



Olmsted County Code of Ordinances

**Chapter 3800**

**OLMSTED COUNTY ILLICIT STORMWATER DISCHARGE  
ORDINANCE**

Olmsted County, MN

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## CHAPTER 3800 OLMSTED COUNTY ILLICIT STORMWATER DISCHARGE ORDINANCE

### 3801. Section I. Purpose/Intent.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Olmsted County 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 ordinance establishes methods for controlling the introduction of pollutants into the county 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 ordinance are:

1. To regulate the contribution of pollutants to the county separate storm sewer system (MS4) by stormwater discharges by any user
2. To prohibit Illicit Connections and Discharges to the county separate storm sewer system
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

### 3802. Section II. Definitions.

For the purposes of this ordinance, the following shall mean:

**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 stormwater, receiving waters, or stormwater 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 or the erosion control or runoff control plan requirements of Olmsted County Zoning Ordinance (OCZO) Section 10.20. NPDES Storm Water permits are required for construction projects resulting in land disturbance of 1 acre or more, or as otherwise required by the Minnesota Pollution Control Agency. Such activities include but are not limited to a land disturbing activity, clearing and grubbing, grading, excavating, and demolition.

**Director.** The director of the county agency designated to enforce this ordinance or his or her designees.

**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 discharge to the storm drainage system that is not storm water runoff (a "non-storm water discharge"), except as exempted in Section VI of this ordinance.

**Illicit Connections.** An illicit connection is defined as any of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drainage 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; or any connection to the storm 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, 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.

**Industrial Activity.** Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

**National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit.** means 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-Storm Water Discharge.** Any discharge to the storm drainage 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, or has charge, care or control of the property.

**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 as defined in state statute or other discarded or abandoned objects, munitions, accumulations including litter, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and

fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens and sewage sludge; dissolved and particulate matter including soil sediment; animal wastes; wastes and residues that result from constructing a building or structure or grading work; industrial and agricultural waste; and noxious or offensive matter of any kind.

**Precipitation** - A deposit on the earth of hail, mist, rain, sleet, or snow; *a/so*, the quantity of water deposited.

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

**Storm Drainage System.** Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal or county streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins and other stormwater facilities, 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.

**Stormwater 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 Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

**Urbanized Area.** The portions of the City of Rochester and the Townships of Cascade, Haverhill, Marion, Oronoco and Rochester which have been identified by the U.S. Census Bureau as part of the Rochester, Minnesota Urbanized Area [see map].

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

**Watercourse.** Any channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods water may leave the confining beds and banks but under low and normal flows water is confined within the channel. A watercourse may be perennial or intermittent and natural or artificially constructed. A watercourse includes all public waters.

**Waters of the United States.** As defined in 33 U.S.C. §1251 et seq. (1972) and as amended from time to time.

### **3803. Section III. Applicability.**

This ordinance shall apply to all water entering the storm drainage system generated on any developed and undeveloped lands within the urbanized area of Olmsted County unless explicitly exempted by an authorized enforcement agency.

### **3804. Section IV. Responsibility for Administration.**

The Olmsted County Public Works, Environmental Resources, and Planning Departments shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Director of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

### **3805. Section V. Severability.**

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance 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 Ordinance.

### **3806. Section VI. Discharge Prohibitions.**

#### **Prohibition of Illegal Discharges.**

No person shall discharge or cause to be discharged into the County storm drainage 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 commencement, conduct or continuance of any illegal discharge to the storm drainage system is prohibited except as described as follows:

1. The following discharges are exempt from discharge prohibitions established by this ordinance: flushing of municipal water lines or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated to a level of less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.

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 written notification to the authorized enforcement agency at least three days prior to the time of the test.
4. 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 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. Proof of compliance with said permit may be required in a form acceptable to the Olmsted County Public Works Department prior to the allowance of discharges to the MS4

### **Prohibition of Illicit Connections.**

1. The construction, use, maintenance or continued existence of illicit connections to the storm drainage system is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. A person is considered to be in violation of this ordinance if the person connects a pipe from a premises that conveys sewage to the MS4, or allows such a connection to continue.

## **3807. Section VII. MS4 Access.**

### **A. General Permission**

Any parcel existing as of the effective date of this ordinance is presumed to have permission to discharge stormwater to the County MS4 system provided it is in compliance with any provisions of NPDES permits, grading permits and or(?) other development approvals in effect at the time of development, except as provided below.

### **B. Performance Standards**

The County may adopt standards applying to the water quality, rate of flow, and volume of discharge of stormwater to the MS4 system that apply retroactively to any parcel discharging stormwater to the system.



### **C. Suspension due to Illegal Discharges in Emergency Situations.**

The Olmsted County Public Works Department 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 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, or to minimize danger to persons. This may include, but is not limited to, installation of a storm sewer pipe plug to stop an actual or threatened discharge.

### **D. Suspension due to the Detection of Illegal Discharge.**

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. This may include, but is not limited to, installation of a storm sewer pipe plug to abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access in writing. The violator may petition the authorized enforcement agency in writing for a reconsideration and hearing within 5 business days following the termination of access to the MS4.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

## **3808. Section VIII. Monitoring of Discharges.**

### **A. Applicability.**

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

### **B. Access to Facilities.**

1. The Olmsted County Public Works Department shall be permitted to enter and inspect premises or facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force 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 Olmsted County 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 storm water, and the performance of any additional duties as defined by state and federal law.

3. The Olmsted County 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 storm water discharge.
4. The Olmsted County 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 request of the Olmsted County 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 Olmsted County Public Works Department access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a 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 ordinance.
7. If the Olmsted County Public Works Department has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

### **3809. Section IX. Requirements to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices.**

Olmsted County 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 storm water, the storm drainage system, or Waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, protection from accidental discharge

of prohibited materials or other wastes into the county storm drainage system or watercourses 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 illegal 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 County's separate 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 stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

### **3810. Section X. 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, , and other obstacles that would pollute, or contaminate, 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 MS4

### **3811. Section XI. Notification of Spills.**

1. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm 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.
2. Hazardous Materials Illegal Discharge: 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.
3. Non-Hazardous Illegal Discharge: In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person, by phone or e-mail no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed or emailed to the Olmsted County Public Works Department within three business days of the notice.
4. Records Retained: If the illegal discharge 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.

## **3812. Section XII. Enforcement.**

### **A. Notice of Violation.**

Whenever the Olmsted County Public Works Department finds that a person has violated a provision or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or illegal discharges;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
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 will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

## **3813. Section XIII.**

Enforcement Of Violations And Appeals. Except as otherwise provided by Minnesota law, the procedures which must be followed in the event a) an exception or variance to any provision of this ordinance is sought where no process for an exception or variance has been spelled out in this ordinance, b) a violation of any provision of this ordinance occurs, or c) an appeal of a civil notice of violation is sought shall be governed by the Olmsted County Administrative Enforcement and Appeals Procedure Ordinance set forth in Chapter 4000 of the Olmsted County Code of Ordinances.

## **3814. Section XIV. 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 30 days of the date a copy of the decision of the County Board pursuant to the County's Administrative Enforcement and Appeals Procedure Ordinance upholding the decision of the authorized enforcement

agency is mailed to the violator, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

### **3815. Section XV. Cost of Abatement of the Violation.**

Within 15 business days after abatement of the violation by Olmsted County, 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 10 business days. If the amount due is not paid within a timely manner as determined by the decision of the Olmsted County Public Works Department or by the expiration of the time in which to file an appeal pursuant to the County's Administrative Enforcement and Appeals Procedure Ordinance, 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 article shall become liable to the County by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of percent per annum shall be assessed on the balance beginning on the 30th day following completion of the work to abate the violation.

### **3816. Section XVI. Injunctive Relief and Violations Deemed A Public Nuisance.**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, in addition to the remedies set forth in the County's Administrative Enforcement and Appeals Procedure Ordinance, 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.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken. The authorized enforcement agency may also recover all attorney's fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

**3817. Section XVII. Criminal Prosecution.**

Any person violating the provisions of this ordinance for which no civil notice of violation has been issued shall be guilty of a misdemeanor criminal offense punishable by a fine of up to \$1000 or a jail sentence of up to 90 days or both. Each day that violation is committed or permitted to exist shall constitute a separate offense. The authorized enforcement agency may recover as restitution all other expenses associated with the enforcement of this ordinance, including sampling and monitoring expenses. The imposition of any fine or sentence shall not exempt the offender from compliance with the requirements of this ordinance.

**3818. Section XVIII. Remedies Not Exclusive.**

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law including, but not limited to, the County’s Administrative Enforcement and Appeals Procedure Ordinance. The County may pursue, by appropriate actions or proceedings, any or all additional other remedies.

**3819. Section XIX. Adoption of Ordinance.**

The 2017 changes to this ordinance pertaining to the manner in which appeals of civil notices of violations or denials of requests for variances or exceptions are directed to a County Hearing Officer or a subordinate board or commission for initial review pursuant to the County Administrative Enforcement and Appeals Procedure Ordinance shall take effect on January 1, 2018.

Dated this \_\_\_\_ day of December 2017

OLMSTED COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Kenneth Brown, Chairperson

ATTEST:

\_\_\_\_\_  
Heidi Welsch, Clerk-Administrator

End of Chapter 3800 – Illicit Stormwater Discharge Ordinance