

# Stormwater Enforcement Response Plan

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**Note:** Instructions for modifying and completing the template are shown in note boxes. Highlighted text indicates where each municipality should insert their specific information.

## 1.0 PURPOSE OF ENFORCEMENT RESPONSE PLAN

The [City, Town, County] staff will follow this Enforcement Response Plan (ERP) to identify, document, and respond to potential and/or actual water quality violations. Those staff must follow the enforcement procedures and actions described in the ERP. In addition, the ERP describes the duties of the enforcement staff and the tools available to those staff to help ensure compliance with applicable regulations. A goal of this ERP is to assist [City, Town, County] staff in taking consistent actions needed to achieve effective and timely compliance with the municipality's stormwater/urban runoff pollution prevention ordinance and other enforcement authorities allowed by the local municipal code.

The ERP is established in part to satisfy the following requirements of the Phase II Permit<sup>1</sup>:

- Enforcement Measures and Tracking (E.6.c.)
- Illicit Discharge Detection and Elimination (E.9.d.ii.e.);
- Construction Site Inspection and Enforcement (E.10.c).
- Operation and Maintenance of Post-Construction Storm Water Management Measures (E.12.h.)
- Post-Construction Best Management Practice Condition Assessment (E.12.i)

The ERP outlines the various enforcement options available to [City, Town, County] staff and provides guidelines as to their application. The selection of an appropriate enforcement action and the escalation of enforcement are based on the seriousness of the violation and its resulting threat to water quality, human health and the environment. If previous violations have occurred before, the violator's response to the agency's previous attempts to achieve compliance can influence the type of enforcement pursued. Other additional factors that can affect the response include:

- Violation magnitude and/or duration.
- History of violations
- Effect of violation on receiving waters
- Violators response and good faith efforts to correct the situation
- Follow-up inspection results

The nature of a specific violation may require tailoring of the timeframes for correction and/or the use of temporary measures to promptly address a violation before a permanent solution is implemented. It may be appropriate to refer violations to another agency, such as the San Francisco Bay Regional Water Quality Control Board (Regional Water Board), the California

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<sup>1</sup> State Water Resources Control Board Water Quality Order No. 2013-0001-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004

## Template

Department of Fish and Wildlife, or other local, State, or Federal agency for additional enforcement.

The [City, Town, County] has authority to enforce stormwater requirements under sections of the Municipal Code listed in **Table 1**.

**Note:** Revise Table 1 to provide references from your municipal code that allow your agency to enforce the stormwater requirements prescribed by the Phase II Permit. The content and characteristics of the enforcement actions included in this ERP are derived from the legal authority of the local municipal code.

**Table 1. Relevant Municipal Code Sections for Enforcement of Stormwater Violations**

Title	Chapter
Stormwater or Urban Runoff Pollution Prevention	
Violations – Misdemeanors or infractions; penalties	
Violations – Civil action for enforcement	
Violations – Administrative enforcement action	
Nuisance Abatement	

## 2.0 COORDINATION WITH OTHER AGENCIES

The nature and circumstances of particular discharges or violations may involve other entities and agencies that have primary enforcement authority. The [City, Town, County] will work collaboratively to identify which entity or agency will determine enforcement action. The entities and agencies include, but are not limited to, those listed in Table 2:

**Table 2. Agencies with primary authority to enforce laws related to particular discharge or violation types.**

Agency	Role	Contact
Marin County Department of Agriculture, Weights and Measures	Oversees the use of pesticides in Marin County and investigates pesticide related complaints.	(415) 473-6700
Marin County Department of Public Works, Waste Management Division, Certified Unified Program Agency (CUPA)	Administers the <i>Hazardous Materials Area Plan</i> , which establishes the emergency response organization for hazardous materials incidents in Marin County. <sup>2</sup>	(415) 473-6647
Marin's individual fire districts	Participate in the implementation of the Marin Hazardous Materials Area Plan and staff the HazMat Team.	Contact local fire department

<sup>2</sup> Marin Hazardous Materials Area Plan

[http://www.marincounty.org/depts/pw/divisions/~media/Files/Departments/PW/cupa/hazmat\\_plan.pdf](http://www.marincounty.org/depts/pw/divisions/~media/Files/Departments/PW/cupa/hazmat_plan.pdf)

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Agency	Role	Contact
Marin County Environmental Health Services	Implements the <i>Response Guidelines for Unauthorized Discharges into Water Bodies</i> , which provides procedures to investigate unauthorized discharges of sewage or other waste and to educate staff regarding response procedures. <sup>3</sup>	(415) 473-6907
Marin's individual sewage collection system operators	Implement <i>Sanitary Sewer Overflow Response Plans</i> to address overflows from collection systems.	Contact local sanitary district

Referral to state agencies, such as the Regional Water Board and California Department of Fish and Wildlife, is addressed in **Section 5.0**.

### 3.0 TYPES OF ENFORCEMENT ACTIONS AND THEIR USE

The municipal code provides a range of alternatives for responding appropriately to a given situation or violation. Factors that may enter into a determination of an enforcement option include magnitude of the violation, the duration and history of non-compliance, the good faith efforts of the violator to achieve compliance, and whether the violation may interfere with the municipality's compliance with the Phase II Permit. An enforcement action may be escalated depending on the circumstances of the case. Actions range from technical assistance through criminal prosecution.

**Table 3** lists and describes available enforcement actions. The examples provided are instructional in nature and are not intended to limit the use of any particular enforcement option. In addition to the range of enforcement actions authorized in the Municipal Code, the [City, Town, County] may also deny local permits and approvals and may refer violators to the Regional Water Board or another regulatory agency with jurisdiction over the violation.

A compliance meeting may be arranged to discuss the nature of a violation with the responsible party prior to initiation of a more formal enforcement action. At these meetings, information submitted by the responsible party (written plan, monitoring data) will be reviewed and the enforcement options are discussed. The meeting may be held informally at the responsible person's place of business, a [City, Town, County] facility, or other mutually agreed location.

**Note:** Modify the Table 2 for the specifics of your municipality's enforcement options. The options listed are based on the model ordinances that were developed in Permit Year 2.

<sup>3</sup> Marin County Environmental Health Division Policy and Procedure Number 2-01, Effective March 31, 2009.

## Template

**Table 3. Enforcement Actions Overview**

Actions	Use	Time Schedule to Achieve Compliance
Technical Assistance and/or Outreach and Education	<ol style="list-style-type: none"> <li>1. Use where inspector observes a situation that poses a potential water quality threat and the responsible party is unaware of the requirement and agrees to address the issue in a timely manner.</li> <li>2. Most commonly would be used with residents or businesses and activities that are not specifically regulated.</li> </ol>	Goal is to correct the situation and behavior to protect water quality. The compliance timeframe should be short and will depend on the nature of the potential water quality threat.
Verbal Warning	<ol style="list-style-type: none"> <li>1. Use for threatened violations due to inadequate housekeeping, lack of appropriate BMPs to prevent pollution, or threatened non-stormwater discharges disallowed by Phase II Permit. Typically would be issued during an inspection.</li> <li>2. Use when technical assistance/education and outreach was not effective in achieving compliance. This enforcement approach is consultative in nature.</li> </ol>	Require correction within 30 days. Shorter time periods may also be specified, such as before the next inspection or before the next predicted rain event.
Written Warning Letter and Order to Abate Pollution	<ol style="list-style-type: none"> <li>1. Issue for minor violations due to failure to implement BMPs, inadequate BMPs, spilled materials that do not enter MS4 or receiving waters, and there is no significant harm.</li> <li>2. Use when verbal warning was not effective in achieving compliance.</li> </ol>	Require correction of spilled materials or illicit discharges within 72 hours. Require correction or BMPs within 30 days or before the next predicted rain event.
Warning Letters with requirements to submit written reports	<ol style="list-style-type: none"> <li>1. Issue for minor violations due to failure to have up-to-date plans, or where a more detailed corrective action plan is required, or where supplemental information is needed and there is no significant harm.</li> <li>2. Use when verbal warning or earlier written warning letter was not effective in achieving compliance.</li> </ol>	Require correction of spilled materials or illicit discharges within 72 hours. Require submission of required reports. Inspector can specify the timeframe for the reports as appropriate for the situation.

## Template

**Table 3. Enforcement Actions Overview**

Actions	Use	Time Schedule to Achieve Compliance
Notice of Violation (NOV)	<ol style="list-style-type: none"> <li>1. Use for violations that result in a discharge of pollutants to the MS4 or receiving water or for knowing disregard of BMP requirements.</li> <li>2. Use when written warning was not effective in achieving compliance.</li> <li>3. Use when responsible party fails to respond to written warning.</li> </ol>	<p>Require correction of spilled materials or illicit discharges within 72 hours.</p> <p>Inspector can specify shorter timeframe as appropriate for the situation.</p>
Stop Work Order	<ol style="list-style-type: none"> <li>1. Use for construction sites for serious violations with immediate risk to public, property or environment.</li> <li>2. Use for construction sites after ongoing unsuccessful enforcement efforts when there is a continued presence of serious violations.</li> </ol>	<p>Effective immediately, all work, except work to remedy non-compliant situation, must cease.</p>
Civil Action	<ol style="list-style-type: none"> <li>1. Use for violations that cause significant harm.</li> <li>2. Use when response to written warnings for NOV is inadequate or the responsible party fails to respond.</li> </ol>	<p>The time schedule for compliance will be determined based on case-specific information.</p>
Criminal Action	<ol style="list-style-type: none"> <li>1. Use for the most serious violations, typically involving a responsible party who knowingly violates the requirement.</li> <li>2. Use when responsible party makes false statements.</li> </ol>	<p>Consult with legal counsel or District Attorney</p>
Referrals	<ol style="list-style-type: none"> <li>1. Sites that fail to obtain state industrial or construction permits.</li> <li>2. Sites that fail to comply with municipal enforcement actions.</li> <li>3. Sites that discharge waste or hazardous wastes to receiving waters.</li> </ol>	<p>NA</p>
Denial of Local Permits and Approvals	<ol style="list-style-type: none"> <li>1. Use when sites and facilities fail to meet stormwater ordinance requirements</li> </ol>	<p>NA</p>

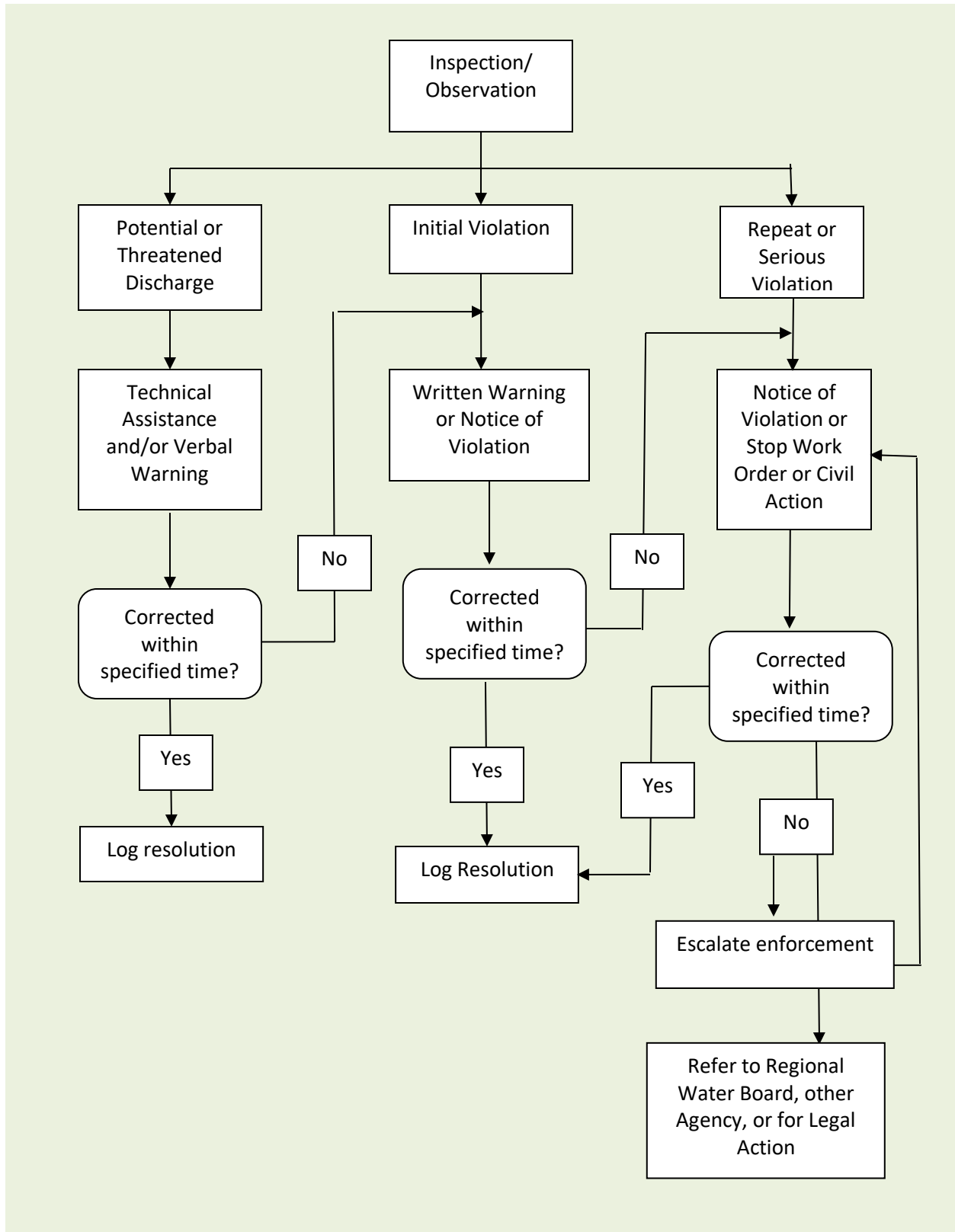


Figure 1. Flow Chart of Progressive Enforcement Process

#### 4.0 ESCALATION OF ENFORCEMENT ACTIONS

[City, Town, County] implements a progressive enforcement response process that is designed to maintain a fair and equitable system for enforcement to ensure that actions are proportionate to the scale and effect of violations. This process allows the [City, Town, County] to escalate enforcement actions to encourage prompt compliance. An enforcement action may be escalated depending on the circumstances of the case. In any situation the [City, Town, County] can select the most appropriate enforcement action for the situation; it is not necessary to start at the lowest level action if the situation warrants a higher level response.

The process to escalate enforcement actions is provided in **Table 3** and a flow chart of the enforcement escalation process is provided in **Figure 1**.

#### 5.0 REFERRALS TO OTHER AGENCIES

As required by the Phase II Permit, the [City, Town, County] will make a good faith effort to compel compliance with the municipal code by exercising its progressive enforcement authorities.

- The Phase II Permit requires the [City, Town, County] to refer non-filers under the State Industrial General Permit<sup>4</sup> and Construction General Permit<sup>5</sup> within 30 days of making the determination that the facility has not obtained appropriate permit coverage. Referrals will be submitted either Regional Water Board or on the CalEPA complaint website at: [http://www.dtsc.ca.gov/database/CalEPA\\_Complaint/index.cfm](http://www.dtsc.ca.gov/database/CalEPA_Complaint/index.cfm).
- The Phase II permit requires the [City, Town, County] to refer responsible parties with on-going violations to the Regional Water Board following at least two documented attempts to compel compliance through enforcement of the municipal code.

Notwithstanding the good faith effort requirements identified above, [City, Town, County] reserves the right to refer violators to other regulatory agencies at any point in the enforcement process, especially in cases of discharges that may result in harm to human health or the environment. Referral may be made to the Regional Water Board, California Department of Fish and Wildlife, the Department of Toxic Substances Control or other federal, state, or local agencies with appropriate jurisdiction. When warranted or requested, the [City, Town, County] will cooperate with other agencies on joint violation or incident responses or compliance inspections.

#### 6.0 COST RECOVERY

The responsible party may be liable for public costs and expenses incurred by the [City, Town, County] in connection with the enforcement and abatement. Recoverable costs include costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, costs of suit, salaries, attorney's fees, expert fees, equipment and materials, testing and monitoring expenses, costs for clean-up or mitigating actions taken by the [City, Town,

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<sup>4</sup> Order 2014-057-DWQ

<sup>5</sup> Order 2009-0009-DWQ, as amended.

County], and other expenses recoverable under state law, incurred during any inspection or investigation conducted.

## 7.0 ROLES AND RESPONSIBILITIES

**Note:** This section needs to be specific for each municipality. A generic example of the roles and responsibilities has been provided based on other ERPs. This description must be customized for the types of staff involved in your inspection and enforcement process. For the purpose of the example, we have assumed three types of inspectors.

If desired, include or reference forms used in the enforcement process, such as NOVs, warning letters, etc.

The response to stormwater violations occurs at several levels and requires coordination and communication between staff to ensure resolution or appropriate escalation. [City, Town, County] staff will assume the necessary roles to perform inspections and coordination to ensure enforcement of the [City, Town, County]'s municipal code sections which provide legal authority to control pollutant discharges into and from its MS4 and to meet the requirements of the Phase II Permit. The [City, Town, County]'s \_\_\_\_\_ will perform the role of Enforcement Official. General responsibilities are detailed in the sections below.

### 7.1 Duties of Staff Performing Inspections:

Assigned staff will perform inspections to identify and respond to stormwater-related complaints and violations in a timely manner.

The [City, Town, County]'s Stormwater Coordinator will either conduct or delegate routine inspections and investigate illicit discharge incidents and complaints.

The [City, Town, County]'s Department of \_\_\_\_\_ oversees public and private land-disturbing construction projects requiring a permit including inspections for erosion control, sediment control, and good housekeeping Best Management Practices (BMPs) and abatement of illicit discharges from the construction site.

The [City, Town, County]'s Department of \_\_\_\_\_ oversees [City, Town, County] construction projects including inspections for erosion control, sediment control, and good housekeeping Best Management Practices (BMPs) and abatement of illicit discharges from the construction site.

The [City, Town, County]'s Department of \_\_\_\_\_ is/are responsible for verifying inspection of Regulated Project post-construction BMPs (e.g., bioretention facilities) following the completion of said projects and in accordance with Phase II Permit sections E.12.h and E.12.i.

**Note:** It's possible it will be decided that MCSTOPPP staff will assist with inspections of post-construction BMPs in the future. The City/Town/County will be responsible for enforcement.



## Template

**Table 4** provides a summary of inspection staff title and duties.

As necessary to comply with the Phase II Permit, assigned [City, Town, County] staff will perform the following inspection-related duties:

- Conduct inspections and reviews documentation to identify discharge violations.
- Educate the responsible party regarding the potential harm of the discharge, appropriate BMPs that may be used to abate the discharge, and penalties for non-compliance.
- Issue Verbal Warnings, Written Warnings, Notices of Violation, and Administrative Citations to responsible parties.
- Review compliance history reports.
- Prepare, maintain and log all inspection reports and enforcement actions in the [inspection files or tracking database or other tracking system].
- Assist in the preparation of and implementation of compliance meetings.
- Review compliance schedules and tracks deadlines.
- Verify responsible party has responded, in a timely manner, to enforcement actions.
- Prepare compliance reports.
- Report spills in accordance with applicable reporting laws and the [City, Town, County]'s Spill Response Plan. Spills that pose an immediate threat to human health or the environment must be reported immediately to 911, State of California Office of Emergency Services Warning Center ((800)-853-7550 or (916)-845-8911), and the Marin County CUPA ((415)-473-6647).
- Conduct informal meetings with owners and/or contractors to encourage compliance and provide education concerning requirements.

**Table 4. Inspection Staff Titles and Duties**

Inspector Type	Department/Division	Inspection Target
Construction Inspector	[Public Works/Land Development]	Private permitted construction projects
Construction Inspector	[Public Works/Engineering or Capital Improvement Division]	[City, Town, County] construction projects
Stormwater Coordinator (Performs or delegates role of Illicit Discharge Inspector)	[Public Works/Waste Management: Local Stormwater Program]	Reports of illicit discharges
Post-Construction Inspector	[Public Works/Land Development]	Verify inspections to ensure ongoing O&M of Permanent post-construction BMPs at Regulated Projects

## 7.2 Duties of Staff Performing/Coordinating Enforcement

Assigned staff will perform and coordinate enforcement tasks in a timely and consistent manner. To achieve compliance, [City, Town, County] staff will typically conduct the following duties:

- Review violations when compliance has not yet been obtained and make a determination on the level of enforcement to take. Ensure that compliance actions taken are consistent and timely.
- Coordinate and moderate compliance meetings and the preparation of compliance schedules.
- Review compliance reports and schedules prepared by [City, Town, County] staff to ensure that appropriate enforcement actions are taken and compliance goals are met.
- Compile compliance reports for annual reporting.

After [City, Town, County] enforcement staff may issue an order to cease and desist from the discharge, practice, operation or other activity causing or likely to cause a violation of the [City, Town, County]'s [Enter relevant code]. Such order shall be directed to those persons in violation of the ordinance stating clearly and concisely the nature of the violation, the requirements for compliance, a timetable for compliance, and such other remedial and/or preventative action as may be deemed necessary. Upon the violator's failure to comply with such order, the [City, Town, County] shall take further enforcement action as specified in this plan, or in accordance with any other appropriate provision of local, state or federal law. At the discretion of the agency, orders to cease and desist may take the form of any of the enforcement actions shown in Table 3.

To achieve compliance the enforcement staff typically performs the following duties:

- Reviews responsible party's response letters to ensure the response adequately addresses compliance issues.
- Coordinates and moderates compliance meetings and the preparation of compliance schedules.
- Reviews responsible party's compliance history reports.
- Compiles compliance reports for the annual report.
- Keeps a record of all costs and expenses incurred in conjunction with enforcement
- Communicates and coordinates with resource agencies and their respective Attorney's Office.
- Testifies as required if case goes to court

## 7.4 Duties of the Enforcement Official

The role of the Enforcement Official is to supervise the enforcement response program. The Enforcement Official is the [Director of Public Works] or his or her designee.

## **7.5 Other Municipal Staff**

All [City, Town, County] employees are encouraged to report possible stormwater violations to [Name or Department or Hotline]. All reports are investigated by an inspector.