

# STANDARD OPERATING PROCEDURE ENFORCEMENT RESPONSE

CITY OF DEARBORN



JULY 2019

## **SECTION A – PURPOSE**

The Michigan Department of Environmental Quality (MDEQ) National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Phase II Stormwater Discharge Permit Application requires an Enforcement Response Procedure (ERP) to address violations of the ordinance(s) or regulatory mechanism(s) identified in the Stormwater Management Plan.

## **SECTION B – GENERAL PENALTY**

Section 1-9 of Chapter 1 General Provisions of the City of Dearborn Code of Ordinances defines the penalties levied by the City for ordinance violations. The section specifically defines penalties and continuing violations.

Sec. 1-9. - General penalty.

- (a) Whenever in this Code or in any rule, regulation or order made pursuant to this Code or any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense, or whenever the doing of any act is required or the failure to do any act is declared to be unlawful, the violation of any such provision by any person shall, upon conviction, be punished by a fine not exceeding \$500.00 or imprisonment for a term not exceeding 93 days, or both, except whenever a specific penalty is otherwise provided.
- (b) Any person under the age of 17 years who violates any provision of this Code or any ordinance of the city shall be dealt with by the juvenile division of the probate court or as prescribed by the laws of the state.
- (c) In addition to the penalties provided in subsection (a) of this section, any condition caused or permitted to exist in violation of any of the provisions of this Code or any ordinance shall be deemed a new and separate offense for each day that such condition continues to exist.
- (d) In addition to any penalty under this section, the city may seek injunctive relief, abate the condition as a nuisance, revoke any permit or license, and/or seek any other available remedy.
- (e) The provisions of this section shall not apply to the failure of city officers and employees to perform duties required in this Code.

(Ord. No. 01-863, 11-20-01)

## **SECTION C –PART 91 MUNICIPAL ENFORCEMENT AGENCY**

The City of Dearborn is an approved Municipal Enforcement Agency under the Part 91 of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as Amended. As an enforcing agency, the City is responsible for implementing and enforcing their Soil Erosion Control Ordinance (Section 5 - 186-226).

### **C.1 Authority**

Sec. 5-186. - Enabling authority; designation of a municipal enforcing agency and official; and adoption of statute and rules by reference.

- (a) This division is adopted under the authority of part 91, SESC, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (hereinafter "part 91").
- (b) The department of economic and community development is the municipal enforcing agency responsible for administering and enforcing this division and part 91 within the municipal limits of the city.
- (c) The city building official or his duly authorized representative shall be the municipal enforcing official responsible for administering and enforcing this Division and Part 91 within the municipal limits of the city.
- (d) Part 91 and the rules promulgated under part 91 ("rules") are incorporated by reference into this division.

### **C.2 Failure to Complete Work**

Sec. 5-194. - Failure to complete work.

In the event of a failure to complete the work or failure to comply with all the requirements, conditions and terms of the permit, the building official may order such work as is necessary to eliminate any danger to persons or property and to leave the site in a safe condition, and he may authorize completion of all necessary temporary or permanent soil erosion control measures. The permittee and the surety executing the bond or person issuing the instrument of credit or making the cash deposit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be insured or expended by the city in causing any and all such work to be done. In the case of a cash deposit, any unused portion thereof shall be refunded to the permittee.

### **C.3 Enforcement of Article**

Sec. 5-203. - Enforcement.

- (a) Notwithstanding the existence or pursuit or any other remedy, the city may maintain an action in its own name in any court of competent jurisdiction for an injunction or other process against any person to restrain or prevent violations of this division.
- (b) The building official may enter at all reasonable times in or upon any private or public property for the purpose of inspection and investigating conditions and practices which may be a violation of this division.

### **C.4 Violations**

Sec. 5-204. - Violations.

- (a) *Performance.* It shall be unlawful for any person to fail to perform any act required by this division or to perform any act prohibited by this division.
- (b) *Knowledge.* It shall be unlawful for any person having a possessory interest in any land to knowingly permit, acquiesce, assist, aid or encourage any other person to violate the provisions of this division.
- (c) *Continuance of work.* It shall be unlawful for any person to continue any earth change activity after having been served with a stop-work order until such order has been rescinded.

## **SECTION D – ILLICIT DISCHARGE ELIMINATION ENFORCEMENT**

ORDINANCE NO. 18 - 1630 is an ordinance to amend Chapter 19 of the Code of Ordinances of the City of Dearborn by adding Article V Entitled “Illicit Discharges and Connections.” The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the city 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 municipal 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 MS4 by storm water discharges by any user.
- (2) To prohibit illicit connections and 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.

### **D.1 Authority**

#### **SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.**

The city shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the city may be delegated in writing by the Director of the Department of Public Works to persons or entities acting in the beneficial interest of or in the employ of the city or agency.

### **D.2 Violations, Enforcement, and Penalties**

#### **SECTION 14. VIOLATIONS, ENFORCEMENT, AND PENALTIES.**

##### **14.1. Violations.**

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. In the event the violation constitutes an immediate danger to public health or public safety, the city is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The city is authorized to seek costs of the abatement as outlined in Section 17.

##### **14.2. Warning Notice.**

When the city finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the city may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the city to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

#### 14.3. Notice of Violation.

Whenever the city finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the city may order compliance by written notice of violation to the responsible person.

The Notice of Violation shall contain:

- (1) The name and address of the alleged violator;
- (2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (6) A statement that the determination of violation may be appealed to the city by filing a written notice of appeal within 7 days of service of notice of violation; and
- (7) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator. 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;
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

#### 14.5. Compensatory Action.

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

#### 14.6. Suspension of MS4 Access.

##### 14.6.1. Emergency Cease and Desist Orders

When the city finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the city may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- (1) Immediately comply with all ordinance requirements; and

(2) 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.

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 city 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 city may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the city 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 city within 3 days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

#### 14.6.2. Suspension due to Illicit Discharges in Emergency Situations

The city 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 city 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.

#### 14.6.3. Suspension due to the Detection of Illicit 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. The city will notify a violator of the proposed termination of its MS4 access. The violator may petition the city for a reconsideration and hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the city.

#### 14.7. Civil Penalties.

In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within 3 days, or such greater period as the city shall deem appropriate, after the city has taken one or more of the actions described above, the city may impose a penalty not to exceed \$500.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

#### 14.8. Criminal Prosecution.

Any person that has violated or continues to violate this ordinance shall be guilty of a misdemeanor and shall be subject to a fine of \$1000.00 per violation per day and/or imprisonment for a period of time not to exceed 93 days. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

### **SECTION E – POST-CONSTRUCTION CONTROLS**

It is the City's understanding that the updated Wayne County Standards will be available in 2019. The City will review and consider adoption of the updated Standards when available.

### **SECTION F – ENFORCEMENT TRACKING**

The City of Dearborn will track all violations and issued permits. The following information will be collected and used for tracking records for each violation that is imposed by the City.

1. Name
2. Date
3. Location of the Violation (address, cross streets, etc.)
4. Business, Agency, Organization as applicable
5. Description of the Violation
6. Applicable Correspondence
7. Follow-up Actions
8. Key Dates
9. Descriptions of the City Enforcement Response
10. Schedules for Achieving Compliance
11. Date the Violation was Resolved

### **SECTION F – PROCESS FOR REVISION**

Any questions on this policy and procedure should be directed to the Stormwater Manager or the DPW Director. This procedure shall be reviewed once per permit cycle by the Stormwater Manager for any updates to streamline the requirements.