

# ENFORCEMENT RESPONSE PLAN

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# ENFORCEMENT RESPONSE PLAN

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## ACRONYMS

BMP	Best Management Practice
CGP	Construction General Permit
ECC	Erosion Control Coordinator
ERP	Enforcement Response Plan
MS4	Municipal Separate Storm Sewer System
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
ROW	Right-of-Way
SWPPP	Stormwater Pollution Prevention Plan
USEPA	United States Environmental Protection Agency

# SECTION 1

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## 1. INTRODUCTION AND BACKGROUND

This Stormwater Enforcement Response Plan (ERP) codifies enforcement procedures used by the City of Rosemount (City) to enforce provisions of its National Pollutant Discharge Elimination System (NPDES) Statewide Stormwater Permit No. MS400117 (hereafter referred to as the MS4 Permit). Under the MS4 permit, the City is to control the release of pollutants to and discharges from the municipal separate storm sewer system (MS4) which is owned or operated by the City through rules and regulations regulating stormwater discharges. The goals of the MS4 permit are as follows:

- Control the contribution of pollutants to the MS4 by stormwater and non-stormwater discharges associated with industrial activity and the quality of stormwater discharged from sites of industrial activity.
- Prohibit illicit discharges to the MS4.
- Control the discharge to the MS4 from spills, dumping, or disposal of materials other than stormwater.
- Require compliance with conditions in State statutes, rules, permits, contracts, and orders.
- Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the MS4.

The City's MS4 consists of a conveyance or system of conveyances owned by the City that is designed or used for collecting or conveying stormwater, which is not a combined sewer and which is not part of a publicly owned treatment works.

### *1.1 Purpose*

This ERP describes the measures available to the City to exercise its authority. The ERP identifies enforcement procedures designed to encourage a timely response by the discharger. Implementation of the ERP will ensure a consistent response throughout the City and avoid confusion, delays, and disputes over enforcement for stormwater pollution prevention.

An effective enforcement program depends on detailed and comprehensive documentation of all contacts with the alleged violator and of all evidence establishing the violation. Investigations and enforcement actions must be handled quickly. The City is required by the Permit to investigate reports of illicit discharges and initiate enforcement action to eliminate the source(s) of the discharge.

# SECTION 1

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## **1.2 *Rosemount's Permit History***

The City's current MS4 permit was issued by the State of Minnesota's Pollution Control Agency (MPCA) and became effective on August 1, 2013. This permit replaces the previous National Pollutant Discharge Elimination System (NPDES) MS4 permit issued by the MPCA on June 1, 2006. The scope of the current permit includes all stormwater discharges associated with construction sites, industrial facilities, maintenance facilities, and other activities within the MS4's jurisdiction.

## **1.3 *Types of Enforcement Actions***

The City will use City Code, permits, and penalties to enforce illicit discharges to the City's MS4 system. The City anticipates two general types of stormwater violations: construction sites, and illicit discharges or connections to the City's MS4. Potential violators include construction contractors, businesses, industries, private citizens, and other governmental agencies which are detailed below.

### **1.3.1 Construction Sites**

The City's construction contractors are required to obtain all required permits pertaining to land disturbance activities from various agencies. Permits could include watershed, DNR, City, or State permits.

To that end, the City has inspection oversight responsibility and must ensure that a trained employee inspects construction activity at sites until final stabilization is achieved. The MS4 permit requires the City to implement a system to monitor contracted construction activities and to enforce Permit provisions. The City is required to list and describe all violations and enforcement responses taken for construction activities in the Annual Report submitted to MPCA.

The City's authority to take enforcement action at construction sites is derived from its city code along with permit language.

### **1.3.2 Illicit Discharges and Connections**

The Permit also requires Rosemount to take measures to detect and eliminate illicit discharges and connections to the City's MS4. An illicit discharge is defined as any discharge to a MS4 that is not composed entirely of stormwater, with the exception of allowable non-stormwater discharges and separately-permitted discharges. Illicit connections are defined as any man-made conveyance that connects an illicit discharge directly to the MS4. The City is required to implement a program to minimize, detect, investigate, and eliminate illicit discharges and connections, including unauthorized non-stormwater discharges and spills, into the MS4 system.

## SECTION 2

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### 2. METHODS OF DISCOVERY OF NON-COMPLIANCE

Reports of a stormwater violation or non-compliance may come from one of several sources:

- Reports from City Staff – Illicit discharges and discharges of sediment or other pollutants from the construction sites, facilities, or other sources within the City's MS4 may be observed by City staff as they conduct normal activities such as driving to or from job sites, or when inspecting other activities. Such non-compliances could include water and wind erosion, sediment tracking onto local streets, poor housekeeping, location of concrete washouts, and failed or ineffective best management practices (BMPs).
- Permit Compliance Activities – Non-compliances may be discovered through Permit-required inspections or monitoring, including construction site inspections, dry weather screening, and stormwater sampling.
- Contractor Compliance Activities – Non-compliances may be discovered through a construction contractor's failure to comply with the State's Construction General Permit (CGP) requirements such as conducting and submitting inspection reports, obtaining annual certifications, and preparing and implementing Stormwater Pollution Prevention Plans (SWPPPs).
- Reports from the Public – Public complaints may come directly to the City or through other local, state or federal government agencies.

## SECTION 3

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### 3. CONSTRUCTION SITE EROSION AND SEDIMENT ENFORCEMENT

This section imposes the obligation of an applicant to perform their duties in an honest, diligent, and cooperative manner.

The following section describes the City's authority and the mechanisms for enforcing Permit provisions on construction sites within the boundaries of the City's MS4 jurisdiction.

#### 3.1 *Compliance Requirements*

Compliance with stormwater permits and laws on construction projects within the City's MS4 must be enforced according to these Enforcement Response Procedures.

- Applicants are to comply with the State's NPDES CGP, City, and Watershed permits for regulated construction projects, including the obligation to file a Notice of Intent (NOI) and obtain authorization under the State CGP for each construction project or site. The applicant shall also file a Notice of Termination (NOT) for each construction project or site, either terminating their responsibility if final stabilization has been achieved, or transferring it to another owner for completion.

#### 3.2 *Construction Enforcement*

When stormwater non-compliance is identified by the City, enforcement actions will be taken within 7 days following identification of the non-compliance. The City will take appropriate sanctions against the applicant based on the nature and severity of the situation. Non-compliances will be classified as minor or major violations. Major violations are generally those acts or omissions that lead to a discharge of pollutants to stormwater. Minor violations are generally instances of non-compliance that do not directly result in such a discharge. Serious discharges or an imminent threat of discharge on a project may require an immediate escalation to a higher level of enforcement. The level of enforcement response will depend upon several factors:

- Severity of the violation: the duration, quality, and quantity of pollutants, and effect on public safety and the environment
- The violator's knowledge (either negligent or intentional) of the regulations being violated
- A history of violations and /or enforcement against individual or contractor
- The potential deterrent value of the enforcement action

The City will use the following progressive enforcement policy, escalating the

## SECTION 3

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response when an applicant fails to respond in a timely manner. If the City identifies a deficiency in the implementation of the approved SWPPP or amendments and the deficiency is not corrected immediately or by a date requested by the City, the project is in non-compliance. The recommended sequence of enforcement actions are detailed below.

### **3.2.1 Notice of Violation**

A warning letter may be issued if the non-compliance continues for 7 days, if the non-compliance cannot be corrected while the inspector is on site, or if the non-compliance is a significant violation. The warning letter will document the reasons why the discharge is illegal and provide a deadline for compliance. Compliance is required within 48 hours to avoid additional enforcement actions; however, if the situation warrants, shorter or longer deadlines may be permissible. A sample letter to violators is provided in Appendix A.

### **3.2.2 Stop Work Order**

If the verbal and written warnings do not result in corrective action by the documented deadline, the City may stop work (full or partial shutdown) at the construction site. Upon successful corrective action in response to a stop work order and upon approval by the City, work may begin again at the site. An example stop work order is provided in Appendix B.

#### ***3.2.2.1 Temporary Suspension of Work***

If immediate action is required due to an imminent threat of discharge, or if the contractor does not respond to the warning letter within the required time frame, the City may temporarily suspend work on the project until the corrective action has been completed.

#### ***3.2.2.2 Require Corrective Action***

The City may require the permit holder to undertake corrective or remedial action to address any release or threatened release or discharge of the hazardous substance, pollutant or contaminant, water, wastewater, or stormwater.

## SECTION 4

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### 4. ILLICIT DISCHARGES AND CONNECTION ENFORCEMENT

The City is responsible for monitoring discharges to its MS4. The Permit requires the City to ensure that the discharges do not cause or contribute to an exceedance of water quality standards. Any discharge/connection without permission is an illegal encroachment on the City's MS4. A discharge/connection can be discovered in two ways, either through routine inspection or due to a complaint.

Similarly to the process in **Section 3.2**, notification of observed illicit connections or discharges will be carried forward to the connector/discharger by the inspector or observer. The City will use the following progressive enforcement policy, escalating the response when a discharger fails to respond in a timely manner.

#### 4.1 *Verbal Warning*

When a routine inspection of the drainage system identifies an illegal connection/discharge to the City's MS4 system, the inspector will document the discharge on an Illicit Discharge Detection and Elimination Inspection form or in their City electronic management system, which will be provided to the City Engineer within 48 hours, as well as notify other departments and agencies as appropriate.

If the source of the connection is evident, the observer/inspector will contact the connector/discharger directly by phone or in person to discuss elimination. The communication will include requesting any permits or other authorizations and providing a follow up date (within 15 days). If the discharge is permitted or authorized (documentation is required), no further action is required; if the discharge is not authorized, it will need to be corrected or terminated within 15 days.

#### 4.2 *Written Warning*

If after 15 days the illicit connection/discharge has not been corrected, a City representative will issue a "Notice of Illegal Discharge and Demand for Corrective Action" letter to the property owner (example letter in Appendix C). The letter will request that the connection/discharge be corrected or removed within 30 days. A follow up inspection will be performed by a City representative to ensure compliance. If the connection/discharge has not been corrected, the incident will be referred internally to the City Engineer for further review.

#### 4.3 *Removal of Connection/Discharge*

The City may remove the illegal connection/discharge if it has not been corrected within a suitable timeframe. If the City removes the illegal connection/discharge, the responsible party is subject to civil action for damages.



## SECTION 4

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### **4.4 Civil Action**

If the illegal connection/discharge is not corrected within 60 days of observation, the City Engineer may forward the matter to be considered for further legal action. Additional measures will be escalated as needed to achieve compliance.

#### **4.4.1 Minnesota Pollution Control Agency**

Authority to administer the state MS4 permit in Minnesota rests with the MPCA. The MPCA has several enforcement mechanisms for violations of NPDES rules, including fines.

#### **4.4.2 United States Environmental Protection Agency**

Although the USEPA delegated authority for the NPDES Program to the state of Minnesota, the USEPA reserves the authority to apply fines in addition to fines issued by the MPCA. Federal environmental regulations based on the Clean Water Act allow the USEPA to levy fines on dischargers of up to \$27,500 per day per violation.

## SECTION 5

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### 5. EMERGENCY RESPONSE CONDITIONS

The City's MS4 Permit identifies "discharges from emergency situations where federal rules specify washing as the preferred method to assure public safety" as an authorized non-stormwater discharge. Such discharges will not be subject to enforcement action.

## SECTION 6

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### 6. REPORTING REQUIREMENTS

The City shall provide a list and description of all violations and their resolutions, including any enforcement actions taken against contractors, corporations, or other entity in the Annual Report to MPCA. At a minimum, the inspector should document the source of the complaint, the date, the time, the contact person (if any), a description of the nature of the non-compliance or illicit discharge, actions taken, and final resolution.

## **APPENDIX A**

### **Non-Compliance Notice to Contractors**

## Erosion Control Violation Notice

### Notice:

A VIOLATION has been observed with respect to the City of Rosemount's Erosion Control Requirements, Surface Water Management Ordinance Title 10, Section 10-1-12.

An inspection was performed at \_\_\_\_\_,

(within the) \_\_\_\_\_ (Development) at \_\_\_\_\_ (P.M.)/(A.M.)

on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

### Erosion control Non-Compliance Items:

The following items have been found to be non-compliant with the City of Rosemount's Erosion Control Requirements and must be corrected as noted:

Silt Fence/Hay Bales \_\_\_\_\_

\_\_\_\_\_

Rock Entrance \_\_\_\_\_

\_\_\_\_\_

Spoil Piles/Sediment Piles \_\_\_\_\_

\_\_\_\_\_

Other \_\_\_\_\_

\_\_\_\_\_

A mandatory follow-up inspection will be performed FORTY-EIGHT hours from the time and date of this document. Failure to correct the noted items will result in a STOP WORK ORDER, at which time, NO building inspections will be performed or scheduled and NO work will be allowed to continue. A STOP WORK ORDER will be released upon final approval by the engineering department.

Please call the City at 651-322-2005 for a re-inspection.

\_\_\_\_\_  
Inspector Signature

**APPENDIX B**

**Stop Work Order**

# **STOP WORK**

## **DO NOT CONTINUE WORK**

### **DO NOT REMOVE THIS NOTICE**

#### **THIS IS A STOP WORK ORDER**

This lot is in violation of The City of Rosemount Erosion Control Ordinance. Before work can continue corrections must be made. Please call 651-322-2022.

Contractor/Owner: \_\_\_\_\_

Address: \_\_\_\_\_

Citations may be issued on failure to comply with city codes or this notice. Violation of the City Code is a Misdemeanor. Section 9-1-1/

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Rosemount Public Works Department  
2875 145<sup>th</sup> Street West  
Rosemount, MN 55068

## **APPENDIX C**

### **Notice of Illegal Discharge and Demand for Corrective Action**



## NOTICE OF ILLEGAL DISCHARGE OR CONNECTION

Person or Business Name  
Address  
Rosemount, MN

Dear Property Owner:

The City of Rosemount is responsible for maintaining the storm sewer system. The Minnesota Pollution Control Agency (MPCA) Municipal Separate Storm Sewer System General Permit requires the City to control the amount of pollutants entering the drainage system. Part of this charge is the detection and elimination of illegal discharges or connections to the system that may contain pollutants or are otherwise not allowed. Left uncorrected, any pollutants entering the system will ultimately impact nearby streams, as storm drainage is not treated at a treatment facility. Any discharge/connection without permission is illegal and requires immediate termination of the discharge.

An inspection of the drainage system has occurred in the vicinity of your property and an illegal connection/discharge was discovered entering into the City system. The discharge/connection was discovered on <insert date> at <insert business name and address>.

Indicators or Source include pipng and staining.

Photographs of this discharge/connection are enclosed with this letter. In addition, I have enclosed an aerial photograph showing the location of this discharge/connection.

This discharge or connection must be ceased or removed within 30 days. A follow-up investigation will be conducted after that time to ensure compliance. If the situation is not corrected, the City will take corrective measures, including but not limited to referring this matter to the MPCA so that enforcement action can be taken, which may include the issuance of a fine. As an alternative, the City may remove the discharge/connection and invoice you directly pursuant City Code Title 10, Chapter 2. If the illegal discharge/connection cannot be removed within 30 days, or if you do not understand this notice, or if you disagree that an illegal discharge/connection exists at your property, please contact me with further details or explanation by calling 651-322-2022 or by email at pwadm@ci.rosemount.mn.us.

Sincerely,

Andrew J. Brotzler, PE  
City Engineer

Enclosure (photographs)

Cc: