

**ORDINANCE INTRODUCED BY ENVIRONMENTAL SERVICES DIVISION  
ADMINISTRATOR DAN ROMANS INTRODUCING CHAPTER 114, ARTICLE VI,  
ILLCIT DISCHARGE AND ILLICIT CONNECTION**

The Common Council of the City of Superior, Wisconsin, does ordain as follows:  
Chapter 114, Article VI, Illicit Discharge and Illicit Connection, of the City Code of Ordinances of the City of Superior, Wisconsin, is hereby introduced to read as follows:

**CHAPTER 114, ARTICLE VI ILLICIT DISCHARGE AND ILLICIT CONNECTION \***

**\*Cross references:** Buildings, Construction and Housing, ch 34.

**Sec. 114-201. Intent.**

The intent of this Article is to provide for the health, safety and general welfare of the citizens of the City of Superior through the regulation of non-stormwater discharges to the stormwater conveyance system to the maximum extent practicable as required by federal and state law.

**Sec. 114-202. Findings of Fact.**

The Common Council finds that illicit discharges and illicit connections contribute significant pollutants to water resources and have a significant impact upon the health, safety and general welfare of the community. They have an adverse impact upon the water quality of receiving waters which diminishes the public enjoyment and use of natural resources.

Specifically, illicit discharges and connections:

- a) Can contain sanitary wastewater, septic system effluent, vehicle wash water, wash down from grease traps, motor oil, antifreeze, gasoline and fuel spills, among other pollutants.
- b) Can result from 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, spills, or "midnight dumping").
- c) Have the greatest potential to contain raw sewage from direct illicit discharges. Common sewage related direct discharges are broken sanitary sewer lines, cross-connections and straight pipe discharges.

**Sec. 114-203. Purpose.**

The purpose of this Article is to establish 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.

Specific objectives of this Article are:

- (a) To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.
- (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 Article.

- (d) To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.

**Sec. 114-204. Applicability.**

This Article shall apply to all water entering the stormwater conveyance system or waters of the state generated on any developed or undeveloped lands unless explicitly exempted by an authorized enforcement agency.

**Sec. 114-205. Definitions.**

*Best Management Practices (BMPs)* means structural or non-structural measures, practices, techniques or devices employed to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, stormwater conveyance systems, or waters of the state by avoiding or minimizing soil, sediment or other pollutants carried in stormwater. BMPs include schedules of activities; prohibitions of practices; general good house keeping practices; pollution prevention and educational practices; maintenance procedures; treatment practices; operating procedures and practices to control site runoff, spillage, leaks, sludge, water disposal, drainage from raw materials storage; and other management practices.

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

*Construction Activity* means activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one (1) acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating and demolition.

*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.

*Illicit Connections* means either:

- (a) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the stormwater conveyance system or waters of the state. This includes but is not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater and wash water to enter the stormwater conveyance system or waters of the state. It also includes any connections to the stormwater conveyance system or waters of the state 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
- (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 an authorized enforcement agency.

*Illicit Discharge* means any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Sec. 114-209 of this Article.

*Industrial Activity* means any activities subject to NPDES Industrial Permits as defined in 40 CFR, Sec. 114- 122.26 (b)(14).

*Maximum Extent Practicable* means a level of implementing Best Management

Practices to achieve a performance standard which 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 in ways to meet the performance standards and may vary based on the performance standard and site conditions.

*National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit* means a permit issued by EPA or WDNR 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* means any discharge to the stormwater conveyance system or waters of the state that is not composed entirely of stormwater.

*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.

*Pollutant* means 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, articles 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; dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste and noxious or offensive matter of any kind.

*Pollution* means human-made or human-induced alteration of the chemical, physical, biological or radiological integrity of water.

*Premises* means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

*Stormwater Conveyance System* means publicly-owned facilities by which 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.

*Stormwater* means runoff from precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.

*Stormwater Pollution Prevention Plan* means a document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters, to the maximum extent practicable.

*Wastewater* means water carrying Domestic Water and/or Non-domestic Waste.

#### **Sec. 114-206. Administration.**

The City of Superior Public Works Department shall administer, implement and enforce the provisions of this Article.

**Sec. 114-207. Severability.**

The provisions of this Article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Article.

**Sec. 114-208. Ultimate Responsibility.**

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

**Sec. 114-209. Discharge Prohibitions.**

(a) Prohibition of Illicit Discharges.

- (1) No person shall discharge or cause to be discharged into the municipal stormwater conveyance system or waters of the state 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 stormwater conveyance system or waters of the state is prohibited except as described as follows:
  - a. The following discharges are exempt from discharge prohibitions established by this Article:
    - . 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 wet-land flows, swimming pools (if dechlorinated - typically 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 agencies prior to the time of the test.
  - d. The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency,

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.

(b) Prohibition of Illicit Connections.

- (1) The construction, use, maintenance or continued existence of illicit connections to the stormwater conveyance 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 Article if the person connects a line conveying sewage to the stormwater conveyance system, or allows such a connection to continue.
- (4) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Department of Public Works.
- (5) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Department of Public Works requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Department of Public Works.

**Sec. 114-210. Suspension of Stormwater Conveyance System Access.**

(a) Suspension due to Illicit Discharges in Emergency Situations

- (1) The City of Superior Public Works Department may, without prior notice, suspend stormwater conveyance system 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 stormwater conveyance system or 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 stormwater conveyance system or Waters of the United States, or to minimize danger to persons.

(b) Suspension due to the Detection of Illicit Discharge

- (1) Any person discharging to the stormwater conveyance system in violation of this Article may have their stormwater conveyance system access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its stormwater conveyance system access.

The violator may petition the authorized enforcement agency for a reconsideration and hearing.

- (c) A person commits an offense if the person reinstates stormwater conveyance system access to premises terminated pursuant to this Sec. 114-120, without the prior approval of the authorized enforcement agency.

**Sec. 114-211. Industrial or Construction Activity Discharges.**

Any person subject to an industrial or construction activity NPDES 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 City of Superior Public Works Department prior to the allowing of discharges to the stormwater conveyance system.

**Sec. 114-212. Monitoring of Discharges**

(a) Applicability.

- (1) This Section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

(b) Access to Facilities.

- (1) The City of Superior Public Works Department shall be permitted to enter and inspect facilities subject to regulation under this Article as often as may be necessary to determine compliance with this Article. 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.
- (2) Facility operators shall allow the City of Superior Public Works Department 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 an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (3) The City of Superior Public Works Department 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 stormwater discharge.
- (4) The City of Superior Public Works Department 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.
- (5) 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 City of Superior Public Works Department and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (6) Unreasonable delays in allowing the City of Superior Public Works Department access to a permitted facility is a violation of a stormwater discharge permit and of this Article. A person who is the operator of a facility with a NPDES 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 Article.

- (7) If the City of Superior Public Works Department has been refused access to any part of the premises from which stormwater is discharged and is able to demonstrate probable cause to believe that there may be a violation of this Article, 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 Article 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.

**Sec. 114-213. Requirement to Prevent, Control and Reduce Stormwater Pollutants by the Use of Best Management Practices.**

The City of Superior Public Works Department will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain 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 conveyance system or waters of the state or watercourses 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 MS4. 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. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

**Sec. 114-214. 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.

**Sec. 114-215. 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 stormwater,

the storm drain 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 or by phone no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Superior Public Works Department within three 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 years.

#### **Sec. 114-216. Enforcement.**

##### **(a) Notice of Violation.**

- (1) Whenever the City of Superior Public Works Department finds that a person or entity has violated a prohibition or failed to meet a requirement of this Article, the authorized enforcement agency 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 stormwater pollution or contamination hazards and the restoration of any affected property; and
  - 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.

#### **Sec. 114-217. 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 fifteen (15) 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 fifteen (15) business days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

**Sec. 114-218. Enforcement Measures after Appeal**

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 fifteen (15) business days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject's 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 government agency or designated contractor to enter upon the premises for the purposes set forth above.

**Sec. 114-219. Cost of Abatement of the Violation**

Within fifteen (15) business 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 fifteen (15) business days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority 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.

**Sec. 114-220. Injunctive Relief**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. If a person has violated or continues to violate the provisions of this Article, 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.

**Sec. 114-221. Compensatory Action**

In lieu of enforcement proceedings, penalties and remedies authorized by this Article, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

**Sec. 114-222. 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 Article 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.

**Sec. 114-223. Prosecution**

Any person who violates any provision of this Article shall be subject to a penalty of up to \$1,000 dollars per violation per day.

**Sec. 114-224. Remedies Not Exclusive**

The remedies listed in this Article 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.

This ordinance shall take effect and be in force from and after its passage and publication, as provided by law.

Passed and adopted this xx day of xxx, 2009.

Approved this xx day of xx, 2009.

Attest:

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Mayor

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City Clerk