

CHAPTER 63: STORM WATER ILLICIT DISCHARGE AND CONNECTION

Article

I. STORM WATER ILLICIT DISCHARGE AND CONNECTION

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ARTICLE I: STORM WATER ILLICIT DISCHARGE AND CONNECTION

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§ 63.101 PURPOSE.

The purpose of this article is to provide for the health, safety, and general welfare of the public through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the NPDES permit process. The objectives of this article are:

- (A) To regulate the contribution of pollutants to the MS4 by storm water discharges by any user;
- (B) To prohibit illicit connections and discharges to the MS4; and

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(C) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this article.
(Ord. 497, passed 5-21-18)

§ 63.102 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BEST MANAGEMENT PRACTICES (BMPS). Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. **BMPS** also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CLEAN WATER ACT. The federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), and any subsequent amendments thereto.

CODE OFFICIAL. The City Administrator or their designee.

CONSTRUCTION ACTIVITY. Activities subject to NPDES construction permits. Currently these include construction projects resulting in land disturbance of five acres or more. Beginning in March 2003, NPDES storm water phase II permits will be required for construction projects resulting in land disturbance of one acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

DISCHARGE PERMIT. A permit issued by the EPA (or by a state under authority delegated pursuant to 33 U.S.C. § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

EPA. The Environmental Protection Agency or its successor.

HAZARDOUS MATERIALS. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLEGAL DISCHARGE. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in § 63.106(A)(2).

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ILLICIT CONNECTION. An **ILLICIT CONNECTION** is either of the following:

(1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or

(2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

INDUSTRIAL ACTIVITY. Activities subject to NPDES industrial permits as defined in 40 CFR 122.26(b)(14).

MDEQ. Michigan Department of Environmental Quality or its successor.

MS4. Municipal separate storm sewer system.

NON-STORM WATER DISCHARGE. Any discharge to the storm drain system that is not composed entirely of storm water.

NPDES. The National Pollutant Discharge Elimination System.

PERSON. Any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner or as the owner's agent.

POLLUTANT. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid, solid wastes, and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

PREMISES. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

STORM DRAINAGE SYSTEM. Publicly-owned facilities by which storm water is collected and/or conveyed, including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

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STORM WATER. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

STORM WATER POLLUTION PREVENTION PLAN. A document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

WASTEWATER. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

(Ord. 497, passed 5-21-18)

§ 63.103 APPLICABILITY.

This article shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

(Ord. 497, passed 5-21-18)

§ 63.104 RESPONSIBILITY FOR ADMINISTRATION.

The Code Official or their designee shall administer, implement, and enforce the provisions of this article. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Director of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

(Ord. 497, passed 5-21-18)

§ 63.105 ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this article are minimum standards; therefore, this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

(Ord. 497, passed 5-21-18)

§ 63.106 DISCHARGE PROHIBITIONS.

(A) *Prohibition of illegal discharges.*

(1) No person shall discharge, or cause to be discharged, into the municipal storm drain system or watercourses, any materials, including, but not limited to, pollutants or waters containing any

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pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

(2) The commencement, conduct, or continuance of any non-authorized discharge to the storm drain system is prohibited except as described as follows:

(a) The following discharges are exempt from the discharge prohibitions established by this article:

1. Water line flushing or other potable water sources;
2. Landscape irrigation or lawn watering, and irrigation waters;
3. Diverted stream flows and flows from riparian habitats and wetlands;
4. Rising ground water and springs;
5. Uncontaminated ground water infiltration and seepage;
6. Uncontaminated pumped ground water except for groundwater cleanups specifically authorized by NPDES permits;
7. Foundation drains, water from crawl space pumps, footing drains and basement sump pumps (not including active groundwater dewatering systems);
8. Air conditioning condensation;
9. Waters from non-commercial washing of vehicles;
10. Street wash water;
11. De-chlorinated swimming pool water from single, two, or three family residences;
12. Firefighting activities; and
13. Any other water source not containing pollutants.

(b) Dye testing done under the authorization of the MDEQ (general rule 97) is an allowable discharge but requires a complete notice of intent to the MDEQ prior to the time of the test.

(c) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the

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authority of the EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(B) Prohibition of illicit connections.

(1) The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.

(2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4 or allows such a connection to continue.
(Ord. 497, passed 5-21-18)

§ 63.107 SUSPENSION OF MS4 ACCESS.

(A) Suspension due to illicit discharges in emergency situations. The Code Official or their designee may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

(B) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

(C) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the authorized enforcement agency.
(Ord. 497, passed 5-21-18)

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§ 63.108 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Code Official prior to the allowing of discharges to the MS4.
(Ord. 497, passed 5-21-18)

§ 63.109 MONITORING OF DISCHARGES.

(A) *Applicability.* This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

(B) *Access to facilities.*

(1) The Code Official or their designee shall be permitted to enter and inspect facilities subject to regulation under this article as often as may be necessary to determine compliance with this article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

(2) Facility operators shall allow the Code Official or their designee ready access to all parts of the premises for the purposes of inspection, sampling, examination, and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(3) The Code Official or their designee shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

(4) The Code Official or their designee has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Code Official or their designee, and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the Code Official or their designee access to a permitted facility is a violation of a storm water discharge permit and of this article. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits

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an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this article.

(7) If the Code Official or their designee has been refused access to any part of the premises from which storm water is discharged, and he or she is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

(Ord. 497, passed 5-21-18)

§ 63.110 REQUIREMENT TO PREVENT, CONTROL, AND RESCUE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The City Commission will adopt requirements identifying BMPs for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

(Ord. 497, passed 5-21-18)

§ 63.111 WATERCOURSE PROTECTION.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately-owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

(Ord. 497, passed 5-21-18)

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§ 63.112 NOTIFICATION OF SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting, or may result, in illegal discharges or pollutants discharging into storm water, the storm drain system, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the city within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years. (Ord. 497, passed 5-21-18)

§ 63.113 ENFORCEMENT.

(A) Whenever the Code Official or their designee finds that a person has violated a prohibition or failed to meet a requirement of this article, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice 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 storm water pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

(B) 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 shall further advise that, should the violator 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 violator.

(Ord. 497, passed 5-21-18)

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§ 63.114 APPEAL OF NOTICE OF VIOLATION.

Any person receiving a written notice of violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within 20 days from the date of the notice. Hearing on the appeal before the City Commission shall take place at their next regular meeting, but not less than 15 days from the date of receipt of the notice of appeal. The decision of the City Commission shall be final.

(Ord. 497, passed 5-21-18)

§ 63.115 ENFORCEMENT MEASURES AFTER APPEAL.

If the violation has not been corrected pursuant to the requirements set forth in the written notice of violation, or, in the event of an appeal, within 30 days of the decision of the City Commission upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

(Ord. 497, passed 5-21-18)

§ 63.116 COST OF ABATEMENT OF THE VIOLATION.

(A) Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within ten days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

(B) Any person violating any of the provisions of this article shall become liable to the city by reason of such violation.

(Ord. 497, passed 5-21-18)

§ 63.117 INJUNCTIVE RELIEF.

It shall be unlawful for any person to violate any provision, or fail to comply with, any of the requirements of this article. If a person has violated or continues to violate the provisions of this article, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations, or compelling the person to perform abatement or remediation of the violation.

(Ord. 497, passed 5-21-18)

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§ 63.118 COMPENSATORY ACTION.

In lieu of enforcement proceedings, penalties, and remedies authorized by this article, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, and the like.

(Ord. 497, passed 5-21-18)

§ 63.119 VIOLATIONS DEEMED A PUBLIC NUISANCE.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, and welfare, is declared and deemed a nuisance, may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

(Ord. 497, passed 5-21-18)

§ 63.199 PENALTY.

(A) Any person violating any provisions of this article shall be responsible for a municipal civil infraction and subject to the penalties and sanctions provided by this code. The authorized enforcement agency may recover all attorney's fees, court costs, and other expenses associated with enforcement of this article, including sampling and monitoring expenses.

(B) The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state, or local law, and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

(Ord. 497, passed 5-21-18)

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