

## **Illicit Discharge and Connection**

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## **Illicit Discharge and Connection**

### **§ 01. Applicability.**

This article shall apply to all water entering the Municipal Separate Storm Water System (“MS4”) generated on any lands unless explicitly exempted by the Director of Public Works.

### **§ 02. Responsibility for administration.**

The Board of Trustees of the Village of Eden and/or its agents shall administer, implement, and enforce the provisions of this article. Any powers granted or duties imposed upon the Village Engineer may be delegated by the Board to persons or entities acting in the beneficial interest of or in the employ of the Village.

### **§ 03. Compatibility with other regulations.**

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

### **§ 04. Ultimate responsibility.**

The standards set forth herein and promulgated pursuant to this article are minimum standards; therefore, this article does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

### **§ 05. Discharge and connection prohibitions.**

- A. Prohibition of illicit discharges. No person shall throw, drain, or otherwise discharge, cause, or allow others under its control or constructive control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater.
- B. Allowed discharges:
- (1) Water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, 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.
  - (2) Discharges or flow from firefighting, and other discharges specified, in writing, by the Village Board, at any time, as being necessary to protect public health and safety.
  - (3) Discharges associated with dye testing,
  - (4) Any non-stormwater discharge permitted under a Wisconsin Pollutant Discharge Elimination System ("WPDES") permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the DNR. Any person subject to such a WPDES stormwater discharge permit shall comply with all provisions of such permit.
- C. Prohibition of illicit connections.
- (1) The construction, use, maintenance or continued existence of illicit connections to the MS4 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.
  - (4) Improper connections in violation of this article must be disconnected and redirected, if necessary, to an approved on-site wastewater management system or the sanitary sewer system upon approval of the Department of Public Works.
  - (5) 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 property upon receipt of written notice of violation from the Village Board requiring that such locating be completed. Such notice 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 Village Board.

**§ 06. 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.

**§ 07. Compliance monitoring.**

- A. Right of entry; inspecting and sampling. The Village Engineer shall be permitted to enter and inspect facilities, after providing verbal notice, subject to regulation under this article as often as may be necessary to determine compliance with this article.
- (1) 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 Village Engineer.
  - (2) Facility operators shall allow the Village Engineer ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records.
  - (3) The Village Engineer shall have the right to set up on any facility such devices as are necessary in the opinion of the Village Engineer to conduct monitoring and/or sampling of the facility's stormwater discharge.
  - (4) The Village Engineer 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 stormwater 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 Village Engineer and shall not be replaced. The costs of clearing such access shall be borne by the operator.
  - (6) Unreasonable delay in allowing the Village Engineer access to a facility is a violation. A person who is the operator of a facility commits an offense if the person denies the Village Engineer reasonable access to the facility for the purpose of conducting any activity authorized or required by this article.

- B. Special inspection warrant. If the Village Engineer has been refused access to any part of the premises from which stormwater is discharged, and it 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 Village Engineer may seek issuance of a special inspection warrant per § 66.0119, Wis. Stats.

#### **§ 08. Use of best management practices required.**

The owner or operator of any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the MS4, or waters of the state shall provide, at its own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of these structural and nonstructural BMPs. Further, any person responsible for a property or premises that is, or may be, the source of an illicit discharge may be required to implement, at said person's expense, additional structural and nonstructural 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 compliance with the provisions of this section. These BMPs shall be part of a stormwater management plan and/or stormwater pollution prevention plan (SWPPP) as necessary for compliance.

#### **§ 09. 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 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 nonhazardous materials, said person shall notify the Village Clerk in person or by phone, e-mail 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 Village Clerk within five 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. Failure to provide notification of a release as provided above is a violation of this article.

#### **§ 10. Enforcement; violations and penalties.**

- A. Violations. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. Any person who has violated or continues to violate the provisions of this article may be subject to the enforcement actions outlined in this section or the violation 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 Village Engineer 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 Village Board is authorized to seek costs of the abatement as outlined in § 12.

- B. Warning notice. When the Village Engineer finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, the Village Engineer 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 the subsection shall limit the authority of the Village Engineer to take action, including emergency action or any other enforcement action, without first issuing a warning notice.
- C. Notice of violation. Whenever the Village Engineer finds that a person has violated a provision or failed to meet a requirement of this article, the Village Engineer may order compliance by written notice of violation to the responsible person.
  - (1) The notice of violation shall contain:
    - (a) The name and address of the alleged violator;
    - (b) The address when available or a description of the building, structure or land upon which the violation is occurring or has occurred;
    - (c) A statement specifying the nature of the violation;
    - (d) A description of the remedial measures necessary to restore compliance with this article and a time schedule for the completion of such remedial action;
    - (e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
    - (f) A statement that the determination of violation may be appealed to the Village Board by filing a written notice of appeal within three days of service of notice of violation; and
    - (g) 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.
  - (2) Such notice may require without limitation:
    - (a) The performance of monitoring, analyses, and reporting;

- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) The implementation of BMPs.

D. Suspension of MS4 access.

(1) Emergency cease and desist orders.

- (a) When the Village Board, after a reasonable investigation, finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, or that the person's past violations are likely to recur, 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 Village Board 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 requirements of this chapter; and
  - [2] Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.
- (b) 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 Village Engineer 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. Neither the Village Engineer nor the Village shall be liable to the discharger for any damages suffered by the discharger for such actions. The Village Engineer may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Village Engineer that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this article. 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 Village Engineer within five days of receipt of the notice of violation.

- (2) Suspension due to illicit discharges in emergency situations. The Village Engineer 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 Village Engineer 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. Neither the Village Engineer nor the Village shall be liable to the discharger for any damages suffered by the discharger for such actions.
- (3) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this article may have its MS4 access terminated if such termination would abate or reduce an illicit discharge. The Village Board will notify a violator of the proposed termination of its MS4 access. The violator may petition the Village Board 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 Village Board. Neither the Village Engineer nor the Village shall be liable to the discharger for any damages suffered by the discharger for such actions.

E. Prosecution and penalties. Any person that has violated or continues to violate this article 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 Village Board, after the Village Board has taken one or more of the actions described above, the Village of Eden may impose a penalty of not less than 100 dollars or more than 1000 dollars (depending on the severity of the offense) for each day the violation remains unremedied after receipt of the notice of violation.

#### **§ 11. Enforcement measures after appeal.**

If an illicit discharge violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, the Village Board upheld the decision of the Village Engineer, then representatives of the Village Board are authorized to enter upon the subject private property and authorized to take any and all measures necessary to abate the violation. 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.

#### **§ 12. Cost of abatement of violation.**

Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. If the amount due is not paid by the date determined by the Village Board, the charges shall become a special charge against the property

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and shall constitute a lien on the property.

**§ 13. Violations deemed a public nuisance.**

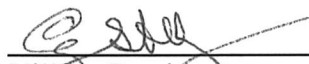
Any condition in violation of any of the provisions of this article and declared and deemed a nuisance may be summarily abated or restored at the violator's expense.


**§ 14. Remedies not exclusive.**

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 Village Board to seek cumulative remedies. The Village Board may recover all attorneys' fees, court costs and other expenses associated with enforcement of this article, including sampling and monitoring expenses.

Adopted this Date 21st of November, 2017.

Village of Eden

  
\_\_\_\_\_  
Village President

  
\_\_\_\_\_  
Clerk/Treasurer