

Commercial/Industrial Stormwater Compliance Program

INSPECTION AND ENFORCEMENT POLICY Environmental Management Department (EMD)



**REVISED
JULY 2012**

Per Section 15.12.555 of the County Stormwater Ordinance, this Enforcement Policy has been approved by the Director of Water

Resources:

A handwritten signature in blue ink, which appears to read "Michael L. Peterson".

9/10/12

Michael L. Peterson, Director, Department of Water Resources

Date

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DEFINITIONS

Administrative Civil Penalty. A fine assessed under the authority of Section 15.12.560 of the County Stormwater Ordinance and corresponding sections of municipal stormwater ordinances.

Administrative Enforcement. Administrative Enforcement allows EMD to pursue an Administrative Civil Penalty independent of an outside prosecutorial agency. EMD determines the appropriate penalty, up to \$5,000 per day for each violation, based on the circumstances and degree of the violation as established in the Penalty Matrix herein. EMD may set the penalty and the timeframe for the violator's return to compliance. If the alleged violator chooses to contest the case, EMD schedules a hearing at which there is the opportunity to refute the allegations and present any mitigating factors that may affect the penalty.

Administrative Enforcement Order (AEO). This includes any of the order variations including the Consent Order, Expedited Consent Order, Stipulation and Order, and Unilateral Order.

Administrator. From the Sacramento County Stormwater Ordinance, Chapter 15.12: The administrator of the County of Sacramento's Municipal Services agency and his or her designees.

Best Management Practices (BMPs). Best Management Practices or BMPs are defined in section 15.12.130 (b) of the County Stormwater Ordinance and includes policies, practices, structures, and any other means of reducing or eliminating the discharge of pollutants and non-stormwater discharges to the storm drain system.

Enforcement Official. An enforcement official is any person authorized to conduct inspections and/or issue enforcement actions pursuant to the Stormwater Ordinance. Within the Environmental Management Department, Environmental Compliance (EC) Division staff will be primarily responsible for enforcing the stormwater ordinance, although, Environmental Health (EH) Division staff may also enforce.

Industrial General Permit (IGP). The State's Stormwater Industrial General Permit is a permit issued by the California State Water Resources Control Board, under the National Pollutant Discharge Elimination System provisions of the Federal Clean Water Act. The Industrial General Permit applies to facilities that discharge stormwater associated with industrial activities as defined in 40 CFR 122.26 (b)(14) *i-ix* and *xi*. The MS4 Permit requires inspection of these facilities on a triennial basis.

Inspection Cycle. The three-year period in which all facilities are required by the MS4 Permit to be inspected, beginning with the July 2010 – June 2013 inspection cycle. In the last year of each inspection cycle, in some cases facilities may be caught up by the end of that calendar year.

MS4 Permit. The Municipal Separate Storm Sewer System Permit is a permit issued by the Regional Board under the Federal Clean Water Act National Pollutant Discharge Elimination System for discharges from Municipal Separate Storm Sewer Systems. For the purposes of this policy, MS4 Permit is NPDES Permit number CAS082597 and any successor permits, issued to the County of Sacramento and the Cities of Citrus Heights, Elk Grove, Folsom, Galt, Rancho Cordova and Sacramento.

Facility Operator. Any individual that runs, manages, or owns a business.

Receiving Water Limitations. Receiving water limitations are those limitations included in Provision B of the MS4 Permit.

Regional Board. The Regional Board is the California Regional Water Quality Control Board, Central Valley Region.

Specialist. EMD inspector representing the stormwater program.

Storm Drain System. The storm drain system or stormwater conveyance system, are those public facilities within the County which are owned, operated, maintained or controlled by the County or cities, by which stormwater may be conveyed to waters of the United States, including, but not limited to, any roads with drainage systems, municipal streets, roadside drainage ditches, catch basins, water quality basins, detention basins, constructed wetlands, artificial channels, aqueducts, curbs, gutters, ditches, sumps, pumping stations, and storm drains. The storm drain system also includes natural creeks and streams which are identified as receiving waters by the MS4 Permit, but does not include the Sacramento, American, Mokelumne, or Cosumnes rivers, or navigable waters of the Delta.

Stormwater Ordinance. Stormwater Ordinance refers to Chapter 15.12 of the Sacramento County Code, and/or any equivalent ordinance adopted by a City that establishes authority under which the Environmental Management Department provides stormwater inspection and enforcement services. Each of the incorporated cities within the County (except Isleton) has a stormwater ordinance that has been modified to provide inspection and billing authority to EMD for stormwater compliance. Each of the city ordinances refer to Chapter 15.12 of the Sacramento County Code for enforcement matters at businesses that EMD regulates for stormwater on their behalf, to allow for consistent, county-wide enforcement.

City Stormwater Ordinances	
City	Municipal Code Chapter
Citrus Heights	98, Article V
Elk Grove	15.12
Folsom	8.70
Galt	16.10
Rancho Cordova	15.12
Sacramento	13.16

STORMWATER INSPECTION GUIDELINES

INTRODUCTION

Inspections are conducted by Environmental Management Department (EMD) on behalf of the Sacramento Stormwater Quality Partnership (SSQP) stormwater agencies (Permittees) within Sacramento County to ensure compliance with the local stormwater ordinances that provide authority for inspection, enforcement, and fee collection. Local stormwater ordinances in each participating SSQP jurisdiction refer to Ch. 15.12 of the Sacramento County Code for matters pertaining to enforcement at businesses that EMD is authorized to inspect.

FACILITY ACCESS

Inspections are unannounced and permission to access the facility and conduct the inspection is obtained verbally from the facility operator or his/her responsible representative such as manager, assistant manager, shift leader, or foreman, upon arrival. If access is denied by the facility operator, the Specialist obtains an inspection warrant. If helpful to gain access to the facility, an inspection appointment may be made with the facility operator or his/her representative.

REGULATED BUSINESS CATEGORIES

Business Type	Criteria/Description
1. Industrial General Permit (IGP)	Facilities with coverage under the State's Stormwater IGP
2. Auto Repair	<ul style="list-style-type: none"> • Auto repair as primary business activity, or • Ancillary activity with least 300 sq. ft. of dedicated shop space
3. Auto Body	<ul style="list-style-type: none"> • Auto body work as primary business activity, or • Ancillary activity with least 300 sq. ft. of dedicated shop space
4. Auto Dealerships	Vehicle sales, lease, or rental with at least 5,000 sq. ft. of outdoor display space
5. Equipment Rental	At least 200 sq. ft. of outdoor storage or display space
6. Retail Gas Outlet (RGO)	Retail gasoline fueling stations
7. Restaurants	Restaurants and all related non-mobile food preparation facilities including convenience-stores/mini-marts at RGOs
8. Nurseries	Excluding small retailers that do not apply pesticides or fertilizers
9. Kennels	At least 400 sq. ft. of space devoted to dog kenneling

Each category is further defined and described in the Sacramento County Code.

INSPECTION BOUNDARY

The MS4 Permit does not apply to all areas within Sacramento County. The MS4 permit covers the land within the Sacramento County Urban Service Area boundary, as well as the City of Galt and the Sacramento International Airport. Land designated within the Urban Service Area includes the Cities of Citrus Heights, Elk Grove, Folsom, Rancho Cordova, Sacramento and unincorporated Sacramento County. Consistent with the MS4 Permit, inspections are conducted at all nine business types located within the MS4 Permit Attachment A (Permit Area Boundary). In addition, all IGP facilities are inspected anywhere in unincorporated Sacramento County.

EXCLUDED AREAS/FACILITIES

Isleton: The City of Isleton is not a Co-Permittee in the MS4 Permit issued to the SSQP; therefore, it is not part of the local compliance/inspection program.

Combined System: Some areas in the City of Sacramento have a combined sanitary system and stormwater system (combined system). All stormwater and waste water is discharged to the same sewer system. This water is treated at a sewage treatment plant prior to discharge to waters of the state. As such, the combined system is covered under the City's sewer use ordinance rather than stormwater ordinance. Therefore, businesses in the combined sewer system are not part of the local compliance/inspection program.

Small MS4s: The State Water Resources Control Board adopted an NPDES General Permit for the Discharge of Stormwater from Small MS4s (WQ Order No. 2003-0005-DWQ) to provide permit coverage for smaller municipalities, including non-traditional Small MS4s, which are governmental facilities such as military bases, public campuses, and prison and hospital complexes. The following entities have separate Small MS4 General Permits (as indicated in the MS4 Permit) and are therefore not part of the local compliance/inspection program:

- California Exposition and Fair
- California State University at Sacramento
- Cosumnes Community Services District
- Elk Grove Unified School District under the purview of Sacramento County Office of Education

Reclamation District 1000 (RD1000) in Unincorporated Sacramento County: This is a special district that protects the Natomas Basin from flooding. Some of its users discharge directly into RD1000 infrastructure and not to a Permittee storm drain system. RD1000 encompasses an area that is partially in the City of Sacramento and partially in unincorporated Sacramento County. In the City of Sacramento, RD1000 dischargers connect to the City storm drain system and are included in the local compliance/inspection program; however, in unincorporated Sacramento County they do not and are therefore not part of the local compliance/inspection program.

Old Sacramento – Front Street: Some businesses on Front Street discharge directly into the Sacramento River and not to a Permittee storm drain system; therefore, they are not part of the local compliance/inspection program.

De-Listed Facilities: If during an inspection a Specialist determines that a given facility has no prohibited discharges and no potential stormwater exposure whatsoever to process, storage, waste storage, equipment, and shipping and receiving activities, the facility will be conditionally "de-listed" and receive no further inspections. This will typically require that all activities at a facility are conducted indoors, or under permanent coverage. If a business repairs engines indoors but stores materials, product, or wastes outdoors, for example, it will most likely not qualify for de-listing. IGP facilities do not qualify for delisting; the State has its own/separate process to establish non-applicability for IGP facilities.

STORMWATER INSPECTION COMPLIANCE CRITERIA

Inspections verify compliance with the following, but not limited to:

- No prohibited discharges to the storm drain system.
- No illicit connections to the storm drain system.
- Appropriate BMPs (see below) are in place to address pollutant generating activities.
- No prohibited conditions are evident that are likely to result in exposure of pollutants to stormwater contact and possible pollutant discharge to the storm drain system such as:
 - Poor housekeeping that results in pollutant exposure.
 - Unattended spills and leaks.
 - Uncovered or improperly stored wastes, materials, or inventory items of concern.
 - Open waste receptacles such as tallow bins, compactors, and dumpsters (unless dumpster is used for wood, pallets, or other items that do not have the potential to carry pollutants to stormwater).
 - Leaky or contaminated equipment stored or used outdoors.
 - Track-out of sediment or other materials to street or outdoor areas.

INSPECTION CHECKLIST

Three types of checklists/Notices of Violation (NOV) are utilized:

- Food facility checklists/NOVs
- Retail Gas Outlet & Mini-Mart checklist/NOVs
- All other facilities (non-food) checklist/NOVs

CORRECTIVE ACTIONS/PROOF OF COMPLIANCE

The Specialist requires the facility operator to correct noted violations within the time frames described in the NOV section, below. Proof of correction must be submitted by the facility operator or a re-inspection is conducted by the Specialist by the end of the specified time frame, to ensure that violations are corrected.

Acceptable proof of compliance submittals may include photos, receipts, and/or invoices that clearly demonstrate correction. In many instances, written statements signed by the facility operator describing modified practices or corrections that will prevent repeat violations and/or training logs showing that employees have been trained may be appropriate, in addition to other proof of compliance. Re-inspection should be conducted under the conditions listed in the re-inspection section, below.

BEST MANAGEMENT PRACTICES (BMPs)

BMPs are measures that a facility operator implements to control pollutants associated with business activities. BMPs can include measures such as sweeping, drain protection, or coverage and containment for pollutant sources.

The Specialist should provide the facility operator with a variety of BMP options for noted violations and refrain in as much as possible from specifying a particular BMP as the only option. The Specialist may specify minimum measures and reject BMPs proposed by the facility operator that are inadequate or inappropriate. It is noted that in some instances, there may only be one appropriate BMP option.

It is required that BMP guidance be provided during inspection but the Regional Board recognizes that selection of specific BMPs to be implemented is the responsibility of the discharger.

RECORDS

All inspection photos, return to compliance submittals, action plans or statements, extension requests, formal correspondences, and other documents relevant to an inspection or enforcement action are to be imaged and maintained as record in electronic format.

INSPECTIONS

A stormwater compliance inspection is conducted at least once every three years for each business in the stormwater program inventory, by no later than the end of three calendar years. Routine inspections at restaurants are conducted by Environmental Health (EH) Specialists. Routine inspections at retail gas outlets are conducted by Environmental Compliance (EC) Specialists on the Tank Team. All other routine inspections and all complaint inspections are conducted by EC Specialists on the Stormwater Team.

Inspections are conducted in compliance with Article 4 of the County's Stormwater Ordinance.

RE-INSPECTIONS

A facility is subject to a stormwater compliance re-inspection (typically within 60 days) to ensure return to compliance under the following conditions, but not limited to:

- Illicit connections are found.
- Violations are so serious, numerous, or complicated that the Specialist does not feel that photos or similar documentation will be adequate to demonstrate compliance.
- Based upon facility operator's compliance history, willingness to comply, nature of violation(s), and/or inconsistent or contradictory information provided by facility operator, the Specialist believes re-inspection is necessary.
- Facility operator fails to provide return to compliance documentation (RTC) within the required time frame, or if RTC is inadequate, and the facility operator fails to request (and is granted) an extension within the required time frame.

- Facility operator requests re-inspection.

Re-Inspection Fee: The cost of performing one inspection, per facility, once every three years is included in the annual stormwater inspection program fees. Any re-inspection at a given facility during a three-year inspection cycle is billed at the EMD hourly rate. The re-inspection fee includes inspection time, drive time, and related office time.

COMPLAINT RESPONSE

Complaints regarding stormwater ordinance violations may be received from anyone, for example the public, other local agencies, EPA, or the Regional Board. The following apply:

- Complaints received from the Regional Water Quality Control Board are responded to within three (3) business days. Complaints from all other sources are responded to as quickly as practicable, given available resources.
- A NOV is always issued if violations are noted.

Complaint Response Fee: Any complaint response inspection is billed at the EMD hourly rate, if the complaint is valid and reported violations are noted. The complaint response fee includes inspection time, drive time, and related office time.

PROGRESSIVE ENFORCEMENT GUIDELINES

NOTICE OF VIOLATION (NOV)

A NOV is provided to the facility operator for each regular, triennial inspection, regardless of whether violations were found or not. If there are no violations found, the NOV will clearly state that there are no violations. For complaint responses, a NOV is issued if violations are noted. NOV guidelines:

- Violations are described in writing on the NOV, along with a written description of what is required to correct the violation, along with a deadline for completion.
- The completed NOV is signed by the facility owner, facility operator, or representative, to demonstrate that the NOV was received by that person. Signature does not imply that the signor agrees with the notice's findings.
- NOV forms will contain all information required by County Code Chapter. 15.12, article 5.

VIOLATION-SPECIFIC NOV'S FOR RESTAURANTS

Special violation-specific NOV's are sometimes used at restaurants to streamline NOV issuance for minor and moderate violations noted, and to provide mitigation guidance at the same time. Major stormwater violations cited by EH Specialists at the restaurants they inspect are forwarded to the assigned EC Stormwater Specialist to verify the violation has been corrected.

TIMEFRAMES FOR CORRECTING VIOLATIONS

Depending upon the nature of violations noted, the Specialist will specify compliance deadlines for the facility operator in the NOV, as follows:

- **Prohibited discharges:** Discharges are to be stopped **immediately** and up to 19 days given for facility operator to provide a written description of correction, long-term compliance plan, photos, etc.
- **Illicit connection:** Discharge via the illicit connection to be stopped **immediately** and up to 19 days given to provide proof that connection was permanently terminated. Re-inspection typically is required.
- **Pollutant exposure/prohibited conditions violations:** Up to 30 days to correct violations and 35 days to provide proof of compliance for violations during dry weather (RTC must be received within 35 days).
- **Shorter time frames:** Shorter time frames may be specified during wet season (Nov – April), or when violations are in close proximity to drains, creek, etc., as appropriate to prevent pollutant discharges.

EXTENSIONS OF COMPLIANCE DEADLINES

There are instances when a facility operator is not able to comply with requirements within the time frame specified. The Specialist may grant a reasonable extension to the facility operator if the Specialist determines that an extension is warranted, as follows:

- A request for extension must be received in writing (mail, e-mail, fax, hand delivered, etc.) by the Specialist by no later than the last day of the initial specified compliance deadline date.
- The extension request must explain why the extension is needed and warranted, as well as include a summary of actions taken to date by the facility operator to comply with requirements of the NOV.
- No more time is provided than should reasonably be needed for the facility operator to competently correct the noted violations. Shorter extensions should be provided during the wet season.
- Written requests for extension are imaged to file in electronic format.

Appropriate reasons to grant an extension include, but are not limited to:

- Confirmed delays due to contractor or other service provider outside of facility operator's control.
- Extensive corrections involving work that would conceivably take longer than the time frame provided.
- In general, extensions should not be granted to allow the continuation of unauthorized non-stormwater discharges (NSDs).

The Specialist may require an action plan or statement to be submitted by the facility operator within the initial compliance time frame, as a condition of granting an extension. The action plan or statement should specify the corrections that are to be made and specify an anticipated time frame for completion. The action plan or statement should be signed and dated by the facility operator.

FAILURE TO RETURN TO COMPLIANCE NOTIFICATIONS

Periodically, EMD identifies facilities with violations that have not been corrected within stipulated deadlines. These businesses and facilities are issued a "Failure to Return to Compliance" (FRC) notice stating the record of their failure to either correct the noted discrepancies or to submit documentation proving corrective actions have been completed.

Content of Notification: Businesses or facilities receiving an FRC notice are provided with the following information:

- The date of their most recent inspection.
- Notification that they are subject to re-inspection and that they are liable for the cost.
- Notification that the facility may be subject to administrative enforcement action if violations remain uncorrected.

Follow-up Actions: EMD Supervisors review all businesses and facilities that continue to have open violations and determine if a re-inspection is warranted. Supervisors direct the initiation of administrative enforcement actions for those businesses or facilities with uncorrected violations.

CEASE AND DESIST ORDER (CDO)

The County's Stormwater Ordinance (Section 15.12.520) authorizes a Cease and Desist Order to be issued as an alternative to a NOV when immediate action by the responsible party is necessary to eliminate a continuing or threatened serious violation of the Stormwater Ordinance.

APPEALS

Any person issued a notice or order may appeal and request a hearing before an Appeals Hearing Officer (Section 15.12.540 of the County's Stormwater Ordinance).

To request a hearing, the recipient of the notice or order must submit a written request, along with a fee of \$360 to EMD within **30 days** of receipt of the notice or order. The request is valid if it is postmarked within that **30-day** period. If the appeal is upheld in its entirety by the Hearing Officer the appellant's fee is to be refunded. If not, the fee is retained.

The hearing is scheduled within **90 days** of receipt of the hearing request unless a Cease and Desist Order is being appealed, in which case the hearing must be held within **15 days**. This means that when a cease and Desist Order is issued, the facility operator will be informed that if he/she wishes to appeal, he/she must notify EMD immediately. When the issuing Specialist receives a hearing request, he/she will contact the approved hearing officer within 24 hours, to arrange a hearing date. Within 72 hours, the Specialist will send a letter by certified mail, informing the appellant as to the date and location of the hearing, as well as other necessary information.

MONITORING STATUS PROGRAM

Monitoring Status (MS) re-inspections are to be used as a progressive enforcement tool as well as a means of monitoring a facility to ensure it does not relapse into non-compliance. The following apply:

- A facility may be placed in the MS program with approval from supervisor.
- MS consists of one to three unannounced re-inspections billed for at EMD's current rate, including drive time and related office time.
- The number of MS re-inspections assigned is based upon the type and number of violations as described in the Monitoring Status Matrix at the end of this section.
- MS commences after it is confirmed that violations that triggered MS status are corrected either by receiving adequate proof of compliance or by re-inspection of the facility.
- The facility operator is notified by certified letter that the facility is being placed in the MS program, using the standard form letter and including a copy of the MS Fact Sheet.

MS Re-inspection Findings:

- When all scheduled MS re-inspections are completed with no violations noted, the facility may be released from the MS program.
- If MS re-inspection reveals repeat violations that are **same or similar** to the violations that triggered placement in the MS program, the Specialist will:
 - Issue a NOV that requires correction of the violation:
 - If the violations are minor and/or conditions are otherwise improving, the Specialist notifies the facility operator that Monitoring Status will be extended as an enforcement action. This information is provided in the NOV, or later by certified letter.
 - If the violations are same, the Specialist notifies the facility operator in the NOV that a further enforcement action will follow.
- If conditions have worsened, propose issuance of an AEO, as appropriate.
- If MS re-inspection reveals violations **unrelated** to the violations that triggered placement in the MS program, the Specialist may deal with the violations separately by assigning additional MS re-inspections or pursuing other enforcement actions, as appropriate, and inform the facility operator of this in writing on NOV.

Monitoring Status Matrix: The following table is used to determine the number of MS re-inspections, based on number and type of violation.

Violation (Defined in Penalty Matrix, Section B)	Number of Times Violation Occurred	Number of MS Re- Inspections
Minor (except WF01 and SW45)	2	1
	3	1
	4+	2
Moderate	1	2
	2	2
	3+	3
Major	1	3
	2+	3

ADMINISTRATIVE CIVIL PENALTIES

EMD’s goal is to achieve compliance through an extensive inspection program, educational outreach efforts and, if necessary, the initiation of appropriate enforcement action(s). The goal of any enforcement action is to: (1) return the facility to compliance in a timely manner; (2) eliminate economic benefit realized by the noncompliant facility; and (3) punish violators and deter future noncompliance.

Timeliness: In order to achieve the maximum effectiveness from a specific enforcement action, timeliness is essential. Timely enforcement is measured from the date of the inspection or incident when the violation(s) were first detected. If an AEO is the selected enforcement option, then the goal of EMD is to

issue an Order within 180 calendar days of the inspection or incident. If the case is to be referred to an outside enforcement agency such as the Sacramento County District Attorney's Office, the goal is to make that referral within 60 calendar days of the date of inspection or incident.

Documentation: Proper documentation forms the basis for any contemplated enforcement action, including:

- Issuing adequate and proper notices to the responsible party describing the violations.
- Use of photographs depicting the violations.
- Clearly and completely documenting interviews with witnesses.
- Sampling or otherwise preserving physical evidence.
- Maintaining an accurate chronology of events.

Roles and Responsibilities:

- The Director of EMD reviews and signs any actions taken against a Respondent where a penalty of \$100,000 or more will be assessed.
- EC Division Chief (or designee):
 - Review and sign AEOs, Stipulations and Orders, Consent Agreements and any other documents generated for respondents.
 - Pursuant to guidance outlined in this manual, confer with supervisors and determine which cases should be referred to outside enforcement agencies for action.
 - Conduct informal conferences with the respondents for the purposes of explaining or negotiating the penalty.
 - Routinely (at least monthly) meet with all Supervisors to discuss potential enforcement actions.
- Supervisors:
 - Determine whether alleged violations require consideration for the initiation of formal enforcement action.
 - Ensure that staff understands enforcement procedures and prepares potential formal enforcement actions in accordance with the provisions of this manual and appropriate statutes.
 - Review, approve, and forward all enforcement documents prepared by staff within their respective units.

- Environmental Specialists:
 - Conduct inspections of regulated businesses/facilities and/or respond to complaints that allege violations.
 - Draft enforcement documents when appropriate.

Case Disposition Guidance:

- Based on information provided by the Specialist, supervisors will review each case and provide recommendation(s) to the EC Division Chief (or designee) regarding whether:
 - The case should be referred to an outside agency for enforcement action or;
 - The case should be handled through the AEO process.
- The EC Division Chief (or designee) reviews the supervisor’s recommendation(s) and determines the proper disposition of the case and, if necessary, the appropriate AEO option to be utilized.
- If the case alleges violation(s) that may involve fines and/or penalties that exceed \$100,000.00, the EC Division Chief confers with the Director of EMD prior to making a final decision regarding case disposition.

Common cases to be acted on include, but are not limited to:

- Violations resulting in significant harm to human health and/or environment.
- Repeat major or repeat moderate violation(s).
Note: Repeat violations include violations of same general type as violation(s) that a NOV was issued for within the past 6 years.
- First-time major violation(s) that are a result of willful neglect, recalcitrance, and/or failure to comply with previous warning or requirement by county officials to correct conditions.
- Failure of facility operator to comply with NOV requirements despite having been provided a reasonable compliance timeframe and at least one reasonable extension time frame, if requested.

ADMINISTRATIVE ENFORCEMENT ORDER (AEO) PROCESS

Introduction:

- The Stormwater Ordinance (Section 15.12.560) authorizes assessment of Administrative Civil Penalties, which are carried out through an Administrative Enforcement Order (AEO) process.
- The goal of the AEO is, among other things, to return a facility to compliance in a timely manner; eliminate economic benefit realized by the noncompliant facility, and create deterrence against future noncompliance.

- To expedite achieving the enforcement goal throughout the AEO, EMD may encourage the respondent to enter into settlement discussions. Settlement discussions can occur at any time – before or after issuance of a Final Order or during the period before and after the appeal is heard by a Hearing Officer.
- If the respondent fails to respond to an AEO within the specified amount of time, the Order becomes final and is forwarded to the office of the Sacramento County Counsel to apply for a clerk’s judgment requesting the amount of the penalty in the Order to be awarded to EMD. Once a clerk’s judgment is received it is forwarded to the Sacramento County Department of Revenue and Recovery for collection of the judgment.

AEO Options: The table below should be consulted when considering the appropriate AEO option, depending on the circumstances of each case.

AEO Process Alternative	When to Use	Disadvantages
Show Cause Letter	<ol style="list-style-type: none"> 1. When a business is not a repeat violator, does not have a history of noncompliance, and has not been recalcitrant or uncooperative. 2. The violations do not pose an imminent and substantial threat to public health or the environment and the violations have not resulted in a significant release to the environment. 	Statutory timeframes for filing a notice are not started and therefore a deadline has not been established.
Consent Order	<ol style="list-style-type: none"> 1. The violations are less serious, simple and easily understood. 2. The compliance issues are straightforward and no compliance schedule is required. 3. The business is not a recalcitrant or repeat offender. 4. The anticipated penalties are relatively small and prompt settlement is expected. 	<ol style="list-style-type: none"> 1. Provides no opportunity for discussion of complex compliance issues. 2. Difficult to use if case involves multi-agency enforcement.
Stipulation and Order	<ol style="list-style-type: none"> 1. An Unilateral Order has been issued and the business has then requested settlement discussions. 2. Settlement discussions have led to an agreement with the business on compliance timelines and penalties and EMD does not wish to restate the violations cited in the Unilateral Order. 	
“Final” Unilateral Order	<ol style="list-style-type: none"> 1. The business is a repeat violator or has a history of noncompliance. 2. The violations pose an imminent and substantial threat to public health or the environment; or 3. The violations have resulted in a significant release to the environment. 	Doesn’t allow for consideration of the business’s response prior to formal public action.

Show Cause Letter: A Show Cause letter may be issued to a business, notifying it that EMD is planning to take an AEO action and encouraging the business to submit relevant information to be taken into account prior to EMD taking action. The Show Cause letter is a public document and is not enforcement confidential. It does not constitute a formal enforcement action but establishes EMD's intent to pursue formal enforcement and encourages a consensual resolution.

- The goal of this process is to enter into settlement discussions between the business and EMD and reach agreement on compliance, timeliness, and penalties; and formalize the agreement in writing.
- The Show Cause alternative should be used when:
 - The business is not a repeat violator, and does not have a history of noncompliance.
 - The business has not been recalcitrant or uncooperative and the violations do not pose an imminent and substantial threat to public health or the environment; and
 - The violations have not resulted in a significant release to the environment.

Consent Order: EMD may issue a Consent Order to the business and request, in a cover letter, concurrence and signature to finalize the Order.

- This alternative provides a means of resolution on simple cases, where the respondent is not likely to contest the Order.
- The Consent Order alternative should be used:
 - For less serious, simple, and easily understood violations;
 - When compliance issues are straightforward and a compliance schedule is not required;
 - When the business is not a recalcitrant/repeat violator and the penalties are relatively small; or
 - When prompt settlement is anticipated.

Stipulation and Order: A Stipulation and Order is a mechanism that EMD uses when it comes to an agreement (a stipulation) with a respondent after a Unilateral Order has been issued. A Consent Order can also be used.

- A Stipulation and Order does not require a restatement of the violations identified in the Unilateral Order and incorporates them by reference. For this reason, the use of a Stipulation and Order may be more expeditious than the use of a Consent Order, in certain situations.
- The Stipulation and Order may be appropriate under the following circumstances:
 - A Unilateral AEO has already been issued for the violation or violations in question and the business has requested settlement discussions after service of the Unilateral Order; or

- Settlement discussions have led to an agreement with the business on compliance timelines and penalties and EMD wishes to avoid re-stating the violations cited in the Unilateral Order.

Unilateral Order: EMD will issue a Unilateral Order to a facility without prior discussion or negotiation. The Show Cause alternative anticipates the possibility of the issuance of a Unilateral Order as an outcome if a settlement cannot be reached. This alternative utilizes the issuance of a Unilateral Order as the initial step. (Unilateral Orders are not final until the “Hearing Period” has passed.)

- The Unilateral Order is appropriate under the following circumstances:
 - The facility is a repeat violator or has a history of noncompliance with either the HWCL or other environmental or public safety laws;
 - The facility has been recalcitrant or uncooperative;
 - The violations pose an imminent and substantial threat to public health or the environment;
or
 - The violations have resulted in a significant release to the environment.
- As previously noted, the Unilateral Order can be a necessary escalation when settlement is not achieved with the Show Cause alternative.
- When preparing a Unilateral Order, all of the following documents must be included in the package served on the respondent:
 - A copy of the signed Order.
 - All exhibits or attachments referred to in the Order.
 - A copy of proof of service.
 - Cover letter to respondent.
 - A copy of the Notice of Defense (NOD).
- An Order shall be served in person or by “proof of service” certified mail. If a NOD is not received within 20 calendar days of service of the Order, the Order becomes final. The additional 5 calendar days (from the 15-day statutory requirement) is to allow for mail delivery time. A proof of service form must be completed and included in the package.
- Amending a Unilateral Order. There are two situations in which a Unilateral Order may be amended:
 - When the respondent files a request for amendment that is agreed to by EMD, EMD will make the appropriate amendments to the Order and send a copy to the respondent. This action does not constitute a new Order and does not create new appeal rights.

- When EMD determines that a correction is necessary. The issuance of an amended Unilateral Order in this situation requires the re-issuance of the complete service package and may create new appeal rights.
- If EMD decides to withdraw a Unilateral Order, a “Revocation of Enforcement Order” will be completed and mailed with return receipt requested, officially notifying the respondent that the Order is being withdrawn.

Settlement Discussions/Settlement Agreement:

- Settlement discussions between EMD and the business/facility owner or operator can occur at any time in the process. Statutory time frames for requesting a hearing may be stayed by agreement between the business/facility owner or operator and EMD during the course of settlement discussions.
- EMD will set a time and place for any settlement discussion meeting. If EMD and the business/facility owner or operator is able to reach a settlement, EMD will issue either a Consent Order or Stipulation and Order. At a minimum, a Consent Order or Stipulation and Order shall mandate:
 - Compliance with applicable sections of Federal, State and Local statutes, regulations and/or ordinances;
 - Payment of fees and/or costs due to EMD; and
 - Payment to EMD of any penalty assessed.
- Failure to comply with any term of the Settlement Agreement shall void the Agreement and EMD may proceed with any and all actions lawfully available. However, so long as the Respondent faithfully performs under the Agreement, EMD shall suspend any enforcement actions associated with the subject violation. Where the Respondent has waived the right to a hearing or where EMD and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.
- In the event that a payment plan is agreed to regarding a settlement amount, the terms of the payment plan will be specified in an Amended Stipulation and Order. Failure to meet the terms of the payment plan will cause the entire outstanding balance of the penalty amount in the original Enforcement Order to become due and payable. A copy of the Amended Stipulation and Order accompanied by a certified copy of the AEO shall constitute a sufficient showing to warrant issuance of a judgment. The copy will be certified by the employee who has been designated as the custodian of records for the open enforcement cases and forwarded to County Counsel to request a Clerk’s Judgment.

GUIDELINES FOR CASE REFERRAL TO OUTSIDE AGENCIES

To the greatest extent possible, EMD will utilize administrative enforcement options to achieve compliance. However, cases will occur where action by outside agencies such as the Sacramento County District Attorney’s office or the State Attorney General is required and/or appropriate.

Referrals: The following are examples of case situations that may warrant referral to an outside agency for possible enforcement action:

- Criminal prosecution may be warranted.
- Multiple locations (facilities) are involved that may suggest an industry or companywide pattern of non-compliance.
- The case requires additional investigation that is beyond the capability of EMD.
- The case stems from a Sacramento County Environmental Crimes Task Force operation/investigation.
- Chronic or recalcitrant violators who have had multiple administrative actions taken against them.

Evaluation: The EC Division Chief (or designee) will evaluate each case regarding the factors listed above and determine whether the case will be referred to an outside enforcement agency. Consultation with the Director of EMD and/or the appropriate agency may be needed under some circumstances.

PENALTY MATRIX

Penalties are determined based upon authority to impose maximum fines of \$5,000 per day, per violation, using the matrix below.

AUTHORITY: SACRAMENTO COUNTY CODE, CHAPTER 15, SECTION 12.560	ACTUAL OR POTENTIAL HARM (VIOLATION DEGREE) ▼		
EXTENT OF DEVIATION ▼	Major	Moderate	Minor
Major	<u>Maximum:</u> \$5,000	<u>Maximum:</u> \$3,000	<u>Maximum:</u> \$2,000
	<u>Average:</u> \$4,000	<u>Average:</u> \$2,500	<u>Average:</u> \$1,500
	<u>Minimum:</u> \$3,000	<u>Minimum:</u> \$2,000	<u>Minimum:</u> \$1,000
Moderate	<u>Maximum:</u> \$3,000	<u>Maximum:</u> \$2,000	<u>Maximum:</u> \$1,000
	<u>Average:</u> \$2,500	<u>Average:</u> \$1,500	<u>Average:</u> \$750
	<u>Minimum:</u> \$2,000	<u>Minimum:</u> \$1,000	<u>Minimum:</u> \$500
Minor	<u>Maximum:</u> \$2,000	<u>Maximum:</u> \$1,000	<u>Maximum:</u> \$500
	<u>Average:</u> \$1,500	<u>Average:</u> \$750	<u>Average:</u> \$250
	<u>Minimum:</u> \$1,000	<u>Minimum:</u> \$500	<u>Minimum:</u> \$0

Guidelines for using Penalty Matrix: Determination of Penalties begins with determining if a violation(s) is major, moderate, or minor in nature. Compare violation(s) to the descriptions below and find the best match. Then determine degree of deviation to find appropriate fine amount on the table, above.

Violation Degrees:

Major Violations	Moderate Violations	Minor Violations
<p>Includes significant pollutant discharges to the storm system and/or receiving waters as well as creation of conditions that threaten imminent discharge of significant pollutants to the storm system and/or receiving waters. This also includes, but is not limited to, significant discharges of hazardous or toxic substances.</p> <p>Major violations have the potential to present a major threat to human health or safety and/or the environment. The intent of the violator should be considered: Patterns of willful disregard for safety and the environment, recalcitrance, and repeat violations should contribute to designation of a violation as major, but are not necessary.</p> <p>Examples:</p> <ol style="list-style-type: none"> 1. Intentional discharge of waste oil to the storm drain. 2. Discharge of significant volumes of auto body wet sanding effluent to storm drain from work on multiple vehicles, as practice. Especially where repeat violations or evidence of habitual discharge is evident. 3. Significant amount of spilled restaurant grease is intentionally washed into storm drain, especially if hazardous degreasing agent is used. 4. Significant amount of Oil/fluids leaking from improperly stored engines and parts discharge to storm drain system, especially if repeat violation. 5. Repeat moderate violations may be considered major. 	<p>Typically involves less significant pollutant discharges to the storm system and/or receiving waters or conditions that threaten to result in minor to moderate pollutant discharges to the storm system and/or receiving waters.</p> <p>May include small or incidental discharges of hazardous or toxic substances. The violation does not present a major threat to human health and safety, but is likely to result in degradation of receiving water quality.</p> <p>Examples:</p> <ol style="list-style-type: none"> 1. Discharge of moderate amounts of automotive fluids to storm drain system results from neglected spills and poor housekeeping. 2. Discharge of moderate amount (less than 20 gallons of diluted effluent) of auto body wet sanding effluent to storm drain system. 3. More than a quart of spilled restaurant grease on outdoor pavement is neglected, possibly getting tracked out of trash enclosure. Neglect appears to be habitual but so far, impact to storm drain is moderate. 4. Moderate amount of Oil/fluids leaking from improperly stored engines and parts discharge to storm drain system. 5. Repeat minor violations may be considered moderate. 	<p>Typically involves conditions that threaten to result in pollutant discharge to the storm system and/or waterways, if not corrected. The immediate threat to human health or the environment is low.</p> <p>Examples:</p> <ol style="list-style-type: none"> 1. Unattended automotive fluid drips and spills likely to result in moderate discharges to the storm drain system. 2. Discharge of a moderate amount of car body wet sanding effluent from a single vehicle to outdoor pavement that has not yet impacted the storm drain system. 3. Unattended spilled restaurant grease on outdoor pavement. Spill appears to be recent, is less than a quart, has not yet impacted the storm drain system and poor housekeeping do not appear to be habitual. 4. Oily, uncovered engines, or other oily, possibly leaky items stored outside. 5. Open and missing dumpster and tallow bin lids.

Extent of Deviation:

- **Major** – The act deviates from the intent of the ordinance to such an extent that the requirement is completely ignored or the function of the requirement is rendered ineffective because some of its provisions are not complied with.
- **Moderate** – The act deviates from the intent of the ordinance but functions to some extent.
- **Minor** – The act deviates from the intent of the ordinance but functions nearly as intended.

COMBINING MULTIPLE VIOLATIONS

A single penalty may be assessed for multiple violations for the following situations:

- The Respondent has violated the same requirement in different locations or units within a site.
- The Respondent has violated the same requirement on different days. This would not be appropriate if the Respondent has been notified of the violation and has had sufficient time to correct the violation.

MULTI-DAY VIOLATIONS

On a case-by-case basis, for days following the first day of violation, the multi-day component of the penalty may be calculated by determining 2% of the adjusted initial penalty times the number of days after the initial day.

PENALTY ADJUSTMENT FACTORS

Adjustment Factors for Intent: The initial penalty may be adjusted based on the violator’s intent in committing the infraction. The following factors will be considered as a basis for adjustment.

Adjustment Factor	Circumstances
Downward adjustment of up to 100%	Violation was completely beyond the control of the violator.
Downward adjustment of 0 to 50%	Violation occurred even though good faith efforts to comply with regulations were made.
No adjustment	Violation indicated neither good faith efforts nor intentional failure to comply.
Upward adjustment of 50 to 100%	Violation was the result of intentional failure to comply.

Economic Benefit Adjustment: The initial penalty may be increased if the violator realized significant economic benefit as a result of the failure to comply. The adjustment to the initial penalty cannot exceed the maximum of \$5,000 per day, per violation. Economic benefits to consider include: avoided or delayed costs, or increased profits.

Adjustment Factors for Cooperation:

Degree of Cooperation/Effort	Adjustment Factor	Circumstance
Extraordinary	Downward adjustment of up to 25 %	Operator exceeded minimum requirements in returning to compliance or returned to compliance faster than requested.
Good Faith	No adjustment	Operator demonstrated a cooperative effort.
Recalcitrance	Upward adjustment of up to 25 %	Operator failed to cooperate, delayed compliance, created unnecessary obstacles to achieving compliance, or the compliance submittal failed to meet requirements.
Refusal	Upward adjustment of 50 to 100 %	Operator intentionally failed to return to compliance with regulations or to allow cleanup operations to take place. This does not include refusal to allow inspection.

Adjustment for Compliance History: The total base penalty may be adjusted upward or downward based on the Respondent’s compliance history.

- General Considerations
 - Previous violations at the site should receive more weight than previous violations at another site owned or operated by the same person.
 - Recent violations should receive more weight than older violations (more than 3 years).
 - The same or substantially similar previous violations should receive more weight than previous unrelated violations.
- Specific Guidance
 - Downward adjustments of up to 5% for each previous consecutive inspection with no violations can be made up to a maximum of 10%.
 - Upward adjustments of up to 100% can be made if a Respondent has a consistent history of noncompliance over the past six (6) years.

PROJECT OR TRAINING IN LIEU OF PENALTY

In lieu of paying a fine, upon approval of the EC Division Chief, the responsible party may apply all or part of the amount of an imposed fine to complete projects or programs designed to reduce or eliminate the possibility of future violations. Allowable projects or programs may include, but are not limited to, structural BMP installation or staff training, but should generally not include on-going operational or maintenance costs. The cost of the project should roughly equal the amount of the penalty to be waived. When considering approval of such projects or programs, the Enforcement Official should consider at a minimum, the following factors:

- Severity of the violation.
- Compliance history of the responsible party.
- Competitive advantage gained by the responsible party as a result of the violation.
- Existence of malicious intent or gross negligence that contributed to the violation.
- Environmental benefit.

COST RECOVERY

When, in association with a complaint response or violation that requires clean-up and/or extensive investigation by county/municipal staff, EMD staff determines who is responsible for a violation, the responsible party may be required to reimburse the County for all costs incurred by the County or city related to the violation, pursuant to County Stormwater Ordinance, or corresponding sections of the appropriate city ordinance. Cost recovery fees that may be collected include, but are not limited to, investigation, enforcement, compliance assistance, damage, control, and clean-up.

REFERRALS TO THE REGIONAL BOARD

All significant violations and all NOI non-filers must be referred to the Regional Board within 30 days of determination that a significant violation or IGP Notice of Intent (NOI) non-filer status exists. At a minimum, the following information must be included: Name of facility, name of facility operator, name of owner, type of activities conducted at the facility and copy of the violation.

ABATEMENT BY COUNTY

When a responsible party fails to cease or control a nuisance condition that results in or is likely to result in further or continuing violations, Section 15.12.550 of the County Stormwater Ordinance provides means to enable the Administrator to request the County to abate conditions on private property if necessary, or in the event of imminent danger to public safety or the environment, the Administrator itself may abate the nuisance condition.

OTHER COUNTY AND CITY DEPARTMENTS

The County Enforcement Official may defer enforcement action against Stormwater Ordinance violations by referring the violation to other County or city departments for enforcement. This may be done when enforcement against the violation itself, or against the practice or condition that caused the violation, is clearly within the jurisdiction and responsibility of the other department.

DISTRICT ATTORNEY

Severe or continuing violations should be referred to the District Attorney for consideration of criminal charges.

ATTACHMENTS

ATTACHMENT A:



COORDINATED STORMWATER INSPECTION AND ENFORCEMENT POLICY FOR CROSS-JURISDICTIONAL CASES For: County of Sacramento Environmental Management Department and Sacramento Municipal Stormwater Permit Co-Permittees Effective 2-14-06

Policy	Sacramento County Environmental Management Department (EMD) and the Permittees of the Sacramento Stormwater Quality Partnership will coordinate inspections and enforcement actions in cases where action is required against multiple entities in which enforcement responsibilities are held by EMD <u>and</u> one or more of the Permittees. In such cases, coordinated inspection and enforcement will be conducted in accordance with this policy.
Description	When in the course of investigating a complaint or conducting an inspection it becomes evident that actions must be taken against multiple entities to gain compliance, and enforcement responsibilities are held by EMD <u>and</u> one or more of the Permittees, this policy will be implemented to provide comprehensive and complimentary actions in a timely manner.
Example	EMD issues NOV for dumpster violations to a restaurant operator who shares a dumpster with a non-EMD inspected business that is contributing to the violation. EMD refers the non-EMD business to Permittee and Permittee provides matching compliance information and issues NOV with matching requirements within a similar time frame.
Referring Agency	Referring agency will: <ol style="list-style-type: none">1. Contact EMD or Permittee by phone or e-mail when it becomes evident that coordinated enforcement will be required2. Provide the following to the referred-to agency as quickly as possible:<ul style="list-style-type: none">• Background and relevant information• Photos• Recommendations, if any, regarding handling the other affected parties to ensure a unified consistent message is delivered to all affected parties• Copy of any NOV, checklist, and notes, if requested• Available maps, correspondences, site history, and return to compliance information documentation, if requested3. Be available to meet at the site with representative of the referred-to agency, if needed

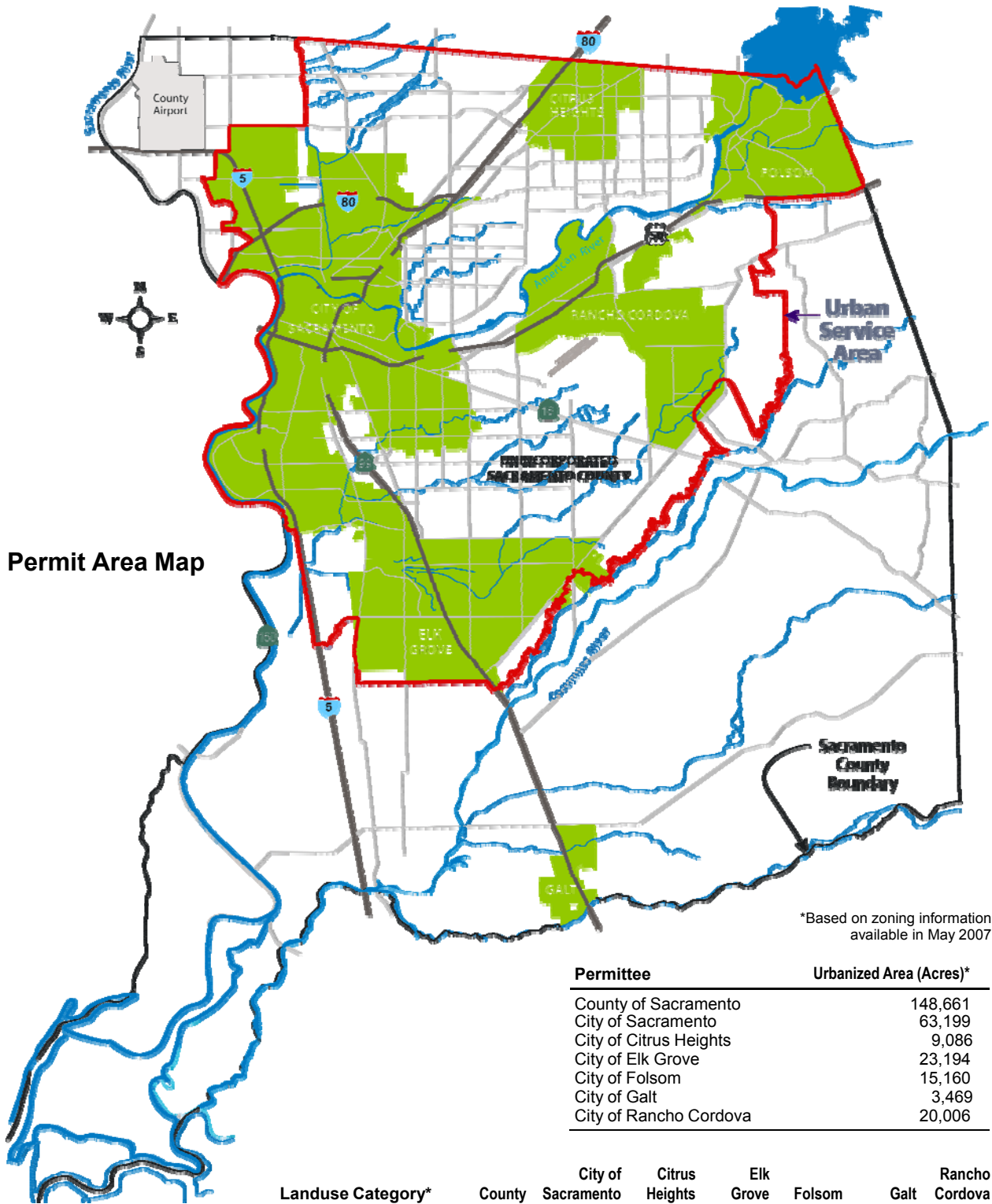
Attachment A (continued):

Receiving Agency

Receiving agency will:

1. **Initiate a response within 5 business days**
 2. Operate in a manner that complements actions taken, information provided, and any applicable compliance time frames of, the referring agency at the site in question, in as much as is possible
 3. Provide updates on actions taken and confirmation to the referring agency when compliance is achieved, if requested
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ATTACHMENT B – MS4 PERMIT AREA MAP



*Based on zoning information available in May 2007

Permittee	Urbanized Area (Acres)*
County of Sacramento	148,661
City of Sacramento	63,199
City of Citrus Heights	9,086
City of Elk Grove	23,194
City of Folsom	15,160
City of Galt	3,469
City of Rancho Cordova	20,006

Landuse Category*	County	City of Sacramento	Citrus Heights	Elk Grove	Folsom	Galt	Rancho Cordova
Residential	33%	55%	63%	74%	46%	59%	53%
Commercial	4%	17%	8%	10%	8%	15%	14%
Industrial	10%	2%	OC	4%	5%	7%	6%
Institutional	OC	9%	6%	2%	10%	7%	6%
Major Roads/Freeways	OC	5%	15%	3%	OC	OC	OC
Parks and Open Space	10%	11%	2%	7%	22%	4%	21%
Agricultural	20%	0%	0%	0%	0%	8%	0%
Other/Miscellaneous	24%	1%	6%	0%	9%	0%	0%

OC = included in other land use categories