

Enforcement Response Plan (ERP)

Clemson University



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Clemson University

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1.0 INTRODUCTION

This Enforcement Response Plan (ERP) has been developed to provide guidance in responding to violations to the *Clemson University Storm Water Management Plan (SWMP)* and/or the *Stormwater Planning and Management Policy: Policy 17* established by Clemson University. Responses to violations have been developed with the ultimate goal of reducing pollutant discharges to the maximum extent practical (MEP) and protecting water quality.

This ERP is for use of Clemson University Facilities and/or the permit authorities to whom Clemson University Facilities may delegate authority to administer the permitting program for construction activities and post-construction storm water management as required by Sections 4.2.4 and 4.2.5 of the NPDES General Permit for Storm Water Discharges from Regulated Small Municipal Separate Storm Sewer Systems (SMS4) (General Permit). The permit authority designated responsible for each minimum control measure (MCM) has the right to enforce its own ERP with the approval and oversight of Clemson University.

Clemson University Facilities reserves the right to revise this document at any time, without prior notice. Clemson University Facilities may terminate the delegation of authority to administer the permitting program required by Section 4.2.4 and 4.2.5 of the General Permit (Construction Activities Permitting Program) without revising this document. Upon termination of the delegation of authority to administer the Construction Activities Permitting Program, Clemson University Facilities may administer the program or delegate authority to administer the program to another entity.

This ERP also sets forth responses to address illicit discharges into the SMS4 and failure to comply with permanent storm water management requirements. These violations would be expected to be the result of actions by University faculty, staff, or students or of actions by parties with whom the University has a contractual relationship (e.g., contractors, vendors, and tenants). Accordingly, the responses to such violations will be handled through disciplinary action where the violator is University faculty, staff, or student and through contractual provisions for contractors, vendors, and tenants.

This response actions established in this ERP are divided into two categories. Section 2 will address responses to violations related to the Construction and Post-Construction. Section 3 will address responses to violation related to illicit discharges and connections into the SMS4.

2.0 CONSTRUCTION ACTIVITIES PERMITTING PROGRAM

2.1 Notice of Violation

Clemson University Facilities or the entity to whom Clemson University Facilities has delegated authority to administer Construction Activities Permitting Program (Construction Permitting Authority) may issue a written notice of the violation (NOV) for any violation of the Construction Activities Permitting Program. If the Construction Permitting Authority is not Clemson University Facilities, the Construction Permitting Authority shall provide Clemson University Facilities with a copy of the NOV issued to a responsible party. Within seven (7) working days of this notice, the responsible party shall submit to the Construction Permitting Authority an explanation of the violation and a plan for corrective action. Submission of this plan in no way relieves the responsible party of liability for any violations occurring before or after receipt of the notice of violation.

The notice shall contain:

- (a) The name and address of the responsible party
- (b) The address or a description of the building, structure or land upon which the violation is occurring, or has occurred
- (c) A description of the violation
- (d) A description of the corrective action(s) necessary to restore compliance and a time schedule for the completion of such action
- (e) A statement of the penalty or penalties which may be issued against the party responsible for the violation
- (f) A statement that the determination of violation may be appealed to the Chief Facilities Officer or the governing body of the delegated permitting authority if the Construction Permitting Authority is an entity outside the University. If the Construction Permitting Authority is a department of the University, the notice of appeal shall be submitted in accordance with Policy 17. If the Construction Permitting Authority is an entity outside the University, the notice of appeal shall be submitted in accordance with the ordinances and regulations of that entity.

2.2 Response to Violation

Violation responses will be dictated by the type of violation. The categories of violations include:

- Failure to Obtain Construction Permit
- Failure to Comply with Construction Stormwater Requirements
- Failure to Maintain Post-Construction Stormwater Control Measures

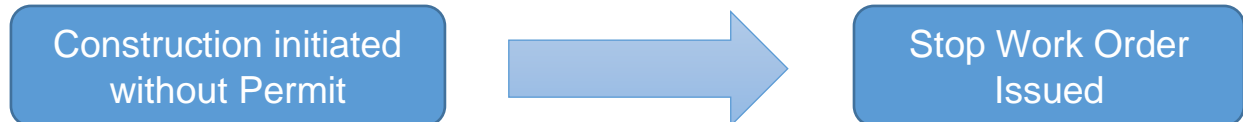
Procedures for responding to violations in each of these categories are outlined in the *Procedures for Penalty Issuance* section below.

2.3 Procedures for Penalty Issuance

2.3.1 Failure to Obtain Construction Permit

All violations related to construction permitting shall be enforced by the Construction Permitting Authority. When construction is initiated without a site development/land disturbing/grading permit, a stop work order may be issued immediately upon identification of unpermitted construction activity.

Figure 1. Response Procedure for Failure to Obtain Construction Permit



2.3.2 Failure to Comply with Construction Stormwater Requirements

All violations related to construction stormwater requirements shall be enforced by the Construction Permitting Authority.

As a University committed to maintaining a safe and healthy environment for students, faculty, and staff, maintaining compliance with construction stormwater requirements is a high priority for the University. When a University owned/operated construction stormwater practice is discovered to be out of compliance, the University Facilities Department commits itself to bringing the practice back into compliance as soon as possible.

If the responsible party fails to correct the violation or provide a scheduled plan for correction within the 7-day period following issuance of the NOV, the Construction Permitting Authority may issue one or more of the following non-monetary penalties:

- (a) Stop Work Order - the Construction Permitting Authority may issue a stop work order to the party responsible for the violation. The stop work order shall remain in effect until the responsible party has taken the corrective action set forth in the notice of violation or has otherwise remediated the violation or violations called out in the NOV. The stop work order may be withdrawn or modified to enable the applicant or other responsible person to take the necessary corrective actions to remediate the violation(s). Initiation of land disturbing activity without obtaining a stormwater permit, unless otherwise exempt, will lead to issuance of a stop work order until such permit is obtained.
- (b) Withhold Certificate of Occupancy – the Construction Permitting Authority in coordination with the University may refuse to issue a certificate of occupancy for the building or other improvements constructed or being

constructed on the site until the responsible party has taken the corrective actions requested in the NOV or has otherwise remediated the violations.

- (c) Suspension, Revocation, or Modification of Permit – the Construction Permitting Authority may suspend, revoke or modify the permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the corrective actions requested in the notice of violation or has otherwise remediated the violations. Such permit may be reinstated to enable the responsible party to take the necessary corrective actions for violations as seen necessary by Clemson University.

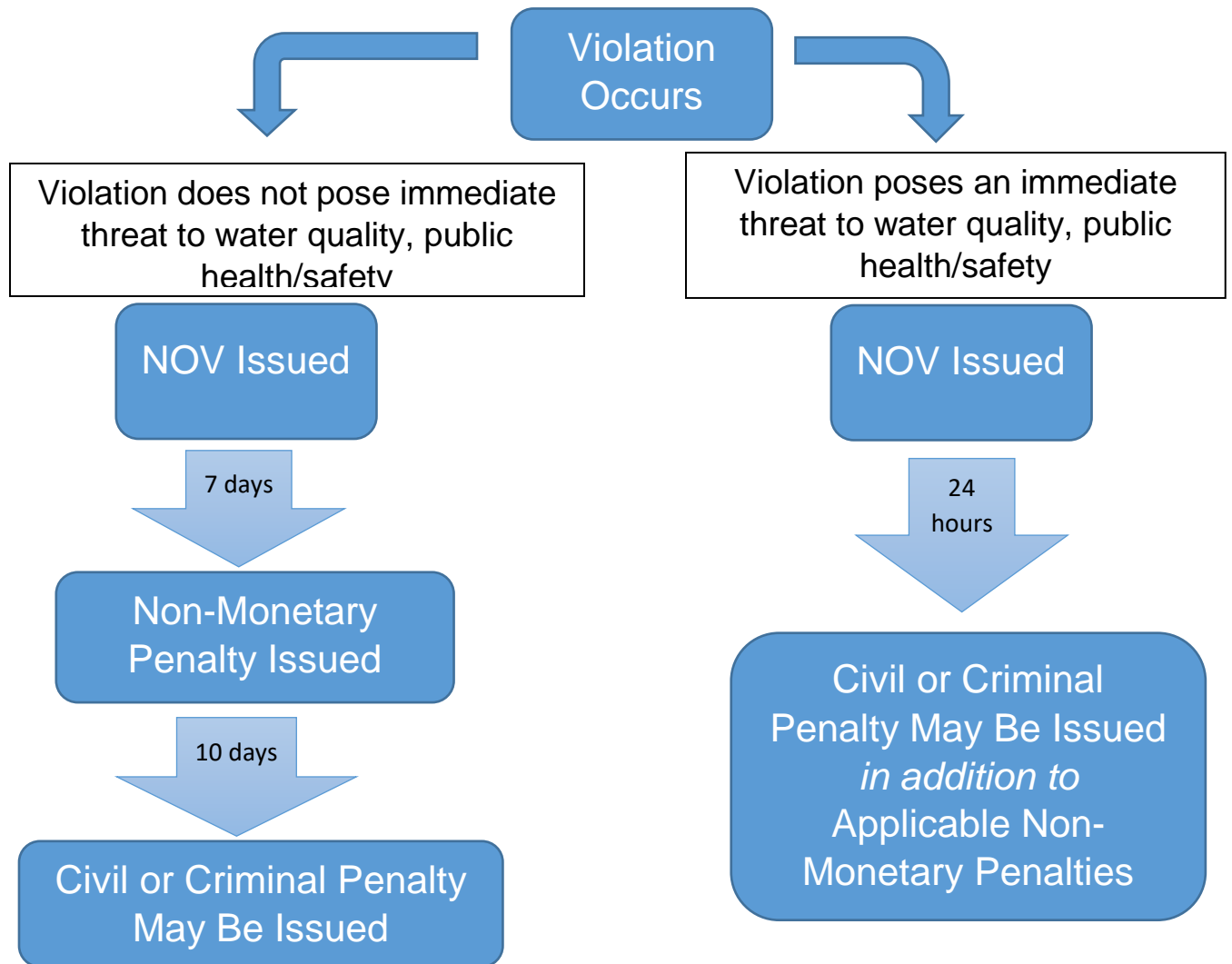
In the event the responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days, or such greater period as the Construction Permitting Authority shall deem appropriate (except, that in the event the violation constitutes an immediate danger to water quality, public health or public safety, 24 hours notice shall be sufficient) after the Construction Permitting Authority has taken one or more of the actions described above, the Construction Permitting Authority may impose a civil penalty as described below.

Civil Penalties –civil penalties shall not exceed \$1,000 (depending on the severity of the violation) for each day the violation remains un-remedied upon receipt of the notice of violation.

For intentional and flagrant violations of this ordinance, the Construction Permitting Authority may issue a criminal penalty as described below.

Criminal Penalties – the Construction Permitting Authority may issue a citation to the responsible person, requiring such person to appear to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

Figure 2. Response Procedure for Failure to Comply with Construction Stormwater Requirements



In addition to the enforcement action taken by the Construction Permitting Authority, the University may also impose additional contractual and legal remedies when the responsible party is a contractor, vendor, or tenant of the University. Legal action for non-compliance by contractors, vendors, or tenants may include:

- 1) Withholding contract payment, liquidated damages, setoff, indemnification or equitable adjustment as provided in the applicable contract;
- 2) Contract termination;
- 3) Consideration of non-compliance in award of future contracts;
- 4) Stop work order for the entire project subject to the contract until violations are remedied.

2.3.3 Failure to Maintain Post-Construction Stormwater Control Measures

All violations related to construction stormwater requirements shall be enforced by the Construction Permitting Authority.

If the responsible party fails to correct the violation or provide a scheduled plan for correction within the 7-day period following issuance of the NOV, Construction Permitting Authority may issue one or more of the following penalties:

- (a) Civil Penalties – In the event the responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days, or such greater period as the Construction Permitting Authority shall deem appropriate (except, that in the event the violation constitutes an immediate danger to water quality, public health or public safety, 24 hours notice shall be sufficient) after the Construction Permitting Authority has taken one or more of the actions described above, the Construction Permitting Authority may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied receipt of the notice of violation.
- (b) Criminal Penalties - For intentional and flagrant violations, the Construction Permitting Authority may issue a citation to the responsible person, requiring such person to appear to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

2.4 Appeals

Appeals may be taken in accordance with the ordinances of the Construction Permitting Authority.

3.0 ILLICIT DISCHARGES

3.1 Illicit Discharge/Illicit Connection/Improper Waste Disposal Violations

Clemson University Facilities holds responsibility for response to illicit discharge/illicit connection/improper waste disposal violations.

As a University committed to maintaining a safe and healthy environment for students, faculty, and staff, elimination of illicit discharge related to University

operations is a high priority for the University. Given that an illicit discharge is discovered that originates from a University operation, the University Facilities Department commits itself to taking immediate action to eliminate this discharge.

Once an illicit discharge or illegal connection has been located, the response by the Clemson University Facilities will vary depending on the type, location, frequency, severity, and source of illicit discharge. In any case, the responsible party will be required to take corrective action to eliminate the non-stormwater discharge within 30 days of notification. Should elimination take longer than 30 days, the responsible party shall submit a plan with the schedule for elimination. Where the violator is identified as University faculty, staff or students, it is expected that they will comply with any action required by the University to eliminate the potential for further illicit discharges. When the violation is the result on an illegal connection from a building, Clemson University Facilities or any other group responsible for that building will promptly take corrective action to eliminate the illegal connection. If University faculty, staff or students fail to comply with notice to eliminate an illicit discharge or connection and take appropriate corrective action as deemed necessary by Clemson University Facilities, the University may take disciplinary action in accordance with the policies and procedures set forth in the Clemson University Faculty Manual, the Clemson University Human Resources Policies and Procedures Manual, and the Clemson University Student Code of Conduct. These policies and procedures provide for progressive discipline to address repeated and continuing non-compliance. Additionally, if a University department other than Clemson University Facilities fails to conduct corrective action as directed by Clemson University Facilities, Clemson University Facilities may undertake such corrective action and charge the costs of conducting the corrective action to the responsible department.

Where the violator is identified as a contractor, vendor, or tenant, Clemson University Facilities will prepare a letter to be sent to an entity responsible for an illicit discharge or illegal connection. Depending on the circumstances, the letter will describe the findings of the investigation, the required remedy, the deadline for compliance, technical resources, and the legal actions which may be taken for non-compliance. Legal action for non-compliance by contractors, vendors, or tenants may include:

- 1) Withholding contract payment, liquidated damages, setoff, indemnification or equitable adjustment as provided in the applicable contract;
- 2) Contract termination;
- 3) Consideration of non-compliance in award of future contracts;

- 4) Stop work order for the entire project subject to the contract until violations are remedied.

Clemson University Facilities and/or the elected permit authorities must report immediately the occurrence of any dry weather flows believed to be an immediate threat to human health or the environment to SC DHEC Emergency Response, 1-888- 481-0125. If the source of the suspected illicit discharge is found to be a suspected non-compliance with an NPDES permit, the appropriate SC DHEC Regional Office must be notified.

3.2 Appeals

Appeals for actions taken by Clemson University Facilities in response to an illicit discharge/illegal connection may be submitted to the Chief Facilities Officer by any party aggrieved by any personnel, department, board, or affiliation of the University. The appeal must be filed within 15 days of the grievous action, by filing a complaint with Clemson University Chief Facilities Officer specifying the grounds of the appeal.

Within 45 days of the date of appeal, the Chief Facilities Officer shall meet for the hearing of the appeal. Clemson University holds the right to reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

Appeals of disciplinary action against University faculty, staff, or students for violations under this ERP will be taken in accordance with procedures set forth in the Clemson University Faculty Manual, the Clemson University Human Resources Policies and Procedures Manual, and the Clemson University Student Code of Conduct.