

ENFORCEMENT CONSISTENCY GUIDE FOR WATER QUALITY ORDINANCE IMPLEMENTATION

December 15, 1997
(Revision of August 15, 1994 Version)

City of _____

Approved By: _____
[City Manager, Director of Public Works
City Engineer or as Appropriate]

June 15, 2001

2051-00001
56228_1

ENFORCEMENT CONSISTENCY GUIDE

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I. INTRODUCTION

This document is the Enforcement Consistency Guide (the "Guide") and was developed as a companion to the Water Quality Ordinance (hereinafter "Ordinance") providing step by step guidance to Authorized Inspectors, Enforcing Attorneys and other City [Orange County] personnel responsible for implementing the Ordinance. The Guide provides important additional information with respect to the Water Quality Ordinance and implements the drainage area management requirements of the Santa Ana and San Diego Regional Water Quality Control Board NPDES Permits. The use of this Guide will assist staff in identifying, documenting, and responding to violations of the Ordinance and selecting appropriate enforcement actions.

Unless otherwise defined herein, all capitalized terms used in this Guide are defined in the Ordinance.

Each Co-Permittee is required to certify implementation of this Guide for use. Each Co-Permittee should note that the Guide is a general approach to implementation of an investigation and enforcement program. The Guide was prepared to provide a consistent approach to water quality ordinance enforcement throughout Orange County. The actual implementation of each Co-Permittee's investigation and enforcement program should be adapted to the various program approaches taken by each Co-Permittee consistent with the requirements of the permits.

Once implemented by the Co-Permittee, the Guide is a public record pursuant to the Government Code (§6250 et seq.) and must be made available to any person so requesting it. It is the intent of the preparers of this Guide that its contents are essentially program suggestions, and each Co-Permittee may utilize similar or other equivalent investigation and enforcement approaches. Further, the Guide is not all inclusive and some investigation and enforcement programs may include additional measures or other techniques that are more appropriate to the facts of the given situation. Each Co-Permittee's investigation and enforcement program should be flexible in order that the best response will be provided in each situation.

II. PURPOSE

This Guide is intended to provide standard guidelines and protocols for ordinance implementation to ensure uniform countywide enforcement and to aid the Co-Permittee in accomplishing the following objectives:

- ◆ Select water quality ordinance program personnel
- ◆ Document Stormwater Drainage System Monitoring and Inspections
- ◆ Investigate Noncompliance
- ◆ Document Noncompliance
- ◆ Manage Data and Discharger Information
- ◆ Select Appropriate Enforcement Tools
- ◆ Plan for Emergency Response
- ◆ Coordinate with Other Public Agencies, Other City Departments and the Public
- ◆ Establish a Local Permit Program (hereinafter defined) as authorized by the Ordinance
- ◆ Establish Procedures for the Review and Approval of New Development and Significant Redevelopment Projects in accordance with the DAMP

As noted above, this Guide was developed in support of the Water Quality Ordinance, and is not intended to support the enforcement of requirements under the State General Industrial and General Construction Permit Programs, which are subject to enforcement by other regional authorities. More information about the State issued NPDES Stormwater Permits may be obtained from either the Santa Ana or San Diego Regional Water Quality Control Boards.

III. SELECTION OF PERSONNEL

- A. Each Co-Permittee will be responsible for designating the Department or specific personnel responsible for inspection, enforcement, permitting and review of New Development and Significant Redevelopment projects. The selected personnel will comprise the Water Quality Compliance Team (hereinafter "Team").
- B. Each Team should consist of one or more persons² capable of carrying out specific Team functions³, including:
- ◆ Program Coordinator
 - ◆ Program Liaison Officer
 - ◆ Authorized Inspectors⁴
 - ◆ Permit Officer
 - ◆ Planning Officer
 - ◆ Enforcing Attorney³
 - ◆ Program Clerk
 - ◆ Hearing Officer³
 - ◆ Spill Response Team

The Team should have the knowledge, skill and training as necessary to effectively carry-out their duties, including but not limited to:

- ◆ Training in the practical application of the Ordinance and this Enforcement Consistency Guide,

² It is important to note that Co-Permittees are not expected to employ separate individuals for each described Team function. It is anticipated that elements of each Team function will be selected based on personnel availability, with specific tasks assigned to one or more storm water compliance program personnel.

³ Section III. E. below further identifies the duties of each Team position.

⁴ These positions are further defined and specifically discussed in the Water Quality Ordinance.

- ◆ Knowledge of SARA (Superfund Amendments and Reauthorization Act of 1986) Title III reporting requirements and State OES reporting requirements,
- ◆ Knowledge of the Orange County Hazardous Materials Area Plan, California Ocean Oil Spill Plan, applicable Regional Water Quality Control Board Basin Plans,

Contacts:

- Orange County Hazardous Materials Area Plan (or City Equivalent)
Orange County Fire Authority
180 South Water Street
Orange, California 92866-0086
Staff Contact: Jennifer Bower
(714) 744-0465
- Region 8 - Basin Plan
Regional Water Quality Control Board - Santa Ana Region
3737 Main Street, Suite 500
Riverside, California 92507
Staff Contact: Laurie Taul
(909) 782-4906
- Region 9 - Basin Plan
Regional Water Quality Control Board - San Diego Region
9771 Clairmont Mesa Blvd., Suite A
San Diego, California 92124
Staff Contact: Debra Jayne
(619) 467-2952
- ◆ Familiarity with Proposition 65 requirements, applicable health and safety training, including California OSHA requirements,

Contact:

- Health Care Agency
Environmental Health
2009 East Edinger Avenue

- ◆ Safety training in accordance with 40 CFR 1910.120
 - ◆ Technical training as necessary for effective inspection, monitoring and sampling, and
 - ◆ Technical training as necessary for effective permit issuance and/or for review of New Development/Significant Redevelopment projects for consistency with the Orange County NPDES Stormwater Permit Program Drainage Area Management Plan (hereinafter “DAMP”), specifically including DAMP Chapter VII and the Appendix thereto entitled Best Management Practices for New Development Including Non-Residential Construction Projects, as the same may be amended from time to time.
- C. Each Co-Permittee may elect to contract for the services of any public agency or private enterprise to carry out the Team duties and/or to conduct the permitting, inspection and enforcement contemplated by the Ordinance.
- D. The Co-Permittee may elect to have some of the duties of the Team performed by in-house personnel, while contracting for remaining services. Further, Co-Permittee may select all or a subset of the duties of the Team from all of the identified functions based on individual program priorities.
- The duties described below for each Team member are listed as one option for a program of Stormwater discharge regulation. This Team approach is designed to accomplish all NPDES Permit requirements through collective action; however, the NPDES Permit does not specify these duties as identified herein.
- E. The duties of each Team member, which may be selected include:
1. Program Coordinator. Program Coordinator should be a management level Co-Permittee employee authorized to identify and implement major water quality control program tasks, supervise the completion of tasks assigned to other team members and interface with the City Council/Orange County Board of Supervisors and management level City/Orange County employees. The Ordinance identifies many of the duties of the Program

Coordinator as the responsibility of the City Manager [City Administrator, City Engineer, Director of Public Works, Director of Public Facilities and Resources Department] and persons directed by them and under their instruction and supervision.

2. Program Liaison Officer. The Program Liaison Officer will coordinate the efforts of the members of the Team with other City/County Departments having related responsibilities.

The Program Liaison Officer's duties may be undertaken by other personnel under the supervision of the Program Coordinator or Authorized Inspector. Program Liaison Officer duties may be selected from the following list as appropriate to support the program priorities established by each Co-Permittee, as follows:

- a) Coordinate education efforts with other Co-Permittee departments such as public works, police, and fire, and code enforcement to establish basic skills in identification of unauthorized discharges and spills to the Stormwater Drainage System.
- b) Coordinate with community service officers in community education efforts.
- c) Establish procedures for the request of assistance by the Team from other Co-Permittee departments.
- d) Coordinate departmental cross-training programs for the sharing with the Team of expertise in evidence preservation, evidence documentation, chain-of-custody requirements, and similar related matters.
- e) Coordinate Team work with the Orange County Hazardous Materials Strike Force, the local Fire Department's hazardous materials response team and personnel checking Business Plans (pursuant to SARA Community Right-To-Know requirements).
- f) Coordinate the Team work with local health and safety program officers and building inspectors.

- g) Establish contacts with and provide program information and education to business groups, local homeowners groups, neighborhood watch organizations, local hospitals, local ambulance services and other groups who may benefit from the receipt of program information.
- 3. Authorized Inspectors. Authorized Inspectors will work as assigned by the Program Coordinator.
 - a) The Ordinance identifies many of the duties of the Authorized Inspector as the responsibility of the City Manager [City Administrator, City Engineer, Director of Public Works, Director of Public Facilities and Resources Department], and those persons directed by them and under their instruction and supervision who are assigned to investigate compliance with, detect violations of, and take actions pursuant to the Ordinance.
 - b) This Guide has been drafted based upon the understanding that the State General Permits (Industrial and Construction) are subject solely to the enforcement efforts of the State Water Resources Control Board and the Regional Water Quality Control Boards. Therefore, Authorized Inspectors are not responsible for directly enforcing the State General Permits. Nevertheless, certain requirements of the State General Permits (including, filing of Notices of Intent and the development of Stormwater Pollution Prevention Plans and monitoring programs), are reviewable under the specific terms of those permits by local program personnel. Accordingly, the Ordinance provides that Authorized Inspectors may request and review State General Permit program documentation when conducting site investigations and as necessary to assist in local program enforcement. If a State General Permit violation is uncovered by an Authorized Inspector, the Authorized Inspector may report the matter to the appropriate Regional Water Quality Control Board.
 - c) The duties of the Authorized Inspector may include, but are not limited to:
 - 1) Map discharge points and outlets, and collect other data.
 - 2) Sample wet and dry weather discharges.

- 3) Conduct administrative compliance inspections and/or criminal inspections, including collecting, preserving and documenting evidence.
- 4) Identify locations of Illicit Connections.
- 5) Identify sources of Prohibited Discharges.
- 6) Review documents and records related to chemicals or processes occurring at inspected sites.
- 7) Identify facilities or properties where a Local Permit may be appropriate and to enforce the provisions of such a permit.
For purposes of this Guide, "Local Permit" means a Co-Permittee's authorization, issued pursuant to Section VIII of the Ordinance, for the release of non-stormwater discharges to the Stormwater Drainage System.
- 8) Inspect properties subject to structural and non-structural BMPs required of New Development/Significant Redevelopment projects in accordance with the DAMP to assure appropriate performance and structural maintenance and functionality.
- 9) Conduct tests, such as smoke or dye tests or physical inspections and/or video surveys to verify compliance or locate a source of discharge.
- 10) Prepare inspection consent requests and consult with Enforcing Attorney regarding applications for administrative inspection warrants, as necessary.
- 11) Consult with the Enforcing Attorney regarding criminal inspection warrants, as appropriate.
- 12) Issue Notices of Noncompliance, Administrative Compliance and Cease and Desist Orders.

- 13) In consultation with fire department staff, evaluate and determine the need for emergency abatement of conditions posing an imminent danger to public safety or the environment.
 - 14) Issue citations and recommend prosecution.
- d) Proposition 65. All Authorized Inspectors should be aware of the requirements of Health & Safety Code Section 25180.7 for the reporting of an illegal discharge or threatened illegal discharge. The requirements of this section are set forth more fully in Appendix A hereto.
4. Enforcing Attorney. The Enforcing Attorney should be either the City Attorney [County Counsel] or District Attorney acting as counsel to the Co-Permittee, and his/her appointee. For purposes of criminal prosecution, only the District Attorney or designee [and/or City Attorney, and Deputy District and City Attorneys as assigned] will act as the Enforcing Attorney. The duties of the Enforcing Attorney include:
- a) Assist Program Coordinator as requested in the implementation of the stormwater control program.
 - b) Provide advice with respect to the enforcement of the Ordinance.
 - c) Assist with administrative inspection warrants.
 - d) Assist with criminal inspection warrants.
 - e) Assist Authorized Inspectors in proper documentation of evidence.
 - f) Prosecute citations, as necessary.
 - g) Seek judicial injunctions.
 - h) File civil and criminal actions.
 - i) File nuisance liens and obtain recovery of nuisance abatement costs from responsible parties.

5. Permit Officer. The Permit Officer is primarily responsible for accepting, reviewing and approving or rejecting applications of dischargers for issuance of a Local Permit to allow non-stormwater discharges to the Stormwater Drainage System. The Permit Officer should be qualified to evaluate permit applications in accordance with the requirements of the Ordinance as further identified in Appendix B hereto.
6. Planning Officer. The Planning Officer is primarily responsible for identifying conditions of approval to be imposed on New Development/Significant Redevelopment projects in accordance with the DAMP.
7. Program Clerk. The Program Clerk is primarily responsible for preparation of documentation in support of the enforcement program. The Program Clerk is responsible for preparing account information and invoices for costs to be billed to owners and operators of properties that do not come into compliance with any notice or order issued pursuant to the Ordinance. The invoice for costs should reflect all personnel, equipment, response costs, damages, and expenses incurred by any Co-Permittee in enforcing administrative compliance orders, issuing cease and desist orders and pursuing other civil and criminal remedies as provided in the Ordinance. The Program Clerk's duties should also include maintaining data on various aspects of the program, including discharger history, and monitoring and inspection results.
8. Hearing Officer. The Hearing Officer is the [insert department head] or his/her designee, who shall preside at the administrative hearings authorized by the Ordinance and issue final decisions on the matters raised therein [(or) Hearing Officer may mean the appeals board established by separate resolution of the City Council (or Board of Supervisors), which shall preside at the administrative hearings authorized by the Ordinance and issue final decisions]. The Hearing Officer should not be an individual who has supervised or otherwise been involved with the specific activity or investigation that has become the subject of an administrative proceeding. Therefore, the Co-Permittee may wish to agree to a cooperative arrangement with another Co-Permittee, such that stormwater program personnel may act as the Hearing Officer for a neighboring Co-Permittee. Depending on their level of experience, training for Hearing Officers may be required to ensure familiarity with stormwater issues and the manner in which administrative hearings should be conducted.

The Hearing Officer's duties include:

- a) Processing of hearing requests.
 - b) Establishing appropriate hearing schedules.
 - c) Acting as presiding officer at hearings.
 - d) Issuing final decisions and preparation of the administrative record in cases of further appeal.
9. Spill Response Personnel. The spill response personnel may be Authorized Inspectors and other City/County personnel responsible for coordinating with the local fire department for the immediate response to any accidental spill, leak or Prohibited Discharge of Pollutants requiring immediate cleanup. In addition to acting as necessary to protect human health and the environment, the duties of the spill response personnel may include:
- a) Documenting the source of the spill.
 - b) Identifying the responsible party, where possible.
 - c) Establishing evidence useful in the recovery of spill response costs, where appropriate.
 - d) Assisting the Authorized Inspector in evaluating the need for emergency abatement.
 - e) Coordinating activities for spill response with the Orange County Hazardous Materials Strike Force.

Appendix C is a form which may be adopted by a Co-Permittee for identification of its Team members. If responsibilities change, a revised form may easily be substituted in its place.

IV. MONITORING POLLUTANT DISCHARGES FROM INDUSTRIAL FACILITIES AND ENFORCEMENT PROGRAM PRIORITIES

A. Purpose

The Co-Permittees have a number of programs that have facilitated the detection of sources of non-stormwater discharges. These programs include industrial facility inspection, drainage facility inspection, field screening for gross contamination, and the wide distribution of public education materials that provide phone numbers and encourage the reporting of spills.

B. Industrial Facility Inspection

A number of public agencies routinely conduct inspections of industrial facilities in Orange County. These agencies and their areas of responsibility include the following:

- * The Orange County Health Care Agency regulates the storage and disposal of hazardous wastes. Approximately 5,500 businesses are inspected annually to ensure proper waste management.
- * The Fire Departments in Orange County regulate the storage of hazardous materials through disclosure ordinances such as OCC Sec 4-3-200-300 and Article 80 of the Fire Code. This regulation involves inspection at over 7,000 businesses.
- * Agricultural chemicals, notably pesticides, are regulated by the Agriculture Commissioner through the State Agriculture Code (CCR Title 3, Sec. 6000 et seq.). The Commissioner's office performs facility inspections and initiates enforcement action for non-compliance.
- * Discharges to the sanitary sewers are regulated by the County Sanitation Districts of Orange County, the Irvine Ranch Water District, and the Aliso Water Management Agency/South East Regional Reclamation Authority. All three organizations conduct facility inspections.

Routine coordination with staff of these inspection programs through the Orange County Hazardous Materials Strike Force accompanied by occasional formal presentations will ensure their cognizance of stormwater concerns and prompt

notification of the Co-Permittees of pollution issues. Appendix D contains an example of safety procedures for inspection of industrial facilities.

C. Drainage Facility Inspection

The Co-Permittees conduct drainage system inspections as part of routine facility maintenance.

D. Field Screening

The primary objective of this component of the water quality monitoring program, conducted by the County as principal permittee, is to detect gross contamination from unpermitted non-stormwater discharges through field analysis for phenols, cyanide, chlorine, copper, chromium, pH, and conductivity. The program will be revised in 1998 as part of the overall evolution of the monitoring program. Nonetheless, detection of sources of gross contamination will remain a major objective of the water quality monitoring effort.

E. Incident Reporting

Public reporting of spills is facilitated by the listing of City/County telephone numbers in materials produced and distributed by the Stormwater Program's public education activities. In addition, Orange County "white page" telephone directories list the County's Water Pollution Section telephone number.

F. Enforcement Program Priorities

The Co-Permittee's inspection programs for ordinance compliance will utilize an incident response inspection approach to focus resources on addressing reports of possible non-compliance at a particular location. As discussed in Section VI., inspections will only occur after information that a violation of the ordinance may be occurring has been brought to the attention of the Program Coordinator through one of the mechanisms discussed previously (Sections IV.B-IV.F).

An administrative inspection plan (Appendix E), used to implement a proactive inspection program, may be implemented when information from the water quality monitoring justifies such a significant reallocation of resources.

V. POLLUTANTS OF CONCERN

A. Industrial and Commercial Sources

The following constituents may be found in the Stormwater Drainage System as a result of discharge in either dry weather or wet weather flows from industrial and commercial sources:

1. Solid Particle Materials: chips, dusts, plastic pellets, wood or metal shavings.
 - a) Characteristics: clearly visible particles.
 - b) Possible sources: manufacturing facilities, lumber yards, cement plants, material storage yards, metal operations, textile facilities.
2. Petroleum Products and Engine Coolants, such as fuels, oils, solvents, grease, coolants.
 - a) Characteristics: oil sheen on visible water areas, brown staining of runoff areas.
 - b) Possible sources: vehicle storage facilities, or locations where vehicle maintenance takes place or petroleum products are produced, stored or dispensed.
3. Miscellaneous conditions:
 - a) Metals such as cadmium, lead, zinc, copper, silver, nickel, chromium
 - b) Non-metal materials such as phosphorous and silica
 - c) High or low pH (alkalinity and acidity, respectively), which may be evidenced by the presence of deposits or stains or damage to concrete or metal storm drain structures.

- d) Color: yellow (chemicals or textile sources), brown (packing plants, printing, metal works, stone or concrete works, refineries), green (chemical or textile sources), red (meat packing plants), gray (dairies).
- e) High Turbidity: characterized by cloudy or opaque waters.
- f) Organic Compounds: characterized by odors typical of decomposing materials such as sewage or sulfide (rotten egg) or rancid-sour smells.
- g) High levels of bio-chemical oxygen demand, chemical oxygen demand or toxic organic compounds
- h) High Temperature, which is generally characterized by steam
- i) Toxic materials characterized by effect on surrounding vegetation.

An industrial inventory field sheet which may be used to record conditions at commercial or industrial sites is attached as Table 1. Supplemental guides for identification of Pollutants of Concern are found in Tables 2 and 3.

B. Pollutants from Construction Sites

Materials present may include sediments, petroleum products and engine coolants, metal shavings or materials, pesticides, fertilizers, toxic chemicals such as solvents, cleaners, sealers, adhesives, or paints. Construction sites are also sources of miscellaneous wastes such as concrete, paints, and sealers, wash waters, landscape or yard waste materials, packaging materials, trash and sanitary or sewage waste.

C. Pollutants from Residential and Commercial Activities

Materials present may include petroleum products, engine coolants, pesticides, fertilizers, landscape or yard waste and trash.

The Ordinance also lists a number of activities that are typically residential in nature (and which may also be found in commercial developments), but which are exceptions to the prohibitions in the Ordinance and are defined therein as "Discharge Exceptions". These include: landscape irrigation runoff, foundation

drain water, air conditioning condensation and other runoff from building roofs, non-commercial vehicle washing and dechlorinated swimming pool water. Potential sources of and the manner in which certain Pollutants may enter the Stormwater Drainage System are set forth in Tables 1 and 2.

VI. POTENTIAL VIOLATIONS

A. Illicit Connections

1. The Ordinance defines the term “Illicit Connection” as any man-made conveyance or drainage system through which the discharge of any pollutant to the stormwater drainage system occurs or may occur.
2. Constructed (Man-Made) Illicit Connections include: pipelines, conduits, inlets or outlets, connected impervious areas, channels or swales.
3. Practical examples of constructed Illicit Connections include: pipes which discharge onto adjacent property or into a water runoff area, facilities constructed adjacent to construction areas which allow dewatering runoff to flow to the stormwater drainage system, or storm drain inlets that drain from outside wash areas directly into the stormwater drainage system.
4. Legal nonconforming connections receive special treatment under the Ordinance as connections that would otherwise be unacceptable, but which were placed in service in accordance with all requirements in place at the time of connection. The Ordinance defines Legal Nonconforming Connections and allows a grace period of five (5) years for all structural improvements or six (6) months for nonstructural improvements.

B. Prohibited Discharges

1. The Ordinance defines the term “Prohibited Discharge” as any discharge from public or private property, and containing any pollutant, to: the stormwater drainage system; any upstream flow which is tributary to the stormwater drainage system; groundwater; river; stream; creek; wash; dry weather arroyo; wetlands; marsh; coastal slough/bay/harbor; or Pacific Ocean.
2. Prohibited discharges typically are generated from poorly managed on-site operations, illegal dumping and/or contaminated stormwater discharges.

3. Site operations which may produce Prohibited Discharges include releases of:
 - a) Process waters such as boiler blowoff, rinse waters, chlorinated pool discharges.
 - b) Waste materials such as manufactured floatable materials, animal wastes from kennels or riding stables, vehicle fluids (oils, coolants, etc.).
 - c) Raw materials unloading and storage areas can be sources of sand/gravel, cement, fertilizers, pesticides.
 - d) Practical examples of problematic site operations would include:
 - 1) Pressurized washing and steam cleaning areas that drain to storm drain inlets.
 - 2) Auto repair shops where operations occur out of doors in unprotected areas and no provision is made for preventing contamination from leaving the site.
 - 3) Barrels placed in unbermed areas where hand pumps are used to dispense petroleum products and residues can migrate to storm drain areas.
 - 4) A non-retail fueling area where vehicle washing also occurs and runoff flows to open storm drain area.
 - 5) Manufacturing storage yard for concrete materials where materials are uncovered and washoff flows directly to storm drain.
 - 6) Construction location where concrete debris is flowing to street gutter.
4. Illegal dumping activities include:
 - a) Household wastes such as home, garden or yard debris; trash or rubbish; household hazardous wastes.

- b) Commercial wastes such as landscape debris or soil; trash or rubbish; hazardous wastes in drums or canisters or septage.
- c) Animal or agricultural wastes such as manure, stock wastes, fruit and vegetable materials and animal carcasses.
- d) Practical examples of illegal dumping activities could include:
 - 1) Home/yard debris dumped near curb inlet to stormwater drainage system.
 - 2) Trash, drums or discarded materials left on creek or wash area banks.

5. Contaminated Stormwater Runoff

Stormwater runoff can occur as contaminated overland flow or as direct runoff.

- a) Contaminated overland flows may either be sheet flows or concentrated flows.
- b) Contaminated overland flows can occur as runoff from semi-pervious areas which includes fertilizers or eroded soils in quantities that will interfere with or adversely affect the beneficial uses of the receiving waters, flora or fauna of the State.
- c) Contaminated overland flows can occur as runoff from impervious areas which includes oil and grease from parking and equipment service areas.
- d) Direct runoff waters can occur from unprotected raw materials storage areas or from rainfall contacting contaminated work areas or rooftops where contaminants from building stacks have accumulated.
- e) Practical examples of stormwater runoff include:
 - 1) Construction or work on an exposed site where soils are being tracked onto the street and washed down the gutter in

quantities that will interfere with or adversely affect the beneficial uses of the receiving waters, flora or fauna of the State.

- 2) Construction or work on an exposed site where materials such as sand are migrating into street gutter area either through non-concentrated exposure to water such as sprinkler systems or by actual contact with other runoff water in quantities that will interfere with or adversely affect the beneficial uses of the receiving waters, flora or fauna of the State.
- 3) Petroleum contaminated soils in equipment servicing areas, which are exposed to gutter area through tracking.
- 4) Uncovered areas of stockpiled construction demolition materials.
- 5) Uncovered materials storage areas for cleaning fluids where obvious ground staining has occurred.
- 6) Outside storage of unsealed paint and solvent containers.
- 7) Exposed truck loading docks with uncovered materials.
- 8) Equipment storage yards without runoff controls.

6. Practical Conditions for the Prevention of Prohibited Discharges.

Good management practices will prevent Ordinance violations, these might include:

- a) Materials storage areas with covers and secondary containment systems.
- b) Loading docks that are covered or have materials that are covered, or which are implementing other best management practices.
- c) Clean loading docks.

- d) Soil stockpiles that are covered from contact with rainfall by plastic sheeting.
- e) Construction waste containers with plastic covers.
- f) Materials storage shed.

VII. INVESTIGATING NONCOMPLIANCE

A. Individual Property Inspections

The Co-Permittee's inspection programs for ordinance compliance will utilize an incident response inspection approach. The use of this inspection approach will minimize the need for additional staff resources by focusing responses directly on reports of possible non-compliance at a particular location. A glossary of terms relevant to enforcement is attached as Table 6.

The incident response inspection will occur after information has been brought to the attention of the Program Coordinator, Authorized Inspector or Enforcing Attorney indicating that a discharge in violation of the Ordinance is occurring. In that event, the following procedure should be utilized:

B. Criminal Inspections

The inspection for non-compliance may be based on limited facts indicating that a condition may exist at a location, which is in violation of the Ordinance. The Authorized Inspector should review these facts (where appropriate with the assistance of the Enforcing Attorney) and determine whether the facts indicate that the discharger may be subject to criminal sanctions under the Ordinance. Although negligent or knowing violators of the Ordinance may subject a person to criminal liability, generally the act or incident of unlawful discharge should be willful (knowing) on the part of the discharger before criminal prosecution is appropriate. In the event the facts indicate that the violation is criminal in nature, the Authorized Inspector should follow the procedure below for issuance of a criminal inspection warrant. A criminal inspection warrant will not be necessary if the Authorized Inspector obtains consent (preferably written, but may be verbal) from the discharger for the inspection, and the discharger is informed that the inspection is to be made for the collection of evidence which may be used in prosecution of a criminal case. In most cases, it can be anticipated that the

discharger will withhold consent for warrantless inspection if criminal prosecution is intended by the Co-Permittee.

C. Administrative Inspections

If, after review of the facts, the discharge does not appear to be a willful violation of the Ordinance, the Authorized Inspector may decide to inspect the location in order to assess compliance, and if justified, issue a notice of noncompliance, administrative compliance order or cease and desist order. The Authorized Inspector should follow the procedures in Subsection F below for conducting an administrative compliance inspection.

It should be noted that it is particularly important to determine the focus of the inspection prior to undertaking the inspection because information obtained in an administrative compliance inspection generally cannot be used in support of a criminal case.

D. Public Documents

1. Public Information. The Public Records Act, Government Code §6250 et seq., requires the release by local agencies of information and documents compiled in the course of conducting the public business. As discussed in the introduction section to this Guide, the Guide itself is a public record subject to release on receipt of a request under the Public Records Act. The policy served by disclosure of public documents is to preserve the accountability of public agencies for their actions.
2. Program Information. In the course of carrying out the inspection and enforcement program, each Co-Permittee will be compiling general data and other specific information about the compliance status of facilities in its area. From time to time, public requests for the release of information about local facilities may be received by Co-Permittee. The Public Records Act requires prompt response and information requests must be responded to within ten (10) days. In order to comply with the required response deadline, it is recommended that Team personnel contact their City Attorney or County Counsel representative immediately when an information request is received. The final decision as to the release of public documents should be made with the advice and assistance of counsel.

3. General Information Release Guidelines. As a matter of general information, Stormwater Program personnel should be aware that unless the information requested is confidential under the Ordinance, or subject to certain limited exceptions, it will be subject to disclosure under the public records act.

The information compiled by the City [Orange County] during the course of conducting all activities to promote compliance with the requirements of this Ordinance may include (but is not limited to) general program data on the quality of stormwater discharges, stormwater drainage system surveys, discharger information supplied for the review of New Development/Significant Redevelopment projects or for processing of applications for local permits, files and information on specific facilities and their compliance status and/or inspection documentation ("Program Information"). Program Information is to be available to the public and governmental agencies without restriction unless the person submitting the data (or from whom the data is obtained) specifically requests and is able to demonstrate to the satisfaction of the City [Orange County] that the release of such information will divulge information, processes or methods which would be detrimental to the user's competitive position.

The demonstration of the need for confidentiality made by the party seeking to protect information must meet the burden necessary for withholding such information from the general public under applicable State and Federal law.

All requests for confidentiality should be made at the time of submittal of the information by marking the submitted information "Confidential Business Information" on each page sought to be withheld from future disclosure.

Information that is demonstrated to be confidential should not be released to anyone other than a governmental agency without prior notification to the protected party. The results of monitoring or test data, which indicate the quality of stormwater discharge or other runoff or discharge, should not be deemed confidential.

- a) Limited exceptions to the release of public documents include:
 - 1) Privacy. Pursuant to Government Code §6254(c), Information in the possession of public agencies that is of a highly personal nature may be withheld from public disclosure if the

disclosure would be an unwarranted invasion of personal privacy.

- 2) Preliminary Agency Information. Pursuant to Government Code §6254(a), the draft memoranda, notes and preliminary documentation of public agencies may be withheld from disclosure if (1) the document is not otherwise retained in the ordinary course of the agencies activities, and (2) the public interest in withholding the document is greater than the public interest in disclosure of the document.
- 3) Deliberative Process Privilege. This case law exception to the release of public information applies if (1) the disclosure would expose internal decision-making processes of the agency and, thereby, discourage candid internal discussion and undermine the agency's ability to perform its functions, and (2) where the document is factual in nature, the document is inextricably related to a policy formulation process.
- 4) Privilege for Official Information. Pursuant to Evidence Code §1040, information that is acquired by a public employee in confidence and in the course of the conduct of their duties is not subject to public disclosure requirements if the need to preserve the confidence is greater than the policy in favor of public disclosure.
- 5) Trade Secrets. Pursuant to Evidence Code §1061, persons seeking protection of documents as trade secrets may apply to the court for protection of documents. The information may be considered a trade secret if it is a formula, pattern, compilation, program, device, method, technique or process, and (1) It derives independent economic value (whether actual or potential) by virtue of not being generally known to the public or others who might obtain value from the disclosure, and (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- 6) Geological Data. Geological or geophysical data or other similar information related to utility systems development is

protected from public disclosure under Government Code §6254(e) if the information is supplied to the public agency in confidence.

E. Safety Procedures

The work of the Authorized Inspector in conducting inspections under the Ordinance should be performed in accordance with acceptable safety practices as developed by each Co-Permittee's safety officer. An inspection safety document developed and implemented by the County Sanitation Districts Orange County for use by their Compliance Division Inspectors is attached as Appendix D as a reference tool for each Co-Permittee to develop appropriate safety practices.

F. Administrative Compliance Inspections

As noted above, administrative compliance inspections are conducted for the purpose of assessing compliance and pursuing administrative or civil enforcement proceedings. The administrative compliance inspection is a term applied to two specific types of investigation procedures, the first of these is the incident response inspection, which is an individual property inspection, and the second is the planned area inspection. The following procedures are suggested for incident response inspections. Procedures for use in a planned area inspection are set forth in Appendix E.

1. The Incident Response Inspection. Typically the Authorized Inspector will encounter information about an event or incident of non-compliance. This may occur through a concerned citizen report, a report from another local agency, such as police or fire departments, or as a result of the Authorized Inspector's observations while in the field. Before investigation of the location in question occurs, a short individual property inspection plan should be prepared, which documents the information available about the non-compliant facility or property. The purpose of the single inspection plan is to establish that the inspection is occurring in accordance with set procedures, which establish a measure of justification for the inspection and thereby protect the regulated community from unreasonable searches. The inspection plan should state:
 - a) The source reporting the possible non-compliance.

- b) The address of location and facility contact person, if known.
- c) Specific facts reported about the non-compliance, including identification of the likely constituents of concern, where possible.
- d) Available water quality program data base information, such as specific details of past spill incidents at the location in question, status of compliance with General Permit requirements and/or conditions of approval for New Development/Significant Redevelopment, and notes from off-site visual observations.
- e) Because State statutes and the Ordinance require inspections at reasonable hours, the Authorized Inspector should identify a reasonable time for the inspection in the inspection plan. If an unusual time is selected (e.g. 10 p.m.) the inspector should describe why the time selected for the inspection is reasonable.

2. Inspection Notice and Consent. State statutes and the Ordinance require notice to the owner or occupant of the time and date of the inspection.

- a) Informal Notice and Consent. The Authorized Inspector may visit the site and make an informal (oral) request for consent to the inspection and, if the owner or occupant responds with verbal consent, then the inspection may proceed at that time. The Authorized Inspector should carefully document the owner's or occupant's verbal consent in his inspection notes. The Authorized Inspector should be aware that an inspection pursuant to verbal consent may be terminated at any time by revocation of the consent by the owner or occupant.
- b) Written Consent. As an alternative approach to informal contact and verbal consent, the Authorized Inspector may seek written consent by delivery of a request to inspect to the site in question. Written requests for consent should state the following:
 - 1) The purpose of the inspection, which is to conduct an administrative compliance inspection.
 - 2) The name of the Authorized Inspector and agency personnel to be contacted for further information.

- 3) The proposed time and date of inspection.
- 4) A request for the return of the owner/occupant's written consent for the inspection.

If the written request for consent to inspect is not returned to the Authorized Inspector, then the inspector may wish to visit the site and either pursue the informal/verbal consent inspection noted above or request, in person, the written authorization consenting to the inspection.

If written consent to an administrative compliance inspection is received from the owner or occupant, the Authorized Inspector should be aware that an inspection pursuant to written consent may be terminated at any time by the verbal revocation of the consent by the owner or occupant.

- c) Inspection by Warrant. If verbal consent or written consent to an administrative compliance inspection is refused by the owner or occupant, the Authorized Inspector may seek an administrative warrant following the procedure described in Section G below. By statute, inspections conducted by administrative warrant require 24 hours advance notice to the owner or facility occupant of the date and time of the inspection. However, the issuing magistrate may waive the requirement of advance notice of the inspection if the Authorized Inspector establishes that the inspection results may be materially altered by the advance notice requirement.
- d) Change in Inspection Purpose. During the course of conducting any administrative compliance inspection, whether conducted pursuant to consent or after issuance of an administrative inspection warrant, if, at any time, the Authorized Inspector obtains information which leads him/her to believe that the agency may pursue a criminal prosecution instead of an administrative or civil enforcement proceeding, then the purpose of the inspection has changed and it is no longer an administrative inspection. At that point, the Authorized Inspector must notify the person who is the subject of the inspection that information obtained through further inspection may be used in a criminal prosecution. The inspection may continue if

consent (preferably written, but may be verbal) is then provided for a criminal inspection. If consent is not provided, the Authorized Inspector should leave the site and bring an application for a criminal inspection warrant to the magistrate pursuant to the procedure described below.

G. Administrative Compliance Inspection Warrants

Where oral consent is not received or when written consent requests are not returned, or consent is determined to be otherwise inadvisable, the Authorized Inspector should, following consultation with the Enforcing Attorney, seek an administrative inspection warrant.

1. Purpose. The administrative inspection is necessary to ascertain the compliance of one or more facilities or locations with the provisions of the Ordinance. The administrative inspection must be conducted in accordance with Ordinance Section VI.A., Scope of Inspections.
2. Single Inspections. The Authorized Inspector may identify a specific property for a compliance inspection based on limited facts indicating that a condition may exist at that location in violation of the Ordinance.
3. General Inspection Plan. The Authorized Inspector may identify the property or properties to be inspected based on a general or routine plan for enforcement of the Ordinance, which selects, by area or by category or classification of activities, facilities or locations having some potential to contribute discharges to the storm drain system that are in violation of the Ordinance.
4. Consent. The Authorized Inspector should request that the owner or occupant of property consent to an inspection to be conducted for the purpose of verifying compliance with the provisions of the Ordinance. The request may be made by direct contact with the owner or occupant, but if the Authorized Inspector cannot directly contact the owner or occupant, the request for consent may be posted at the entrance to the property. If consent is obtained, a warrant is not required.
5. Notice, Time and Entry. Inspections must be conducted at reasonable hours. The occupant or owner of the property should receive notice of the time and date of the inspection. An Authorized Inspector's request for

consent may serve as notice, but in the case of warrant inspections, written notice should be given 24 hours in advance by posting a copy of the warrant on the subject property. In the absence of an emergency requiring immediate entry or judicial authorization therefore, no forcible entry should occur. Notwithstanding the notice, time and entry requirements, the Authorized Inspector may establish to the satisfaction of the issuing magistrate that the purpose of the inspection will be harmed by compliance with these requirements and less restrictive conditions or requirements may be issued to ensure that an effective inspection may occur.

6. Warrant Application. The Authorized Inspector should consult with the Enforcing Attorney for the preparation of an application to the proper magistrate for issuance of an Administrative Inspection Warrant.
7. Inspector Affidavit. The Authorized Inspector may conduct administrative inspections in accordance with Code of Civil Procedure §1822.50 et seq. upon application to a court of competent jurisdiction for issuance of an administrative inspection warrant based on such proof as the court may require, including an affidavit of the Authorized Inspector establishing the following:
 - a) The date, time and location of the proposed administrative compliance inspection and the party to be served with the inspection warrant, if known.
 - b) The source of information indicating that the location to be inspected is suspected of being in non-compliance with the Ordinance. The specific facts relied upon by the Authorized Inspector to conclude that a condition of non-compliance may exist at the location.
 - c) That a request for consent to the inspection was either made by contacting the owner or occupant was sent in writing to the owner or occupant, but consent was refused or not received. In the alternative, the affidavit may explain why the request for consent requirement should be waived.

H. Criminal Investigations

Any person who negligently or knowingly violates any provision of the Ordinance has committed a misdemeanor, but as a matter of policy, it is suggested that criminal prosecution should generally be the last step taken to stop a condition of

noncompliance. In some limited cases criminal enforcement may be appropriate as a first step in enforcement if the facts indicate that the violation is severe, willful and egregious.

1. Causes for Criminal Prosecution. Criminal prosecution will be appropriate if information or events indicate that a particular owner or operator of a facility is causing an unlawful discharge, which is (i) willful, (ii) fails to comply with the best management practices imposed on a New Development or Significant Redevelopment project, (iii) violates the terms, conditions and requirements of a Local Permit, (iv) continues after notice of non-compliance is received, or (v) is a direct attempt to conceal a violation of the Ordinance. Criminal prosecution may be utilized for egregious violations which are the result of negligent rather than willful conduct. Figure 1 identifies the range of enforcement options available. Figure 2 identifies circumstances when administrative remedies or criminal prosecution may be appropriate.

2. Co-Permittee response. In response to the above, the Co-Permittee may treat the actions of the discharger as subject to criminal sanctions and the Authorized Inspector should act as follows:

- a) Request the assistance of the Enforcing Attorney in deciding whether to seek consent to inspect by contacting the owner or apply directly for the issuance of a warrant for inspection of possible criminal violations.
- b) Criminal warrants may be issued on the affidavit of the Authorized Inspector prepared as described above in Section G.7 for administrative compliance inspection warrants; however, an application for a criminal search warrant must state the specific facts and details establishing the Authorized Inspector's honest and strong suspicion that a criminal violation may be found at the location. An honest and strong suspicion of a criminal violation must be supported by distinct facts describing what is known to the Authorized Inspector about the site and its conditions. These might include:
 - 1) Site conditions
 - 2) Observed equipment
 - 3) Observed discharges, odor or coloration.
- c) The Authorized Inspector's warrant application must identify the scope of the criminal inspection in as much detail as is then available, including the place and areas to be searched, the items to be inspected, tested, sampled, photographed, videotaped, copied or otherwise discovered at the location.

I. Arrests

Authorized Inspectors do not have authority to act as peace officers; therefore, arrests of persons committing misdemeanors under the Ordinance should be made by police officers. If the Authorized Inspector has identified a set of circumstances as proper for the criminal arrest of the party or parties involved, then the Authorized Inspector may wish to arrange in advance for the presence of a police officer.

J. Emergency Entry

The Ordinance provides that entry on property without consent or warrant may be made in certain limited circumstances, as follows:

"In the event [a] nuisance constitutes an imminent danger to public safety or the environment, the . . . [Co-Permittee] may enter the property from which the nuisance emanates, abate the nuisance and restore any area of public property affected by the nuisance. To the extent reasonably practicable, informal notice shall be provided to the owner or occupant prior to abatement. If necessary to protect the public safety or the environment, abatement may proceed without prior notice to or consent from the owner or occupant thereof and without judicial warrant.

- (i) An imminent danger shall include, but is not limited to, exigent circumstances created by the dispersal of Pollutants, where the same presents a significant and immediate threat to the public safety or the environment.
- (ii) Notwithstanding the authority of the City [Orange County, Orange County Flood Control District] to conduct an emergency abatement action, an administrative hearing pursuant to [Water Quality Ordinance] Section VII.A.8 shall follow the abatement action."

1. Identification and Documentation of Emergency Conditions. In most cases actual emergencies involving hazardous materials will be responded to by the Co-Permittee's Fire Department Response Team. The first responder may be in the best position to determine the need for summary abatement to prevent harm to the public or the environment.

Because circumstances may occur where the Authorized Inspector or another Team member is the first person who responds to a spill or other release that threatens the public or the environment, the following discussion is offered to assist program personnel in the determination of facts and conditions that may justify unauthorized entry onto property and summary abatement:

- a) Time Considerations. If conditions indicate that in order to protect the public safety or the environment from an immediately dangerous

condition, action should not be delayed for the period necessary to either obtain consent or a warrant to enter the property.

- b) Convenience. The emergency abatement procedure should never be used merely because it is the more convenient way to stop uncontrolled discharges.

- c) Factual Support. The Authorized Inspector must be able to establish that the emergency abatement is necessary to eliminate an immediate, dangerous condition. Improper entry is actionable by civil suit, and the Authorized Inspector must have more than a mere suspicion that the condition is harmful. If doubt exists whether the condition presents a harmful situation, it may be appropriate to contact the Orange County Hazardous Materials Strike Force and/or the Co-Permittee's Fire Department to make the determination. In most cases, if the threat is serious, these agencies will be prepared to take emergency steps to stop the threatened harm.

VIII. DOCUMENTING NONCOMPLIANCE

The Authorized Inspector's goal in conducting the inspection should include obtaining legally defensible documentation of any discovered noncompliance.

A. Scope of Inspection

The Ordinance authorizes the inspector to act as follows:

1. Enter property (by consent or warrant) to investigate the source of any discharge to any public street, gutter, storm drain or Stormwater Drainage System.
2. Verify compliance with the Ordinance by identifying products produced, processes conducted, chemicals used and materials stored on the property,
3. Verify compliance with the Ordinance by identifying point(s) of discharge of all Pollutants, wastewater and process water systems,
4. Verify compliance with the Ordinance by investigating the natural slope of the property, drainage patterns and man-made conveyance systems and establishing the location of all points of discharge from the property, whether by surface runoff or through a storm drain system.
5. Request all records relating to the chemicals or processes occurring on site, including, material or chemical inventories, facilities maps or schematics and diagrams, material safety data sheets, hazardous waste manifests, business plans, pollution prevention plans, State General Permits, stormwater pollution prevention and monitoring plans.
6. Inspect, sample and test any area runoff, any area of soil (including groundwater testing), process discharge, materials within any waste storage area (including container contents), and/or treatment system discharge for the purpose of determining the potential for contribution of pollutants to the Stormwater Drainage System.
7. Investigate the integrity of the wastewater discharge (sanitary sewer) system or other pipelines on the property using appropriate tests, including but not limited to smoke and dye tests or video survey.

8. Erect and maintain monitoring devices for the purpose of measuring any discharge or potential source of discharge to the Stormwater Drainage System.

B. Collection of Evidence

The Authorized Inspector should carefully document the inspection to insure that accurate information is obtained and all evidentiary requirements are met. The following procedures are suggestions for the collection of evidence and may replace or supplement, at the discretion of the Co-Permittee, the Co-Permittee's current enforcement program. It is suggested that the Authorized Inspector may conduct inspections in accordance with the following steps:

1. Discuss the planned inspection in advance with the Enforcing Attorney and gain suggestions for the gathering and preservation of important evidence, and if it is anticipated that an enforcement action will result or it is otherwise appropriate, then:
2. Utilize an inspection inventory sheet, such as the example provided at Table 3.
3. Carefully observe all physical conditions. For example, the inspector should be alert to (i) odors, such as sulfide smells, similar to rotten eggs, which may indicate discharges from meat packers, dairy operations or stale wastewater dumping, (ii) color, such as green discharges, which may indicate runoff from chemical or textile facilities, (iii) turbidity, such as cloudy water, which may indicate waste runoff from automotive dealers, and (iv) floatable matter, such as oil sheen, which may indicate discharges from petroleum refineries or vehicle service facilities. Additional parameters of observation for physical conditions are identified in Tables 4 and 5.
4. Consult with the laboratory which will analyze samples obtained to determine if any special handling or sample preservation techniques will be required for the types of samples expected to be obtained.
5. Verify that all containers to be used for sample collection have been properly cleaned.
6. Investigate all areas on the property which may have an illicit connection.

7. Obtain samples of all suspect stormwater runoff and all on-site pollutants located or stored in a manner which may contribute to a prohibited discharge or otherwise be in violation of the Ordinance. Samples should be obtained, if possible, from the point at which the water is running off the subject property.
 - a) Assign each sample a sample identification number. The sample number should be marked on both the sample container and/or a separate log indicating the sample number and the location from which the sample was obtained.
 - b) Preserve all samples, as required for proper laboratory analysis.
 - c) Seal the sample container with evidence tape and store the sample in a secure area until delivered to the laboratory for analysis.
 - d) Photograph all sample containers.
8. Upon request, the discharger should, if possible, be provided with a split sample of each sample obtained.
9. Follow chain-of-custody requirements for the collection, retention and analysis of samples.
10. Photograph the areas of investigation in item nos. 6 and 7. All photographs should be of at least 35 mm film for future ease in developing and enlarging, where necessary. Further, the first and last photo taken of any series of documentation or evidence should be a poster/paper indicating the date and the case name.
11. Document any photograph taken with a written narrative verifying:
 - a) Location from which photograph is taken;
 - b) Date and time of photograph;
 - c) Name of photographer;

- d) Description of contents of the photo, including buildings, markers and items depicted in the photograph.

The goal in preparation of the written narrative is to allow a person not present at the scene to match the photographer's description to the photographs. This step assists later parties who were not present in verifying that the Inspector did, in fact, take the picture, and he/she can accurately testify as to what it shows. If possible, a date/time marker should be included at the beginning and end of the photo roll.

The written narrative should be prepared as near in time as possible to the taking of the photograph. One approach might be the recording of the narrative at the time the picture is taken. The photographer should sign and date the narrative on completion.

- 12. Conduct separate interviews with persons on the site who are responsible for facilities management or may otherwise have information relevant to the potential of the operations/facilities to contribute Pollutants to the Stormwater Drainage System. If the investigation is criminal in nature, all interviews should be conducted by or with trained investigators from the local police or fire district.
- 13. Review requested documents and copy or otherwise record important contents.
- 14. Perform smoke or dye tests, video surveying, or other appropriate tests.
- 15. After the inspection, the Inspector should prepare a detailed written report, including a description of the site, the processes thereon, the location of each sample point, the names and addresses of all potential witnesses, recorded observation of physical conditions indicating possible discharge (see Tables 2 and 3), the findings of the inspection, and the manner in which the runoff is reaching the Stormwater Drainage System.
- 16. As appropriate, confer as early as possible with the Enforcing Attorney to review findings and to determine if additional evidence should be collected.

IX. MANAGING DATA AND DISCHARGER INFORMATION

The information collected for facilities and area inspections should be systematically retained and collected into a data pool to be utilized as follows:

- A. To establish and report on overall stormwater NPDES compliance program progress;
- B. To plan future inspections; and
- C. To select appropriate enforcement tools if that becomes necessary.

As noted above, the creation and maintenance of the data pool is the first job responsibility of the Program Clerk.

As the NPDES stormwater program continues, a periodic review should be planned for the data collected pertaining to each particular location and the overall compliance history of the location should be assessed.

X. NEW DEVELOPMENT AND SIGNIFICANT REDEVELOPMENT PROJECTS

The Co-Permittees are imposing conditions of approval on New Development and Significant Redevelopment projects in order to ensure project compliance with the DAMP.

It is anticipated that, in most instances, such conditions will be drawn from the best management practices which are part of the Development Project Guidance. These conditions of approval will be implemented with the incorporation of structural and non-structural best management practices (BMPs) into the project. These BMPs must continue to be implemented, if non-structural, and must continue to be functional, if structural, for the life of the project. Ensuring the continued satisfactory operation of these BMPs is a key element of the stormwater quality management enforcement effort.

A. Recording of Approved Compliance Plans

Recordation of approved compliance plans through which BMPs are imposed is not a requirement. Each Co-Permittee must weigh the advantages to BMP enforcement (notice to property owner of BMPs) against the administrative burden associated with potential future changes of recorded requirements.

1. If the Co-Permittee determines that the approved compliance plan will contain terms or requirements, restrictions of use, covenants and conditions or other prohibitions or obligations which are to be enforceable against, or require the compliance of other Persons, such as future owners and occupants of the property, then, subject to Section V.A.7. of the

Ordinance, the Co-Permittee may require the property owner to record the approved compliance plan along with other documentation to be recorded for the project (such as, covenants, conditions and restrictions, use permit conditions, or map approval conditions).

In the alternative, if no other document is to be recorded, which affects terms, conditions or obligations on the owner or occupant, then the Co-Permittee may require the approved compliance plans to be recorded as a separate declaration of restrictions for the property. The Co-Permittee should require the project proponent to provide a copy of each document recorded to the Co-Permittee promptly after recording.

2. The approved compliance plans imposed pursuant to the DAMP should include a statement regarding failure to implement the conditions, such as: "This approved compliance plan constitutes notice to the holder hereof that each and every failure to implement and adhere to the terms, conditions and requirements of the approved compliance plan constitutes a violation of the City's [County's] Water Quality Ordinance and may subject the violator to potential civil and/or criminal enforcement action."
3. If the approved compliance plan has been recorded as a Declaration of Restriction or as a part of other recorded covenants, conditions or obligations, then any subsequently revised Declaration of Restriction or other similar document should also be recorded as a supplemental declaration of restriction, which amends, supersedes and revises in relevant part, the earlier recorded requirements.
4. If the approved compliance plan is recorded as a part of the covenants, conditions and restrictions for any New Development or Significant Redevelopment project, the approved compliance plan should include the following recitations:
 - (i) The City [Orange County] owns adjacent lands and other real property interests deriving benefit from the covenants, conditions and restrictions and any common plan or scheme established therein.
 - (ii) The City [Orange County] is entitled to bring a civil action to enforce the covenants, conditions and restrictions, and may seek all damages, costs and expenses, including legal costs and attorneys

fees, incurred as a result of the violation of the covenants, conditions and restrictions.

XI. SELECTING ENFORCEMENT OPTIONS

In selecting enforcement options, the Co-Permittee must ensure that violations of a similar nature are subjected to similar-types of enforcement remedies in order to avoid any claim of selective enforcement of the Ordinance. Nonetheless, a more severe enforcement option may be selected when a violator has either a history of noncompliance or has failed to take good faith actions to eliminate continuing violations or to meet a previously imposed compliance schedule. (See Figures 1 and 2)

An enforcement action should be brought promptly, preferably within 60 days following discovery of the violation. Delays longer than 60 days may result in the failure of witnesses to recall events accurately or may lull the person violating the Ordinance into believing that no additional enforcement action will occur, which often means that a negotiated resolution becomes more difficult to accomplish.

Enforcement options should be reviewed with the Enforcing Attorney to insure that evidence is collected and delivered in a timely fashion.

A. Administrative Remedies

The Ordinance establishes four (4) administrative remedies, which together provide a range of enforcement response to the Authorized Inspector. These include (i) a Notice of Noncompliance; (ii) an Administrative Compliance Order; (iii) a Cease and Desist Order; and (iv) commencement of other civil or criminal enforcement action.

1. Notice of Noncompliance. The Notice of Noncompliance is the least onerous enforcement tool and constitutes a basic request that the property owner or facility operator rectify the condition causing or threatening to cause noncompliance with the Ordinance.

The Notice of Noncompliance may be issued when one or more of the following circumstances exist:

- a) The violation or threat is not significant and has been short in duration,
- b) The responsible party is cooperative and has indicated a willingness to remedy the conditions,
- c) The violation or threat is an isolated incident, and
- d) The violation or threat does not affect and will not harm human health or the environment.

Prior to use of more onerous enforcement options, the Co-Permittee should first deliver to the person the Notice of Noncompliance, which states the act or acts constituting the violation and directs that the violation be corrected.

The Notice of Noncompliance should provide the person with a reasonable time period to correct the violation before further proceedings are brought against the person. However, a Notice of Noncompliance should not be the first enforcement method used if egregious or unusual circumstances indicate that a stronger enforcement tool is needed.

2. Administrative Compliance Orders. The Administrative Compliance Order is an appropriate enforcement tool in the following circumstances:

- a) An actual condition of noncompliance exists, but the condition cannot be remedied within a relatively short period of time.
- b) The owner of the property or facility operator has indicated willingness to come into compliance by meeting milestones established in a reasonable schedule.
- c) The violation does not pose an immediate threat to human health or the environment.

3. Cease and Desist Order. The cease and desist order is appropriate when the immediate action of the owner of property or operator of a facility is necessary to stop an existing discharge, which is occurring in violation of the Ordinance. The cease and desist order may also be appropriately issued as a first step in ordering the removal of nuisance conditions, which threaten to cause an unauthorized discharge of Pollutants if exposed to rain or surface water runoff.

The cease and desist order may issue when one or more of the following circumstances exist:

- a) The violation or threat is immediate in nature and may require an emergency spill response or immediate nuisance abatement if left unattended.
 - b) The violation or threat exhibits a potential situation that may harm human health or the environment.
 - c) The Authorized Inspector's contacts with the property owner or facility operator indicate that further authority of the City [Orange County] may need to be demonstrated before remedial action is forthcoming.
 - d) The Authorized Inspector's prior Notices of Non-compliance have not obtained a favorable response.
4. Enforcement Strategy. Prior to issuance of any Administrative Compliance Order, cease and desist order or commencement of other civil or criminal enforcement action against any person, the Co-Permittee should deliver to the person a written Notice of Noncompliance, which states the act or acts constituting the violation and directs that the violation be corrected. The Notice of Noncompliance should provide the person with a reasonable time period to correct the violation before further proceedings are brought against the person. However, a Notice of Noncompliance should not be the first enforcement method used if egregious or unusual circumstances indicate that a stronger enforcement method is appropriate. Appendix F contains examples of form administrative orders which may be used for enforcement purposes.

B. Criminal Enforcement

1. Misdemeanors. Criminal enforcement is appropriate when evidence of noncompliance indicates that the violator of the Ordinance has acted wilfully with intent to cause, allow to continue or conceal a discharge in violation of the Ordinance.

2. Infractions. At the discretion of the Enforcing Attorney, misdemeanor acts may be treated as infractions. Factors that the Enforcing Attorney may use in determining whether the misdemeanor is more appropriately treated as an infraction may include:
 - a) The duration of the violation or threatened violation.
 - b) The compliance history of the person, business or entity.
 - c) The effort made to comply with an established compliance schedule.
 - d) The existence of prior enforcement actions.
 - e) The actual harm to human health or the environment from the violation.

3. Issuance of Citation. Where criminal enforcement is indicated, the Authorized Inspector may cause issuance of a citation to the offending party pursuant to Penal Code §853.5, §853.6, and §853.9. The citation shall include:
 - a) The name and address of the violator,
 - b) The provisions of the Ordinance violated,
 - c) The time and place of required appearance before a magistrate.

The offending party must sign the citation thereby promising to appear. If the cited party refuses to sign the citation, the Authorized Inspector may cause the arrest of the discharger, or may refer the matter to the Enforcing Attorney for issuance of a warrant for arrest. Authorized Inspectors should be aware that cited parties have the right to demand the immediate review by a magistrate, and such a request must be granted. Authorized Inspectors should respond to such a request by referring the request to a local Police Officer.

C. Other Civil Actions

The Authorized Inspector should consult with the Enforcing Attorney in all matters of continuing or emergency nuisance, and at the discretion of the Enforcing Attorney, an injunction may be sought or other civil enforcement proceeding may be brought in accordance with the provisions of the Ordinance.

D. Other Administrative Proceedings

Where the Co-Permittee has issued a local permit as described in Section VIII of the Ordinance, the Authorized Inspector may elect to initiate administrative proceedings to suspend, revoke or modify the permit if the permit terms are violated or if changed conditions occur.

XII. ADMINISTRATIVE HEARINGS

The Ordinance provides for appeals of the Authorized Inspector's decisions to a designated Hearing Officer. In the usual case, the Hearing Officer will be either the City Engineer or the Director of Public Works or an appointee or substitute for that person.

The final decisions of Hearing Officers are appealable to the court with proper jurisdiction under statutory review procedures, however, some Cities may elect to allow Hearing Officer decisions to be taken on appeal to the City Council or Mayor before the decision is considered final.

A. Qualifications

1. Hearing Officers should approach each hearing as an impartial party.
2. They should be trained in and understand the Ordinance and the Enforcement Consistency Guide.
3. The Hearing Officer should have knowledge of the practical aspects of implementing a stormwater pollution control program.
4. It is also essential that the Hearing Officer be familiar with basic administrative procedures for administrative hearings and, in some cases, it may be appropriate to provide independent counsel to assist the Hearing Officer in obtaining an understanding of the following:
 - a) The proper consideration of evidence (generally, all evidence that is reasonably reliable may be considered at an administrative hearing), and
 - b) The weight of hearsay evidence in administrative matters (generally, statements that are quotations from persons other than the party testifying may not be allowed if the statement is the only evidence available to establish the point evidenced by the statement).

B. Rulings

1. Hearing Officers will hear matters that are both contested and uncontested, and his/her job will be to exercise discretion to determine whether or not the evidence supports the conclusion that the Ordinance was violated.
2. There are boundaries to the Hearing Officer's exercise of discretion and the Hearing Officer should seek the advice of counsel with respect to these limitations. For example, where the facts of an event show that an activity occurred that was harmful to the environment, the Hearing Officer may not have sufficient discretion to find that no violation of the Ordinance occurred.