

Chapter 28
ILLCIT DISCHARGE AND CONNECTION¹

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28.01 PURPOSE/INTENT

The purpose of this Chapter is to provide for the health, safety and general welfare of the citizens of the Village through the regulation of non-stormwater discharges to the stormwater drainage system to the maximum extent practicable, as required by federal and state law. This Chapter establishes methods for controlling the introduction of pollutants into the Village's municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit program. The objectives of this Chapter 28 are:

1. To regulate the discharge of pollutants to the municipal separate storm sewer system;
2. To prohibit illicit connections and discharges to the municipal separate storm sewer system; and
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Chapter.

28.02 DEFINITIONS

In addition to the terms defined in Appendix A of this Code, for the purposes of this Chapter, the following shall mean:

Authorized enforcement agency: Employees or designees of the Village designated to enforce this Chapter 28.

¹ Ordinance 2006-45

Best Management Practices (BMPs): Schedules of activities, prohibitions of practices, general good housekeeping practices, stormwater pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters and stormwater drainage systems. BMPs also include treatment practices, operating procedures and practices to control site runoff, spillage, leaks, sludge and wastewater disposal, and drainage from raw materials storage areas.

Chapter: This Chapter 28 of the Lakewood Municipal Code.

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 a NPDES Construction Site Activities Permit. Currently, these activities include construction projects resulting in a land disturbance of one acre or more. Such activities include, but are not limited to, clearing, grubbing, grading, excavating and demolition.

EPA: Environmental Protection Agency (state or federal).

Hazardous materials: 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.

Illegal discharge: Any direct or indirect non-stormwater discharge to the stormwater drainage system, except as exempted in Section 28.06 herein.

Illicit connection: An illicit connection is defined as either of the following:

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the stormwater drainage system, including, but not limited to, any conveyances which allow any non-stormwater discharges such as sewage, process wastewater and wash water, to enter the stormwater drainage system and any connections to the stormwater drainage 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
2. Any drain or conveyance connected from a commercial or industrial land use to the stormwater drainage system which has not been documented in plans, maps or equivalent records and approved by an authorized enforcement agency.

Industrial activity: Activities subject to a NPDES Industrial Activities Permit as defined in 40 CFR, Section 122.26 (b)(14).

Municipal Separate Storm Sewer System, also MS4: The system of stormwater drainage facilities, including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels and storm drains, owned and operated by the Village and used for collecting and/or conveying stormwater. The municipal separate storm sewer system is not used for collecting and/or conveying sewage.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by EPA (or by a state under authority delegated pursuant to 33 USC § 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.

Non-stormwater discharge: Any discharge to the stormwater drainage system that is not composed entirely of stormwater.

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, solvents, oil and other automotive fluids, non-hazardous liquid and solid wastes, yard wastes, refuse, rubbish, garbage, litter or other discarded or abandoned objects, accumulations that may cause or contribute to pollution, floatables, pesticides, herbicides, fertilizers, hazardous substances and wastes, sewage, fecal coliform and pathogens, dissolved and particulate metals, animal wastes, wastes and residues that result from construction activity 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 parking strips.

Stormwater drainage system: The facilities by which stormwater is collected and/or conveyed, including, but not limited to, sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, storm drains, pumping facilities, 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 resulting from any form of natural precipitation.

Stormwater Pollution Prevention Plan or SPPP: A document which 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, receiving waters and stormwater drainage systems to the maximum extent practicable.

Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from any premises.

28.03 RESPONSIBILITY FOR ADMINISTRATION

The Village shall administer, implement, and enforce the provisions of this Chapter. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the Village.

28.04 APPLICABILITY

This Chapter shall apply to all water entering the stormwater drainage system and generated on any developed and undeveloped lands unless explicitly exempted by the authorized enforcement agency.

28.05 ULTIMATE RESPONSIBILITY

The standards set forth in this Chapter and promulgated pursuant to this Chapter are minimum standards; therefore this Chapter does not intend, nor imply, that compliance by any person will ensure that there will be no contamination or pollution of stormwater or unauthorized discharge of pollutants to the stormwater drainage system or to waters of the United States.

28.06 DISCHARGE PROHIBITIONS

A. Prohibition of Illegal Discharges: No person shall discharge or cause to be discharged into the stormwater drainage system or waters of the United States any materials, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards.

The commencement, conduct or continuance of any illegal discharge to the stormwater drainage system is prohibited except as described as follows:

1. The following discharges are exempt from discharge prohibitions established by this Chapter: water line flushing, fire hydrant flushing, discharges from potable water sources, landscape irrigation, lawn watering, rising groundwater, groundwater infiltration, uncontaminated pumped groundwater, diverted stream flows, natural riparian habitat and wetland flows, springs, storm sewer cleaning water, street wash water from streets where spills or leaks of pollutants or toxic or hazardous materials has not occurred (unless the pollutants or toxic or hazardous materials have been removed), foundation drains, footing drains, crawl space pumps, air conditioning condensation, non-commercial vehicle washing, routing external building washing that does not use detergents, dechlorinated swimming pool discharges (discharges must contain less than one part per million chlorine), fire fighting activities and any other water source not containing pollutants or toxic or hazardous materials.
2. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
3. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

The prohibition shall not apply to any non-stormwater discharge permitted under a NPDES permit, waiver or waste discharge order issued to the discharger and administered under the authority of the United States EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and all other applicable laws and regulations, and provided that written approval has been granted by the authorized enforcement agency for the discharge to the stormwater drainage system.

B. Prohibition of Illicit Connections: The construction, use, maintenance or continued existence of illicit connections to the stormwater drainage 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 applicable or prevailing at the time of connection. A person is considered to be in violation of this Chapter if the person connects a line conveying sewage or any other non-stormwater discharge to the MS4, or allows such a connection to continue.

28.07 SUSPENSION OF MS4 ACCESS

A. Suspension Due to Illicit Discharges in Emergency Situations: The Village 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, to the health or welfare of persons, to the MS4 or to waters of the United States. 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 United States and to minimize danger to persons.

B. Suspension Due to the Detection of Illicit Discharge: Any person discharging to the MS4 in violation of this Chapter may have their MS4 access terminated if such termination would abate or

reduce an illicit discharge. The authorized enforcement agency will notify a violator, in writing, of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

C. A person is in violation of this Chapter if the person reinstates MS4 access to premises terminated pursuant to this Section 28.07 without the prior written approval of the authorized enforcement agency.

28.08 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to a NPDES Construction Site Activities Permit or NPDES Industrial Activities Permit shall comply with all provisions of such permit. A copy of the Notice of Intent (NOI) that was provided to the Illinois EPA shall be submitted to the Village. Additional proof of compliance with a NPDES Construction Site Activities Permit or NPDES Industrial Activities Permit may be required, in a form acceptable to the Village, prior to the allowing of discharges to the MS4.

28.09 MONITORING OF DISCHARGES

The authorized enforcement agency shall be permitted to enter and inspect premises subject to regulation under this Chapter as often as may be necessary to determine compliance with this Chapter. 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.

Facility operators shall allow the authorized enforcement agency ready access to all parts of the premises for the purposes of inspection, sampling, examination, copying of records that must be kept under the conditions of an NPDES permit, and the performance of any additional duties as required by state and federal law.

The authorized enforcement agency shall have the right to set up on any premises such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the premises' stormwater discharge.

The authorized enforcement agency 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.

Any temporary or permanent obstruction to safe and easy access to the premises to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the authorized enforcement agency and shall not be replaced. The cost of clearing such access shall be paid by the operator.

Unreasonable delays in allowing the authorized enforcement agency access to a premises is a violation of this Chapter. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits a violation of this Chapter 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 Chapter.

If the authorized enforcement agency 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 Chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Chapter or any order issued hereunder,

or to protect the overall public health, safety and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

28.10 REQUIREMENT TO PREVENT, CONTROL AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BMPs

The authorized enforcement agency will adopt requirements identifying BMPs for any activity, operation or facility which may cause or contribute to pollution or contamination of stormwater, the stormwater drainage system or waters of the United States. 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 stormwater drainage system or waters of the United States through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premises, 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 municipal separate storm sewer 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 compliance with the provisions of this Section 28.10. These BMPs shall be part of a SWPPP as necessary for compliance with requirements of the NPDES permit.

All wastes generated as a result of site development activity shall be properly disposed of and appropriate measures shall be required to prevent wastes from being carried off-site by either wind or water. Adequate receptacles shall be provided for the disposition of all construction material debris generated during the development process. The development site shall be kept free of all construction material debris such as discarded building materials, concrete truck washout, chemicals, litter and sanitary waste. No construction material debris shall be dumped, deposited, dropped, thrown, discarded or left upon any development site, channel, United States waters or isolated wetland.

28.11 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.

28.12 NOTIFICATION OF SPILLS

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or any person responsible for emergency response for a facility or operation, has information regarding any known or suspected release of materials which are resulting or may result in illegal discharges or in pollutants entering stormwater, the stormwater drainage system or waters of the United States, 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, by phone or by 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 within three business days of the phone call or personal 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.

28.13 NOTICE OF VIOLATION

Whenever the Village finds that a person has violated a prohibition or failed to meet a requirement of this Chapter, the authorized enforcement agency may order compliance by written notice of violation to the responsible person.

The notice of violation shall contain:

1. The name and address of the alleged violator;
2. The address, when available, or a description of the building, structure or land upon which the violation is occurring, or has occurred;
3. A statement specifying the nature of the violation;
4. A description of the remedial measures necessary to restore compliance with this Chapter and a time schedule for the completion of such remedial action;
5. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
6. A statement that the determination of violation may be appealed to the Village by filing a written notice of appeal within 15 days of service of the violation; and
7. A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and such expense shall be charged to the violator.

Such notice may require, without limitation:

1. The performance of monitoring, analyses and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices or operations shall cease and desist;
4. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
5. Payment of a fine to cover administrative and remediation costs; and
6. The implementation of source control or treatment BMPs.

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 may be performed by the authorized enforcement agency and the expense shall be charged to the violator.

28.14 APPEAL OF NOTICE OF VIOLATION

Any person receiving a notice of violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within 15 days from the date of the notice of violation. Hearing on the appeal before a hearing officer of the Village, or other designated administrative body,

shall take place within 30 days from the date of receipt of the notice of appeal. The decision of the designated hearing officer shall be final.

28.15 ENFORCEMENT

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 30 days of the decision of the designated hearing officer, then the authorized enforcement agency reserves the right to enter upon the subject private property and 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 authorized enforcement agency or designee to enter upon the premises for the purposes set forth above.

The authorized enforcement agency may extend the period for corrective action upon a showing of good cause for extension of the corrective action period.

28.16 COST OF ABATING THE VIOLATION

Within 30 days after abatement of the violation by the authorized enforcement agency, the owner of the property will be notified of the cost of abatement, including, but not limited to administrative, court, attorney and engineering costs. The property owner may file a written protest objecting to the amount of the assessment within 15 days. If the amount due is not paid within a timely manner as determined by the decision of the designated management agency 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.

Any person violating any of the provisions of this Section 28.16 shall become liable to the Village by reason of such violation. The liability shall be paid in not more than 12 equal monthly payments. Interest at the rate of prime plus 2 percent per annum shall be assessed on the balance beginning on the 1st day following discovery of the violation.

28.17 INJUNCTIVE RELIEF

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

28.18 COMPENSATORY ACTION

In lieu of enforcement proceedings, penalties and remedies authorized by this Chapter, the authorized enforcement agency may impose upon a violator alternative compensatory actions including, but not limited to, storm drain stenciling, attendance at compliance workshops and cleanup activities.

28.19 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 Chapter 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.

28.20 CRIMINAL PROSECUTION

Any person that has violated or continues to violate this Chapter shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of not less than \$50.00 and not more than \$500.00 per violation per day. Each violation and each day upon which an individual violation occurs shall constitute a separate offense.

28.21 REMEDIES NOT EXCLUSIVE

The remedies listed in this Chapter 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 authorized enforcement agency may recover all attorney's fees, court costs and other expenses associated with enforcement of this Chapter, including sampling and monitoring expenses.