

CITY OF ALCOA
Enforcement Response Plan
Illicit Discharge/Illegal Connections



Dry Screening
Standard Operating Procedure
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City of Alcoa Enforcement Response Plan Illicit Discharge/Illegal Connections

Section 1. Introduction

National Pollutant Discharge Elimination System (NPDES) Permit Number TNS 000000 authorizes the City of Alcoa to discharge stormwater runoff in accordance with certain water quality management programs and provisions as set forth in the permit.

Section 4 of the NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer System (MS4) requires the City of Alcoa to develop, implement, and enforce a stormwater management program to reduce pollutants from the City's MS4. Sections 4.2.3 and 4.5.1 require the City of Alcoa to develop and implement an Enforcement Response Plan (ERP) for Illicit Discharge Detection and Elimination. Under the Illicit Discharge Detection and Elimination minimum control measure, the permit requires the City to develop, implement, and enforce a program of practices and tools (including this ERP) to control, minimize, or eliminate pollutants that have the potential to be discharged to the City storm sewer system, or to waters of the State.

This ERP is intended to guide City of Alcoa personnel in enforcement of discovered illicit discharges or illegal connections to the City's storm sewer system by identifying the City's potential responses to violations of the stormwater program. This ERP also addresses repeat violations through progressive enforcement as needed to eliminate non-stormwater discharges. It should be used only as a guide while recognizing that each situation is unique. 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.

While the purpose is to provide guidance for administration of the Section 16-508 (Non-stormwater discharges / illicit discharge, detection and elimination) of the City of Alcoa Municipal Code, it is not intended to limit the judgment and flexibility of the Director in determining an appropriate response to a violation. Professional judgment must be used when implementing all enforcement actions found within this plan.

Minor infractions may be resolved by a verbal notice, telephone call, or warning letter advising the owner/discharger of the nature of the violation. If such fails to generate an adequate response by the owner/ discharger, further enforcement actions as provided in Section 16-515 (Enforcement and Penalties) of the City of Alcoa Municipal Code, may be taken. This ERP also addresses persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm.

Section 2. Enforcement of Illicit Discharge/Illegal Connections to the MS4

The City of Alcoa passed Ordinance number 08-154 establishing regulations and enforcement oversight regarding Illicit Discharge Detection and Elimination. Sections 16-508 and 16-515 of

this ordinance outlines the illicit discharge enforcement options available to the Stormwater Department to assure compliance with NPDES requirements.

Under Sections 16-508 and 16-515 of Ordinance number 08-154, enforcement mechanisms include:

- a. Verbal Warning
- b. Written Warning
- c. Recovery of Damages and Costs

Stormwater Inspectors will document activities/conditions at a property using the Illicit Discharge Report Form or. If the Inspector determines that a property is in violation of an illicit discharge or illegal connection, then the inspector will contact the owner/discharger and/or responsible person either via verbal or written documentation regarding the corrective action(s) required and the timeline for compliance. In order to assure fair and just enforcement to all parties involved and to provide adequate guidance to City of Alcoa stormwater field personnel, the following protocol shall be employed in enforcement of the City of Alcoa's stormwater management ordinance.

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 the Director's opinion, a more forceful response is necessary.

A. Enforcement Response – Verbal Warning

Verbal warnings are used to communicate to the owner/discharger of an enforcement action due to a less serious violation.

B. Enforcement Response - Written Notices

Written notices are used to communicate to the owner/ discharger of an enforcement action due to a violation. Written notices will be delivered by certified mail or can also be delivered by hand and signed for by the owner/ discharger. The different types of written notices that the City could use are as follows:

- Notice of Violation (NOV): to serve as written acknowledgement that a violation has occurred at the site and was documented by the Inspector. The NOV provides to the owner/discharger a description of the violation, where and when it occurred, the required corrective action(s), and the deadline for compliance or to stop work.
- Civil Penalty and Damages: the City may assess a civil penalty to the owner/discharger for an amount between \$50 and \$5,000 per day, per violation. Each day of violation may constitute a separate offense. The City may also recover any and all damages proximately caused to the City by the violation.

C. Enforcement Response - Penalty Assessment

In order to assess the amount of a civil penalty that is to be levied against individuals and/or organizations that violate the regulations, it is necessary to evaluate the damages that have resulted from the specific violation. Specific assessment factors will be used to evaluate environmental damages that are based on TCA § 68-221-

1106. The civil penalty assessment provisions, as stated below (C.1-C.3), may be altered or changed to better fit specific circumstances and situations. Any changes will be made by the Director following his best professional judgment. Civil penalties and damage expenses shall be paid to the City of Alcoa Stormwater Utility within ten (10) days of receipt of the written notice, unless otherwise noted.

In assessing a civil penalty, the City shall follow the provisions of the schedule of penalties as set forth in the policy manual and for any violation not listed may consider the following in determining and appropriate amount:

1. The harm done to the public health or the environment;
2. Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
3. The economic benefit gained by the violator;
4. The amount of effort put forth by the violator to remedy the violation;
5. Any unusual or extraordinary enforcement costs incurred by the municipality;
6. The amount of penalty established by ordinance or resolution for specific categories of violations, if any;
7. All equities of the situation which outweigh the benefit of imposing any penalty or damage assessment;
8. Willingness and cooperation of the violator to remedy the violation and remediate the damage;
9. Whether the violation was intentional, accidental, or negligence;
10. Cost incurred by the municipality for any administration, remediation, investigation, enforcement, and monitoring of the violation; and
11. Prior violations for this location and/or business.

In addition to the civil penalty, the City may also recover all damages proximately caused by the violator to the municipality, which may include any reasonable expenses incurred in investigating violations and enforcing violations of the resolution. City inspectors will use their best professional judgment in determining the severity of the environmental impacts associated with the violation.

C.1. Illicit Discharges (Non-residential, Non-accidental or Accidental)

First Offense:

Notice of Violation (NOV) will be issued to responsible party for non-stormwater discharge.

** If responsible party does not properly remediate the discharge, then damages consisting of salaries and the cost of all City crew or contracted services to clean up illicit discharge may be assessed to the responsible party.

Second Offense:

Issuance of a Civil Penalty against responsible party of no less than \$50.00 and no more than \$5,000.00 per day per each violation depending upon environmental damage.

** If responsible party does not properly remediate the discharge, then additional damages consisting of salaries and the cost of all City crew or contracted services to clean up illicit discharge may be assessed to the responsible party.

Third or Subsequent Offense:

Issuance of a Civil Penalty against responsible party of no less than \$50.00 and no more than \$5,000.00 per day per each violation depending upon environmental damage.

** If responsible party does not properly remediate the discharge, then additional damages consisting of salaries and the cost of all City crew or contracted services to clean up illicit discharge may be assessed to the responsible party.

Note:

An illicit discharge properly reported as an accidental discharge will not be subject to a Civil Penalty as an illicit discharge. However, the responsible party may still be held liable to damages to the City of Alcoa. Additional damages consisting of salaries and the cost of all City crew or contracted services to clean up accidental release may be assessed to the responsible party.

C.2. Illicit Discharge (Residential Wastewater Discharge)

First Offense:

Notice of Violation (NOV) will be issued to responsible party for non-stormwater discharge requiring the responsible party to stop illicit discharge within 10-days.

Failure to comply:

Issuance of a Civil Penalty against responsible party of no less than \$50.00 and no more than \$5,000.00 per day per each violation depending upon environmental damage.

Note:

An illicit discharge properly reported as an accidental discharge will not be subject to a Civil Penalty as an illicit discharge. However, the responsible party may still be held liable to damages to the City of Alcoa. Additional damages consisting of salaries and the cost of all City crew or contracted services to clean up accidental release may be assessed to the responsible party.

C.3. Illicit Discharge (Residential Other than Wastewater Discharge)

First Offense:

Notice of Violation (NOV) will be issued to responsible party for non-stormwater discharge.

Second Offense:

Issuance of a Civil Penalty against responsible party of no less than \$50.00 and no more than \$5,000.00 per day per each violation depending upon environmental damage.

** If responsible party does not properly remediate the discharge, then additional damages consisting of salaries and the cost of all County crew or contracted services to clean up illicit discharge may be assessed to the responsible party.

** More serious violations, such as deliberate dumping of pesticide, used motor oil or other hazardous or dangerous chemicals into a storm drainage system, would result in an automatic issuance of a Civil Penalty.

** A less serious violation, such as raking leaves into a drainage system, may result in written or verbal warning along with required corrective actions and deadline for compliance to rectify the problem.

Note: An illicit discharge properly reported as an accidental discharge will not be subject to a Civil Penalty as an illicit discharge. However, the responsible party may still be held liable to damages to the City of Alcoa. Additional damages consisting of salaries and the cost of all City crew or contracted services to clean up accidental release may be assessed to the responsible party.

D. Guidance for Enforcement Response Selection

The enforcement response selected should be appropriate for the violation. However, in selecting an enforcement response, City Inspectors must always exercise professional judgment for the situation at hand and attempt to communicate with the owner/discharger of the site where the violation occurred. When considering an appropriate response, the following factors should be considered:

- The magnitude of the violation,
- The potential for discharges/damages, or the actual discharges/damages, off-site or to the waters of the State. Discharges and/or damage to City-owned property (the stormwater system, streets, ditches, etc.) should be included in this evaluation,
- The compliance history of the owner/discharger. Repeated offenses of a similar nature, whether at one site or multiple sites, indicate that an owner/discharger either doesn't understand a particular requirement, or more likely, is choosing to ignore the requirement. NOVs issued on a per day basis combined with civil penalties that graduate rapidly with each violation can be an effective approach for enforcement on repeat offenders.

E. Enforcement Timeframes

In order to be effective, detection and enforcement of illicit discharges/illegal connections and the required response or corrective action from the discharger must be prompt. Due to the dynamic nature of illicit discharges/illegal connections, response times are highly variable depending on the situation. The NPDES Phase II MS4 Permit requires the City to investigate suspected illicit discharges/illegal connections within 7 days of discovery. The City may choose to give the discharger a shorter amount of time to reply to the City and/or address the noncompliance issue or violation. However, in situations that involve complex repairs, more time may be appropriate.

Section 3. NPDES Permit Referrals

Section 4.5.2 of the NPDES Phase II MS4 Permit requires the City of Alcoa to account in its ERP for NPDES Permit referrals for those construction projects, industrial facilities, or businesses that are subject to the TNR100000 (the NPDES general permit for stormwater discharges from construction activity) or TNR050000 (the NPDES general permit for stormwater discharges from industrial activity). If the City becomes aware that owners/dischargers of

activities that are subject to the above-mentioned permits are operating without a permit or violating the regulations, it must make TDEC aware of the situation.

The City of Alcoa may choose to notify TDEC, at the local Environmental Field Office (EFO) for persistent noncompliance by the owner/discharger, which appears to be in non-compliance through the City's enforcement efforts. The contact information for the local EFO is as follows:

TDEC-Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921
(865) 594-6035

City inspectors who plan to make referrals to TDEC should be prepared to provide the following information:

- location of violation
- type of violation
- time violation occurred
- name of owner/discharger or facility
- owner/discharger contact information
- receiving waterbody

Section 4. Enforcement Tracking

Section 4.5.3 of the NPDES Phase II MS4 Permit requires the City of Alcoa to track instances of non-compliance either in paper files or electronically. Enforcement actions by the City are kept in paper files and electronically. Information contained within the files includes, but are not limited to, the following:

- Contact Information
- Location
- Inspection reports
- Photographic documentation
- Nature of discharge
- Enforcement action
- Follow-up inspection report

Section 5. Requirements for Chronic Violators

Section 4.5.4 of the NPDES Phase II MS4 Permit requires the City of Alcoa to identify chronic violators of any Stormwater Management Program component and reduce the rate of noncompliance recidivism. The City keeps records of all violations and considers the appropriateness of increasing the inspection frequency at the owner's/discharger's sites. If corrective actions are not taken, the City may pursue progressive enforcement and, if needed, may perform the necessary work and assess the incurred costs of repairs against the property owner.