

Chapter 13.09.
STORM SEWER SYSTEM DISCHARGE REGULATIONS

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13.09.010 Definitions.

1. “Discharge”. The release of water and any elements, compounds and particles contained within or upon, from property owned or controlled by a Responsible Party.
2. “IDNR”. The Iowa Department of Natural Resources or an authorized representative.
3. “Illicit connection”. Any physical connection or other topographical or other condition, natural or artificial, which is not specifically authorized by ordinance or written rule of the City, which causes or facilitates, directly or indirectly, an illicit discharge.
4. “Illicit discharge”. Any discharge into the City’ s storm sewer system prohibited by the City’ s MS4 Permit.
5. “Municipal Separate Storm Sewer System (MS-4)”. The conveyance or system of conveyances including storm sewers, roadways, road with drainage systems, catch basins, curbs, gutters, ditches, constructed channels, and storm drains owned or operated by the permittee.
6. “Responsible Party”. One or more persons that control or are in possession of or own property. Responsible parties shall be jointly and severally responsible for compliance with this chapter and jointly and severally liable for any illicit discharge from the property that occurred while the person controlled, possessed or owned the Property.
7. “Permittee”. The MS-4 city or municipality.
8. “Property”. Includes, but is not limited to real estate, fixtures, facilities and premises of any kind located upon, under or above the real estate from which the Illicit Discharge occurred.
9. “Significant Materials”. Includes but is not limited to: raw materials, fuels, materials such as solvents, detergent, and plastic pellets, finished materials such as metallic products, raw materials used in food processing or production: hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); any chemical the facility is required to report pursuant to Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.
10. “Storm Water”. Storm water runoff, snow melt, and surface runoff and drainage.
11. “Storm Water Discharge Associated with Industrial Activity”. The discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified or activities identified in paragraphs (i) through (x) of this definition, the term includes but is not limited to storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process water waters (as defined at 40 CFR Part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment; storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain

and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all areas (except access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (i) and (xi) of this definition include those facilities designated under 122.26 (a)(9)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection: Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards that are exempted under category (xi) of this definition); Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 31, 32 (except 323), 33, 3441, 373; Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations that have been released from applicable State or Federal reclamation requirements (after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products or waste products located on the site of such operation; inactive mining operations are mining sites that are not being actively mined, but that have an identifiable owner/operator; Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA; Landfills, land application sites, and operational dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle d of RCRA; Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but not limited to those classified as Standard Industrial classification 5015 and 5093; Steam electric power generating facilities, including coal handling sites; Transportation facilities classified as Standard Industrial Classification 40, 41, 42 (except 4221-25), 43, 44, 45 and 5171 that have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication, equipment cleaning operations, airport deicing operations, or that are otherwise identified under paragraphs (i) to (vii) or (ix) to (xi) of this subsection are associated with industrial activity; Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and that are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR Part 503; Construction activity including clearing, grading and excavation activities that result in the disturbance of 1 acre or more of total land area or which result in the disturbance of less than 1 acre but are part of a larger common plan of development or sale of 1 acre or more; Facilities under Standard Industrial Classification 20, 21, 22, 23, 265, 267, 27, 283, 285, 30, 31 (except 311) 323, 349 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25, (and that are not otherwise included within categories (i) to (x)).(Ord. 2006-0607)

13.09.020 Findings.

1. The U.S.EPA's National Pollutant Discharge Elimination System ("NPDES") permit program (Program) administered by the IDNR requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System (MS4) (MS4 Permit). The City of Sioux City, Iowa (City) is subject to the Program and is required to obtain, and has obtained, an MS4 Permit; the City's MS4 Permit is on file at the office of the city clerk and is available for

public inspection during regular office hours. (Ord. 2006-0607)

2. As a condition of the City's MS4 Permit, the City is obliged to adopt and enforce a Storm Sewer System Discharge Regulations ordinance.

3. No state or federal funds have been made available to assist the City in administering and enforcing the Program. Accordingly, the City shall fund its operations under this chapter entirely by charges imposed on the owners of properties which are made subject to the Program by virtue of state and federal law, and/or other sources of funding established by a separate ordinance.

4. Terms used in this chapter shall have the meanings specified in the Program. (Ord. 2006-0607)

13.09.030 Illicit Discharges prohibited.

1. It shall be unlawful for a Responsible Party to allow or cause an illicit discharge from any Property it controls, possesses or owns.

2. It shall be unlawful for a Responsible Party subject to an IDNR-issued industrial discharge permit or any other federal, state or City permit, statute, ordinance or rule to violate or fail to comply with any obligation imposed by such permit, statute, ordinance or rule if any such obligation is greater than any obligation imposed by this chapter.

3. Sediment pollution originating from excessive erosion rates on a construction site not otherwise subject to the City's Construction Site Erosion and Sediment Control (COSESCO) ordinance or sediment pollution entering a municipal storm sewer that causes a water quality violation as determined by the IDNR shall be deemed an illicit discharge in violation of this chapter.

4. Except as hereinafter provided, no person shall discharge or cause to be discharged into the municipal separate storm sewer system any illicit materials. The following discharges are permitted into the separate storm sewer system:

a. Water line flushing or other potable water sources, landscape irrigation or lawn water, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains but excluding active groundwater dewatering systems, crawl space pumps, air condition condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pool water if the water contains less than one part per million chlorine, fire fighting activities, and any other water source not containing pollutants prohibited by the City's MS4 Permit;

b. Discharges specified in writing by city as being necessary to protect public health and safety;

c. Water that has been dyed for testing purposes provided that the city has given its written permission;

d. 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 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. (Ord. 2006-0812, 2006-0607)

13.09.040 Illicit connections prohibited.

1. It shall be unlawful for any person to construct, use, maintain or continue use of any illicit connection.

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.

However, if the Responsible Party did not construct the illicit connection, the Responsible Party shall be given reasonable notice by the City of the requirement that it removed the illicit connection and an opportunity to connect into the Storm Sewer System in conformance with current City ordinances. (Ord. 2006-0607)

13.09.050 Industrial discharges.

1. Any Responsible Party subject to an industrial NPDES discharge permit issued by the IDNR shall comply with all provisions of such permit. A Responsible Party who does not comply is in violation of Chapter 567 of the Iowa Administrative Code.

2. Proof of compliance with said permit may be required in a form acceptable to the enforcement officer prior to discharges to the storm sewer system authorized by said permit. (Ord. 2006-0607)

13.09.060 Illicit discharge detection and reporting; cost recovery.

1. All detection activities permitted under this chapter shall be conducted by the City public works director,

hereinbefore and after referred to as the “enforcement officer.”

2. The City shall not be responsible for the direct or indirect consequences to persons or property of an illicit discharge, or circumstances which may cause an illicit discharge.

3. Every Responsible Party has an absolute duty to monitor conditions on property owned or controlled by them, to prevent all illicit discharges, and to report to the enforcement officer illicit discharges which the Responsible Party knows or should have known to have occurred. Failure to comply with any provision of this chapter is a violation of this chapter.

a. Notwithstanding other requirements of law, as soon as any Responsible Party has information of any known or suspected illicit discharge, the Responsible Party shall immediately take all necessary steps to ensure the discovery, containment, and cleanup of such discharge at the Responsible Party’s sole cost.

b. If the illicit discharge consists of hazardous materials, the Responsible Party shall also immediately notify emergency response agencies of the occurrence via emergency dispatch services.

c. If the illicit 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.

d. A report of an illicit discharge shall be made in person or by phone or facsimile or email to the enforcement officer immediately but in any event within twenty-four hours of the illicit discharge; notifications in person or by phone shall be confirmed by written notice addressed and mailed or emailed to the enforcement officer within twenty-four hours of the personal or phone notice.

4. Any person or entity shall also report to the City any illicit discharge or circumstances which such person or entity reasonably believes pose a risk of an illicit discharge.

5. Upon receiving a report pursuant to the previous subsections, or otherwise coming into possession of information indicating an actual or imminent illicit discharge, the enforcement officer shall conduct an inspection of the site as soon as reasonably possible and thereafter shall provide to the Responsible Party, and any third party reporter, a written report of the conditions which may cause or which have already caused an illicit discharge. The Responsible Party shall immediately commence corrective action or remediation and shall complete such corrective action or remediation within twenty-four hours or as soon as it practicable given the circumstances of the discharge.

6. The enforcement officer shall be permitted to enter and inspect property subject to regulation under this section as often as is necessary to determine compliance with this section. If a Responsible Party has security measures that require identification and clearance before entry to its property or premises, the Responsible Party shall make the necessary arrangements to allow access by the enforcement officer. By way of specification but not limitation:

a. A Responsible Party shall allow the enforcement officer ready access to all parts of the property for purposes of inspection, sampling, examination and copying of records related to a suspected, actual, or imminent illicit discharge, and for the performance of any additional duties as defined by state and federal law.

b. The enforcement officer shall have the right to set up on any property such devices as are necessary in the opinion of the enforcement officer to conduct monitoring and/or sampling related to a suspected, actual or imminent illicit discharge.

c. The enforcement officer shall have the right to require any Responsible Party at Responsible Party’s sole expense to install monitoring equipment and deliver monitoring data or reports to the enforcement officer as the enforcement officer directs. The sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the Responsible Party at Responsible Party’s sole expense. All devices shall be calibrated to ensure their accuracy.

d. Any temporary or permanent obstruction to safe and easy access to Property to be inspected and/or sampled shall be promptly removed by the Responsible Party at the written or oral order of the enforcement officer and shall not be replaced. The costs of clearing such access shall be borne by the Responsible Party.

e. An unreasonable delay in allowing the enforcement officer access to a Property is a violation of this chapter.

f. If the enforcement officer has been refused access to any part of the Property from which an illicit connection and/or illicit discharge to a municipal storm sewer is occurring, suspected or imminent, and is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the enforcement officer may seek issuance of a search warrant from any court of competent jurisdiction.

7. If it is determined that an illicit discharge is imminent or has occurred, the actual administrative costs incurred

by the City in the enforcement of this chapter shall be recovered from the Responsible Party. The enforcement officer shall submit an invoice to the Responsible Party reflecting the actual costs and wages and expenses incurred by the city for the enforcement activities undertaken. Failure to pay charges invoiced under this chapter within thirty days of billing shall constitute a violation of this chapter. (Ord. 2006-0607)

13.09.070 Suspension of access to the city s storm sewer system.

1. Emergency suspension. The enforcement officer may, without prior notice, suspend storm sewer system access to a Property when such emergency suspension is necessary to stop an ongoing or imminent illicit discharge. If the Responsible Party fails to immediately comply with an emergency suspension order, the enforcement officer shall take such steps as deemed necessary to prevent or minimize the illicit discharge. All costs of such action shall be recovered from the Responsible Party for the property identified as the source of the illicit discharge.

2. Non-emergency suspension. If the enforcement officer detects or is informed of circumstances which could cause an illicit discharge but such illicit discharge is not ongoing or imminent, and if the suspension of storm sewer system access would reasonably be expected to prevent or reduce the potential illicit discharge, the enforcement officer shall notify the Responsible Party of the proposed suspension of storm sewer system access and the time and date of such suspension. Notice to one Responsible Party for the property shall be sufficient notice to all. Remediation of the circumstances shall avoid a violation of this chapter provided that no illicit discharge occurs. In the alternative, any Responsible Party may request a meeting with the enforcement officer for the purpose of presenting information which the Responsible Party believes will show that remediation is unnecessary, and if the enforcement officer finds such information is satisfactory the enforcement officer may rescind or modify the notice of suspension. If the enforcement officer finds such information unsatisfactory the enforcement officer shall issue a final written order of suspension including the date and time of suspension and such order may be appealed as provided hereinafter. Any physical action to reinstate storm sewer system access to property subject to such order prior to obtaining a court order of relief shall be deemed a violation of this chapter. An order of suspension shall not preclude charging the Responsible Party with a municipal infraction as provided hereinafter or taking any other enforcement action permitted by statute or ordinance. (Ord. 2006-0607)

13.09.080 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 below the elevation of the 100 year flood free of trash, debris, grass clippings or other organic wastes and other obstacles that would pollute, contaminate, or significantly alter the quality of water flowing 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. (Ord. 2006-0607)

13.09.090 Enforcement.

1. Violation of any provision of this chapter may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this chapter.

2. Violation of any provision of this chapter may also be enforced as a municipal infraction within the meaning of Section 1.04.100.

3. Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney. (Ord. 2006-0607)

13.09.100 Appeal.

1. Administrative decisions by City staff and enforcement actions of the enforcement officer may be appealed by the applicant to the City Manager or his designee pursuant to the following rules:

a. The appeal must be filed in writing with the city clerk within five business days of the decision or enforcement action.

b. The written appeal shall specify in detail the action appealed from, the errors allegedly made by the enforcement officer giving rise to the appeal, a written summary of all oral and written testimony the applicant intends to introduce at the hearing, including the names and addresses of all witnesses the applicant intends to call, copies of all documents the applicant intends to introduce at the hearing, and the relief requested.

c. The enforcement officer shall specify in writing the reasons for the enforcement action, a written summary of all oral and written testimony the enforcement officer intends to introduce at the hearing, including the names and addresses of all witnesses the enforcement officer intends to call, and copies of all documents the enforcement officer intends to introduce at the hearing.

d. The city clerk shall notify the applicant and the enforcement officer by ordinary mail, and shall give public notice in accordance with Chapter 21, Iowa Code, of the date, time and place for the regular or special meeting of the city council at which the hearing on the appeal shall occur. The hearing shall be scheduled for a date not less than four nor more than twenty days after the filing of the appeal. The rules of evidence and procedure, and the standard of proof to be applied, shall be the same as provided by Chapter 17A, Code of Iowa. The applicant may be represented by counsel at the applicant's expense. The enforcement officer may be represented by the city attorney or by an attorney designated by the city council at City expense.

2. The decision of the city council shall be rendered in writing and may be appealed to the Iowa District Court. (Ord. 2006-0607)

13.09.110 Penalty.

Any person who violates any of the provisions of this chapter is guilty of a municipal infraction and shall upon conviction, be punished as provided in section 1.04.100 of this municipal code. Alternatively, any person who knowingly or intentionally violates any of the provisions of this chapter is guilty of a misdemeanor and shall upon conviction be punished as provided in section 1.04.100 of this code. A peace officer may issue a criminal citation for such violations. No person shall be charged with both a municipal infraction and a misdemeanor for the same violation. (Ord. 2006-0812, 2006-0607)