

Appendix C3: Response Plan for Investigations of Illegal
Discharges, 2016





Response Plan for Investigations of Illegal Discharges

**For the City and County of Honolulu
Municipal Separate Storm Sewer System
National Pollutant Discharge Elimination System
Permit No. HI S000002**

FINAL

Revised February 2016

**Prepared by
Department of Facility Maintenance, Storm Water Quality Branch
City and County of Honolulu**



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Definition and Acronyms

BMP	Best Management Practices
CCH/City	City and County of Honolulu
CSM	Collection System Maintenance Division, Department of Environmental Services, City and County of Honolulu
CWB	Clean Water Branch, Department of Health, State of Hawaii
DOH	Department of Health, State of Hawaii
DOT	Department of Transportation, State of Hawaii
DDC	Department of Design and Construction, City and County of Honolulu (from July 1, 1998)
DFM	Department of Facility Maintenance, City and County of Honolulu (from July 1, 1998)
DPP	Department of Planning and Permitting, City and County of Honolulu (from July 1, 1998)
DRM	Road Maintenance Division, Department of Facility Maintenance, City and County of Honolulu
ENV	Department of Environmental Services, City and County of Honolulu (from July 1, 1998)
HAZMAT	Hazardous Materials Response Units, Honolulu Fire Department, City and County of Honolulu
LOW	Letter of Warning
MS4	Municipal Separate Storm Sewer System
NOO	Notice of Order
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
Permit	National Pollutant Discharge Elimination System Permit No. HI S000002
ROH	Revised Ordinances of the City and County of Honolulu
State	State of Hawaii
SWQ	Storm Water Quality Branch, Department of Facility Maintenance, City and County of Honolulu (from July 1, 2015)
TMK	Tax Map Key

References

City and County of Honolulu, “Field Screening Plan,” February 2016

City and County of Honolulu, “Inspection and Enforcement Program for Construction Sites,” January 2000

City and County of Honolulu, Department of Environmental Services, Adoption of Chapter 13-1, City and County of Honolulu Administrative Rules, November 2012

City and County of Honolulu, Department of Planning and Permitting, “Rules Relating to Soil Erosion Standards and Guidelines,” dated April 1999.

“Memorandum of Agreement Between Departments Covered Under NPDES Permit HI S000002,” City and County of Honolulu, 2015

“Memorandum of Understanding between the Department of Health, Environmental Management Division, State of Hawaii and the Department of Public Works, City and County of Honolulu,” October 11, 1995.

“Memorandum of Understanding between the Department of Transportation, Highways Division, State of Hawaii, and City and County of Honolulu Department of Environmental Services and Department of Facility Maintenance,” February 2, 2002.

Revised Ordinances of Honolulu, Chapter 14, Article 12, Drainage, Flood and Pollution Control, September 1996.

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1. Introduction

This document has been amended in compliance with Part D.1.c.(5) of the City and County of Honolulu’s (CCH or City) municipal separate storm sewer system (MS4) National Pollutant Discharge Elimination System (NPDES) Permit No. HI S000002 (Permit), effective February 16, 2015, issued by the State of Hawaii (State), Department of Health (DOH). Text from the permit has been provided below (in italics) with the corresponding permit reference numbers.

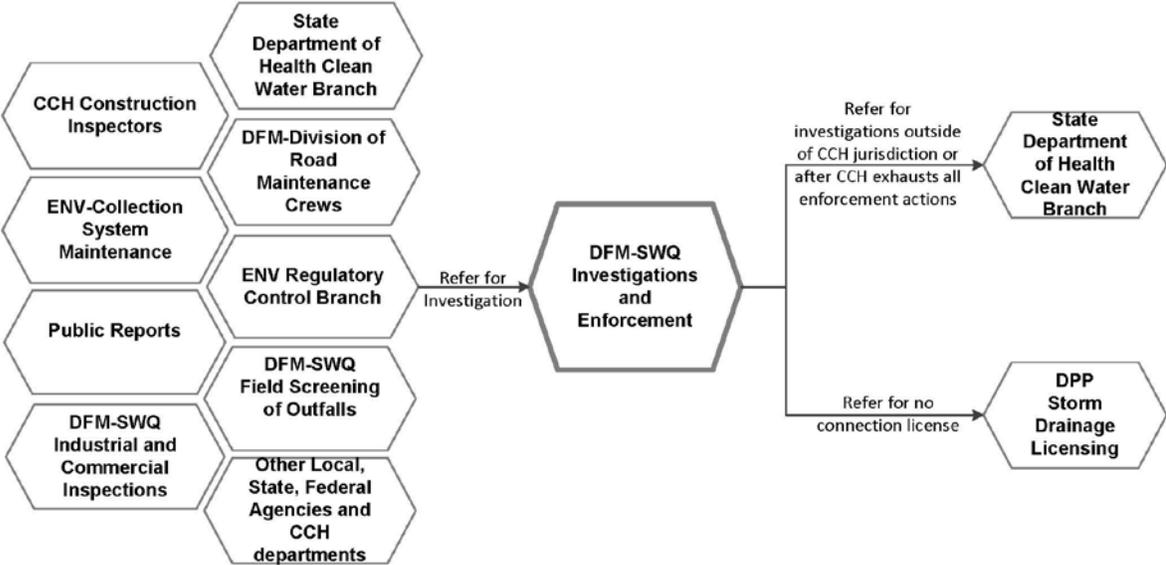
Part D.1.c.(5): “Investigate complaints. The Permittee shall promptly investigate observed, suspected, or reported illicit flows and pursue enforcement actions, as appropriate. Complaints made to CWB, which discharge to the City’s MS4 will be forwarded to the Permittee for their action...”

Part D.1.c.(5)(ii): “Update the “Response Plan for Investigation of Illegal Discharges,” dated June 2012, to be consistent with the requirements in this Permit.”

Effective July 1, 2015, the Storm Water Quality (SWQ) Branch transferred from the Department of Environmental Services (ENV) to the Department of Facility Maintenance (DFM) who now administers the NPDES MS4 program, including the activities in this Response Plan. Through a memorandum of agreement (September 2015), the SWQ Branch investigators will continue to enforce illicit discharges under ENV rules. DFM is currently going through the Rule Making process to obtain authority to enforce illicit discharges under its department.

An overview of the program and the role of SWQ branch is shown below in Figure 1.

Figure 1. Overview of CCH Illegal Discharges Investigation Program



2. Initiation of Investigations

Investigations are initiated through several avenues discussed below.

a. Public Complaints/ Reports of Illegal Discharges

Complaints are received through phone calls to the SWQ Branch, calls to the City's Environmental Concern Line (808-768-3300), and referrals from other departments and agencies, including the DOH. Many complaints are referred to the SWQ Branch by the Complaint Section of the City's Customer Service Department.

b. Field Screening of Outfalls

The City performs field screening of major and minor outfalls to screen for improper discharges as described in the "Field Screening Plan" (February 2016). Field screening in prioritized areas involves an intensive search for illegal discharges by reviewing the existing inventory and map of the storm water system in the area, and conducting inspections of drain outfalls in the designated area during dry weather conditions.

If a dry weather flow is observed, the flow is inspected for characteristics such as color, sheen, odor, temperature, and consistency. The observations are documented with inspection forms and photographs. If such characteristics are detected, efforts are made to trace the flow upstream to determine the location and source of the discharge and forwarded to an SWQ Branch investigator for follow-up action.

c. Best Management Practice Surveys of Industrial and Commercial Facilities and Activities

The Permit requires the City to conduct a minimum of 300 industrial and 100 commercial facility inspections annually. The selection of these target businesses is based on the following criteria:

- Business location has potential to discharge to the City MS4.
- Have an approved drain connection license from the City.
- Have received prior warnings of violation or Notice of Violations (NOVs) from DFM-SWQ.
- Either have or have applied for a DOH NPDES permit or conditional no exposure exclusion for industrial storm water discharges.
- Included in the list of industrial facilities in Part 2 of the City's NPDES application. This list includes all known connections to the MS4, gas stations, Resource Conservatory and Recovery Act, and Superfund Authority and Reauthorization Act facilities.
- Targeted commercial facilities which include retail gasoline outlets, retail automotive services including repair facilities, and restaurants.
- Any other commercial facility that the City or DOH determines is contributing pollutants to the City MS4 that may cause or contribute to an exceedance of State water quality standards.

The inspectors identify deficiencies, assess potential impacts to receiving waters, and evaluate the appropriateness and effectiveness of deployed Best Management Practices (BMPs) and Storm Water pollution Control Plans (SWPCP), if applicable. An inspection checklist and photographs are used to document site and BMP conditions. The City may also perform wet weather inspections of industrial or commercial facilities to assess adequacy of BMPs and to detect any illicit discharges. The City may require additional controls at sites

whose private drains have been modified since the date of issuance of connection licenses issued by the DPP.

Any discharge that does not meet the State's water quality standards or the City's municipal permit requirements may result in a cease and desist order or license termination.

d. Referrals to/ from other Agencies and Departments

i. State Department of Health

Discharges to private or State owned/controlled roads or streams are reported to the DOH Clean Water Branch (CWB). Although they have the authority to take enforcement action, the DOH normally refers complaints of discharges into City streets and the MS4 to the SWQ Branch for enforcement action since the City has primary authority or responsibility for discharges to their MS4. If the DOH has conducted an investigation, the investigation report or findings are used for the enforcement action by the City. The City also receives referrals from the State Department of Transportation (DOT).

ii. Regulatory Control Branch - Industrial Wastewater Discharge Applications

The ENV Regulatory Control Branch permits all industrial discharges to the wastewater system. The permit application includes questions on whether vehicles are washed on the property and, if so, whether the wash water is discharged to the streets or storm drain system. If the applicant indicates that vehicle wash water is discharged to the street or MS4, the SWQ Branch will do a follow-up investigation. Wash water from commercial vehicles is not allowed in the MS4.

iii. Road Maintenance Crews

Crews from DFM's Road Maintenance Division (DFM-DRM), including those responsible for stream cleaning, are a regular source for initiating investigations. They notify the SWQ Branch when they notice discharges such as concrete wash water, illegal connections, odors originating from catch basins and manholes, discoloration in streams, dumping of trash or tree trimmings into City streams, etc.

iv. Cesspool Pumping Crews

ENV Collection System Maintenance (CSM) Division performs cesspool pumping for residents who have elected to be serviced by the City through its cesspool pumping service. The crews have been instructed to report cesspool spills into the MS4 to the DOH Wastewater Branch and the SWQ Branch.

v. City Construction Inspectors

If City inspectors see illegal discharges to streets, streams, or storm drains from construction sites, they have been instructed to report them to the SWQ Branch. The SWQ Branch will investigate if the discharge is to the City MS4, or forward it to the DOH if it is to private streets or directly to State Waters, or to the DOT if it is to DOT's highways or MS4.

3. Investigation Procedures

a. Storm Water Quality Branch

For most discharges, the SWQ Branch is the lead agency for investigations of illegal discharges to the MS4. The SWQ investigation process is shown in Figure 2. When the SWQ Branch initiates a storm water investigation of an illegal discharge, discharge without a permit, or illegal connection, a complaint is logged, jurisdiction is verified, and an investigator assigned to the case. An investigation report is generated for all complaints that are investigated. The report documents the complaint, location of alleged violation (Tax Map Key [TMK]), observations taken in the field, interviews with persons involved or related to the investigation, the investigator's findings, the alleged violators actions, and recommendations of level(s) of enforcement. If the discharge is to private land or storm drain systems other than the City MS4, the report will be forwarded to the state, federal, or appropriate party(ies).

Whenever a Notice of Violation has been transmitted to a property owner, permittee, or discharger, the same reporting investigator will be responsible to ascertain compliance. The investigator will also schedule a follow-up inspection. If the property owner, permittee, or discharger fails to fully comply with any order, the investigator will contact the property owner, permittee, or discharger to determine whether any order(s) issued was misunderstood, ignored, or refused. Procedures for enforcement actions are further discussed in Section 5.

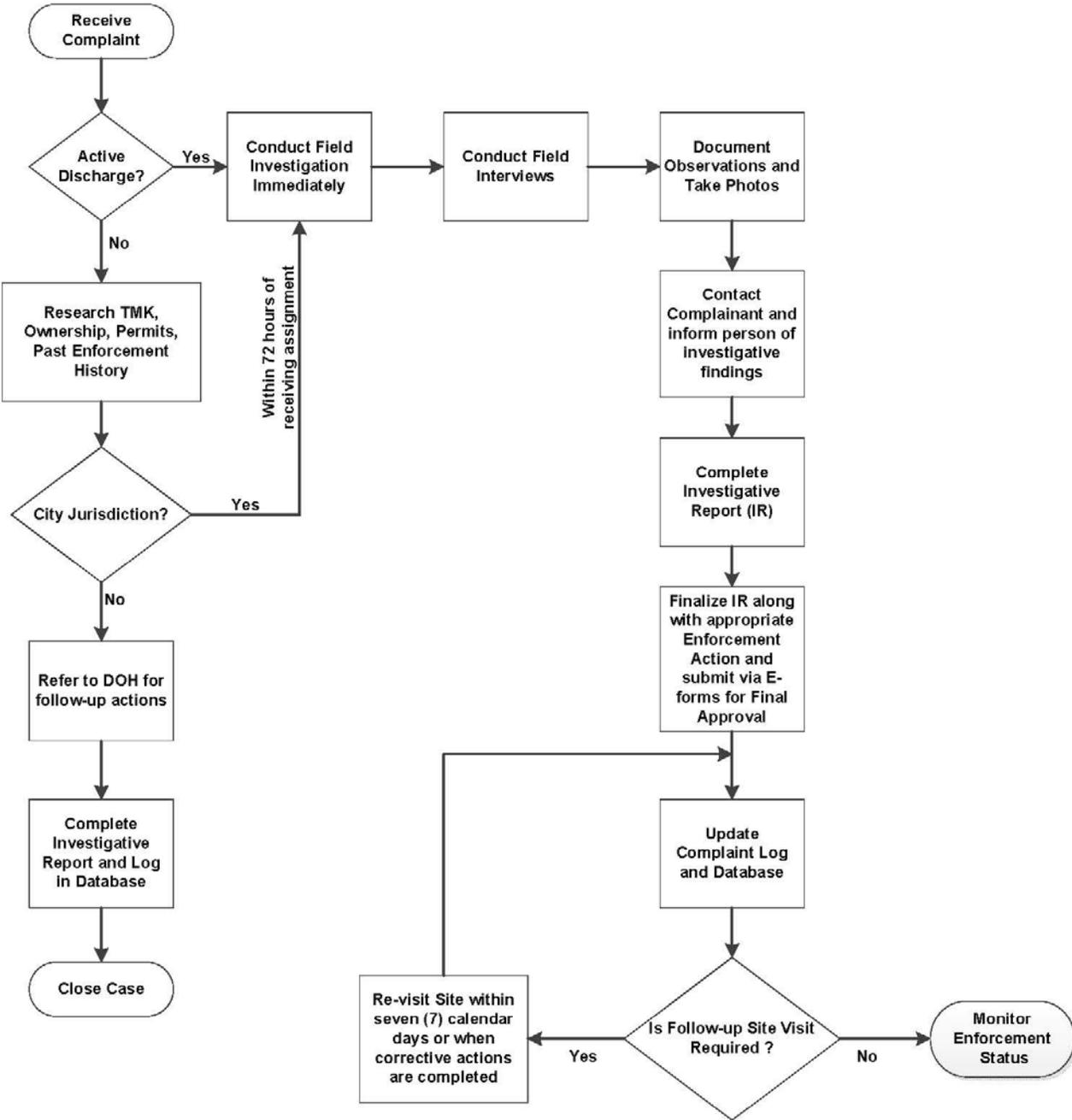
b. Road Maintenance Division Responsibilities in Rural Areas

DFM-DRM personnel responds to complaints in the rural yard areas under an arrangement formalized in 1998 by an interdepartmental memorandum. DFM-DRM personnel alert SWQ Branch investigators via email or phone. SWQ branch investigators will then follow the procedure described above.

c. Construction Inspector Responsibilities

Construction engineers and inspectors for the DPP, Department of Design and Construction (DDC), Department of Transportation Services (DTS), and Department of Facility Maintenance (DFM), are often the first responders for any illegal discharges from construction sites. They will report any illegal discharges to the SWQ Branch. The DPP is the lead for enforcement of any grading and building permit violations.

Figure 2. SWQ Investigative Process



4. Coordination with other Agencies and Departments

The City coordinates investigation, response, and enforcement with DOH, DOT, Oahu Civil Defense, Coast Guard, and EPA. At an interagency meeting held on March 14, 1995, it was agreed that the following response protocol would be used for illegal discharges and spills to State, private, and City roads and drainage systems.

The agency having primary responsibility for inspection and enforcement will determine ownership of the first connection or point of direct discharge or spill to a drain system or waterway. Any discharge or spill to the private portion of streams is under the DOH jurisdiction.

If the discharge is to the City MS4, then the SWQ Branch will initiate enforcement action. If the discharge is directly to State waters, then the SWQ Branch will forward the complaint to the CWB (808-586-4309) for investigation and follow-up.

If the effluent is suspected to be oil or hazardous material from an accident or accidental spill, the Coast Guard (808-842-2601) will be notified. The Oahu Civil Defense will also be contacted (808-733-4300), they in turn may call the DOH Hazard Evaluation and Emergency Response Team (808-586-4249) and the Honolulu Fire Department's Hazardous Materials Response Unit (HAZMAT) (808-422-1001) company in accidents involving toxic chemical, petroleum, and radioactive material. On a few occasions, the City has assisted the United States Environmental Protection Agency on investigations, but this has been limited to criminal investigations.

Response procedures for the prevention and responding to spills to the MS4, including those from the City's wastewater system, private sewer laterals, or individual wastewater systems to the City MS4 are addressed in the ENV document titled "Program to Prevent and Respond to Spills to the City MS4," (February 2016).

5. Enforcement

The penalties for illegal discharges are given in the Chapter 14 of City's Revised Ordinances of Honolulu (ROH). The three (3) most cited ordinances in regards to storm water violations are referenced below.

ROH §14-12.12 (a)(1) specifies that all connections from non-municipal and private drainage systems to the city-owned separate storm sewer system shall require a storm drain connection license issued by the chief engineer.

ROH §14-12.22 (a) specifies that no person shall discharge any effluent other than storm water runoff onto any public right-of-way and/ or into any drainage facility without first obtaining a permit from the chief engineer.

ROH §14-12.23 (a) specifies that it shall be unlawful for any person to discharge or cause to be discharged any pollutant into any drainage facility which causes a pollution problem in state waters, or causes a violation of any provision of the Permit or the water quality standards of the State of Hawaii.

Enforcement actions are served upon the violator: the person responsible for the violation which may include the fee owner, leaseholder, sub-leaseholder, assignee, or tenant of the real property on which the violation occurs, the permittee of any permit issued by the City, and any general contractor or subcontractor responsible for work on the premises.

The SWQ Branch investigators progressively escalate enforcement actions from Letters of Warning (LOWs), to NOVs, to Notice of Orders (NOOs), which can be issued with a fine.

a. Letter of Warning

LOWs are sent in response to complaints of illegal discharges if an investigation was initiated but either no evidence was found or the responsibility could not be determined.

b. Show Cause Order

The Show Cause Order (ROH §14-12.26) allows the City to take enforcement action for potential violations. Whenever the City finds that a discharge of storm water or effluent or any pollutant is threatening to take place in violation of any requirement imposed by ordinance, regulation or other law, the City may issue a notice of violation and show cause order requesting the property owner or permit holder or discharger to show why there should be no formal enforcement action.

c. Notice of Violation

A NOV is issued when there is evidence of a discharge and the source can be determined. The NOV describes the violation and orders any violator to comply with City ordinances. The NOV also gives the date by which the necessary corrective actions must be completed to avoid the imposition of civil fines.

d. Notice of Order

A NOO is issued upon determining that a violation is reoccurring or remains uncorrected after the deadline specified in an NOV. The NOO identifies the uncorrected violation and corresponding NOV or prior violations.

The NOO states the amount of the civil fine imposed and the amount of additional civil fines that will be imposed until the date of correction, if any. Violators can be assessed a penalty of not less than \$1,000 nor more than \$25,000 per violation per day. Each day's continuance of the same offense constitutes a separate offense.

e. Unlicensed Drain Connections

Whenever a property owner is cited for an illegal private drain connection to the MS4, ROH §14- 12.12 allows the property owner a period of 90 days from the date of the citation to obtain a connection license. DPP will issue a connection license to the property owner without a penalty within the 90-day period provided that the discharge to the MS4 includes only storm water or allowed NPDES permitted non-storm water. Non-compliance will result in enforcement as described previously.

f. Construction Enforcement

Enforcement for construction sites is described in a separate document titled the "Inspection and Enforcement Program for Construction Sites," (January 2000), currently under revision.

g. Referral to the Department of Health

In the event the City has exhausted all available sanctions and cannot bring a facility or responsible party into compliance with local ordinances and the Permit, the DOH will be notified to escalate the compliance.

h. Appeal Proceedings

The person receiving the Notice and Finding of Violations has 30 calendar days in which to file an appeal. This is stipulated in the "Rules of the Engineering Division, Part I-Drainage, Flood and Pollution Control and Grading, Soil Erosion and Sediment Control Programs." The Hearings Officer will, within 10 days after receiving the petition, set the date for the hearing on the appeal and the public hearing. The procedure for the hearing is outlined in the Rules.