



# Enforcement Response Plan

Version Dated 12/20/2023

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## 1. Introduction

Montgomery County is the operator of a small municipal separate storm sewer system (MS4) and has coverage under the NPDES General Permit for Discharges from Small MS4s. The permit is issued by the Tennessee Department of Environment and Conservation, Division of Water Resources under the authority of the Tennessee Water Quality Control Act of 1977. To maintain compliance with the permit, operators must develop and implement a Stormwater Management Plan that meets the minimum control measures detailed in the permit.

One requirement of the permit is the development and implementation of an Enforcement Response Plan, which is a set of procedures that describe the County's potential responses to violations of its Stormwater Resolution. The Enforcement Response Plan contains detailed procedures indicating how the County will investigate and respond to instances of noncompliance.

The purpose of the Enforcement Response Plan is to provide consistent enforcement responses for similar violations and circumstances.

## 2. Administration & Jurisdiction

All entities within Montgomery County discharging stormwater to the MS4 are subject to the provisions of the Enforcement Response Plan. All entities discharging anything into stormwater or otherwise impacting stormwater discharges are also subject to the provisions of the Enforcement Response Plan. The County administers and implements all elements of the Enforcement Response Plan. The Enforcement Response Plan does not preclude the County from taking any, all, or any combination of actions against a noncompliant entity.

## 3. Types of Enforcement Actions

### A. Verbal Warnings

Verbal Warnings provide immediate notification that staff has concerns that operations / procedures being applied on a site may lead to a violation. They may also be used for minor isolated violations. Verbal warnings are a courtesy that are not necessary to occur before a Notice of Violation (NOV).

### B. Notice of Violation

A Notice of Violation is a written notice to the noncompliant operator that a stormwater violation has occurred. The NOV includes a statement detailing the legal authority under which the County has issued the NOV, a description of the violation(s), the corrective action(s) required to correct the violation, and a deadline by which remediation must be complete.

### C. Citation

A Citation is a written notice to a noncompliant operator that a stormwater violation has occurred or is still occurring/has not been resolved following the issuance of a NOV. Citations are accompanied by civil

and administrative penalties. A civil penalty is a punitive monetary charge assessed by the County rather than a court. An administrative penalty is the cost incurred by the County to achieve compliance at the site. The purpose of the penalties is to recover the economic benefit of noncompliance and to deter future violations. The range of civil penalties allowed by the Montgomery County Stormwater Resolution and by TCA Section 68-221-1106 is a minimum of fifty dollars (\$50.00) to a maximum of five thousand dollars (\$5,000.00) per day of violation. Refer to Appendix A for more information regarding penalty calculations. Administrative penalties are based on the staff involved in achieving compliance in addition to other County resources utilized in the enforcement process.

#### D. Withholding Inspections, Permits & Other Approvals

The County may withhold inspections, permitting, and other authorizations at any time during the enforcement process to encourage compliance. This includes, but is not limited to, building permits, grading permits, final plats, certificates of occupancy, building inspections, etc.

#### E. Stop Work Order

A Stop Work Order (SWO) is an order issued to the operator by the County requiring that all work at the site cease until such time as the violation is corrected. Only work related to remediation of the violation(s) may occur. The stop work order can be posted at the site, can be sent as part of the NOV, or both.

#### F. Show Cause Hearing

A Show Cause Hearing is a formal meeting requiring the Operator to appear, explain their noncompliance, and show cause as to why more severe enforcement actions against the operator should not go forward. The meeting may also serve as a forum to discuss corrective action and compliance schedules. While a Show Cause Hearing is an option in the enforcement process, the County is not required to hold one at any time.

#### G. TDEC Referral

If an offender refuses to accept a certified Citation/SWO letter and/or is generally unresponsive to the requirements and deadlines for remediation, the matter should be referred to TDEC. TDEC will automatically be contacted regarding any violations relating directly to Waters of the State.

#### H. Additional Measures

The following additional measures may be implemented should the above measures not result in corrective action.

- The County completes remediation and passes on costs to violator
- Filing a property Lien for damages for costs Incurred during remediation
- Lawsuits

## 4. Enforcement Personnel & Duties

### A. Stormwater Inspector

The Stormwater Inspector holds an active Level I and Level II certification in erosion prevention and sediment control issued by TNEPSC, and is responsible for the day-to-day implementation and enforcement of construction-related compliance. The enforcement responses carried out by the Stormwater Inspector are as follows:

- Inspections
- Verbal warnings
- Written/email warnings
- Issuance of minor civil penalties (\$50) for failure to correct violations at construction sites
- Participation in show cause hearings
- Issuance of Stop Work Orders

### B. Stormwater Coordinator

The Stormwater Coordinator keeps in regular contact with the Stormwater Inspector throughout the week to stay abreast of the compliance status of active construction sites. The Stormwater Coordinator holds an active Level I and Level II certification, issued by TNEPSC. He/she investigates any illicit discharge and permanent stormwater violations or concerns. The following are additional responsibilities of the Stormwater Coordinator regarding enforcement:

- Assists in conducting compliance inspections of active construction sites in the absence of the Stormwater Inspector or in cases that have proceeded to a NOV or Citation.
- issues NOVs/Citations for violations
- work with the Stormwater Inspector to determine the appropriate civil penalties in construction-related cases
- issues Citations
- schedules and conducts show cause hearings
- contacts TDEC, as needed
- represents the County at Stormwater Board of Appeal meetings/public hearings

### C. Stormwater Board of Appeals

The Stormwater Board of Appeals consists of a seven-member committee that serves the function of hearing appeals of decisions of the Stormwater Coordinator, including civil penalties issued as a result of violations of the Stormwater Regulations. Members of the committee are appointed by the Montgomery County Mayor and serve a two-year term.

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## 5. Inspections

There are many activities associated with the identification and investigation of noncompliance. A description of these activities is provided below.

1. Routine inspections: inspections that occur on a regular basis to determine compliance with County Resolutions and approved plans. Any violations documented during routine inspections may initiate enforcement actions. Routine inspections will occur at the following sites:
  - a. Active construction sites
  - b. Hotspots
  - c. Sites with permanent Stormwater Control Measures (SCMs)
2. Dry weather screening: County staff routinely checks high priority stormwater system outfalls for illicit discharges. If an illicit discharge is detected, County staff will conduct an area-wide investigation to determine the source of the discharge. Any violations identified during an illicit discharge investigation will initiate enforcement actions.
3. Complaint-based inspection: The County investigates all stormwater-related complaints, which are typically received via the County's online citizen request system or through email correspondence sent to County staff members. Concerned citizens may also submit a complaint in person or by phone. Violations documented by a complaint-based inspection will initiate enforcement activities.
4. Compliance inspections: for sites under enforcement action, follow up inspections will be conducted based on the deadline provided on the NOV/Citation. Compliance inspections will occur until the site returns to a compliant state and/or referral to TDEC occurs.
5. Informal site visits: staff may conduct random site visits for a variety of reasons, such as to spot check certain BMPs, to determine activities occurring on site, etc.

All inspections must be documented. Each inspection report shall include a list, details, and photo documentation (date stamped) of all deficiencies/violations observed on site. Enough photographs should be taken to clearly document the violation and the result of the violation (e.g. sediment discharge to stream). The inspection report must be uploaded into the project file on MUNIS.

## 6. Enforcement Process

The Enforcement Process Decision Chart (Appendix B) will be used to determine the correct process to follow based on the violation category and circumstances leading to the violation. Three violation categories have been developed:

1. Construction Sites
-

2. Illicit Discharges
3. Post-Construction/Permanent Stormwater

The following general guidelines should be followed during the enforcement process.

- Violations which threaten health, property, or environmental quality are considered emergencies and will receive immediate response such as the issuance of a stop work order.
- EPSCs and maintenance of EPSCs are the responsibility of the permittee. While weather is understood to impact some types of EPSC maintenance activities (i.e. heavy equipment use), it should not be considered to preclude all / interim, smaller scale EPSC maintenance efforts (such as using manpower to improve controls, etc.).
- Lack of EPSC maintenance is a violation.
- Illicit discharge of sediment due to inadequate EPSC is a violation.
- In many circumstances, the property owner is not the party directly responsible for a violation. For instance, a grading contractor is typically responsible for the installation and maintenance of erosion control measures on a construction site.
  - County staff will communicate with the responsible party during the early stages of the enforcement process.
  - If the responsible party does not return their site to compliance after the initial NOV has been issued, the property owner may be included in future correspondence.
  - While the responsible party should be held accountable for any violations, ultimate liability lies with the property owner in the enforcement process.
- Visual documentation of all violations will be generated and provided to the violator to support the declared violation. A remediation deadline will be provided on the NOV/Citation.
- All compliance deadlines and requirements shall be clearly noted on all NOVs, Citations and SWOs. Deadlines should be set with the mentality that they will be enforced expeditiously.
- The Stormwater Coordinator may review a written request for an extension of time if there is sufficient evidence of hardship. Considerations which could allow for an extension of time may include:
  - Structural modifications or any repair work for which new design plans are usually not necessary. The Stormwater Coordinator may typically allow a maximum of 14 days for these projects to occur.



- New structure or major structural modifications which require coordinated effort for design planning. The Stormwater Coordinator may typically allow a maximum of 60 days for large projects to occur.
- New structures of any structural modifications that require state or federal permits to complete the project. The Stormwater Coordinator may allow a maximum of 180 days for large projects with substantial elements of design work.
- Cost is not a justification for failure to remedy or to request an extension.
- Upon issuance of a Citation, all future inspections, permitting and other authorizations will be withheld until the time that the work described in the NOV and the associated penalties have been resolved.

All NOVs and Citations must be sent via email to the responsible party/parties with a read receipt request. Additionally, Citations must be sent via certified mail to the responsible party. All staff in the engineering and development departments must be notified when a Citation is issued so staff are aware of the violations and can withhold permitting, inspections, plat signatures, etc. as necessary.

## 7. Penalty Determination

If a Citation will be issued, civil and administrative penalties must be calculated and charged to the responsible party/property owner.

- Civil penalties can be calculated upon issuance of the Citation and will be determined using the Montgomery County's stormwater civil penalty matrix. A copy of this matrix is provided in Appendix A.
- Administrative penalties will be calculated once the violation is remedied. The Montgomery County may recover all damages proximately caused by the violator to the County, which may include reasonable expenses and attorney's fees incurred with investigating, enforcing or correcting violations. Reasonable expenses include, but are not limited to, drive time, report writing, inspections, and meetings.

## 8. Repeat Offenders

Escalating enforcement response will be used for recurring violations and failure to achieve compliance after informal or formal enforcement. A recurring violation is one in which the same type of violation occurs on a project or on multiple projects by the same operator, owner, or any other pattern of noncompliance is shown.

Escalating enforcement includes, but is not limited to, the following:

- immediate issuance of a Citation upon discovery of a violation

- increase in civil penalties
- increase in permit fees
- permit blocks
- stop work orders
- May require individual application for coverage under the Tennessee Construction General Permit

## 9. Appeals

The defendant will have **15 days** to request an administrative hearing from the time of receiving the Citation (the reissue of a Citation DOES NOT start the 15 day cycle over again). The request must be made in writing and filed with the Montgomery County Building & Codes Clerk within 15 days. Failure to appeal shall be deemed consent of the violator to the damage assessment or civil penalty and it shall become final.

- 1) If an appeal is made, the Stormwater Board of Appeals shall hold a public hearing in a time frame not to exceed 30 calendar days from the date of the appeal. Ten days' prior notice of the time, date, and location of said hearing shall be published in a newspaper of general circulation. Ten days' notice by registered mail shall also be provided to the aggrieved party, such notice to be sent to the address provided by the aggrieved party at the time of appeal. The decision of the Stormwater Board of Appeals shall be final.
- 2) The aggrieved party will have the opportunity to appeal the Stormwater Board of Appeals decision under a writ of certiorari to the circuit or chancery court, under T.C.A title 27, chapter 8. Generally speaking, review of an administrative decision by way of the common law writ is confined to the question of whether the inferior board or tribunal has exceeded its jurisdiction or acted illegally, arbitrarily, capriciously, or fraudulently. T.C.A 27-8-101

Should an affirmative ruling be made or the violator fails to apply for a public hearing, Montgomery County will anticipate compliance and submission of all relevant civil penalties to the Montgomery County Building & Codes Department.

*The appeals process could take up to 90+ days, during this time fines may continue to accrue if violation is not remedied.*

## 10. Release of Violations and Citations

A Notice of Violation or Citation may be released ONLY after the site has remedied all documented violations AND all civil and administrative penalties have been paid. Once those requirements have been met, a letter must be drafted and mailed to the violator for their records. A copy may also be delivered via e-mail.

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*If an appeal has been filed, the responsible party must still pay the civil/administrative penalties to be released from the Citation. Otherwise, permitting, inspections, plat signatures, etc. will continue to be held. If the STORMWATER BOARD OF APPEALS overturns all or a portion of the fines charged to the aggrieved party, the County will reimburse the aggrieved party accordingly following the public hearing.*

## 11. Emergency Spill Response Plan

In the case of a **minor to moderate spill (<25 gallons)**, the County's Stormwater Coordinator should be contacted to facilitate the local environmental component of the response. Montgomery County Stormwater staff, in conjunction with the Montgomery County Emergency Management Agency, will be the preliminary contacts for minor events. Provided no more than 25 gallons of hazardous material is released into environmental media, Tennessee Emergency Management Agency (TEMA) does not need to be contacted.

### Contacts

John Doss	Stormwater Coordinator	(931) 648-5718
Ed Baggett	Director, Montgomery County EMA	(931) 648-5702
Eric Salmon	City of Clarksville NPDES Coordinator	(931) 645-7464

### **Tennessee Emergency Management Agency (TEMA)**

TEMA should be contacted in the case of a hazardous waste or material spill **where a threat of pollutants entering waters of the state is present.**

#### **Middle Region Office**

1200 Foster Ave, Bldg. K-4  
Nashville, TN 37210  
615-741-7342  
1-800-422-7342  
Fax: (615) 741-0498

#### **Headquarters**

3041 Sidco Drive  
Nashville, TN 37204  
(615)741-0001 (TEMA Operations)  
tema.swp@tn.gov (TEMA Operations)

#### **EPA National Response Center**

**1-800-424-8802**

**In the case of an environmental emergency that pose a sudden or imminent threat to public health** including an oil or chemical spill or biological discharges, contact the EPA's National Response Center.

#### **Hazardous Materials Database**

To access response information and reactivity for thousands of hazardous materials visit the CAMEO Chemicals website.

<http://cameochemicals.noaa.gov/>

**APPENDIX A**

Civil Penalty Calculator

NOV ##### Site Name

Violation	Working Without a Permit or Expired Permit	Multiplier	Penalty	Total
Base penalty			\$ 500.00	\$ -
Additional Factors	Acres disturbed	0	\$ 100.00	\$ -
	Circumstances	0	\$ 100.00	\$ -
	Harm done to public or environment	0	\$ 100.00	\$ -
	Seriousness of deficiency	0	\$ 100.00	\$ -
	Number of previous violations	0	\$ 100.00	\$ -
	Effort put forth to remedy the violation	0	\$ 100.00	\$ -
<b>Total Penalty for this Violation</b>			<b>\$ -</b>	<b>\$ -</b>

Violation	EPSC Measures Not Installed/Maintained per BMP Manual	Multiplier	Penalty	Total
Base penalty			\$ 50.00	\$ -
Additional Factors	Number of locations/BMPs	0	\$ 50.00	\$ -
	Circumstances	0	\$ 50.00	\$ -
	Harm done to public or environment	0	\$ 50.00	\$ -
	Seriousness of deficiency	0	\$ 50.00	\$ -
	Number of previous violations	0	\$ 50.00	\$ -
	Effort put forth to remedy the violation	0	\$ 50.00	\$ -
<b>Total Penalty for this Violation</b>			<b>\$ -</b>	<b>\$ -</b>

EPSC Deficiencies: twice weekly inspections not being conducted, silt fence failure needs repair

Violation	Failure to Remove, or Improper Removal of, Sediment from Public Roadway	Multiplier	Penalty	Total
Base penalty			\$ 50.00	\$ -
Additional Factors	Number of locations	0	\$ 50.00	\$ -
	Circumstances	0	\$ 100.00	\$ -
	Harm done to public or environment	0	\$ 100.00	\$ -
	Seriousness of deficiency	0	\$ 100.00	\$ -
	Number of previous violations	0	\$ 50.00	\$ -
	Effort put forth to remedy the violation	0	\$ 50.00	\$ -
<b>Total Penalty for this Violation</b>			<b>\$ -</b>	<b>\$ -</b>

Violation	Illicit Discharge to Storm Sewer System (including sediment)	Multiplier	Penalty	Total
Base penalty			\$ 500.00	\$ -
Additional Factors	Number of locations	0	\$ 200.00	\$ -
	Circumstances	0	\$ 500.00	\$ -
	Harm done to public or environment	0	\$ 100.00	\$ -
	Seriousness of deficiency	0	\$ 1,000.00	\$ -
	Number of previous violations	0	\$ 500.00	\$ -
Effort put forth to remedy the violation	0	\$ 100.00	\$ -	
<b>Total Penalty for this Violation</b>			<b>\$ -</b>	<b>\$ -</b>

Violation	Illicit Connection	Multiplier	Penalty	Total
Base penalty			\$ 250.00	\$ -
Additional Factors	Number of locations	0	\$ 50.00	\$ -
	Circumstances	0	\$ 200.00	\$ -
	Harm done to public or environment	0	\$ 200.00	\$ -
	Seriousness of deficiency	0	\$ 200.00	\$ -
	Number of previous violations	0	\$ 100.00	\$ -
Effort put forth to remedy the violation	0	\$ 100.00	\$ -	
<b>Total Penalty for this Violation</b>			<b>\$ -</b>	<b>\$ -</b>

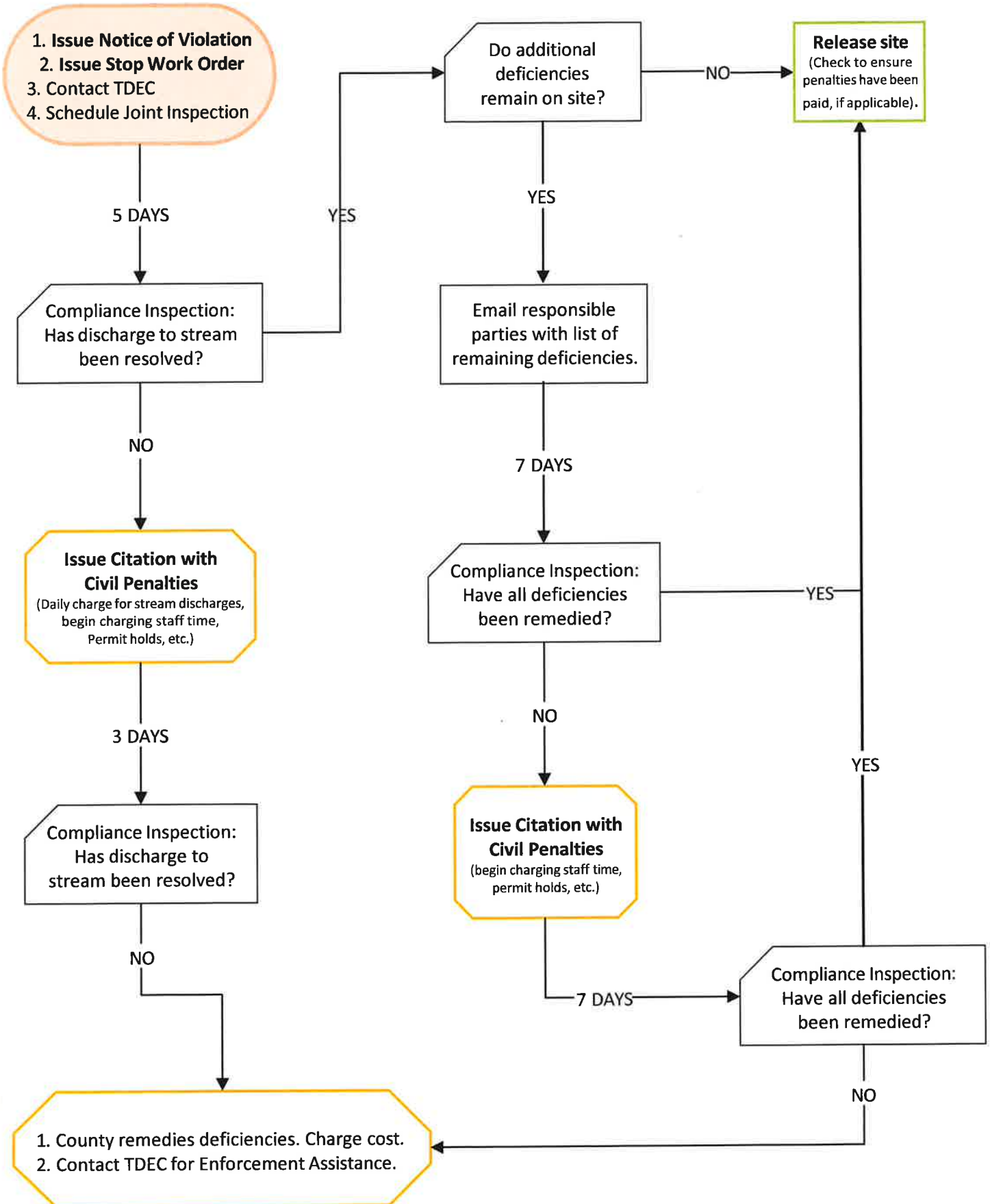
**Cumulative Civil Penalty Charges** \$ -

**Cumulative Administrative Penalty Charges** \$ -

**Total Charges** \$ -

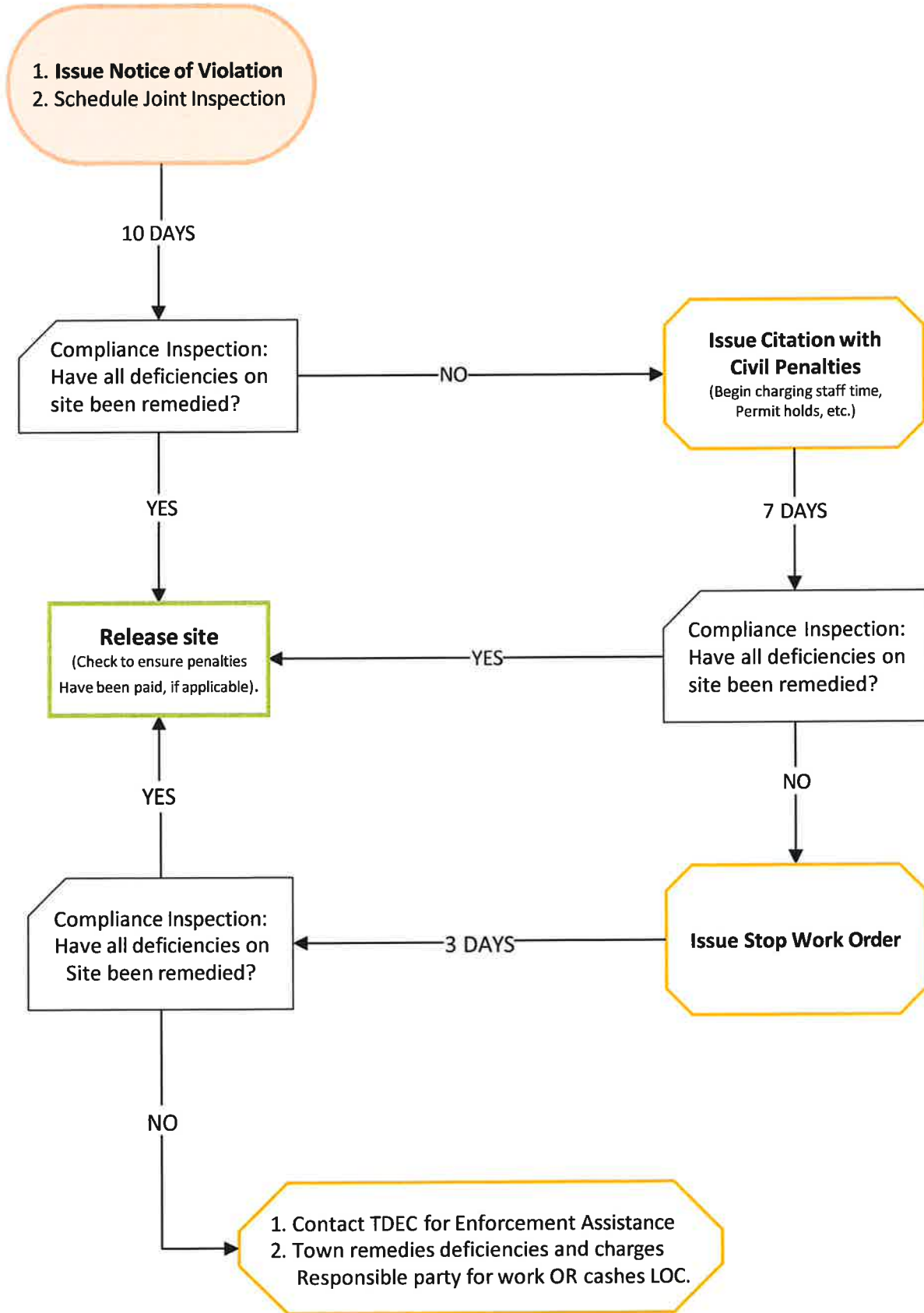
**APPENDIX B**

# Process 1 Construction Site - Pollutant Release



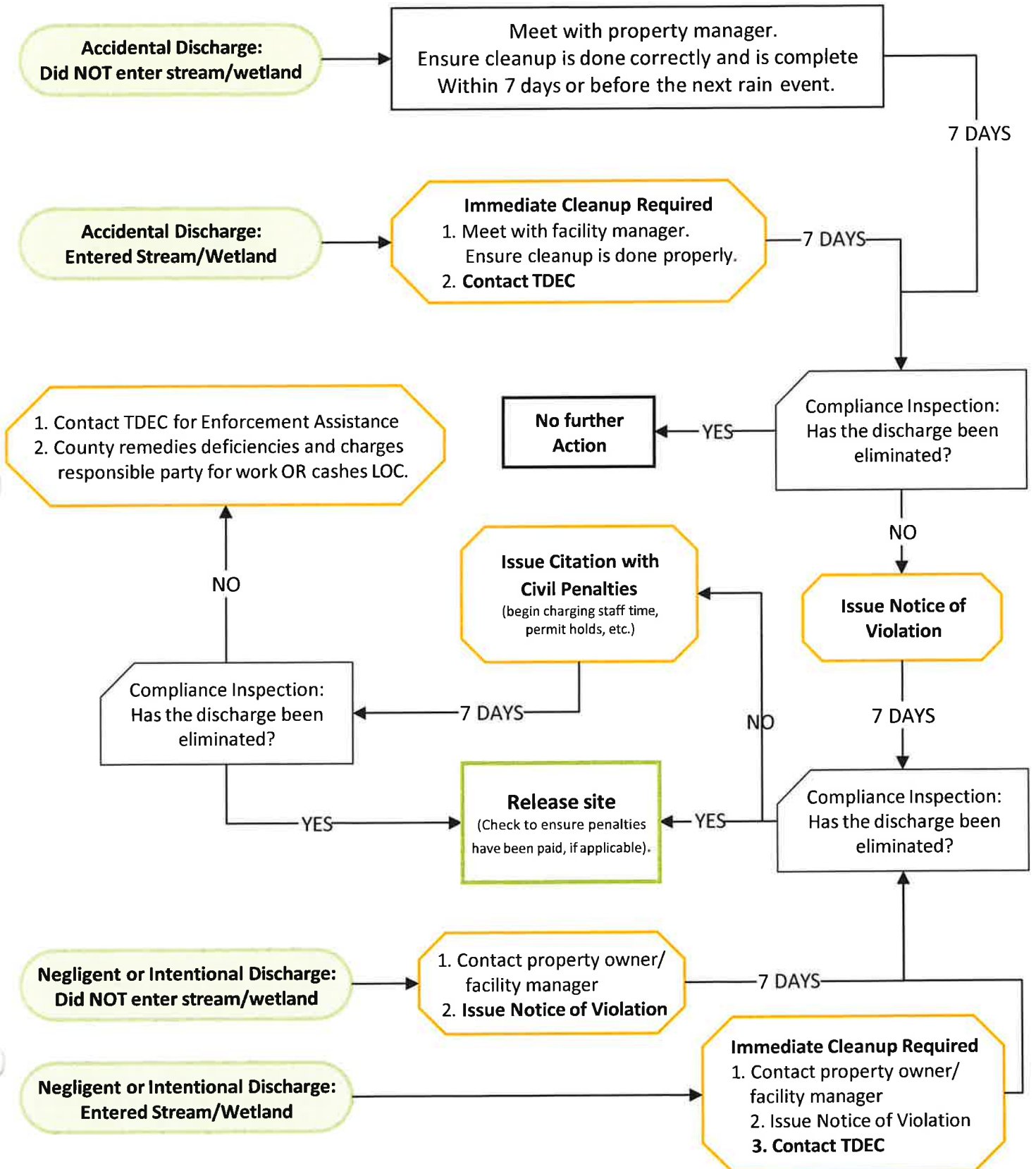


## Process 2 Construction Site - NO Pollutant Release

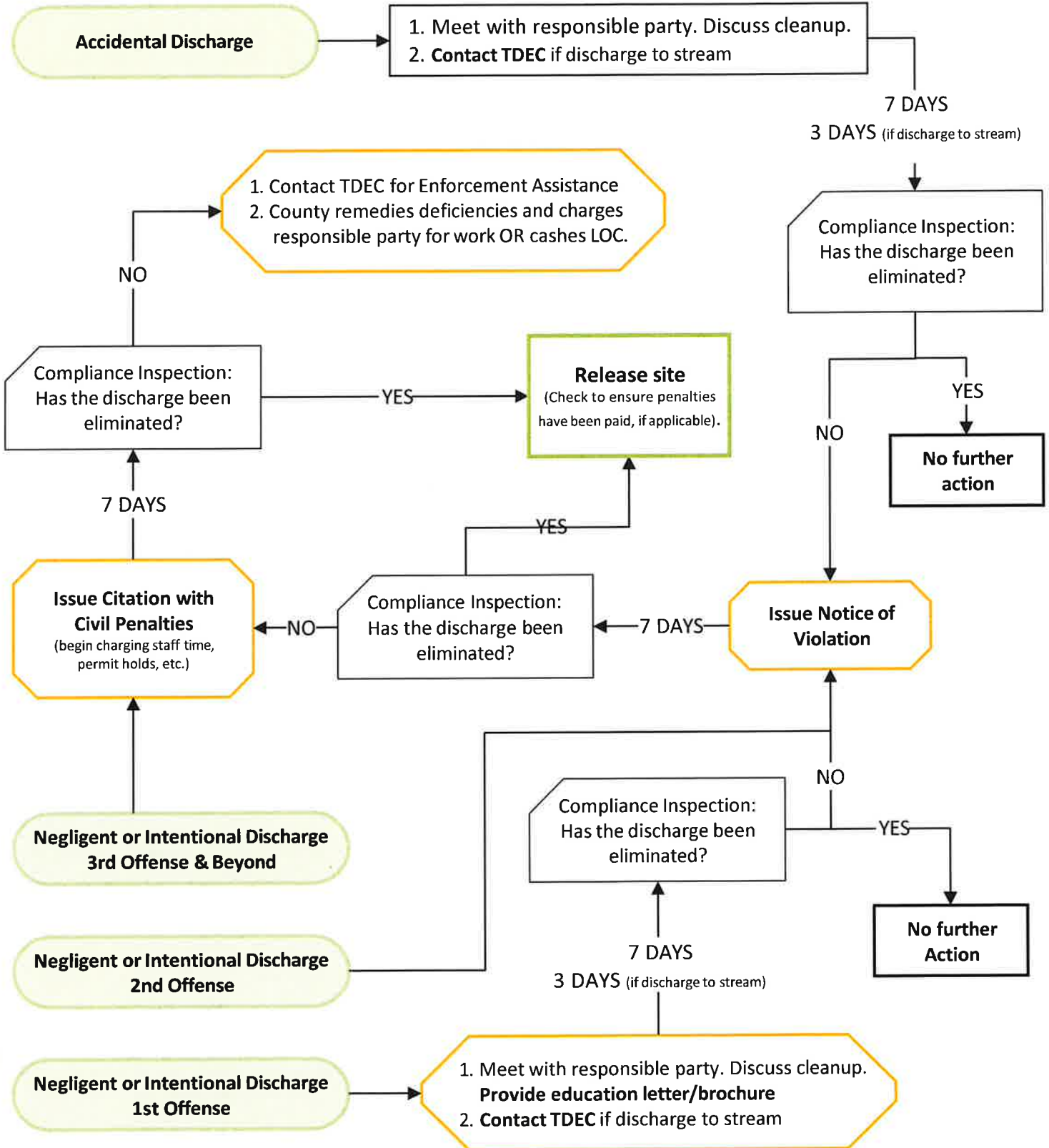


# Process 3

## Illicit Discharge - Commercial/Industrial Facility

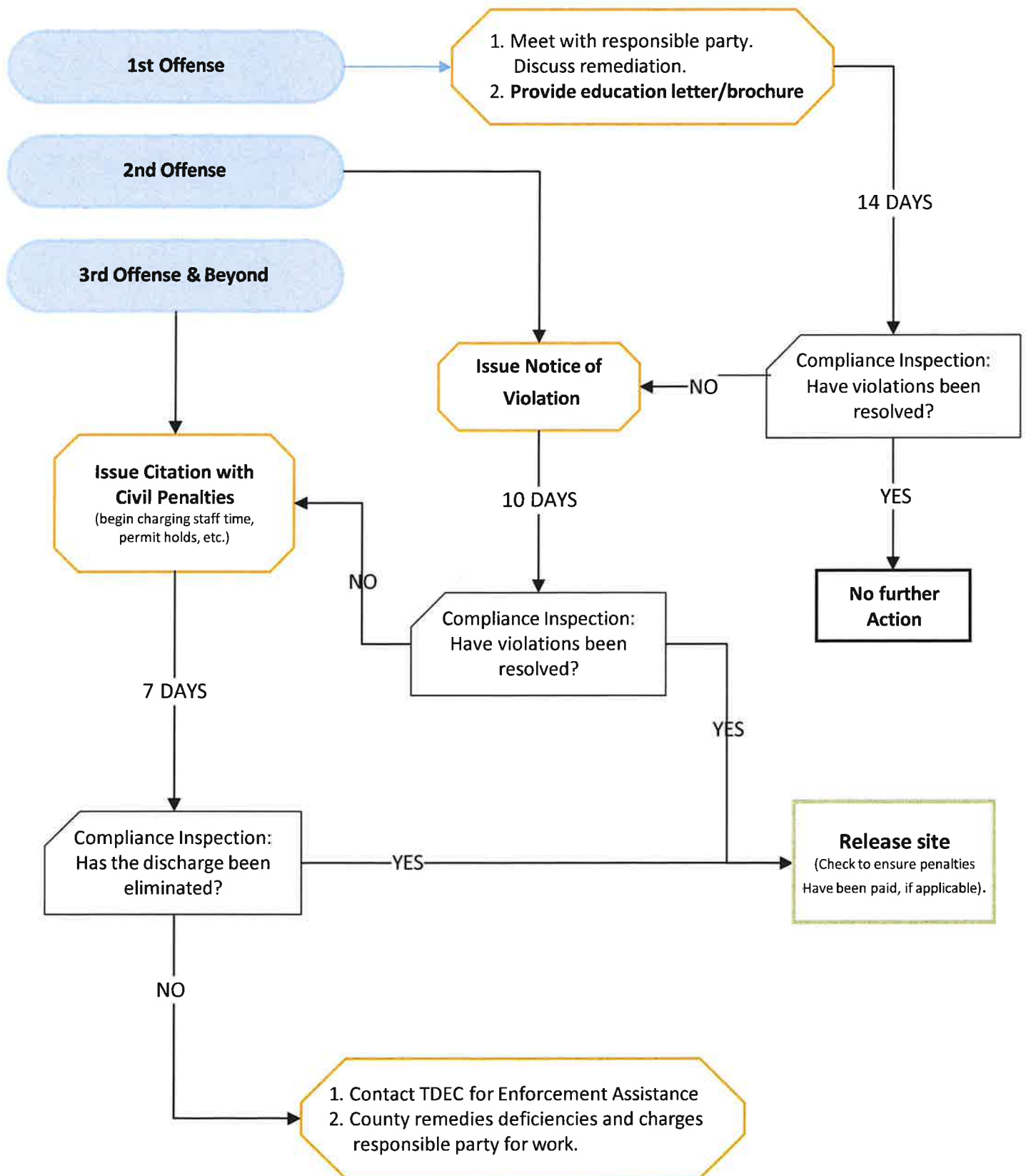


# Process 4 Illicit Discharge - Residential



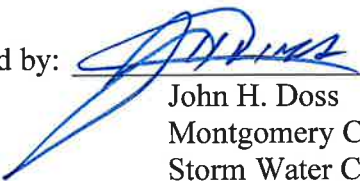
# Process 5

## Post-Construction/Permanent Stormwater Control Measures




**Montgomery County, TN. Enforcement Response Plan (Version Dated December 20, 2023)**  
is approved for use by the Montgomery County, TN Stormwater Program. Changes to this document must be submitted to the Montgomery County, TN Building and Codes Committee for approval.

Effective Date: 1/4/2024

Submitted by:  \_\_\_\_\_ Date: 1/3/2024  
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