



City of Crossville, TN
Enforcement Response Plan

TN Small MS4 General NPDES Permit No. TNS079987

RESOLUTION ADOPTING AN ENFORCEMENT RESPONSE PLAN FOR THE STORMWATER ORDINANCE

Introduction

The intent of this document is to provide guidance to city officials in enforcing the stormwater 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 mandatory. 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 stormwater management ordinance, it is not intended to limit the judgment and flexibility of the director in determining an appropriate 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.

Enforcement Responses

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 his 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 or notice of violation (NOV). 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 must be documented by contemporaneous notes. A copy of the notes should be placed in the owner's master file.

Likewise, if an informal discussion is held, notes shall be kept summarizing the discussion. Copies of the notes should be distributed to all entities involved. Anyone wishing to take exception to the notes should be required to respond in writing.

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 notice of violation (NOV) is an official notification to inform a non-compliant owner of a violation of the stormwater management 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 his discretion. Submission of this plan in no way relieves the owner of liability for any violations occurring before or after receipt of the notice of violation.

Enforcement Orders

Enforcement orders are documents which direct owners to perform, or to cease, specific activities. Enforcement orders may also invoke a penalty. There are three (3) primary types of Enforcement Orders: consent orders; compliance orders; and cease and desist orders.

Consent orders are entered into between the city 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 Title 14, Chapter 8, Section 8 (2).

Compliance orders may be issued when the director finds that an owner has violated, or continues to violate, the ordinance or an order issued there under. 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 stormwater ordinance or order issued there under. 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. Issuance of a cease and desist order shall not be a bar against or a prerequisite for taking any other action against the owner.

City of Crossville
Enforcement Response Plan

Violation orders 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 (the stormwater ordinance).
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 Enforcement 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 Enforcement Order itself may subject the owner to additional penalties as set out in the stormwater management ordinance;
 - (c) No provision of the order shall be construed to limit the city'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.

Enforcement Orders issued as a result of a violation of the stormwater management ordinance shall contain a penalty as determined using Tables 'A' and 'B' in this document. Enforcement Orders 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.

Penalties, Administrative or Civil

The stormwater ordinance authorizes assessment of penalties not to exceed \$5,000 perviolation per day. Additionally Title 14, Chapter 8, Section 9 (2) of the ordinance authorizes the director to assess a civil penalty for actual damages incurred by the city.

Explanation of Use of Tables

This guide is based primarily on the use of two tables; "A", and "B". Table "A" indicates how point values are assigned for each violation, considering the severity, duration, degree of harm, and compliance history of the owner. All possible violations may not be listed; however, this does not preclude an appropriate enforcement response.

In Table "A", three columns are associated with each listed violation – the "Initial Points" column, the "Repeat Value" column, and the "Cumulative" column. If no history of violations is noted, the value in the "Initial Points" column may be used in conjunction with Table "B" to assess a typical response to the violation.

If the user has a history of similar violations, the initial point value plus the product of the number of previous occurrences times the repeat value should be used as shown in the following formula: Total Point Value (TP) = P + (N x R), where:

P = Initial Point Value for a single violation
N = Number of previous occurrences
R = Repeat Value from Table "A"

Should more than one violation be noted at a time, the cumulative column should be consulted. If violations are cumulative in nature, the sum of the individual point values should be used to judge the response. If not, the greatest individual values should be used to judge response, with the documentation for that response, however, noting all violations.

Once a point value is determined, Table "B" should be consulted for recommended responses. Table "B" provides a schedule of appropriate responses based upon the number of "points" determined by Table "A".

Example

An owner violates the terms of the stormwater management ordinance. This violation is considered significant and causes harm. Investigation reveals the owner has been cited twice in the past for the same violation: Total Point Value (TP) = P + (N x R). Therefore: TP = 3 + (2 x 1) = 5, where:

3 = Points charged for isolated but significant discharge from Table "A"
2 = Number of previous occurrences; and
1 = Repeat value from Table "A".

Resulting options: Civil injunction or Enforcement Order with up to \$500.00 penalty.

City of Crossville
Enforcement Response Plan

TABLE "A"
Response Guide for Violation

<u>DESCRIPTION OF VIOLATION</u>	<u>INITIAL</u>	<u>REPEAT</u>
<u>CUMULATIVE</u>	<u>POINTS</u>	<u>VALUE</u>

EROSION PREVENTION AND SEDIMENT CONTROL

Violation of a single requirement:

Not significant	1	1
Significant, no harm	2	1
Significant, causes harm	2	1

Violation of more than one requirement:

Not significant	2	1
Significant, no harm	3	1
Significant, causes harm	4	1

UNAUTHORIZED DISCHARGES

Illicit Discharges:

Owner unaware of requirement, no harm	1	N/A
Owner unaware of requirement, harm	2	N/A
Owner aware of requirement, no harm	2	1
Owner aware of requirement, harm	2	1

Illicit Connections:

Owner unaware of requirement, no harm	1	N/A
Owner unaware of requirement, harm	2	N/A
Owner aware of requirement, no harm	2	1
Owner aware of requirement, harm	3	1

City of Crossville
Enforcement Response Plan

INSPECTION

Entry denied	2	2
Inspection Records		
Incomplete	1	2
Not available	1	2

MAINTENANCE

Failure to properly operate and maintain BMPs	1	1
--	---	---

STORMWATER MANAGEMENT

Pre- Construction

Failure to obtain NOC	2	1
Failure to obtain grading permit	2	1
Failure to provide performance bond	2	1

Post Construction

Failure to provide water quality BMPs	2	2
Failure to provide channel protection	2	2
Failure to provide downstream impact Analysis	2	2
Failure to provide special pollution abatement plan	2	2

TABLE "B"
VIOLATION RESPONSE GUIDE

<u>POINT TOTAL</u>	<u>ACTION</u>
1	Written warning
2	Notice of Violation
3	Enforcement Order with up to \$150 Penalty
4	Enforcement Order with up to \$300 Penalty
5	Enforcement Order with up to \$500 Penalty
6	Enforcement Order with up to \$1000 Penalty
7	Enforcement Order with up to \$2000 Penalty
8	Enforcement Order with up to \$3000 Penalty
9	Enforcement Order with up to \$4000 Penalty
10	Enforcement Order with up to \$5000 Penalty

Cease and Desist Order

When the City of Crossville finds that any person has violated or continues to violate this ordinance or any permit or order issued hereunder, the director may issue an order to cease and desist all such violations and direct those persons in noncompliance to:

- (1) Comply forthwith; or
- (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.