



# **City of Portland, TN Municipal Separate Storm Sewer System Permit Enforcement Response Plan**

**Revised:**  
March, 2017

**Implemented by the:**  
City of Portland Stormwater Department  
100 South Russell Street  
Portland, TN 37148

## **Introduction:**

The City of Portland Stormwater Department is responsible for enforcing stormwater code. There are three distinct types of enforcement within the Stormwater Department. The first section of the Enforcement Response Plan (ERP) covers construction and development stormwater code violations. The second section of the ERP covers stormwater code violations specific to illicit discharges regardless of whether they are from development properties or other sources. The final section explains the Stormwater Department enforcement measures for Post Construction Best Management Practice (BMP).

## **Section 1: Construction Related Violations:**

### **1.1 Stormwater Department EPSC Summary:**

Adequate Erosion Prevention and Sediment Control (EPSC) measures shall be required on Land Disturbance Permit plans prior to them being approved. Initial EPSC's must be installed, inspected, and approved prior to the land disturbance permit being issued. Controls shall be proactively maintained (including required inspections by the permittee's EPSC Professional) during the project and until the site achieves final stabilization. EPSC's that are found to be inadequate shall be upgraded by the permittee. EPSC inadequacies represent violations to the City of Portland Stormwater Ordinance. Additionally, City of Portland permit obligations (per State and Federal statutes) require an effective City of Portland EPSC enforcement program to promote compliance.

### **1.2 General:**

EPSC controls are expected to be installed and maintained per approved plans and associated specifications. Therefore, it is important that EPSC's on approved plans be adequate. All site discharges are to be controlled in a manner that does not result in pollution. If approved EPSC's are found by City of Portland staff to be inadequate once land disturbance activities commence, the permittee will be notified that enhanced BMPs are required. Any infraction to City of Portland Ordinance is considered a separate violation that may be enforced upon.

### **1.3 Enforcement:**

EPSC's and maintenance of EPSC's is the responsibility of the permittee per their Land Disturbance Permit requirements. EPSC maintenance records for a site should be available if requested by City of Portland staff to determine if enforcement is warranted (to delineate negligence vs. adequate controls that failed during latest rain event).

While weather is understood to impact some types of EPSC maintenance activities (i.e. heavy equipment use), it should not be considered to preclude all / interim smaller scale EPSC maintenance efforts (such as using manpower to improve controls etc.).

Lack of EPSC BMP maintenance is a violation. Illicit discharge of sediment due to inadequate EPSC is a violation.

### **1.4 Enforcement Tools:**

The City Engineer shall have the authority to issue notices of violation and citations, and to impose the Civil Penalties provided in this Title. Each day of noncompliance is considered a separate offense; and nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation, including application for

injunctive relief. If the Person, property or Facility has or is required to have a Stormwater discharge permit from TDEC, the City shall alert the appropriate state authorities of the violation.

All compliance deadlines and requirements shall be clearly noted on all NOV's and SWO's. Deadlines should be set with the mentality that they will be enforced expeditiously.

Administrative penalty calculations shall be based on the City of Portland's itemized penalty worksheet. A copy of this completed worksheet shall be saved in the appropriate file.

The processing of building permits and certificate of occupancy's shall be held until the site is in compliance. Additional land disturbance permits will not be issued for other phases of the project if a portion of the site is in non-compliance.

All NOV's/SWO's may be appealed by the person or entity in which it was served to. A hearing must be requested in writing to the City within ten (10) days of service of the NOV.

### **1.5 Documentation:**

All inspections and associated contacts must be documented within the appropriate database.

Photographs shall be date stamped and/or noted in the inspector's field log and saved in the appropriate network file folder. Enough photographs should be taken to document the violation and the result of the violation.

### **1.6 Enforcement Categories:**

#### **Official Warnings (verbal or written):**

**Verbal warning.** Verbal warning may be given at the discretion of the Inspector when it appears the condition can be corrected by the violator within a reasonable time, which time shall be approved by the Inspector.

**Written notice.** Whenever the City Engineer or Stormwater Program Manager finds that any Permittee or any other Person discharging Stormwater has violated or is violating this ordinance or a permit or order issued hereunder, the City may serve upon such Person written notice of the violation. All written notices will be documented and delivered by personal service or by registered or certified mail (return receipt requested) to the Person that has violated or is violating the City's Stormwater Ordinance. Within ten (10) days of this notice or shorter period as may be prescribed in the notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the City. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.

**Notice of Violation (NOV) (suspended penalty):** issued to sites where EPSC is inadequate or in need of significant maintenance, but excessive sediment loss has not been documented/observed at the site (but maintenance or upland disturbance is needed to prevent sediment loss during future rain events). If improvement is not made within 7 days or before the next rainfall the site may be subject to NOV with penalty. They may also be issued to smaller non-permitted sites such as single family residences in which there are no runoff issues.

**NOV (with penalty):** Issued to sites where EPSC is inadequate or in need of significant maintenance, and sediment loss has been documented/observed at the site. They are issued to sites that cause immediate harm to the environment and/or have not met the specified deadlines and are still in non-compliance from the warnings or NOV listed above. They are also issued to sites found having CGP / land disturbance permit violations as found under the itemized penalty worksheet.

To promote compliance, a penalty may be reduced in some instances, but no lower than 50 dollars, if it is documented that the site came into compliance prior to the deadline as stipulated in the NOV. A typical reduction will be 50 percent of the original penalty. An example may be that the unpermitted fill was removed and the site was stabilized as required prior to the deadline. Any penalty reduction options will be clearly written on the NOV that is issued.

**Stop Work Order (SWO) (no penalty):** issued to all sites found to be disturbing land without a land disturbance permit and to sites not adhering to the NOV with penalty deadlines (past due). A SWO may also be issued to a site if a Construction General Permit (CGP) is not obtained on a required site.

**SWO (with penalty):** same conditions as NOV penalty in addition to; previously issued NOV compliance conditions have not been met within the stipulated deadline or site noncompliance issues necessitate immediate mitigation (items that must be corrected prior to other work proceeding at the site as the site is losing significant amounts of sediment as evidenced by downstream structures or conveyances). A SWO should be issued to all sites found to be disturbing land without a permit.

**Tennessee Department of Environment and Conservation (TDEC) Referral:** If an offender refuses to accept a certified NOV/SWO letter or enforcement and/or is generally unresponsive to our requirements and deadlines despite our best efforts, the matter should be referred to TDEC.

**Enforcement Assistance Request to TDEC:** There may be occasions given the circumstances where TDEC needs to be notified for enforcement assistance. For violations relating directly to streams or the construction general permit, TDEC should be immediately contacted. When a request for assistance is made, proper documentation must accompany the request. This documentation would include: photographs, copies of inspections, copies of correspondence, copies of enforcements taken, and a summary report.

**Revocation:** Upon notice and opportunity for a hearing, the City Engineer may revoke any approval or permit issued under the provisions of the City of Portland Ordinance for any of the following reasons:

1. A false statement or misrepresentation of facts was made in the application or plans on which the permit or approval was based;
2. The developer or EPSC professional changes on a project without notifying the City; or,
3. A permitted site has unpaid civil penalties that are delinquent by 60 days or more.

**Penalty Multipliers:** To promote compliance and to protect water quality, habitat, and floodplain storage penalty multipliers are incorporated within the itemized penalty worksheet.

**Table 1 – Land disturbance Permit Violation Itemized Penalty Worksheet**

Violation	Comments	Multiplier	Penalty	Total
<b>Grading without a Land Disturbance Permit</b>	yes = 1		\$300.00	\$0.00
	Amount of acres graded		\$100.00	\$0.00
	in 100 yr floodplain - yes = 1		\$200.00	\$0.00
Previous Violation Multiplier Calculator	1 Violation = 1 2 Violations = 2 3 Violations = 3 4 Violations = 4 5 or More Violations = 5	1		\$0.00
Number of Previous Violations				
Dates of Previous Violations				
<b>Grading Without a Land Disturbance Permit Penalty Total</b>				<b>\$0.00</b>

Violation	Comments	Multiplier	Penalty	Total
<b>Failure to Install / Maintain EPSC</b>	yes = 1		\$100.00	\$0.00
	# of separate failure locations		\$50.00	\$0.00
	# of acres with exposed soils		\$50.00	\$0.00
Previous Violation Multiplier Calculator	1 Violation = 1 2 Violations = 2 3 Violations = 3 4 Violations = 4 5 or More Violations = 5	1		\$0.00
Number of Previous Violations				
Dates of Previous Violations				
<b>Failure to Install / Maintain EPSC Penalty Total</b>				<b>\$0.00</b>

Violation	Comments	Multiplier	Penalty	Total
<b>Failure to Follow Erosion Control Plan</b>	yes = 1		\$200.00	\$0.00
Previous Violation Multiplier Calculator	1 Violation = 1 2 Violations = 2 3 Violations = 3 4 Violations = 4 5 or More Violations = 5	1		\$0.00
Number of Previous Violations				
Dates of Previous Violations				
<b>Failure to Follow EPSC Plan Penalty Total</b>				<b>\$0.00</b>

Violation	Comments	Multiplier	Penalty	Total
<b>Failure to have EPSC Inspector on Site</b>	yes = 1		\$200.00	\$0.00
Previous Violation Multiplier Calculator	1 Violation = 1 2 Violations = 2 3 Violations = 3 4 Violations = 4 5 or More Violations = 5	1		\$0.00
Number of Previous Violations				
Dates of Previous Violations				
<b>Failure to Have EPSC Inspector Penalty Total</b>				<b>\$0.00</b>

Violation	Comments	Multiplier	Penalty	Total
<b>Failure to Provide Copies of EPSC Inspection Reports</b>	yes = 1		\$200.00	\$0.00
Previous Violation Multiplier Calculator	1 Violation = 1 2 Violations = 2 3 Violations = 3 4 Violations = 4 5 or More Violations = 5	1		\$0.00
Number of Previous Violations				
Dates of Previous Violations				
<b>Failure to Provide Copies of EPSC Inspection Reports Penalty Total</b>				<b>\$0.00</b>

Violation	Comments	Multiplier	Penalty	Total
<b>Transporting Fill to a Non Permitted Site</b>	yes = 1		\$100.00	\$0.00
Previous Violation Multiplier Calculator	1 Violation = 1 2 Violations = 2 3 Violations = 3 4 Violations = 4 5 or More Violations = 5	1		\$0.00
Number of Previous Violations				
Dates of Previous Violations				
<b>Transporting Fill to a Non Permitted Site Penalty Total</b>				<b>\$0.00</b>

Violation	Comments	Multiplier	Penalty	Total
<b>Construction that may Increase Flooding</b>	yes = 1		\$200.00	\$0.00
Previous Violation Multiplier Calculator	1 Violation = 1 2 Violations = 2 3 Violations = 3 4 Violations = 4 5 or More Violations = 5	1		\$0.00
Number of Previous Violations				
Dates of Previous Violations				
<b>Construction that may Increase Flooding Penalty Total</b>				<b>\$0.00</b>

Violation	Comments	Multiplier	Penalty	Total
<b>Water Quality Buffer Disturbance</b>	yes = 1		\$200.00	\$0.00
	stream listed on 303D List - yes = 1		\$300.00	\$0.00
	buffer disturbance >5,000 sqft - yes = 1		\$200.00	\$0.00
Previous Violation Multiplier Calculator	1 Violation = 1 2 Violations = 2 3 Violations = 3 4 Violations = 4 5 or More Violations = 5	1		\$0.00
Number of Previous Violations				
Dates of Previous Violations				
<b>Water Quality Buffer Penalty Total</b>				<b>\$0.00</b>

Violation	Comments	Multiplier	Penalty	Total
<b>Illicit Discharge of Sediment</b>	yes = 1		\$100.00	\$0.00
	# of separate discharge points in watershed of sediment impaired stream yes = 1		\$50.00	\$0.00
	directly in sediment impaired stream yes = 1		\$200.00	\$0.00
			\$300.00	\$0.00
Previous Violation Multiplier Calculator	1 Violation = 1 2 Violations = 2 3 Violations = 3 4 Violations = 4 5 or More Violations = 5	1		\$0.00
<b>Number of Previous Violations</b>				
<b>Dates of Previous Violations</b>				
<b>Illicit Discharge of Sediment Penalty Total</b>				<b>\$0.00</b>

Violation	Comments	Multiplier	Penalty	Total
<b>Failure to Post Land Disturbance Permit</b>	yes = 1		\$50.00	\$0.00
Previous Violation Multiplier Calculator	1 Violation = 1 2 Violations = 2 3 Violations = 3 4 Violations = 4 5 or More Violations = 5	1		\$0.00
<b>Number of Previous Violations</b>				
<b>Dates of Previous Violations</b>				
<b>Failure to Post Land Disturbance Permit Penalty Total</b>				<b>\$0.00</b>

Violation	Comments	Multiplier	Penalty	Total
<b>Failure to Control Construction Waste</b>	yes = 1		\$100.00	\$0.00
Previous Violation Multiplier Calculator	1 Violation = 1 2 Violations = 2 3 Violations = 3 4 Violations = 4 5 or More Violations = 5	1		\$0.00
<b>Number of Previous Violations</b>				
<b>Dates of Previous Violations</b>				
<b>Failure to Control Construction Waste Penalty Total</b>				<b>\$0.00</b>

Violation	Comments	Multiplier	Penalty	Total
<b>Site not Stabilized within 14 days</b>	yes = 1		\$50.00	\$0.00
	#of acres not stabilized		\$50.00	\$0.00
Previous Violation Multiplier Calculator	1 Violation = 1 2 Violations = 2 3 Violations = 3 4 Violations = 4 5 or More Violations = 5	1		\$0.00
<b>Number of Previous Violations</b>				
<b>Dates of Previous Violations</b>				
<b>Failure to Stabilize Site Penalty Total</b>				<b>\$0.00</b>

Violation	Comments	Multiplier	Penalty	Total
Administrative Penalties		1	\$100.00	\$100.00
<b>Administrative Penalties</b>				<b>\$0.00</b>

**TOTAL FINE LEVIED: \$0.00**

**Stormwater Manager:** \_\_\_\_\_

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

**City Engineer:** \_\_\_\_\_

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

**Section 2: Illicit Discharge Violations:**

**2.1 Stormwater Department Illicit Discharge Summary:**

No Person shall introduce or cause to be introduced into the MS4 any Discharge that is not composed entirely of Stormwater or any Discharge that flows from Stormwater Management Facility that is not inspected in accordance with section 21-107 shall be an Illicit Discharge. Non-Stormwater Discharges shall include, but shall not be limited to, sanitary wastewater, car wash wastewater, radiator flushing disposal, spills from roadway accidents, carpet cleaning wastewater, effluent from septic tanks, improper oil disposal, laundry wastewater/gray water, improper disposal of auto and household toxics. This section of the ERP details standard protocol to be followed for enforcement for Illicit Discharge violations.

**2.2 General:**

The Stormwater Department discovers illicit discharges to the MS4 system utilizing a variety of methods such as routine inspections, citizen complaints, proactive reconnaissance, etc. Some of the more typical illicit discharges include: wash water, sewage, industrial process discharges and contaminated runoff, paint, sediment, etc. Once discovered, the Stormwater Department implements the below enforcement measures in order to gain compliance. The below enforcement steps do not have to be used in sequence, rather the mode of enforcement shall be chosen based on the type of violation.

**2.3 Enforcement Proceedings:**

Under the authority provided in Tennessee Code Annotated § 68-221-1106, the City declares that any Person violating the provisions of this Title may be assessed a Civil Penalty by the City Engineer of not less than fifty dollars (\$50.00) and not more than five thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation.

## **2.4 Enforcement Categories/Steps:**

**Official Warnings (verbal or written):** to be issued in the event of minor/negligible discharges to the MS4/community waters especially when the discharge is unintentional (i.e. spill, sewer line break, etc.). In some instances, City of Portland staff will observe a non-stormwater discharge on private property in which either no amount or small amounts of the discharge has reached the MS4 or community waters. In this case, the biggest threat to water quality is the potential for contaminated runoff during rain events, which makes it extremely important to issue immediate warnings to the site to expedite compliance. The warning can be either verbal or written and should include specific deadlines and compliance measures to be performed by the responsible party. Some examples of illicit discharge violations subject to official warnings include:

Pressure washing with small amounts of wash water discharges;

Private sewer service line break or missing clean-out cap;

Accidental spills with minor amounts of material reaching the MS4 or community waters;

Materials exposed to stormwater runoff (messy dumpster pads, fats or grease on ground, open containers of oil, etc.).

**Notice of Violation (NOV) (with penalty):** to be issued in the event that a more than minor/negligible amount of non-stormwater is discharged to the MS4 or community waters. Every NOV issued will be accompanied with a completed penalty assessment worksheet. All intentional discharges that are more than minor/negligible will result in monetary penalties based on various factors delineated in Table 1. For purposes of this document, “intentional” is defined as an act that was deliberately carried out that led to the discharge of non-stormwater material. A written violation shall clearly state the required remediation for the violation and timeframe for compliance. In most cases, the carbon copy NOV ticket shall be utilized; however, in some cases a formal letter can serve as the NOV. Some examples of illicit discharges that will be subject to a formal NOV include the following:

Dumping of motor oil or other hazardous chemicals in an MS4 drain or stream;

Washing out paint brushes or other construction materials in an MS4 drain or stream;

Discharge of pit pump water or wet saw slurry to the MS4 or stream;

Washing out concrete truck trays in an MS4 drain or stream;

Discharge of dumpster leachate to the MS4 or a stream;

Discharge of industrial process water (without an NPDES permit) to the MS4 or stream;

Significant amount of contaminated stormwater runoff from private property to the MS4 or stream.

**Notice of Violation (NOV) (with daily penalties):** to be issued only in rare cases when, for whatever the reason, the site refuses to comply with the first NOV and as a result, a substantial amount of non-stormwater material is being lost to the MS4 or community waters every day or every time it rains. In the cases where pollution only occurs every time it rains, the daily penalties shall only apply to the days rain occur. Daily penalty amounts are to be calculated using Table 1.

**Enforcement Assistance Request to TDEC:** There may be occasions given the circumstances where TDEC need to be notified for enforcement assistance. For violations involving significant

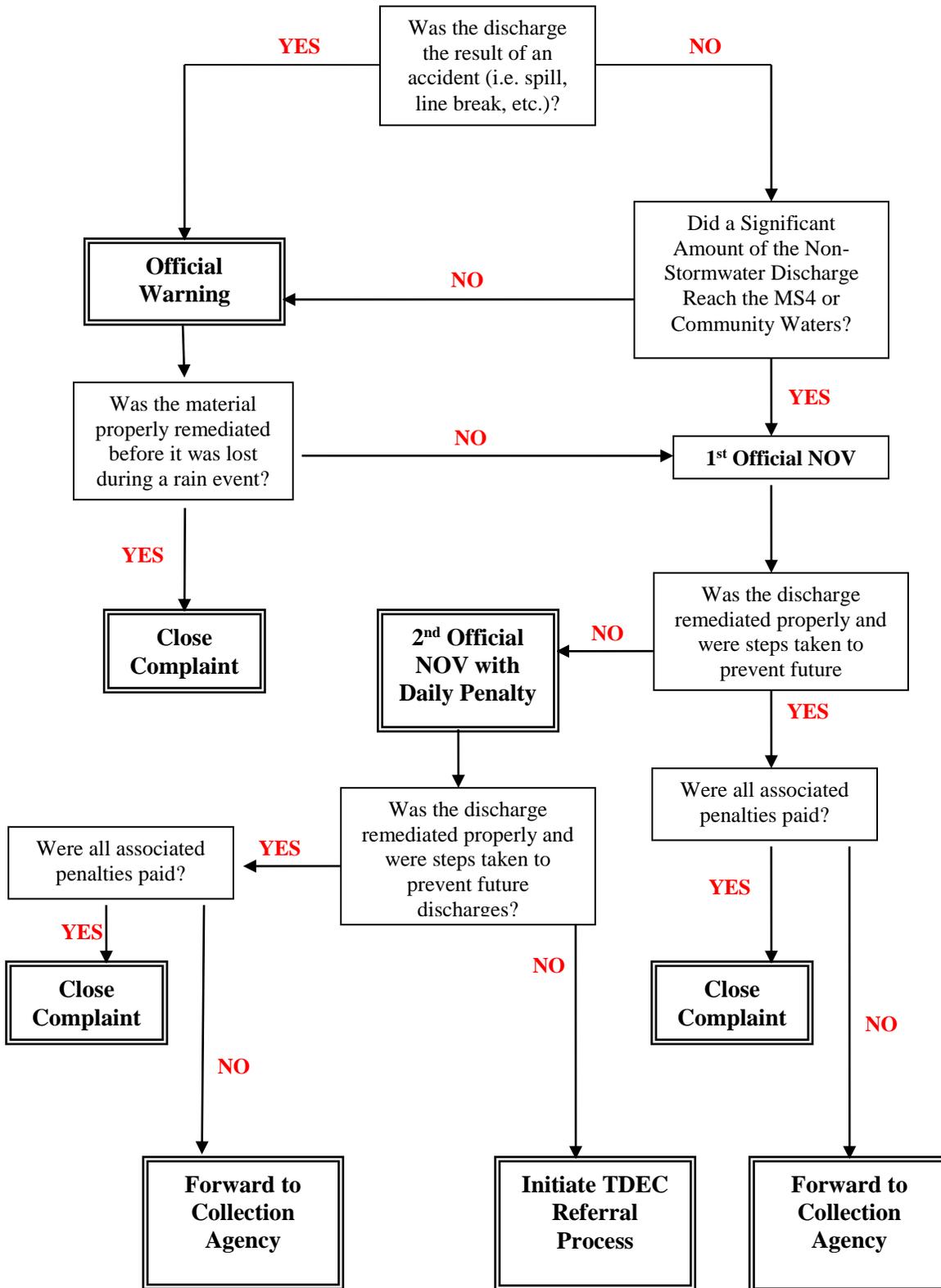
discharges to streams, TDEC should be immediately contacted. When a request for assistance is made, proper documentation must accompany the request. This documentation would include: photographs, copies of inspections, copies of correspondence, copies of enforcements taken, and a summary report.

**2.5 Documentation:**

All correspondence should be documented in the appropriate database and any photographs, scanned in field investigation notes etc. shall be stored within the appropriate project folder.

There should always be a database entry of any official notification given to a site. In the event that the official notification is in the form of a verbal warning, the City of Portland's inspector shall note the verbal warning on the complaint investigation form and within the respective database.

**Table 2 – Illicit Discharge Penalty Calculation Worksheet**  
**Illicit Discharge Enforcement Flow Chart**



### **Section 3: Stormwater Department Post Construction BMP Maintenance Enforcement Response Plan**

#### **General Considerations**

Maintenance is required to ensure that post construction stormwater BMPs continue to function as designed. The cleaning and/or repair of a BMP is ultimately the responsibility of the property owner. In some cases, management companies and HOAs perform the work or contract it out.

#### **Enforcement Tools:**

The City Engineer shall have the authority to issue notices of violation and citations, and to impose the Civil Penalties provided in this Title. Each day of noncompliance is considered a separate offense; and nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation, including application for injunctive relief. If the Person, property or Facility has or is required to have a Stormwater discharge permit from TDEC, the City shall alert the appropriate state authorities of the violation.

A Maintenance Document (MD) signed by the property owner must be submitted with the Land disturbance Permit application. The MD includes either an Inspection and Maintenance (I&M) Agreement or a Declaration of Restrictions and Covenants. Both of these documents require that the property owner maintains their BMP(s), submits annual reports, and grants The City the ability to perform the BMP maintenance and collect reimbursement.

#### **Enforcement Categories**

Enforcements for post construction BMP maintenance will fall into two general categories: Enforcements for BMPs that were inspected by City of Portland staff and a deficiency was noted;

Enforcements for sites that have not submitted their annual inspection and maintenance reports.

#### **BMP Deficiency Enforcement:**

Notice of Violation (NOV, no penalty) – issued to sites where a BMP needs repair or cleaning. The NOV will list the deficiency and give a timeline for compliance. If a site cannot meet their compliance deadline for a legitimate reason (e.g. weather, hardship), they may request an extension.

Notice of Violation (NOV, penalty) – issued to sites that are not in compliance with the timeline on their NOV. The penalty will be derived using the itemized penalty worksheet. Whereas continued non-compliance is creating a water quality problem (e.g. sediment discharge) or a public health nuisance (e.g. mosquitoes), the penalty can be escalated.

If an offender refuses to accept a certified NOV letter or is generally unresponsive to the requirements and deadlines stipulated in their NOV, the following options can be pursued: TDEC Referral;

Maintenance/repair of the BMP by the City of Portland or a City of Portland contractor and cost recovery by the City of Portland from the property owner/responsible party.

**Failure to Submit Annual Report:**

Notice of Violation (NOV, no penalty) – will be issued to sites that do not submit their annual report by July 1<sup>st</sup>. The NOV will be accompanied by a letter that explains the annual reporting requirement and lists the recording number of the site's Maintenance Document. The deadline for the report submittal is one month, unless an extension is requested for a legitimate reason. Failure to submit the report may result in penalties. The City of Portland may inspect the site to determine if the BMP(s) requires maintenance or repair. If deficiencies are noted, another NOV may be issued (see BMP Deficiency Enforcement above). If a site fails to submit their annual report in two different years while under the same ownership and receives a NOV without penalty each year, the third failure will result in an immediate penalty.