consistent with MS4 General Permit conditions. Files retention may be either paper or digital files.

## H. Identifying Priority Sites

- i. Priority Sites - Priority sites are determined by the proximity to surface waters, the proximity to impaired waters and compliance history. The site will be determined a high priority site, if the following:
  1. **Adjacent to Surface Waters.** Any project that conducts grading within 20 feet of a surface water, or makes a connection to a surface water, will be considered a high priority site.
  2. **Adjacent to Impaired Water.** Any project that discharges into an impaired water, as defined in the MPCA General Construction Permit, will be considered a high priority site.
  3. **Compliance History.** Any project in which the property owner has a history of stormwater non-compliance, or in which the Contractor has a history of stormwater non-compliance, will be considered a high priority site.

High priority sites will be inspected at least monthly, and within 24 hours of a rain of 0.5 inch or greater or the next working day if the rain event occurs on a weekend or holiday. As a goal, high priority sites will be inspected more frequently than monthly if staff resources allow.

- ii. Low Priority Sites - All other projects will be considered low priority sites. Low priority sites include: construction adjacent to farm fields, projects in which the Contractor has good compliance history and is not immediately adjacent to a lake, river or stream, or natural wetland (grading/earth disturbance within 20 feet).

Low priority sites will be inspected at least once, generally at the time of final stabilization. Additional inspections of low priority sites will be performed subject to staff availability.

## I. Procedures for MCM 4 – Construction site stormwater runoff control (Section 19)

- i. If someone calls in with a stormwater complaint, City Staff will physically visit the site. When reports of stormwater non-compliance are received, they should be forwarded to the Stormwater Inspector, currently Jennifer Gulbrandson. Please obtain the following information:
  1. Property address or location
  2. Type of concern being reported / description
  3. Severity level – concern for public health and safety?
  4. Duration that is has been occurring or date first noticed
  5. Name and phone number if they are open to being contacted with questions and/or follow up
- ii. Staff will physically visit the site and investigate for non-compliance
- iii. Staff will utilize a written checklist to document each site inspection when determining compliance, including the following:
  1. Stabilization of exposed soils (including stockpiles);
  2. Stabilization of ditch and swale bottoms;

3. Sediment control BMPs on all downgradient perimeters of the project and upgradient of buffer zones;
  4. Storm drain inlet protection;
  5. Energy dissipation at pipe outlets;
  6. Vehicle tracking BMPs;
  7. Preservation of a 50-foot natural buffer or redundant sediment controls where stormwater flows to a surface water within 50 feet of disturbed soils;
  8. Owner/operator of construction activity self-inspection records;
  9. Containment for all liquid and solid wastes generated by washout operations (e.g., concrete, stucco, paint, form release oils, curing compounds, and other construction materials); and
  10. BMPs maintained and functional.
- iv. If a stormwater non compliance is observed, staff will utilize the above Enforcement Response Procedures to achieve compliance with the site.
  - v. Records will be maintained in accordance with “Section G. Recordkeeping & Tracking”

J. Responsible Persons – Jen Gulbrandson with Public Works Department is the Stormwater Inspector and is the responsible person for this MCM.

K. Annual Assessment of Program – an annual assessment of the Construction Stormwater Runoff Control program will be performed, typically in late winter or early spring commensurate with completing the MS4 Annual Report. Record changes to the program here:

2022 – Updated Enforcement Response Procedure, Updated Inspection form