

## CHAPTER 31 ILLICIT STORM WATER DISCHARGE

**Section 31.1 Statutory Authority and Title.** This Chapter is adopted in accordance with the Township Ordinance Act, being MCL 41.181, *et seq.*, as amended, being MCL 280.1, *et seq.*; the Land Division Act, as amended, being MCL 560.1, *et seq.*; the Revenue Bond Act, as amended, being MCL 141.101, *et seq.*; the Natural Resources and Environmental Protection Act, as amended, being MCL 324.101, *et seq.*; Section 401(p) of the Federal Water Pollution Control Act (also known as the Clean Water Act), as amended, being 33 USC 1342(p) and 40 CFR Parts 9, 122, 123, and 124; and other applicable state and federal laws.

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

**Section 31.2 Findings.** The Township finds that:

- A. Illicit discharges contain pollutants that will significantly degrade the water bodies and water resources of the Township, thus threatening the health, safety, and welfare of the citizenry.
- B. Illicit discharges enter the storm water drainage system through either direct connections (e.g., wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (e.g., infiltration into the storm drain system or spills connected by drain inlets).
- C. Establishing the measures for controlling illicit discharges and connections contained in this Chapter and implementing the same will address many of the deleterious effects of illicit discharges.
- D. 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.

**Section 31.3 Purpose.** It is the purpose of this Chapter to establish minimum storm water management requirements and controls to accomplish, among others, the following objectives:

- A. To regulate the contribution of pollutants to the storm water drainage system and water bodies by storm water discharges by any user.
- B. To prohibit illicit discharges and connections to the storm water drainage system and water bodies.
- C. To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this Chapter.
- D. To provide appropriate remedies for failure to comply with this Chapter.

**Section 31.4 Applicability and General Provisions.** This Chapter shall apply to all discharges entering the storm water drainage system and water bodies generated on any developed and undeveloped lands.

**Section 31.5 Definitions.** For the purpose of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context in which they are used specifically indicates otherwise:

- A. **Authorized Enforcement Agency** means the Township of Courtland and/or any persons or agencies designated to act as the Authorized Enforcement Agency by the Township.
- B. **Best Management Practices (BMPs)** means structural devices or nonstructural practices that are designed to prevent pollutants from entering storm water flows, to direct the flow of storm water, or to treat polluted storm water flows. BMPs may include, but shall not be limited to, those described in the Michigan Department of Environmental Quality Guidebook of BMPs for Michigan watersheds. Equivalent practices and design criteria that accomplish the purposes of this Chapter (including, but not limited to, minimizing storm water runoff and preventing the discharge of pollutants into storm water) shall be as determined by the Township Engineer.
- C. **Clean Water Act** means the Federal Water Pollution Control Act, 33 USC Section 1251 *et seq.*, as amended, and the applicable regulations promulgated thereunder.
- D. **Discharge** means the introduction (intentionally or unintentionally, and directly or indirectly) of any liquid, substance, pollutant, or other material into a storm water drainage system or water body.
- E. **Discharger** means any person who directly or indirectly discharges storm water from any premises. Discharger also includes any employee, officer, director, partner, contractor, or other person who participates in, or is legally or factually responsible for, any act or omission that is, or results in, a violation of this Chapter.
- F. **Drain** means any and all conduits, facilities, measures, areas, and structures that serve to convey, catch, hold, filter, store, and/or receive storm water or groundwater, either on a temporary or permanent basis.
- G. **Drainage** means the collection, conveyance, or discharge of groundwater and/or surface water.
- H. **Drainageway** means a drain, water body or floodplain.
- I. **EPA** means the U.S. Environmental Protection Agency (EPA).
- J. **Floodplain** means the area, usually low lands, adjoining the channel of a river, stream, or watercourse or lake, or other body of standing water that has been or may be covered by floodwater.

- K. **Hazardous Materials** means any solid, liquid, semisolid, or gaseous substance or material that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed.
- L. **Illicit Connection** means any method, means, or conduit for conveying an illicit discharge into a water body or a storm water drainage system.
- M. **Illicit Discharge** means any discharge to a water body or a storm water drainage system that does not consist entirely of storm water, that is not authorized by the terms of an NPDES permit, or that is not an authorized discharge as defined by this Chapter.
- N. **MDEQ** means the Michigan Department of Environmental Quality.
- O. **National Pollutant Discharge Elimination System (NPDES) Permit** means a permit issued by the EPA or a state under authority delegated pursuant to the Clean Water Act that authorizes the discharge of pollutants to waters of the United States.
- P. **Non-Storm Water Discharge** means any discharge to the storm water drainage system or a water body that is not composed entirely of storm water.
- Q. **Person** means an individual, firm, partnership, association, public or private corporation, public agency, instrumentality, or any other legal entity.
- R. **Pollutant** includes, but is not limited to, the following: any dredged spoil, solid waste, vehicle fluids, yard wastes, animal wastes, agricultural waste products, sediment, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological wastes, radioactive materials, hazardous materials, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, commercial, and agricultural waste, or any other contaminant or other substance defined as a pollutant under the Clean Water Act. Pollutant also includes properties or characteristics of water, including, but not limited to, pH, heat, TSS, turbidity, color, BOD, COD, toxicity, and odor.
- S. **Premises** means any building, structure, lot, parcel of land, or portion of land, or property, whether improved or unimproved, including adjacent sidewalks and parking strips.
- T. **Property Owner** means any person having legal or equitable title to premises or any person having or exercising care, custody, or control over any premises.
- U. **State of Michigan Water Quality Standards** means all applicable state rules, regulations, and laws pertaining to water quality, including the provisions of Section 3106 of Part 31 of 1994 PA 451, as amended.

- V. **Storm Water Drainage System** means storm sewers, conduits, curbs, gutters, catch basins, drains, ditches, pumping devices, parking lots, roads, or other man-made channels that are designed or used, singly or together in combination with one another, for collecting or conveying storm water.
- W. **Storm Water Pollution Prevention Plan** 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 storm water, a storm water drainage system, and/or a water body to the maximum extent practicable.
- X. **Storm Water Runoff (or Storm Water)** means the runoff and drainage of precipitation resulting from rainfall, snowmelt, or other natural event or process.
- Y. **Toxic Material** means any pollutant or combination of pollutants that is or can potentially be harmful to the public health or the environment, including, without limitation, those listed in 40 CFR 401.15 as toxic under the provisions of the Clean Water Act, or listed in the Critical Materials Register promulgated by the Michigan Department of Environmental Quality, or as otherwise provided by local, state, or federal laws, rules, or regulations.
- Z. **Wastewater** means any water or other liquid, other than uncontaminated storm water, discharged from a premises. The term includes any water that has in any way been used and degraded or physically or chemically altered.
- AA. **Water Body** means a river, lake, stream, creek, or other watercourse or wetlands.

## PROHIBITIONS AND AUTHORIZATIONS

### Section 31.6 Prohibited Discharges.

- A. It is unlawful for any person to discharge, or cause to be discharged, to a storm water drainage system or water body any substance or material, 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 or an authorized discharge. This prohibition includes the commencement, conducting, or continuance of any illicit discharge by any person to a storm water drainage system or water body.
- B. Any person discharging storm water shall effectively prevent pollutants from being discharged with the storm water, except in accordance with BMPs.
- C. The Authorized Enforcement Agency is authorized to require dischargers to implement pollution prevention measures, using Storm Water Pollution Prevention Plans and BMPs, as determined necessary by the Authorized Enforcement Agency to prevent or reduce the discharge of pollutants to a storm water drainage system or water body.

- D. The discharge prohibitions of this section shall not apply to any non-storm water discharge authorized under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, provided 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 water drainage system.

**Section 31.7 Prohibited Illicit Connections.**

- A. It is unlawful for any person to construct, use, maintain (or to allow the construction, use, maintenance or continued existence of) an illicit connection.
- B. This prohibition expressly includes, without limitation, illicit connections made prior to the effective date of this Chapter, and regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

**Section 31.8 Authorized Discharges.** The following non-storm water discharges are permissible, but only if they do not result in a violation of State of Michigan water quality standards and provided that they are undertaken in compliance with any applicable or required BMPs:

- A. Water supply line flushing.
- B. Landscape irrigation runoff.
- C. Diverted stream flows.
- D. Rising groundwater.
- E. Uncontaminated groundwater infiltration to storm drains.
- F. Uncontaminated pumped groundwater.
- G. Discharges from potable water sources.
- H. Foundation drains.
- I. Air conditioning condensate.
- J. Irrigation water.
- K. Springs.
- L. Water from crawl space pumps.
- M. Footing drains and basement sump pumps.
- N. Lawn watering runoff.

- O. Waters from non-commercial car washing.
- P. Flows from riparian habitats and wetlands.
- Q. Residential swimming pool water and other dechlorinated swimming pool water, provided that any filter backwash water that is present is treated.
- R. Residual street wash water.
- S. Discharges or flows from emergency firefighting activities.
- T. Discharges specifically authorized in writing by the Authorized Enforcement Agency as being necessary to protect public health, welfare, and safety or the environment.

**Section 31.9 Storage of Hazardous or Toxic Materials in Drainageway.** Except as permitted by law, it shall be unlawful for any person to store or stockpile, within a drainageway, any hazardous or toxic materials, unless adequate protection and/or containment has been provided so as to prevent any such materials from entering a storm water drainage system or water body.

### **INSPECTION, MONITORING, REPORTING, AND RECORDKEEPING INSPECTION AND SAMPLING**

**Section 31.10 Inspection and Sampling.** The Authorized Enforcement Agency may inspect and/or obtain samples from any discharger's premises as necessary to determine compliance with the requirements of this Chapter. Upon request, the discharger shall allow properly identified representatives of the Authorized Enforcement Agency to enter the premises of the discharger at all hours necessary for the purposes of such inspection or investigation, including, but not limited to, smoke/dye testing, televising pipes, sampling, and excavation. The Authorized Enforcement Agency shall provide the discharger reasonable advance notice of the need for such access, if possible and consistent with protection of public health and safety and the environment. The properly identified representatives may place on the discharger's premises the equipment or devices used for such sampling or inspection. Unreasonable delays in allowing access to a premises is a violation of this Chapter.

**Section 31.11 Storm Water Monitoring Facilities.** If directed in writing to do so by the Authorized Enforcement Agency, a discharger of storm water runoff from any premises used for commercial or industrial purposes shall provide and operate equipment or Devices for the monitoring of storm water runoff to provide for inspection, sampling, and flow measurement of each discharge to a water body or a storm water drainage system, as specified by the Authorized Enforcement Agency. The Authorized Enforcement Agency may require a discharger to provide and operate such equipment and devices if it is necessary or appropriate for the inspection, sampling, and flow measurement of discharges in order to determine whether adverse effects from, or as a result of, such discharges may occur. All such equipment and devices for the inspection, sampling, and flow measurement of discharges shall be installed and maintained at the discharger's expense in accordance with applicable laws, ordinances, and regulations.

**Section 31.12 Accidental Discharges.** Any discharger who accidentally discharges into a storm water drainage system or a water body any substance other than storm water or an authorized discharge shall immediately notify the Authorized Enforcement Agency of the discharge. If the notification is given orally, a written report concerning the discharge shall be filed with the Authorized Enforcement Agency within 5 days. The written report shall specify all of the following:

- A. The composition of the discharge and the cause thereof.
- B. The exact date, time, and estimated volume of the discharge.
- C. All measures taken to clean up the discharge, all measures taken or proposed to be taken to mitigate any known or potential adverse impacts of the discharge, and all measures proposed to be taken to reduce and prevent any recurrences.
- D. The names and telephone numbers of the individual making the report, and (if different) the individual who may be contacted for additional information regarding the discharge.

**Section 31.13 Recordkeeping Requirement.** Any person that violates any requirement of this Chapter or that is subject to monitoring under this Chapter shall retain and preserve for no less than three years any and all books, drawings, plans, prints, documents, memoranda, reports, correspondence, and records, including records on magnetic or electronic media, and any and all summaries of such records relating to monitoring, sampling, and chemical analysis of any discharge or storm water runoff from any premises connected with the violation or subject to monitoring.

## ENFORCEMENT

### **Section 31.14 Sanctions for Violation.**

- A. **Violation; Municipal Civil Infraction.** Except as provided by Section 4.01 (6), and notwithstanding any other provision of the Township's laws, ordinances, and regulations to the contrary, a person who violates any provision of this Chapter (including, without limitation, any notice, order, permit, decision or determination promulgated, issued or made by the Authorized Enforcement Agency under this Chapter) is responsible for a municipal civil infraction, subject to a penalty as provided in this Ordinance Code.
- B. Any person who (1) at the time of a violation knew or should have known that a pollutant or substance was discharged contrary to any provision of this Chapter, or contrary to any notice, order, permit, decision or determination promulgated, issued or made by the Authorized Enforcement Agency under this Chapter; or (2) intentionally makes a false statement, representation, or certification in an application for, or form pertaining to a permit, or in a notice, report, or record required by this Chapter, or in any other correspondence or communication, written or oral, with the Authorized Enforcement Agency regarding matters regulated by this Chapter; or (3) intentionally falsifies, tampers with, or renders inaccurate any

sampling or monitoring device or record required to be maintained by this Chapter; or (4) commits any other act that is punishable under state law by imprisonment for more than 90 days; shall, upon conviction, be guilty of a misdemeanor punishable by a fine of \$500 per violation, per day, or imprisonment for up to 90 days, or both in the discretion of the court.

- C. Any person who aids or abets another person in a violation of this Chapter shall be subject to the sanctions provided in this section.

**Section 31.15 Failure to Comply; Completion.** The Township is authorized, after giving reasonable notice and opportunity for compliance, to correct any violation of this Chapter or damage or impairment to the storm water drainage system caused by a discharge and to bill the person causing the violation or discharge for the costs of the work to be reimbursed. The costs reimbursable under this section shall be in addition to fees, amounts or other costs and expenses required to be paid to the Township under other sections of this Chapter.

**Section 31.16 Emergency Measures.** If emergency measures are necessary to respond to a nuisance; to protect public safety, health, and welfare; and/or to prevent loss of life, injury, or damage to property, the Authorized Enforcement Agency is authorized to carry out or arrange for all such emergency measures. Property owners shall be responsible for the cost of such measures made necessary as a result of a violation of this Chapter, and shall promptly reimburse the Township for all of such costs.

**Section 31.17 Cost Recovery for Damage to Storm Water Drainage System.** Any person who discharges to a storm water drainage system or a water body, including, but not limited to, any person who causes or creates a discharge that violates any provision of this Chapter, produces a deposit or obstruction or otherwise damages or impairs a storm water drainage system, or causes or contributes to a violation of any federal, state, or local law governing the Township, shall be liable to and shall fully reimburse the Township for all expenses, costs, losses or damages (direct or indirect) payable or incurred by the Township as a result of any such discharge, deposit, obstruction, damage, impairment, violation, exceedence or noncompliance. The costs that must be reimbursed to the Township shall include, but shall not be limited to, all of the following:

- A. All costs incurred by the Township in responding to the violation or discharge, including, expenses for any cleaning, repair or replacement work, and the costs of sampling, monitoring, and treatment, as a result of the discharge, violation, exceedence or noncompliance.
- B. All costs to the Township of monitoring, surveillance, and enforcement in connection with investigating, verifying, and prosecuting any discharge, violation, exceedence, or noncompliance.
- C. The full amount of any fines, assessments, penalties, and claims, including natural resource damages, levied against the Township, or any Township representative, by any governmental agency or third party as a result of a violation of applicable laws or regulations that is caused by or contributed to by any discharge, violation, exceedence, or noncompliance.



- D. The full value of any Township staff time (including any required overtime), consultant and engineering fees, and actual attorney fees and defense costs (including the Township legal counsel and any special legal counsel), associated with responding to, investigating, verifying, and prosecuting any discharge, violation, exceedence or noncompliance, or otherwise enforcing the requirements of this Chapter.

**Section 31.18 Collection of Costs; Lien.**

- A. Costs incurred by the Township pursuant to Sections this Chapter shall constitute a lien on the premises, which shall be enforceable in accordance with Act No. 94 of the Public Acts of 1933, as amended from time to time, or as otherwise authorized by law. Any such charges that are delinquent for 6 months or more may be certified annually to the Township Treasurer, who shall enter the lien on the next tax roll against the premises, the costs shall be collected, and the lien shall be enforced in the same manner as provided for in the collection of taxes assessed upon the roll and the enforcement of a lien for taxes. In addition to any other lawful enforcement methods, the Township shall have all remedies authorized by Act No. 94 of the Public Acts of 1933, as amended, and by other applicable laws.
- B. The failure by any person to pay any amounts required to be reimbursed to the Township as provided by this Chapter shall constitute an additional violation of this Chapter.

**Section 31.19 Suspension of Access to the Storm Water Drainage System.**

- A. The Township may, without prior notice, suspend access to the storm water drainage system to any person or premises 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 storm water drainage system or a water body. If the person fails to comply with a suspension order issued in an emergency, the Township may take such steps as deemed necessary to prevent or minimize damage to the storm water drainage system or the environment, or to minimize danger to persons, and bill the person for the costs to the Township in taking such steps.
- B. Suspension due to the detection of illicit discharge. Any person discharging to the storm water drainage system in violation of this Chapter may have their access to the system terminated, if the Authorized Enforcement Agency determines that such termination would abate or reduce an illicit discharge. The Authorized Enforcement Agency will notify a violator of the proposed termination of its access. It shall be unlawful for any person to reinstate access of the storm water drainage system to a premises terminated pursuant to this section without the prior written approval of the Authorized Enforcement Agency.

**Section 31.20 Appeals.** Any person to whom any provision of this Chapter has been applied may appeal in writing to (specify local entity, not later than 30 days after the action or decision being

appealed. Such appeal shall identify the matter being appealed, and the basis for the appeal. The (entity) shall consider the appeal and make a decision whereby it affirms, rejects, or modifies the action being appealed. In considering any such appeal, the (entity) may consider the recommendations of the Township and the comments of other persons having knowledge or expertise regarding the matter. In considering any such appeal, the (entity) may grant a temporary variance from the terms of this Chapter so as to provide relief, in whole or in part, from the action being appealed, but only upon finding that the following requirements are satisfied:

- A. The application of the Chapter provisions being appealed will present or cause unnecessary hardship for the person appealing; provided, however, that unnecessary hardship shall not include the need for a property owner to incur additional reasonable expenses in order to comply with the Chapter; and
- B. The granting of the relief requested will not prevent accomplishment of the goals and purposes of this Chapter, nor result in less effective management of storm water runoff.

**Section 31.21 Judicial Relief.** With the approval of the Township, the Authorized Enforcement Agency may institute legal proceedings in a court of competent jurisdiction to seek all appropriate relief for violations of this Chapter or of any permit, order, notice or agreement issued or entered into under this Chapter. The action may seek temporary or permanent injunctive relief, damages, penalties, costs, and any other relief, at law or equity that a court may order. The Authorized Enforcement Agency may also seek collection of fines, penalties and any other amounts due to the Township that a person has not paid.

**Section 31.22 Cumulative Remedies.** The imposition of a single penalty, fine, order, damage, or surcharge upon any person for a violation of this Chapter, or of any permit, order, notice or agreement issued, or entered into under this Chapter, shall not preclude the imposition by the Township, the Authorized Enforcement Agency, or a court of competent jurisdiction of a combination of any or all of those sanctions and remedies or additional sanctions and remedies with respect to the same violation, consistent with applicable limitations on penalty amounts under state or federal laws or regulations. A criminal citation and prosecution of a criminal action against a person shall not be dependent upon and need not be held in abeyance during any civil, judicial, or administrative proceeding, conference, or hearing regarding the person.

## **PERFORMANCE AND DESIGN STANDARDS**

**Section 31.23 Responsibility to Implement BMPs.** The owner or operator of a premises used for commercial or industrial purposes shall provide, at the owner or operator's own expense, reasonable protection from an accidental discharge of prohibited materials or other wastes into the storm water drainage system or water body through the use of structural and nonstructural BMPs. Further, any person responsible for a premises that is, or may be, the source of an illicit discharge may be required to implement, at the person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the storm water drainage system or water body. 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.