



Policy 14

STORMWATER ENFORCEMENT RESPONSE PLAN

In compliance with the National Pollution Discharge Elimination System Permit # TNS068055, the City of Knoxville is required to prohibit and enforce non-stormwater discharges to the municipal separate storm drain system. This was initially accomplished by the Knoxville Stormwater and Street Ordinance in 1997. To fulfill the remainder of the NPDES requirements with regards to enforcement, these guidelines have been adopted by the Water Quality Section and other personnel within the Stormwater Engineering Division.

Upon discovery of a violation of Chapter §22.5 of the City Code, the Engineering Director or his representative may employ any combination of the enforcement actions below, and to escalate enforcement responses where necessary to address persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm.

- A) Verbal Warnings – The site inspector may issue verbal warnings that specify the nature of the violation, any required corrective action, and a time to comply with verbal warning.
- B) Written Notices - The Engineering Director or his representative may issue a Notice of Violation (NOV) to the responsible party and/or property owner where the violation has occurred. The NOV shall typically include:
 1. The description and nature of the violations to the City Code.
 2. The location of where the violations have occurred.
 3. A description of the ordered repair or remediation work which is necessary to comply with the Knoxville Stormwater and Street Ordinance (Chapter 22.5 of the City Code).
 4. The latest date that the repair or remediation work must be completed. This becomes the expiration date of the NOV.
 5. Signature of the person issuing the NOV.

The NOV shall require that any violation of the City Code must stop immediately, unless doing so would otherwise endanger the public safety or welfare. The Engineering Director will not allow an extension of time for NOVs that substantially harm natural streams and the environment.

The Engineering Director may review a written request for an extension of time, if there is sufficient evidence of hardship. Considerations which could allow for an extension of time may include:

- Structural modifications or any repair work (such as sanitary sewer laterals) for which new design plans are usually not necessary. The Engineering Director may typically allow a maximum of 14 days for these projects to occur.
- New structures or major structural modifications which require a coordinated effort for design planning. The Engineering Director may typically allow a maximum of 60 days for large projects to occur.

- New structures or any structural modifications that require state or federal permits to complete the project. The Engineering Director may allow a maximum of 180 days for large projects with substantial elements of design work.

C) Citations with Administrative Penalties - Any person violating the provisions of the City of Knoxville Stormwater and Street Ordinance may be assessed a civil penalty by the City of Knoxville of not less than \$50 per day and not more than \$5,000 per day for each day of violation. Each day of violation shall constitute a separate violation. After the NOV has been issued, the property owner, developer and/or responsible party will be notified by mail of the violations and the ordered repairs.

The NOV typically does not include the amount of any fines or penalties. All fines and penalties will be determined by the Engineering Director, and are generally assessed after the NOV expires. The Director will consider the following criteria when assessing penalties:

1. The amount of damage to the public health and the environment.
2. The amount of effort put forth by the violator to remedy this violation.
3. The economic benefit gained by the violator for not obeying the law.
4. Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity.
5. The amount of penalty established by ordinance or resolution for specific categories of violations.
6. Any unusual or extraordinary enforcement costs incurred by the city.
7. Any equities of the situation that outweigh the benefit of imposing any penalty or damage assessment.

The Director may also consider these additional criteria for determining penalties of violations:

8. Willingness and cooperation of the violator to remedy this violation and remediate any damage.
9. Whether the violation was intentional, negligent, or accidental.
10. Costs incurred by the City of Knoxville for any administrative or remediation costs, including the investigative and monitoring activities. This is often computed in terms of number of man-hours necessary to deal with the problem.
11. Prior violations for this violator or at this location.

In addition to the civil penalty above, the City of Knoxville may recover all damages proximately caused by the violator to the city, which may include any reasonable expenses and attorney's fees incurred with investigating, enforcing or correcting violations. The City may bring legal action to enjoin any continuing violation, and the existence of any other remedy, at law or in equity, shall be no defense to any such actions. The remedies set forth in this policy shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.

Any person aggrieved by the imposition of a civil penalty or damage assessment, as provided by the Knoxville Stormwater and Street Ordinance (Chapter 22.5), may appeal said penalty or damage assessment to the Board of Environmental Appeals. The appeal shall be in writing and filed with the City of Knoxville Law Department within 30 days after the damage assessment or civil penalty is served in any manner authorized by law.

Upon receipt of an appeal, the Board shall hold a public hearing within 60 days, or a later date mutually agreed upon by all parties. At least 10 days prior to the hearing, the Board shall publish time, date and location of the public hearing in a daily paper of general publication. At least 10 days prior to the hearing, notice shall be provided to the aggrieved party at the address provided at the time of appeal. Any alleged violator may appeal a decision of the Board of Environmental Appeals pursuant to the provisions of Title 27, Chapter 8 of the Tennessee Code Annotated.

In the event that an assessed civil penalty is due and unpaid, the City of Knoxville may collect the monies due from the surety bond, cashier's check, letter of credit or other security supplied to ensure the proper completion of the project.

- D) Stop Work Orders - The Engineering Director or his representative may issue a Notice of Violation (NOV) for ceasing all activities on site (Stop Work Order, SWO) to the responsible party and/or property owner where the violation has occurred and the violation is egregious or where the above means have failed to bring the site into compliance.
- E) Withholding of Plan Approvals or Other Authorizations - When violations are known to exist, the Engineering Director or his representative may withhold the approval of all plans the responsible party or property owner submits.
- F) Additional Measures - The City of Knoxville may also use other escalated measures provided under local legal authorities. The City may perform work necessary to improve erosion control measures and collect the funds from the responsible party in an appropriate manner, such as collecting against the project's bond or directly billing the responsible party to pay for work and materials. The City may also increase permitting fees for any future developments.