Review Draft
VOLUME 5 – ENFORCEMENT

City of Seattle
Seattle Public Utilities
Department of Planning and Development

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Note:
Some pages in this document have been purposely skipped or blank pages inserted so that this document will copy correctly when duplexed.

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1.1. Background

The City of Seattle Department of Planning and Development (DPD) and Seattle Public Utilities (SPU) produced this document as a joint Directors' Rule (DR) to interpret the enforcement provisions that are described in the Seattle Municipal Code (SMC) 22.800 – 22.808 (Stormwater Code). This volume is designed to help clarify the application of enforcement in Seattle.

If the Director finds a violation of the Stormwater Code has occurred or is occurring, a Notice of Violation (NOV) or an Order is given to the responsible party of that violation. The civil penalty attached with the NOV or Order is determined using the enforcement penalty matrix described below.

1.2. Enforcement Penalty Matrix

The enforcement penalty matrix (Table 1) is comprised of a set of criteria formulated as questions for the Director to evaluate and answer. The Director uses the guidelines of *Section 1.3* to determine the total points to be assessed according to the violation. Once the total amount of penalty points is determined, a rating and a corresponding penalty amount is established (Table 2).

Table 1. Enforcement Penalty Matrix.

Enforcement Evaluation Criterion	No (0 points)	Possibly (1 point)	Probably (2 points)	Definitely (3 points)
Public Health Risk?				
Environmental Damage or Adverse Impacts to Infrastructure?				
Willful or Knowing Violation?				
Unresponsive in Correcting Action?				
Improper or Inadequate Operation or Maintenance?				
Failure to Obtain and Comply with Necessary Permits, Certifications, and Approvals?				
Economic Benefit to Non-Compliance?				
Repeat Violation?				

Table 2. Penalty Points Rating and Corresponding Penalty Amount.

Rating	1-2	3-4	5-8	9-11	12-14	15
Penalty	$250	$500	$1,000	$1,500	$2,000	$2,500
Rating	**16**	**17**	**18**	**19**	**20+**	
Penalty	$3,000	$3,500	$4,000	$4,500	$5,000	

1.3. Application of Penalty Criteria

The framework below provides guidance on how to rate each criterion of the enforcement penalty matrix. The civil penalty is determined by the total score of the matrix.

1. Did the violation pose a public health risk[1]?

    a. Answer "no" if there is no evidence to support a claim of public health risk or adverse health effects.

    b. Answer "possibly" if evidence supports a claim of public health risk and there is a plausible connection between this violation and health effect.

    c. Answer "probably" if evidence supports a claim of public health risk and there is a likely connection between this violation and health effect.

    d. Answer "definitely" if there is direct evidence linking public health risk or adverse effects with the violation.

2. Did the violation result in environmental damage or adverse impacts to infrastructure[2]?

    a. Answer "no" if there is no evidence to support a claim of environmental or infrastructure damage.

    b. Answer "possibly" if environmental or infrastructure damage can be inferred from evidence or knowledge of the effects of the violation.

    c. Answer "probably" if there is evidence to support a claim of environmental or infrastructure damage and there is a likely connection between the violation and the damage/impairment.

    d. Answer "definitely" if there is direct evidence linking environmental or infrastructure damage with the violation.

3. Was the action a willful and knowing violation?

    a. Answer "no" if the violator obviously did not know that the action or inaction constituted a violation.

    b. Answer "possibly" if the violator should have known.

    c. Answer "probably" if it is likely the violator knew.

    d. Answer "definitely" if the violator clearly knew or was previously informed by inspectors.

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[1] Risk involving the physical or social well-being of a community or environment.

[2] Results in damage to publicly owned infrastructure that contributes to its impairment.

4. Was the responsible party[3] unresponsive in correcting the violation?

    a. Answer "no" if the violation was corrected as soon as the responsible party learned of it.

    b. Answer "possibly" if the violation was corrected in a less timely and cooperative fashion.

    c. Answer "probably" if the responsible person made some attempt to correct the problem, but did not correct it.

    d. Answer "definitely" if the responsible party made no attempt to correct the violation.

5. Was the violation a result of improper operation, inadequate maintenance, or inadequate implementation of a required plan that addresses stormwater management (e.g., O&M[4] manual, DCP[5], SWPPP[6], or TESC[7] plan)?

    a. Answer "no" if the violation was not the result of improper operation or inadequate maintenance.

    b. Answer "possibly" if the facility has an O&M manual, DCP, SWPPP, or TESC plan, but it is out of date or inadequate.

    c. Answer "probably" if there is no O&M manual, DCP, SWPPP, or TESC plan and the violation would have been less severe if the plan were developed and followed.

    d. Answer "definitely" if the facility has no O&M manual, DCP, SWPPP, or TESC plan or did not follow its plan AND the violation was clearly the result of improper operation or maintenance.

6. Did the responsible party fail to obtain and comply with the necessary and relevant permits, certifications, and approvals that require or would have required the responsible party to manage stormwater in a manner that could have prevented or mitigated the Code violation?

    a. Answer "no" if the paperwork was complete and appropriate for the job or task that caused the violation.

    b. Answer "possibly" if the responsible party obtained and received approval for some but not all of the required permit(s).

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[3] Owners, operators, and occupants of property, and any person causing or contributing to a violation of the City Code are considered a "responsible party" for purposes of a Code violation (SMC, Section 22.801.190).

[4] Operations and maintenance

[5] Drainage Control Plan

[6] Stormwater Pollution Prevention Plan

[7] Temporary Erosion and Sediment Control

c. Answer “probably” if the responsible party obtained some but not all of the required permit(s) and did not receive approvals for the job or task that caused the violation.

d. Answer “definitely” if the responsible party either did not obtain the necessary permits or did obtain permits but did not comply with their conditions.

7. Did anyone benefit economically[8] from non-compliance?

   a. Answer “no” if it is clear that no one gained an economic benefit.

   b. Answer “possibly” if someone might have benefited.

   c. Answer “probably” if anyone benefited, but the benefit is not quantifiable.

   d. Answer “definitely” if the economic benefit is quantifiable.

8. Is this violation a repeat violation[9]?

   a. Answer “no” to indicate that there have been no prior violations.

   b. Answer “possibly” to indicate that there has been one prior violation.

   c. Answer “probably” to indicate that there have been two prior violations.

   d. Answer “definitely” to indicate that there have been three or more prior violations.

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[8] Gain and/or no loss in resources.

[9] From Stormwater Code (SMC, Section 22.801.190): “Repeat violation” means a prior violation of this subtitle within the preceding 5 years that became a final order or decision of the Director or a court. The violation does not need to be the same nor occur on one site to be considered repeat.