

City of Belle Meade, Tennessee

Enforcement Response Plan (ERP)

August 2024

This outline addresses available types of enforcement responses as well as showing an enforcement action matrix for inspector reference for failure to comply with construction requirements, illicit discharge removal and post-construction requirements. The ERP is included in BMP 2.A and 3.C of the City's Stormwater Management Plan (SWMP). This plan is a guide; any of the enforcement responses may be used at the City's discretion. The City may also choose to pursue an enforcement case by skipping intermediate steps.

I. Description of Each Type of Enforcement Response

A. Verbal Warnings

1. The MS4 permit includes minimum verbal warning requirements that the violation's nature and the required corrective action must be specified in the verbal warning.
2. A date for a follow-up inspection to confirm that the problem has been addressed should be part of the verbal warning.
3. A verbal warning is not a required prerequisite if the conditions warrant a more formal written notice.
4. Recordkeeping: The records would include documenting the verbal warnings, and records from any follow-up site visit(s) or other actions.

B. Written Notices

1. Written Warning
 - a) A written warning should include a description of the noncompliance, corrective actions needed to address the issue and a follow-up inspection date.
 - b) A date for a follow-up inspection to confirm that the problem has been addressed should be part of the written warning.
 - c) Recordkeeping: Maintain copies of the written warning and documentation from any follow-up site visit(s) or other actions.
2. Notice of Violation (NOV)
 - a) The NOV should include a description of the noncompliance, corrective actions needed to address the issue and a follow-up inspection date.
 - b) The NOV should require the party committing the violation to submit an explanation of the violation and a plan for the satisfactory correction and prevention of the violation conditions, including specific required actions.
 - c) This response is submitted to the City Manager

- d) Submitting this NOV response plan does not relieve the party committing the violation of any violations that occurred either before or after the receipt of the NOV. Monetary penalties (civil and administrative penalties) may be assessed for NOVs at the City's discretion.
- e) Recordkeeping: The City must keep a copy of the NOV as well as documentation from any follow-up site visit(s) or other actions.

C. Citations with Administrative Penalties

1. Compliance Order

- a) The City Building Official may issue this order to a person who has violated or continues to violate the stormwater ordinance, a permit issued under the ordinance or an order issued under the stormwater ordinance.
- b) This order can direct the violator to install adequate structures and devices and to implement procedures for proper operation within a specific time period.
- c) Monetary penalties (civil and administrative penalties) will be assessed with the compliance order.
- d) Recordkeeping: The City must keep a copy of the compliance order as well as documentation from any follow-up site visit(s) or other actions.

D. Stop Work Orders

1. Cease and Desist Order

- a) The City Building Official may issue this order for any person who has violated or continues to violate the stormwater ordinance or any permit or order issued under the stormwater ordinance.
- b) This order requires that the violator must comply with the order and must take appropriate remedial or preventive action to properly address the continuing or threatened violation. This can include stopping work and terminating the discharge.
- c) Monetary penalties (civil and administrative penalties) will be assessed with the cease and desist order.

- d) Recordkeeping: The City must keep a copy of the cease and desist order as well as documentation from any follow-up site visit(s) or other actions.

E. Withholding of Plan Approvals or Other Authorizations

1. The City's stormwater ordinance does not allow a building permit to be issued until an applicant has already obtained a land disturbance permit as required by the stormwater ordinance.
2. Following construction, all applicants must submit as built drawings for any structures on-site after final construction is completed. These as built drawings must show final design specifications for all stormwater management facilities and must be sealed by a registered professional engineer licensed to practice in Tennessee.
3. The City's stormwater ordinance states that occupation permits will not be granted until all BMP corrections have been made and have been accepted by the City.
4. Where authorizations are withheld related to an unresolved stormwater ordinance violation, the permit applicant must receive a clear explanation of why the authorization is being withheld and what corrective action(s) could be taken to correct the violation and to reconsider approval for other authorization for a project.
5. Recordkeeping: The City should maintain records of any withholding of authorizations related to unresolved stormwater ordinance violations as well as records from any follow-up site visit(s) or other actions.

F. Additional Measures

1. Consent Orders
 - a) The City Building Official may enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with the person responsible for the noncompliance.
 - b) A consent order will include specific corrective actions to be taken to correct the noncompliance along with a specified time period to finish the corrective actions.
 - c) A consent order has the same force and effect as administrative orders such as the compliance order and the cease and desist order.

- d) Recordkeeping: The City should keep copies of the consent order records as well as records from any follow-up site visit(s) or other actions.

2. Show Cause Hearing

- a) The City Manager or his designee is able to order a person who violates the stormwater ordinance or a permit or order issued under the stormwater ordinance to show cause why a proposed enforcement action should not be taken.
- b) A notice for this hearing must be served on the person specifying the time and place for the meeting, the proposed enforcement action, the reasons for the proposed enforcement action and a request for the violator to show cause why this proposed enforcement action should not be taken.
- c) The meeting notice must be either served personally or delivered by registered or certified mail (return receipt requested) at least ten (10) days before the hearing.
- d) Recordkeeping: The City should maintain copies of the show cause hearing records as well as records from any follow-up site visit(s) or other actions.

3. Civil Penalties

- a) The City may assess civil penalties to the party violating the stormwater ordinance's provisions.
- b) These penalties will be no less than fifty dollars (\$50.00) per day and no more than five thousand dollars (\$5,000.00) per day.
- c) Each day of violation counts as a separate violation.
- d) The City Manager or his designee may consider the following in assessing civil penalties for violations:
 - (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 this 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; and
- (7) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

4. Recovery of Damages and Costs

- a) In addition to civil penalties, the City may recover damages and costs for the violation.
- b) Damages can include all damages proximately caused by the violator to the municipality.
 - (1) This can include reasonable expenses for investigating the violations and enforcing compliance with the ordinance.
 - (2) This also includes any other actual damages from the violation.
- c) Costs can include the City's costs for maintaining stormwater facilities if the user of these facilities fails to maintain them as required by the ordinance.

5. Performance Bonds

- a) The City may require an applicant to submit a performance security or a performance bond before a permit is issued.
- b) This practice is to ensure that the stormwater practices are installed by the permit holder as required by the approved stormwater management plan.
- c) The amount for the performance security or performance bond will be based on the total estimated construction cost of the structural BMPs approved under the permit as well as any reasonably foreseen additional related costs (e.g., damages, enforcement).
- d) The applicant must provide an itemized construction cost estimate complete with unit prices.
- e) The City may accept, amend or reject the applicant's cost estimate.
- f) The City may also calculate the construction cost estimate.

- g) For a performance security, there will be forfeiture provisions for failing to complete the specified work in the stormwater management plan.
 - h) To receive full release of the performance security or performance bond, both of these steps must be fulfilled.
 - (1) The applicant must submit as-built drawings and written certification by a registered professional engineer licensed to practice in Tennessee stating that the structural BMP(s) have been installed in accordance with the approved plan and other applicable provisions of the stormwater ordinance.
 - (2) The City will make a final inspection of the structural BMP(s) for compliance with the approved plan and with the ordinance provisions.
 - i) The City may allow for a partial pro-rata release of the performance security or performance bond based on completing various development stages. This pro-rata release may be granted at the City's discretion.
6. Legal Action/Other Remedies: The City may bring legal action related to the stormwater ordinance violation.

II. NPDES Permit Referrals

- A. For a known project site involving a construction activity or an industrial stormwater discharge where the discharge should also be covered by a state NPDES permit, and the known site does not have a state NPDES permit, the City of Belle Meade must notify TDEC about this discharge through the local EFO. The following information must be supplied to the local EFO:
- 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); and
 - 4. Records of communication with the owner or operator regarding filing requirements.

- B. For a site where the City of Belle Meade has not been able to bring an NPDES-permitted discharge into compliance with the City's stormwater-related and water pollution-related ordinances through the City's enforcement mechanisms, the City must notify TDEC about the situation through the local EFO. The following information must be supplied to the local EFO:

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); and
4. Records of communication with the owner or operator regarding the violation, including at least two follow-up inspections, two warning letters or notices of violation, and any response from the owner or operator.

III. Recordkeeping & Tracking

- A. All non-compliance instances must be tracked either electronically or using paper files.. This tracking must include all records and documents related to stormwater ordinance violations at the site should be stored in the enforcement case file.

- B. The minimum required documentation must include the following items:

1. Name of owner/operator;
2. Location of construction project or industrial facility;
3. Description of violation;
4. Required schedule for returning to compliance;
5. Description of enforcement responses used, including escalated responses if repeat violations occur or violations are not resolved in a timely manner;
6. Accompanying documentation of enforcement response (e.g., notices of noncompliance, notices of violation, etc.);
7. Any referrals to different departments or agencies; and
8. Date violation was resolved.

- C. The City must use the non-compliance records and tracking to identify any chronic violators, and use this information to work toward reducing the rate of noncompliance recidivism.
 - 1. This will include tracking violations, applying incentives and/or disincentives, and increasing the inspection frequency of the operator's sites.
 - 2. If the operator fails to take corrective actions, the City must pursue progressive enforcement and, if need be, perform the necessary work and assess against the owner the costs incurred for repairs.
- D. For BMPs on public property or within public rights-of-way, the City must document that appropriate maintenance and/or repairs have been completed (e.g., using photos, maintenance logs, contractor invoices).
- E. The City must keep any closed files related to enforcement for a minimum of three (3) years after the file is closed consistent with the MS4 General Permit conditions. However, file retention time may be longer if required by law.

IV. Enforcement Action Matrices

A. Noncompliance with Construction Requirements

- 1. See Table 1 for the enforcement action matrix for noncompliance with construction requirements. In general, the severity of the enforcement measure increases moving down the matrix.
- 2. For parties who fail to obtain a land disturbance permit before starting work, the initial enforcement action may be more stringent than for a project that has an approved plan but has failed to comply with the approved plan.

- a) The City has the ability to stop project work for non-permittees. Stopping work generally includes all work except what is needed to address stormwater and/or safety until the project has an approved stormwater plan.
- b) Non-permittees may be required to perform corrective actions as advised by the City and to develop the required erosion control and/or stormwater plan submittals to submit to the City for review and approval.
- c) The City will not issue a land disturbance permit where work began prior to receiving approval from the City. However, the City may issue another approval to the non-permittee following the plan review and approval process similar to what would have happened if the project plans had been submitted for advance review and permit approval before work began.
- d) Once the corrective actions have been successfully completed and the submitted stormwater plan has been approved by the City, the City will issue the violator a written notice that the situation has been resolved.
- e) If the corrective actions or the submitted plan cannot be approved, the City should also send a written notice to the violator describing what was deficient and what step(s) are needed to resolve the situation.

Table 1. Enforcement Action Matrix for Noncompliance with Construction Requirements.

Type of Violation	Failure to Obtain Land Disturbance Permit Prior to Starting Work	Minor Violations (Failure to Install, Maintain or Upgrade Measures on Erosion and Sediment Control Plan)	Minor Violations (Failure to Install, Maintain or Upgrade Measures on Erosion and Sediment Control Plan for a "Hot Spot" or Priority Area)	Major Violation (Failure to Install, Maintain or Upgrade Measures on Erosion and Sediment Control Plan that Resulted in a Sediment Release from the Project Site)	Repeat Violation by a Party (Different Site)	Repeat Violation by a Party (Same Site)	Repeat Violation by a Party (Different Site)
		Verbal and/or Written Warning	Verbal and/or Written Warning	NOV and/or Verbal or Written Warning	NOV and/or Verbal or Written Warning	NOV and/or Verbal or Written Warning	NOV and/or Verbal or Written Warning
Enforcement Measures For Use (Increasing Severity Moving Down the Chart)	Cease and Desist Order or Consent Order	NOV	NOV	Compliance Order or Consent Order	Compliance Order or Consent Order	Compliance Order or Consent Order	Compliance Order or Consent Order
		Compliance Order or Consent Order	Compliance Order or Consent Order	Cease and Desist Order or Consent Order	Cease and Desist Order or Consent Order	Cease and Desist Order or Consent Order	Cease and Desist Order or Consent Order
	Legal Action	Cease and Desist Order or Consent Order	Cease and Desist Order or Consent Order	Cease and Desist Order or Consent Order	Cease and Desist Order or Consent Order	Cease and Desist Order or Consent Order	Cease and Desist Order or Consent Order
		Legal Action	Legal Action	Legal Action	Legal Action	Legal Action	Legal Action

This plan is a guide; any of the enforcement responses may be used at the City's discretion and the City may choose to escalate an enforcement case by skipping intermediate steps. Penalties (Civil, Recovery of Damages and Costs, Etc.) may be assessed as described in the stormwater ordinance and as allowed by law at the City's discretion.

B. Failure to Remove Illicit Discharges

1. See Table 2 for the enforcement action matrix for failure to remove illicit discharges.
2. The action matrix was set up to provide varying suggested degrees of response to noncompliance documented by the City.
3. In general, the severity of the enforcement measure increases moving down the matrix.

Table 2. Enforcement Action Matrix for Failure to Remove Illicit Discharges.

Type of Violation	First Failure to Remove illicit Discharge	Repeat Violation by a Party (Same Site)	Repeat Violation by a Party (Different Site than initial Noncompliance Site)
Enforcement Measures For Use (Increasing Severity Moving Down the Chart)	Verbal and/or Written Warning	NOV and Verbal and/or Written Warning	NOV and Verbal Warning and/or Written Warning
		Compliance Order or Consent Order	
	NOV	Cease and Desist Order or Consent Order	Compliance Order or Consent Order
	Compliance Order or Consent Order	Legal Action	Cease and Desist Order or Consent Order
	Cease and Desist Order or Consent Order		Legal Action
	Legal Action		

This plan is a guide; any of the enforcement responses may be used at the City's discretion and the City may choose to escalate an enforcement case by skipping intermediate steps. Penalties (Civil, Recovery of Damages and Costs, Etc.) may be assessed as described in the stormwater ordinance and as allowed by law at the City's discretion.

C. Noncompliance with Post-Construction Requirements

1. See Table 3 for the enforcement action matrix for noncompliance with post-construction requirements.
2. The action matrix was set up to provide varying suggested degrees of response to noncompliance documented by the City.
3. In general, the severity of the enforcement measure increases moving down the matrix.

Table 3. Enforcement Action Matrix for Noncompliance with Post-Construction Requirements

Type of Violation	First Failure to Comply with Post-Construction Requirements	Repeat Violation by a Party (Same Site)	Repeat Violation by a Party (Different Site than initial Noncompliance Site)
Enforcement Measures For Use (Increasing Severity Moving Down the Chart)	Verbal and/or Written Warning	NOV and Verbal and/or Written Warning	NOV and Verbal Warning and/or Written Warning
		Compliance Order or Consent Order	
	NOV	Cease and Desist Order or Consent Order	Compliance Order or Consent Order
	Compliance Order or Consent Order	Legal Action	Cease and Desist Order or Consent Order
	Cease and Desist Order or Consent Order		Legal Action
	Legal Action		

This plan is a guide; any of the enforcement responses may be used at the City's discretion and the City may choose to escalate an enforcement case by skipping intermediate steps. Penalties (Civil, Recovery of Damages and Costs, Etc.) may be assessed as described in the stormwater ordinance and as allowed by law at the City's discretion.

