

Amended Bill No. 47, Ordinance No. 46, Session 2022

ARTICLE 942
Detection and Elimination of Illicit Discharges
to the Municipal Separate Storm Sewer System

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942.01 ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated by 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.
(Ord. 32-2011. Passed 10-4-11.)

942.02 PROHIBITION OF ILLICIT DISCHARGES.

(a) No person shall discharge or cause to be discharged in to storm drain system or waters of this Commonwealth any materials, including, but not limited to, pollutants or waters containing pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater. Any discharge in violation of the Article shall be considered illicit discharges, except as exempted below.

(b) ~~The commencement, conduct or continuance of any illicit discharge to the storm drain system or Waters of this Commonwealth is prohibited except as follows:~~ **Any drain or conveyance, whether on the surface or subsurface, that allows any non-stormwater discharge including sewage, process waste water, and wash water to enter a regulated small MS4 or to enter the surface waters of this Commonwealth is prohibited.**

(c) The following discharges are authorized unless they are determined to be significant contributors to pollution of a regulated small MS4 or to the waters of this Commonwealth:

- Discharges <u>or flows</u> from firefighting activities	-Flows from riparian habitats and wetlands
- Potable water sources including water line flushing. <u>Discharges from potable water sources including water line flushing and fire hydrant flushing, if such discharges do not contain detectable concentrations of Total Residual Chlorine (TRC).</u>	- Uncontaminated water from foundations or from footing drains
- Irrigation drainage <u>Non-contaminated irrigation water, water from lawn maintenance, landscape drainage and flows from riparian habitats and wetlands.</u>	- Lawn watering
- Air conditioning condensate	- Dechlorinated swimming pool discharges (less than one PPM chlorine)
- Springs <u>and diverted stream flows</u>	- Uncontaminated groundwater
- <u>Non-contaminated</u> water from crawl space pumps	- Water from individual residential car washing <u>Residential (i.e., not commercial) vehicle wash water where cleaning agents are not utilized</u>
- Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spill material have been removed) and where detergents are not used	- Routine external building wash down (which does not use detergents or other compounds)
- Diverted stream flows	- Water discharged in well testing for potable water sources
- Groundwater Infiltration to Storm Drains	- Uncontaminated Pumped Groundwater
- Crawl Space Pumps	- Non-contaminated HVAC condensation and water from geothermal systems
<u>-Non-contaminated hydrostatic test water discharges, if such discharges do not contain detectable concentrations of TRC</u>	

- (1) Discharges specified in writing by the Municipality as being necessary to protect public health and safety.
- (2) Dye testing is an allowable discharge, but requires a verbal notification to the Municipality 48 hours prior to the time of the test
- (3) 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 DEP; provided, that the discharge 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 and/or Waters of this Commonwealth.

(e)(d) In the event that the Municipality or DEP determines that any of the discharges identified in Section 942.02(b) significantly contribute ~~to pollution~~ **pollutants to a regulated small MS4 or to the** ~~of the~~ waters of this Commonwealth, Municipality or DEP will notify the responsible person(s) to cease the discharge. (Ord. 32-2011. Passed 10-4-11.)

942.03 PROHIBITION OF ILLICIT CONNECTIONS.

The construction, use, maintenance or continued existence of Illicit Connections to the storm drain system is prohibited.

- (a) 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.
- (b) A person is considered to be in violation of this Article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
(Ord. 32-2011. Passed 10-4-11.)

942.04 SUSPENSION OF MS4 ACCESS.

(a) Suspension due to Illicit Discharges in Emergency Situations. The Municipality, the Commonwealth of Pennsylvania and the United States of America 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 Commonwealth of Pennsylvania, or the United States. If the violator fails to comply with a suspension order issued in an emergency, the Municipality may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the Commonwealth of Pennsylvania or United States, or to minimize danger to persons, including, without limitations, entering the property for the purpose of disconnecting and/or performing emergency maintenance or repairs to storm sewers. In the event the Municipality must disconnect or perform emergency maintenance and/or repairs, the Municipality may file and attach a municipal lien on the property which is causing Illicit Discharge.

(b) Suspension due to the Detection of Illicit Discharge or Illicit Connection. Any person discharging to the MS4 in violation of this Article may have their MS4 access terminated if such termination would abate or reduce an Illicit Discharge or Illicit Connection. The Municipality will notify a violator of the proposed termination of its MS4 access. The violator may petition the Municipality for a reconsideration and hearing.

(c) 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. (Ord. 32-2011. Passed 10-4-11.)

942.05 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES storm water 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 Municipality prior to the allowing of discharges to the MS4. (Ord. 32-2011. Passed 10-4-11.)

942.06 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 Municipality 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 Municipality.
- (2) Facility operators shall allow the Municipality 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 Municipality shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Municipality to conduct monitoring and/or sampling of the facility's storm water discharge.
- (4) The Municipality 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 Municipality and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (6) Unreasonable delays in allowing the Municipality access to a permitted facility are a violation of a storm water discharge permit and of this Article. 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 Municipality reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Article.
- (7) If the Municipality has been refused access to any part of the premises from which stormwater is discharged, and the Municipality representative 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 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.

(Ord. 32-2011. Passed 10-4-11.)

**942.07 REQUIREMENTS TO PREVENT, CONTROL AND REDUCE
STORMWATER POLLUTANTS BY THE USE OF BMPs.**

The Municipality 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 drain system, or Waters of the Commonwealth of Pennsylvania or 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 storm drain 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 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 municipal 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 in 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. (Ord. 32-2011. Passed 10-4-11.)

942.08 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. (Ord. 32-2011. Passed 10-4-11.)

942.09 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 Illicit Discharges or pollutants discharging into storm water, the storm drain system, or water of the Commonwealth of Pennsylvania or 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 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 Municipality 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.
(Ord. 32-2011. Passed 10-4-11.)

942.10 ENFORCEMENT.

(a) Whenever the Municipality finds that a person has violated a prohibition or failed to meet a requirement of this Article, the Municipality 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 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.

(b) 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 or assessed as a municipal lien on the property.

(Ord. 32-2011. Passed 10-4-11.)

942.11 APPEALS OF NOTICE OF VIOLATION.

Any person receiving a Notice of Violation may appeal the determination of the Municipality. The notice of appeal must be received within 30 days from the date of the Notice of Violation. A hearing on the appeal before the appropriate authority or his/her designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the Municipal authority or their designee shall be final.

(Ord. 32-2011. Passed 10-4-11.)

942.12 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 15 days of the hearing representative's decision upholding the decision of the Municipality, then representatives of the Municipality 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 Municipality or designated contractor to enter upon the premises for the purposes set forth above. (Ord. 32-2011. Passed 10-4-11.)

942.13 COST OF ABATEMENT OF VIOLATION.

(a) Within 30 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 thereafter file a written protest objecting to the amount of the assessment within 30 days. If the amount due is not paid within a timely manner as determined by the decision of the Municipality 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 Municipal lien on the property for the amount of the assessment.

(b) Any person violating any of the provisions of this Article shall become liable to the Municipality by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of 12 percent per annum shall be assessed on the balance beginning on the 1st day following discovery of the violation.

(Ord. 32-2011. Passed 10-4-11.)

942.14 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 Municipality 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.

(Ord. 32-2011. Passed 10-4-11.)

942.15 COMPENSATORY ACTION.

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

(Ord. 32-2011. Passed 10-4-11.)

942.16 VIOLATIONS DEEMED AS 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 public 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.

(Ord. 32-2011. Passed 10-4-11.)

942.17 CRIMINAL PROSECUTION.

Any person that has violated or continues to violate this any section of this Article 942 shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$1,000 dollars per violation per day and/or imprisonment for a period of time not to exceed 90 days.

(Ord. 32-2011. Passed 10-4-11.)

942.18 ATTORNEY FEES AND COSTS.

The Municipality may recover all attorney's fees, court costs and other expenses associated with enforcement of this Article, either criminal or civil, including sampling and monitoring expenses or other costs of investigation.

(Ord. 32-2011. Passed 10-4-11.)

942.19 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 Municipality to seek cumulative remedies.

(Ord. 32-2011. Passed 10-4-11.)