

Port Of Oakland

Storm Water Enforcement Guidelines

Pursuant to Port of Oakland Storm Water Ordinance

(Ordinance No. 4311: Adopted January 15, 2015; Effective April 1, 2015)

Implementing Port of Oakland Non-Traditional Municipal Storm Water Permit
as of July 2, 2015

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Port of Oakland Storm Water Ordinance Enforcement Guidelines

Pursuant to Storm Water Ordinance, Ordinance No. 4311

ARTICLE 1 INTRODUCTION

1.1. **Basis for Guidelines.** These Port of Oakland Storm Water Ordinance Enforcement Guidelines (“Guidelines”) implement **Article 5** of the Port of Oakland Storm Water Ordinance, Ordinance No. 4311 adopted January 15, 2015, and effective April 1, 2015 (“SW Ordinance” or “SWO”).

1.2. **Regulatory Requirements.** The SW Ordinance and these Guidelines were developed to be consistent with the requirements of the Municipal Separate Storm Sewer System (“MS4”) Permit issued by the State Water Resources Control Board and applicable to the Port at that time, the Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, Order 2013-001-DWQ, NPDES No. CAS000004 (commonly referred to as the “Phase II Small MS4 Permit,” “Municipal General Permit,” and herein, “MGP.”)

1.3. **Authority.** The Port of Oakland is authorized by the SW Ordinance to enforce the requirements and prohibitions of the SW Ordinance within the Port Area. [SWO § 5.2.]

1.4. **Purpose.** The purpose of these Guidelines is to ensure fair and consistent enforcement of the SW Ordinance to achieve compliance with Storm Water Laws, deter noncompliance, implement the Port’s SW Ordinance and ultimately protect and enhance the water quality of San Francisco Bay. The essential elements of enforcement are:

- A. Assessment by knowledgeable personnel of information indicating a violation of the SW Ordinance by knowledgeable personnel;
- B. Issuance of Enforcement Action appropriate to the severity of the violation;
- C. Follow-up to verify compliance or document need for further enforcement;
- D. Progressive, escalating enforcement as appropriate to compel compliance, including such measures as issuing notices of violation or penalty, issuing stop work orders, withholding, modifying or revoking Port approvals or authorizations and other measures;
- E. Identification of and response to emergencies;

- F. Documentation of all phases of enforcement; and
- G. Reporting of enforcement activities as required by Storm Water Laws.

1.5. **Tenant Agreements and Conflicts.** In the event of any conflict between the provisions of these Guidelines and a lease, space assignment, or other agreement for use or occupancy of Port property between the Port and a tenant, the provisions of the agreement will control. Conflicts between such agreement and the SW Ordinance should be brought to the attention of the Port Attorney for resolution.

1.6. **Department Contacts.** For purposes of internal communication, Port departments involved in the Storm Water program shall designate a contact Person, each of whom is identified in **Appendix A**.

ARTICLE 2 DEFINITIONS

The definitions in the SW Ordinance are incorporated herein, except as otherwise provided.

2.1. **Enforcement Action** means any of the informal or formal measures described in ARTICLE 5 of these Guidelines employed to enforce the SW Ordinance.

2.2. **Enforcement Action Log** means the records kept by Enforcement Officers pursuant to § 5.3 of these Guidelines.

2.3. **Enforcement Officer** means the individual(s) authorized by the Director to assess violations and take Enforcement Action pursuant to these Guidelines for the purpose of enforcing the SW Ordinance. [ARTICLE 3 of these Guidelines.]

2.4. **Guidelines** means these Enforcement Guidelines.

2.5. **Legal Action** means Enforcement Action affecting legal rights undertaken by the Port Attorney, including those listed in § 5.8.1.1(f) of these Guidelines.

2.6. **NOP** means Notice of Penalty, as defined in the SW Ordinance and described more particularly in § 5.7 of these Guidelines.

2.7. **NOV** means Notice of Violation, as defined in the SW Ordinance and described more particularly in § 5.6 of these Guidelines.

2.8. **Protest Officer** means the individual(s) authorized by the Director to review a Protest of a NOV or NOP, and affirm, modify or reverse any aspect of the NOV or NOP in accordance with ARTICLE 7 of these Guidelines and SW Ordinance § 5.5.

2.9. **Protester** means a Person who Protests an NOV or NOP pursuant to SW Ordinance § 5.5, in accordance with ARTICLE 7 of these Guidelines.

2.10. **RWQCB** means the Regional Water Quality Control Board

2.11. **SW Ordinance** means the Port of Oakland Storm Water Ordinance, Ordinance No. 4311, adopted January 15, 2015 and effective on April 1, 2015, as such may be amended, modified or reissued from time to time. References to SWO are to the particular provisions of the SW Ordinance.

2.12. **Verbal Warning** means the Enforcement Action described in § 5.4 of these Guidelines.

2.13. **Written Warning** means the Enforcement Action described in § 5.5 of these Guidelines.

ARTICLE 3 ENFORCEMENT OFFICERS

3.1. **Authority.** Enforcement Officers are authorized to assess violations and take Enforcement Action. Enforcement Action may also be issued by the Director, the Director's Representative(s) for purposes of the SW Ordinance, and the Port Attorney.

3.2. **Qualifications.** Enforcement Officers are knowledgeable about the requirements of Storm Water Laws and have sufficient training, knowledge and experience to identify and assess violation(s) of the SW Ordinance. It is expected that Enforcement Officers will keep abreast of changes to, and developments under, Storm Water Laws.

3.3. **Designation.** The Director shall designate Enforcement Officers with authority to implement the enforcement provisions of the SW Ordinance and these Guidelines. [SWO § 1.4 re delegation.] These individuals so designated are identified in **Appendix A**.

ARTICLE 4 ASSESSING VIOLATIONS

4.1. **Reliable Information as a Basis for Enforcement Action.**

4.1.1 **Observation.** Enforcement Action is to be based upon direct observation or other reliable information that provides clear evidence of a violation. Detailed reports of Port personnel trained or experienced in recognizing SW Ordinance violations may support Enforcement Action.

4.1.2 **Verified Information.** An Enforcement Officer will verify reports from untrained individuals, including from the public, prior to initiating an Enforcement Action.

4.1.3 **Other Information.** Enforcement Action may also be based on other reliable information, such as monitoring data, admissions of the violator, reports and disclosures made pursuant to Storm Water Laws or Port direction, findings of Illicit Discharge investigations, and knowledge of the Enforcement Officer (such as failure to take or cease action, provide information or otherwise respond to request or direction from an Enforcement Officer.)

4.1.4 **List of Violations.** SW Ordinance violations are described at SW Ordinance § 5.1(a).

4.2. **Inspections.** Inspections are typically the best approach to evaluate compliance. Inspections are generally authorized pursuant to the SW Ordinance [SWO § 4.1.], and most Port tenancy agreements authorize reasonable inspections of tenant facilities. Port staff who may be on tenant properties in the course of their regular activities should be provided an appropriate level of training in the identification of Storm Water issues so that they can accurately report observations to an Enforcement Officer.

4.2.1 **General Practice.** Except in the case of emergency, inspections of either tenant or non-tenant facilities and properties should be performed only after providing advance written notice or obtaining permission. Written notice should be provided a minimum of twenty four (24) hours prior to an inspection when hand delivered or posted at the property. A minimum of forty-eight (48) hours is recommended for notice by email, and six (6) days by mail. Inspections should be conducted during normal business hours with a minimum of disturbance to facility operations. [SWO § 4.1.]

4.2.2 **Emergency entry.** Port staff may enter any property at any time in an emergency or other circumstances posing an immediate threat to the health, safety or welfare of the public. [SWO § 4.1(b).] For purposes of this section, an emergency includes a significant spill or release of a Pollutant that has entered or may enter Port Storm Drains or Receiving Waters.

4.2.3 **Uncooperative occupants.** Port staff who are denied entry following proper notice shall promptly report the incident to the Aviation, Maritime or Commercial Real Estate Department of the Port, as appropriate, and to the Port Attorney, for follow-up.

4.3. **Documentation.** Photographs and inspection checklists should be used where appropriate to document observations. Documents and correspondence to, from or with the violator, any regulatory agency or any other entity concerning the violator, shall be maintained in Port files until 5 years following the date such violator has ceased to conduct business or occupy property within the Port Area.

ARTICLE 5 ENFORCEMENT ACTION

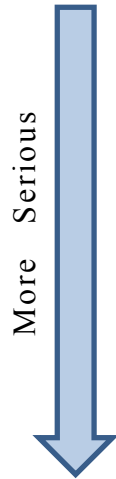
5.1. **Enforcement Officer to Take Enforcement Action.** Enforcement Action should be taken only by an Enforcement Officer, except in the case of Legal Action, which should be taken by the Port Attorney, and Verbal Warnings, which may be given by any Port staff knowledgeable or trained in SW Ordinance compliance. Port staff giving such Verbal Warnings should promptly notify an Enforcement Officer of the circumstances of any Verbal Warning given to facilitate enforcement tracking under MGP requirements. Port staff should be mindful of the Port's obligations under the Municipal General Permit to enforce the SW Ordinance and be aware that failure to do so may subject the Port to liability for failure to implement the MGP..

5.2. **Progressive Approach.**

5.2.1 **Escalation.** In general, an escalating series of Enforcement Actions is to be employed until compliance is achieved. For less serious violations, an informal Verbal Warning along with education and compliance coaching is often sufficient. A Written Warning or NOV may be necessary if a Verbal Warning fails to produce compliance. More aggressive action, such as more specific orders in an NOV or issuance of an NOP may be necessary to compel compliance from non-responsive, recalcitrant or repeat/chronic offenders. Under more egregious circumstances, taking Legal Action or reporting violators to the RWQCB may be appropriate, and in the case of Port tenants, tenancy termination must be considered.

It is not always necessary to escalate enforcement at each step (more than one or two Written Warnings could be issued before an NOV, for example). However, a series of Enforcement Actions at one level that produce only marginal compliance improvement should be avoided. On the other hand, if appropriate to the circumstances, enforcement may be accelerated by skipping one or more levels.

Overview of Progressive Enforcement

		Guidelines
	Verbal Warning	§ 5.4
	Written Warning	§ 5.5
	Warning form	Appendix B
	Warning letter	--
	Notice of Violation	§ 5.6
NOV Form	Appendix C	
Notice of Penalty	§ 5.7	
Legal Action	§ 5.8	

5.2.2 **Initial Enforcement Action.** After assessing the violation and any relevant circumstances, the Enforcement Officer should select Enforcement Action reasonably calculated under the circumstances, in his or her discretion, to achieve compliance in a reasonable period of time and with a minimal impact to water quality and the environment, consistent with the purposes described in § 1.4 of these Guidelines. Initial Enforcement Action need not begin with a Verbal Warning but should be at a level appropriate to the circumstances of the violation, as exemplified in the relevant sections of ARTICLE 5 of these Guidelines. In general, minor violations should be initially approached with education and assistance to foster cooperation and compliance, while more serious infractions should prompt a stronger enforcement response.

5.2.3 **Timeframe for Enforcement Action.** Enforcement Action should promptly follow the discovery of information indicating a violation has occurred. If Enforcement Action does not produce compliance, subsequent Enforcement Action should be

taken in a reasonable period of time. For purposes of this paragraph, a reasonable period of time is subject to discretion, taking into account the seriousness of the violation, the continuing threat to water quality, the corrective measures necessary, the violator's operations, the likelihood of precipitation, and other relevant considerations.

5.3. **Enforcement Action Log.** Enforcement Officers will maintain a log of Enforcement Actions to record reports received, inspections performed, violations observed, Enforcement Action taken, Port follow up, resolution, and other measures. Log entries include, at a minimum, a brief and specific description of the alleged violation, the name of the violator, dates of Enforcement Action, follow-up actions and resolution. Records should be maintained in such a manner that the compliance history of a particular facility can be reviewed.

5.4. **Verbal Warnings.**

5.4.1 **Content.** Verbal Warnings are consultative in nature. At a minimum, Verbal Warnings shall specify the nature of the violation(s) and required corrective action, and establish a due date for completion of corrective action.

5.4.2 **Appropriate Context.**

5.4.2.1 **Appropriate.** Verbal Warnings are appropriate in the context of providing notice of existing or potential violations of a minor or environmentally insignificant nature, including "paper violations" involving documentation, and violations having no environmental impact. Verbal Warnings are primarily intended to bring to a Person's attention circumstances that appear to represent a violation and that should be corrected by such Person.

5.4.2.2 **Not Appropriate.** Verbal Warnings are not appropriate for more significant violations, such as:

- (a) the occurrence of a significant spill or release;
- (b) the threatened or likely occurrence of a significant spill or release that could drain to and ultimately discharge into Port Storm Drains;
- (c) circumstances that pose an immediate threat to public health, safety or the environment;
- (d) repeated or continuing ("chronic") violations which have been the subject of a previous Verbal or Written Warning that failed to produce a reasonable response;
- (e) The violator's expressed refusal to comply; or
- (f) Other significant events at the discretion of the Enforcement Officer.

5.4.3 **Follow-up.** Enforcement Officers should follow up to confirm violations have been corrected or compliance has been otherwise achieved.

5.4.4 **Records.** Verbal Warnings, follow up action and resolution should be promptly recorded in the Enforcement Action Log. [§ 5.3 of these Guidelines.]

5.5. **Written Warnings.**

5.5.1 **Content.** Written Warnings include the nature of the violation(s) and the required corrective action with a specific due date to complete the corrective action. A sample form is attached at **Appendix B.**

5.5.2 **Appropriate Context.**

5.5.2.1 **Appropriate.** Written Warnings are generally appropriate:

- (a) when Verbal Warnings are not appropriate (see above at § 5.4.2 of these Guidelines);
- (b) when Verbal Warning(s) have failed to produce compliance in the specified or a reasonable time;
- (c) for minor violations that are, in the Port's discretion, continuous, repetitive, chronic or moderately serious in nature;
- (d) for failure to obtain or register for applicable Storm Water permits for industrial or construction activities; or
- (e) to lay the groundwork for an NOV resulting from the violators anticipated failure to take action.

5.5.2.2 **Not Appropriate.** Written Warnings are generally not appropriate:

- (a) when a significant spill has occurred and Pollutants have reached Port Storm Drains or Waters of the U.S.;
- (b) when circumstances pose an imminent and significant threat to public health, safety or the environment; or
- (c) when the Port seeks to order a Person to abate a nuisance or clean up a spill.

Such directives should be in the form of an NOV. [SWO § 5.2(a)(1).]

5.5.3 **Delivery.** Written Warnings must be delivered by hand delivery, certified mail or email. [SWO § 5.2(f).] Except as otherwise requested, Enforcement Officers shall copy Written Warnings to the Port Attorney or to his/her designee as well as to designated personnel in the Aviation, Maritime, and Commercial Real Estate Departments of the Port, as appropriate.

5.5.4 **Follow-up.** Enforcement Officers should follow up to confirm that the violations have been corrected or compliance has been otherwise achieved. If a violator fails to

reasonably perform following two (2) Written Warnings for the same violation, the Enforcement Officer shall issue an NOV. However, such NOV may be deferred one time if the Enforcement Officer consults with the Port Attorney and the appropriate Department, and they collectively determine to issue a third Written Warning in the form of a letter. Follow up should include further Enforcement Action for repeat and continuing violations as well as new violations.

5.5.5 **Records.** Written Warnings, all follow-up action and resolution should be promptly recorded in the Enforcement Action Log. [See § 5.3 of these Guidelines.]

5.6. **Notice of Violation (“NOV”).**

5.6.1 **Appropriate Context.**

5.6.1.1 **Appropriate.** An NOV is generally appropriate:

- (a) when compliance is not achieved in a timely manner;
- (b) when circumstances pose a threat to public health, safety or the environment; or
- (c) when a significant spill or release of Pollutants has occurred or is reasonably likely to occur.

5.6.1.2 **Inappropriate.** An NOV is generally not appropriate:

- (a) for first-time or insignificant violations posing no real threat to water quality, or related solely to documentation.

5.6.2 **Content.** Enforcement Officers should use the form NOV at **Appendix C** to ensure all elements are included:

5.6.2.1 Notice Date;

5.6.2.2 Name of company or Person to whom issued;

5.6.2.3 Date and description of the violation(s) or observed conditions believed to constitute a violation;

5.6.2.4 Order to take or cease specified action, such as are exemplified below. [SWO § 5.2(a).]; Check all that apply, and provide additional detail as appropriate.

- (a) Order to abate a nuisance or spill;
- (b) Order to take specific action (examples include construct, implement, operate, repair, maintain and/or replace source control or treatment BMPs);
- (c) Order to cease and desist (specific discharges, practices, activities or operations);

connections;

- (d) investigate and/or eliminate illicit discharges or illicit

- (e) Inspect and/or monitor;

- (f) Prepare and/or submit documents; or

- (g) Reimburse costs.

5.6.2.5 Due date for completion;

5.6.2.6 Date of follow-up inspection by Port;

5.6.2.7 Notice of possible subsequent action in the event compliance is not achieved in the time provided, including:

- (a) Port to abate a nuisance, abate or clean up a spill, or complete other work to achieve compliance at discharger's expense;

- (b) NOP and penalty;

- (c) Reporting of violation to RWQCB or other appropriate Governmental Authorities;

- (d) Stop work orders;

- (e) Withholding or modification of Port authorizations or tenancy [SWO § 5.4(c).]; and

- (f) Further Legal Action.

5.6.3 Order to Abate.

5.6.3.1 72-Hour Order. An order to abate and clean up a spill should include a deadline of 72 hours from notification, unless Enforcement Offers provide written justification for a longer period. The 72 hour period accords with the timeframe prescribed by the MGP § F.5.a.1.(ii)(g)1). [SWO § 5.2(a).]

5.6.3.2 30-day Order. An order to abate uncontrolled sources of Pollutants that could pose an environmental threat (such as Illicit Discharges) should include a deadline of thirty (30) calendar days from notification, unless the Enforcement Officer provide written justification for a longer period. The 30 day period accords with the timeframe prescribed by MGP § F.5.a.1.(ii)(g)2). [SWO § 5.2(a).]

5.6.3.3 When the Port and discharger agree that clean-up activities cannot be completed within the original timeframe, the Port may grant an extension and set a new deadline. The Port must notify the RWQCB within five (5) business days of its decision to extend the deadline in accordance with MGP § F.5.a.1.(ii)(g)5).

5.6.3.4 If the discharger fails to abate and clean up a spill, the Port may perform such work and seek reimbursement of its costs. The NOV must notify the discharger of this possibility.

5.6.4 **Delivery.** NOVs must be delivered by hand delivery, certified mail or email. [SWO § 5.2(f).] Enforcement Officers must transmit a copy of the NOV to the Port Attorney as well as to designated personnel in the Aviation, Maritime, and Commercial Real Estate Departments of the Port, as applicable.

5.6.5 **Follow-up.** Enforcement Officers should follow up to confirm violations have been corrected or compliance has been otherwise achieved. Follow-up action should include further Enforcement Action for repeat and continuing violations as well as new violations. If a Person fails to perform in a reasonable time and manner to two (2) NOVs, the Port Attorney shall issue an NOP and consider referral to the RWQCB or other Governmental Authorities as appropriate. If, in the discretion of the Director, an NOP is not issued, the Director shall prepare and retain written justification upon each determination to defer an NOP.

5.6.6 **Extension.** The Port may grant an extension of time for a Person to respond to an NOV. [SWO § 5.2(d).] Extensions should be confirmed in writing and logged into the Enforcement Action Log. Enforcement Officers must report an extension of established abatement timeframes to the RWQCB. [See § 5.6.3.3 of these Guidelines.].

5.6.7 **Notice to Port Attorney.** Port Enforcement Officers shall promptly advise the Port Attorney of existing or developing circumstancing that may warrant Legal Action, and shall promptly transmit a copy of any NOV to the Port Attorney as well as designated personnel in the Aviation, Maritime, and Commercial Real Estate Departments of the Port, as appropriate.

5.6.8 **Records.** NOVs, all follow up action and compliance should be promptly recorded in the Enforcement Action Log. [See, § 5.3 of these Guidelines.

5.7. **Notice of Penalty (“NOP”).**

5.7.1 **Purpose.** An NOP is the mechanism to order a violator to pay a penalty or take alternative compensatory action. [SWO §§ 5.2(c), 5.4.]

5.7.2 **Port Attorney to Issue.** When issuance of an NOP appears warranted and appropriate, the Enforcement Officer will first confer with the Port Attorney or with his/her designee. The Port Attorney may then issue an NOP after consultation with designated personnel in the Aviation, Maritime, and Commercial Real Estate Departments of the Port, as appropriate.

5.7.3 **Content.** An NOP must name the violator, describe the specific violation(s) and the violator’s response, provide the date(s) of prior written Enforcement Action(s) prompting the NOV(s), and notify the violator of his or her right to protest the penalty. [SWO § 5.2(c).]

5.7.3.1 Penalties should be calculated on the basis of \$500 per violation per day. [SWO § 5.4(a).]

5.7.3.2 Alternative compensatory action may be required in lieu of remedies or all or some of the penalty. It is expected that alternative compensatory action will contribute to water quality improvement and may include, for example, monitoring, installation of Storm Water Facilities, installation of storm drain markings, attendance at compliance workshops, participation in shoreline cleanup activities, or other specified measures. Alternative compensatory action measures that mitigate the type of water quality hazard associated with the specific violation(s) in the NOV are preferred. [SWO §§ 5.2(c), 5.4.]

5.7.4 **NOV Prerequisite.** An NOP should not be issued unless an NOV has been issued.

5.7.5 **Delivery.** An NOP must be delivered by hand delivery, certified mail or email. [SWO § 5.2(f).] A copy of the NOP should be promptly transmitted to the appropriate Enforcement Officer and designated personnel in the Aviation, Maritime, and Commercial Real Estate Departments of the Port, as appropriate.

5.7.6 **Extension.** The Port may grant an extension of time for a violator to respond to an NOP. [SWO § 5.2(d).] Extensions should be confirmed in writing and logged into the Enforcement Action Log.

5.7.7 **Records.** NOPs and confirmation of payment or completion of alternative compensatory action should be promptly recorded in the Enforcement Action Log. [See § 5.3 of these Guidelines.]

5.8. **Legal Action.**

5.8.1 **Appropriate Context.** The Port Attorney may undertake Legal Action in addition to any other Enforcement Action.

5.8.1.1 **Appropriate.** Legal Action is generally appropriate, in the Port's discretion:

- (a) when environmentally significant violation(s) have occurred;
- (b) when significant spill(s) or environmental impact have occurred, particularly as a result of negligence or recklessness of the responsible party;
- (c) when chronic violations have not been corrected despite multiple efforts over an extended period;
- (d) when the violations threaten the Port's compliance with Storm Water Laws;
- (e) when the Port has incurred significant costs abating a nuisance or spill, or taking other action to respond to conditions created by the violator; or
- (f) when significant violations are likely to occur in the future.

5.8.2 **Options.** The Port may undertake such measures as are necessary and appropriate, in its discretion, to achieve compliance, including the following:

5.8.2.1 Modification of any Port authorization, privilege or tenancy [SWO § 5.4(c).];

5.8.2.2 Civil action (such as for nuisance or breach of a tenancy agreement); or

5.8.2.3 Placement of a lien on private property.

5.8.3 **Records.** The Port Attorney should notify the Enforcement Officer of the resolution of Legal Action for inclusion in the Enforcement Action Log.

ARTICLE 6 ABATEMENT BY PORT

6.1. **Basis.** If a nuisance or spill has not been abated or cleaned up as required by an NOV, the Port may enter the premises and take action itself to abate and/or clean up the nuisance or spill, and recover its costs to do so. [SWO § 5.3.]

6.2. **Notice.** The Port should promptly provide the following notifications:

6.2.1 Notice to discharger, responsible party, or facility occupant, as appropriate, of the Port's intent to enter property and abate a nuisance or abate and clean up a spill.

6.2.2 Notice to Port Attorney of determination to undertake abatement.

6.2.3 Notice to designated personnel in the Aviation, Maritime and Commercial Real Estate Departments of the Port, as appropriate of a determination to undertake abatement.

6.2.4 Notice to regulatory authorities as appropriate (e.g., discharge of reportable quantity of hazardous material, etc.)

6.3. **Records.** To support a claim for reimbursement, Enforcement Officers shall maintain accurate records of time spent and costs incurred in association with its abatement activities. [SWO § 5.3(c).]

6.4. **Reimbursement.** When the Port has taken direct action to abate a nuisance or spill, staff involved in the incident shall promptly notify the Port Attorney, who may pursue reimbursement from responsible parties as appropriate.

ARTICLE 7 PROTEST

7.1. **Overview.** The purpose of the Protest process is to provide a forum for resolving a dispute over enforcement action before involvement of the courts. Upon receipt of a Protest

requesting review of an NOV or NOP, a Protest Officer is appointed to review the matter and either affirm, revoke or modify the action protested, based on submitted materials and the Port's written record. The Protest Officer's decision becomes final in fourteen (14) days unless the Protester requests a hearing. If a hearing is requested, review is elevated to the Director or his/her Representative for reconsideration at a hearing at which the Protester and Enforcement Officer are present to present their positions and evidence. The Director's decision is final upon issuance. Only NOV's and NOP's are reviewable by Protest. [SWO § 5.5.]

7.2. **Designation of Protest Officers.** The Director shall designate one or more individuals employed with the Port to serve as Protest Officer(s). [SWO § 1.4.] The designation may be for a specified period and may be withdrawn or revoked in the discretion of the Director. The individual(s) so designated are identified in **Appendix A**.

7.3. **Procedures.**

7.3.1 **Assignment of Protest Officer Upon Receipt of a Protest.** Upon receipt of a timely and properly filed Protest, the Director shall promptly assign a Protest Officer. [SWO § 5.5(a).] A Protest is timely and properly filed if:

7.3.1.1 the Protest form (See **Appendix D**) is completed and delivered by certified mail or hand delivery along with payment of \$750.00 to the office of the Director;

7.3.1.2 it is sent within twenty (20) calendar days of receipt of the NOV or NOP being protested; and

7.3.1.3 it specifies the reasons why the order, penalty or assessment of attorneys' fees should be rescinded or modified. [SWO § 5.5(a).]

7.3.2 **Recusal.** The assigned Protest Officer shall immediately recuse him- or herself whenever serving in that capacity may create a conflict of interest, and the Director shall promptly assign another Protest Officer to avoid delays in the response. For purposes of this section, a conflict of interest exists if the Protest Officer has a financial or personal interest in the property, business or personal affairs of the Protester, is subject to undue influence of the violator, or is involved in a set of circumstances which may cause the appearance of, or actual, impropriety. Any question of a conflict of interest shall be promptly referred to the Port Attorney.

7.3.3 **Protest Officer Review and Decision.** Upon assignment, the Protest Officer should obtain and review documentation relevant to the Enforcement Action protested, and may interview the Enforcement Officer. In reconsidering the Enforcement Action, the Protest Officer should evaluate the severity and chronic nature of the violation(s) and consider any mitigating factors. Mitigating factors may include history of violations, and good faith efforts to reduce environmental impact and resolve violations. The Protest Officer's final decision must be sent by certified mail within twenty (20) calendar days of receipt of the Protest. [SWO § 5.5(b).]

7.3.4 **Hearing Request.** The Protester may appeal the Protest Officer's decision by sending a written request for a hearing to the Director within ten (10) calendar days

of receiving the Protest Officer's Decision. The Director must send a written notice of the date, time and location of the hearing to the Protester within ten (10) calendar days of receiving the hearing request. The hearing notice should establish procedures and time frames for presentations, testimony and submission of evidence. [SWO § 5.5(c).]

7.3.5 Hearing. The Hearing shall be public, with the Director or his/her Representative presiding. The Director or Representative may request information from, and/or participation of, the Enforcement Officer(s). The Protester and Enforcement Officer(s) may give testimony and present evidence within the timeframes and restrictions established by the Director no less than seven (7) calendar days in advance of the scheduled hearing. The Director shall issue a final decision within twenty (20) calendar days after the hearing.

APPENDICES

Appendix A –Port Enforcement Officers and Department Storm Water Contacts

Appendix B – Written Warning Form

Appendix C – Notice of Violation

Appendix D – Protest Form

**Appendix A
Enforcement Staff and
Port Department Storm Water Contacts**

Subject to Change. Current as of June 8, 2015.

1. Enforcement Staff

The Director has designated the following individuals as Enforcement Staff to, on his behalf, take Enforcement Action to enforce the SW Ordinance.

Richard Sinkoff

Director of Environmental Programs and Planning

Associate Port Environmental Scientist

Associate Port Environmental Scientist

Designated by Executive Director

Chris Lytle

Date

2. Division and Department Storm Water Contacts

The following individuals are the primary contacts for communications concerning Storm Water Enforcement Actions.

Environmental – Primary Storm Water Contact(s):

EPP Staff (Maritime)

Date

EPP Staff (Aviation)

Date

EPP Staff (OABP)

Date

Environmental – Spill Response Coordinator:

Emergency Spill Response Coordinator

Date

Aviation Department: Director of Aviation

Director of Aviation

Date

Maritime Department:

Director of Maritime

Date

Commercial Real Estate Department:

Director of Commercial Real Estate

Date

Office of the Port Attorney:

Port Attorney

Date

Appendix B
Written Warning Form



PORT OF OAKLAND

530 Water Street • Oakland, CA 94607 • (510) 627-1100

WRITTEN WARNING FORM

DATE: _____ NO. _____

ISSUED TO: _____ (person, facility or company)

ADDRESS: _____ STATE: _____ ZIP: _____

CONTACT: _____ PHONE: (____) _____

Facility Inspection performed by _____ Date of Inspection: _____

You are in violation of the Port of Oakland Storm Water Ordinance.

Failure to comply with the SW Ordinance _____

Concealment of violation of the SW Ordinance _____

Failure to timely comply with Port notice or direction dated: _____

Causing, or permitting, a discharge to the Port Storm Drains or Receiving Waters that constitutes a nuisance, or causes or contributes to a violation of Storm Water Laws

DESCRIPTION OF VIOLATION(S): _____

Additional pages attached

This violation may be subject to substantial penalty. Your response does not preclude further enforcement action by the Port, other Governmental Authorities or other third parties.

Within ten calendar days, submit to the Port a written response describing the corrective action taken, and further corrective action to be taken with estimated timeline. Include a copy of this notice. If additional time is required, submit a request for an extension of time before the deadline.

Follow up inspection on or about _____

SIGNED: _____
Port Staff

SIGNED: _____
Recipient Name and Title

PHONE: _____
(Signature verifies receipt of Written Warning and is not an admission of guilt.)

Appendix C
Notice of Violation



530 Water Street • Oakland, CA 94607 • (510) 627-1100

NOTICE OF VIOLATION

DATE: _____ NO. _____

ISSUED TO: _____ (person, facility or company)

ADDRESS: _____ STATE: _____ ZIP: _____

CONTACT: _____ PHONE: _____

Facility Inspection performed by _____ Date of Inspection: _____
Name and Title
Phone: _____ Email: _____

You are in violation of the Port of Oakland Storm Water Ordinance.

- Failure to comply with the SW Ordinance _____
 - Concealment of violation of the SW Ordinance _____
 - Failure to timely comply with Port notice or direction dated: _____
 - Causing or permitting a discharge to the Port Storm Drains or Receiving Waters that constitutes a nuisance, causes or contributes to a violation of Storm Water Laws _____
- DESCRIPTION OF VIOLATION(S):

- Additional pages attached

This violation may be subject to substantial penalty. Your response does not preclude further enforcement action by the Port, other Governmental Authorities or other third parties.

YOU ARE HEREBY ORDERED:

- To abate a nuisance (describe): _____
- To take the following action (ex: construct, implement, operate, repair, maintain and/or replace source control or treatment BMPs): _____
- To cease and desist (as specified, ex: specified discharge practices, activities or operations) within a specified time frame if Pollutant sources or activities are not abated: _____
- To investigate and/or eliminate illicit discharges or illicit connections _____
- To inspect and/or monitor _____
- To prepare and/or submit documents _____
- To submit within ten calendar days to the Port a written response describing the corrective action taken, and further corrective action to be taken with estimated timeline. Include a copy of this notice. If additional time is required, submit a request for an extension of time before the deadline.
- Follow up inspection on or about _____

Failure to comply with this Order shall constitute a further violation of the Port's Storm Water Ordinance and be subject to a penalty of up to \$500/day per violation. If the discharger fails to abate and clean up a spill, the Port may also perform such work and seek reimbursement of its costs, staff time and attorneys' fees.

Deadline: _____ (Note: 72 hours to abate a nuisance or spill unless otherwise provided.)

SIGNED: _____
Port Staff

SIGNED: _____
Recipient Name and Title

PHONE: _____

(Signature verifies receipt of Notice of Violation and is not an admission of guilt.)

You may seek reconsideration of this NOV by submitting, within 20 calendar days, a Protest and \$750.00 fee as provided by §5.5 of the Storm Water Ordinance and Article 7 of the Storm Water Enforcement Guidelines.

**Appendix D
Protest Form**

Protest of Port of Oakland Storm Water Enforcement Action



This is a Protest and request for review of Enforcement Action taken by the Port of Oakland under the Storm Water Ordinance (Ordinance No. 4311). This Protest is made pursuant to §5.5 of the Storm Water Ordinance. By filing this Protest, the applicant acknowledges that they will comply with the process described in the Storm Water Ordinance §5.5 and Storm Water Enforcement Guidelines. This application must be filed with the required fee (\$750).

Protester Name:

Phone:

Protester Contact Name and Title:

E-mail:

Facility Address:

Mailing Address:

THIS PROTEST SEEKS REVIEW OF:

NOTICE OF VIOLATION (NOV)

Dated: _____

Date Received: _____

NOTICE OF PENALTY (NOP)

Dated: _____

Date Received: _____

SUBMIT WITH THIS PROTEST:

1. A copy of the NOV or NOP that is the subject of this Protest.
2. The specific action requested.
3. A clear and concise description of the ground(s) upon which the action is requested.
4. Any relevant documentation or evidence supporting this Protest.
5. \$750 fee

Within twenty (20) calendar days, the Protest Officer will review this Protest and issue a written decision, which shall become final unless, within ten (10) calendar days, the Protester delivers by certified mail or hand delivery to the Director or Protest Officer, a written request for a hearing specifying the specific issues to be addressed at the hearing.

SIGNED: _____ TITLE: _____

PRINT NAME: _____ DATE: _____

Port of Oakland • 530 Water Street • Oakland, CA 94607 • (510) 627-1100