

Chapter 17

ILLICIT DISCHARGE DETECTION AND ELIMINATION ORDINANCE

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17.01 Authority.

(1) This ordinance is adopted by the Town Board of the Town of Sheboygan under the authority granted by Wis. Stat. § 60.627. This ordinance supersedes all conflicting and contradictory Illicit Discharge Detection and Elimination regulations previously enacted under Wis. Stat. § 60.62. Except as specifically provided for in Wis. Stat. § 60.627, Wis. Stat. § 60.62 applies to this ordinance and to any amendments to this ordinance.

(2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.

(3) The Town Board of the Town of Sheboygan hereby designates the Superintendent of Public Works to administer and enforce the provisions of this ordinance.

(4) The requirements of this ordinance do not pre-empt more stringent Illicit Discharge Detection and Elimination requirements that may be imposed by Wisconsin Department of Natural Resources (WDNR) administrative rules, permits or approvals including those authorized under Wis. Stats. §§ 281.16 and 283.33.

17.02 Findings and purpose.

(1) The Town of Sheboygan's Municipal Separate Storm Sewer System (MS4) are municipally owned facilities where 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.

(2) The Town Board of the Town of Sheboygan finds illicit discharges can carry pollutants to the Waters of the State in the Town of Sheboygan through its MS4.

(3) The purposes of this ordinance are:

(a) To regulate the contribution of pollutants to the MS4.

(b) To prohibit illicit connections and discharges to the MS4.

(c) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

17.03 Applicability of Ordinance.

(1) This ordinance applies to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by the Town of Sheboygan.

(2) This ordinance is not applicable to activities conducted by a state agency, as defined under Wis. Stats. § 227.01(1). This includes:

(a) The office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under Wis. Stats. § 281.33(2).

(b) The Wisconsin Department of Transportation (WisDOT) that entered into a memorandum of understanding with the WDNR that satisfies Wis. Stats. § 281.33(2), such that activities directed and supervised by WisDOT are exempt from this ordinance.

(3) 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.

(4) Any person subject to an industrial or contraction 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 Town of Sheboygan prior to the allowing of discharges to the MS4.

17.04 Title.

This ordinance shall be known as the Illicit Discharge Detection and Elimination Ordinance for the Town of Sheboygan.

17.05 Definitions.

(1) "Administering authority" means a governmental employee empowered under Wis. Stats. § 60.627, that is designated by the Town of Sheboygan to administer this ordinance.

(2) "Agricultural land use" means use of land for planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or yarding of livestock and has the same meaning as in Wis. Stats. § 281.16(1).

(3) "Best management practice" or BMPs" means structural or non-structural measures, practices, techniques, or devices employed to avoid or to minimize soil, sediment, or pollutants discharged directly or indirectly to waters of the State.

(4) "Business day" means a day the office of the Town of Sheboygan is routinely and customarily open for business.

(5) "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.), and any subsequent amendments thereto.

(6) "Commercial land use" means use of land for the retain or wholesale sale of goods or services.

(7) "Construction Activity" means activities subject to erosion control and post construction stormwater permits.

(8) "Cease and desist order" means a court issued order to halt land disturbing construction activity that is being conducted without the required permit.

(9) "Construction site" means an area where one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.

(10) "Control plan" means a written description of the number, locations, sizes, and other pertinent information of BMPs designed to meet the requirements of this ordinance submitted by the applicant for review and approval by the Town of Sheboygan.

(11) "Governing body" means the Town Board of the Town of Sheboygan.

(12) "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.

(13) "Illegal discharge" means any illegal direct or indirect non-storm water discharge to the MS4, except as exempted in Section 17.06 of this ordinance.

(14) "Illicit connection" is defined as either of the following:

(a) Any drain or conveyance, whether on the surface or subsurface, that allows an illegal discharge to enter the MS4. This includes, but is 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.

(b) Any drain or conveyance connected from a commercial or industrial land use to the MS4 that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

(15) "Industrial activity" means activities subject to WPDES Industrial Permits as defined in 40 CFR, § 122.26(b)(14), or subject to Wisconsin Administrative Code NR 216.20.

(16) "Landowner" means any person holding title to or having an interest in land.

(17) "Land user" means any person operating, leasing, renting, or having made other arrangements with the landowner where the landowner authorizes use of his or her land.

(18) "MEP" or "maximum extent practicable" means a level of implementing BMPs to achieve a performance standard specified in this ordinance that takes into account the best available technology, cost effectiveness, and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties, and geographic features. MEP allows flexibility to meet the performance standards and may vary based on the performance standard and site conditions.

(19) "MS4" or "Municipal Separate Storm Sewer System" means municipally owned facilities where 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, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

(20) "Non-stormwater discharge" means discharge to the MS4 that is not composed entirely of stormwater.

(21) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

(22) "Person" means 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.

(23) "Pollutant" has the meaning given in Wis. Stats. § 283.01(13), and means anything that causes or contributes to pollution. Pollutants may include, but are not limited to: Paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, 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.

(24) "Pollution" has the meaning given in Wis. Stats. § 281.01 (10).

(25) "Responsible party" means any entity holding fee title to the property or performing services to meet the performance standards of this ordinance through a contract or other agreement.

(26) "Runoff" means the rainfall, snowmelt, or irrigation water flowing over the ground surface via sheet or channelized flow.

(27) "Sediment" means settleable solid material that is transported by runoff, suspended within runoff, or deposited by runoff away from its original location.

(28) "Stormwater" means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

(29) "Stormwater Pollution Prevention Plan" or "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, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

(30) "Technical standard" means a document that specifies design, predicted performance, and operation and maintenance specifications for a material, device, or method.

(31) "Wastewater" means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

(32) "Waters of the State" means those portions of Lake Michigan and Lake Superior within boundaries of Wisconsin, and all 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 and has the same meaning given in Wis. Stats. § 281.01 (8).

(33) "Wisconsin Pollutant Discharge Elimination System (WPDES) Stormwater Discharge Permit" means a permit issued by the WDNR [as authorized by the EPA under authority delegated pursuant to 33 use § 1342(b)] that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

17.06 Prohibition of Illegal Discharges.

(1) No person shall discharge or cause to be discharged into the MS4 or watercourses 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.

(2) The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited, except as described as follows:

(a) 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 ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, 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 declorinated less than one ppm chlorine), fire fighting activities, and any other water source not containing pollutants.

(b) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

(c) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

(d) The prohibition shall not apply to any non-storm water discharge permitted under a WPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the WDNR, 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.

17.07 Prohibiting of Illicit Connections.

(1) The construction, use, maintenance or continued existence of illicit connections to the storm drain 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.

(3) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

17.08 Suspension Because of Illicit Discharges in Emergency Situations.

The Town of Sheboygan 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, to the health or welfare of persons, to the MS4, or to waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the Town of Sheboygan 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.

17.09 Suspension Because of 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 Town of Sheboygan will notify a violator of the proposed termination of its MS4 access. The violator may petition the Town of Sheboygan 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 Town of Sheboygan.

17.10 Watercourse Protection.

Every person owning property that 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.

17.11 Monitoring Discharges.

(1) This section applies to all facilities that have storm\water discharges associated with industrial activity, including construction activity.

(2) Access to facilities:

(a) The Town of Sheboygan 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 that requires 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.

(b) Facility operators shall allow the Town of Sheboygan 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 a WPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

(c) The Town of Sheboygan shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Town of Sheboygan to conduct monitoring and/or sampling of the facility's stormwater discharge.

(d) The Town of Sheboygan 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.

(e) 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 Town of Sheboygan and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(f) Unreasonable delays in allowing the Town of Sheboygan access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a WPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

(g) If the Town of Sheboygan 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 authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

17.12 Requirement to Prevent, Control and Reduce Stormwater Pollutant by the Use of BMPs.

(1) The Town of Sheboygan will adopt requirements identifying BMPs for any activity, operation, or facility that may cause or contribute to pollution or contamination of stormwater, the MS4, or waters of the State.

(2) 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 these structural and non-structural BMPs. Any person responsible for a property or premise, that 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 municipal separate storm sewer system.

(3) Compliance with all terms and conditions of a valid WPDES permit authorizing the discharge of stormwater associated with industrial activity, to the maximum extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be a part of a SWPPP as necessary for compliance with requirements of the WPDES permit.

17.13 Notification of Spills.

(1) 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 that are resulting or may result in illegal 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 authorized enforcement agency in person or by telephone or facsimile no later than the next business day.

(2) Notification in person or by telephone shall be confirmed by written notice addressed and mailed to the Town of Sheboygan within three (3) business days of the telephone notice.

(3) If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an onsite written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

17.14 Enforcement.

(1) Whenever the Town of Sheboygan finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the Town of Sheboygan may order compliance by written notice of violation to the responsible person. 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 storm water 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 source control or treatment BMPs.

(2) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

17.15 Appeal of Notice of Violation.

(1) Any person receiving a Notice of Violation may appeal to the Town Board the determination of the Town of Sheboygan. The notice of appeal must be received within ten (10) working days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within thirty (30) working days from the date of receipt of the notice of appeal. The decision of the Town Board or their designee shall be final.

(2) 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 ten (10) working days of the decision of the Town Board upholding the decision, the representatives of the Town of Sheboygan 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. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Town of Sheboygan or designated contractor to enter upon the premises for the purposes set forth above.

(3) Within sixty (60) working days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within ten (10) working days. If the amount due is not paid within a timely manner as determined by the decision of the Town Board or by the expiration of the time in which to file an 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) In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the Town of Sheboygan may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, watercourse cleanup, etc.

17.16 Injunctive Relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. If a person has violated or continues to violate the provisions of this ordinance, the Town of Sheboygan may petition for a preliminary or permanent injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.

17.17 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, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

17.18 Criminal Prosecution.

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law.

17.19 Cost Recovery.

(1) The Town of Sheboygan may recover all attorneys' fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

(2) 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.

17.20 Severability.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a decision of a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and not affect the validity of all other provisions, sections or portion thereof of the ordinance which shall remain in full force and effect. Any other ordinance whose terms conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict."