
CII Subcommittee Meeting
December 17, 2009 – 1:00 to 2:30 pm
Millbrae Community Center Conference Room
 477 Lincoln Circle – Millbrae

AGENDA

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| 1. | Introductions, Announcements, Changes to Agenda, Approve October Meeting Summary
<i>Outcome: Agree on agenda and meeting summary.</i> | 5 min. | <i>Ward Donnelly</i> |
| 2. | Update on Pollution Prevention Group's Activities
<i>OUTCOME: Obtain update.</i> | 10 min. | <i>Whomever</i> |
| 3. | Review of MRP's Requirements That Affect CII
<i>OUTCOME: Understand relevant requirements from Provisions C.4, C.5, and C.15, PCB-containing equipment training/ inspections in C.12, and C.13.d inspect facilities likely to use copper.</i> | 15 min. | <i>Fred Jarvis/
Everyone</i> |
| 4. | Update on Use of Draft Template for Industrial and Commercial Business Inspection Plan
<i>OUTCOME: Obtain results of further testing of use of template to create a business inspection plan.</i> | 15 min. | <i>Dermot Casey/
Fred/
Everyone</i> |
| 5. | Review Draft Template for Enforcement Response Plan
<i>OUTCOME: Review and comment on draft template for the Enforcement Response Plan.</i> | 15 min. | <i>Fred/
Everyone</i> |
| 6. | Update on TAC Meeting Any Other Matters That Affect CII Not Covered Elsewhere
<i>OUTCOME: Obtain information.</i> | 10 min. | <i>Matt Fabry</i> |
| 7. | Share Information on Illicit Discharge and Industrial/Commercial Inspection Problems
<i>OUTCOME: Identify common problems and gain information on successful ways to resolve them.</i> | 15 min. | <i>Everyone</i> |
| 8. | Agree on Next Meeting Date of February 17 and Topics
<i>OUTCOME: Agree on next meeting date and topics.</i> | 5 min. | <i>Everyone</i> |

DRAFT CII Subcommittee Report

Meeting Date: October 8, 2009

Subcommittee Action:

- Agreed that the August subcommittee meeting summary was acceptable.
- Agreed that a useful way for each municipality to describe how it is meeting the Provision C.15 Exempted and Conditionally Exempted Discharges requirements is to include a description of its approach in the next annual report.
- Municipalities will provide comments by October 22 on the proposed language that had been added under the “Description of Municipality’s Prioritization Process” to the draft Industrial and Commercial Business Inspection Plan (Inspection Plan). This additional language was developed recently in response to a suggestion that some example language be included in the template.
- It was agreed that the CII Subcommittee working with the New Development Subcommittee will develop one enforcement response plan template for adaptation by the cities.

Requested Technical Advisory Committee Action or Feedback/Guidance (if any): None.

Other Information/Announcements:

- **Bay Area Pollution Prevention Group.** The work group completed its proposed projects and budgets for FY 2010/11. San Jose is leading a campaign about not putting pharmaceuticals down the drain. Save the Bay representatives provided information about its Cities Keep It Clean Program.
- **Municipal Regional Stormwater Permit.** Noted that the final tentative order added an April 1, 2010 completion date in Provisions C.4 and C.5 for the enforcement response plan (ERP). Most of the changes to the permit provisions that affect CII were made to Provision C.15 Exempted and Conditionally Exempted Discharges.
- **Inspection Plan.** Dermot reviewed an example of using the draft Inspection Plan to create an inspection list. It was acknowledged that municipalities may inspect businesses more frequently than the commitment made in the Inspection Plan. Dermot believes that it would be fairly easy to develop one Inspection Plan document that includes all of the 16 cities that County Environmental Health provides inspection services for. He estimated that he would be able to hand out a draft list of businesses to each of these cities for review within two months. There was also discussion of businesses, such as tile cutters and limousine services, which are neither hazardous waste generators nor retail food facilities, but should be inspected for stormwater and nonstormwater discharge issues. The county may be able to use some technicians to help inspect and provide educational outreach to these businesses who may be falling through the cracks.
- **Enforcement Response Plan.** Concepts for updating a previously used enforcement response plan (ERP) were discussed. Some agencies are able to charge for the amount of time that they need to spend to do the follow up necessary to assure that problems at a business are corrected.

- **TAC Meeting.** The MRP and BASMAA's applications for federal grant funding were discussed.
- **Training Work Group.** The training work group is providing a forum for the more detailed development and trial use of an Inspection Plan template and the update of an ERP.
- **Sharing Information.** Dermot advised that stormwater complaints about a restaurant or hazmat facility should be sent to the county. Ward added that some times a more immediate response can be achieved by calling a city. Dermot reiterated that it is important to know who the code enforcement and building inspectors are in each city. The subcommittee also reviewed EBMUD's graywater fact sheet that explains new plumbing code language that makes the requirements for residential graywater reuse less onerous.

Subcommittee Work That Affects Other Subcommittees: ERP affects new development subcommittee.

Next Steps: The Training Work Group will work with the New Development Subcommittee on developing a draft ERP.

Next Meeting Date: Subcommittee will meet next on December 17, 2009 at 1:00 pm.

DRAFT TEMPLATE

Enforcement Response Plan for the Municipal Stormwater Program
Agency [City/County or Flood Control District] _____
Dated _____

Description and Purpose of Enforcement Response Plan

This enforcement response plan (ERP) provides guidance to inspection staff to assist them to take consistent actions needed to achieve effective and timely compliance with the municipality’s stormwater ordinance and other enforcement authorities allowed by the local municipal code. The ERP was developed to comply with the following sections of the municipal regional stormwater permit (MRP):

- Industrial and Commercial Site Controls – ERP (Provision C.4.c);
- Illicit Discharge Detection and Elimination – ERP (Provision C.5.b); and
- Construction Site Control – ERP (Provision C.6.b).

As shown in Appendix A these different MRP sections contain similar, but not identical requirements for developing and implementing an ERP. This template integrates the requirements from these three different MRP provisions into one ERP to facilitate consistent enforcement response within the agency.

The selection of an appropriate enforcement action and the escalation of enforcement are based on the seriousness of the violation and the violator’s response to the agency’s previous attempts to achieve compliance. The ERP includes suggested amounts of time to allow for the correction of violations based on the goal stated in the MRP¹. 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 may be implemented. As required by the MRP, this ERP also describes when it may be appropriate to refer violations to another agency, such as the San Francisco Bay Regional Water Quality Control Board (Water Board), for additional enforcement.

The agency has authority to enforce municipal stormwater control requirements under the following sections of its municipal code:

- [Municipal Stormwater Ordinance] _____
- [Grading Ordinance] _____
- [Public Nuisance] _____
- [Code Enforcement] _____
- [Other] _____

Types of Enforcement Actions and Their Use

This ERP describes a range of enforcement options available for use to encourage prompt correction of violations and the prevention of conditions that pose a threat to cause future violations. There are administrative and judicial (civil and criminal) remedies in the stormwater ordinance and other parts of the agency’s code that provide a range of discretionary options for responding appropriately to a given violation depending on the 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 agency’s compliance with the MRP. The following table lists and describes available enforcement actions, provides examples of their use, and lists suggested time schedules for compliance.

¹ The MRP states that violations must be corrected in a timely manner with a goal of correction before the next rain event, but not longer than 10 business days after discovery unless agency staff document reasons why a longer period is needed in the agency’s database or equivalent

Enforcement Actions² Overview

Enforcement Actions	Use	Examples			Time Schedule to Achieve Compliance
		Industrial/Commercial Business	Illicit Discharge	Construction Site	
Verbal Warning	For <u>threatened violations</u> due to inadequate housekeeping, lack of appropriate BMPs to prevent pollution, or threatened non-stormwater discharges disallowed by MRP.	Inappropriate storage of material out-of-doors that may contribute to pollutants in stormwater during rainfall, such as lids on dumpster being left open.	A wash area is present where washwaters may flow to MS4 based on the configuration, operational procedures, or evidence of a possible discharge.	Lack of an updated erosion control plan that reflects current conditions at a construction site.	Before the next rainfall event, but not longer than 10 business days, unless more timely compliance is feasible or other exceptions apply ³ .
Written Warning/ Notice of Violation	Issue for <u>minor violations</u> or if the response to a verbal warning is inadequate. A written warning may be in the form of a written inspection report, such as a completed Standard Stormwater Facility Inspection Report Form; letter; or checklist that describes violations, expected corrections, and schedule for correction.	Use of best management practices that are almost effective, but do not achieve the maximum extent practicable standard, for the pollutant generating activity they are intended to control.	A non-stormwater discharge that is not specifically allowed by the MRP, but might be if adequate documentation and procedures had been followed to verify the adequate control of pollutants and obtain necessary approvals.	Lack of having a copy of the Stormwater Pollution Prevention Plan at the construction site.	Before the next rainfall event, but not longer than 10 business days, unless more timely compliance is feasible or other exceptions apply ² .

² Where allowed by local municipal code, enforcement actions may include cost recovery for municipal staff time and associated expenses to initiate and track enforcement, conduct recordkeeping, collect and test samples, and verify a return to compliance.

³ The MRP states that violations must be corrected in a timely manner with a goal of correction before the next rain event, but not longer than 10 business days after discovery unless agency staff document reasons why a longer period is needed in the agency's database or equivalent.

Enforcement Actions² Overview (continued)

Enforcement Actions	Use	Examples			Time Schedule to Achieve Compliance
		Industrial/Commercial Business	Illicit Discharge	Construction Site	
Notice to Comply	Issue for <u>major violations</u> or if the response to written warning is inadequate. A notice to comply may be in the form of a cease and desist order ⁴ , notice to clean ² , notice to abate ⁵ , an administrative citation, or a letter that describes violations, expected corrections, and schedule for correction.	Use of best management practices that are ineffective for the pollutant generating activity they are intended to control.	Discharge of non-stormwater discharges to MS4 that contain soap or other pollutants.	Inadequate use of BMPs to control sediment runoff from a construction site.	Before the next rainfall event, but not longer than 10 business days, unless more timely compliance is feasible or other exceptions apply ² If more time is needed than provided above, consider issuing a stop work order for construction sites, or requiring the immediate cessation of pollutant or illicit discharge generating activities until long-term remedies may be implemented.
Legal Action	Pursue for the most serious violations including where the response to the notice to comply is inadequate. These types of violations are referred to city attorney or County District Attorney for civil and criminal prosecution.	Lack of use of best management practices for pollutant generating activity, such as storing wastes in a way that allows pollutants to be mobilized by rainfall and stormwater runoff.	Discharge of hazardous wastes to MS4.	Violations that affect the agency's ability to comply with the MRP's requirements.	The time schedule for compliance will need to be determined based on case-specific information. This information will be documented as required by the MRP.

⁴ The model stormwater ordinance provides that an authorized enforcement official may issue cease and desist orders and notices to clean.

⁵ The model stormwater ordinance provides that any condition caused or permitted to exist in violation of the stormwater ordinance is a nuisance and may be summarily abated and/or restored by any enforcement official.

Escalation of Enforcement Actions

This ERP incorporates a progressive enforcement response policy that is designed to maintain a fair and equitable system for enforcement to ensure that enforcement actions are proportionate to the violations, to provide maximum flexibility and effectiveness of enforcement actions, and to provide a system of escalating enforcement actions to encourage prompt compliance. The stormwater ordinance and other municipal codes allow for a degree of enforcement flexibility and a range of enforcement options that are needed to most efficiently gain compliance. An enforcement action may be upgraded or escalated depending on the circumstances of the case.

Joint Compliance Inspections

In some situations it is appropriate to have joint compliance inspections with other agencies because the nature of the violation or because the violations are ongoing or repeated violations and may benefit from the enforcement options provided by other environmental statutes. Using the results of a joint compliance inspection, the regulatory agencies will be able to decide how to most efficiently achieve compliance.

Referral to Other Agencies

The MRP states that where enforcement tools are inadequate, the violations should be referred to the Regional Water Board, district attorney, or other relevant agencies for additional enforcement (Provision C.4.c). The legal enforcement action may include referral to the San Mateo County District Attorney Environmental Crimes Unit. Referrals may also be made to the California Department of Fish and Game and possibly to the U.S. Environmental Protection Agency, if the Regional Water Board staff is unable to provide effective assistance.

Appendix A
Comparison of Municipal Regional Stormwater Permit's Enforcement Response Plan Requirements

Task Description	Provision C.4 Industrial/Commercial	Provision C.5 Illicit Discharge Detection/Elimination	Provision C.6 – Construction Site Control
Overall Description	Develop and implement ERP that serves as <u>inspection staff's</u> reference document to take <u>consistent actions to achieve timely and effective</u> compliance.	Develop and implement an ERP that will serve as guidance for <u>inspection staff</u> to take <u>consistent actions to achieve timely and effective</u> abatement of illicit discharges.	Develop and implement ERP that serves as <u>inspection staff's</u> reference document to take <u>consistent actions to achieve timely and effective</u> compliance. {identical to Prov. C.4)
Required Enforcement Actions/Recommended Responses	<u>Include timeframes for correction of various field violation</u> scenarios and <u>provide guidance</u> on appropriate use of various <u>enforcement tools</u> , such as verbal and written notices, <u>citations</u> , <u>cleanup requirements</u> , <u>administrative</u> and <u>criminal penalties</u> .	<u>Include timeframes for correction of various types and degree of violations</u> . ERP will <u>provide guidelines</u> on when to employ the range of <u>regulatory responses</u> from warnings, <u>citations</u> and <u>cleanup</u> and cost recovery, to <u>administrative</u> or <u>criminal penalties</u> .	<u>Include timeframes for correction of problems for various field violation</u> scenarios.
Timely Correction of Violations	States <u>violations</u> as a <u>goal</u> should be <u>corrected before the next rain event</u> , but <u>no longer than 10 business days after discovery unless reasons are recorded in Permittee's database or equivalent</u> . Include appropriate time periods for each level of corrective action. Describe permittee's procedures for follow up inspections, enforcement actions, and referral to another agency.	<u>Goal of correcting violations before the next rain event but not longer than 10 business days after discovery unless rationale is recorded in database or equivalent</u> . Immediate correction can be temporary and short-term if a long-term, permanent correction will involve significant resources and construction time. An example of replumbing a wash area is described.	All violations must be corrected in a timely manner with <u>goal of correcting them before the next rain event but no longer than 10 business days after the violations are discovered</u> . If more than 10 business days are required for compliance, a <u>rationale</u> shall be <u>recorded in database or equivalent</u> .
Escalation of Enforcement/Referrals	Enforce stormwater ordinances as necessary to achieve compliance. Where enforcement tools are inadequate, <u>refer</u> the case to the Water Board, district attorney or <u>other relevant agencies</u> for additional enforcement.	If corrective actions are not implemented promptly or if there are repeat violations, permittees shall <u>escalate responses</u> as needed to achieve compliance, including <u>referral</u> to <u>other agencies</u> where necessary.	Take <u>progressively stricter responses</u> to achieve compliance. ERP shall include structures for progressively stricter responses & various violation scenarios that evoke progressively stricter responses.

Task Description	Provision C.4 Industrial/Commercial	Provision C.5 Illicit Discharge Detection/Elimination	Provision C.6 – Construction Site Control
Recordkeeping	Maintain adequate records to demonstrate compliance and appropriate follow-up enforcement responses. Lists specific information that should be tracked regarding business inspections; list includes type of enforcement and problem resolution.	All incidents or discharges reported to the complaint/spill system that might pose a threat to water quality shall be logged to track follow up and response through problem resolution. Data collected shall be sufficient to demonstrate escalating responses to repeated problems, and inter/intra-agency coordination, where appropriate. Specific spill and discharge complaint tracking information requirements are listed in Provision C.5.f.ii.	Specific information required for each inspection and problems found and resolved is listed in Provision C.6.e.ii.(4).
Reporting	Lists information for inclusion in the annual report including number and percent of violations resolved within 10 working days or otherwise resolved in a longer but still timely manner. Frequency and types/categories of violations observed. Frequency and type of enforcement. Summary of types of violations by business category.	Number of discharges reported; number of discharges reaching storm drains and/or receiving waters; number and percentage of discharges resolved in a timely manner; and summary of major types of discharges and complaints.	Reporting of inspection results is required in Provision C.6.e.iii. Agencies must report the number and percentage of each type of enforcement action listed in its ERP.
Time Frame for Development and Implementation of ERP	April 1, 2010	April 1, 2010	April 1, 2010