



RESOLUTION NO. 408
RESOLUTION ADOPTING AN ENFORCEMENT
RESPONSE PLAN FOR THE STORMWATER
MANAGEMENT ORDINANCE

WHEREAS, the Town of Mount Carmel has enacted a comprehensive stormwater management ordinance; and

WHEREAS, to provide direction to Town officials in enforcing the provisions of the ordinance, this resolution sets out policies and procedures in an enforcement response plan to guide Town staff in determining adequate penalties in the event of violation of the ordinance.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the following enforcement response plan for the Town of Mount Carmel stormwater management ordinance is adopted:

Introduction

The intent of this document is to provide guidance to Town officials in enforcing the stormwater management ordinance. It should be used only as a guide while recognizing that each situation is unique. The provisions of this enforcement response plan are not mandatory. Actual enforcement procedures should consider any unusual aspects of a violation or condition, as well as special characteristics of an enforcement action, in determining the proper response.

While the purpose is to provide guidance for administration of the stormwater management ordinance, it is not intended to limit the judgment and flexibility of the stormwater designated enforcement officer in determining an appropriate response.

Minor infractions may be resolved by a verbal notice, telephone call, or warning letter advising the owner/operator/person of the nature of the violation. If such action fails to generate an adequate response by the owner/operator/person, further enforcement actions as provided by the ordinance may be taken.

Enforcement Responses

The order of precedence for enforcement responses outlined in this guide should not be construed to prevent the stormwater designated enforcement officer from taking a stronger action without first implementing less stringent steps, if in his opinion, a more forceful response is necessary.

A show cause hearing should be held prior to any enforcement action other than a telephone call, warning letter or notice of violation (NOV). The purpose of a show cause hearing is to provide a forum for the owner to present a defense to charges as outlined, or, to obtain additional information.

Documented Phone Calls or Informal Discussions

In the case of the most minor violation of a permit or the ordinance, a telephone call or informal meeting may be sufficient to obtain the desired compliance. Phone calls must be documented by



contemporaneous notes. A copy of the notes should be placed in the owner's master file and another copy mailed to the owner.

Likewise, if an informal discussion is held, notes shall be kept summarizing the discussion. Copies of the notes should be distributed to all entities involved. Anyone wishing to take exception to the notes should be required to respond in writing.

Warning Letter

A warning letter is the lowest level of formal response to a violation. It is intended for minor violations which would not cause harm to the environment.

Notice of Violation

A notice of violation (NOV) is an official notification to inform a non-compliant owner of a violation of the stormwater management ordinance. Within ten (10) days of receipt of this notice, a written explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the owner to the stormwater designated enforcement officer. Inspection to ensure performance of any corrective actions may be conducted by the stormwater designated enforcement officer at his discretion. Submission of this plan in no way relieves the owner of liability for any violations occurring before or after receipt of the notice of violation.

Administrative Orders

Administrative orders (AO) are enforcement documents which direct owners to perform, or to cease, specific activities. Administrative orders may also invoke a penalty. There are three (3) primary types of administrative orders: consent orders; compliance orders; and cease and desist orders.

Consent orders are entered into between the Town and the owner to assure compliance as to specific actions to be taken by the owner to correct non-compliance within a specified time period. The stormwater designated enforcement officer may enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with any owner responsible for noncompliance. Such documents shall include specific action to be taken by the owner to correct the noncompliance within a time period specified in the document. Such documents shall have the same force and effect as orders issued pursuant to Section 14-1635(1).

Compliance orders may be issued when the stormwater designated enforcement officer finds that an owner has violated, or continues to violate, the ordinance or an order issued thereunder. It is similar to a consent order except that the consent of the owner is not implied in its issuance. When the designated enforcement officer finds that an owner has violated or continues to violate any section of this article, or a permit or order issued under this article, the stormwater designated enforcement officer may issue an order to the owner responsible for the violation directing that the owner come into compliance within a specified time, and such order may include assessment of a penalty to be paid if the owner does not come into compliance within the time provided. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged offsite. A compliance order does not relieve the owner of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against or a prerequisite for taking any other action against the owner.

Cease and desist orders may be issued when the stormwater designated enforcement officer



finds that an owner has violated, or continues to violate, the stormwater management ordinance or order issued thereunder. The order shall require that the owner:

- (a) Comply forthwith; and
- (b) Take such appropriate remedial or preventive action as may be needed or deemed necessary to properly address a continuing or threatened violation, including halting operations and terminating the discharge. Issuance of a cease and desist order shall not be a bar against or a prerequisite for taking any other action against the owner.

Administrative orders contain the following components:

1. Title - The title specifies the type of order being issued (see below), to whom it is being issued, summarizes the purpose of the order, and contains an identification number.
2. Legal Authority - The authority under which the order is issued (the stormwater management ordinance).
3. The Finding of Noncompliance - All violations must be described including the dates, the specific permit and/or ordinance provisions violated, and any damages known and attributable to the violation.
4. Required Activity - All orders should specify the required actions, such as installation of best management practices, additional inspections, appearance at show cause hearings, etc.
5. Milestone Dates for Corrective Actions - When compliance schedules are appropriate, all milestone dates must be established including due dates for required written reports.
6. Supplemental Clauses - The document should contain standard clauses providing that:
 - (a) Compliance with the terms and conditions of the administrative order shall not be construed to relieve the owner of its obligation to comply with applicable state, federal or local law, or the permit;
 - (b) Violation of the administrative order itself may subject the owner to additional penalties as set out in the stormwater management ordinance;
 - (c) No provision of the order shall be construed to limit the Town's authority to issue supplementary or additional orders, or to take action deemed necessary to implement this program or ordinance;
 - (d) The order shall be binding upon the owner, its officers, directors, agents, employees, successors, assigns, and all persons, firms or corporations acting under, through or on behalf of the owner.

Administrative orders issued as a result of a violation of the stormwater management ordinance shall contain a penalty as determined using Tables 'A' and 'B' in this document. Administrative orders may also be used to advise an owner of the need to take, or cease, certain actions, and in such case, may or may not be associated with penalties as defined in the ordinance or in this guide.

Penalties, Administrative or Civil

The stormwater management ordinance authorizes assessment of penalties not to exceed \$5,000 per violation per day. Additionally, Section 14-1627(5) of the ordinance authorizes the stormwater designated enforcement officer to assess a civil penalty for actual damages incurred by the Town.



Before assessment of any administrative penalty, a show cause hearing must be held with the non-compliant owner.

If a violation results in conditions requiring the expenditure of public funds for mitigation of damages, a penalty shall be assessed in such amount as to offset the public funds so expended. This will in no way reduce or offset the liability of the owner with respect to damages incurred.

Explanation of Use of Tables

This guide is based primarily on the use of two tables; "A", and "B". Table "A" indicates how point values are assigned for each violation, considering the severity, duration, degree of harm, and compliance history of the owner. All possible violations may not be listed; however, this does not preclude an appropriate enforcement response.

In Table "A", three columns are associated with each listed violation – the "Initial Points" column, the "Repeat Value" column, and the "Cumulative" column. If no history of violations is noted, the value in the "Initial Points" column may be used in conjunction with Table "B" to assess a typical response to the violation.

If the user has a history of similar violations, the initial point value plus the product of the number of previous occurrences times the repeat value should be used as shown in the following formula: Total Point Value (TP) = $P + (N \times R)$, where:

P = Initial Point Value for a single violation

N = Number of previous occurrences

R = Repeat Value from Table "A"

Should more than one violation be noted at a time, the cumulative column should be consulted. If violations are cumulative in nature, the sum of the individual point values should be used to judge the response. If not, the greatest individual values should be used to judge response, with the documentation for that response, however, noting all violations.

Once a point value is determined, Table "B" should be consulted for recommended responses. Table "B" provides a schedule of appropriate responses based upon the number of "points" determined by Table "A".

Example

An owner violates the terms of the stormwater management ordinance. This violation is considered significant and causes harm. Investigation reveals the owner has been cited twice in the past for the same violation: Total Point Value (TP) = $P + (N \times R)$. Therefore: $TP = 3 + (2 \times 1) = 5$, where:

3 = Points charged for isolated but significant discharge from Table "A"

2 = Number of previous occurrences; and

1 = Repeat value from Table "A".

Resulting options: Civil injunction or administrative order with up to \$500.00 penalty.



TABLE "A"
Response Guide for Violation

<u>DESCRIPTION OF VIOLATION</u>	<u>INITIAL POINTS</u>	<u>REPEAT VALUE</u>	<u>CUMULATIVE</u>
EROSION PREVENTION AND SEDIMENT CONTROL			
Violation of a single requirement:			
Not significant	1	1	Yes
Significant, no harm	2	1	Yes
Significant, causes harm	3	1	Yes
Violation of more than one requirement:			
Not significant	2	1	Yes
Significant, no harm	3	1	Yes
Significant, causes harm	4	1	Yes
UNAUTHORIZED DISCHARGES			
Illicit Discharges:			
Owner unaware of requirement, no harm	1	N/A	No
Owner unaware of requirement, harm	2	N/A	No
Owner aware of requirement, no harm	2	1	Yes
Owner aware of requirement, harm	3	1	Yes
Illicit Connections:			
Owner unaware of requirement, no harm	1	N/A	No
Owner unaware of requirement, harm	2	N/A	No
Owner aware of requirement, no harm	2	1	Yes
Owner aware of requirement, harm	3	1	Yes



INSPECTION

Entry denied	2	2	Yes
---------------------	---	---	-----

Inspection Records

Incomplete	1	2	No
------------	---	---	----

Not available	1	2	No
---------------	---	---	----

MAINTENANCE

Failure to properly operate and maintain Best Management Practices	1	1	Yes
---	---	---	-----

STORMWATER MANAGEMENT

Pre-Construction

Failure to obtain Notice of Coverage	2	1	No
--------------------------------------	---	---	----

Failure to obtain grading permit	2	1	No
----------------------------------	---	---	----

Failure to provide performance bond (when required)	2	1	No
---	---	---	----

Post Construction

Failure to provide water quality Best Management Practices	2	2	No
--	---	---	----

Failure to provide channel protection	2	2	No
---------------------------------------	---	---	----

Failure to provide downstream impact Analysis	2	2	No
---	---	---	----

Failure to provide special pollution abatement plan	2	2	No
---	---	---	----



TABLE "B"
VIOLATION RESPONSE GUIDE

<u>POINT TOTAL</u>	<u>ACTION</u>
1	Written warning
2	Notice of Violation
3	Administrative Order with up to \$150 Penalty
4	Administrative Order with up to \$300 Penalty
5	Administrative Order with up to \$500 Penalty
6	Administrative Order with up to \$1000 Penalty
7	Administrative Order with up to \$2000 Penalty
8	Administrative Order with up to \$3000 Penalty
9	Administrative Order with up to \$4000 Penalty
10	Administrative Order with up to \$5000 Penalty

Cease and Desist Order

A civil injunction may be requested at any time, for any violation, if in the opinion of the stormwater designated enforcement officer in consultation with the Town attorney, such action is justified, needed or appropriate.

Criminal Action

In cases where criminal acts are suspected by the stormwater designated enforcement officer, after consultation with the Town attorney, information shall be gathered and forwarded to the district attorney of Hawkins County for action. Criminal prosecution, if pursued, shall be in addition to other actions authorized by ordinance. To the extent authorized by federal and state statute and case law, including, but not limited to that approved in the case of *Vandergriff, et al., vs. City of Chattanooga, et al.*, 44 F. Supp. 2d 927 (D. Tenn., E. D. Chattanooga Division, 1998), the Designated Enforcement Officer shall be authorized, in keeping with the principles of justice and fairness, to institute such alternative proceedings in a Court of competent jurisdiction as traditional notions of fair play and substantial justice may require in order to effectuate the objectives of the Stormwater Management ordinance.

SECTION II. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

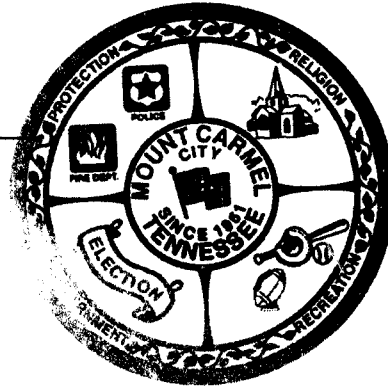
ADOPTED this the _____ day of September, 2008.



Gary Lawson
GARY W. LAWSON, Mayor

ATTEST:

Marian Sandidge
MARIAN SANDIDGE, Recorder



APPROVED AS TO FORM:

Joe May
LAW OFFICES OF MAY & COUP

FIRST READING	AYES	NAYS	OTHER
Vice-Mayor Eugene Christian	✓		
Alderman Wanda Davidson	✓		
Alderman Richard Gabriel	✓		
Alderman Tresa Mawk	✓		
Alderman Thomas Wheeler	✓		
Alderman Carl Wolfe	✓		
Mayor Gary Lawson	✓		
TOTALS	7	0	0

PASSED FIRST READING: September 23, 2008