

ILICIT DISCHARGE ORDINANCE

ORDINANCE 2008 - 07 OF THE ORDINANCES FOR THE CITY OF MENOMONIE FOR 2008.

An ordinance regarding illicit storm water discharge and connection regulations.

THE COMMON COUNCIL OF THE CITY OF MENOMONIE DO ORDAIN AS FOLLOWS:

Section 1. Chapter 29 of the City Code is hereby created as follows:

Chapter 29

Illicit Stormwater Discharge and Connection.

Section I. Purpose.

(1) Authority.

(a) The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the City of Menomonie through the regulation of non-stormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the Wisconsin Pollutant Discharge Elimination System (WPDES) permit process. The objectives of this chapter are:

1. To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.
2. To prohibit illicit connections and discharges to the MS4.
3. To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this chapter.

(b) The provisions of this chapter are deemed not to limit any other lawful regulatory powers of the City.

- (c) In instances where the provisions of this chapter conflict with provisions of other City ordinances, zoning regulation, or the regulatory provisions of state agencies, including, but not limited to, the WPDES Stormwater Discharge Permits issued by the WDNR under Section 281.31, Wis. Stats., the more stringent provision shall apply.
 - (d) The City designates the Director of Public Works as the person responsible to administer and enforce the provisions of this chapter.
- (2) Ultimate Responsibility. The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore, this chapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.
 - (3) Findings of Fact. The City and adjacent towns are growing at a rapid rate. Lake Menomin, Red Cedar River and its tributaries are of regional significance, representing a major natural amenity of the community. Illicit discharges have the potential to severely impact the fish and wildlife habitat of these water bodies.

Section II. Applicability. This chapter shall apply to all water entering the MS4 generated on any lands unless explicitly exempted by the City.

Section III. Definitions. For the purpose of this chapter, the following definitions shall apply:

- (1) "Best management practices" or "BMPs" means practices, techniques or measures that are effective in reducing flooding, removing pollutants, providing thermal mitigation, enhancing infiltration and/or providing other benefits related to stormwater management as set forth in the WDNR Construction Site Erosion and Sediment Control Technical Standards and the Post Construction Storm Water Management Technical Standards developed under Subchapter V of Wis. Adm. Code Ch. NR 151, available on their website at <http://dnr.wi.gov/runoff/stormwater/techstds.htm>
- (2) "City" means the City of Menomonie.

- (3) "Director of Public Works" or "DPW" means the governmental employee designated by the common council to administer this chapter and includes any other governmental employees designated by the DPW or the common council in the absence of the DPW.
- (4) "Dechlorinated swimming pool discharge" means pool water that has been allowed to sit for one (1) week or more with no treatment, or pool water that can otherwise be tested to show that residual chlorine or bromine levels are non-detectable.
- (5) "Discharge" shall have the meaning as set forth in Section 283.01, Wis. Stats.
- (6) "Hazardous materials" means 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.
- (7) "Illicit discharge" means any discharge to the MS4 that is not composed entirely of stormwater, except discharges authorized by a WPDES permit and except other allowed discharges identified at subsection IV(2) of this chapter.
- (8) "Illicit connections" are defined as either of the following:
 - (a) Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter the MS4 including but not limited to any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the MS4 and any connections to the MS4 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
 - (b) Any drain or conveyance connected from an commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
- (9) "Industrial activity" means any activities subject to WPDES Industrial Permits pursuant to Wis. Adm. Code Ch. NR 216, and Ch. 283, Wis. Stats., and any amendments thereto.

- (10) "Municipal separate storm sewer system" or "MS4" as defined in the Wis. Adm. Code Ch. NR 216, and any amendments thereto, means a conveyance or system of conveyances including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meet all the following criteria:
- (a) Owned or operated by a municipality.
 - (b) Designed or used for collecting or conveying stormwater.
 - (c) That which is not a combined sewer conveying both sanitary and stormwater.
 - (d) That which is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.
- (11) "Non-stormwater discharge" means any discharge to the MS4 that is not composed entirely of stormwater.
- (12) "Owner" means any person holding fee title, an easement or other interest in property.
- (13) "Outfall" means the point at which stormwater is discharged to waters of the state or leaves one MS4 and enters another.
- (14) "Person" means an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.
- (15) "Pollutant" shall have the meaning as set forth in Section 283.01, Wis. Stats., and any amendments thereto.
- (16) "Pollution" shall have the meaning as set forth in Section 283.01, Wis. Stats., and any amendments thereto.
- (17) "Pollution prevention" means taking measures to eliminate or reduce pollution.
- (18) "Premises" means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- (19) "Storm sewer" means a closed conduit for conducting collected stormwater.

- (20) "Stormwater" means runoff from precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (21) "Stormwater management plan/stormwater pollution prevention plan" (SWMP/SWPPP) means a document that describes the BMPs 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 stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable. Identifies what actions will be taken to reduce stormwater quantity, volume, pollutant loads, thermal increases to the receiving stream and/or erosion resulting from land development activity to levels meeting the purpose and intent of this chapter and the SWMP/SWPPP.
- (22) "Structure" means anything that is constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground.
- (23) "Wastewater" means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
- (24) "Watercourse" means a natural or artificial channel through which water flows. These channels include: all blue and dashed blue lines on the USGS quadrangle maps, all channels shown on the soils maps in the NRCS soils book for Dunn County, all channels identified on the site, and new channels that are created as part of a development. The term watercourse includes waters of the state as hereinafter defined.
- (25) "Waters of the state" means lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within the state or its jurisdiction, except those waters which are entirely confined and retained completely upon the premises of a person.
- (26) "WDNR" means the Wisconsin Department of Natural Resources.

- (27) "WPDES stormwater discharge permit" means a permit issued by the WDNR under Section 283.31, Wis. Stats. which authorizes the discharge of stormwater from construction sites, industrial facilities, and selected municipalities to waters of the state.

Section IV. Discharge Prohibitions.

- (1) Prohibition of Illicit Discharges. No person shall throw, drain, or otherwise discharge, or cause, or allow any other person to throw, drain, or otherwise discharge any illicit discharges into the MS4.
- (2) Allowed Discharges.
- (a) Discharges specified in writing by the DPW as being necessary to protect public health and safety.
- (b) Discharges associated with dye testing; however, this activity requires a verbal notification to the DPW a minimum of one (1) day prior to the time of the test.
- (c) Any non-stormwater discharge permitted under a WPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the WDNR. Any person subject to such a WPDES stormwater discharge permit shall comply with all provisions of such a permit.
- (d) Other water resources determined by the DPW in writing as not containing pollutants that cause or contribute to waterway degradation including, but not limited to, landscape irrigation, individual residential car washing, not-for-profit fundraising car washing, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, footing drains, air conditioning condensation, irrigation water, lawn watering, water line flushing, rising ground waters, non-commercial water from crawl space pumps, dechlorinated swimming pool discharge, street wash water, discharges or flow from fire fighting and flows from riparian habitats and wetlands.

- (e) Other water resources determined by the DPW in writing as not containing pollutants that cause or contribute to waterway degradation including, but not limited to, a violation of applicable water quality standards and/or degradation of the biotic integrity of surface water bodies and their floodplains.
- (3) Prohibition of Illicit Connections.
- (a) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
 - (b) 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.
 - (c) A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
 - (d) Improper connections in violation of this chapter must be disconnected and redirected, if necessary, to an approved on-site wastewater management system of the sanitary sewer system upon approval of the City.
 - (e) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that premises upon receipt of written Notice of Violation from the City requiring that such location be completed. Such Notice of Violation will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the DPW.

Section V. Watercourse Protection.

- (1) Every person who owns, leases, otherwise controls or occupies premises through which a watercourse passes shall keep and maintain that portion of the watercourse in question free of trash, debris, excessive vegetation or other obstruction which has the tendency to pollute, contaminate or significantly retard or block the flow of water through the watercourse. This duty shall include the responsibility of maintaining structures within or adjacent to the watercourse in such location and in such a manner of repair so as not to constitute an impediment to the use, function, or physical integrity of the watercourse.

Section VI. Compliance Monitoring.

- (1) Right of Entry, Inspecting and Sampling. The City reserves the right to enter and inspect all premises in the City which contain watercourses, points of discharge, connections with storm sewers and outfalls for the purpose of ascertaining compliance with this chapter.
 - (a) 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 City.
 - (b) Facility operators shall allow the City ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records.
 - (c) The City shall have the right to set up on any premises such devices as are necessary in the opinion of the DPW to conduct monitoring and/or sampling of the facility's stormwater discharge.
 - (d) The City has the right to require the discharger to install monitoring equipment as necessary. The premises' 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 stormwater flow and quality shall be calibrated to ensure their accuracy.

- (e) Any temporary or permanent obstruction to safe and easy access to the premises to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the DPW and shall not be replaced. The costs of clearing such access shall be borne by the operator.
 - (f) Unreasonable delays in allowing the City access to a premises is a violation. A person who is the operator of a facility commits an offense if the person denies the City reasonable access to the premises for the purpose of conducting any activity authorized or required by this chapter.
- (2) Special Inspection Warrant. If the DPW has been refused access to any part of the premises from which stormwater is discharged, and if the DPW is able to demonstrate probable cause under Section 66.0119, Wis. Stats. to believe that there may be a violation of this chapter, 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 chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the DPW may seek issuance of a special inspection warrant pursuant to Section 66.0119, Wis. Stats.

Section VII. Prevention, Control And Reduction of Stormwater Pollutants By The Use Of BMPs.

- (1) The owner or operator of any activity, operation, or facility and the owner, lessee or occupant of any premises which causes or contributes to pollution or contaminates stormwater, the MS4 or watercourses shall provide, at said person's sole expense, reasonable protection against the accidental discharge of prohibited or non-permitted materials or other waste into the MS4 or other watercourses and may be required to implement additional structural or non-structural BMPs to prevent further or continuing discharge of pollutants to the MS4 and watercourses. 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 sole expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid WPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliant with the provisions of this section.

These BMPs shall be part of a SWMP/SWPPP as necessary for compliance.

Section VIII. Notification of spills.

- (1) Notwithstanding other requirements of law, as soon as any person who owns or occupies any premises subject to this chapter or who operates a facility or operation has any information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the MS4, or waters 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 DPW in person or by telephone or facsimile no later than the next business day. Notification in person or by telephone shall be confirmed by written notice addressed and mailed to the DPW within three (3) business days of the telephone 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 seven (7) years. Failure to provide notification of a release as provided above is a violation of this chapter.

Section IX. Compliance Enforcement.

- (1) Violations. It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Any person who has violated, or continues to violate, the provisions of this chapter may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the DPW is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation. The DPW is authorized to seek costs of the abatement as outlined in subsection IX(5) of this chapter.

- (2) **Warning Notice.** When the DPW finds that any person has violated, or continues to violate, any provision of this chapter, or any order issued hereunder, the DPW may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the DPW to take action, including emergency action or any other enforcement action without first issuing a Warning Notice.
- (3) **Notice of Violation.**
- (a) Whenever the DPW finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the DPW may order compliance by written Notice of Violation to the responsible person.
- (b) The Notice of Violation shall contain:
1. The name and address of the alleged violator;
 2. The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
 3. A statement specifying the nature of the violation;
 4. A description of the remedial measures necessary to restore compliance with this chapter and a time schedule for the completion of such remedial action;
 5. A statement of the penalty or penalties that shall or may be assessed against the person to whom the Notice of Violation is directed;
 6. A statement that the determination of violation may be appealed to the common council by filing a written Notice of Appeal within thirty (30) days of service of Notice of Violation; and

7. A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or contractor and the expense thereof shall be charged to the violator.

(c) Such Notice of Violation 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 premises;
5. Payment of a penalty to cover administrative and remediation costs; and
6. Preparing plans for and implementing BMPs.

(4) Suspension of MS4 Access.

(a) Emergency Cease and Desist Orders. When the DPW finds that any person has violated, or continues to violate, any provision of this chapter, or any order issued hereunder, or that the person's past violations are likely to reoccur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the state which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the DPW may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

1. Immediately comply with all ordinance requirements; and

2. Take such appropriate preventative action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge. Any person notified of an emergency order directed to it under this subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the DPW may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the state, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The DPW may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the DPW that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this chapter. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the DPW within five (5) days of receipt of the emergency order.

(b) Suspension Due to Illicit Discharges in Emergency Situations. The DPW 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 state. If the violator fails to comply with a suspension order issued in an emergency, the DPW may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the state, or to minimize danger to persons.

(c) Suspension Due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this chapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The DPW will notify a violator of the proposed

termination of its MS4 access. The violator may petition the DPW for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the DPW.

- (d) Prosecution and Penalties. Any person that has violated or continues to violate this chapter shall be liable to prosecution to the fullest extent of the law. In the event the alleged violator fails to take the remedial measures set forth in the Notice of Violation or otherwise fails to cure the violations described therein within the set time period specified by the DPW, and after the DPW has taken one or more of the actions described above, the DPW may impose a penalty not to exceed one thousand dollars (\$1,000.00) per day, the specific amount of which shall be determined by the severity of the violation in question, for each day the violation remains unremedied after receipt of the Notice of Violation. The DPW may also impose upon a violator alternative compensatory actions, including but not limited to, storm drain stenciling/markings, attendance at compliance workshops, pond or drainage way cleanup.
- (5) Cost of Abatement of the Violation. Within thirty (30) days after abatement of the violation, the owner of the premises will be notified of the cost of abatement, including administrative costs. If the amount due is not paid by the date determined by the City, the charges shall become a special charge against the property, and shall constitute a lien on the property pursuant to Section 66.0627, Wis. Stats. The City may recover all attorneys' fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Section X. Appeal of Notice of Violation.

- (1) Appeals. Any person receiving a Notice of Violation may appeal the determination of the DPW. The Notice of Appeal must be received by the City Clerk within thirty (30) calendar days from the date of the Notice of Violation. Hearing on the appeal before the common council shall take place within sixty (60) calendar days from the date of receipt of the Notice of Appeal.

- (2) Enforcement Measures After Appeal. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event the common council upholds the decision of the DPW, representatives of the DPW are authorized to enter upon the subject private property and authorized to take any and all measures necessary to abate the violation. It is 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.

Section XI. Violations Deemed a Public Nuisance.

- (1) Any condition in violation of any of the provisions of this chapter and declared and deemed a nuisance, may be summarily abated or restored at the violator's expense.

Section XII. Severability.

- (1) The provisions of this chapter are declared to be severable. If a court of competent jurisdiction judges any section, clause, provision or portion of this chapter unconstitutional or invalid, the remainder of this chapter shall remain in force and not be affected by such judgment.

Section 2. This ordinance shall take effect upon the date of publication as provided in Section 62.11(4)(a), Wisconsin Statutes.

INTRODUCED 5-19-08
FIRST READING waived 5-19-08
SECOND READING waived 5-19-08

PASSED 5-19-08
PUBLISHED 5-25-08
ATTEST Joann L. Kadinger
CITY CLERK, JOANN L. KADINGER

APPROVED THIS 19th DAY
OF May 2008
Dennis Kropp
MAYOR, DENNIS KROPP

SUBMITTED BY:
Susan Beety
ALDERPERSON, Susan Beety