

# **CITY OF ALGONAC**

## **ENFORCEMENT RESPONSE PROCEDURE**

### **Introduction:**

An Enforcement Response Plan (ERP) has been developed which outlines the procedures followed by City's Enforcement Coordinator to identify, document and respond to violations not in compliance with Illicit Discharge Elimination Program (IDEP), City of Algonac Ordinances and the City's Storm Water Management Plan. Incorporated into the ERP are specific criteria by which Enforcement Coordinator can determine the enforcement action most appropriate to the nature of the violation. In addition , the ERP describes the duties of the Enforcement Coordinator methods used to determine compliance with applicable regulations; procedures to review compliance data.

### **Definitions**

**Administration Orders:** Enforcement documents, which direct the Violator to undertake or to cease, specific activities. Administrative Orders may incorporate compliance schedules, timeframes, administration penalties, and termination of services orders. Administration orders include:

- Finding of Non-compliance - a written notice instructing the Violator to identify and correct causes of -non compliance.
- Consent Order- documents non-compliance and includes actions required to be accomplished by specific dates. Consent Orders are developed during Compliance Meetings and both parties agree to terms.
- Compliance Order - directs the Violator to achieve or restore compliance by a date specified in the order. A compliance Order is often a stipulated agreement that may include a compliance schedule, the payment for monetary penalties, or cost recovery for and the imposition of fines when milestones are not meet.
- Cease and Desist Order - directs a Violators non-compliance to cease illegal or unauthorized discharges or to terminate discharges altogether.
- Termination of Services or Permit Revocation - a notice delivered to a Violator serving notification of the intent to revoke the User's Permit or the termination of services.

**Compliance Inspection:** An inspection to determine compliance status and to identify practices, which may lead to non-compliance. Compliance inspection are normally not scheduled.

**Compliance Meeting:** A meeting with the Violator to discuss the causes of non-compliance, corrective actions to achieve compliance, and time frames for the implementation of corrective actions.

**Compliance Schedule:** A timetable for the implementation of corrective actions by the Violator in order to achieve consistent compliance.

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**Good Faith Effort:** Prompt and vigorous pollution control measures undertaken by the Violator which shows that extraordinary efforts have been made to achieve compliance. Good faith may also be defined as the user's honest intention to remedy its non-compliance coupled with actions, which support to this intention.

**Notice of Violation (NOV):** AN official notice that a violation of discharge regulations has occurred. A written response to the Notice of Violation identifying causes of the violation and corrective actions taken to prevent recurring violations is required within two weeks of the mailing date.

**Verbal Warning:** A documented warning communicated to the Violator orally. The violation is usually slight or within the range of analytical error.

**Warning Notice:** A written notice that a violation has occurred. The Warning Notice directs the Violators to take actions to correct the violations, and does not require a formal response.

### **Duties of the Enforcement Coordinator**

The Enforcement Coordinator (EC) is a city employee appointed by the Mayor of Algonac to ensure that the Enforcement Response Plan is followed in a timely and consistent manner. To achieve this, the EC conducts the following duties:

- Reviews monitoring results and verifies violations.
- Reviews and inspects public complaints of illicit discharges.
- Inspects construction activities occurring within the city that has the potential for contamination to surface waters.
- Determines if violation of Part 91 (SESC Permit) has occurred. If so, EC notifies all complaints to St. Clair County Health Department Environmental Health Division (Part 91 agency) immediately following the inspection of the illicit discharge.
- Reviews violation of Part 91 (SESC Permit) with St. Clair County Health Department Environmental Health Division, determine severity of violation, if it warrants further review the St. Clair County Health Department Environmental Health Division will contact MDEQ.
- Verify Violator's responded, in a timely manner, to Notices Violations, Compliance Meetings, and Compliance Schedules.
- Assists in the preparation and running of compliance meetings. Review compliance meeting schedules and ensure that deadlines are being met.
- Prepare weekly compliance reports.
- Review monitoring results and identify discharge violations.

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- Track Violator's response to Notices of Violations, Compliance Meetings, and Compliance Schedules.
- Review Violator's response letters to ensure the response adequately addresses compliance issues.
- Review compliance meeting schedules and ensure that deadlines are being met.
- Prepare non-routine compliance letters, Administrative Orders and Citations.
- Review Violator's compliance history reports.
- Enters all enforcement actions into the Enforcement Action Database.

### **Enforcement Response Guide**

The Enforcement Response Guide (ERG) lists the routine types of non-compliance and enforcement actions taken. These routine actions include Verbal Warnings, Warning Notices, Notices of Violation, Administrative Citations and Compliance Meetings. This guide is a matrix, which describes violations and indicates minimum enforcement actions.

Prior to taking any enforcement action, including Verbal Warnings, the EC will ensure that the type of enforcement action proposed is consistent with the enforcement response guide and is appropriate to the level of violation.

If multiple violations for one or more parameters occur during a calendar day, the Violator will only be issued one enforcement action, and all violations will be listed. If during an inspection multiple violations are discovered, over a number of days, those violations will be grouped by day and each group of violations will be issued an enforcement action.

When considering the type of enforcement action to be taken, the ERG serves as a **minimum standard**. EPA's Guidance for Developing Control Authority Enforcement Response Plans Chapter 4.1 discusses the criteria that the Control Authority should consider when determining a proper enforcement response. Enforcement action may be **escalated** when considering the criteria for evaluating the degree of non-compliance. When an enforcement action is increased over the minimum, written documentation will detail the reasons for the increased enforcement action. The six criteria for evaluating the degree of non-compliance are:

- **Magnitude of the violation**

Generally an isolated instance of noncompliance can be met with an enforcement response listed in the Enforcement Response Guide. However, since even an isolated violation could threaten public health and the environment, damage public and private property, or threaten the integrity of the Control Authority's program, the enforcement response to this type of violation must be escalated to 1) mitigate the violation quickly, 2) prevent a reoccurrence of violation(s), 3) provide an appropriate level of response and

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4) provide for cost recovery as appropriate.

- **Duration of the violation**

Violations (regardless of severity) which continue over prolonged periods of time should subject the Violator to escalated enforcement actions. The response to these situations must prevent extended periods of noncompliance from recurring.

- **Effect of the violation on the receiving water**

One of the primary objectives of the Program is to prevent pollutants from “passing through” and entering the receiving waters. Consequently, any violation which results in environmental harm will be met with an escalated enforcement response.

A minimum response to these types of violations would be an administrative order and referral to the attorney. In addition, the response should ensure the recovery from the Violator of any NPDES fines and penalties. Termination of service may also be considered for repeat violations.

- **Compliance History of the Violator**

When evaluating the level of enforcement action to be taken for a violation, the last twelve months compliance history of the Violator shall be reviewed. If a pattern of recurring violations for the same parameter is noted, then an escalated enforcement action may be warranted.

- **Good Faith of the Industrial User**

The Violator’s “good faith” effort in correcting its noncompliance is a factor in determining which enforcement action to take. “Good faith” maybe defined as the user’s honest intention to remedy its noncompliance, coupled with actions which give support to this intention. However, good faith does not eliminate the necessity of an enforcement action.

### **Types of Enforcement Actions**

A **Verbal Warning** is generally issued for Slight Violations. In this case the inspector notifies the Violator that a violation occurred and directs the Violator to take corrective actions. This notification serves as the enforcement action. Written documentation of a Verbal Warning will be posted to the company’s file. The Inspector may schedule additional inspections and/or sampling, or may elect to implement more stringent enforcement action. A more stringent enforcement action may be the issuance of a Warning Notice in place of a Verbal Warning in cases where there have been previous recent violations for the same parameter

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and according to the guidelines. The issuance of a Verbal Warning will be documented in the facility's file.

A **Warning Notice** is a written notice and is generally issued for a Slight or Moderate Violation depending on the criteria evaluation. A Warning Notice documents the type of violation that occurred and directs the Violator to identify and correct the cause of the violation. The Inspector may schedule additional inspections and/or sampling, or may elect to implement more stringent enforcement action. A more stringent enforcement action may be the issuance of a Notice of Violation in place of a Warning Notice in cases where there have been previous recent violations for the same parameter and according to the guidelines.

A **Notice of Violation** is generally issued for a Severe or for recurrent violations. The Notice of Violation documents the type of violation that occurred and directs the Industrial User to identify and correct the cause of the violation. The Violator is required to respond in writing, within two weeks, describing the cause of the violation and the corrective actions taken.

**Compliance Meetings** are held when Severe Violations occur or when previous violations appear to remain uncorrected as evidenced by repeated violations. Many Notices of Violation do not require a compliance meeting. During a compliance meeting, a compliance schedule and timeline are established. Progress on the compliance schedule is tracked by the Enforcement Coordinator. Compliance schedules are completed when all tasks are completed and consistent compliance is achieved.

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<b>NON COMPLIANCE FORM</b> <b>Algonac Enforcement Response Procedure (ERP)</b>
Name of responsible party:
Incident date:
Incident location:
Describe the violation:
Describe the enforcement used:
Schedule of return to compliance:
Date of violation resolution:
Additional notes: