Handling a Stormwater Notice of Violation

RESTORATION + RECOVERY
A Stormwater Management Company

Receiving a Letter of Non-Compliance or Notice of Violation (NOV) from your stormwater regulatory body is a serious matter. Proper and immediate response is critically important, and it is imperative to partner with an expert in stormwater rules, regulations, and regulatory response. This expert should understand the most effective strategies to return the stormwater system to a well functioning state, mitigating both environmental harm and regulatory exposure for the property owner.

INTRODUCTION

A notice of violation (NOV) is an official notification to inform a non-compliant property owner/manager of a violation of the stormwater management ordinance. This notice will detail what part of the stormwater ordinance was violated, when and where the violation was observed, and any necessary actions required. The notice may or may not include fines and penalties depending on the severity of the violation and prior history of the responsible party. Fines and penalties can sometimes be avoided by either proving the violation did not occur or by getting your stormwater management system into compliance immediately. If the stormwater management system is receiving Stormwater Tax Credits, the violation may be cause for the credits to be rescinded. Serious or repeated violations can lead to criminal charges, and ignorance of environmental laws is not an excuse for non-compliance.

This whitepaper will discuss an overview of stormwater management NOVs, including the various reasons NOVs are issued, who issues them, and most importantly, what to do once a NOV is issued.

CATEGORIES OF VIOLATIONS

When considering why a NOV is issued, it is important to remember the basics of stormwater management:

- A system is designed and constructed to manage rainfall and storm events at a site with impervious surfaces
- This system is agreed to and approved by a regulatory body
- This system is (or should be) inspected annually and maintained and repaired so that it continually operates as designed and intended

If the above steps are not performed, for any reason, the system is at risk of receiving a NOV. Examples of types of NOV are:

During site construction

- Failure to apply for permit coverage
- Failure to prepare a Storm Water Pollution Prevention Plan (SWPPP)
- Inadequate SWPPP

After construction (post construction stormwater management)

- Failure to implement Best Management Practices (BMPs)
- Failure to maintain or repair BMP's
- Failure to conduct or document inspections
- Inadequate Erosion/Sediment Controls
- Illegal Dumping/Discharge
- Illicit Connection (Connecting a Sanitary Sewage System into a Stormwater System)

NON-COMPLIANT BMP EXAMPLES

Swale with Excessive Vegetation

Erosion from Improperly Draining BMP

Outlet Clogged with Tree Debris from Beaver Activity

Erosion at Outlet

Severe Erosion at Inlet

Overgrowth of Vegetation at Retention Pond

Invasive Species Dominant

Collection of Debris, Inadequate Maintenance

Restoration & Recovery's technicians perform inspections, maintenance, and repairs on all sizes of **bioretention cells, sand filters, constructed wetlands, wet and dry detention basins (retention and detention ponds), grassed swales, infiltration basins, permeable/pervious pavement surfaces, level spreader devices,** and **manufactured underground systems.** We serve property owners and managers in the contiguous 48 states and Puerto Rico.

Request a FREE consultation

ISSUERS OF NOVS

The EPA and State governments can issue NOVs for violations of the Clean Water Act or other legislation. However, it is more likely for the NOV to be issued by the stormwater department of the local city/county government, typically following up on a local complaint or inspection by the regulatory official. Factors influencing the issuance of a NOV include:

- Frequency (and severity) of violations by property owner, manager or business
- Other types of noncompliance involved
- Degree of impact to the environment
- Whether the violation has harmed or has the potential to harm public health

TYPES OF NOVS

The word NOV is being used generically herein. Specific types of issuances from governmental bodies include:

- Notice of Violation (NOV) — A written document issued by a regulatory body to a permittee or other regulatee informing them of the violation(s) of the applicable permit, statute, regulation and/or management agreement.
- Expedited Settlement Offer (ESO) — A consent agreement and final penalty order issued by the EPA or a regulatory body, in specified circumstances, where violations of the applicable permit, statute, regulation and/or management agreement may be resolved quickly through an expedited process in which the violator corrects identified deficiencies, signs an agreement with EPA certifying that deficiencies have been corrected, or pays a penalty.
- Administrative Order (AO) — A written document issued by the EPA or a regulatory body which contains findings of fact and which directs a permittee or other regulatee to achieve compliance with the applicable permit, statute, regulation and/or management agreement.
- Administrative Penalty Order (APO) — An order entered by the EPA or a regulatory body assessing penalties against a permittee or other regulatee for violating the applicable permit, statute, regulation and/or management agreement.
- A Civil Action — A judicial action that typically seeks both penalties and injunctive relief for violating the applicable permit, statute, regulation and/or management agreement.

FICTIONAL EXAMPLE OF A NOV

CITY OF METROPOLIS
STORMWATER DEPARTMENT

February 19, 2014

Big Box Incorporated
123 Fake St
Metropolis, NY 38719

RE: **Detention Pond Maintenance:**

Dear Property Manager,

An inspection was made of your property at **123 Fake Street, Metropolis NY 38719** and it was determined to be in violation of the City of Metropolis Stormwater Ordinance section 27-612 regarding maintenance of stormwater facilities. The City of Metropolis is required to make routine inspections of stormwater facilities to identify deficiencies. When ponds are not maintained they may fail and adversely impact downstream properties and/or waters of the State.

Our inspector found the following deficiencies during inspection:

- *Overgrowth of vegetation near inlet pipe*
- *Debris within pond*
- *Vines growing on perimeter fence*

A follow up inspection will be made in 30 days to re-inspect the facility. If attempts to address the maintenance have not started within 30 days, the City of Metropolis will proceed with enforcement. **If you have any questions or feel there has been an error please call 555-555-9312.** Thank you for your cooperation in this matter.

Sincerely,

John Smith, Operations Management Supervisor
Water Resources Department
Stormwater Management Division

FICTIONAL EXAMPLE OF A NOV

Form No. IDF 42-4 REV.4/17

City of Metropolis

DEPARTMENT OF STORMWATER MANAGEMENT
CODE ENFORCEMENT DIVISION
MUNICIPAL CENTER
1212 COURTHOUSE DRIVE
BUILDING 19B
METROPOLIS NY, 34567
(555)555-5532
FAX (555)555-6705

BIG BOX RETAILER
123 WIDE BRIDGE RD
METROPOLIS, NY 34678

MAINTENANCE VIOLATION

CASE NUMBER 24-15-QQN-22006

RE: 848 FREEDOM BLVD
METROPOLIS, NY 34680

GPIN 25896328101234

INSPECTION DATE 1/1/2014

The City of Metropolis has ordinances in effect that are designed to preserve and protect water quality and public welfare. Since violations of these ordinances have a detrimental effect on the quality of the City's water supply, your cooperation is requested in the abatement of the violations indicated below:

CODE	DESCRIPTION	CORRECT VIOLATION BY
SEC. 34-59 WEEDS AND GRASS	Cut all weeds and grass in excess of ten (10) inches in height on property bordering retention pond.	2/1/2014
SEC. 34-61 TRASH, GARBAGE, LITTER	Remove all accumulation of trash, garbage, and litter within retention pond.	1/8/2014
SEC. 34-65 RETENTION POND	Retention pond outlet is clogged and not draining at an acceptable rate.	1/8/2014

Failure to comply by the indicated date shall result in the following appropriate actions:

(1) The requisite work will done by contractor. The cost and expenses of such work, including an administrative fee in the amount of three hundred dollars ($300.00) will be charged to the owner of the land or premises. Any such charges which are not promptly paid shall be entered in the judgment lien book in the clerk's office indexed against the record owner of the real estate.
(2) Legal action may be instituted if necessary to obtain compliance. A violation of Section 34-59 and Section 34061 constitutes a Class IV misdemeanor. A violation of Section 34-65 constitutes a Class II misdemeanor.

In case of error, or if you have any questions, please call the inspector immediately between 8:00 a.m. and 4:30 p.m. Monday through Friday at 555-555-6110. Thank you for your cooperation in this matter.

John Doe, Code Enforcement Inspector

WHAT TO DO AFTER RECEIVING A NOTICE OF VIOLATION?

Upon receiving a NOV, it is important to act thoughtfully but quickly — every day a site is found out of compliance is generally considered an individual incident, and if there are fees that go along with non-compliance "incidents," these fees can accumulate quickly.

- Read the entire notice carefully. If you do not understand any part of it or believe something is incorrect, contact a stormwater management company such as R&R for clarification and assistance.
- Prevent further immediate environmental damage referenced in the NOV by taking the necessary corrective measures (example, repair the leak, clean up the spill, remove the nuisance vegetation, etc.), even if these corrective measures are interim steps before a more complete response.
- If you perfectly understand the reasoning behind the NOV and the impacts of the needed corrective actions, respond to the NOV and regulatory body in writing. Explain the cause of the violation, how you plan to clean up the damage with a specific timeline, any interim steps you have taken, and how you plan to prevent future violations via permanent corrective measures. If you feel the notice of violation was unwarranted you may appeal the violation as detailed in the notice. If you do NOT perfectly understand the reasoning behind the NOV and the impacts of the needed actions, seek the counsel of a stormwater management company such as R&R. The first communication with a regulatory body is important, and establishes the baseline for the entire management of the NOV.
- After making contact with the regulatory body, confirm that they agree with the corrective actions in your response and then carry out the corrective actions. Upon the completion of the corrective actions, submit a completion report with before/after photo documentation of the stormwater management issue and resolution.

Please note that in the experience of R&R, most regulatory bodies do not issue NOVs frivolously. If the stormwater management system violations are serious enough to warrant a NOV, professional and immediate response is required. If you or your organization has received a NOV, we strongly recommend that you engage an experienced stormwater management organization such as R&R. Our stormwater experts will manage the NOV process to minimize costs from fines, to minimize environmental liability, and to prevent future noncompliance. Our team will visit the site to assess the situation and develop a plan to deal with the violation in the most expeditious and cost-effective manner, more than likely involving a combination of our Inspection, Maintenance and Repair services. Whether it's a minor problem such as excessive vegetation or a more major problem such as a sinkhole, our experienced staff will offer turnkey service in managing all aspects of the NOV response. As one might expect, we have found that regulatory bodies respond more favorably to communication from stormwater experts than from those inexperienced in the field.

CONCLUSION

With the stormwater regulatory changes of the last decade, owners and managers of **properties with more than one acre roofed or paved** have a clear responsibility to manage stormwater. In addition to the legal responsibility, taking care of the surrounding environment is the right thing to do and is good for business. However clear and direct the legal responsibility is, the various requirements, rules, regulations and nuances of this business make it a sometimes arduous and confusing undertaking, and never more so than in response to a NOV from a regulatory body.

Receiving a NOV is never pleasant, but upon the receipt of a NOV, the next step is the most important. A well-planned and thorough response to a NOV will keep the matter small and manageable; ignoring the NOV, or not understanding the ramifications of the NOV, may lead to a large, confusing and expensive undertaking.

If you have received a stormwater NOV, we at R&R are ready to help, and ready to answer any and all questions about how to get started.

Restoration & Recovery is the only company that solely specializes in stormwater management.

Restoration & Recovery's comprehensive post-construction stormwater management services include:

- **Inspection,**
- **Maintenance,**
- **Repairs to Aboveground Stormwater Facilities,**
- **Repairs to Underground Stormwater Devices,**
- **Emergency Response,** and
- **Consulting.**

Most importantly, we are as passionate about our customer service as we are about our technical expertise. We are **focused and comprehensive**, we aim to turn all of our clients into **raving fans**, we believe in the tenets of the **Stormwater Circle**, and all of our work is backed by our **Unconditional Guarantee**. We call these four concepts the "R&R Difference," and every action each day is informed by these beliefs.

Request a FREE consultation

Restoration & Recovery

Water Quality Excellence Through Superior Stormwater Management

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