

Stormwater Enforcement Response Plan

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**Department of Environmental
Health & Safety, Northern
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Arizona**

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APPENDICES

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ACRONYMS

A.A.C.	Arizona Administrative Code
ADEQ	Arizona Department of Environmental Quality n
A.R.S.	Arizona Revised Statutes
AZPDES	Arizona Pollutant Discharge Elimination System
BMP	Best Management Practice
CGP	Construction General Permit
ERP	Enforcement Response Plan
MS4	Municipal Separate Storm Sewer System
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
SWPPP	Stormwater Pollution Prevention Plan
USEPA	United States Environmental Protection Agency

1 Introduction and Background

This Stormwater Enforcement Response Plan (ERP) codifies enforcement procedures used by the Northern Arizona University (NAU) campus to enforce provisions of its Arizona Pollutant Discharge Elimination System (AZPDES) Stormwater Permit No. AZG2016-002 (hereafter referred to as the NAU Permit). Under Permit Section 3.0, NAU must “adopt and implement local ordinance(s) or other regulatory mechanism(s) that provide adequate enforcement procedures that satisfy the requirements of the permit to control pollutant discharges into its Municipal Separate Storm Sewer System (MS4) that is owned or operated by NAU through rules and regulations regulating water pollution [e.g., Arizona Administrative Code (A.A.C.) R2-10-207(10), et seq.], permits, contracts or similar means.” This legal authority authorizes or enables NAU to:

- Control the contribution of pollutants to the MS4 by stormwater and non-stormwater discharges associated with industrial activity and the quality of stormwater discharged from sites of industrial activity.
- Prohibit illicit discharges to the MS4.
- Control the discharge to the MS4 of spills, dumping, or disposal of materials other than stormwater.
- Require compliance with conditions in State statutes, rules, permits, contracts, and orders.
- Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the NAU main campus MS4.

NAU’s MS4 consists of a conveyance or system of conveyances owned by NAU that is designed or used for collecting or conveying stormwater, which is not a combined sewer, and which is not part of a publicly owned treatment works.

1.1 Purpose

This ERP describes the measures available to NAU to exercise its authority. The ERP identifies enforcement procedures designed to encourage a timely response by the discharger. Implementation of the ERP will ensure a consistent response throughout the NAU campus and avoid confusion, delays, and disputes over enforcement for stormwater pollution prevention.

An effective enforcement program depends on detailed and comprehensive documentation of all contacts with the alleged violator and of all evidence establishing the violation. Investigations and enforcement actions must be handled quickly. NAU is required by Permit Section 3.2.f. to cease and desist illicit discharges to the MS4 and by Permit Section 3.2.g. to initiate enforcement and corrective action to eliminate the source(s) of the discharge consistent with this ERP.

1.2 NAU Permit History

NAU's current AZPDES permit was issued by Arizona Department of Environmental Quality (ADEQ) and became effective on September 30, 2016. This permit replaces the previous AZPDES MS4 permit issued by the Arizona Department of Environmental Quality (ADEQ) in 2002 (Permit No. AZG2002-002). The scope of the current permit includes all stormwater discharges associated with campuswide construction sites, industrial facilities, maintenance facilities, and MS4 under NAU's control.

Although permitted under the federal program, permit waivers for small construction projects, known as erosivity waivers, are not permitted under the NAU AZPDES permit.

1.3 Types of Enforcement Actions

NAU is not a traditional MS4 but does have a police force on campus with the authority to levy fines. This allows NAU to enforce provisions of the Permit. NAU anticipates two general types of stormwater violations: NAU construction sites and illicit discharges and connections to NAU's MS4. Potential violators include construction contractors, private citizens, and a few infrastructure support units. These are discussed in more detail below.

1.3.1 Construction Sites

NAU's Permit provides AZPDES coverage for NAU as owner of NAU construction projects on campus grounds. NAU is not required to file a Notice of Intent (NOI) or Notice of Termination (NOT) for these construction projects.

NAU construction contractors are required to obtain coverage as operators for NAU construction projects by filing NOIs with ADEQ for coverage under the AZPDES Construction General Permit (CGP) on campus. Contractors are subject to all CGP provisions. NAU continues to be responsible for complying with construction stormwater discharge requirements on campus. Whether activities are performed directly by NAU employees or by contractors on behalf of NAU is responsible for ensuring that contractors adhere to the applicable general permit(s).

To that end, NAU has inspection oversight responsibility and must ensure that a trained and certified individual inspects construction activity at every construction site until final stabilization is achieved. The Permit also requires NAU to implement a system to monitor contracted construction activities and to enforce Permit provisions. NAU is required to list and describe all violations and enforcement responses taken for construction activities in the Annual Report submitted to ADEQ.

NAU's authority to take enforcement action at construction sites is derived from its contractual relationship with construction contractors. NAU's Technical Specifications Section 01.41.13 (Codes and Standards) contains mechanisms NAU can use to ensure Permit compliance. These are discussed in more detail in Section 3.

1.3.2 Illicit Discharges and Connections

The Permit also requires NAU to take measures to detect and eliminate illicit discharges and connections to NAU's 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. NAU 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 NAU.

NAU has authority to take enforcement action on illicit discharges and connections through its Illicit Discharge Detection and Elimination (IDDE) provisions. NAU's enforcement authority is generally limited to contacting the violator and requesting discontinuance of the discharge/connection and if that is not successful, reporting illicit discharges and connections to the NAU Police Department and/or to the peace officers around the Flagstaff area (City of Flagstaff, County Sheriff) for timely correction.

2 Methods of Discovery of Non-Compliance

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

- Reports from NAU employees – Illicit discharges and discharges of sediment or other pollutants from the construction sites, NAU facilities, or other sources within NAU's MS4 may be observed by NAU employees 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 campus streets, 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 construction contractor’s failure 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 Students and Public – Public and student complaints may come directly to NAU EH&S, PD, or through other local, state or federal government agencies.

3 Construction Contractor Enforcement

An NAU 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. This section imposes the obligation on NAU and the Contractor to perform their contractual duties in an honest, diligent, and cooperative manner.

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

3.1 Construction Contractor Enforcement Authority

NAU's construction contractor enforcement authority can come from two different sources: provisions in the NAU Technical Standards/Design Guidelines or special provisions added to the standards.

3.1.1 Technical Standards/Design Guidelines

Section 5.2.2. of NAU's Design Guidelines 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 Design Professional team and/or the Project Manager to issue a stop work order. A stop work order will be issued for failure to complete any of the following:

- Should the inspector (NAU DP/Project Manager or EH&S) determine that the SWPPP is not being properly implemented; the contractor will be notified in writing of such concerns. The contractor’s SWPPP manager/inspector/coordinator shall fully implement, to the

satisfaction of the inspector, the requirements of the approved SWPPP within three working days.

- Should any corrective measures not be completed within the time periods specified therein, the inspector will notify the contractor in writing. The contractor's SWPPP contact 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 inspector 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 SWPPP contact shall demonstrate, to the satisfaction of the inspector, that such steps have been taken to correct the problem (**NAU Technical Specification 01.45.23.**).

Section 5.2.1. of the Design Guidelines indicates site development must be done in a way to avoid the following conditions:

- Ponding of a duration that may allow mosquito breeding, in access ways which may create a nuisance for pedestrians, or within 10' of building foundations (to prevent infiltration that may cause indoor mold or structural problems).
- Any water catchment not draining within 24 hours.
- Retention (groundwater infiltration) facilities not draining within 12 hours.
- Surface water that is wasted, e.g., by running down the street.
- Surface water that is routed in a way which inappropriately distributes sediment or chemicals.
- Channelized or concentrated water conveyed over sidewalks.
- Water running off of irrigated turf areas.
- Water that puddles in areas where freezing may cause a pedestrian or vehicular hazard or damage to hardscape.

These standard contractual provisions clarify and more fully demonstrate NAU's legal authority to review and enforce the NAU stormwater management standards on 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 and NAU is legally bound and entitled to enforce them. Specific 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
- Discharge reporting requirements
- Sampling and analysis requirements
- Project scheduling
- Other agency requirements (e.g. mitigation specified by other governmental agencies/local municipalities)

3.2 Contractor Compliance Requirements

Compliance with stormwater permits and laws on NAU's construction projects must be enforced according to contract provisions. NAU's construction contract requires that NAU's contractors shall be responsible to implement the requirements of the AZPDES for erosion and sediment control as specified in the "General Permit for Discharge from Construction Activities to the Waters of the United States" as issued by ADEQ. Submittal of the contractor's NOI shall certify that the contractor and its subcontractors have read, and will comply with, all provisions of the AZPDES CGP. NAU's Permit requires that:

- NAU require its contractors to comply with the AZPDES CGP for regulated construction projects, including the contractor's obligation to file a NOI and obtain authorization under the AZPDES CGP for each construction project or site. The contractor shall also file a NOT for each construction project or site, either terminating their responsibility if final stabilization has been achieved, or transferring it to NAU for completion. NAU shall impose contract provisions incorporating into the contract all requirements of NAU's Permit that are not included in the AZPDES CGP. NAU may also impose project-specific requirements in addition to those specified in the CGP.

- NAU shall ensure that the contractor's NOI references the site as an NAU project and shall keep a copy of the ADEQ or USEPA authorization certificate.
- NAU shall ensure that all applicable provisions of the AZPDES CGP and the NAU Permit are implemented for NAU projects, as appropriate, and shall implement a system to enforce these provisions.

3.3 Construction Contract Enforcement

When stormwater non-compliance is identified by the NAU DP, Project Manager, or EH&S, enforcement actions will be taken promptly but in no event later than 30 days following identification of the non-compliance. NAU will take appropriate contractual sanctions against the contractor based on the nature and severity of the situation. Non-compliances will be classified as minor or major violation. Major violations are generally those acts or omissions that lead to a discharge of pollutants to stormwater. Minor violations are generally instances of non-compliance that do not directly result in such a discharge. Serious discharges or an imminent threat of discharge on a project may require an immediate escalation to a higher level of enforcement. The level of enforcement response will depend upon several factors:

- Severity of the violation: the duration, quality, and quantity of pollutants, and effect on public safety and the environment
- The violator's knowledge (either negligent or intentional) of the regulations being violated
- A history of violations and /or enforcement actions individual or contractor
- The potential deterrent value of the enforcement action

NAU 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 NAU 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 NAU 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 (NAU DP, Project Manager, EH&S) 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 observes the corrective action and deems it appropriate.

3.3.2 Written Warning

A warning letter following an inspection report submittal may be issued if the non-compliance continues for 5 days after the verbal warning is issued, if the non-compliance cannot be corrected while the inspector 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 5 days to avoid

additional enforcement actions; however, if the situation warrants, shorter or longer deadlines may be permissible. NAU inspectors will provide documentation regarding any issues requiring corrective action in the form of a field report (Appendix A).

3.3.3 Stop Work Order

If the verbal and written warnings do not result in corrective action by the documented deadline, NAU may stop work (full or partial shut down) 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 within the required time frame, NAU 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, NAU may terminate the contract and mobilize another contractor or NAU's maintenance personnel to complete the work.

3.3.4 Rejection of SWPPP

NAU may reject the Contractor's SWPPP if, in the opinion of NAU, the conditions of the AZPDES CGP or the approved SWPPP are not being fulfilled. The Contractor's SWPPP 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. (24 hours if sediment flows directly into a body of water.)
- Failure to perform routine maintenance within three working days after written notification.

In the event the contractor's SWPPP fails to comply with any of the above requirements, NAU will direct the Contractor to stop all affected work and propose, and incorporate, new BMPs to the SWPPP 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 NAU has approved and determined 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 NAU is responsible to ADEQ for discharges from its MS4 to waters of the US, NAU must hold others, including encroachment permit holders, responsible for discharges to the MS4. If a permittee fails or refuses to comply with stormwater pollution prevention requirements or causes NAU to be in violation of its Permit, NAU may take the following progressive actions against the permit holder.

4.1 Require Corrective Action

NAU 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 Injunctive Relief

NAU may seek legal assistance from law enforcement agencies requiring the permit holder to either prohibit an act or condition or to require a certain action to abate the discharge on NAU property.

5 Illicit Discharge and Connection Enforcement

NAU is responsible for monitoring discharges to its MS4 because the NAU Permit requires NAU to ensure that discharges from its MS4 do not cause or contribute to an exceedance of water quality standards. In addition, neighboring property owners are not allowed to occupy, use or interfere with NAU property without permission. Any discharge/connection without permission is an illegal encroachment on NAU property. A discharge/connection can be discovered in two ways, either through routine inspection or due to a complaint.

Similar to Section 3.3, notification of observed illicit connections or discharges will be carried forward to the alleged connector/discharger by the inspector or observer. NAU will use the following progressive contract 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 NAU system, the inspector documents the discharge on a Dry Weather Field Screening Report, which will be provided to NAU EH&S within 48 hours. If during routine business a connection/discharge to the NAU system is discovered, then either NAU EH&S or ADEQ will be notified as soon as practicable.

If the source of the connection is evident, the NAU inspector will contact the connector/discharger directly by phone or in person to discuss elimination/abatement. 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.

5.2 Written Warning

If after 15 days the illicit connection/discharge has not been corrected, NAU will issue a “Notice of Illegal Discharge and Demand for Corrective Action” letter to the property owner (example letter in Appendix C). The letter will request that the connection/discharge be ceased or removed within 30 days. A follow up inspection will be performed by NAU to ensure compliance. If the connection/discharge has not been corrected, the incident will be referred externally to ADEQ for action.

5.3 Removal of Connection/Discharge

NAU EH&S or designee may remove the illegal connection/discharge if it has not been corrected within the initial 60 days of observation timeframe. If NAU removes the illegal connection/discharge, the responsible party is subject to civil action for damages.

5.4 Civil Action

If the illegal connection/discharge is not corrected within 60 days of observation, NAU may forward the matter to the Arizona Office of the Attorney General so that a lawsuit may be filed. Alternatively, on direction of the attorney general, the local county attorney may file pursuant to A.R.S. §49-141 Environmental Nuisances.

5.5 Other Enforcement Actions

NAU is not a traditional MS4, such as a city or county, but does have its own police department . NAU can also rely on other jurisdictions for enforcement assistance if required. However, non-compliance will be referred internally to NAU's EH&S department before seeking civil or external enforcement, as necessary. The following subsections describe the authority of other government entities that NAU 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 \$27,500 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 NAU property discharge to a regulated MS4, those discharges are subject to enforcement by the local municipality. Likewise, when NAU property accepts discharges from adjacent MS4s, NAU is responsible to remediate or rectify the situation, thereby complying with its Permit.

In the event that a discharger is not identified, NAU EH&S will prepare a letter to the local MS4 describing all known information regarding the connection/discharge, and request the action be addressed within 30 days. If no response is received by NAU from the MS4 in 30 days, NAU will exercise the authority to initiate enforcement action pursuant to A.R.S. 49-261.

MS4 enforcement procedures vary, but may include citations for code enforcement violation that range from as little as \$50 to the maximum amount allowed under the A.R.S. (\$25,000). Some municipalities will issue citations directly to the contractor or the individual person responsible for the discharge.

6 Emergency Response Conditions

NAU's Permit identifies "discharges or flows from firefighting activities where federal rules specify washing as the preferred method to assure public safety" as an authorized non-stormwater discharge. Such discharges will not be subject to enforcement action.

7 Reporting Requirements

NAU shall provide a list and description of all violations and their resolutions, including any enforcement actions taken against its contractors, in the Annual Report to ADEQ. At a minimum, the inspector should document the source of the complaint, the date, the time, the contact person (if any), a description of the nature of the non-compliance or illicit discharge, actions taken, and final resolution.

APPENDIX A

FS-15 Inspection Record

APPENDIX B

Stop Work and Resume Work Orders

APPENDIX C

Notice of Illegal Discharge and Corrective Action