

§ 50.09 STORMWATER ILLICIT DISCHARGE AND ILLICIT CONNECTION.

(A) *Purpose.* The purpose of this section is to provide for the health, safety and general welfare of the citizens of the city through the regulation of non-stormwater discharges to the storm drain system to the maximum extent practicable as required by federal and state law. This section establishes methods for controlling the introduction of pollutants into the storm drain system in order to comply with requirements of the National Pollutant Discharge Elimination System permit process. The objectives of this section are:

- (1) To regulate the contribution of pollutants to the storm drain system by stormwater discharges by any user;
- (2) To prohibit illicit connections and discharges to the storm drain system; and
- (3) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this section.

(B) *Findings.* The City Council hereby finds that non-stormwater discharges to the city's municipal separated storm sewer system are subject to higher levels of pollutants that enter into receiving water bodies adversely affecting the public health, safety and general welfare by impacting water quality, creating nuisances, impairing other beneficial uses of environmental resources and hindering the ability of the city to provide adequate water, sewage, flood control and other community services.

(C) *Definitions.* For the purpose of this section, the following terms, phrases, words and their derivatives shall have the meaning stated below.

BEST MANAGEMENT PRACTICE or **BMP.** Defined at § 153.471.

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

CONSTRUCTION ACTIVITY. An activity subject to the NPDES general stormwater permit for construction activity. This includes 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. Adding, introducing, releasing, leaking, spilling, casting, throwing or emitting any pollutant, or placing any pollutant in a location where it is likely to pollute waters of the state.

EROSION. Defined at § 153.471.

GROUNDWATER. Water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under confined, unconfined or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground.

HAZARDOUS MATERIAL. 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.

ILLICIT CONNECTION. Defined as either of the following:

(a) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system (including any non-stormwater discharge) including sewage, process wastewater and wash water and any connections to the storm drain system from indoor drains and sinks, regardless of whether the drain or connection had been previously allowed, permitted or approved by the city; or

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

ILLICIT DISCHARGE. Any direct or indirect non-stormwater discharge to the storm sewer system, except as exempted in division (G) below.

INDUSTRIAL ACTIVITY. An activity subject to NPDES general stormwater permit for industrial activity as defined in 40 C.F.R. § 122.26(b)(14).

MPCA. The Minnesota Pollution Control Agency.

MUNICIPAL SEPARATE STORM SEWER SYSTEM or **MS4.** The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains) owned and operated by the city and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

NPDES. The National Pollutant Discharge Elimination System, which is the program for issuing, modifying, revoking, reissuing, terminating, monitoring and enforcing permits under the Clean Water Act (§§ 301, 318, 402 and 405) and 33 C.F.R. parts 1317, 1328, 1342 and 1345 authorizing the discharge of pollutants to water of the United States.

NPDES STORMWATER DISCHARGE PERMIT. A permit issued by the MPCA that authorizes the discharge of pollutants to waters of the state, whether the permit is applicable on an individual, group or general area-wide basis.

NON-STORMWATER DISCHARGE. Any discharge to the storm drain system that is not composed entirely of stormwater.

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.

(a) Any substance which, when discharged has potential to or does any of the following:

1. Interferes with state designated water uses;
2. Obstructs or causes damage to waters of the state;
3. Changes water color, odor or usability as a drinking water source through causes not attributable to natural stream processes affecting surface water or subsurface processes affecting groundwater;
4. Adds an unnatural surface film on the water;
5. Adversely changes other chemical, biological, thermal or physical condition, in any surface water or stream channel;
6. Degrades the quality of groundwater; or
7. Harms human life, aquatic life or terrestrial plant and wildlife.

(b) **POLLUTANT** includes but is not limited to dredged soil, solid waste, incinerator residue, garbage, wastewater sludge, chemical waste, biological materials, radioactive materials, rock, sand, dust, industrial waste, sediment, nutrients, toxic substance, pesticide, herbicide, trace metal, automotive fluid, petroleum-based substance and oxygen-demanding material.

POLLUTE. To discharge pollutants into waters of the state.

POLLUTION. The direct or indirect distribution of pollutants into waters of the state.

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

STATE DESIGNATED WATER USES. Uses specified in state water quality standards.

STORM DRAIN SYSTEM. Publicly-owned facilities by which stormwater is collected 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.

STORM SEWER SYSTEM. A conveyance or system of conveyances that is owned and operated by the city or other entity and designed or used for collecting or conveying stormwater.

STORMWATER. Defined at § 153.471.

SURFACE WATERS. All waters of the state other than ground waters, which include ponds, lakes, rivers, streams, tidal and non-tidal wetlands, public ditches, tax ditches and public drainage systems except those designed and used to collect, convey or dispose of sanitary sewage.

WASTEWATER. Any water or other liquid, other than uncontaminated stormwater, discharged from a premise.

(D) *Administration.* The city and its authorized representatives are authorized to administer, implement and enforce the provisions of this section.

(E) *Applicability.* This section shall apply to all water entering the storm drain system generated on any developed or undeveloped lands unless explicitly exempted by the city. The city shall administer, implement and enforce the provisions of this section.

(F) *Compatibility with other regulations.* This section is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this section are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this section imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, then whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

(G) *Discharge prohibitions and exceptions.*

(1) No person shall throw, drain or otherwise discharge, cause or allow anyone under his or her control to throw, drain or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited, except as described as follows:

(a) Water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated ground water infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges and street wash water;

(b) Discharges or flow from firefighting activities and other discharges authorized by the city as being necessary to protect public health and safety;

(c) Discharges associated with dye testing; however this activity requires a verbal notification to the Public Works Department prior to the time of the test;

(d) Any non-stormwater discharge permitted under an NPDES permit, waiver or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, 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.

(2) No person shall throw, deposit, leave, maintain, keep or permit to be thrown, deposited, left or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system or water of the state, any refuse, rubbish, garbage, litter or other discarded or abandoned objects, articles and accumulations, so that the same may cause or contribute to pollution. Waste deposited in streets in proper receptacles for the purposes of collection is exempted from this prohibition.

(3) No person shall throw, deposit, place, leave, maintain or keep any substance upon any street, alley, sidewalk, storm drain, inlet, catch basin conduit or drainage structure, business place or upon any public or private land, so that the same might be or become a pollutant, unless the substance is in containers, recycling bags or any other lawfully established waste disposal device.

(H) *Illicit connection prohibitions.*

(1) No person shall use any illicit connection to intentionally convey non-stormwater to the city's storm sewer system.

(2) The construction, use, maintenance or continued existence of illicit connections to the storm sewer system is prohibited. 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 section if the person connects a line conveying sewage to the storm sewer system, or allows such a connection to continue.

(4) If a drain or conveyance on a property has not been documented in any plans or maps or equivalent documentation filed with the city which may be connected to the storm drain system, the city may require the owner or occupant of the property to locate the drain or conveyance to make certain that it is not an illicit connection to the storm drain system. The city shall provide the owner or occupant with a written notice requiring that the locating be completed within a reasonable time period. The owner or occupant shall perform the locating and shall provide the city with documentation that the drain or conveyance is not an illicit connection.

(I) *Industrial or construction activity discharges.* Any person performing any construction or industrial activity subject to an

NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with the permit may be required in a form acceptable to the Public Works Department prior to the allowing of discharge to the storm drain system.

(J) *Requirement to prevent, control and reduce stormwater pollutants by the use of BMPs.* BMPs are required for any activity, operation or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system or waters of the state. The owner or operator of such activity, operation or facility shall provide, at his or her own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the storm drain system or waters of the state through the use of structural and non-structural BMPs. The owner or operator of a premise that may be the source of an illegal discharge may be required by the city to implement, at the discharger's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the storm drain system. These BMPs shall be part of the Stormwater Pollution Prevention Plan if necessary for compliance with requirements of an NPDES permit. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

(K) *General provisions.* All owners or occupants of property shall comply with the following general requirements.

(1) No person shall leave, deposit, discharge, dump or otherwise expose any chemical or septic waste in an area where discharge to streets or storm sewer system may occur. This section shall apply to both actual and potential discharges.

(a) Individual septic systems must be maintained to prevent failure, which has the potential to pollute surface water.

(b) No part of any individual septic system requiring on-land or in-ground disposal of waste shall be located closer than 150 feet from the ordinary high water level in the case of DNR protected waters, or the wetland boundary in the case of all other water bodies, unless it is proven by the applicant that no effluent will immediately or gradually reach the water bodies because of existing physical characteristics of the site or the system.

(c) Recreational vehicle sewage shall be disposed to a proper sanitary waste facility. Waste shall not be discharged in an area where drainage to streets or storm sewer systems may occur.

(d) For pools, water must be allowed to sit seven days without the addition of chlorine to allow for chlorine to evaporate before discharging in an area where drainage to streets or storm sewer systems may occur.

(2) Runoff of water from residential property shall be minimized to the maximum extent practicable. Runoff of water from the washing down of paved areas in commercial or industrial property is prohibited unless necessary for health or safety purposes and not in violation of any other provisions of the city code or zoning ordinances.

(3) Mobile washing companies (carpet cleaning, mobile vehicle washing, etc.) shall dispose of wastewater to the sanitary sewer. Wastewater must not be discharged where drainage to streets or storm sewer system may occur.

(4) Storage of materials, machinery and equipment must comply with the following requirements.

(a) Objects, such as motor vehicle parts containing grease, oil or other hazardous substances and unsealed receptacles containing hazardous materials shall not be stored in areas susceptible to runoff.

(b) Any machinery or equipment that is to be repaired or maintained in areas susceptible to runoff shall be placed in a confined area to contain leaks, spills or discharges.

(5) Debris and residue shall be removed as follows.

(a) All motor vehicle parking lots and private streets shall be swept at least once a year in the spring to remove debris. Such debris shall be collected and properly disposed.

(b) Fuel and chemical residue or other types of potentially harmful material, such as animal waste, garbage or batteries shall be removed as soon as possible and disposed of properly. Household hazardous waste may be disposed of through the county collection program or at any other appropriate disposal site and shall not be placed in a trash container.

(L) *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 the storm sewer system, or water of the state 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 city within 24 hours of the discharge. 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 reoccurrence. Such records must be retained for at least five years past the end of the NPDES industrial permit cycle. Failure to provide notification of a release as provided in this section is a violation of this section.

(M) *Access to building for inspection, monitoring and/or dye testing.*

(1) The city shall be permitted to enter and inspect all buildings under this section as often as may be necessary to determine compliance with this section provided the city gives 24 hours' advanced notice. However, in cases of emergency, the city shall be given immediate access.

(2) Facility operators shall allow the city ready access to all part of the premises for the purposes of inspection, sampling, dye testing, examination and copying of records that relate to the discharge of stormwater. Any temporary or permanent obstruction to safe and easy access to the area to be inspected or sampled shall be promptly removed by the discharger at the request of the Public Works Department and shall not be replaced.

(3) The city shall have the right to establish, at any building, such devices as are necessary to conduct monitoring, sampling and/or dye testing of the facility's stormwater discharge.

(4) The city has the right to require the discharger to install monitoring equipment as necessary. The monitoring equipment must be maintained by the discharger in a safe and proper operating condition at all times. All devices used to measure stormwater flow and quality must be calibrated in order to ensure their accuracy.

(5) Unreasonable delays in allowing the city access to a facility is a violation of this section.

(6) If the city has been refused access to any part of the premises from which stormwater is discharged, and is able to demonstrate probable cause to believe that there may be a violation of this section, 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 section or any order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the city may seek issuance of an administrative search warrant from any court of competent jurisdiction.

(N) *Suspension of storm sewer system access.*

(1) *Suspension due to illicit discharges in emergency situation.* The city may, without prior notice, suspend storm sewer system discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm sewer or waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the storm sewer system or waters of the state, or to minimize danger to persons.

(2) *Suspension due to the detection of illicit discharge.* All persons discharging to the storm sewer system in violation of this section may have their storm sewer system access terminated if such termination serves to abate or reduce an illicit discharge. It is a violation of this section to reinstate storm sewer system access to premises that have been terminated pursuant to this section without the prior approval of the city.

(O) *Enforcement.*

(1) *Notice of violation.* A violation of this section is a public nuisance. When the city finds that a person has violated a prohibition or failed to meet a requirement of this section, the person is deemed to have created a public nuisance subject to abatement and assessment, as provided in City Code Chapter 94. The city may also issue an administrative citation pursuant to City Code § 10.98. In addition to any order issued to abate the public nuisance pursuant to City Code Chapter 94, the city may require the following:

- (a) The performance of monitoring, analysis and reporting;
- (b) The implementation of source control or treatment BMPs; and
- (c) Any other requirement deemed necessary or appropriate.