

# City of North Augusta

## Stormwater Management Department

### Enforcement Response Plan

The City of North Augusta's Stormwater Management Department inspects and investigates impacts to its storm sewer system and watershed as required by its MS4 permit. This document explains the legal authority of the department, types of violations that require correction, steps to ensure compliance, and the actions available if compliance is not met.

## 1. Enforcement Overview - Legal Authority

The following ordinances provide the City of North Augusta's Stormwater Management Department (SWMD) authority to

- access and conduct site inspections,
- conduct monitoring,
- to establish and enforce policy.

### **I. North Augusta Code - Article V. Stormwater Management; Division 2. Illicit Discharge**

#### Sec. 14-150. Purpose/intent

The purpose of this division is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of non-stormwater discharges to the storm drainage system to the "maximum extent practicable" as required by federal and state law. This division establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4). The objectives of this division are:

- (1) To prohibit illicit connections and discharges to the municipal separate storm sewer system.
- (2) To ensure the proper installation, operation, and maintenance of construction site best management practices (BMPs).
- (3) To establish legal authority to carry out all procedures necessary to ensure compliance with this division.

(Ord. No. 03-21, § I, 8/14/03)

#### Sec 14-161 Enforcement.

(1) Whenever the SWMD finds that a person has violated a prohibition or failed to meet a requirement of this division, the SWMD may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- a) The elimination of illicit connections or discharges;
- b) That violating discharges, practices, or operations shall cease and desist;
- c) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
- d) The implementation of source control or treatment BMPs.

(2) If Abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that,

should the violator fail to remediate or restore within the established deadline, the city or a contractor will do the work and the expense thereof shall be charged to the violator.

Sec. 14-162. Civil Penalties.

Any person found to be in violation of this ordinance that fails to comply with a compliance directive issued by the SWMD and referenced in Section 14-161 shall be punishable as provided in Section 1-8(1) of the City Code of North Augusta. Each day in violation of the provisions of this division shall constitute a separate and distinct offense. The punishment shall be in addition to the remedial process provided for in Section 14-161. (Ord. No. 03-21 § I, 8-14-03)

Sec 14-163. Remedies not exclusive.

The remedies listed in this division are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies. (Ord. No. 03-21 § I, 8-14-03)

*(Reference 1)*

*Chapter 1) General Provisions*

Sec. 1-8. General penalty; continuing violations.

*Wherever in this Code, or in any ordinance or resolution of the council, or rule, regulation, notice or order promulgated or given by any officer or agency of the city under authority duly vested in such officer or agency, and act is prohibited or is declared to be unlawful or an offense or a misdemeanor, and no specific penalty is provided for the violation thereof, the violation of any such provision of this Code or any such ordinance, resolution, rule, regulation, notice or order shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than thirty (30) days, or both, or as otherwise limited by state law. Each day any violation of this Code or any such ordinance, resolution, rule, regulation, notice or order shall continue, shall constitute, except where otherwise provided, a separate offence.*

Sec. 1-10. Ordinance summons.

*a) An "ordinance summons" is hereby adopted in accordance with Act 328 of 1992.*

*b) The city administrator (Administrator), all department directors (Director), and any person designated by the Administrator or Director as a code enforcement officer shall be empowered to use the ordinance summons.*

***SWMD designee: Codes Enforcement Officer of the City of North Augusta***

**II. Ordinance No. 2004-09: Establishing Regulations for Erosion and Sediment Reduction and Stormwater Management on Land and Land Disturbing Activities. Effective July 19, 2004; Division 3 Construction Permitting for Land Disturbing Activities REVISED-ADOPTED CHANGES December 20, 2021**

Sec. 14-178 Enforcement

(1) *Cease and Desist Order; Revocation of Permit.* In the event that any person holding a site development permit or individual building permit pursuant to this ordinance violates the terms of the permit, or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the SWMD may suspend or revoke the site development permit by issuance of a written notice.

(2) *Violation and Penalties.* Any person found to be in violation of this ordinance that fails to comply with a compliance directive issued by the SWMD shall be punishable as provided in Section 1-8<sup>(1)</sup> of this Code of Ordinances. Each day in violation of the provisions of this division shall constitute a separate and distinct offense. The punishment shall be in addition to any remedial activity needed to safeguard the public, the environment or the City storm drainage system. The SWMD reserves the right to conduct emergency repair or maintenance to any STP at the responsible party's expense if the responsible party is unwilling or unable to perform the necessary work.

## 2) Construction Site Compliance Inspections

**Required Pre-Construction Meeting:** All projects require a pre-construction meeting prior to beginning work. These meetings are to be conducted on site. The SWMD and the Engineering Department site inspector will meet with representatives of the developer, contractors, sub-contractors, and utility installers to discuss the SWPPP and its requirements.

### Self-monitoring inspections:

Site inspections are to be performed by the stormwater permit holders designated site inspector. As required by the NPDES General Permit for Stormwater Dischargers Associated with Construction Site (hereinafter "NPDES General Permit") a site inspector must be either:

- The stormwater pollution prevention plan (SWPPP) preparer or someone working under his or her direction.
- A DHEC certified erosion prevention and sediment control inspector (CEPSCI). To learn more about obtaining this certification contact Clemson (864) 656-1456 or visit their website at: <http://www.clemson.edu/t3s/cepsci/index.htm>.
- A professional engineer

Inspections must be performed at the frequency described in the project SWPPP. The SWPPP will indicate the required frequency. For most projects, that is weekly and after storm events that exceed 0.5" of rainfall.

The site inspector is required to perform routine inspections to effectively address maintenance and repair of Best Management Practices (BMPs). As part of the site inspections, the site inspector **must document** the inspection by preparing a sediment and erosion control inspection report for each inspection. The report **must include** findings of the

inspection and list maintenance activities required to bring the site into compliance with its permit. The report should include notes regarding changes that may be required to the SWPPP. The site inspector must sign and date the inspection report. To enable effective communication and quick response to any stormwater quality control deficiencies, the City encourages the site inspector to contact the City Stormwater Management Department (803) 441-4246 regarding any questions, concerns, or major changes that may need to be implemented to protect water quality. All of the inspection reports must be kept on site for inspection.

## Compliance inspections – Projects with a permitted C-SWPPP:

ALL OWNERS AND CONTRACTORS MUST FOLLOW THE PERMIT FOR THE PROJECT WHETHER IT BE A SWPPP (Site Plan and Associated Paperwork) OR AN INDIVIDUAL LOT PERMIT (BMP guide or Subdivision SWPPP)

Site inspections are conducted routinely at residential and commercial projects to verify compliance with the approved SWPPP (stormwater pollution prevention plan) also known as “the Permit”. Two permits are issued for projects with approval of the SWPPP, the City SW Construction Permit and the state NPDES Construction General Permit (CGP). The SWPPP also may *reference* other permits issued or guidelines required for protection of water quality (e.g. ACOE permits, 404 Permits, FEMA, Well, Septic, UST, SC Forestry BMPs, etc.). City inspectors will notify the project manager and developer of all deficiencies noted during the inspection with a time-frame required to bring the site into compliance before further action will be taken.

### Inspection Rating Descriptions:

- **Satisfactory** – the site is in compliance with the SWPPP. For city oversight inspections, the inspection is electronically logged only. No paper report is generated.
- **Marginal** – the site inspection revealed minor site problems or related BMP maintenance issues that need to be addressed and indicate that no offsite impacts are imminent. The marginal rating alerts the project manager that maintenance activities need to be addressed as soon as possible. A written report is submitted to the responsible party and permit holder.
- **Unsatisfactory** – the site inspection revealed that:
  - BMPs are not installed according to the SWPPP,
  - insufficient maintenance activities of BMPs are evident,
  - BMP installations are insufficient or improper,
  - site inspections inadequate or are not being performed,
  - *site clearing/grading has gone beyond the limits approved, (immediate Cease & Desist until approved Major Modification in hand)*
  - sequence of construction for the project is not being followed,
  - or the required documents (NPDES General Permit) are not on site.

The Unsatisfactory rating is to alert the project manager and permit owner that the site is non-compliant with its SWPPP thus violating the terms of the permit(s) and that the site must be brought into compliance. Failure to address the problems within the time-frame allotted by the inspector may result in a Cease & Desist order (aka “Stop Work Order”). After inspection, a written report is submitted to the responsible party or “operator” with a time frame to bring the site into compliance. A follow-up inspection will be conducted at the end of that time frame to verify compliance is met. If the operator cannot meet that deadline, **they must contact the inspector to discuss the issues and ask for more time to complete**. The inspector will conduct the follow-up inspection to verify compliance is met (no charge) on the day specified on the report or the date agreed upon if difficulty arises. For that inspection, if a second unsatisfactory rating is given for the site, the operator must immediately repair the controls and bring the site into compliance and call for a follow-up inspection within the timeframe given on the second report. This subsequent inspection is \$50.00. The operator must pay the \$50.00 to the city building standards office prior to receiving the third inspection. It may be paid prior to the end of the timeframe given on the

second inspection report. **Failure to bring the site into compliance in a timely manner is a violation of the permit.** Each subsequent violation (failure to bring site into compliance) where the operator failed to correct issues or created further issues from the initial (first) unsatisfactory report, will require a fee payment of \$50.00 for each inspection until the site is in compliance.

- **Cease & Desist** – The Cease & Desist notice requires that all site work stops *except* activities to correct deficiencies to stabilize the area(s) noted in the report(s) or when further permitting required is attained. No further inspections will be conducted by the city for any purpose except to verify compliance with the stormwater construction permit. If no permit exists, only sediment & erosion control BMPs can be implemented until the permit is issued. This rating alerts the project manager and permit owner that there are deficiencies that require immediate attention to protect properties or waterways from impact and or the site is not in compliance with its SWPPP and/or impacts to waterways, storm sewers, adjacent properties or right of ways are evident or immanent; and/or the operator has ignored stormwater inspection reports and directives, and has failed to manage the site as required by the permit.

A Cease & Desist may be issued for failure to correct deficiencies. If previous site inspections have concluded that the site is not in compliance [violating the terms of the permit(s)] and no attempts have been made to correct deficiencies and bring the site into Satisfactory condition [within the time frame described in the Unsatisfactory inspection report(s)], the site can be issued a Cease & Desist *regardless* of immanent impacts to adjacent properties, waterways, or right of ways. A written report is submitted to the responsible party and permit holder.

Operators that repeatedly fail to manage the site according the SWPPP are placed on a heightened inspection program due to those failures and a Cease & Desist may be issued to halt the project to address all stormwater concerns.

If problems persist and compliance cannot be achieved by the Cease & Desist order, a summons will be issued litigation and fines.

*General: Correction Time frames:* These time frames may be adjusted based on previous SWMD experiences with project owners, managers or contractors. In addition, in the event of immanent weather forecasts of strong storms and excessive rainfall, the time-frames may be adjusted to prevent impacts that might occur. The actual time frame to bring a site into compliance is at the discretion of the inspector conducting the assessment of site conditions and imminent rainfall.

- **Impacts to waterways:** Discharges must stop immediately. Corrections must be made within 24 hours of inspection (1 day). This includes storm drainage systems leading directly to a waterway. Failure to comply will result in a Cease & Desist order.
- **Immanent/Potential impacts to waterways:** Corrections must be made within 48 hours of inspection (2 days). This includes storm drainage systems leading directly to a waterway.
- **Major impacts to right of ways:** Corrections must be made within 24 hours of inspection (1 day).
- **Minor impacts to right of ways:** Corrections must be made within 48 hours of inspection (2 days).
- **Major impacts to adjacent properties:** Corrections must be made within 24 hours (1 day).
- **Minor Impacts to adjacent properties:** Corrections must be made within 48 hours of inspection (2 days).
- **Installation/Maintenance of required or additional BMPs with no potential for impacts to waterways, adjacent properties, or right of ways:** Corrections must be made within 5 days of the inspection.
- **Installation/Maintenance of required or additional BMPs with immediate threat to waterways, adjacent properties, and right of ways:** Corrections must be made within 24 hours of inspection (1 day).

## Compliance inspections – Residential S/D lot or individual lot:

Individual lot construction sites in permitted subdivisions or on private lands require an initial satisfactory BMP compliance inspection prior to obtaining a footing inspection by the Building Standards Department. **No land disturbing activity may be initiated until BMPs are in place.** All building permits holders (issued by Building Standards) are considered

stormwater permits if an overall SWPPP or site permit is not issued. Each building permit holder is provided a BMP/sediment and erosion control pamphlet that guides them on proper BMPs and requirements. Owners or operators must contact the Stormwater Management Department for a compliance inspection once BMPs have been installed at the site. If the project is evaluated as satisfactory or marginal (see ratings descriptions on Page 4), the contractor may begin clearing and grading the site for the building, begin the footing or foundation work and then contact Building Standards for a footing inspection to proceed to the next step. If the project is rated Unsatisfactory, then BMPs must be installed/repared and re-inspected and signed off as Satisfactory by the SWMD prior to requesting further site inspections by the Building Standard inspectors.

Failure of owners/contractor(s) to abide by SWMD compliance inspections will result in a Cease & Desist order being issued to that owner/contractor. While a Cease & Desist order is in place on a lot, the city may withhold all other permits under review, city required inspections, or Certificate of Occupancy requested. Repeated violations by a contractor or group of contractors working in a permitted subdivision that has the potential to impact stormsewers or waterways will result in the **subdivision** permit owner receiving a Cease & Desist order that will halt all construction within that subdivision until the permit owner brings the site into compliance with its SWPPP. Enforcement actions may be taken against all parties involved up to a summons.

### 3) Non-Compliant Inspections

Any maintenance, repair or installation of non-critical BMPs that are noted deficient during the inspection by the site inspector and/or City Inspector must be completed within the time-frame noted on the report. Non-critical means that the inspector deemed that there is no immediate threat to a waterway, adjacent property, or a right of way.

Any maintenance, repair or installations of critical BMPs that are noted during the inspections by the site inspector and/or City Inspector must be completed by the end of the working day or within twenty-four (24) hours from the time of the inspection. Critical deficiencies include any that pose an immediate threat or current impact to a waterway, adjacent property, or right of way.

As noted above, after the initial non-compliance report and its follow-up inspection, there is a fee (\$50.00) that will be required for all subsequent inspections resulting from the initial non-compliance report. The \$50.00 fee will be charged for all subsequent inspections until the site passes the inspection.

#### **The following information outlines typical non-compliance issues and may lead to enforcement actions.**

1. Failure to obtain a City of North Augusta Stormwater Permit and/or failure to obtain a State NPDES Construction General Permit if the project is greater than or equal to one (1) acre or are part of a larger common plan of development or sale. A Cease & Desist site work order will be issued until permits are approved and BMPs are required to be installed immediately if the site is disturbed.
2. Failure to abide by the conditions of the City Stormwater Discharge Permit (SWPPP).
3. Discovery of an illicit discharge to a waterway or the City Storm-sewer system.
4. Failure to properly install, maintain, and/or replace *critical* BMPs by the end of the working day or within twenty four (24) hours of such items being noted unsatisfactory during an inspection.
5. Failure to properly install, maintain, and/or replace non-critical BMPs within five (5) calendar days of such items being noted during an inspection.

6. Impacts to waterways, adjacent properties, or right of ways.
7. Failure to Cease & Desist site work after an order to do so is received, codes enforcement will become involved.
8. Failure of permit holders to inspect and monitor their BMPs and assure that the SWPPP is being followed.
9. Clearing beyond the limits of disturbance indicated within the OS-SWPPP.
10. Clearing and grading more than the permit allows for individual home construction. The permit dictates.
11. Cutting, filling, or disturbing soils in floodplains, floodways, or wetlands without authorization to do so.

### Impacts to waterways:

Failure to maintain BMPs in such a way as to impact a waterway is a critical violation of the City Stormwater Discharge Permit, the State NPDES General permit, the South Carolina Pollution Control Act, and the federal Clean Water Act. No discharges of sediment, construction debris, or other pollutants are allowed into waterways, adjacent property, or rights of way within the city.

## 4) Post-Construction Facility Inspections

All stormwater facilities will be inspected annually for deficiencies and physical integrity. If a deficiency is found, the City inspector will submit a report to the responsible party. If the responsible party fails to correct a critical deficiency in a timely manner, the city may elect to correct the deficiency at the owner's expense.

## 5) Illicit Discharge Inspections

An illicit discharge is any discharge of pollutants or potential pollutants to the city's storm sewer system or waterways. The city conducts routine investigations, inspections, and water quality monitoring to determine if an illicit discharge is occurring. Any commercial, residential, or construction site found to have an illicit discharge coming from its property will be notified and the discharge must be eliminated immediately. If an illicit discharge is found, the city will contact the responsible party to implement corrective actions at the site. Illicit discharges could lead to an enforcement procedure. Failure to adhere to the direction of the City Stormwater department regarding illicit discharges will lead to enforcement proceeding as stated in (6) Enforcement.

## 6) Enforcement

If site conditions are found to be in violation of the SWPPP or any other requirements of the Construction Permit during an inspection by the City Inspector, one or all of the following actions may be taken:

1. In some instances, a verbal warning to bring the site into compliance or an email to the permit holder.

2. A Written Compliance Report (Inspection report/Notice of Violation) with a time frame to bring the site into compliance.
3. One free follow-up inspection to determine compliance will be conducted.
4. Cease & desist or stop work order for residential or commercial projects not brought into compliance as determined by a follow-up inspection by the SWMD designated official.
5. Cease & desist or stop work order for individual residential projects that fail to maintain BMPs at their site. No further site inspections from any city department will be conducted until the stop work order is lifted. Pending permits and other city required documents can be put on hold. The stop work order can only be lifted by the Stormwater Management Department.
6. Revocation of permit(s) for the project.
7. Denial of further review or follow-up inspections at sites of permit holder that is under a Cease & Desist site work order within the city.
8. Issuance of a summons to appear before the magistrate court for judgement and fine.
9. A formal legal action may be brought by the city against the permit owner, land owner or its agents to further remedy a non-compliant site located within the city if necessary.
10. A formal remedy authorized by the city or legal action may be taken to reimburse the city of any and all costs associated with bringing a site into compliance after failure to do so by the owner.

**Additional penalties for violations: *for information only***

**2017 South Carolina Code of Laws**

**SC Code Title 48 - Environmental Protection and Conservation Chapter 14 - THE STORMWATER MANAGEMENT AND SEDIMENT REDUCTION ACT**

Civil penalties for violations. Universal Citation: SC Code 48-14-140

(A) Any person who violates any provision of this chapter or any ordinance or regulation promulgated, enacted, adopted, or issued pursuant to this chapter by the department or other implementing agency, or who initiates or continues a land disturbing activity for which a stormwater management and sediment control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty of not more than one thousand dollars. No penalty may be assessed until the person alleged to be in violation has been notified of the violation. Each day of a violation constitutes a separate violation.

(B) The implementing agency shall determine the amount of the civil penalty to be assessed under this section for violations under its jurisdiction. It shall make written demand for payment upon the person responsible for the violation and set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within thirty days after demand for payment is made, a civil action may be filed in the circuit court in the county in which the violation is alleged to have occurred to recover the amount of the penalty. If the implementing agency is the department, the action must be brought in the name of the State. Local governments shall refer the matters under their jurisdiction to their



respective attorneys for the institution of a civil action in the name of the local government in the circuit court in the county in which the violation is alleged to have occurred for recovery of the penalty.

## **Title 48 - Environmental Protection and Conservation**

### **CHAPTER 1 - POLLUTION CONTROL ACT**

Section 48-1-330. Civil penalties. Universal Citation: SC Code § 48-1-330 (2017)

Any person violating any of the provisions of this chapter, or any rule or regulation, permit or permit condition, final determination or order of the Department, shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation.