CHAPTER XXXVII
ILLICIT STORMWATER DISCHARGES AND CONNECTIONS

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37.01 AUTHORITY

This Ordinance is adopted under the authority granted by Section 62.234, Wisconsin Statutes, that relates to illicit discharges of stormwater and illicit connections. Except as otherwise specified in Section 62.234, Wisconsin Statutes, Section 62.23, Wisconsin Statutes, applies to this Ordinance and to any amendments thereto.

A. Regulatory Powers. The provisions of this Ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.

B. Stricter Requirements. The requirements of this Ordinance do not preempt more stringent illicit stormwater discharge and connection requirements that may be imposed by any of the following:

1. Wisconsin Department of Natural Resources administrative rules, permits or approvals, including those authorized under Subsections 281.16 and 283.33, Wisconsin Statutes.

2. United States Environmental Protection Agency administrative rules, permits or approvals.

37.02 FINDINGS AND PURPOSE

A. Findings. The City of Kenosha's Separate Storm Sewer Systems (MS4) are municipally-owned facilities where stormwater is collected and/or conveyed, including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, infiltration and detention basins, natural and unnatural or altered drainage channels, reservoirs, and other drainage structures.

The Common Council finds illicit discharges can carry pollutants to the waters of the State through its MS4s.

B. Purpose. The purposes of this Ordinance are:

1. To provide for the health, safety, and general welfare of the citizens of the City of Kenosha through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by Federal and State law;

2. To reduce the amount of pollutants entering the City's Municipal Separate Storm Sewer System and the waters of the State from the City of Kenosha by prohibiting illicit connections and discharges of stormwater;

3. To establish methods to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process;

4. To protect spawning grounds, and fish and aquatic life;

5. To preserve scenic beauty;

6. To promote sound economic growth by minimizing the amount of pollutants illicitly discharged to waters of the State in the City of Kenosha; and,

7. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Ordinance.

37.03 ADMINISTRATION

The provisions of this Ordinance shall be administered and enforced by the Director of Public Works for the City of Kenosha, Wisconsin, or his/her designee.

37.04 APPLICABILITY OF CODE

A. Applicability. This Ordinance applies to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by the City.

B. Nonapplicability. This Ordinance is not applicable to activities conducted by a State agency, as defined in Section 227.01(1), Wisconsin Statutes. This shall include:

1. The Office of the District Attorney, which is subject to the State plan promulgated or a memorandum of understanding entered into under Section 281.33(2), Wisconsin Statutes.

2. The Wisconsin Department of Transportation (WisDOT) that entered into a memorandum of understanding with the Wisconsin Department of Natural Resources that satisfies Section 281.33(2), Wisconsin Statutes, such that activities directed and supervised by WisDOT are exempt from this Ordinance.

C. Minimum Standards. The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore, this Ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor the unauthorized discharge of pollutants.

D. WPDES Stormwater Discharge Permit Compliance. Any person subject to an industrial or construction activity WPDES Stormwater Discharge Permit shall comply with all the provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Director of Public Works prior to allowing discharges to the MS4.

E. Jurisdiction. This Ordinance applies to waters and lands within the boundaries and jurisdiction of the City of Kenosha, as well as the extraterritorial division of land subject to an Ordinance enacted pursuant to Sections 236.45(2) and (3), Wisconsin Statutes.

37.05 DEFINITIONS

Best Management Practice (BMP) means structural or nonstructural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the State.

Business Day means a day the office the Department of Public Works is routinely and customarily open for business.

Cease and Desist Order means a Court issued order to halt illicit stormwater discharge or connection activity that is being conducted.

Construction Activity means activities subject to Erosion Control and Post-Construction Stormwater Permits.

Erosion means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.

Hazardous Materials means 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 means any direct or indirect non-stormwater discharge, regardless of intentionality, to the MS4 or to a privately maintained retention basin, except as exempted in this Ordinance. Indirect non-stormwater discharge includes discharges into watercourses or onto driveways, sidewalks, parking lots or other areas that drain into the MS4. Direct non-stormwater discharge includes deposition of solids, including, but not limited to grass, directly into the MS4.

Illicit Connection is defined as either of the following:

- Any drain or conveyance, whether on the surface or subsurface, that allows an illegal discharge to enter the MS4. This includes, but is not limited to, any conveyances that allow any non-stormwater discharge, including sewage, process wastewater, and wash water to enter the MS4 and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency.
- Any drain or conveyance connected from a commercial or industrial land use to the MS4 that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity means activities subject to WPDES Industrial Permits as defined in 40 CFR, Section 122.26(b)(14) or subject to State of Wisconsin Administrative Code NR 216.20.

MEP or **Maximum Extent Practicable** means a level of implementing best management practices in order to achieve a performance standard specified in this Chapter which takes into account the best available technology, cost effectiveness and other competing issues, such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

MS4 or **Municipal Separate Storm Sewer System** means municipally owned facilities where stormwater is collected and/or convey, including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm

drains, pumping facilities, retention and detention basins, natural and manmade or altered drainage channels, reservoirs, and other drainage structures.

Non-Stormwater Discharge means discharge to the MS4 that is not composed entirely of stormwater.

Performance Standard means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

Permit means a written authorization made by the Director of Public Works to the applicant to conduct land-disturbing construction activity or to discharge post-construction runoff to waters of the State.

Person means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or owner's agent.

Pollutant has the meaning given in Section 283.01(13), Wisconsin Statutes, and means anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Pollution has the meaning given in Section 281.01(10), Wisconsin Statutes.

Stormwater Pollution Prevention Plan or **SWPPP** means a document that describes the BOPS 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.

Technical Standard means a document that specifies design, predicted performance, operation and maintenance specifications for a material, device or method.

Waters of the State has the meaning given in Section 281.01(18), Wisconsin Statutes.

Wisconsin Pollutant Discharge Elimination System (WPDES) Stormwater Discharge Permit means a permit issued by Wisconsin Department of Natural Resources (as authorized by the EPA under authority delegated pursuant to 33 U.S.C. §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.

37.06 PROHIBITIONS

A. Discharge Prohibitions. No person shall cause, conduct, allow, or allow to continue, an Illegal Discharge.

B. Exemptions. Discharge to the MS4 of the following materials is not illegal:

1. Stormwater that is uncontaminated by pollutants or sedimentation.

2. Waterline flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows; rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawlspace pumps, air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if decholorinated less than one ppm chlorine), firefighting activities, and any other water source not containing pollutants.

3. Discharges specified in writing by the authorized enforcement agency as being necessary to protect the public health and safety.

4. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

5. Any non-stormwater discharge permitted under a WPDES Permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Wisconsin Department of Natural Resources, 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.

C. Illicit Connections To Storm Drain System. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. 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.

D. Violation. 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.

37.07 SUSPENSION OF ILLICIT DISCHARGES

A. Suspension of MS4 Discharge Access. 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 that presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, to the MS4, or to waters of the State. 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 State, or to minimize danger to persons.

B. Termination of MS4 Discharge Access. 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 Director of Public Works will notify a violator of the proposed termination of its MS4 access. The violator may petition the Director of Public Works for a reconsideration and hearing.

C. Reinstatement of MS4 Access Without Approval. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Director of Public Works.

37.08 MONITORING

A. Applicability. This Section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

B. Access To Facilities.

1. The Director of Public Works, or his/her designee, shall be permitted to enter and inspect 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 that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the Director of Public Works or his/her designee.

2. Facility operators shall allow the Director of Public Works, or his/her designee, 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 a WPDES Permit to discharge stormwater, and the performance of any additional duties as defined by State and Federal law.

3. The City shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Director of Public Works to conduct monitoring and/or sampling of the facility's stormwater discharge.

4. The Director of Public Works 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 Director of Public Works and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6. Unreasonable delays in allowing the Director of Public Works, or his/her designee, to a permitted facility is a violation of a Stormwater Discharge Permit and of this Ordinance. A person who is the operator of a facility with a WPDES Permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Director of Public Works, or his/her designee, reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.

7. If the Director of Public Works, or his/her designee, 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 Director of Public Works may seek issuance of a search warrant from any court of competent jurisdiction.

37.09 PREVENTION WITH BMPS

A. BMP Identification Requirements. The City

will adopt requirements identifying BMPs for any activity, operation, or facility that may cause or contribute to pollution or contamination of stormwater, the MS4, or waters of the State.

B. Protection From Accidental Discharge. 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 nonstructural BMPs. The Director of Public Works may require any person responsible for a property or premise that is, or may be the source of an illicit discharge to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the MS4.

C. Compliance. Compliance with all terms and conditions of a valid WPDES Permit authorizing the discharge of stormwater associated with industrial activity, to the maximum extent practicable, shall be deemed compliance with the provisions of this Section. These BMPs shall be part of a SWPPP as necessary for compliance with requirements of the WPDES Permit.

37.10 NOTIFICATION OF SPILLS

A. Notification of Release of Illegal Discharges or Pollutants Into Stormwater. 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 that are resulting or may result in illegal 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 nonhazardous materials, said person shall notify the Director of Public Works in person or by telephone or facsimile no later than the next business day.

B. Written Notice Required. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Director of Public Works within three (3) business days of the telephone notice.

C. Written Record Required. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator fo such establishment shall also retain an onsite written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

37.11 ENFORCEMENT

A. Notice of Violation. Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Director of Public Works may order compliance by written notice of violation to the responsible person.

B. Notice of Remediation/Restoration. If abatement of a continuing violation and/or restoration of an affected property is required, notice shall be given to the Responsible Person , which 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 remedy or restore within the established deadline, the work will be done by a governmental agency or a contractor designated by the Director of Public Works, and the expense thereof shall be charged to the violator.

C. Abatement/Remediation At Violator's Expense. 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 the 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 to compel the cessation of such nuisance, may be taken. It is not necessary to prosecute for forfeiture, or issue a notice or order pursuant to this Chapter before instituting a civil action.

D. Penalty. Any person that has violated or continues to violate a provision of this Chapter shall, upon conviction, be subject to a forfeiture of not more than One Thousand ($1,000.00) Dollars, in addition to all applicable costs, fees, surcharges, and assessments. Each day that such violation continues shall be considered a separate offense. In addition to other available alternative penalties, failure to pay said forfeiture and all applicable costs, fees, surcharges, and assessments shall subject the violator to a period in the County Jail of not more than ninety (90) days per offense. It is not necessary for notice of violation to be given prior to the issuance of a citation for violation of this Chapter.

E. Cost Recovery. The City may recover all

attorney fees, court costs and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

F. Remedies Not Exclusive. The remedies listed in this Section are not exclusive of each other or of any other remedies available under any applicable Federal, State or local law, and it is within the discretion of the City to seek cumulative remedies.

37.12 APPEAL

A. Notice of Appeal. Any person receiving a Notice of Violation may appeal the determination of the Director of Public Works to the City's Stormwater Utility Committee. The notice of appeal must be delivered to the Director of Public Works within ten (10) working days from the date of the Notice of Violation, who as soon as practicable, will forward the notice of appeal to the Stormwater Utility Committee. Hearing on the appeal shall take place within thirty (30) working days from the date of receipt of the notice of appeal.

B. Abatement. 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 ten (10) working days of the Stormwater Utility Committee's decision to uphold the original decision, then representatives of the Director of Public Works 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 Director of Public Works, or his/her designee, or designated contractor, to enter upon the premises for the purposes set forth above.

C. Costs of Abatement/Special Assessments. Within sixty (60) working days after abatement of the violation, the Director of Public Works will notify the owner of the property of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within ten (10) working days. If the amount due is not paid within a timely manner as determined by the decision of the Director of Public Works or by the expiration of the time in which to file an appeal, and the costs of abatement or restoration may be directly associated to a particular parcel for which the responsible party is the violator, the costs shall become a special assessment against the property and constitute a lien on the property for the amount of the assessment.

D. Alternative Compensatory Actions. In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the Director of Public Works may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, watercourse cleanup, etc.

37.13 SEVERABILITY

If a court of competent jurisdiction judges any section, clause, provision or portion of this Ordinance unconstitutional or invalid, the remainder of the Ordinance shall remain in force and not be affected by such judgment.