

Chapter 14

Illicit Discharge and Illicit Connection Ordinance

Ch. 14 of the Winnebago County code entitled “Illicit Discharge and Illicit Connection Ordinance” relating to illicit discharge and connection and response procedure is hereby created to provide control over illicit discharges, connections and associated pollutants reaching waters of the state. Use of this ordinance by Winnebago County will foster the consistent statewide application of illicit discharge and connection standards in NR 151, Wis. Adm. Code.

14.01 AUTHORITY.

- (1) This ordinance is adopted under the authority granted by s. 59.693, Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. 59.69 Wis. Stats., that relate to construction site erosion control and/or stormwater management. Except as otherwise specified in s. 59.693 Wis. Stats., s. 59.69 Wis. Stats., applies to this ordinance and to any amendments to this ordinance.
- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the County.
- (3) Winnebago County hereby designates the County Highway Commissioner or designee of that office, to administer and enforce the provisions of this ordinance.
- (4) The requirements of this ordinance do not pre-empt more stringent illicit discharge and connection requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals.
 - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources.

14.02 PURPOSE AND INTENT.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Winnebago County through the regulation of non-storm- water discharges to the Winnebago County owned municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the Winnebago County owned MS4 in order to comply with requirements of the Wisconsin Pollutant Discharge Elimination System (WPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.
- (2) To prohibit illicit connections and illicit discharges to the MS4.
- (3) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

14.03 APPLICABILITY.

- (1) This ordinance applies to all water and/or discharges entering the Winnebago County owned MS4 located within the boundaries and jurisdiction of the Urbanized Area (UA) unless explicitly exempted by Winnebago County. (The UA boundaries shall apply until amended and then shall apply as amended.)

14.04 RESPONSIBILITY FOR ADMINISTRATION.

- (1) The County Highway Commissioner shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the County Highway Commissioner may be delegated in writing by the County Highway Commissioner to persons, agents and/or entities acting in the beneficial interest of or in the employ of the County.

14.05 COMPATIBILITY WITH OTHER REGULATIONS

- (1) This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of

any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

14.06 SEVERABILITY.

- (1) 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.

14.07 ULTIMATE RESPONSIBILITY.

- (1) The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

14.08 DEFINITIONS.

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

- (1) “Administering Authority” means the governmental employees or their designees empowered under S. 59.693, Wisconsin Statutes to administer this ordinance. For the purpose of this ordinance the administering authority is the Winnebago County Highway Commissioner’s Office or their designees, under guidance from the Highway Committee.
- (2) “Best Management Practices or BMPs” means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the state or the MS4.
- (3) “Contaminated stormwater” means stormwater that comes into contact with any pollutant, material handling equipment or activities, raw materials, intermediate products, final products, waste materials,

byproducts or industrial machinery in the source areas listed in NR 216.

- (4) “Department” or “WDNR” means the Wisconsin Department of Natural Resources.
- (5) “Discharge” when used without qualification includes a discharge of any pollutant.
- (6) “Discharge of pollutant” or “discharge of pollutants” means any addition of any pollutant to the waters of the state or MS4 from any point source.
- (7) “Illicit Connections” means any drain or conveyance, whether on or above the surface or in the subsurface, that allows an illicit discharge to enter the MS4. For the purpose of this ordinance, illicit connections include channels, subsurface conduits, seepages, or preferential flow paths resulting from damaged or leaking drains, pipe or other conveyances and/or properties that allow an illicit discharge to the MS4.
- (8) “Illicit Discharge” means any discharge to the municipal separate storm sewer system that is not composed entirely of stormwater; except discharges authorized by a WPDES permit and those discharges allowed in Section 14.09(1)(c) of this ordinance.
- (9) “Industrial Activity” means activities subject to WPDES Industrial Permits per NR 216 and Wisconsin Statute 283.
- (10) “Municipality” means any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law.
- (11) “Municipal Separate Storm Sewer System (MS4)” (as defined in WI admin Code NR 216) means a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all the following criteria:
 - i. Owned or operated by a municipality.
 - ii. Designed or used for collecting or conveying stormwater.
 - iii. Which is not a combined sewer conveying both sanitary and stormwater.
 - iv. Which is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

- (12) “Non-Stormwater Discharge” means any discharge that is not composed entirely of stormwater.
- (13) “Notice of Violation” means a written order issued by the administering authority that informs the recipient of a violation(s) to the ordinance, and furthermore states requirements and schedule to achieve compliance with the ordinance.
- (14) “Operator” means any person operating, leasing, renting, or performing work on behalf of the owner, or having made arrangements with the landowner by which the landowner authorizes use of his or her land. For the purpose of this ordinance, the term operator includes contractors performing activities on behalf of the landowner.
- (15) “Owner” or “landowner” means any person holding fee title, an easement or other interest in property.
- (16) “Person” means an individual, owner, operator, corporation, organization, firm, partnership, association, municipality, interstate agency, state agency or federal agency or other entity recognized by law and acting as either the owner or as the owner’s agent.
- (17) “Pollutant” means any constituent, chemical, substance, contaminant or material that causes or contributes to pollution. Pollutants may include, but not be limited to: dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil and other automotive fluids, paints, varnishes, solvents, sewage sludge, munitions, chemical wastes, pesticides, herbicides, fertilizers, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, animal, and agricultural waste.
- (18) “Pollution” as defined in Wisconsin Statute 283, man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.
- (19) “Pollution prevention” means taking measures to eliminate or reduce pollution.
- (20) “Premises” means any building, lot, residence, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

or
land.

- (21) “Runoff” means that portion of precipitation (rain, snow, or ice melt) other material/liquid that moves or has flowed on the surface of the
- (22) “Stormwater” means the water which results from, and which occurs during and immediately following a rainfall, snow or ice melt event.
- (23) “Stormwater Management Plan/ Stormwater Pollution Prevention Plan” (SWPPP) 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.
- (24) “Urbanized Area” means a place and the adjacent densely settled surrounding territory that together have a minimum population of 50,000 people, as determined by the U.S. Bureau of the Census on the latest decennial federal census. For the purpose of this ordinance, the urbanized area is the area located within Winnebago County which is regulated under a WDNR permit issued pursuant to subch. I of NR 216, Wis. Adm. Code.
- (25) “Wastewater” means any water or other liquid, other than uncontaminated stormwater, discharged from a facility or manufacturing process.
- (26) “Waters of the state” as defined in Wisconsin Statute 283 (November 1, 2005), means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.
- (27) “Wisconsin Pollutant Discharge Elimination System (WPDES) Storm Water Discharge Permit” means a Wisconsin pollutant discharge elimination system permit issued pursuant to Wisconsin Statute 283.

14.09 DISCHARGE PROHIBITIONS.

- (1) ILLICIT DISCHARGES. Any direct or indirect non-stormwater discharges to the MS4 are prohibited unless exempted below in section c.

- a. Direct Discharges. No person, municipality, or entity shall discharge (throw, dump, spill, drain, leak, or otherwise discharge) or cause to be discharged or allow others under its control to discharge to the MS4 any substances or materials, including but not limited to pollutants, wastewater, or waters containing any pollutants, other than stormwater.
- b. Indirect Discharges. Runoff from any activity, operation, premises or facility which causes or contributes to pollution or contamination to the MS4 is prohibited.
- c. Exemptions. The following discharges/activities are exempt from the provisions of this section unless found to have an adverse impact on the MS4 and/or stormwater:
 - 1. Stormwater that contains no pollutants.
 - 2. Discharges authorized by a WPDES permit issued by WDNR.
 - 3. Discharges resulting from fire fighting activities.
 - 4. Discharges from uncontaminated groundwater, potable water sources, roof drains, foundation drain and sump pump, air conditioning condensation, springs, lawn watering, individual residential car washing, and dechlorinated swimming pool discharges.
 - 5. Discharges associated with dye testing, however this activity requires verbal notification to the administering authority and WDNR a minimum of one day prior to the time of the test.

(2) ILLICIT CONNECTIONS.

- a. The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
- b. This prohibition expressly includes, without limitation, illicit connections made prior to the adoption of this ordinance, 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 ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- d. 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 Winnebago County and/or its authorized agents.

- e. 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 Winnebago County and/or its authorized agents 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 Winnebago County and/or its authorized agents.

14.10 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

- (1) The owner or operator of any activity, operation, premises, or facility which may cause or contribute to pollution or contamination of stormwater, the MS4, or waters of the state shall provide, at their own expense, reasonable protection from discharge of prohibited materials or other wastes into the municipal MS4 or waters of the state through the use of structural and nonstructural BMPs. Further, any person responsible for a property or premise that 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 WPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. Additionally, the holder of the WPDES permit shall comply with all provisions of such permit. If applicable, the BMPs shall be part of a Stormwater Management Plan (SWMP)/Stormwater Pollution Prevention Plan (SWPPP) as necessary for compliance.

14.11 COMPLIANCE MONITORING

- (1) Right of Entry: Inspecting and Sampling.
 - a. The administering authority shall be permitted to enter and inspect facilities/premises subject to 14.14 under this ordinance as often as may be necessary to determine compliance with this ordinance.
 - (1) The discharger shall make all necessary arrangements to allow the administering authority and/or its representatives access to all parts of the premises for the purposes of inspection, monitoring (including the right to set up at any facility/premises such devices as are necessary in the opinion of the administering authority to conduct monitoring and/or sampling [of the facility's discharge]), sampling, examination and copying of records.
 - (2) The administering authority has the right to require the discharger to install monitoring equipment or provide analytical results of the discharge(s) as necessary. The facility's or premises 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.
 - (3) Any temporary or permanent obstruction to safe and easy access to the facility/premises to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the administering authority and shall not be replaced. The costs of clearing such access shall be borne by the operator.
 - (4) Unreasonable delays in allowing the administering authority access to a facility/premises is a violation. An owner or operator of a facility commits an offense if the person denies the administering authority reasonable access to the facility or at the premises for the purpose of conducting any activity authorized or required by this ordinance.
- (2) Special Inspection Warrant.

- a. If the administering authority has been refused access to any part of the premises from which a discharge(s) has occurred, 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 administering authority may seek issuance of a special inspection warrant per state statute 66.0119.

14.12 NOTIFICATION OF SPILLS.

- (1) Notwithstanding other requirements of law, as soon as any person responsible for a facility, premises, or activity, or responsible for emergency response for a facility, premises, or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the MS4, or waters of the State, 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 administering authority in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the administering authority within 3 business days of the phone notice. If the discharge of 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 7 years.
- (2) Failure to provide notification of a release as provided above is a violation of this ordinance.

14.13 SUSPENSION OF MS4 ACCESS

- (1) In the event the violation is a result of an emergency situation, Winnebago County and/or its authorized agents may, without prior notice, suspend MS4 discharge access to a person(s) 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. If a person(s) fails to comply with a suspension order issued in an emergency, the administering authority and/or its agents may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the state, or to minimize danger to persons.

a. The County may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- (a) Immediately comply with all ordinance requirements; and
- (b) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

(2) In the event the violation is detected as a result of an illicit discharge/connection, when [in the event] the source of a violation is unknown, the administering authority may suspend MS4 discharge access to a person(s) until the source of the violation is determined and/or the discharge has been corrected.

(3) Any person notified of an emergency order directed to it under this subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Winnebago County and/or its authorized agents may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Winnebago County and/or its authorized agents may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Winnebago County and/or its authorized agents that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this ordinance. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Winnebago County and/or its authorized agents within 10 days of receipt of the prerequisite for, taking any other action against the violator.

a. Suspension due to Illicit Discharges in Emergency Situations

- (a) Winnebago County and/or its authorized agents 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. If the violator fails to comply with a suspension order issued in an emergency, the Winnebago County and/or its authorized agents may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the State, or to minimize danger to persons
- (4) 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. Winnebago County and/or its authorized agents will notify a violator of the proposed termination of its MS4 access. The violator may petition Winnebago County and/or its authorized agents for a reconsideration and hearing.
- (5) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of Winnebago County and/or its authorized agents.

14.14 VIOLATIONS, ENFORCEMENT, AND PENALTIES.

- (1) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.
- (2) In the event the violation constitutes an immediate or imminent danger to public health or public safety or to the environment, the administering authority and/or its agents are authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation. The administering authority is authorized to seek costs of the abatement as outlined in 14.15.

- (3) The administering authority shall serve the responsible owner or operator with a notice of violation of any non-complying activity(ies). Such notice of violation may require without limitation:
- the elimination of illicit connections or discharges;
 - that violating discharges, practices, or operations shall cease and desist;
 - the performance of monitoring, analyses, and reporting; the elimination of illicit connections or discharges;
 - the abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 - payment of a fine to cover administrative, monitoring, and remediation costs; and the implementation of BMPs.

Investigation and/or resolution of the matter in response to the notice of violation in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the notice.

(4) If the owner or operator does not comply with ordinance requirements and/or a notice of violation from the administering authority, the administering authority and/or its agents are authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation. The administering authority is authorized to seek costs of the abatement as outlined in 14.15 of this ordinance.

(5) Any person that continues discharging to the MS4 in violation of this ordinance or notice of violation may have their MS4 access terminated if such termination would abate or reduce an illicit discharge.

(6) Any person who does not comply with the provisions of this ordinance, or fails to cease activity as required in a cease and desist order posted under this section, or fails to comply with any approved plan or permit, shall be subject to a forfeiture in accordance with section 25.04 of the Winnebago County Code. Every violation of this ordinance is a public nuisance and each day that the violation exists shall constitute a separate offense. The administering authority may impose upon a violator additional compensatory actions, such as storm drain stenciling, attendance at compliance workshops, and cleanup of MS4s or watercourses.

- (7) Compliance with this ordinance may be enforced by injunctive order by Winnebago County pursuant to S. 59.69(11), Wisconsin Statutes. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

14.15 COST OF ABATEMENT OF THE VIOLATION.

1. Within 60 days after abatement of the violation, the owner or operator of the property will be notified of the cost of abatement, including administrative costs. If the amount due is not paid by the date determined by the municipal authority, the charges shall become a special charge against the property and shall constitute a lien on the property.
2. In the event an owner or operator fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect the amount plus any interest thereupon as a special charge against the property pursuant to Section 66.60(16), Wisconsin Statutes.

14.16 VIOLATIONS DEEMED A PUBLIC NUISANCE.

- (1) Any condition in violation of any of the provisions of this ordinance and declared and deemed a nuisance, may be summarily abated or restored at the violator's expense.

14.17 REMEDIES NOT EXCLUSIVE.

- (1) The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the administering authority to seek cumulative remedies.
- (2) The administering authority may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

14.18 ORDINANCE EFFECTIVE DATE

- (1) This ordinance shall become effective upon passage and publication.

14.19 AMINISTRATIVE REVIEW PROCEDURE

- (1) Any person aggrieved by a decision of the administering authority in relationship to this ordinance shall be provided a review of said decision pursuant to the provisions of Chapter 68, Wisc. Stats.