

# Enforcement Response Plan

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HAWAII ARMY NATIONAL GUARD

NPDES PERMIT NO. HIS000052

May 2021

HAWAII ARMY NATIONAL GUARD  
ENVIRONMENTAL OFFICE  
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## LIST OF ACRONYMS

AMD	Asset Management Database
HIARNG	Hawaii Army National Guard
BMP	Best Management Practice
DOT	Department of Transportation
DOH	State of Hawaii, Department of Health
DOH-CWB	State of Hawaii, Department of Health, Clean Water Branch
ENV	HIARNG Environmental Office
EPA	United States Environmental Protection Agency
ERP	Enforcement Response Plan
FAR	Federal Acquisitions Regulations
HIARNG	Hawaii Army National Guard
HRS	Hawaii Revised Statutes
MS4	Municipal Separate Storm Sewer System
O&M	Operation and Maintenance
SWMP	Stormwater Management Plan
WQCS	Water Quality Compliance Specialist



## **1.0 PURPOSE OF ENFORCEMENT RESPONSE PLAN**

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This Enforcement Response Plan (ERP) will be used to identify, document, and respond to potential and/or actual water quality violations. The ERP describes the duties of the HIARNG ENV and the tools available to help ensure compliance with applicable regulations. A goal of this ERP is to assist HIARNG EOs in taking consistent actions needed to achieve effective and timely compliance with HIARNG's stormwater/urban runoff pollution prevention ordinance and other enforcement authorities allowed by the local municipal code.

The ERP is established in part to satisfy the following requirements of the HIARNG Municipal Separate Storm Sewer System (MS4) NPDES Permit No. HI S000052:

- Part D.1.c.(4) Illicit Discharge Detection and Elimination Complaint Investigation;
- Part D.1.c.(5) Illicit Discharge Detection and Elimination Enforcement;
- Part D.1.d.(6) Construction Site Runoff Control Compliance;
- Part D.1.e. Post-Construction Storm Water Management in New Development and Redevelopment; and,
- Part D.1.g.(3) Enforcement Policy for Industrial and Commercial Facilities and Activities.

The ERP outlines the various enforcement options available to HIARNG ENV and provides guidelines to their application as defined in Chapter 128D, Environmental Response Law, Part 1. Hawaii Environmental Response Law. The selection of an appropriate enforcement action and the escalation of enforcement are based on the seriousness of the violation and its resulting threat to water quality, human health, and the environment. The violator's response to HIARNG's previous attempt(s) to achieve compliance will influence the type of enforcement pursued. Other additional factors that will impact the enforcement response include:

- Violation magnitude and/or duration;
- History of violations;
- Effect of violation on receiving waters;
- Violator's response and good faith efforts to correct the situation; and,
- Follow-up inspection results.

The nature of a specific violation may require modifying the timeframes for correction and/or the use of temporary measures to promptly address a violation before a permanent solution is implemented. It may be appropriate to refer violations to another agency, such as the Hawaii Department of Health-Clean Water Branch (DOH-CWB), the United States Environmental Protection Agency (EPA), or other local, State, or Federal agency for additional enforcement.

HIARNG has authority to enforce stormwater requirements under sections of the Hawaii Revised Statutes (HRS), Federal Acquisitions Regulations (FAR) 128D-1 listed in Table 1.

**TABLE 1: RELEVANT PART 1 – HAWAII ENVIRONMENTAL RESPONSE LAW**

Title	Chapter
Pollution Prevention	128D-3 Reportable Quantities; duty to report.
Violations – Misdemeanors or infractions; penalties	128D-6 Liability
Violations – Civil action for enforcement	128D-8 Civil Penalties
Violations – Administrative enforcement action	128D-9 Injunctive Relief

## 2.0 COORDINATION WITH OTHER AGENCIES

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The nature and circumstances of particular discharges or violations may involve other entities and agencies that have primary enforcement authority. HIARNG will work collaboratively to identify which entity or agency will determine enforcement action. The entities and agencies include, but are not limited to, those listed in Table 2:

**TABLE 2: AGENCIES WITH PRIMARY AUTHORITY TO ENFORCE LAWS**

Agency	Role	Contact
HIARNG	Oversees the use of the MS4 and investigates stormwater related complaints.  Administers the <i>Hazardous Materials Area Plan</i> , which establishes the emergency response organization for hazardous materials incidents.	(808) 672-1013
DOT	Stormwater interconnections.	(808) 831-6714
City and County of Honolulu	Stormwater interconnections.	(808) 768-3252
U.S. Army Garrison	Stormwater interconnections.	(808) 656-2878

Referral to State agencies and Federal agencies, such as the DOH and EPA, is addressed in Section 5.0.

### 3.0 TYPES OF ENFORCEMENT ACTIONS AND THEIR USE

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General Conditions and Additional General Conditions are added to all State of Hawaii Department of Defense contracts. Section 40 – Environmental Compliance of the Additional General Conditions, provides a range of alternatives for responding appropriately to a contractor’s situation or violation. Factors that may enter into a determination of an enforcement option include magnitude of the violation, the duration and history of non-compliance, the good faith efforts of the violator to achieve compliance, and whether the violation may interfere with HIARNG’s compliance with Permit No. HI S000052. An enforcement action may be escalated depending on the circumstances of the case and range from technical assistance through contract suspension or any additional remedy authorized by law or the contract.

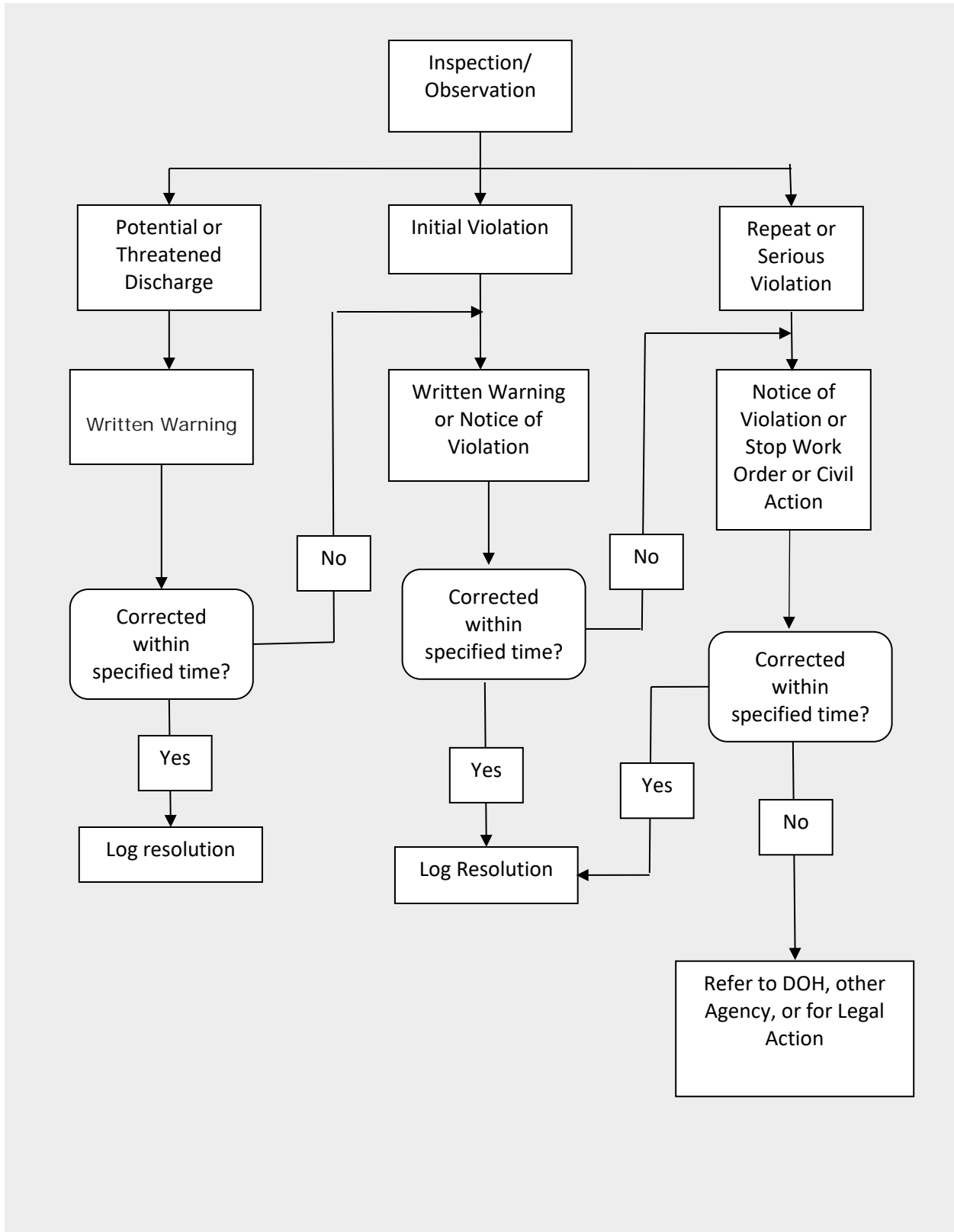
Table 3 lists and describes available enforcement actions. The examples provided are instructional in nature and are not intended to limit the use of any particular enforcement option. In addition to the range of enforcement actions authorized in Section 40 - Environmental Compliance, HIARNG may refer violators to the DOH-CWB or another regulatory agency with jurisdiction over the violation.

A compliance meeting may be arranged to discuss the nature of a violation with the responsible party prior to initiation of a more formal enforcement action. At these meetings, information submitted by the responsible party (e.g., written plan, monitoring data) will be reviewed and the enforcement options discussed. The meeting may be held informally at the responsible person’s place of business, at a HIARNG facility, or other mutually agreed location.

**TABLE 3: ENFORCEMENT ACTIONS OVERVIEW**

Actions	Use	Time Schedule to Achieve Compliance
Technical Assistance and/or Outreach and Education	<ol style="list-style-type: none"> <li>1. Use where inspector observes a situation that poses a potential water quality threat and the responsible party is unaware of the requirement and agrees to address the issue in a timely manner.</li> </ol>	<p>Goal is to correct the situation and behavior to protect water quality. The compliance timeframe should be short and will depend on the nature of the potential water quality threat.</p>
Informal Written Letter	<ol style="list-style-type: none"> <li>1. Use for potential violations due to inadequate housekeeping, lack of appropriate BMPs to prevent pollution, or potential non-stormwater discharges disallowed by Permit No. HI S000052. Typically issued during an inspection.</li> <li>2. Use when technical assistance/education and outreach was not effective in achieving compliance. This enforcement approach is consultative in nature.</li> </ol>	<p>Require correction within 30 days. Shorter time periods may also be specified, such as before the next inspection or before the next predicted rain event.</p>
Formal Written Letter and Order to Abate Pollution	<ol style="list-style-type: none"> <li>1. Issue for minor violations due to failure to implement BMPs, inadequate BMPs, spilled materials that do not enter MS4 or receiving waters, and there is no significant harm.</li> <li>2. Use when informal written letter does not achieve compliance.</li> </ol>	<p>Require corrective action within 3 business days.</p>
Notice of Violation	<ol style="list-style-type: none"> <li>1. Issue for violations due to failure to implement BMPs, inadequate BMPs, spilled materials that do not enter MS4 or receiving waters, and there is no significant harm.</li> <li>2. Use when formal written letter does not achieve compliance.</li> </ol>	<p>Effective immediately, all work, except work to remedy non-compliant situation, must cease; FAR 52.242-14.</p>
Referrals	<ol style="list-style-type: none"> <li>1. Sites that fail to obtain state industrial or construction permits.</li> <li>2. Sites that fail to comply with municipal enforcement actions.</li> <li>3. Sites that discharge waste or hazardous wastes to receiving waters.</li> </ol>	<p>Refer to U.S. Army Garrison, Hawaii (USAG-HI), Schofield Barracks, DOT, City and County of Honolulu, DOH, or EPA</p>

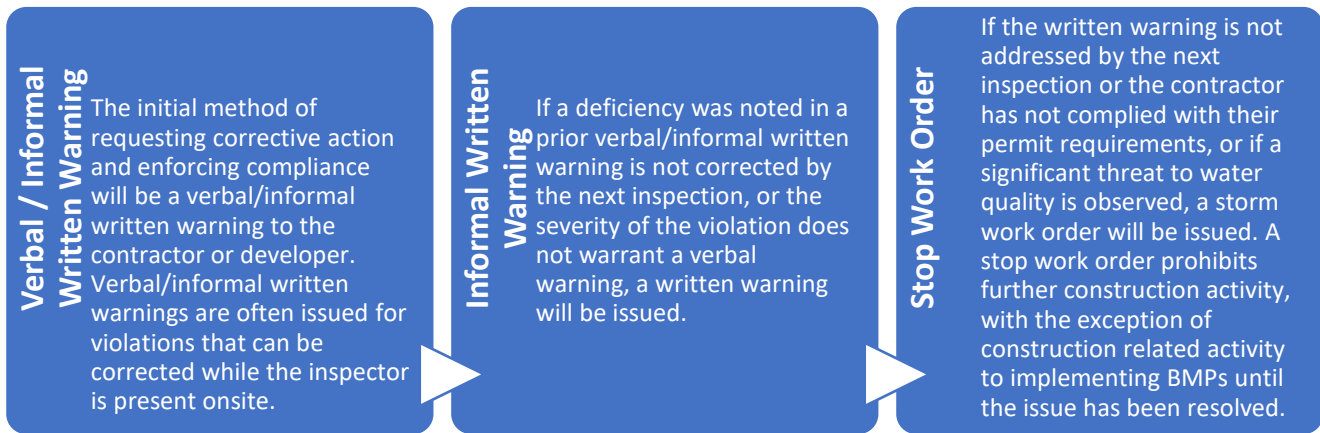
**FIGURE 1: FLOW CHART OF PROGRESSIVE ENFORCEMENT PROCESS**



## 4.0 ESCALATION OF ENFORCEMENT ACTIONS

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HIARNG implements a progressive enforcement response process that is designed to maintain a fair and equitable system for enforcement to ensure that actions are proportionate to the scale and effect of violations. This process allows HIARNG to escalate enforcement actions to encourage prompt compliance. An enforcement action may be escalated depending on the circumstances of the case. In any situation, HIARNG can select the most appropriate enforcement action for the situation; it is not necessary to start at the lowest level action if the situation warrants a higher-level response.



The process to escalate enforcement actions is provided in Table 3 and a flow chart of the enforcement escalation process is provided in Figure 1.

## 5.0 REFERRALS TO OTHER AGENCIES

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As required by Permit No. HI S000052, HIARNG will make a good faith effort to require compliance by exercising its progressive enforcement authorities.

- Permit No. HI S000052 requires HIARNG to refer non-filers under the State Industrial General Permit and Construction General Permit. In instances where an inspector identifies a facility that has not applied for the General Industrial Storm Water permit coverage or any other applicable NPDES permit, HIARNG shall provide email notification to DOH-CWB within one (1) week of such determination.
- Permit No. HI S000052 requires HIARNG to refer responsible parties with on-going violations to DOH-CWB by providing an e-mail notification within one (1) week of such determination to DOH: [cleanwaterbranch@doh.hawaii.gov](mailto:cleanwaterbranch@doh.hawaii.gov), Attn: Enforcement Section Supervisor. E-mail notification shall be followed by written notification within two (2) weeks of the determination and include a copy of all inspection checklists, notes, photographs, and related correspondence in pdf format (300 minimum dpi) in accordance with Part A.7.

Notwithstanding the good faith effort requirements identified above, HIARNG reserves the right to refer violators to other regulatory agencies at any point in the enforcement process, especially in cases of discharges that may result in harm to human health or the environment. Referral may be made to federal, state, or local agencies with appropriate jurisdiction. When warranted or requested, HIARNG will cooperate with other agencies on joint violations, incident responses, or compliance inspections.

## **6.0 COST RECOVERY**

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The responsible party may be liable for public costs and expenses incurred by HIARNG in connection with the enforcement and abatement. Recoverable costs include costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, costs of suit, salaries, attorney's fees, expert fees, equipment and materials, testing and monitoring expenses, costs for clean-up or mitigating actions taken by HIARNG, and other expenses recoverable under state or federal law, incurred during any inspection or investigation conducted.

## **7.0 ROLES AND RESPONSIBILITIES**

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The response to stormwater violations occurs at several levels and requires coordination and communication between HIARNG personnel to ensure resolution or appropriate escalation. HIARNG personnel will assume the necessary roles to perform inspections and coordination to ensure enforcement control pollutant discharges into and from its MS4 and to meet the requirements of Permit No. HI S000052. The HIARNG Water Quality Compliance Specialist (WQCS), will conduct enforcement activities and the general responsibilities detailed in the sections below.

### **7.1.1 7.1 DUTIES OF PERSONNEL PERFORMING INSPECTIONS**

Assigned personnel will perform inspections to identify and respond to stormwater-related complaints and violations in a timely manner.

HIARNG's Water Quality Compliance Specialist will either conduct or delegate routine inspections and investigate illicit discharge incidents and complaints.

HIARNG's Environmental Office (ENV) monitors land-disturbing construction projects and inspections for erosion control, sediment control, and good housekeeping Best Management Practices (BMPs) and abatement of illicit discharges from the construction site.

ENV is responsible for verifying inspection of construction project post-construction BMPs (e.g., bioretention facilities) following the completion of said projects and in accordance with Permit No. HI S000052 sections Part D.1.e.(2) and Part D.1.e.(3).

Table 4 provides a summary of inspection personnel title and duties.

As necessary to comply with Permit No. HI S000052, assigned HIARNG personnel will perform the following inspection-related duties:

- Conduct inspections and review documentation to identify discharge violations.
- Educate the responsible party regarding the potential harm of the discharge, appropriate BMPs that may be used to abate the discharge, and penalties for non-compliance.
- Issue appropriate enforcement action to responsible parties.
- Review compliance history reports.
- Prepare, maintain, and log all inspection reports and enforcement actions
- Assist in the preparation of and implementation of compliance meetings.
- Review compliance schedules and tracks deadlines.
- Verify responsible party has responded, in a timely manner, to enforcement actions.
- Prepare compliance reports.
- Report spills in accordance with applicable reporting laws and HIARNG's Spill Response Plan. Spills that pose an immediate threat to human health or the environment must be reported immediately to 911.

- Conduct informal meetings with contractors to discuss scope of work and encourage compliance and provide education concerning requirements. Discuss the impact(s) of noncompliance excursions (e.g., lack of performing BMP maintenance) to a contractor’s bottom line.

**TABLE 4: INSPECTION PERSONNEL TITLES AND DUTIES**

Inspector Type	Department/Division	Inspection Target
EO/WQCS	ENV	Permitted construction projects
	ENV	Reports of illicit discharges
	ENV	Verify inspections to ensure ongoing O&M of Permanent post-construction BMPs at Regulated Projects

**7.1.2 7.2 DUTIES OF PERSONNEL PERFORMING / COORDINATING ENFORCEMENT**

Assigned personnel will perform and coordinate enforcement tasks in a timely and consistent manner. To achieve compliance, HIARNG personnel will typically conduct the following duties:

- Review violations when compliance has not been obtained to make a determination on the level of enforcement action to take. Ensure that compliance actions taken are consistent and timely.
- Coordinate and moderate compliance meetings and the preparation of compliance schedules.
- Review compliance reports and schedules prepared by HIARNG personnel to ensure that appropriate enforcement actions are taken and compliance goals are met.
- Compile compliance reports for annual reporting.

HIARNG enforcement personnel may issue an order to cease and desist from the discharge, practice, operation, or other activity causing, or likely to cause, a violation of the Permit. Such an order shall be directed to those persons in violation of the ordinance by:

- Stating clearly and concisely the nature of the violation;
- The requirements for compliance;
- A timetable for compliance; and,
- Other remedial and/or preventative action as may be deemed necessary.

Upon the violator’s failure to comply with such an order, HIARNG shall take further enforcement action as specified in this plan, or in accordance with any other appropriate provision of local, state, or federal law. At the discretion of the agency, orders to cease and desist may take the form of any of the enforcement actions shown in Table 3.

To achieve compliance, the enforcement personnel typically perform the following duties:

- Reviews responsible party's response letters to ensure the response adequately addresses compliance issues.
- Coordinates and moderate compliance meetings and the preparation of compliance schedules.
- Reviews responsible party's compliance history reports.
- Compliance reports for the annual report.
- Communicates and coordinates with resource agencies and their respective Attorney's Office.
- Testifies as required if case goes to court

#### **7.1.3 7.4 DUTIES OF THE ENFORCEMENT OFFICIAL**

The role of the Enforcement Official is to implement the enforcement response program. The Enforcement Official is the WQCS.

#### **7.1.4 7.5 OTHER PERSONNEL**

All HIARNG employees are encouraged to report possible stormwater violations to the 24-hour Environmental Emergency Hotline (808-672-1013). All reports are investigated by an inspector.