

Chapter 23 – Municipal Separate Storm Sewer System

23.01 Purpose and Interpretation

The purpose of this Chapter is to provide for the health, safety, and general welfare of the citizens of the City of Troy through the regulation of non-storm water discharges to the storm 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 Municipal Separate Storm Sewer System (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this Chapter are:

- (a) To regulate the contribution of pollutants to the MS4 by storm water discharges by any user.
- (b) To prohibit illicit connections and discharges to the MS4.
- (c) To establish legal authority to carry out all inspection, observations, and monitoring procedures necessary to ensure compliance with this Chapter.

23.02 Definitions

For the purpose of the provisions of this Chapter, the following words and phrases shall be construed to have the meanings herein set forth, unless it is apparent from the context that a different meaning is intended.

Authorized Enforcement Agency. The City of Troy, through its Ordinances, and/or through its City Manager, shall designate authorized officials to enforce this Chapter, which shall specifically include the building official, all inspectors and code enforcement officials and any other appropriate individual. Where applicable the term may also mean the U.S. Environmental Protection Agency (EPA) Administrator or his/her designees, and/or the Director of the Michigan Department of Environment, Great Lakes & Energy, or any successor agency.

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 to storm water, receiving waters, or storm water 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. These include construction projects resulting in land disturbance of five acres or more requiring an issued permit and small construction activities impacting one to five acres of land deemed to operate under a national permit. Such activities include, but are not limited to: clearing and grubbing, grading, excavating, and demolition.

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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-storm water discharge to the storm drain system, except as exempted in section 23.03.04 of this Chapter.

Illicit Connections. An illicit connection means either of the following:

- (a) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which 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 the authorized enforcement agency; or
- (b) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the authorized enforcement agency.

Industrial Activity. Activities subject to NPDES industrial permits as defined in 40 CFR § 122.26(b)(14).

MS4 – A Municipal Separate Storm Sewer System.

National Pollutant Discharge Elimination System (NPDES) Storm water Discharge Permit. A permit issued by the EPA (or by the State of Michigan 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-storm water 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 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; hazardous substances and wastes; sewage,

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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 parking areas.

Storm drainage system. Publicly-owned or privately-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.

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

Storm Water 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 storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

23.03 General Provisions

23.03.01 Applicability.

This Chapter shall apply to all water entering the storm drain system generated on any developed or undeveloped land unless explicitly exempted by the authorized enforcement agency.

23.03.02 Responsibility for Administration.

The designees identified in the Troy Ordinances and any City Manager's designee(s) 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 City Manager to persons or entities acting in the beneficial interest of or in the employ of the agency.

23.03.03 Minimum Standards.

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

23.03.04 Prohibition of Illegal Discharges.

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No person shall discharge or cause to be discharged into the storm drain system 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 storm water.

The following discharges or flows are exempt from the prohibitions established by this Chapter, as long as they are not a significant source of pollutants and/or a significant contributor to violations of federal and state water quality standards:

- (a) Water line flushing or discharges from other potable water sources, landscape irrigation or lawn watering runoff, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active ground water dewatering systems), crawl space pumps, air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated, typically less than one (1) PPM chlorine) from single, two, or three family residences, 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, as long as there is a verbal notification to the authorized enforcement agency prior to the time of the test and compliance with state and federal environmental quality procedures.
- (d) Any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, 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.

23.03.05 Prohibition of illicit connections.

- (a) The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.
- (b) 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.
- (c) A person is considered to be in violation of this Chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

23.03.06 Right of Entry for Inspection.

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Authorized enforcement agency representatives shall be permitted to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing of suspected non-storm water discharges in accordance with the provisions of this Chapter. Refusal of reasonable access to the authorized representatives of the Enforcement Agency to any part of the premises is a violation of this Chapter.

23.03.07 Suspension or Termination of MS4 Access.

- (a) Suspension Due to Illicit Discharges in Emergency Situations. The authorized enforcement agency may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the State or 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 State or United States, or to minimize danger to persons.
- (b) Termination of Access Due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this Chapter may have their MS4 access suspended or terminated by an order of the 52-4 Judicial District Court if such suspension or termination would abate or reduce an illicit discharge. Additionally, the enforcing agency may suspend the person's access to the MS4 by sending written notification to a violator, which shall detail the violation, notify the alleged violator and property owner if the property owner is not the alleged violator of the suspension and proposed termination of its MS4 access. Within ten days after such a notice is sent, the violator may submit a written appeal of the suspension to the Troy City Clerk. If no appeal is timely received, then the enforcing agency shall immediately terminate the violating person's access to the MS4. If a timely appeal is received, then the City Clerk shall submit the written appeal and any supporting documentation from the appellant or the enforcing agency representatives to the Troy City Manager for review and decision. Within 30 days of the receipt of a timely written appeal, the City Manager shall send a written determination to the appellant, determining whether or not the person discharged to the MS4 in violation of this Chapter, and if so, whether or not the suspension should be continued, and/or the person's access to the MS4 should be terminated. The City Manager's decision is final, and appealable only if allowed under Michigan law.

23.03.08 Industrial or Construction Activity Discharges.

Any person subject to an industrial or construction activity NPDES storm water 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 authorized enforcement agency prior to the allowing of discharges to the MS4.

23.03.09 Monitoring of Discharges.

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

- (a) The authorized enforcement agency shall be permitted to enter and inspect facilities 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.
- (b) Facility operators shall allow the authorized enforcement agency ready access to all parts of the premises for the purposes of inspection, sampling, observation, or examination and also copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
- (c) The authorized enforcement agency shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge. Any such equipment shall not be tampered with, removed, or interfered with so as to adversely affect its intended function of monitoring and/or sampling.
- (d) 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 storm water 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 authorized enforcement agency and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (f) Unreasonable delays in allowing the authorized enforcement agency access to a permitted facility are a violation of a storm water discharge permit and of this Chapter. A person who is the operator of a facility with a NPDES permit to discharge storm water 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 Chapter.
- (g) If the authorized enforcement agency has been refused access to any part of the premises from which storm water is discharged, and he/she 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

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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, and/or pursue injunctive relief.

23.03.10 Requirement to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices.

The authorized enforcement agency may adopt requirements identifying best management practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the State of Michigan or 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 storm drain system or water courses 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 storm sewer system. Compliance with all terms and conditions of a valid NPDES 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 storm water pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

23.03.11 Water course Protection.

Every person owning property through which a water course 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. However, publicly or privately owned drains that are not owned by the property owner are the responsibility of the drain owner. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a water course, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

23.03.12 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 storm water, the storm drain system, or water of the State of Michigan or 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 and designated enforcement agency representative(s) in person or by phone or

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facsimile or email and/or other electronic or digital means as may be available or provided by the authorized enforcement agency no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the authorized and designated enforcement agency representative within three (3) 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 (3) years.

23.04 Penalties and Enforcement

23.04.01 Enforcement, Notice of Violation.

a. Notice of Violation.

Whenever the authorized enforcement agency finds that a person has violated a prohibition or failed to meet a requirement of this Chapter, the authorized enforcement agency may issue a written violation notice to the responsible person and the owner of the property if the responsible person is not the owner. Such notice may require without limitation:

- (i) The performance of monitoring, analyses, and reporting;
- (ii) The elimination of illicit connections or discharges;
- (iii) That violating discharges, practices, or operations shall cease and desist;
- (iv) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (v) The payment of a fine to cover administrative and remediation costs; and
- (vi) The implementation of source control or treatment BMPs.

b. Abatement of a Violation.

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 enforcing agency may issue a municipal civil infraction citation and may seek an order from any court of competent jurisdiction requiring the remediation or restoration to be completed within an established deadline, and authorizing the enforcing agency or a contractor to complete the work at the violator's expense if not timely completed.

23.04.02 Enforcement Measures.

It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the enforcement agency or designated contractor to enter upon the premises for the purposes set forth above.

23.04.03 Cost of Abatement of the Violation.

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If the enforcing agency or its contractor are required to restore or remediate the property or otherwise abate a violation of this Chapter, as set forth above, then the enforcing agency will send a written invoice detailing the enforcing agency's costs of the necessary abatement to the property owner within fifteen (15) days after abatement of the violation. The costs may include administrative costs. If the amount due is not paid timely, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

23.04.04 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.

23.04.05 Compensatory Action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this Chapter, the authorized enforcement agency may allow a violator to perform alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc. The decision to seek alternative compensatory actions does not waive the City or authorized enforcement agency's right to seek legal enforcement from a court of law.

23.04.06 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 deemed a threat to public health, safety, and welfare, and is declared a nuisance, public nuisance and nuisance per se 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.

23.04.07 Violations.

- (a) Any person, firm or corporation determined to have been in violation of the provisions of this Chapter shall be responsible for a municipal civil infraction and subject to the provisions of this Code.
- (b) The City, in addition to other remedies, may authorize any appropriate legal action or proceeding to prevent, abate or restrain the violation.
- (c) Each day's continuance of a violation shall be deemed a separate and distinct offense. Expenses in connection with such action shall be assessed as damages against the violation.

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23.04.08 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.

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