

# **Horry County**

## **Enforcement Response Plan**



**October 2014**

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## Introduction

The purpose of this Enforcement Response Plan (ERP) is to provide guidance for identifying types of violations and enforcement responses available to Horry County which can be used to achieve compliance for practices as stated in the Stormwater Management Ordinance (Chapter 17. 7, Article III) and meet the requirements of the SCDHEC Small Municipal Separate Storm Sewer System (SMS4) Permit. The ERP also specifies criteria by which County personnel can determine the enforcement response most appropriate for violations and noncompliance in regards to construction, illicit discharge detection and elimination (IDDE), post construction and good housekeeping. The ERP is designed to achieve the following objectives:

- Prevent pollutants from entering the Municipal Separate Storm Sewer System (MS4) and causing environmental harm.
- Establish definitions for noncompliance.
- Provide equitable and consistent enforcement actions to the extent possible.
- Recover costs incurred by the County due to site operator noncompliance.
- Penalize non-compliant site operators for violations.

Violations can be categorized as either minor or major. The severity of the violation can be based on the duration of the violation, the effect the violation caused on the environment, and whether or not the violator is a repeat offender. These key factors can be used in determining the severity of the violation but the classification is not limited to these only. Minor violations typically have not caused an immediate threat to the environment or SMS4 and most often only require a verbal or written warning. Major violations are assessed when the operator has failed to comply with the stormwater ordinance or has not complied with violation notices, and such negligence has caused an immediate or significant impact on the environment or SMS4. The County may determine the severity of a violation at its discretion.

This plan is intended as a guide to be used by Horry County employees or their designee. Any of the enforcement responses may be used at the County's discretion. The County may alter this document at any time, without prior notice, or pursue an enforcement case by skipping any intermediate steps.

## Enforcement Response Actions

The following are the types of enforcement response actions which may be taken by Horry County. The County reserves the right to apply any enforcement response at their discretion.

- I. **Verbal Warnings:** given at the discretion of the inspector when the violation can be corrected within a reasonable amount of time as determined by the inspector and the violator is contacted and agrees to correct the problem. Verbal warnings should be noted on the inspection report, however, no formal Notice of Violation (NOV) is required. Verbal warnings are to be issued within 24 hours of inspection.

## II. **Written Warnings:**

- a. Notice of Violation (NOV) – must specify the nature of the violation, required corrective action and date of a follow up inspection. Upon receipt of a NOV, the violator should submit a response and a plan for the correction and prevention of the violation conditions in writing within three (3) business days to the Horry County Stormwater Department.
- b. Stop Work Order – applies to active construction sites. Can be issued when a site is determined to be active without proper permits or for failure to respond to a previously issued NOV. May also be issued by the County/inspector if a major violation of the stormwater ordinance or illicit discharge is present that requires immediate action.

Written warnings are to be issued within three (3) business days of inspection.

## III. **Denial of Certificate of Occupancy (CO):**

Upon final inspection of a construction site, if the site is not properly stabilized or the operator has failed to comply with an outstanding notice of violation, then the County inspector may deny the issuance of a Certificate of Occupancy (CO) until final stabilization or compliance has been achieved.

## IV. **Citations (Civil/Criminal Penalties):** The County may impose a monetary penalty (Horry County Code Section 1-8) of no less than fifty dollars (\$50.00) and no more than five hundred dollars (\$500.00). Each day of a violation constitutes a separate violation. Penalties can be assessed based on the following criteria:

1. Severity of impact to public health and/or the environment.
2. Economic benefit gained by the violator.
3. Amount of effort put forth by the violator to correct the violation.
4. Enforcement costs incurred by the County.
5. Recurring violations or repeat violators.

Civil litigation may be used as a response in the following situations:

- Previous efforts have failed to restore compliance.
- The violator fails to pay assessed fines.
- The County determines it needs to recover losses due to the violator's noncompliance.
- It is necessary to stop or prevent activities that threaten human health and/or the environment.

## **Enforcement Response Levels**

Violations can vary and the corrective action taken will be on a case by case basis. The following levels can be used as guidance on determining the best course of action to take for the different types of violations.

Level 1 – Administrative issues with relatively low environmental risk and an infrequent record of violation by the operator should cause the following enforcement sequence: **Verbal Warning -> Notice of Violation -> Stop Work Order -> Citation -> Civil Litigation.**

Level 2 – Record keeping and site conditions that pose a relatively moderate/significant environmental risk to discharge pollutants into the SMS4 or adjacent receiving waterbody should cause the following enforcement sequence: **Verbal or Written Warning -> Notice of Violation -> Denial of Certificate of Occupancy -> Stop Work Order -> Citation -> Civil Litigation.**

Level 3 – Any immediate threat to human health and/or the environment or demonstrated willful noncompliance by an operator should cause the following enforcement sequence: **Stop Work Order -> Citation -> Civil Litigation.**

### Construction Site Violations

Table 1 identifies the resulting environmental impact of the violation, whether or not it is a reoccurring offense or offender, whether it has a minor or major environmental impact, and the recommended level of enforcement responses. The recommended enforcement response, as indicated by the levels described above, can be utilized at the discretion of the County or its designee.

**Table 1. Construction Violation Responses**

<b>Result of Violation</b>	<b>Repeat Offense/Offender</b>	<b>Category</b>	<b>Recommended Enforcement Response</b>
Potential for or minimal sediment deposition	No	Minor	Level 1
	Yes	Minor	Level 2
Sediment deposition occurs without impacting sensitive areas	No	Minor	Level 1
	Yes	Major	Level 2
Major sediment deposition or pollutant discharge	No	Major	Level 2
	Yes	Major	Level 3
Construction occurring without a land disturbance permit	No	Major	Level 3
	Yes	Major	Level 3

### Illicit Discharge Detection and Elimination (IDDE)/Improper Disposal

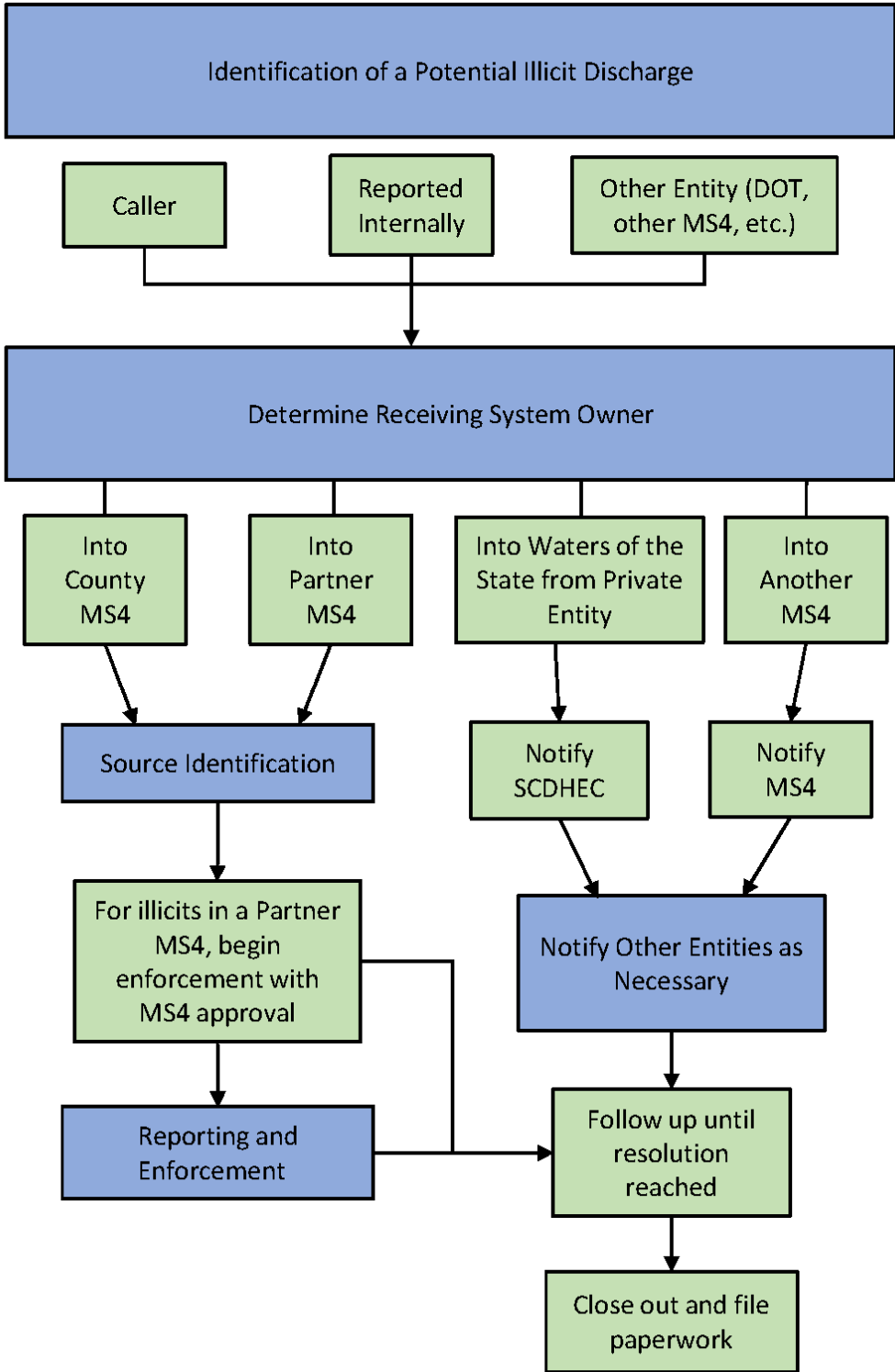
Evidence of an illicit discharge or improper disposal must be reported immediately to the Horry County’s Stormwater Management Department. If the illicit discharge is suspected to be an immediate danger to the health of humans and animals and/or the environment, the County is to immediately contact SCDHEC Emergency Response Section (ERS) at 1-888-481-0125.

The following procedures shall be used when an illicit discharge is discovered:

- If the source of the illicit discharge is evident at the time of inspection, a verbal notice may be issued to the responsible party.
- A NOV or stop work order depending on the severity and nature of the illicit, must be issued within twenty-four (24) hours after the source of the discharge is located. The operator or party responsible for the source of the illicit discharge will be required to eliminate the discharge within five (5) business days of written notification. The County has the option of changing the required elimination time based on the severity of the illicit discharge.
- The County will perform a follow up inspection within ten (10) business days of the initial notification. If the illicit discharge has not been corrected at the time of the follow-up inspection, a second NOV will be issued within twenty-four (24) hours. The operator or responsible party will have three (3) business days from the second NOV to eliminate the illicit discharge.
- A second follow-up inspection will be performed within five (5) days after issuance of the second NOV. If the illicit discharge has not been corrected, the County may proceed with civil action against the operator or responsible party.

Figure 1 represents the steps to be taken for illicit detection or improper disposal. Additional information on the County's IDDE program can be found in the Horry County Standard Operating Procedures for Use in Field Investigations for Illicit Discharges (July 2014).

Figure 1. Illicit Discharge/Improper Disposal Responses



## Post Construction Violations

Horry County requires all developers of new and re-development projects to sign a Maintenance Agreement which designates the developer or designee/owner as the responsible party for maintaining and ensuring the proper function of all post construction BMPs. As per the SCDHEC SMS4 Permit (effective January 1, 2014) the County will be responsible for inspecting all post construction BMPs, permitted by the County after the effective date, at least once during the permit cycle. Following the County's inspection, an inspection report will be generated and sent to the BMP owner.

If no problems are noted during the inspection, then the inspection report will indicate that no "recommended items" or "required items" exist at that time. If minor maintenance issues are discovered during the inspection, then the inspection report will identify "recommended items" and indicate that the owner should take action to address those issues and that the owner is responsible if those issues lead to BMP failure. If major maintenance issues are found during the inspection, then the inspection report will identify "required items" and indicate that the owner must take action to address those issues. Required items are those that directly relate to the safety and primary design function of the BMP, such as but not limited to: excessive woody vegetation on slope of dam/spillway; evidence of burrowing animals; leaks; seepage; or cracks in or major erosion of the dam of a detention pond.

The following levels of enforcement response will apply to post-construction inspections:

Level 1 – Inspection indicates that no recommended or required items exist at this time:

**Inspection Report**

Level 2 – Inspection indicates that recommended items exist: **Inspection Report -> Verbal Consultation-> Verbal or Written Follow-up**

Level 3 – Inspection indicates that required items exist: **Inspection Report (requests corrective action plan) -> Notice of Violation -> County Corrective Action (costs assessed to owner) -> Civil Litigation**

Table 2 outlines the actions to be taken if a post construction BMP is determined, upon inspection, to have failed or have the potential to fail or cause sediment or pollutants to enter a receiving waterbody, sensitive areas, or the SMS4. The County reserves the right to skip any intermediary steps dependent upon the severity of the environmental impact and/or the duration of the violation.



**Table 2. Post Construction Inspection Responses**

<b>Result of Violation</b>	<b>Category</b>	<b>Recommended Response</b>
Inspection report indicates no recommended or required items	Initial Contact	Level 1
Inspection report indicates recommended items only	Initial Contact	Level 2: Verbal Consultation
	Follow-up Contact	Level 2: Verbal or Written Follow-up
Inspection report indicates required items (may also include recommended items)	Initial Contact	Level 3: Notice of Violation (Corrective action plan requested)
Corrective action to repair required items not taken	Compliance Inspection	Level 3: County Corrective Action; Civil Litigation, if warranted

**Intergovernmental Agreements**

Horry County maintains intergovernmental agreements with the Towns of Atlantic Beach and Briarcliffe Acres to achieve compliance with the NPDES General Permit for Storm Water Discharges from Regulated SMS4. Under these agreements, Horry County and the appropriate Town will coordinate and follow the procedures in this Enforcement Response Plan. If necessary in these cases, the Town may levy its own penalties or pursue litigation.