

**SHERBURNE COUNTY ORDINANCE RELATING  
TO ILLICIT DISCHARGE DETECTION  
AND ELIMINATION ORD NO 210**

The Sherburne County Board of Commissioners adopted ORD NO 210 relating to Illicit Discharge Detection and Elimination as follows:

**SECTION 1. PURPOSE AND OBJECTIVES**

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

To regulate the contribution of pollutants to the municipal separate storm sewer system by stormwater discharges by any user

1. To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
2. To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this ordinance.

**SECTION 2. DEFINITIONS**

For the purposes of this ordinance, the following terms shall have the following meanings:

Authorized Enforcement Agency: employees or designees of Sherburne County or the Minnesota Pollution Control Agency as designated to enforce this ordinance.

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 into stormwater, receiving waters, or stormwater 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.

Construction Activity: Activities subject to NPDES Construction Permits.

Hazardous Materials: Any material, including any substance, waster, 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-stormwater discharge to the storm drain system, except as exempted in Section 9 of this ordinance.

Illicit Connections: Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the County's storm drain system including but not limited to any conveyances that 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, Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that 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, Section 122.26 (b)(14).

MPCA: Minnesota Pollution Control Agency.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by EPA (or by the State of Minnesota under authority delegated pursuant to 33 USC § 1342(b)) 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 storm water.

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 liquids, solid wastes, and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, 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 boulevards.

Storm Drainage System: Publicly-owned facilities by which stormwater 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, infiltration, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

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

Stormwater Pollution Prevention Plan (SWPPP): 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 Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the maximum extent practicable.

County: Sherburne County.

County Drainage System: Any county drainage system owned and operated by Sherburne County within its right-of-way including, but not limited to County owned and operated ditches, storm sewers and other stormwater conveyance located in county right-of-way. This definition expressly excludes such conveyances owned and operated by the State of Minnesota, a City, a Township or any other political subdivision of the State of Minnesota and privately owned drainage systems.

Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility or property.

Waters of the State: All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state of Minnesota or any portion thereof.

### **SECTION 3. APPLICABILITY**

This ordinance shall apply to all water entering any County Drainage System generated on any developed and undeveloped lands unless explicitly exempted pursuant to Section 6 of this Ordinance.

### **SECTION 4. SEVERABILITY**

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any Person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

### **SECTION 5. ULTIMATE RESPONSIBILITY**

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

### **SECTION 6. DISCHARGE PROHIBITIONS**

- A. Prohibition of Illegal Discharges. No Person shall discharge or cause to be discharged into the County Drainage System any materials, including but not limited to Pollutants or waters containing any Pollutants that cause or contribute to a violation of applicable water quality standards, other than Stormwater. The commencement, conduct or continuance of any Illegal Discharge to the Storm Drain System is prohibited except as described as follows:
1. The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if de-chlorinated -typically less than one PPM chlorine), firefighting activities, and any other water source not containing Pollutants.
  2. Discharges specified in writing by the MPCA as being necessary to protect public health and safety.
  3. Dye testing is an allowable discharge, but requires a verbal notification to the County Engineer 48-hours prior to the start of the test.
  4. The prohibition shall not apply to 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 MPCA or 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.

B. Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of Illicit Connections to the County Drainage 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.

**SECTION 7. SUSPENSION OF COUNTY DRAINAGE SYSTEM ACCESS**

A. Emergency Cease and Desist Orders. When the County finds that any Person has violated, or continues to violate, any provision of this ordinance, or any order issued here under, 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 County Drainage System which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the County 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;
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.

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 County may take such steps as deemed necessary to prevent or minimize harm to the County Drainage System, and endangerment to Persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The County may allow the Person to recommence its discharge when it has demonstrated to the satisfaction of the County that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this Ordinance. 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 County within [5] days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

B. Suspension due to Illicit Discharges in Emergency Situations. Sherburne County may, without prior notice, suspend County Drainage System 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 County Drainage System or If the violator fails to comply with a suspension order issued in an emergency, the County may take such steps as

deemed necessary to prevent or minimize damage to the County Drainage System 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 County Drainage System in violation of this Ordinance may have their County Drainage System access terminated if such termination would abate or reduce an Illicit Discharge. The County will notify a violator of the proposed termination of its County Drainage System access.
- D. A Person commits an offense if the person reinstates County Drainage System access to premises terminated pursuant to this Section, without the prior approval of the County.

## **SECTION 8. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES**

Any Person subject to an Industrial or Construction Activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to County prior to the allowing of discharges to the County Drainage System.

## **SECTION 9. MONITORING OF DISCHARGES**

- A. Applicability. This section applies to all facilities that have Stormwater discharges associated with Industrial Activity, including Construction Activity.
- B. Access to Facilities.
  - 1. The County shall be permitted to enter and inspect facilities subject to regulation under this Ordinance as often as may be necessary to determine compliance with this Ordinance. 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 County 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 the NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
  - 3. The County shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the County to conduct monitoring and/or sampling of the facility's stormwater discharge.
  - 4. The County 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 per manufacturer's recommendations.
  - 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 County and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6. Unreasonable delays in allowing the County access to a permitted facility is a violation of the stormwater discharge permit and of this Ordinance. A Person who is the operator of a facility with a NPDES permit to discharge Stormwater associated with Industrial Activity commits an offense if the Person denies the County reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.
7. If the County has been refused access to any part of the premises from which Stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, 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 Ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the County may seek issuance of a search warrant from any court of competent jurisdiction.

#### **SECTION 10. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES**

Sherburne County has adopted requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of Stormwater, the County Drainage System. 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 County Drainage System 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 County Drainage System. 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 compliant with the provisions of this Section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

#### **SECTION 11. 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 Stormwater, the Storm Drain System, or Waters of the State, said Person shall take all necessary steps to ensure the discovery, containment, and cleanup of such a 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 911 or MN Duty Office 1-800-422-0798. In the event of a release of non-hazardous materials, said Person shall notify the County Zoning or Public Works Departments 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 Sherburne County 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.

## **SECTION 12. ENFORCEMENT**

For violations of this Ordinance, the County may take any of the actions provided for in this Section 12. These actions shall not be deemed cumulative and the County may use any or all of the actions in its discretion.

- A. Warning Notice. The Zoning Department may issue a warning notice to any Person or landowner alleged to have committed a violation of this Ordinance. A warning notice shall serve to place the Person on notice that compliance with specified Ordinance requirements shall occur to avoid additional enforcement actions. A warning notice may be served in person or by certified mail. The Zoning Department is not required to issue a warning notice before the County proceeds with other enforcement action.
- B. Notice of Violation (NOV). The Zoning Department may issue a notice of violation (NOV) as defined in this Ordinance to any Person or landowner alleged to have committed a violation of this Ordinance. A NOV shall serve to place the landowner and the Person alleged to have committed a violation on notice that compliance with specified Ordinance requirements shall occur to avoid additional enforcement actions. The NOV may be served in person or by certified mail. The Zoning Department is not required to issue a NOV before the County proceeds with other enforcement action.
- C. Misdemeanor Citation. Any Person within the County who violates this Ordinance, or who shall permit such a violation to exist on the premises under his control, or who shall fail to take action to abate the existence of the violation, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished therefore, as provided by law. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues. The County, MPCA, Law Enforcement Officers, or their designees, may issue citations for violations of this Ordinance. The citation shall be issued to the person charged with the violation, or in the case of a corporation or municipality, to the supervisor at the site of the violation or any officer or MPCA expressly implied authorized to accept such issuance.
- D. Commencement of a Civil Court Action. In the event of a violation or a threat of violation of this Ordinance, the County Attorney may also institute other appropriate civil actions or proceedings in any court of competent jurisdiction, including requesting injunctive relief, to prevent, restrain, correct or abate such violations or threatened violations. The County may recover all costs, including reasonable attorney's fees, incurred for enforcement of this Ordinance through a civil action. If a property owner does not complete the corrective actions within the timelines in a court order, the County may correct the violations as permitted by the court. The County may recover the costs of the same from the property owner through the court process.



### **SECTION 13. REMEDIES NOT EXCLUSIVE**

The remedies listed in this ordinance 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.

The above provisions were passed by the Sherburne County Board of Commissioners on the 2<sup>nd</sup> day of June, 2015 and are effective upon the date of publication. The Ordinance has been duly filed with the Sherburne County Auditor.

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Felix Schmiesing, Sherburne County Board Chair

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Steven H. Taylor, Sherburne County Administrator

*Drafted by Sherburne County Zoning Administration  
Sherburne County Government Center, Elk River, Mn*