

Chapter 164: ILLICIT DISCHARGE AND ILLEGAL CONNECTION STORMWATER ORDINANCE

The Village Board of the Village of Cottage Grove, Dane County, Wisconsin does hereby ordain as follows:

- § 164-1. General provisions.
- § 164-2. Definitions.
- § 164-3. Applicability.
- § 164-4. Ultimate responsibility.
- § 164-5. Discharge prohibitions.
- § 164-6. Suspension of MS4 access.
- § 164-7. Industrial or construction activity discharges.
- § 164-8. Best management practices.
- § 164-9. Watercourse protection.
- § 164-10. Access and inspection of properties and facilities.
- § 164-11. Notification of accidental discharges and spills.
- § 164-12. Violations, appeals and enforcement.
- § 164-13. Penalties.
- § 164-14. Violations deemed a public nuisance.
- § 164-15. Remedies not exclusive.
- § 164-16. Severability.
- § 164-17. Effective date.

§164-1. General provisions.

- A. Authority. This chapter is adopted under the authority granted by ss. 283.33, Wis.Stats. and required by NR 216.07(3)(a), Wis.Adm.Code.
- B. Legislative findings. The Village Board of the Village of Cottage Grove finds that discharges to the municipal separate storm sewer system that are not composed entirely of stormwater runoff contribute to increased nonpoint source pollution and degradation of receiving waters. The impacts of these discharges adversely affect public health and safety, drinking water supplies, recreation, fish and other aquatic life, property values and other uses of lands and waters.
- C. Purpose and intent. 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 Wisconsin Pollutant Discharge Elimination System (WPDES) permit process. The objectives of this ordinance are:
 - (1) To regulate the contribution of non stormwater pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
 - (2) To prohibit illicit connections and discharges to the municipal separate storm sewer system;
 - (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance
- D. Abrogation and greater restrictions. It is not intended by this chapter to repeal, abrogate, annul, impair or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations, ordinances or permits previously adopted or issued pursuant to law. However, wherever this chapter imposes greater restrictions, the provisions of this chapter shall govern.
- E. Interpretation. In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes. Where any terms or requirements of this chapter may be inconsistent or conflicting, the more restrictive requirement or interpretation shall control.

§ 164-2. Definitions.

- A. ACCIDENTAL DISCHARGE – A discharge prohibited by this ordinance that occurs by chance and without planning or thought prior to occurrence.
- B. BEST MANAGEMENT PRACTICE (BMP) – A practice, technique, or measure that is an effective, practical means of preventing or reducing the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. This can include a structural or operational practice,

schedule of activities, prohibition of practices, general good house keeping, pollution prevention and educational practices, maintenance procedures, and other management practices systems. A BMP may also be a practice that controls site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

- C. CLEAN WATER ACT – The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- D. DIRECTOR OF PUBLIC WORKS – The individual staffed by the Village to direct the Village’s Department of Public Works.
- E. CONSTRUCTION ACTIVITY – Any land alterations or disturbances that may result in soil erosion, sedimentation, or change in runoff including but not limited to removal of ground cover, grading, excavating, and filling of land.
- F. 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.
- G. ILLICIT DISCHARGE – Any direct or indirect non-stormwater discharge to the municipal separate storm sewer system, except as exempted in § 1XX-5(2) of this ordinance.
- H. ILLEGAL CONNECTION – Either of the following:
 - (1) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or
 - (2) Any pipe, open channel, drain or conveyance connected to the municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
- I. INDUSTRIAL ACTIVITY – Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).
- J. MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) – Any facility designed or used for collecting and/or conveying stormwater, including but not limited to any roads with drainage systems, highways, village streets, curbs,

gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is:

- (1) Owned or maintained by the Village of Cottage Grove;
- (2) Not a combined sewer; and
- (3) Not part of a publicly-owned treatment works.

- K. WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM (WPDES) STORM WATER DISCHARGE PERMIT – A permit issued by the Wisconsin Department of Natural Resources (WDNR) 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.
- L. NON-STORMWATER DISCHARGE – Any discharge to the storm drain system that is not composed entirely of stormwater.
- M. PERSON – Except to the extent exempted from this ordinance, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body or any other legal entity.
- N. POLLUTANT – Anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and 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; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.
- O. POLLUTION – The contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

- P. PREMISES – Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- Q. STORM DRAINAGE SYSTEM – Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.
- R. STORMWATER – The flow of water that results from, and which occurs during and immediately following, a rainfall, snow- or ice- melt event.
- S. STORMWATER POLLUTION PREVENTION PLAN – A document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.
- T. STORMWATER RUNOFF – The waters derived from rains falling or snowmelt or icemelt occurring within a drainage area, flowing over the surface of the ground and/or collected in channels, watercourses or conduits.
- U. STRUCTURAL STORMWATER CONTROL – A structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.
- V. WASTEWATER – Any water or other liquid, other than uncontaminated storm water, discharged from a facility.
- W. WATERS OF THE STATE – The meaning given in s. 281.01 (18), Wis. Stats.

§ 164-3. Applicability.

This chapter applies to all substances entering the Village MS4 generated on any developed or undeveloped lands unless otherwise authorized or explicitly exempted by this ordinance or the WDNR.

§ 164-4. 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.

§ 164-5. Discharge prohibitions.

A. Prohibition of illicit discharges.

- (1) Prohibition. No person shall throw, drain, discharge, cause to be discharged, or allow others under their control to discharge into the municipal separate storm sewer system or watercourse any materials other than stormwater, including but not limited to pollutants or waters containing pollutants.
- (2) Exemptions. The following non-stormwater discharges are excluded from §164-5A(1) of this ordinance:
 - (a) Waterline flushing or other potable water sources;
 - (b) Landscape irrigation or lawn watering;
 - (c) Diverted, natural riparian habitat and/or wetland flows;
 - (d) Rising ground water, ground water infiltration to storm drains, and/or uncontaminated pumped groundwater;
 - (e) Foundation or footing drains (not including active ground water dewatering systems) and crawl space pumps;
 - (f) Air conditioning condensation;
 - (g) Springs;
 - (h) Non-commercial washing of vehicles;
 - (i) Dechlorinated (less than one PPM chlorine) swimming pool water;
 - (j) Firefighting/training activities and other discharges specified in writing by the Director of Public Works as being necessary to protect public health and safety; and
 - (k) Other water sources determined by the Director of Public Works 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.

B. Prohibition of illegal connections.

- (1) The construction, use, maintenance or continued existence of illicit connections to the storm drain 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 application or prevailing at the time of connection.

- (2) A person is in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- (3) 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 Director of Public Works 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 completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and 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 Director of Public Works.

§ 164-6. Suspension of MS4 access.

A. Suspension due to illicit discharges in emergency situations.

- (1) The Director of Public Works may, without prior notice, suspend MS4 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 MS4 or waters of the state.
- (2) If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the state, or to minimize danger to persons.

B. Suspension due to the detection of illicit discharge.

- (1) Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.
- (2) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

§ 164-7. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity WPDES 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 the Director of Public Works prior to the allowing of discharges to the MS4.

§ 164-8. Best management practices.

- A. The Director of Public Works may adopt requirements identifying Best Management Practices for any activity, operation, or facility that may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S.
- B. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of structural and non-structural BMPs identified by the Director of Public Works under sub. A.
- C. 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, structural and non-structural BMPs, in addition to those required by sub. B, to prevent the further discharge of pollutants to the municipal separate storm sewer system.
- D. Compliance with all terms and conditions of a valid WPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the National Pollutant Discharge Elimination System (NPDES) permit.

§ 164-9. 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, cause erosion, 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.

§ 164-10. Access and inspection of properties and facilities.

The Director of Public Works or his/her designee shall be permitted to enter and inspect properties and facilities at reasonable times and as often as necessary to determine compliance with this ordinance.

- A. If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the Director of Public Works.
- B. The owner or operator shall allow the Director of Public Works or his/her designee ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an WPDES permit to discharge stormwater.
- C. The Director of Public Works or his/her designee shall have the right to set up on any property or facility such devices as are necessary in the opinion of the Director of Public Works or his/her designee to conduct monitoring and/or sampling of flow discharges.
- D. The Director of Public Works or his/her designee may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the Director of Public Works or his/her designee. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.
- E. Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the Director of Public Works or his/her designee and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.
- F. Unreasonable delays in allowing the Director of Public Works or his/her designee access to a facility is a violation of this ordinance.
- G. If the Director of Public Works or his/her designee has been refused access to any part of the premises from which stormwater is discharged, and the Director of Public Works or his/her designee 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, environment and welfare of the community, then the Director of Public Works or his/her designee may seek issuance of a search warrant from any court of competent jurisdiction.

§ 164-11. Notification of accidental discharges and spills.

- A. Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the Village's municipal separate storm sewer system, waters of the state, or waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.
- B. Said person shall notify the authorized enforcement agency in person or by phone, facsimile or in person no later than 24 hours of the nature, quantity and time of occurrence of the discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director of Public Works within three business days of the phone or in person 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. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.
- C. In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.
- D. Failure to provide notification of a release as provided above is a violation of this ordinance.

§ 164-12. Violations, appeals and enforcement.

- A. Notice of Violation. Whenever the Director of Public Works or their designee finds that a violation of this ordinance has occurred, the Director of Public Works or his/her designee may order compliance by a 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 ordinance 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; and
 - (f) A statement that the determination of violation may be appealed to the Public Works Committee by filing a written notice of appeal with the Director of Public Works within five (5) days of the service of Notice of Violation.
- (2) Such notice may require without limitation:
- (a) The performance of monitoring, analyses, and/or reporting;
 - (b) The elimination of illicit discharges and illegal connections;
 - (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 to cover administrative and abatement costs; and
 - (f) The implementation of pollution prevention practices.

B. Appeal of Notice of Violation.

- (1) Any person receiving a Notice of Violation may appeal the determination of the Director of Public Works.
- (2) The notice of appeal must be received within five (5) days from the Notice of Violation.
- (3) Hearing on the appeal before the Public Works Committee shall take place within ten (10) days from the receipt of the notice of appeal.
- (4) The decision of the Public Works Committee shall be final.

C. Enforcement/Abatement measures after appeal.

- (1) If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or in the event of an appeal, within five (5) days of the Public Works Committee upholding the decision of the Director of Public Works, then representatives of the Director of Public Works shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property.

- (2) 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.

D. Costs of abatement of the violation.

- (1) Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement including administrative costs.
- (2) The property owner may file a written objection to the amount of the assessment within fifteen (15) days.
- (3) If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within thirty (30) days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.
- (4) Any person violating any of the provisions of this section shall become liable to the Village by reason of such violation.

§ 164-13. Penalties.

- A. Civil penalties. 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 ten (10) days, or such greater period as the local permitting authority shall deem appropriate, after the local permitting authority has taken one or more of the actions described in § 1XX-12, the local permitting authority may impose a penalty, not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the Notice of Violation.
- B. Criminal penalties. For intentional and flagrant violations of this ordinance, the local permitting authority may issue a citation to the alleged violator requiring such person to appear in municipal court to answer charges for such violation

§ 164-14. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, welfare, and environment and is declared and deemed a nuisance, and may be abated by injunctive or other equitable relief as provided by law.

§ 164-15. Remedies not exclusive.

- A. The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable Federal, State or local law and the Village may seek cumulative remedies.
- B. The Village of Cottage Grove may recover in full attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

§ 164-16. Severability.

If any section, clause, provision or portion of this ordinance is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the ordinance shall remain in force and not be affected by such judgment.

§ 164-17. Effective date.

This ordinance shall be in force and effect from and after its adoption and publication.

Adopted by the Village Board of the Village of Cottage Grove, Dane County, Wisconsin, this _____ day of _____, 2008.

Approved: _____

Attested: _____