

Arizona Department of Transportation

Stormwater Enforcement Response Plan

Arizona Pollutant Discharge Elimination System MS4 Permit AZS0000018-2015

Revised December 2020



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ABBREVIATIONS

A.A.C.	Arizona Administrative Code
ADEQ	Arizona Department of Environmental Quality
ADOT	Arizona Department of Transportation
A.R.S.	Arizona Revised Statutes
AZPDES	Arizona Pollutant Discharge Elimination System
BMP	Best Management Practice
CGP	Construction General Permit
ECC	Erosion Control Coordinator
ERP	Enforcement Response Plan
MS4	Municipal Separate Storm Sewer System
NOI	Notice of Intent
NOT	Notice of Termination
ROW	Right-of-Way
SWMP	Stormwater Management Program
SWPPP	Stormwater Pollution Prevention Plan
USEPA	United States Environmental Protection Agency

1 Introduction and Background

ADOT's stormwater discharges are regulated by Arizona Department of Environmental Quality (ADEQ) on non-tribal land. This Stormwater Enforcement Response Plan (ERP) describes procedures implemented by the Arizona Department of Transportation (ADOT) to achieve compliance with legal authority and enforcement requirements stipulated in Arizona Pollutant Discharge Elimination System (AZPDES) Municipal Separate Storm Sewer System (MS4) Permit No. AZS000018-2015. This plan is specific to the requirements in the stormwater conveyance system owned, leased, or operated by ADOT across the state on non-tribal lands. ADOT uses legal authority delegated within the Arizona Revised Statutes and Arizona Administrative Code to enforce against illegal encroachments, including spills and illicit discharges, and utilizes contract specifications to leverage authority on contractors performing work administered by ADOT.

1.1 Purpose

This ERP describes the response measures available to ADOT to exercise its authority to control pollutant discharges to its MS4. Enforcement procedures are designed to encourage timely response and constructive coordination with dischargers in order to prevent stormwater pollution. Consistent implementation of the measures provides a standard response across ADOT's large, diverse MS4 to avoid confusion, delays, and disputes. ADOT's standard process for documentation of possible discharges, subsequent investigations and follow-up actions is also outlined in this ERP.

1.2 ADOT Permit History

The current ADOT MS4 Permit was issued in 2015 and expired in August 2020. Until ADEQ issues a renewal, the 2015 permit will be administratively continued. This ERP meets current permit requirements and will be updated or revised as needed to meet any new or changed requirements.

1.3 Types of Enforcement Actions

ADOT is not a traditional MS4 and does not have a police force or the authority to levy fines. These legal constraints require ADOT to find different mechanisms to enforce provisions of the MS4 Permit. ADOT anticipates two general types of stormwater violations: ADOT construction sites and illicit discharges and connections to ADOT's MS4. Potential violators include contractors, businesses, industries, private citizens, and other governmental agencies. These are discussed in more detail below.

1.3.1 Construction Sites

The MS4 Permit requires ADOT to implement an oversight program for all construction activity occurring in the MS4. ADOT and contractors are required to obtain coverage as operators under the AZPDES Construction General Permit. ADOT specifications require that contractors complete all activities associated with CGP coverage until final acceptance, and then ADOT may assume control. Should any issues with CGP compliance arise, ADOT will initiate progressive enforcement action.

1.3.2 Encroachment Permits

The ADOT highway encroachment permit provides access to and/or use of the ADOT right-of-way by third parties. Encroachment permits are a written approval for use or construction of fixed or temporary improvements within a state highway right-of-way. Examples of temporary use are utility construction or maintenance, drainage improvements, groundwater monitoring, or special events such as litter pick-up and parades.

The encroachment permit requires the permittee to assume all legal liability and financial responsibility for the activity for the duration of the encroachment. The permit holder must also agree to comply with environmental laws to include any and all federal, state, or local statute, law, ordinance, code, rule, regulation, permit, order, or decree with specific reference to compliance with AZPDES requirements.

1.3.3 Illicit Discharges and Connections

The MS4 Permit also requires ADOT to take measures to detect and eliminate illicit discharges and unpermitted connections to the MS4. An illicit discharge is defined as any discharge to a MS4 that is not composed entirely of stormwater with the exception of allowable non-stormwater discharges and separately permitted discharges. Illicit connections are defined as any man-made conveyance that connects an illicit discharge directly to the MS4. ADOT is required to implement a program to minimize, detect, investigate, and eliminate illicit discharges and connections, including unauthorized non-stormwater discharges and spills, into the MS4 owned and/or operated by ADOT.

ADOT can exert control over discharges to the MS4 through statute and code can remove an unauthorized encroachment and may seek repayment for damages.

2 Discovery of Non-Compliance

Reports of a stormwater violation or non-compliance may come from one of several sources:

- Reports from ADOT Staff – Illicit discharges and discharges of sediment or other pollutants from the construction sites, ADOT facilities, or other sources within ADOT's MS4 may be observed by ADOT staff as they conduct normal activities such as driving to or from job sites or when inspecting other activities. Such non-compliances could include water and wind erosion, sediment tracking onto local streets or highways, poor housekeeping, location of concrete washouts, and failed or ineffective best management practices (BMPs).
- Permit Compliance Activities – Non-compliances may be discovered through Permit-required inspections or monitoring, including construction site inspections, dry weather screening, and stormwater sampling.
- Contractor Compliance Activities – A contractor may fail to comply with administrative requirements such as conducting and submitting inspection reports, obtaining annual certifications, preparing and implementing Stormwater Pollution Prevention Plans (SWPPPs).

- Reports from the Public – Public complaints may come directly to ADOT or through other local, state or federal government agencies.

3 Construction Enforcement

An ADOT construction project is a partnership. Partnering is a process for developing a spirit of teamwork and cooperation through shared goals, open communication, problem identification and resolution, conflict escalation procedures, and the monitoring of team performance.

Section 104.01(A) of the ADOT Construction Manual contains the Covenant of Good Faith and Fair Dealing. This section imposes the obligation on ADOT and the Contractor to perform their contractual duties in an honest, diligent, and cooperative manner.

The following section describes ADOT's authority and the mechanisms for enforcing provisions on ADOT construction sites.

3.1 Construction Enforcement Authority

ADOT's contractor enforcement authority can come from two different sources: provisions in the Standard Specifications or special provisions added to the standards.

3.1.1 Standard Specifications

Section 104.09 of ADOT's Standard Specifications for construction contracts includes a number of mechanisms to ensure contractors comply with stormwater pollution prevention requirements.

Failure of the contractor to properly maintain the erosion control measures required in the approved construction SWPPP will be cause for the Engineer to reject the ECC and issue a stop work order. Rejection of the contractor's ECC shall be for failure to complete any of the following:

- Should the Engineer (ADOT employee or representative) determine that the SWPPP is not being properly implemented; the contractor will be notified in writing of such concerns. The contractor's ECC shall fully implement, to the satisfaction of the Engineer, the requirements of the approved SWPPP within three working days.
- Should any corrective measures not be completed within the time periods specified therein, the Engineer will notify the contractor in writing. The contractor's ECC shall complete all required corrective measures within two calendar days of such notification, except that direct inflows of sediment into a watercourse shall be corrected within 24 hours.
- Should the Engineer determine that routine maintenance of the project's erosion control measures is not being adequately performed the contractor will be notified in writing. Within three working days, the contractor's ECC shall demonstrate to the satisfaction of the Engineer that such steps have been taken to correct the problem.

These standard contractual provisions clarify and more fully demonstrate ADOT's legal authority to review and enforce the ADOT stormwater management standards on highway

construction projects. When the standard specifications are not sufficient to address unique or sensitive project sites, special provisions may be implemented.

3.1.2 Special Provisions

Special provisions can be added to construction contracts that contain specific language or direction regarding the implementation of stormwater pollution control measures. Special provisions are legally binding to the contract. Requirements can include:

- Provisions for retention of funds
- A listing of temporary water pollution control practice items of work
- Minimum BMP requirements or BMP specifications
- Requirement to submit a water pollution control cost breakdown
- Specific rainy season dates
- Year-round, rainy season and non-rainy season implementation requirements
- The maximum allowable disturbed soil area for the project during the rainy season
- Regular inspection and maintenance of implemented BMPs
- Sampling and analysis requirements
- Project scheduling
- Other agency requirements (e.g. mitigation specified by other governmental agencies or Tribes)

3.2 Contractor Compliance Requirements

Compliance with stormwater permits and laws on ADOT's construction projects must be enforced according to contract provisions. ADOT's construction contract requires that ADOT's contractors shall be responsible to implement the requirements of the AZPDES for erosion and sediment control as specified in the CGP. ADOT will:

- Require contractors to comply with the CGP by submitting an NOI for each construction project. The contractor shall also file a NOT upon project completion either terminating permit coverage if final stabilization has been achieved, or transferring it to ADOT or to the appropriate local public agency (for local government projects administered by ADOT) for completion.
- ADOT shall ensure that the contractor's NOI references the site as an ADOT project and shall keep a copy of the ADEQ authorization certificate.
- ADOT shall ensure that all applicable provisions of the CGP are implemented.

3.3 Construction Contract Enforcement

ADOT will use the following progressive contract enforcement policy, escalating the response when a contractor fails to respond in a timely manner. If the contractor or ADOT identifies a deficiency in the implementation of the approved SWPPP or amendments, and the deficiency is not corrected immediately or by a date requested by the contractor and approved by ADOT in writing, the project is in non-compliance. The recommended sequence of enforcement actions are detailed below.

3.3.1 Verbal Warning

This action is a verbal exchange between an inspector or the resident engineer and the alleged violator. The information exchanged will be documented by the inspector. Typically, no letter is written if the problem is corrected immediately and the inspector or resident engineer observes the corrective action and deems it appropriate.

3.3.2 Written Warning

A warning letter may be issued if the non-compliance continues for 24 hours after the verbal warning is issued, if the non-compliance cannot be corrected while the inspector or resident engineer is on site, or if the non-compliance is a significant violation. The warning letter will document the reasons why the discharge is illegal and provide deadline for compliance. Typically, compliance is required within three (3) days to avoid additional enforcement actions; however, if the situation warrants, shorter or longer deadlines maybe permissible (Appendix A).

3.3.3 Stop Work Order

If the verbal and written warnings do not result in corrective action by the documented deadline, ADOT may stop work at the construction site. Upon successful corrective action in response to a stop work order, a resume work order may be issued. Example stop work and resume work orders are provided in Appendix B.

3.3.3.1 Temporary Suspension of Work

If immediate action is required due to an imminent threat of discharge or if the contractor does not respond to the warning letter with in the required time frame, ADOT may temporarily suspend work on the project.

3.3.3.2 Termination of Contract

If, after the verbal and written warnings and suspension of work, a contractor does not comply with stormwater discharge control requirements, ADOT may terminate the contract.

3.3.4 Rejection of ECC

ADOT may reject the contractor's ECC if, in the opinion of the resident engineer, the conditions of the AZPDES CGP or the approved SWPPP are not being fulfilled. The contractor's ECC shall be rejected for any of the following:

- Failure to properly implement the SWPPP within three working days after written notification.
- Failure to complete corrective measures within two calendar days after written notification.
- Failure to perform routine maintenance within three working days after written notification.

In the event of the ECC's failure to comply with any of the above requirements, the resident engineer will direct the contractor to stop all affected work and propose a new ECC as soon as possible. However, all erosion and pollution control items specified in the SWPPP shall be maintained at all times. No additional work on construction items affected by the SWPPP will

be allowed until the resident engineer has approved a new ECC and all corrective measures have been completed. The contractor will not be allowed compensation or an extension of contract time for any delays to the work.

4 Encroachment Permit Enforcement

Because ADOT is responsible for discharges from the MS4 to waters of the US, ADOT must hold others, including encroachment permittees, responsible for discharges to the MS4. If a permittee fails or refuses to comply with stormwater pollution prevention requirements or causes ADOT to be in violation of the MS4 Permit, ADOT may take the following progressive actions against the permittee.

4.1 Require Corrective Action

ADOT may require the permit holder to undertake corrective or remedial action to address any release or threatened release or discharge of the hazardous substance, pollutant or contaminant, water, wastewater, or stormwater.

4.2 Revoke the Encroachment Permit

If an inspection of the area covered by the encroachment permit identifies a violation of stormwater requirements, ADOT may revoke the encroachment permit. By revoking the permit, the permit holder is no longer allowed access to the ROW. If the permit is revoked, the permit holder must repair any aspect or condition of the encroachment and restore the ROW to its original or better condition.

4.3 Injunctive Relief

ADOT may seek an order from the court requiring the permit holder to either prohibit an act or condition or to require a certain action.

5 Illicit Discharge and Connection Enforcement

ADOT is responsible for monitoring discharges to the MS4 because discharges from the MS4 cannot cause or contribute to an exceedance of a water quality standard. In addition, neighboring property owners are not allowed to occupy, use or interfere with public ROW without permission. Any discharge/connection without permission is an illegal encroachment on ADOT ROW. A discharge/connection can be discovered in two ways, either through routine inspection or due to a report or complaint.

Similar to Section 3.3, notification of observed illicit connections or discharges will be carried forward to the alleged connector/discharger by the local district. ADOT will use the following progressive enforcement policy, escalating the response when a discharger fails to respond in a timely manner.

5.1 Verbal Warning

When a routine inspection of the drainage system identifies an illegal connection/discharge to the ADOT system, the observations will be documented on a Dry Weather Inspection Form. If the discharge is suspected to be hazardous to health or the environment, the ADEQ 24-hour

hotline will be called (602.771.330). Otherwise, the report will be sent to Environmental Planning Water Resources and the District Environmental Coordinator within 72 hours.

If the source of the connection is evident, the District will contact the connector/discharger directly by phone or in person to discuss the source of the connection and address potential for encroachment permitting. The communication will include requesting any permits or other authorizations and providing a follow up date (within 15 days). If the discharge is permitted or authorized (documentation is required), no further action is required; if the discharge is not authorized, it will need to be addressed or ceased within 15 days. Tracking records will establish a clear follow-up date and assignment (example, in 30 days hazmat will inspect the site).

5.2 Written Warning

If the illicit connection/discharge has not been corrected, Water Resources will prepare and deliver the Notice of Illegal Discharge and Demand for Corrective Action letter via certified mail to the property owner (Appendix C). The letter will explain the situation, document prior communication efforts and agreements, and request that the connection/discharge be ceased or removed within 30 days. A follow up inspection will be performed by a qualified person to document whether the connection or dry weather flow has been removed. If the connection/discharge has not been corrected, the incident will be referred upward to the next level of enforcement action.

5.3 Removal of Connection/Discharge

ADOT will determine the appropriate action after communicating with the Attorney General or District in which the offense occurs. Depending on the severity of the issue, quality and quantity of flow, anticipated impact to the highway system, and proposed remedy, ADOT will remove the encroachment or pursue civil action.

5.4 Civil Action

If the illegal connection/discharge is not corrected and the remedy is not appropriate for ADOT to pursue (staff or cost prohibitive) ADOT will forward the matter to the Arizona Office of the Attorney General, or local county attorney pursuant to A.R.S. §28-7053 Misuse of Public Highway (Appendix C).

5.5 Other Enforcement Actions

ADOT is not a typical MS4, such as a city or county, with its own enforcement branch such as police department, sheriff, or zoning board. Without an enforcement branch, ADOT may report the issue to ADEQ for enforcement assistance. The following subsections describe the authority of other government entities that ADOT may appeal to for enforcement assistance.

5.4.1 United States Environmental Protection Agency

Although the USEPA delegated authority for the NPDES Program to the state of Arizona, the USEPA reserves the authority to apply fines in addition to fines issued by ADEQ. Federal environmental regulations based on the Clean Water Act allow the USEPA to levy fines on dischargers of up to \$37,500 per day per violation.

5.4.2 Arizona Department of Environmental Quality

Authority to administer AZPDES in Arizona rests with ADEQ. ADEQ has several enforcement mechanisms for violations of AZPDES rules including compliance orders (A.R.S. §49-261), injunctive relief and civil penalties (A.R.S. §49-262), and criminal penalties (A.R.S. §49-263).

5.4.3 Municipal Separate Storm Sewer Systems

When sediment or pollutants from ADOT's ROW discharge to a regulated MS4, those discharges are subject to enforcement by the local municipality. Likewise, when ADOT ROW accepts discharges from adjacent MS4s, ADOT is responsible to remediate or rectify the situation.

In the event that a discharger is not identified, ADOT may communicate with the adjacent MS4 in verbal or written methods that describe information the connection/discharge, and request the assistance of the local jurisdiction to isolate the source of the connection or flow.

6 Emergency Response Conditions

Discharges from emergency highway situations where federal rules specify washing as the preferred method to assure public safety are authorized non-stormwater discharges that are not be subject to enforcement action. However, when a responsible party is known to have discharged oils, grease, hazardous materials, or other debris, Administrative Services will file a claim with the party's insurance to reimburse for cleanup and disposal fees.

7 Reporting Requirements

ADOT provides a description of all violations, resolutions, or enforcement actions taken in the Annual Report. For those situations where health or environment could be endangered, ADEQ 24-hour response will be notified. Otherwise, a progressive scale from 24-hours to three days to notify and up to 60 days to coordinate remediation, or civil action, is procedurally effective.

APPENDIX A

Non-Compliance Notice to Contractors

Appendix A



ARIZONA DEPARTMENT OF TRANSPORTATION

NONCOMPLIANCE NOTICE

FROM: _____

TO: _____

Date: _____

Time: _____

CONTRACT NO. _____

PROJECT TITLE _____

CONTRACTOR _____

You are hereby notified that tests, inspection indicates that the _____

does not conform to the contract requirements.

Refer to Section _____ Paragraph _____ Drawing No/Detail _____

of the _____

Under these provisions, the requirements are _____

Non complying work shall be removed and replaced at no cost to the Department. It shall be the contractor's responsibility to determine the corrective action necessary and to submit a corrective plan for approval.

INSPECTOR

Noncompliance notice was received by the Contractor on _____

By: _____

Title: _____

† 10-0506 R03/01

Distribution: 1) Contractor 2) Project File

APPENDIX B

Stop Work and Resume Work Orders

Appendix B

ARIZONA DEPARTMENT OF TRANSPORTATION

STOP WORK ORDER

F.A. Project No. _____ Fund Code Order No. _____

Project _____ Contractor _____

Date Effective _____ Time of Day _____

Work Stopped 100% Work Stopped Partial

(Check square applicable)

Reason: _____

If partial shutdown, list items affected on reverse side or attached sheet

Resident Engineer

Appendix B

**ARIZONA DEPARTMENT OF TRANSPORTATION
RESUME WORK ORDER**

Project No. _____ A.F.E. No. _____ Order No. _____

Project _____ Contractor _____

Date Effective _____ Time of Day _____

Work 100% Resumed

Reason: _____

Resident Engineer

APPENDIX C

Notice of Illegal Discharge and Demand for Corrective Action



**Arizona Department of Transportation
Administrative Services Division**

206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janice K. Brewer
Governor

John H. Nichols
Division Director

January 30, 2012

John S. Halikowski
Director

NOTICE OF ILLEGAL DISCHARGE OR CONNECTION

Person or Business Name
Address
Phoenix, AZ

Dear Property Owner:

The Arizona Department of Transportation (ADOT) is responsible for maintaining not only roadways, but also the extensive storm drain network located within the State rights-of-way. The Arizona Pollutant Discharge Elimination System (AZPDES) Program, which is a component of the Clean Water Act of 1972, requires ADOT to control the amount of pollutants entering the drainage system. Part of this charge is the detection and elimination of illegal discharges or connections to the system that may contain pollutants or are otherwise not allowed. Left uncorrected, any pollutants entering the system will ultimately impact nearby streams, as storm drainage is not treated at any sort of treatment facility. In addition, neighboring property owners are not allowed to occupy, use or interfere with public right of way without permission. Any discharge/connection without permission is an illegal encroachment on ADOT right of way.

An inspection of the drainage system has occurred in the vicinity of your property and an illegal connection/discharge was discovered entering into the ADOT system. The discharge/connection was discovered on <insert date> at <insert business name and address>.

Indicators or Source include pipng and staining.

Photographs of this discharge/connection are enclosed with this letter. In addition, I have enclosed an aerial photograph showing the location of this discharge/connection.

This discharge or connection must be ceased or removed within 30 days. A follow-up investigation will be conducted after that time to ensure compliance. If the situation is not corrected, ADOT will take corrective measures, including but not limited to sending this matter to the Arizona Office of the Attorney General so that a lawsuit may be filed. In the alternative, ADOT may remove the discharge/connection and bill you directly pursuant to A.R.S. § 28-7053.

If the illegal discharge/connection cannot be removed within 30 days, you do not understand this notice, or you disagree that an illegal discharge/connection exists at your property, please contact me with further details or explanation by calling 602.712.8353 or by email at wterlizzi@azdot.gov.

Sincerely,

Wendy Terlizzi
ADOT Office of Environmental Services Water Quality Manager
1611 W Jackson Street, MD EM02
Phoenix, Arizona 85383

Enclosure (photographs)

cc: Todd G. Williams, M.Sc, ADOT Office of Environmental Services Director
District Engineer
District Environmental Coordinator

DRAFT



Arizona Department of Transportation
Administrative Services Division
206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janice K. Brewer
Governor

John H. Nichols
Division Director

January 30, 2012

John S. Halikowski
Director

Mr. Ron J. Aschenbach
Office of the Arizona Attorney General
1275 West Washington Street
Phoenix, AZ 85007

Dear Mr. Aschenbach,

The Arizona Department of Transportation (ADOT) is responsible for maintaining not only roadways, but also the extensive storm drain pipe network located within the State's rights-of-way. On <insert date>, an illegal connection/discharge was discovered entering into the ADOT system at <insert location>. A Notice of Illegal Discharge and Demand for Corrective Action letter (attached) was sent to the property owner <insert name> on <insert date>. Thirty days have elapsed since the issuance of the letter and ADOT conducted a follow-up inspection on <insert date>, where it was discovered that the illegal connection/discharge has not ceased or been removed.

This letter is to request assistance from the Arizona Attorney Generals Office in the removal of the discharge/connection. If you have any questions or need further information, please contact me by calling 602.712.8353 or by email at wterlizzi@azdot.gov.

Sincerely,

Wendy Terlizzi
ADOT Office of Environmental Services Water Quality Manager

cc: Todd G. Williams, M.Sc, ADOT Office of Environmental Services Director
District Engineer
District Environmental Coordinator