

TOWN OF IRMO

Stormwater Enforcement Response Plan



Adopted by Town Council

October 4, 2016

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1 Introduction

As required by the SMS4 permit, this Enforcement Response Plan (ERP) describes the Town's procedures and policies regarding enforcement of the stormwater ordinance, including illicit discharges. Compliance shall be achieved through progressively stricter responses as needed. The ERP includes the following items relative to the Town's enforcement procedures:

- a. A description of the types of enforcement issued by the Town;
- b. A description of specific strategies for escalating enforcement response, where necessary, to address persistent, repeat or escalating violations.

The basis for the Town of Irmo's stormwater program enforcement can be found in the following documents:

- Ordinance 06-10: Lexington County Stormwater Management Ordinance
- Lexington County Land Development Manual (LDM)

This ERP documents the Town of Irmo's policies and procedures in support of the documents noted above.

2 Enforcement Process

The Town's enforcement of land disturbance stormwater violations, water quality violations and illicit discharges is authorized by the Lexington County Stormwater Management Ordinance (see Appendix A). Ordinance 2007-01 was approved by Town Council for adoption by reference; the Lexington County Stormwater Management Ordinance and the Lexington County Land Development Manual into the Irmo Code of Ordinances (see Appendix B).

2.1 Land Disturbance

For new development and redevelopment sites, the County issues land disturbance and building permits on behalf of the Town of Irmo. The Public Works Stormwater Division issues Land Disturbance Permits in compliance with the Land Development Manual. Chapter 2 of the LDM outlines the permitting process for various types of land disturbances. Building permits are issued by the Building Inspections and Safety Division of Community Development Department. Lexington County Public Works Stormwater Division staff coordinates routinely with Lexington County Building Officials. Prior to issuing a building permit, Building department staff ensure that Land Disturbance Permits and/or other stormwater-related permits have been submitted and approved. Once development has been completed, Lexington County Building department staff coordinates with Lexington County Public Works Stormwater staff to ensure as-builts have been submitted and approved before issuing a certificate of occupancy. When issues arise during construction, Lexington County Stormwater and Building department staff work in conjunction with the Town of Irmo to withhold inspections and/or Certificates of Occupancy, as necessary. Stormwater staff has found withholding inspections and/or certificates of occupancy to be the most effective in gaining compliance for land disturbance violations.

2.2 Illicit Discharges

The Town of Irmo has trained their Administrative and Police Department staffs on the identification of illicit discharges. Where an illicit discharge has been identified, the Irmo Stormwater Manager is notified and shall follow-up as soon as practical but typically within 2 hours. Illicit discharge investigations follow the protocols outlined in the County's "Standard Operating Procedures for Use in Investigations for Illicit Discharges". Where illicit discharges are occurring, the Town of Irmo will make every effort to resolve the issue but may also contact Lexington County Public Works Stormwater Division and/or DHEC for assistance.

3 Response Criteria to Consider

Upon discovery of a violation of the Lexington County Stormwater Management Ordinance No. 06-10, the enforcement process begins by identifying the stormwater violation and determining the severity of the enforcement response. Section 5 outlines the enforcement response and progression from verbal warnings to criminal penalties. The following criteria is considered when determining the appropriate enforcement response:

- **Effect on the Environment.** Violations that have the potential to negatively impact the Town's stormwater system, private property, or streams and wetlands are urgent and require expeditious action. Such violations warrant bypassing verbal warnings and moving to more aggressive actions to gain quick compliance.
- **Compliance History of the Violator.** The violator's compliance history can affect the enforcement response. Recurring violations may indicate that an operator's treatment system is inadequate, that the operator has taken a casual approach to operating and maintaining the treatment system or that an operator does not intend to comply with the ordinance. Repeated violations by the same person or company reflects egregiousness and/or willfulness.
- **Duration.** Where a violator has been issued a verbal or written warning, the compliance clock begins. Failure to complete corrective actions within the established time may indicate that escalated enforcement actions are needed to gain compliance.
- **Good Faith of the Violator.** 'Good Faith' is defined as the violator's honest intention to remedy non-compliance evidenced by actions which give support to this intention. Good faith shall be demonstrated by cooperation and completion of corrective measures in a timely manner. A violator's good faith in correcting noncompliance is a factor in determining which enforcement response is suitable.

4 Categories of Violations

There are two general categories of violations:

- **Permitted violations.** These types of violations are typically construction projects holding a Land Disturbance Permit that are in violation of permit conditions.
- **Unpermitted violations.** These violations include illicit discharges, illegal dumping, or land disturbances that begin without first obtaining a Land Disturbance Permit.

5 Town Enforcement Responses

The category of violation and severity of the violation sets the type of enforcement action and aggressiveness of each enforcement steps. The Irmo Stormwater Manager or his/her designee may employ any combination of the following enforcement actions, and may escalate enforcement responses where necessary to address persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm.

5.1 Verbal Warnings

For less severe violations or for first time offenders, the Irmo Stormwater Manager or his/her designee may issue verbal warnings that specify the nature of the violation, any required corrective action, and a time to comply with a documented verbal warning. Warnings for construction/post-construction are documented in Lexington County's Construction Inspection tracking system. Warnings for IDDE are tracked in a spreadsheet by the Irmo Stormwater Manager

5.2 Corrective Order (Written Warning)

A Corrective Order is a written warning intended for minor violations. An example of a Corrective Order can be found in Appendix C. The Irmo Stormwater Manager or his/her designee may issue a Corrective Order to the responsible party and/or property owner where the violation has occurred. The Corrective Order typically includes the following:

- The description and nature of the violations to the County Stormwater Management Ordinance, approved SWPPP, Land Development Manual (LDM) and/or construction plans.
- The location of where the violations have occurred.
- A description of the steps that must be taken to rectify the violation. Steps may include the development and submittal of corrective action plans, repair of measures on a construction site, immediately ceasing illicit discharges and/or repairing any damages that occurred.
- The deadline by which the repairs or remediation work must be completed to avoid escalated enforcement.
- Signature and Title of the person issuing the Corrective Order.

5.3 Notice of Violation

If a Corrective Order has not been addressed to the satisfaction of the Irmo Stormwater Manager, he/she or his/her designee may issue a Notice of Violation (NOV) to the responsible party and/or property owner where the violation has occurred. In addition, for more serious violations or for repeat offenders, a Notice of Violation may be the first notice to the violator.

The NOV does not include the specific fine or penalty amount. An example of a NOV can be found in Appendix C.

The Irmo Stormwater Manager or his/her designee may require the violator to submit, a corrective action plan (CAP) by the deadline stated on the NOV. When required, the CAP must be submitted by the violator to the Irmo Stormwater Manager. An inspection to ensure that corrective actions

have been completed is conducted by the Irmo Stormwater Manager or his/her designee. Submission of the CAP in no way relieves the violator of liability for any violations occurring before or after receipt of the NOV. See Section 8 for further information about the CAP.

In addition to the possible CAP requirement, the NOV includes:

- The description and nature of the violation(s) to the Lexington County Stormwater Ordinance (No. 06-10), approved SWPPP, LDM and/or construction plans.
- The location of where the violation(s) have occurred.
- A description of the ordered repair or remediation work which is necessary to bring the activity or site into compliance
- Requirement to submit to the Irmo Stormwater Manager within 10 days a written corrective action plan to correct the violation.
- Deadline by which the repair or remediation work must be completed to avoid escalated enforcement. This becomes the expiration date of the NOV. Note that the expiration date is based upon the violator's date of receipt of the NOV.
- Signature and Title of the person issuing the NOV.

5.4 Civil Citations

A civil citation is a monetary penalty assessed by the Town to any person violating the Lexington County Stormwater Ordinance, LDM or a permit. The fine is considered punitive in nature and is not related to any specific cost borne by the Town. The Town shall also recover any damages to the Town's stormwater system for actions taken by the Town to rectify a violation or for actions taken by the Town to stop illicit discharges. An example of a Civil Citation Notice can be found in Appendix C. Civil citations are prepared by the Irmo Stormwater Manager and served by a Town Code Enforcement Officer.

Along with the civil citation, the Town may require the violator to submit a written corrective action plan by the deadline stated on the citation. The CAP must be submitted by the violator to the Irmo Stormwater Manager. An inspection to ensure that the corrective actions have been completed is conducted by the Irmo Stormwater Manager or his/her designee. Submission of this plan in no way relieves the violator of liability for any violations occurring before or after receipt of the NOV. See Section 8 for further information about the CAP.

Civil citations are generally issued after the NOV expires and when corrective actions have not been completed. The amount of the penalty is determined by the magistrate court and is typically proportional to the harm caused by the violation and the Town's cost to repair damages. The Irmo Municipal Court, with input from the Irmo Stormwater Manager or his/her designee, 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 Town.

7. Any equities of the situation that outweigh the benefit of imposing any penalty or damage assessment.

The Irmo Municipal Court, with input from the Irmo Stormwater Manager or his/her designee, may also consider these additional criteria for determining penalties of violations:

1. Willingness and cooperation of the violator to remedy this violation and remediate any damage.
2. Whether the violation was intentional, negligent, or accidental.
3. Costs incurred by the Town 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.
4. Prior violations for this violator or at this location.

5.5 Criminal Penalties

Criminal prosecution is a formal process of charging individuals and organizations with violations of ordinance provisions that are punishable, upon conviction, by fines and/or imprisonment. Criminal prosecution is an appropriate enforcement action when there is evidence of willful noncompliance and when criminal negligence or intent can be proven. Some examples of these are altering or falsifying reports, tampering with samples, unauthorized discharges, and violations of administrative orders.

The criminal enforcement process begins when the Town has reason to believe crimes have been or will be committed. This information may be gathered during routine inspections or monitoring/sampling activities or in the form of reports from employees or the public. Citations may be issued by a Code Enforcement Officer from the Town of Irmo Police Department when it is determined the operator's efforts, or lack thereof, to obtain compliance through less formal actions have failed. If crimes are suspected or known, the Irmo Stormwater Manager or his/her designee shall notify the Town Attorney for proper collection of evidence.

Any person who negligently, willfully or intentionally violates any provision of the Lexington County Stormwater Management Ordinance shall be guilty of a misdemeanor and shall be punished subject to the penalty jurisdictional of the Irmo Municipal Court. Each day of a violation shall constitute a new and separate offence.

5.6 Additional Response Alternatives for Land-Disturbance Violations

Additional response alternatives are available for land disturbance-related violations including any one or a combination of the following:

1. Stop Work Order – An example of a stop work order can be found in Appendix C. Lexington County Public Works staff can initiate a SWO where the site has active County permits, such as a building permit or LDP or where land disturbance began without a permit. The SWO must include the steps necessary to bring the site in compliance with applicable permits. Where a Lexington County Public Works Inspector determines that a permit is being violated or a necessary permit has not been obtained, the following steps must be taken:

- i. The Lexington County Public Works Inspector issues a Stop Work Order.
- ii. The Lexington Public Works Inspector notifies the County Director of Public Works and the Irmo Stormwater Manager of the Stop Work Order.
- iii. The Lexington County Public Works Inspector notifies the Lexington County Building Inspections Department of the Stop Work Order
- iv. The Lexington County Public Works Inspector re-inspects to ensure compliance before the County releases the Stop Work order.

A Stop Work Order may be issued to the permit holder and/or property owner of a construction site to suspend work under the following circumstances:

- i. If a Corrective Order has not resulted in a corrective action at a Construction Site which is acceptable to the Lexington County Stormwater Inspector by the expiration date of the Corrective Order.
- ii. If work, which requires a SWPPP, has proceeded without first submitting a plan and obtaining a permit.
- iii. Incidents which may cause damage to the SMS4 and/or the health and welfare of the public and Town of Irmo or Lexington County personnel.
- iv. Incidents which may cause damage to the environment.
- v. Chronic violations and/or failures to comply with Verbal Warnings, Corrective Orders and Notices of Violation

A Stop Work Order typically includes:

- The description and nature of the violations to the Lexington County Stormwater Ordinance(No. 06-10), approved SWPPP, LDM and/or construction plans.
- The location of where the violations have occurred.
- A description of the ordered repair or remediation work necessary to comply with the Lexington County Stormwater Ordinance (No. 06-10), SWPPP, LDM and/or construction plans.
- Possible requirement to submit a corrective action plan by the deadline on the Stop Work Order. The corrective action plan must address actions that will be taken to bring the site into compliance. See Section 8 for further information about the CAP.
- Signature and Title of the person issuing the Stop Work Order.

2. **Withhold Building Inspections**– Where a Lexington County Public Works Inspector determines that a permit is being violated and building has commenced on the site, building inspections may also be withheld by the following procedure:

- The Lexington County Public Works Inspector notifies the Irmo Stormwater Manager and the Lexington County Building Inspections Department to withhold building inspections. Lexington County Building Inspections Department places a hold on building inspections and will not issue a Certificate of Occupancy.
- The Lexington County Public Works Inspector notifies the Lexington County Director of Public Works and the Irmo Stormwater Manager of the hold on building inspections.
- A Lexington County Public Works Inspector shall re-inspect to ensure compliance before the County releases the hold on building inspections.

3. **Withhold Release of Certificate of Occupancy**– If the post-construction BMPs do not pass the final stormwater inspection by a Lexington County stormwater inspector, Lexington County may withhold the release of the Certificate of Occupancy until the site passes its final stormwater inspection by the following procedure:
 - i. The Lexington County Public Works Inspector notifies the Irmo Stormwater Manager and the Lexington County Building Inspections Department to withhold the Certificate of Occupancy.
 - ii. The Lexington County Public Works Inspector notifies the Lexington County Director of Public Works and the Irmo Stormwater Manager of the hold on Certificate of Occupancy.
 - iii. A Lexington County Public Works Inspector shall re-inspect to ensure compliance before the County releases the hold on the Certificate of Occupancy.

6 South Carolina Department of Health and Environmental Control

In the event that a deficiency cannot be resolved by Town enforcement actions, the Irmo Stormwater Manager may notify the South Carolina Department of Health and Environmental Control Bureau of Water to request assistance in obtaining enforcement.

7 Additional Action by the Town of Irmo

Where violations are not corrected in a timely manner or where the violation is damaging or has the imminent potential of damaging other properties or water bodies, Town of Irmo, or its contractor, may enter upon the lot or parcel of land and correct the violation. Where the Town of Irmo completes repairs, the costs incurred by the Town and/or its contractor (including inspection, administration, labor, equipment costs) shall be from the offender through collection of bonds or directly billing the offender.

Where the Town of Irmo is fined and/or placed under a compliance schedule by the state or federal government for violation(s) of its NPDES permit, and the Town of Irmo can identify the person(s) who caused such violations(s) to occur, the Town can pass through the penalty and cost of compliance to that person(s).

The Town of Irmo may institute injunctive, mandamus or other appropriate action or proceedings at law or equity, including criminal conviction, for the enforcement of the Lexington County Stormwater Management Ordinance or to correct violations of the Ordinance, and any court or competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus or other appropriate forms of remedy or relief.

8 Corrective Action Plans

With any corrective action noted above, the Town has the authority to require a violator submit a Corrective Action Plan (CAP). Some corrective actions needed at a site are straightforward, simple actions such as cleaning out sediment controls or vegetating an area. However, other actions may require more planning and thought. In those situations, the Town may require a CAP. Depending on site conditions, the Irmo Stormwater Manager or his/her designee may

require that the CAP be prepared by a Qualified Person or prepared and certified by a Professional Engineer. A CAP must include:

- Proposed corrective actions to resolve the violation, including immediate actions and final actions and
- Proposed schedule for the corrective actions.

When requiring a CAP, the inspector will set a deadline for submittal of the CAP for review and acceptance. If immediate measures are needed to halt damages to the Town of Irmo's stormwater system, private property or a stream, those actions should be separately addressed in the enforcement action and required immediately as opposed to waiting for submittal of the CAP.

APPENDIX A –
LEXINGTON COUNTY
STORMWATER MANAGEMENT ORDINANCE

See TAB titled "Stormwater Ordinance" located in the Town of Irmo's Stormwater Management Program Book

ORDINANCE NO. 2007-01

STATE OF SOUTH CAROLINA)	AN ORDINANCE ADOPTING, BY
)	REFERENCE, THE LEXINGTON COUNTY
COUNTY OF LEXINGTON)	STORMWATER MANAGEMENT
)	ORDINANCE AND LEXINGTON COUNTY
TOWN OF PINE RIDGE)	LAND DEVELOP MANUAL INTO THE
)	PINE RIDGE CODE OF ORDINANCES.

WHEREAS, Town Council wishes to adopt, by reference, the Lexington County Stormwater Ordinance and Lexington County Land Development Manual into the Pine Ridge Code of Ordinances. The Floodplain Management (Division 10) portion will be exempt. A copy of the Ordinance is attached hereto and made a copy of hereby reference.

WHEREAS, Adoption of said ordinance and manual will permit the County of Lexington, in conjunction with the Town of Pine Ridge, to enforce the Lexington County Stormwater Management Ordinance and Lexington County Land Development Manual within the Town of Pine Ridge jurisdiction. The Floodplain Management (Division 10) portion will be exempt.

NOW THEREFORE, BE IT ORDERED AND ORDAINED by the Town of Pine Ridge, South Carolina, in Council duly assembled and by the authority thereof, that:

The Lexington County Stormwater Ordinance and Lexington County Land Development Manual be adopted by the Pine Ridge Town Council and incorporated, by reference, in the Pine Ridge Code of Ordinances.

DULY ADOPTED THIS 14th day of August 2007 under the corporate seal of the Town of Pine Ridge.

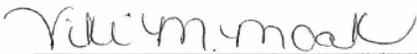
First Reading: July 14, 2007

Second Reading: August 14, 2007



David L. Busby
Mayor

Attest:



Viki M. Moak
Town Clerk

**APPENDIX B –
ENFORCEMENT FORMS**

Corrective Order

Notice of Violation (NOV)

Civil Citation Notice

Stop Work Order (SWO)