

***TOWN OF LERAY  
STORMWATER MANAGEMENT PROGRAM PLAN:***

***ENFORCEMENT RESPONSE PLAN***

***ORIGINAL ISSUE: September 19, 2024***

***PREPARED BY: TOWN OF LERAY TOWN BOARD***

## **INTRODUCTION**

In accordance with the General Permit (GP-0-24-001) for Storm Water Discharges Associated with Municipal Separate Storm Sewer System (MS4), the Town of LeRay is required to develop and implement an Enforcement Response Plan (ERP) to ensure compliance with the Town's Stormwater Management Program Plan (SWMP Plan) and Part IV. F. 1 & 2 of GP-0-24-001. The purpose of this ERP is to specify and provide guidance to town staff when determining appropriate enforcement actions (and need for escalation of enforcement) during instances of non-compliance. This plan will describe the enforcement tools available to town staff and when/how to use them to achieve compliance.

The policies and procedures outlined in this ERP have been developed to address following objectives:

- Prevent pollutants from entering natural waterbodies and causing harm
- Communicate definitions for non-compliance
- Establish appropriate enforcement actions based on the nature and severity of the violation
- Promote consistent and timely use of enforcement tools
- Ensure that violators return to compliance in a timely manner
- Promote compliance through education and assistance first and, if necessary, penalties second

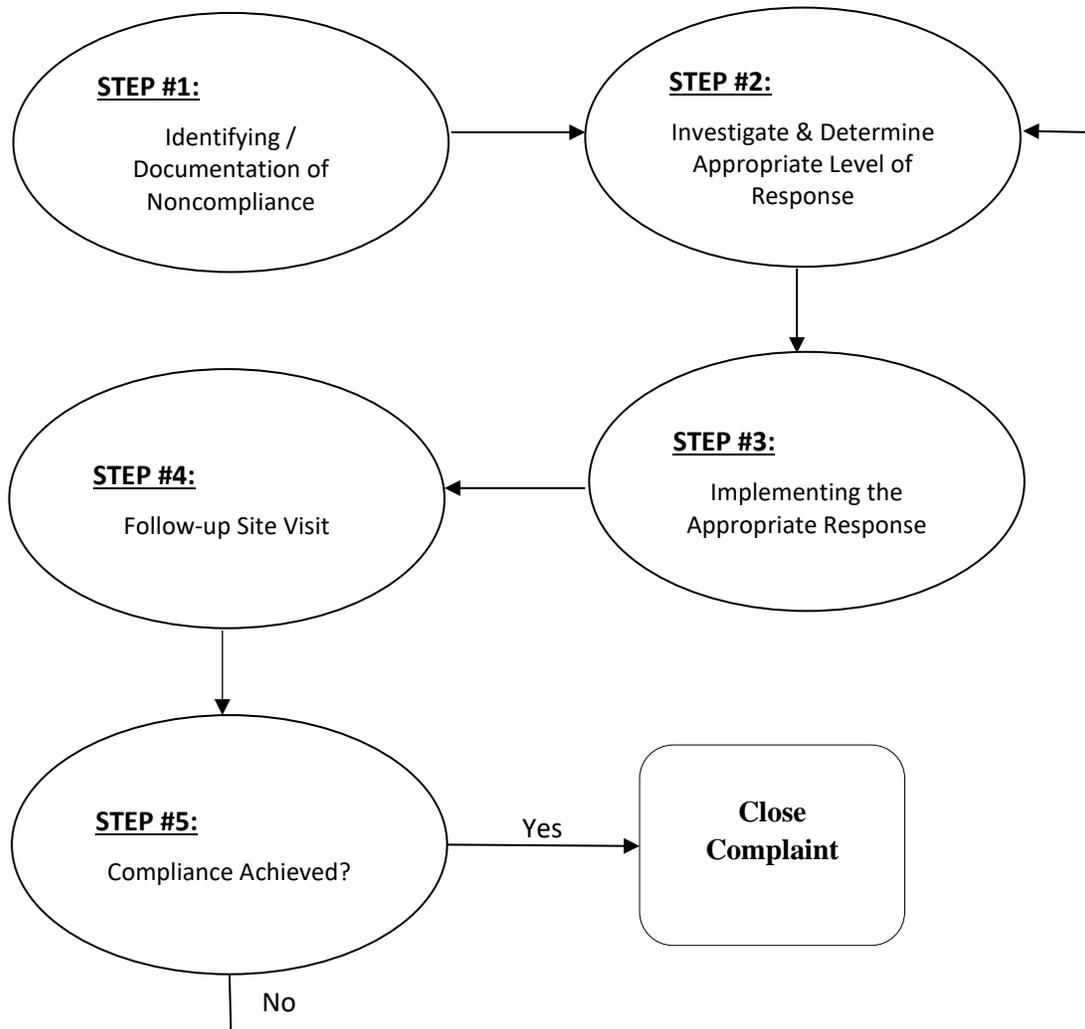
It is important to note that this ERP is NOT intended to create additional enforcement actions or change existing enforcement policies or procedures already set-forth in town code, but instead describe how and when these existing procedures can and should be utilize when dealing with instances of non-compliance related to actions associated with the following stormwater minimum control measures (MCMs):

- Part VI. C of GP-0-24-001: MCM #3 (Illicit Discharge Detection and Elimination)
- Part VI. D of GP-0-24-001: MCM #4 (Construction Site Stormwater Management)
- Part VI. E of GP-0-24-001: MCM #5 (Post-Construction Site Stormwater Management)

Each of the three (3) MCM's listed above also have corresponding sections in town code Section 100.

## **ENFORCEMENT RESPONSE PLAN OVERVIEW**

The enforcement response process consists of five (5) basic steps beginning with identification of a violation and concluding with the closing of the complaint. The overall process is shown in the flowchart below and is further explained in the following step-by-step descriptions.



### **Step #1: Identifying/Documenting Noncompliance**

The town may become aware of stormwater non-compliance or violations in a number of ways that typically include, but are not limited to, the following:

- Permit-required inspections or monitoring may reveal non-compliance: Various permits/ approvals issued by the town include periodic compliance inspections of facilities subject to Construction and Post-Construction inspection requirements. Refer to MCM #4 and MCM #5 in the Stormwater Management Program (SWMP) Plan to understand the various and required program elements related to both MCM's.
- Routine monitoring may reveal non-compliance: Monitoring and inspections that support the elements of the IDDE Program (outfall inspections). Refer to MCM #3 in the SWMP Plan to understand the various and required program elements related to this MCM.
- Town staff or other outside agencies (MCDOT, NYSDOT, NYSCC, etc.) may also identify instances of non-compliance during the course of performing their regular job functions and report those to the town.
- Public complaint or inquiry.

## Step #2: Investigate & Determine the Appropriate Level of Response

Once the town has been notified of a potential stormwater code violation, it is incumbent upon the town to investigate the complaint to determine whether a section of the stormwater code has been violated.

Investigative responses shall take place in the following timeframes:

- Complaints involving discharges of sanitary water near bathing, shell-fishing areas, or public water intakes: Investigative actions should take place within *two (2) hours*.
- Complaints describing a visible contrasting color, sheen in a waterbody, or muddy water: Investigative actions should take place within *twenty-four (24) hours*.
- Other complaints describing poorly functioning stormwater management areas (ponds, infiltration basins, etc.): Investigative actions should take place within *5-days*.
- Complaints associated with active construction sites where coverage under the SPDES General Permit Associated with Construction Activities has been issued: Investigative actions should take place within *2-days*.

Following the investigative portion of a stormwater complaint, the town will decide on the appropriate level of response and notify the responsible party causing the complaint accordingly. The following criteria should be considered when determining the correct level of response:

- **Magnitude:** Incidents that cause damage to the storm sewer system or natural waterbodies or pose a threat to human health and/or the environment will be considered significant and necessitate formal enforcement action.
- **Duration:** Violations that continue over prolonged periods of time will result in formal enforcement action and may lead to escalated levels of response, like that of a Notice of Violation, Stop Work Order, or Compliance Order, in a shorter time frame than usual.
- **Compliance History:** The responsible party's compliance history will be an important factor in determining the appropriate response to apply. The town has the authority to issue informal or formal notices for less severe violations. However, recurring violations may lead to escalated levels of response, like that of a Notice of Violation, Stop Work Order, or Compliance Order, in a shorter time frame than usual.
- **Good Faith of the Operator:** Good faith is characteristic of actions showing that the responsible party intends to achieve compliance in a timely manner. If the responsible party is attempting in good faith to correct the violation, the town's enforcement responses may be less severe. However, potential threats to human health or the environment will always take precedence when considering the town's level of response. In addition, while the responsible party's good faith in correcting its non-compliance may be a factor in determining which enforcement response is suitable, good faith does not preclude the responsible party from other formal notices of other enforcement actions.

The town has four (4) levels of responses, each of which are described below, and should be used alone or in combination of each other to achieve compliance from a responsible party.

### 2.1 Level 1: No Enforcement Action

There may be situations where town staff is made aware of a potential stormwater code violation; however, sufficient evidence does not exist to prove that a violation is or has taken place. An example of such a situation may be if a complaint is received stating that a private

stormwater management facility is not operating correctly or being properly maintained. However, if after a brief site inspection and/or verbal discussion with the responsible party, town staff determines the stormwater management facility is within compliance, then no enforcement action is necessary. Other cases might include transient water quality violations where the receiving waterbody has cleared by the time town staff arrives on-scene and no other upstream evidence exists that would suggest that an illicit discharge took place, then no enforcement action is required.

In such situations, the potential violation and the town's response should be documented using the Illicit Discharge Report Documentation Form, referred to in the SWMP Plan. Updating the Illicit Discharge Report Form in the SWMP Plan with this information is a requirement of GP-0-24-001.

## **2.2 Level 2: Informal Response**

The town will pursue compliance of observed and documented stormwater code violations through informal methods whenever reasonable. Informal responses include verbal and/or email notices, and on-site meetings in order to gain voluntary compliance. These methods are appropriate for situations where education is needed, the responsible party is cooperative, violations do not pose a significant impact to human health or the environment, and the town believes that compliance can be achieved without the use of formal measures.

It is essential to document all informal responses & interactions with responsible parties because the implementation of informal measures can often establish the documentation necessary to implement more formal enforcement actions when these efforts do not result in compliance. Updating the SWMP Plan with this information is also a necessary requirement of GP-0-24-001.

## **2.3 Level 3: Formal Response**

The town will pursue and implement formal response procedures to resolve prolonged non-compliance, or instances where a responsible party is not acting in "good faith" / responding in a timely manner, or instances where immediate impacts to human health and the environment are evident or very likely to occur. Additionally, formal responses may be implemented immediately if/when the responsible party has a history of non-compliance. A history of non-compliance is defined as receiving three (3) or more informal or formal responses from the town in the past two (2) years.

Formal responses include the following (in order of preference and escalation):

- Notice of violation
- Compliance order
- Stop work order
- Issuance of a municipal ticket

Each of these formal responses are described in more detail in Section 3.2 of the ERP. Updating the SWMP Plan with this information is also necessary and a requirement of GP-0-24-001.

## **2.4 Level 4: Referral to Other Agencies**

If formal responses prove insufficient to resolve the situation, the town may enlist the help of the New York State Department of Environmental Conservation (NYSDEC). Assistance from the NYSDEC may be solicited at an earlier stage of the process in the event there are other

regulated natural resources impacted, like wetland areas, protected streams, dams, etc., and/or the NYSDEC has a known history of dealing with the responsible party, or the violation is deemed significant enough for immediate action.

### **Step #3: Implementing the Appropriate Response**

Once a stormwater violation has been documented/confirmed, and the proper response has been determined (Steps #1 & #2), the town will initiate/ implement the appropriate response. Each specific response and how the town implements this response are described in more detail below:

Updating the SWMP Plan with this information is also necessary and a requirement of GP-0-24-001.

#### **3.1 Informal Options**

##### **i.) Verbal/Email Notice**

The town **will issue a verbal, or email notice to the responsible party no more than two (2) days** following the confirmation of a violation. Prior to the verbal or email notice, the Highway Superintendent, with input from the Town Supervisor, will have identified a strategy they think will be the most effective remedy to address the violation, with the goal of achieving compliance in a timely manner. At a minimum, the verbal/email conversation shall be documented with the following information:

1. Date/time of contact
2. Town staff member who initiated contact
3. Person contacted (responsible party)
4. Content of the conversation
5. Date/time of scheduled on-site meeting

##### **ii.) Site Meetings**

If verbal or email contact is made, an on-site meeting will be requested with the responsible party for a time deemed appropriate for the situation, but no more than one (1) week after contact has been made. The on-site meeting will serve to educate the responsible party regarding the violation and to discuss necessary measures for correction. The meeting will be conducted by the Highway Superintendent or another delegated town employee. At a minimum, the meeting shall be documented with the following information:

1. Meeting location
2. Date/time of meeting
3. Meeting attendees
4. Content of the conversation
5. Agreements made at the meeting
6. Schedule of anticipated/needed compliance (if a violation is determined)

The Highway Superintendent will make **two (2) attempts within a 4-day period to contact** the responsible party. In the event that after the second attempt, the responsible party does not answer the verbal/email notice, the Highway Superintendent reserves the right to enter the property without prior notice per Section 100-12 of the town code to inspect or document the presence of a potential violation. This should occur **no more than two (2) days after the second verbal or email attempt is made**. A door hanger will be

left on the property following the site visit, requesting verbal contact with the property owner to discuss the potential violation.

If in the opinion of the Stormwater Coordinator, the responsible party is not putting forth a good-faith effort to engage with the town, or to resolve the violation outright, the Stormwater Coordinator or another delegated town employee shall move to Section 3.2 (i) - Notice of Violation **within five (5) days of the documented site visit.**

### **3.2 Formal Options**

#### **i.) Notices of Violation**

A Notice of Violation (NOV) is an official communication from the town to the responsible party, which informs the party that a violation has occurred and corrective action is required. The NOV will be issued as a warning that violations of the Town's stormwater code have occurred. **A NOV is used in cases where there is a reasonable likelihood of adversely affecting human health and the environment or a verbal /email contact has been ignored for at least five (5) days.** The issuance of a NOV shall be coordinated through the town's Zoning Enforcement Officer, with input from the Town Supervisor. The NOV document, along with the informal verbal or email notices, are the initial attempts of the town to resolve the violation and shall be carefully documented in the SWMP Plan to justify more intense compliance enforcement, like that of a Stop Work Order, Compliance Order, and/or Municipal Infractions.

The NOV will include the following information:

1. Property ID
2. Address
3. Date of initial inspection
4. Specific violation
5. Photos (if necessary/possible)
6. Timeframe to follow-up

The NOV's shall be sent via conventional USPS mail. **If the NOV does not produce a response from the property owner within seven (7) days, the town shall move to Section 3.2 (ii) – Administrative Orders in order to achieve compliance.**

#### **ii.) Administrative Orders (Compliance and/or Stop Work)**

Administrative Orders are “advanced” formal enforcement documents that require the responsible party to either cease the specified activity or implement specified corrective measures by a certain date. The town has two (2) types of Administrative Orders, which are listed below. An Administrative Order will be issued when Sections 3.1 and 3.2 (described above) have been pursued and have not resulted in compliance.

##### **a. Compliance Order**

A Compliance Order is another official communication from the town to the responsible party, which orders/directs the property owner to correct and remove the stated violation from the property by a specified date. A Compliance Order can and should be utilized in situations where violations exist for any of the minimum control measures associated with this ERP (MCM #3, MCM #4, & MCM#5).

The Compliance Order will include the following information:

1. Compliance order number
2. Violation date
3. Comply by date
4. Code section
5. Description of code section
6. General notes

The Compliance Order also states that failure to comply by the specified date will result in prosecution in town court via the issuance of an appearance ticket (municipal infraction). **Note:** The Stormwater Program Coordinator or designated town employee may also utilize a Stop Work Order (Section 3.2(ii) (b)) for violations that are associated with active building or construction activities instead of, or in conjunction with, a Compliance Order.

#### **b. Stop Work Order**

A Stop Work Order (SWO) is a notice that informs a construction site/building operator or contractor of an ongoing stormwater code violation and directs a termination of work until the matter is resolved. The issuance of a SWO shall follow Section 100-14 of the town code and is generally used to achieve compliance for violations associated with MCMs #4 & #5.

In general, no additional permits, certificates of occupancy, inspections, or approvals of any kind will be issued for the project/site as long as the SWO is in effect. The SWO will be issued for failure to comply with an NOV and may be issued instead of a compliance order in circumstances where the interruption of a construction or building schedule could be more impactful than a municipal infraction (appearance ticket). The issuance of a SWO shall be coordinated through the Zoning Enforcement Officer, with input from the Town Supervisor.

The SWO will include the following information:

1. The specific violation
2. Contact information for the town personnel who must be contacted to discuss required remediation procedures
3. The mitigation goals necessary to remove the stop work order
4. A warning notifying the site operator of additional enforcement actions for continued noncompliance

Both types of Administrative Orders (SWO & Compliance Orders) are typically sent via conventional and certified USPS mail; however, a SWO can be delivered directly to the construction or building site operator. A SWO will not be removed until the violation is completely resolved as determined by the issuer of the SWO. If the responsible party ignores either a SWO or does not achieve compliance by the date specified, the Zoning Enforcement Officer shall communicate with the Town Supervisor and the Town Attorney for the issuance of a municipal infraction (appearance ticket), as described in Section 3.3 below.

### **3.3 Municipal Infraction Options**

A municipal infraction (appearance ticket) can be issued to a responsible party/property owner following the issuance of an Administrative Order, as described in Section 3.2 (a) and will usually take place after the **“comply by” date has passed without resolution of the**

**documented violation.** The appearance before a Municipal Judge could result in monetary fines or imprisonment. These penalties are assessed by a Municipal Court Judge to the responsible party after being found guilty of a violation of LeRay’s Town Code, including any violation associated with Chapter 100 of the Town of LeRay Town Code. The framework for “Penalties for Offences” are described in more detail in Section 100-15 of the LeRay Town Code.

**Step #4: Follow-Up Site Visit**

It is important that the Stormwater Coordinator or delegated town employee conduct a follow-up inspection(s) while efforts to rectify the violation are in progress. The Stormwater Coordinator shall ensure that measures agreed upon are being implemented in order to achieve compliance. Tracking of follow-up inspections shall be included in the SWMP Plan.

**Step #5: Compliance Achieved**

It is important that the Stormwater Coordinator or delegated town employee conduct a follow-up inspection after efforts to rectify the violation are complete to verify that compliance has been achieved. Once compliance is achieved, the violation complaint should be closed. Tracking of “compliance achieved” date and the “compliant closed” date shall be included in the SWMP Plan.

**ENFORCEMENT ROLES AND RESPONSIBILITIES**

The following table details the typical enforcement roles of Town staff. Note: NA indicates staff does not have the authority to make the decision.

<b>Enforcement Action</b>	<b>Stormwater Coordinator</b>	<b>Zoning Enforcement Officer</b>	<b>Town Supervisor</b>	<b>Town Justice</b>
Verbal/Email Notice	Secondary	Primary	Third	NA
Meetings	Secondary	Primary	Third	NA
Notice of Violation	Secondary	Primary	Third	NA
Compliance Order	Secondary	Primary	Third	NA
Stop Work Order	Secondary	Primary	Third	NA
Appearance Ticket	Secondary	Primary	NA	NA
Monetary Penalty	NA	NA	NA	Primary
Other Judicial Remedies	NA	NA	NA	Primary

All potential violations will be reported to the Zoning Enforcement Officer. The Zoning Enforcement Officer or delegated town employee will be primarily responsible for coordination and implementation of informal options to achieve compliance. If compliance is not achieved through informal methods or the risk to the environment or safety and health of the community increases, the Zoning Enforcement Officer shall coordinate with the Highway Superintendent and the Town Engineer to decide on the next logical approach to achieve compliance utilizing the methods described in Section 3 of the ERP. The Zoning Enforcement Officer Coordinator, Highway Superintendent, Town Engineer and Town Supervisor shall be copied on all formal enforcement communications and responses. The Zoning Enforcement Officer will consult with the Town Attorney and Town Supervisor on any judicial actions and timeframes.

