

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Works

BOARD AGENDA # *C-1

Urgent Routine

AGENDA DATE May 15, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Introduce and Waive the First Reading of an Ordinance to Amend Sections 14.14.150 and 14.14.180 of the Stanislaus County Code Relating to Storm Water Management and Discharge Control

STAFF RECOMMENDATIONS:

1. Introduce and waive the first reading of an ordinance amending Section 14.14 of the Stanislaus County Code relating to storm water management and discharge control.
2. Find that the subject ordinance change is not subject to the California Environmental Quality Act (Public Resources Code, Sections 2100 et seq.).

FISCAL IMPACT:

No fiscal impact is associated with this action.

BOARD ACTION AS FOLLOWS:

No. 2012-227

On motion of Supervisor Withrow, Seconded by Supervisor Chiesa

and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION: INTRODUCED AND WAIVED THE FIRST READING OF ORDINANCE C.S. 1119

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

Approval to Introduce and Waive the First Reading of an Ordinance to Amend Sections 14.14.150 and 14.14.180 of the Stanislaus County Code Relating to Storm Water Management and Discharge Control

DISCUSSION:

This Amendment to the ordinance is necessary to clarify enforcement authority and procedures relating to violations of the original ordinance, dated December 9, 2008. The ordinance will amend sections *14.14.150 B. Violations, 14.14.150 C. Administrative enforcement powers, and 14.14.180 B. Violations.*

These revisions will define administrative enforcement powers, and include a notice and order to abate and an administrative citation process. The revisions replace the notice of violation and cease and desist orders of the original ordinance, allowing the Department to be more efficient and effective in meeting the intent of the ordinance. The existing ordinance requires court action to enforce the ordinance. Whereas, the revisions will allow the Department to notify a property owner of a violation and work with that person to remedy the violation. If the violation is not remedied, the administrative citation process allows the Department to impose a fine without going to court per County Code Section 1.36.020.

In addition to the changes reflected above, the Department has also established an Enforcement Response Plan. This plan establishes a process to follow should there be violations based on Ordinance 14.14 of the Stanislaus County Code Relating to Storm Water Management and Discharge Control.

POLICY ISSUES:

This ordinance supports the Board's priorities of ensuring A Safe Community and A Healthy Community by providing better enforcement procedures to implement the Storm Water Management and Discharge Control Ordinance.

STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT PERSON:

Matt Machado, Director of Public Works. Telephone: (209) 525-4130.

LB:lc

H:\Laurie B\Board Agenda Items\Storm Water Mgmt And Discharge Control Ordinance\Storm Water Management And Discharge Control Ord_BOS 5.15.12

ENFORCEMENT RESPONSE PLAN

County Code 14.14.150 and this Enforcement Response Plan (ERP) may be used for NPDES violations, seasonal and recurrent nuisances and emergency orders and abatements. The enforcement actions denoted might be used independently depending on the seriousness of the violation(s). The County's approach to ensuring compliance with its County Code is based on a progressive enforcement procedure. In general the County will initially use the least stringent enforcement action available for the subject violation with each successive enforcement action based on the Party's responsiveness and the type of violation. In some cases the County may need to advance the enforcement actions noted in the ERP based on the severity of violation, history of the party, and responsiveness of the party.

Triggers	Enforcement Action	Description
<ul style="list-style-type: none"> • Conditions that may potentially result in ordinance violations due to poor housekeeping or management practices • Party is cooperative and willing to remedy situation 	<p>Written Warning</p>	<ul style="list-style-type: none"> • Identify conditions or potential violations, document and take photographs • Recommend (on the spot) appropriate BMPs to prevent violations • Follow up with written inspection summary within one week, take photographs • Party should take all reasonable steps to comply with recommendations • Conduct follow-up inspection within four weeks and document, take photographs
<ul style="list-style-type: none"> • First-time violation, isolated incident • Failure to implement appropriate BMPs after receiving a written warning • Minor infractions with minimal impact on the storm drain system and the environment • Seasonal and recurrent nuisances may include overflow of irrigation water onto the public right of way • Party is cooperative and willing to remedy situation 	<p>Notice and Order to Abate</p>	<ul style="list-style-type: none"> • Issue Notice and Order to Abate. Complete Attachment "A" specifying code section violations, corrective actions and compliance dates. Include photographs. • Follow Service Methodology in §14.14.150.C.1 (a) • Party may request Extension of Time per §14.14.150 C.1 (d) • Address any request for Extension of Time per §14.14.150 C.1 (d) • Party to submit a written explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall include specific required actions to the Director within the time prescribed in the notice and order (Attachment A). §14.14.150.C.1 (b) • Conduct follow-up inspection after anticipated completion date for corrective actions; document, photograph concerns • Party may appeal the notice and order per §14.14.150 C.4.

ENFORCEMENT RESPONSE PLAN

<ul style="list-style-type: none"> • Failure to comply with Notice and Order to Abate • Failure to submit discharge abatement plan • Violations with significant impacts on the storm drain system and the environment • Party economically benefits from the violation • Party is non cooperative or minimally cooperative to remedy situation • Party may contest the violation 	<p>Administrative Civil Citation § 14.14.150 C.3.</p>	<ul style="list-style-type: none"> • Issue administrative civil citation (Attachment B) • Follow Service Methodology in §14.14.150.C.1 (a) • Determine civil penalty §14.14.150 C.3(c) \$100, \$200 or \$400 • Record Notice of Noncompliance with County Recorder (withdraw when corrected). §14.14.150 C. 1(f) • Conduct follow-up inspection after completion date for corrective actions; photograph concerns • Report violation to Central Valley Regional Water Quality Control Board within 30 days of violation • Party may appeal per §14.14.150 C.3 (e) and §14.14.150 C.4.
<ul style="list-style-type: none"> • Failure to respond appropriately to written notices • Failure to comply with notice and order and/or citations • Party is not cooperative • Multiple offenses of similar nature • Minor to moderate infractions with minimal to moderate impact on the storm drain system and the environment • Third serious violation within a 12-month period • Ongoing discharges of pollutants to the storm drain system or to the roadways, including flooding over a county roadway 	<p>Criminal Prosecution or Civil Action</p> <p>§ 14.14.150 D</p> <p>§ 14.14.180</p> <p>Civil Code 1.36.010 or 1.36.020</p> <p>Business and Professions Code 17200</p>	<ul style="list-style-type: none"> • Refer to District Attorney for prosecution per §14.14.150 D or §14.14.180 • A civil injunction may be requested at anytime, for any violation, if appropriate in the opinion of the Director and County Counsel.
<ul style="list-style-type: none"> • Unsafe Conditions • Major violations of § 14.14(e.g., large spills, gross negligence in housekeeping or management practices) possibly requiring emergency spill response • Ongoing discharges of pollutants to the storm drain system or to the environment • Significant impact to the environment caused by violation requiring immediate abatement to protect 	<p>§14.14.150 C.3</p> <p>Emergency Orders and Abatements</p>	<ul style="list-style-type: none"> • Notify Party of unsafe condition, if possible • Follow Service Methodology in §14.14.150.C.1 (a) • Costs of abatement billed to owner and recording of a lien on property §14.14.150 C.3 (d) • Owner may file appeal contesting costs §14.14.150 C.4 (a) • Director may abate any emergency condition without prior notice to owner. Director shall report actions to BOS. §14.14.150 C.

ENFORCEMENT RESPONSE PLAN

The director or his/her designee, shall cause the notice and order to abate and/or administrative civil citation to be served on the owner(s) of the property as shown on the last equalized assessment roll, or upon the person responsible for or committing the act that constitutes a nuisance, and upon the mortgagee, lienor, lessee or holder of an interest of record in the subject property. Service of the notice and order to abate may be made in the following manner:

1. By personal service; or
2. By mail, certified, return receipt requested, to the owner of the property at the address shown on the last equalized assessment roll, or to the person responsible for or committing the act that constitutes a nuisance at that person's permanent mailing address. Should the service by certified mail, return receipt be returned as "refused or unclaimed," service may be made by posting a copy of the notice and order to abate prominently and conspicuously upon the property where the nuisance exists and mailing a copy of the notice by regular U.S. mail to the owner and any known tenant; and
3. By posting a copy of the notice on the property, if real property is involved.

When service of the notice and order to abate is made by personal service, or posting, proof of service shall be certified to at the time of service by a written declaration. When service is made via certified mail, the card returned in acknowledgment of receipt shall be affixed to a copy of the notice and order retained by the director or his/her designee. The failure of any person to receive the notice does not affect the validity of any proceedings taken under this chapter.

AN ORDINANCE AMENDING SECTIONS 14.14.150 AND 14.14.180 OF THE COUNTY CODE RELATING TO STORM WATER MANAGEMENT AND DISCHARGE CONTROL

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS, STATE OF CALIFORNIA DO ORDAIN AS FOLLOWS:

Section 1. Section 14.14.150 of the Stanislaus County Code is hereby amended to read as follows:

“14.14.150 ENFORCEMENT AUTHORITY.

- A. General enforcement authority.
 - 1. Except as otherwise provided herein, the director of public works shall administer, implement and enforce the provisions of this chapter (Title 1, Chapter 1.24.040).
 - 2. The director of public works may delegate any powers granted to or duties imposed upon the director of public works to other Stanislaus County personnel.

- B. Violations deemed a public nuisance.
 - 1. In addition to the penalties herein provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety or welfare, and is thus deemed a nuisance.
 - 2. Any such nuisance may be abated as provided herein.

- C. Administrative enforcement powers. The enforcement official may also exercise any of the following supplemental enforcement powers as may be necessary or advisable in the enforcement official's judgment under the circumstances.
 - 1. Notice and order to abate.
 - (a) Whenever the enforcement official finds that a discharge has taken place, or is likely to take place, in violation of this chapter, or order issued hereunder, the enforcement official may serve a written notice and order to abate upon the property owner and the person responsible for the discharge, by personal service or by registered or certified mail.
 - (b) Within 30 days of the receipt of this notice, or shorter period as may be prescribed in the notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall include specific required actions, shall be submitted to the enforcement official.
 - (c) Submission of this plan shall in no way relieve the person of liabilities for violations occurring before or after receipt of the notice and order to abate.

(d) Failure to comply with the terms and conditions of a notice and order to abate shall constitute a violation of this chapter. If a person fails to comply with the notice and order to abate, the director of public works may perform, or cause to be performed, such work as shall be necessary to correct the violation. The costs of any such abatement shall be borne by the property owner, and shall be collectable in accordance with the provisions of subparagraph (C)(5) below.

2. Contents of notice.

(a) The street address and/or a legal description sufficient for identification of the property where the violation exists and the address of the person responsible for or committing the act that constitutes a violation of this chapter.

(b) A brief and concise description of the violation or use of the property or act that constitutes a violation of this chapter.

(c) A description of the activities, practices and/or abatement methods to be performed to correct the violation.

(d) The date by which the violation must be corrected, which shall be a reasonable period of time.

3. Administrative citation.

(a) If the owner, or person responsible for the violation, fails to correct the violation within the time specified in the notice and order to abate, the director of public works or his/her designee, may cause an administrative citation imposing an administrative fine or penalty to be issued to the owner of the property (Cal. Gov't. Code § 53069.4).

(b) Any citation issued shall:

1. Identify the date, time and circumstances of the violation;
2. State the amount of the administrative fine or penalty to be imposed;
3. Advise the person of their appeal rights as provided herein.

(c) The citation shall be served in the same manner as the notice of order to abate. The amount of the administrative fine imposed shall be set by director of public works or his/her designee; provided, however, where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in Section 1.36.020. In determining the amount of civil penalty to be assessed, consideration will be given to the following:

1. The extent to which the owner or person responsible for the violation had knowledge or reasonably should have known that the action taken was a violation of this chapter;
2. The magnitude of the violation;

3. The extent to which the owner or person responsible for the violation derived a financial benefit from the violation;
4. Any prior history of related violations by the same person on the subject property or on other parcels within the County; and
5. Any corrective action, or lack thereof, taken by the owner or person responsible to eliminate the violations, and any other mitigating circumstances justifying a reduction of the amount of the penalties.

(d) Any person receiving a citation may request an appeal as provided herein.

(e) Notwithstanding Chapter 2.88 of the Stanislaus County Code or sections, 1094.5 or 1094.6 of the Code of Civil Procedure, within twenty days after the date action is taken by the board of supervisors on the decision of director of public works, a person contesting that final administrative decision may seek review by filing an appeal in the Stanislaus County municipal court pursuant to subdivision (b) of section, 53069.4 of the Government Code. If no notice of appeal to the municipal court is filed within the period set forth in this section, the order or decision of the county shall be deemed confirmed.

(f) If the owner of the property fails to pay the administrative fine or penalty imposed under this section upon demand by the county, the administrative fine or penalty shall be specially assessed against the parcel. The special assessment may be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as are provided for ordinary county taxes. A notice of abatement lien shall be recorded and shall become a lien on the property pursuant to the provisions of California Government Code section, 25845. The director of public works is authorized to prepare and record a notice of release of lien against the legal title of the subject property(s), if the administrative fine or penalty is paid in full.

3. Emergency orders and abatements.

(a) The enforcement official may order the abatement of any discharge from any source to the storm water conveyance system when, in the opinion of the enforcement official, the discharge causes or threatens to cause a condition that presents an imminent danger to the public health, safety, welfare or environment, or a violation of a NPDES permit.

- (b) In emergency situations, where the property owner or other responsible party is unavailable and time constraints are such that service of a notice and order to abate cannot be effected without presenting an immediate danger to the public health, safety, welfare or environment, or a violation of a NPDES permit, the County may perform or cause to be performed such work as shall be necessary to abate the threat or danger, or permit violation.
- (c) The costs of any such abatement shall be borne by the property owner, and shall be collectable in accordance with the provisions of subparagraph (C)(5) below.

4. Appeal.

- (a) Any person served with a notice and order to abate, or administrative citation, or required to perform monitoring, analyses, reporting and/or corrective activities by an authorized enforcement official, or disputing the costs of enforcement, or otherwise grieved by the decision of the authorized enforcement official, may file a written appeal with the public works director within ten days following the effective date of the notice and order, administrative citation, the enforcement official's decision or the delivery of an invoice for enforcement costs.
- (b) Upon receipt of the written appeal, the director of public works shall request a report and recommendation from the authorized enforcement official, and shall set the matter for hearing at the earliest practical date.
- (c) Due notice of the hearing shall be provided to the person appealing.
- (d) At the hearing, the director of public works may hear additional evidence, and may reject, affirm or modify the authorized enforcement official's decision, or the costs of enforcement.
- (e) Upon conclusion of the hearing, the director shall serve written notice of his/her decision in the manner provided for service of a notice and order to abate herein. The director of public works shall present the decision to the board of supervisors, and the board may adopt such decision, with or without modification, without further notice of hearing.

5. Enforcement costs recovery.

- (a) The cost of enforcement, abatement and restoration shall be borne by the owner of the property, and the costs therefore shall be invoiced to the owner of the property. Costs recoverable herein include all costs of abatement incurred by the county, including, but not limited to, administrative costs, and any and all costs incurred in the physical abatement. (Cal. Gov't. Code § 25845).
- (b) If the owner of the property fails to pay the costs upon demand by the county, the board of supervisors may order the

costs to be specially assessed against the parcel. The special assessment may be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as are provided for ordinary county taxes. The board of supervisory may also authorize a notice of abatement lien to be recorded. The costs shall become a lien on the property pursuant to the provisions of California Government Code section, 25845. The director of public works is authorized to prepare and record a notice of release of lien against the legal title of the subject property(s), if the county is fully compensated for the amount of the lien placed upon the property. (Cal. Gov't. Code § 25845).

6. Mitigation. The enforcement official shall have authority to order the mitigation of circumstances that may result in or contribute to illegal discharges.
7. Storm Water Pollution Prevention Plan. The enforcement official shall have the authority to establish elements of a storm water pollution prevention plan, and to require any business to adopt and implement such a plan, as may be reasonably necessary to fulfill the purposes of this chapter.
8. Best management practices. The enforcement official may establish the requirements of best management practices for any premises.
9. Seasonal and recurrent nuisance.
 - (a) If any violation of this chapter constitutes a seasonal and recurrent nuisance, the enforcement official shall so declare.
 - (b) Thereafter, such seasonal and recurrent nuisance shall be abated every year without the necessity of any further hearing.

D. Civil action.

1. In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the County.
2. Monies recovered under this division shall be paid to Stanislaus County to be used exclusively for costs associated with monitoring and establishing storm water discharge pollution control systems and/or implementing or enforcing the provisions of this chapter.
3. In any such action, the County may seek, as appropriate, any or all of the following remedies:
 - (a) A temporary and/or permanent injunction;
 - (b) Assessment of the violator for the costs of any investigation, inspection or monitoring survey that led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this division;

- (c) Costs incurred in removing, correcting or terminating the adverse effects resulting from the violation;
- (d) Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life.”

Section 2. Section 14.14.180 of the Stanislaus County Code is hereby amended to read as follows:

“14.14.180 VIOLATIONS.

- A. It shall be unlawful for any person to violate any provision of this chapter or to fail to comply with any of its requirements.

- B. Any person violating any provision of this chapter shall be guilty of a misdemeanor, unless such violation is declared by the director of public works or the district attorney to be an infraction.

- C. If any violation is continued, each day's violation shall be deemed a separate violation.”

Section 3. This ordinance shall take effect 30 days from and after the date of its passage and before the expiration of 15 days after its passage it shall be published once, with the members voting for and against the same, in the Modesto Bee, a newspaper published in the County of Stanislaus, State of California.

Upon motion of Supervisor _____ seconded by Supervisor _____, the foregoing Ordinance was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, this ____ day of _____, 2012, by the following-called vote:

AYES: Supervisors:
 NOES: Supervisors:
 ABSENT: Supervisors:

 William O'Brien, Chairman
 of the Board of Supervisors of the
 County of Stanislaus, State of California

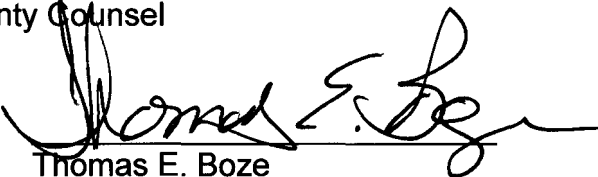
ATTEST:

CHRISTINE FERRARO TALLMAN, Clerk of the
Board of Supervisors of the County of Stanislaus,
State of California

By _____
Liz King, Deputy Clerk

APPROVED AS TO FORM:

JOHN P. DOERING
County Counsel

By 
Thomas E. Boze
Deputy County Counsel

STANISLAUS COUNTY ORDINANCE C.S. 1119

NOTICE IS HEREBY GIVEN that on June 5, 2012, at 9:00 a.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, 1010 10th St., Modesto, CA, to consider the adoption and the waiving of the second reading of Ordinance C.S. 1119.


Ordinance C.S. 1119 amends Sections 14.14.150 and 14.14.180 of the Stanislaus County Code relating to storm water management and discharge control. This ordinance defines administrative enforcement powers, includes a notice and order to abate, and an administrative citation process.

NOTICE IS FURTHER GIVEN that a full copy of the proposed ordinance is available for review in the Clerk of the Board Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, contact the Stanislaus County Department of Public Works at (209) 525-4100 or at 1716 Morgan Road, Modesto, CA.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: May 15, 2012

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk
of the Board of Supervisors
of the County of Stanislaus,
State of California

BY: 
Elizabeth A. King, Assistant Clerk of the Board

**DECLARATION OF PUBLICATION
(C.C.P. S2015.5)**

**COUNTY OF STANISLAUS
STATE OF CALIFORNIA**

I am a citizen of the United States and a resident Of the County aforesaid; I am over the age of Eighteen years, and not a party to or interested In the above entitle matter. I am a printer and Principal clerk of the publisher of **THE MODESTO BEE**, printed in the City of **MODESTO**, County of **STANISLAUS**, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of **STANISLAUS**, State of California, Under the date of **February 25, 1951, Action No. 46453**; that the notice of which the annexed is a printed copy, has been published in each issue there of on the following dates, to wit:

May 23, 2012

I certify (or declare) under penalty of perjury That the foregoing is true and correct and that This declaration was executed at

MODESTO, California on

May 23rd, 2012

(By Electronic Facsimile Signature)

Marie Dieckmann

STANISLAUS COUNTY
ORDINANCE C.S. 1119

NOTICE IS HEREBY GIVEN that on June 5, 2012, at 9:00 a.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, 1010 10th St., Modesto, CA, to consider the adoption and the waiving of the second reading of Ordinance C.S. 1119.

Ordinance C.S. 1119 amends Sections 14.14.150 and 14.14.180 of the Stanislaus County Code relating to storm water management and discharge control. This ordinance defines administrative enforcement powers, includes a notice and order to abate, and an administrative citation process.

NOTICE IS FURTHER GIVEN that a full copy of the proposed ordinance is available for review in the Clerk of the Board Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, contact the Stanislaus County Department of Public Works at (209) 525-4100 or at 1716 Morgan Road, Modesto, CA. BY ORDER OF THE BOARD OF SUPERVISORS. DATED: May 15, 2012.

ATTEST: Christine Ferraro Tallman, Clerk of the Board of Supervisors of the County of Stanislaus, State of California.
BY: Elizabeth A. King, Assst Clerk
Pub Dates May 23, 2012