

Appendix M: Enforcement Response Plan (ERP)

ENFORCEMENT RESPONSE PLAN (ERP)

In accordance with the MS4 permit, the Town of Ithaca is required to develop an Enforcement Response Plan (ERP) to outline the enforcement actions to be taken for violations that the MS4 Operator has enacted for illicit discharge, construction, and post-construction activities. The ERP sets forth a protocol to address repeat and continuing violations through progressively stricter responses as needed to achieve compliance with the terms and conditions of this SPDES general permit.

Illicit Discharge Detection and Elimination:

The follow actions are to be taken for violations of the Illicit Discharge Law enacted by the Town of Ithaca:

- a) Inspection of Potential Illicit Discharge: The Town of Ithaca may find an illicit discharge from site inspections, staff observations, or complaints from the public. Once a potential illicit discharge complaint has been received a member of the Town Engineering staff will conduct a field inspection in accordance with the Town Outfall Reconnaissance Inventory Program. If upon inspection, the outfall in question appears to be a potential illicit discharge, the inspector would take a field sample which would then be sent in for laboratory testing. Based on the results the inspector would follow the illicit discharge track down procedures outlined in the Illicit Discharge Detection and Elimination Manual by the Center for Watershed Protection dated 2004.
- b) Notice of Violation: The Town of Ithaca will send out written notices or order compliance by Notice of Violations. Such notice may require, without limitation:
 - i. The performance of monitoring, analyses, and reporting;
 - ii. The elimination of illicit connections or illicit discharges
 - iii. That violating discharges practices, or operations cease and desist;
 - iv. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and/or
 - v. The implementation of source control or treatment best management practices.
- c) Remediation: If abatement of a violation and/or restoration of affected property is required, the notice of violation shall set forth a deadline within which such remediation or restoration must be completed. Said notice of violation shall further advise that, should the violator fail to remediate or restore within the established deadline, the work may be done by a designated governmental agency or a contractor, with the expense thereof to be charged to the violator and/or to become a lien against the premises.

- I. Town's Performance of Remediation and Restoration.
 - a) If any remedial or restoration measures are not completed to the satisfaction of the SMO within the period set forth in the Town's notice of violation or Town Board's decision after any appeal thereof pursuant to, the Town may enter the premises to undertake the remedial or restoration measures or cause them to be made. The Town's entry onto such premises shall be pursuant to an agreement between the Town and the landowner. If no agreement exists or can be obtained in a timely manner, the Town may enter such property to remove an imminent danger to life, property or safety of the public caused by the activities that violate this chapter. The Town further may seek a warrant from a court of competent jurisdiction for access to the premises and/or may seek a court order requiring or authorizing all actions reasonably necessary to abate the violation and/or restore the property, with the costs of such actions the sole responsibility of the violator.
 - b) The Town shall present the landowner with a bill for all costs and expenses incurred by the Town in connection with the remedial and restoration measures. If the landowner shall fail to pay such costs and expenses within 15 days after the demand for same, or within 30 days of the final decision on any administrative or judicial contest the landowner may pursue, then such unpaid costs, expenses and interest (at the statutory interest rate for money judgments in New York State courts) incurred from the date of the remedial and restoration measures shall constitute a lien upon the land on which such measures were undertaken. A legal action or proceeding may be brought to collect such costs, expenses, interest, and recoverable attorney's fees or to foreclose such lien. As an alternative to the maintenance of any such action, the Town may file a certificate with the Tompkins County Department of Assessment stating the costs and expenses incurred and interest accruing as aforesaid, together with a statement identifying the property and landowner. The Tompkins County Department of Assessment shall in the preparation of the next assessment roll assess such unpaid costs, expenses and interest upon such property. Such amount shall be included as a special ad valorem levy (administered as a move tax) against such property, shall constitute a lien, and shall be collected and enforced in the same manner, by the same proceedings, at the same time, and under the same penalties as are provided by law for collection and enforcement of real property taxes in the Town of Ithaca. The assessment of such costs, expenses and interest shall be effective even if the property would otherwise be exempt from real estate taxation.
- II. Fines, penalties and injunctive relief
 - a) Fines and imprisonment
 - i. A violation is considered an offense, with conviction of a first offense punishable by a fine of up to \$500 or imprisonment not to exceed 15 days, or both. For conviction of a second or subsequent offense which was committed within a period of five years from the commission of the

prior offense, a violator shall be subject to a fine of up to \$1,000 or imprisonment not to exceed 15 days, or both.

- ii. Each day a violation exists shall constitute a separate violation.
- iii. Any police officer, peace officer, Town Code Enforcement Officer, or any other person who may be lawfully designated by the Town Board shall have the authority to issue appearance tickets in connection with such violations.

b) Civil penalties and injunctions.

- i. Violations shall be liable for a civil penalty of up to \$500 for a first violation and up to \$1,000 for a second or subsequent violation which was committed within a period of five years from the commission of the prior violation.
- ii. Each day a violation exists shall constitute a separate violation.
- iii. The Attorney for the Town or his or her designee may commence an action or special proceeding against the violator in a court of competent jurisdiction to collect these penalties, together with costs, disbursements and recoverable attorney's fees, and/or to compel compliance with this chapter or restrain by injunction any such violation.

III. Withholding of building permits and certificates of occupancy or certificates of compliance. If any activity is undertaken or a condition exists in violation of this chapter, the SMO or Town Code Enforcement Officer may withhold or revoke any building permit or withhold a certificate of occupancy or certificate of compliance.

IV. Alternative remedies.

- a) Upon the recommendation of the Attorney for the Town and concurrence of the SMO, the Town and any violator of this chapter may agree that the violator will voluntarily be subject to alternative remedies in lieu of the Town's seeking a civil penalty. Such an agreement is appropriate where:
 - i. The violation was unintentional;
 - ii. The violator has no history of previous violations of this chapter;
 - iii. Environmental damage did not occur or was minimal;
 - iv. The violator acted quickly to remedy the violation; and
 - v. The violator cooperated in the investigation and the violation's resolution.
- b) Alternative remedies may consist of one or more of the following:
 - i. Attendance at compliance workshops.
 - ii. Storm drain stenciling or storm drain marking.
 - iii. River, stream or creek cleanup activities.
 - iv. Any other activity deemed by the Town to be a significant contribution to the health, safety and welfare of the Town, its citizens and/or the environment.

V. Violations deemed a public nuisance

- a) In addition to the enforcement processes and penalties provided in this chapter, any condition caused or permitted to exist in violation of any of the provisions of this chapter is hereby deemed and declared to be a threat to public health, safety, and welfare and is declared and deemed a nuisance and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be undertaken by the Town in its sole discretion.

Active Construction Sites:

The following actions are to be taken for violations against the Town of Ithaca Stormwater Management Law:

A. Notice of Violation:

- I. When the Town of Ithaca determines that the requirements of this chapter are not being met, it may issue a written notice of violation to the landowner and, in the discretion of the Town, to any applicant, developer, or owner or operator of stormwater management practices. The notice of violation shall contain:
 - a) The name and address of the landowner and of any applicant, developer, or owner or operator of the stormwater management practices receiving the notice of violation.
 - b) The address, when available, or a description of the building, structure or land upon which the violation is occurring.
 - c) A statement specifying the nature of the violation.
 - d) A description of the remedial measures necessary to bring the violation into compliance with this chapter and a time schedule for the completion of such remedial action.
 - e) A statement of the fines and penalties applicable to such violations.
- II. If the remedial measures are not completed to the satisfaction of the Town's Stormwater Management Officer within the period set forth in the Town's notice of violation, the Town may enter the property to undertake the remedial measures or cause them to be made. The Town's entry onto such private property shall be pursuant to an agreement between the Town and landowner. If no agreement exists or can be obtained in a timely manner, the Town may enter such property to remove an imminent danger to life, property or safety of the public caused by the inadequate operation or repair of the stormwater management practices.

- III. The Town shall present the landowner with a bill for all costs and expenses incurred by the Town in connection with the remedial measures. If the landowner shall fail to pay such costs and expenses within 10 days after the demand for same, or within 30 days of the final decision on any administrative or judicial contest the landowner may pursue, then such unpaid costs, expenses and interest at the per annum rate of 9% incurred from the date of the remedial measures shall constitute a lien upon the land on which the stormwater management practices are located. A legal action or proceeding may be brought to collect such costs, expenses, interest, and recoverable attorney's fees, or to foreclose such lien. As an alternative to the maintenance of any such action, the Town may file a certificate with the Tompkins County Department of Assessment stating the costs and expenses incurred and interest accruing as aforesaid, together with a statement identifying the property and landowner. The Tompkins County Department of Assessment shall, in the preparation of the next assessment roll, assess such unpaid costs, expenses and interest upon such property. Such amount shall be included as a special ad valorem levy (administered as a move tax) against such property, shall constitute a lien, and shall be collected and enforced in the same manner, by the same proceedings, at the same time, and under the same penalties as are provided by law for collection and enforcement of real property taxes in the Town of Ithaca. The assessment of such costs, expenses and interest shall be effective even if the property would otherwise be exempt from real estate taxation.
- IV. The Town's rights to undertake remedial measures and recover the costs from the landowner are in addition to all other rights and remedies allowed by this chapter or by law or in equity.

B. Stop-work orders.

- I. Authority to issue. The Stormwater Management Officer or Code Enforcement Officer is authorized to issue stop-work orders under this chapter for violations of this chapter.
- II. Content of stop-work orders. Stop-work orders shall be in writing, be dated and signed by the issuing officer, state the reason or reasons for issuance, and if applicable, state the conditions which must be satisfied before work will be permitted to resume.
- III. Service of stop-work orders. The issuing officer shall cause the stop-work order, or a copy thereof, to be served on the owner of the affected property personally or by certified mail. The issuing officer shall be permitted, but not required, to cause the stop-work order, or a copy thereof, to be served personally or by certified mail on any applicant, developer, tenant, contractor, subcontractor, construction superintendent, owner or operator of stormwater

management practices, or his or her agents, or any other person or entity taking part or assisting in work affected by the stop-work order; provided, however, that failure to serve any person or entity mentioned in this sentence shall not affect the efficacy of the stop-work order.

- IV. Effect and duration of stop-work order. Upon the issuance of a stop-work order, the owner of the affected property, applicant, and any other person or entity receiving said order or performing, taking part in or assisting in the work, shall immediately halt all on-site work and activities, except for those activities that address the violations leading to the stop-work order, and except for such work as may be necessary to mitigate or control stormwater and erosion. The stop-work order shall be and shall remain in effect until the Town confirms that the land development activity is in compliance and the violation has been satisfactorily addressed.
- V. Violations of stop-work orders. In addition to any other right or remedy allowed by this chapter or by law or in equity, failure to comply with a stop-work order in a timely manner is a violation of this chapter and may result in civil penalties, criminal fines, imprisonment and/or injunctive relief in accordance with the provisions of this chapter.
- VI. Remedy not exclusive. The issuance of a stop-work order shall not be the exclusive remedy available to address violations of this chapter, and the authority to issue a stop-work order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under other sections of this chapter, under any other applicable local law or state law, or in equity. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop-work order.

C. Violations. Any land development activity that is commenced or is conducted contrary to this chapter, and all other violations of this chapter, may be abated in any manner provided by law.

D. Fines, penalties and injunctive relief.

I. Fines and imprisonment.

- a) A violation of this chapter's requirements to obtain or comply with the terms of a full SWPPP is hereby declared to be an offense, with conviction punishable by a fine of up to \$1,000 or imprisonment not to exceed 15 days, or both.
- b) A violation of this chapter's requirements to obtain or comply with the terms of a basic SWPPP is hereby declared to be an offense, with conviction punishable by a fine of up to \$500 or imprisonment not to exceed 15 days, or both.

- c) A violation of this chapter's requirements to obtain or comply with a simple erosion and sedimentation control plan is hereby declared to be an offense, with conviction punishable by a fine of up to \$250 or imprisonment not to exceed 15 days, or both.
 - d) Any other violation of this chapter's requirements is hereby declared to be an offense, with conviction punishable by a fine of up to \$1,000 or imprisonment not to exceed 15 days, or both.
 - e) Each day a violation exists shall constitute a separate violation.
 - f) Any police officer or peace officer or any person who may be lawfully designated by the Town Board shall have the authority to issue appearance tickets in connection with such violations.
- II. Civil penalties and injunctions.
- a) Persons and other entities that violate this chapter's requirements to obtain or comply with the terms of a full SWPPP shall be liable for a civil penalty of up to \$1,000 for each such violation.
 - b) Persons and other entities that violate this chapter's requirements to obtain or comply with the terms of a basic SWPPP shall be liable for a civil penalty of up to \$500 for each such violation.
 - c) Persons and other entities that violate this chapter's requirements to obtain or comply with the terms of a simple erosion and sedimentation control plan shall be liable for a civil penalty of up to \$250 for each such violation.
 - d) Persons and other entities that violate any other requirements of this chapter shall be liable for a civil penalty of up to \$1,000 for each such violation.
 - e) Each day a violation exists shall constitute a separate violation.
 - f) The Attorney for the Town or his or her designee may commence an action or special proceeding against the violator in a court of competent jurisdiction to collect these penalties, together with costs, disbursements and recoverable attorneys' fees, and/or to compel compliance with this chapter or restrain by injunction any such violation.

E. Withholding of issuance of building permit, certificate of occupancy or certificate of compliance, or inspections. If any building or land development activity is installed or conducted in violation of this chapter, the Stormwater Management Officer or Code Enforcement Officer may withhold any building permit or certificate of occupancy or certificate of compliance, and/or prevent the occupancy of said building or land.

Enforcement Tracking

The MS4 Operator must track instances of non-compliance in the SWMP Plan. The enforcement case documentation must include, at a minimum, the following:

- a) Name of the owner/operator of the facility or site of the violation (can be redacted from the publicly available SWMP Plan);
- b) Location of the stormwater source (e.g., construction project);
- c) Description of the violation;
- d) Schedule for returning to compliance;
- e) Description of enforcement response used, including escalated responses if repeat violations occur or violations are not resolved in a timely manner;
- f) Accompanying documentation of enforcement response (e.g., notices of noncompliance, notices of violations);
- g) Any referrals to different departments or agencies; and
- h) Date violation was resolved