



CITY OF BUELLTON STORMWATER MANAGEMENT PROGRAM – ENFORCEMENT RESPONSE PLAN

Purpose:

The purpose of the Enforcement Response Plan (ERP) is to provide guidance to City of Buellton (City) Staff when enforcing Buellton Municipal Code (BMC) Title 15 Stormwater Chapter 15.01 *Stormwater Management and Discharge Control*, also known as the *Stormwater Management and Discharge Ordinance* (Ordinance). This document should be used only as a guide while recognizing that each violation is unique. The provisions of this ERP are not mandatory. Actual enforcement procedures should consider any unusual aspects of a violation or condition, as well as special characteristics of an enforcement action, in determining the proper response.

While the purpose is to provide guidance for administration of the Ordinance, it is not intended to limit the judgment and flexibility of the Public Works Director/City Engineer (or their Designee) in determining an appropriate response. This ERP contains the type of enforcement actions, and the City's responses to violations and a description of how the City will address continuing violations and the escalated enforcement action process to achieve compliance.

This ERP was prepared in accordance to the State Water Resources Control Board's (SWRCB) Statewide General Permit CAS000004 Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4), Order No. 2013-0001-DWQ "Phase II Municipal General Permit" to fulfill the implementation requirements within Section E.6.c Enforcement Measures and Tracking, E.9.d Illicit Discharge Detection and Elimination, Source Investigations and Corrective Actions and E.9.e Spill Response Plan, E.10.c Construction Site Inspection and Enforcement, E.12.h Operation and Maintenance of Post-Construction Storm Water Management Measures and E.12.i Post-Construction Best Management Practice Condition Assessment.

I. Enforcement and Administration:

Note: If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice of violation shall further advise that, should the property owner of record, operator and/or responsible party fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the property owner of record, operator and/or responsible party.

If the City finds that a person has violated a prohibition or failed to meet a requirement of the Ordinance, Public Works Director/City Engineer (or their Designee) may order compliance by written notice of violation to the responsible person. Violations of the Ordinance may be remedied using the procedures set forth in BMC Title 1 General Provisions. These provisions shall be in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violations of this title. In addition, the Public Works Director/City Engineer (or their Designee) may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
5. The implementation of source control or treatment BMPs;
6. Payment of a fine to cover administrative and remediation costs (fines shall be a minimum of \$3000.00 per day and equitable to those imposed through violations of the California State Water Code Section 13385 and Federal Clean Water Act Section 301 – penalties up to \$10,00.00 per day of violation and \$10.00 per gallon of waste discharged); and/or
7. Cease and desist of operations and shutoff of water meter.

II. City Inspections

The City will conduct inspections of permitted or unpermitted sites, activities or projects to assess compliance with the Ordinance. Whenever necessary to make an inspection to enforce any provision of the Ordinance, or whenever the Public Works Director/City Engineer (or their Designee) has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this chapter, the Public Works Director/City Engineer (or their Designee) may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to stormwater compliance. In the event the property owner of record or occupant refuses entry after a request to enter and inspect has been made, the City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

III. Types of Enforcement Actions

As set forth in BMC Title 15 Stormwater Chapter 15.01 Stormwater Management and Discharge Control, and in keeping with the enforcement processes identified in BMC Title 1 General Provisions in use by the Public Works Director/City Engineer (or their Designee), the following are the types of actions that may be implemented and their use. This list is intended to identify the type of enforcement responses based on the type of violation and should not be considered all inclusive.

Verbal Warning

Note: Verbal warnings (telephone call, informal "in-person" meeting or during an inspection) must be documented within inspection reports/field notes.

A minor violation of the ordinance maybe resolved through a verbal warning to advise the property owner of record, operator and/or responsible party of the nature of the violation to the Ordinance and the required corrective action to obtain the desired compliance to be completed within 72 hours of notification and/or no later than the agreed upon schedule compliance date.

In lieu of the City's follow-up inspection, the property owner of record, operator and/or responsible party can submit electronically written and photographic evidence demonstrating actions to the City inspectors within 72 hours of the date of the notice and/or no later than the agreed upon scheduled compliance date either determined at the time of inspection or through an approved written request of extension submitted by the owner of record, operator and/or responsible party.

Verbal warnings are most effective for first time, minor offenses with threatened discharge but no immediate harm to life, property and/or the environment, and typically in conjunction with technical assistance/education that will remedy the offense.

Written Notice

Note: The written notices (electronic or written) must be sent via electronic transmission, US mail, or hand deliver the written notice in-person to the property owner of record, operator and/or responsible party during or after the inspection.

A minor violation of the ordinance maybe resolved through a written notice to advise the property owner of record, operator and/or responsible party of the nature of the violation to the Ordinance and the required corrective/abatement actions within 72 hours to obtain desired compliance and/or no later than the agreed upon schedule compliance date as well as the date of the City's follow-up inspection to verify desired compliance has been achieved.

In lieu of the City's follow-up inspection, the property owner of record, operator and/or responsible party can submit electronically written and photographic evidence demonstrating corrective actions to the City inspectors within 72 hours of the date of the notice and/or no later than the agreed upon scheduled compliance date either determined at the time of inspection or through an approved written request of extension submitted by the owner of record, operator and/or responsible party.

Written notices are the lowest level of formal response to a violation. It is intended for minor violations and typically in conjunction with technical assistance/education that will remedy the offense.

Notice of Violation/Letter to Correct

Note: The notice of violation (NOV) or letter to correct (LTC) must be sent via electronic transmission, US mail, or hand deliver the written notice in-person to the property owner of record, operator and/or responsible party during or after the inspection.

A NOV/LTC is an official notification to advise the property owner of record, operator or responsible party of the nature of the violation to the Ordinance and the required corrective/abatement actions within 72 hours to obtain desired compliance including the date of the City's follow-up inspection and/or no later than the agreed upon schedule compliance date as well as notice of potential escalated enforcement measures for non-compliance.

In lieu of the City's follow-up inspection, the property owner of record, operator and/or responsible party can submit electronically written and photographic evidence demonstrating corrective actions to the City inspectors within 72 hours of the date of the notice and/or no later than the agreed upon scheduled compliance date either determined at the time of inspection or through an approved written request of extension submitted by the owner of record, operator and/or responsible party.

Effectively used in all cases and typically prior to the issuance of any escalated enforcement measure.

Escalated Enforcement Measures

It is the discretion of the Public Works Director/City Engineer (or their Designee) to determine which level of enforcement is most appropriate for the situation based on the severity of the issue, urgency of abatement, any prior enforcement history, and other factors (Refer to Attachment 1 for the Enforcement Response Plan Process Flowchart).

Administrative Citations (Fines)

Note: The amounts of the fines for code violations imposed pursuant to BMC Title 1 General Provisions shall be set forth in the schedule of fines established by resolution of the City Council.

Prior to issuing an administrative citation the Public Works Director/City Engineer (or their Designee) shall give notice of the violation, and if the violation may be cured, shall grant a reasonable time, at the discretion of the Public Works Director/City Engineer (or their Designee), within which to cure the violation. No more than one notice and opportunity to cure need be given to a responsible party for a reoccurring violation.

If an administrative citation is issued in accordance with BMC Title 1 General Provisions the fines will be assessed per violation as follows:

1. A fine not exceeding one hundred dollars (\$100.00) per day for a first violation.
2. A fine not exceeding two hundred dollars (\$200.00) per day for a second violation of the same code provision or permit within one year from the date of the first violation.
3. A fine not exceeding five hundred dollars (\$500.00) per day for each additional violation of the same code provision or permit within one year from the date of the first violation.

A penalty of ten percent will be added on any delinquent fines on the last day of each month after the due date. In addition to the late penalty provided by this section, delinquent fines will accrue interest at the rate of one percent per month, exclusive of penalties, from the due date.

Payment of a fine shall not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the administration citation. Fines may be assessed per violation, per day and are very effective for immediate punitive purposes for on-view violations, or cases where at least one written warning was provided.

Stop Work Orders

The Stop Work Order (SWO) is a notice posted by the City on a construction site which informs the property owner or operator and/or responsible party that a work performance violation has been issued in accordance with BMC Title 12 Streets, Sidewalks and Public Places, Chapter 12.04 Street Construction and Excavation and/or revocation or suspension of any permit granted under this title. Such stop order shall be in writing and shall be effective immediately upon personal delivery to the person in charge of the work at the construction site. Upon such delivery of such stop order, all further work shall be immediately stopped, other than such work as is immediately necessary for the preservation of life, property, or the environment, and shall not be recommenced until written permission therefor is granted by the Public Works Director/City Engineer (or their Designee).

In accordance with BMC, any person who shall continue any work after having been served with a SWO, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to the penalties and code enforcement procedures set forth in BMC Title 1 General Provisions.

Withholding of Plan Approvals or Other Authorizations

If the City finds a facility non-compliant with any enforcement action or the Ordinance, the City may withhold any current or future development plan approvals permits should the violator not complete corrective efforts to the satisfaction of the City, which may include, but is not limited to: cleanup, abatement of discharge, and installation/ maintenance of appropriate best management practices (BMPs).

It is unlawful for any person to violate any provision of, or to fail to comply with, any requirements of the BMC. Any person violating the provisions or failing to comply with any of the mandatory requirements of the BMC shall be guilty of an infraction or misdemeanor.

Additional Measures

The City has legal authority under the BMC to proceed with the following additional measures as deemed necessary:

Public Nuisance

If the City determines that any condition caused or permitted to exist in violation of any of the provisions of the Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored by the City at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the City. The Public Works Director/City Engineer (or their Designee) may require the permittee to take reasonable measures to abate such nuisance and may revoke or suspend the permit until such measures are taken.

Property Lien

If a violation has occurred, a lien may be imposed by the City Manager upon the real property. The lien shall remain in effect until full payment for outstanding principal, penalties, and cost related to the lean are paid in full. In addition, the total cost for abating a nuisance shall constitute an assessment against the premises to which it relates, and upon recordation in the office of the county recorder of a notice of lien, shall constitute a lien on the property for the amount of such assessment.

Infraction and Misdemeanors

It is unlawful for any person to violate any provision of, or to fail to comply with, any requirements of the BMC. Any person violating the provisions or failing to comply with any of the mandatory requirements of the BMC shall be guilty of an infraction or misdemeanor.

All violations may be prosecuted by City authorities in the name of the people of the state, or redressed by civil action. Except where a violation is specifically designated as a misdemeanor, the violation shall be an infraction.

Infraction

It is unlawful for any person to violate any mandatory provisions of or fail to comply with such provision of the BMC. Any persons violating such sections shall be prosecuted as an infraction

Any infraction may be prosecuted by the City authorities in the name of the people of the state or redressed by civil action. Infractions are as follows:

- A. Any person convicted of an infraction for the violation of this code may be punished by:
 - 1. A fine not exceeding one hundred dollars (\$100.00) for a first violation;
 - 2. A fine not exceeding two hundred dollars (\$200.00) for a second violation of the same code section within one year; and,
 - 3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of the same code section within one year.
- B. Any person convicted of an infraction for a violation of any city buildings and construction code may be punished by:
 - 1. A fine not exceeding one hundred dollars (\$100.00) for a first violation;
 - 2. A fine not exceeding five hundred dollars (\$500.00) for a second violation of the same code section within one year; and,
 - 3. A fine not exceeding one thousand dollars (\$500.00) for each additional violation of the same code section within one year.

Misdemeanor

Any person convicted of a misdemeanor under the BMC shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the County jail for a period not exceeding six (6) months, or by both fine and imprisonment.

Continued Violations

It shall constitute a new and separate offense for each and every day during any portion of which a violation of, or failure to comply with, any provision or requirement of the BMC is committed, continued, or permitted by any person, and shall be punished accordingly. The City may also refer the ongoing violation to the Central Coast Regional Water Quality Control Board (CCRWQCB) within 30 days of making that determination or file a complaint on the SWRCB's website: http://www.dtsc.ca.gov/database/CalEPA_Complaint/index.cfm.

Construction (Performance) or Maintenance Bond

The City conducts project review through Planning Department, including consultations, to ensure comprehensive input. A letter to the project applicant (property owner of record and/or authorized agent, architect, engineer / surveyor, contractor) states the City's response, soliciting any changes to the erosion and sediment control plan, stormwater control plan, and/or stormwater pollution prevention plan, as applicable. Any changes must be submitted in writing and reviewed by City Staff before approval is granted.

To ensure that low impact development design measures, treatment measures and/or structural source control measures (also known as stormwater management facilities) as applicable are installed as designed, appropriately stamped as-built certifications must be provided to the Public Works Director for review and approval prior to the release of a construction (performance) or maintenance bond.

The property owner of parcels or premises containing stormwater management facilities shall submit a compliance letter to the Public Works Department by October 31st of every year. The compliance letter must certify that the stormwater site design measures, treatment or source control measures (as applicable) have been recently inspected and repaired as necessary to ensure continued operation as intended. The compliance letter shall include certification and signature form the property owner and a Qualified Stormwater Practitioner (QSP).

IV. NPDES Permit Referrals – Non-filers or Ongoing/Continued Violations

Construction Activity

If the City determines that an construction activity is subject to the Construction General Permit (CGP) and the property owner of record or operator and/or responsible party cannot demonstrate permit coverage under the CGP or has an ongoing stormwater discharge violation with their CGP and if the City has made a good-faith effort of progressive enforcement to achieve compliance with the City's Ordinance that includes at minimum the documentation of two follow-up inspections and two warning letters or notices of violations, the City shall refer the CGP non-filer to the Central Coast Regional Water Quality Control Board (CCRWQCB) within 30 days of making that determination, or file a complaint on the SWRCB's website:

http://www.dtsc.ca.gov/database/CalEPA_Complaint/index.cfm.

When referring a construction activity non-filer to the CCRWQCB, the City must include at a minimum the following documentation:

1. Construction project location;
2. Name of owner or operator;
3. Estimated construction project size; and
4. Records of communication with the owner or operator regarding filing requirements or violation including the last two follow-up inspections, two notices of violation or administrative orders, and any response from the owner or operator.

Industrial Activity

If the City determines that an industrial activity is subject to the Industrial General Permit (IGP) and the property owner of record or operator cannot demonstrate permit coverage under the IGP or has an ongoing stormwater discharge violation with their IGP and if the City has made a good faith effort of progressive enforcement to achieve compliance with the City's Ordinance that includes at minimum the documentation of two follow-up inspections and two warning letters or notices of violations, the City shall refer the IGP non-filer to the CCRWQCB within 30 days of making that determination, or file a complaint on the SWRCB's website:

http://www.dtsc.ca.gov/database/CalEPA_Complaint/index.cfm.

When referring an industrial activity non-filer to the CCRWQCB, the City must include at a minimum the following documentation:

1. Industrial facility location;
2. Name of owner or operator;
3. Type of Industrial activity (including the Standard Industrial or the North American Industry Classification, if known);
4. Records of communication with the owner or operator regarding filing requirements or violation including the last two follow-up inspections, two warning letters or notices of violation, and any response from the owner or operator

Enforcement Tracking

The City will track construction and industrial activity non-compliance within a hard-copy or electronic file. The enforcement tracking document will include, at a minimum the following:

1. Name of property owner/operator;
2. Location of construction project or industrial facility;
3. Description of violation;
4. Required schedule for returning to compliance;
5. Description of enforcement response use, including escalated response if repeat violations occur or violations are not resolved within the time specified in the enforcement action;
6. Accompanying documentation of enforcement response (e.g., notices of non-compliance, notices of violation, etc.); and
7. Any referrals to different departments or agencies.

Recidivism Reduction (Chronic Violators)

Based on enforcement tracking of construction or industrial activity non-compliance, if the City identifies a property owner or operator and/or responsible party as a chronic violator of the Ordinance or related provision of the BMC or regulation and reduce the rate of non-compliance recidivism, the City may invoke incentives, disincentives, or increase inspection frequency at the construction property or industrial facility to prevent chronic violations. (Refer to Attachment 2 for Enforcement Measures and Tracking Log)

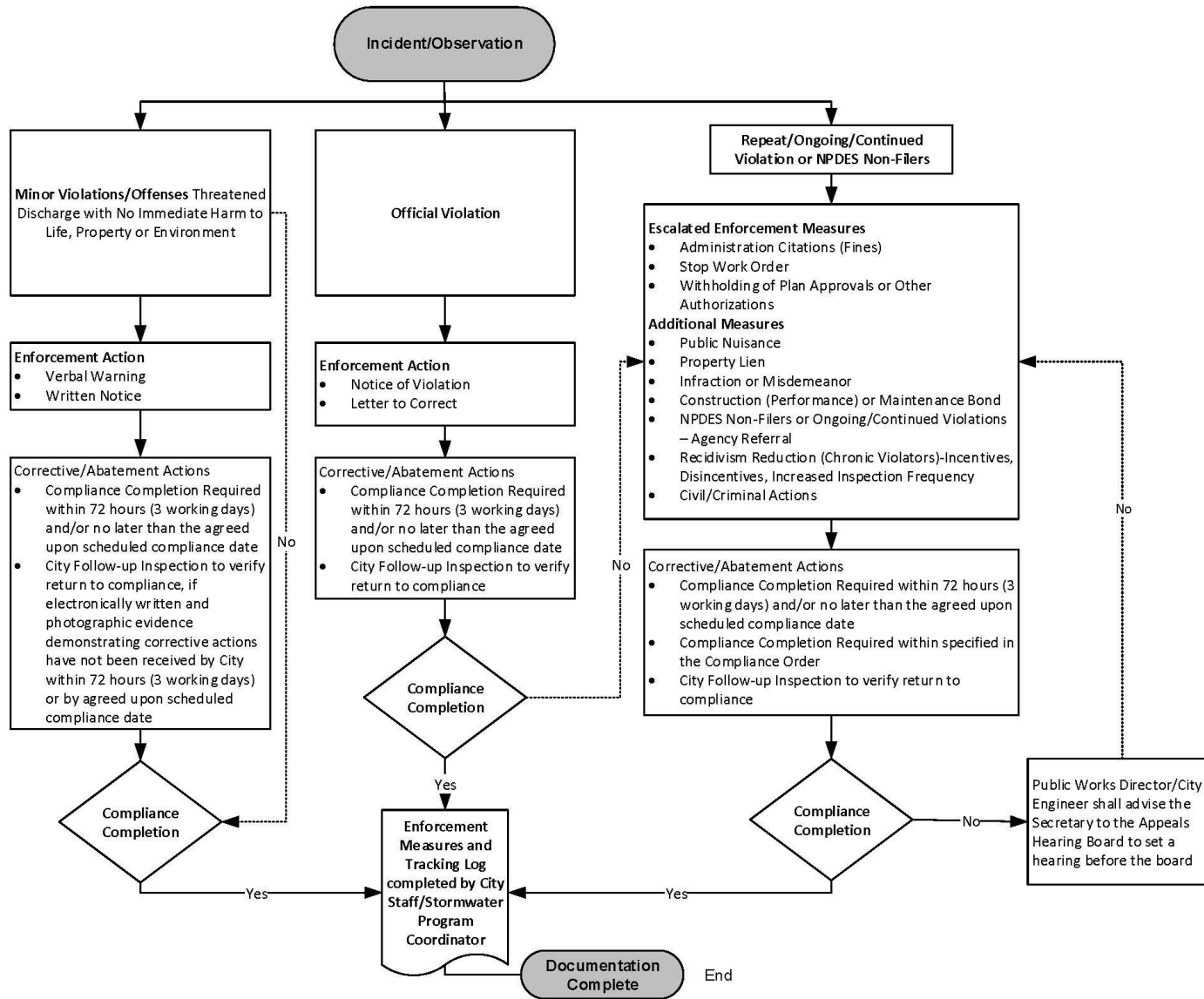
Civil/Criminal Action

In cases where criminal acts are suspected by the Public Works Director/City Engineer (or their Designee), after consultation with the City Attorney, information shall be gathered and forwarded to the City Attorney for action. Criminal prosecution, if pursued, shall be in addition to other actions authorized by the Ordinance and the BMC.

Any property owner or operator and/or responsible party who violate the Ordinance may also be in violation of the Clean Water Act and/or the Porter-Cologne Act and may be subject to the sanctions of those acts including civil and criminal penalties. Any enforcement action authorized under the Ordinance shall also include written notice to the violator of such potential liability.

Attachment 1

Enforcement Response Plan Process Flowchart



Attachment 2

Enforcement Measures and Tracking Log

CITY OF BUELLTON
STORMWATER MANAGEMENT PLAN
E 10 PROGRAM MANAGEMENT ELEMENT
E.6.c Enforcement Measures and Tracking

Entry No.	Incident Date (MM/DD/YY)	Name of Owner/Operator	Facility Type (Commercial, Construction, Industrial, Residential)	Facility Address	Description of Violation	Scheduled Compliance Completion Date (MM/DD/YY)	Enforcement Response (ER)				Agency Referrals			
							ER TYPE (List Applicable Codes*)	Repeat Violation	Resolved Violation	Compliance Completion Date (MM/DD/YY)	ER Documentation (Hard Copy Location or Electronic File Name)	Type (Non-Filer, Ongoing / Continued Violations)	Agency	Referral Date (MM/DD/YY)
#	5/12/16	Tyson Development	Construction	5555 Tower Road; Tower City, CA	Failure Erosion and Sediment BMPs causing Non-stormwater Discharge to Santa Ynez River	5/12/16	VW, WN, NOV, EEM-AC	No	N/A	5/12/16	MNS Office - SWMP Spill Response Plan and Enforcement Response Plan Binder	Non-Filer	CCRWQCB	5/12/16
		<p>*ER Type Code</p> <p>VW: Verbal Warning WN: Written Notice NOV: Notice of Violation NTC: Notice to Correct EEM-AC: Escalated Enforcement Measure-Administrative Citations (Fines) EEM-AO: Escalated Enforcement Measure-Administrative (Compliance) Order EEM-SWO: Escalated Enforcement Measure-Stop Work Orders EEM-WP/A: Escalated Enforcement Measure-Withholding of Plan Approvals or Other Authorizations AM-PN: Additional Measure-Public Nuisance AM-PL: Additional Measure-Property Lien AM-I: Additional Measure-Infraction AM-M: Additional Measure-Misdemeanor AM-CM: Additional Measure-Continued Violation AM-CMB: Additional Measure-Construction or Maintenance Bond RR-I: Recidivism Reduction-Incentives RR-D: Recidivism Reduction-Disincentives RR-II: Recidivism Reduction-Increased Inspections C/CA: Civil/Criminal Action</p>												