

Chapter 102

ILLICIT DISCHARGE DETECTION AND ELIMINATION

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§ 102-1. Title.

This chapter shall be known as the “Illicit Discharge Law” of the Village of Buchanan.

§ 102-2. Purpose and intent.

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the Village of Buchanan through the regulation of nonstormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the SPDES General Permit for Municipal Separate Storm Sewer Systems (MS4s). The objectives of this chapter are:

- A. To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02, or as amended or revised;
- B. To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process or discharge nonstormwater wastes;
- C. To prohibit illicit connections, activities and discharges to the MS4;
- D. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter; and
- E. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the MS4.

§ 102-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BEST MANAGEMENT PRACTICES (BMPs) — Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CLEAN WATER ACT — The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY — Activities requiring authorization under the SPDES Permit for Stormwater Discharges From Construction Activity, GP-02-01, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

HAZARDOUS MATERIALS — 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.

ILLICIT CONNECTIONS — Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including but not limited to:

- A. Any conveyances which allow any nonstormwater discharge including treated or untreated sewage, process wastewater, and wash water to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
- B. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

ILLICIT DISCHARGE — Any direct or indirect nonstormwater discharge to the MS4, except as exempted herein.

INDUSTRIAL ACTIVITY — Activities requiring a SPDES Permit for Discharges From Industrial Activities Except Construction, GP-98-03, as amended or revised.

MS4 — Municipal separate storm sewer system.

MUNICIPALITY — The Village of Buchanan or the Village.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) — A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- A. Owned or operated by the Village;
- B. Designed or used for collecting or conveying stormwater;
- C. Which is not a combined sewer; and
- D. Which is not part of a publicly owned treatment works (POTW), for treatment of sewage, as defined at 40 CFR 122.2.

NONSTORMWATER DISCHARGE — Any discharge to the MS4 that is not composed entirely of stormwater.

NYSDEC — The New York State Department of Environmental Conservation.

PERSON — Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

POLLUTANT — Dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, agricultural waste and ballast discharged into water; which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards.

PREMISES — Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

SPECIAL CONDITIONS — The conditions that may affect the municipality's MS4 permit as follows:

- A. Discharge compliance with water quality standards: The condition that applies where a municipality has been notified that the discharge of stormwater authorized under their MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition, the Village must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.
- B. 303(d) listed waters: the condition in the Village's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition, the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.
- C. Total maximum daily load (TMDL) strategy: the condition in the Village's MS4 permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a water body or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the municipality was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

- D. The condition in the Village's MS4 permit that applies if a TMDL is approved in the future by EPA for any water body or watershed into which an MS4 discharges: Under this condition, the Village must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the Village must, within six months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT — A permit issued by the NYSDEC that authorizes the discharge of pollutants to waters of the state.

STORMWATER — Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT OFFICER (SMO) — An employee, the Village's Consulting Engineer, or other public official(s) designated by the Village of Buchanan to enforce this chapter. The SMO may also be designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

SURFACE WATERS OF THE STATE OF NEW YORK — Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons, which also meet the criteria of this definition, are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

303(d) LIST — A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the NYSDEC as required by Section 303(d) of the Clean Water Act. 303(d) listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next two years.

TMDL — Total maximum daily load.

TOTAL MAXIMUM DAILY LOAD — The maximum amount of a pollutant to be allowed to be released into a water body so as not to impair uses of the water allocated among the sources of that pollutant.

WASTEWATER — Water that is not stormwater, is contaminated with pollutants and is or will be discarded.

WATERS OF THE STATE — See "surface waters of the State of New York."

§ 102-4. Applicability.

This chapter shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

§ 102-5. Responsibility for administration.

The Stormwater Management Officer(s) [SMO(s)] shall administer, implement, and enforce the provisions of this chapter. Such powers granted or duties imposed upon the authorized enforcement official may be delegated in writing by the SMO as may be authorized by the Village.

§ 102-6. Illicit discharges and connections, prohibited; exceptions.

- A. No person shall discharge or cause to be discharged into the MS4 any materials other than stormwater except as provided in § 102-6A(1), below. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as set forth below:
- (1) The following discharges are exempt from discharge prohibitions established by this chapter, unless the NYSDEC or the Village has determined them to be substantial contributors of pollutants: water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains, roof drains, crawl space or basement sump pumps, air-conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire-fighting activities, and any other water source not containing pollutants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants.
 - (2) Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this chapter.
 - (3) Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a verbal notification to the SMO prior to the time of the test.
 - (4) The prohibition shall not apply to any discharge permitted under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the NYSDEC, 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 MS4.
- B. No person shall allow or create an illicit connection to or cause an illicit connection to the MS4.
- (1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
 - (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.
 - (3) A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the Village's MS4 or allows such a connection to continue.

§ 102-7. Activities contaminating stormwater prohibited.

Activities that are subject to the requirements of this section are those types of activities that:

- A. Cause or contribute to a violation of the Village's MS4 SPDES permit.
- B. Cause or contribute to the Village being subject to the special conditions as defined in § 102-3, Definitions, of this chapter.

§ 102-8. Enforcement, notification and remedy of illicit discharges, connections and contamination.**A. Notice of violation.**

- (1) When the Village's SMO finds that a person has violated a prohibition or failed to meet a requirement of this chapter, he/she may order compliance by written notice of violation to the responsible person(s). Such notice may require, without limitation:
 - (a) The elimination of illicit connections or discharges;
 - (b) That violating discharges, practices, or operations shall cease and desist;
 - (c) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 - (d) The performance of monitoring, analyses, and reporting;
 - (e) Payment of a fine; and
 - (f) The implementation of source control or treatment BMPs.
- (2) If abatement of a violation and/or restoration of affected property are 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.

B. Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the Village's MS4 SPDES permit authorization, that person shall take all reasonable actions to properly respond to such notification and to correct such activities such that he or she no longer causes or contributes to violations of the Village's MS4 SPDES permit authorization in accordance with the procedures herein.**C. The following notification and response procedures shall be followed if illicit discharges or connections or activities contaminating stormwater are identified:**

- (1) The SMO shall provide notification by certified or registered mail, return receipt requested, and shall file a copy of the notice with Village Clerk within five days of identification of an illicit discharge, connection or an activity contaminating stormwater.
- (2) A written response shall be provided from the person notified within five days of receipt of the notice of violation providing a brief description of the intended remedy to the violation.
- (3) A detailed response and related plans showing the proposed remedy to the violation shall be prepared by the violator or his authorized representative, with the assistance of a competent professional, and shall be submitted to the SMO within 21 days of the receipt of the notice along with any required forms and payment of required fees as follows:
 - (a) Additional copies of the response and plans shall be provided as required by the SMO.
 - (b) The proposed remedy shall address the purposes and intent of this chapter, appropriate BMPs, and all pertinent requirements and standards contained in this chapter.
 - (c) A copy of any other applications for land disturbance or development activities on the site, including stormwater permits, and any other applicable federal, state and local permits,

shall be provided.

- (d) The proposal shall include a reasonable timeline for completion of the remedial activities.
- (4) A review of the response and plans shall be conducted by the SMO, or an authorized representative of the SMO, and as deemed necessary, the Village's Consulting Engineer and other officials or representatives of the Village.
- (5) An on-site evaluation of proposed remedy shall be conducted by the SMO, or an authorized representative of the SMO, and as deemed necessary, the Village's Consulting Engineer and other reviewers.
- (6) The detailed response and plans shall be revised and resubmitted for additional review, including any necessary reports or studies. The submitted materials shall be revised as requested by the SMO or his authorized representative, the Village's Consulting Engineer and other reviewers until all concerns have been addressed.
- (7) The SMO shall provide authorization to proceed with the proposed remedy, including a specific timeline for completion of BMPs and all related improvements.
- (8) The SMO may require the violator to post a bond to cover the cost of completion of the authorized remedy. The bond shall be an amount recommended by the Village's Consulting Engineer to be sufficient to ensure the completion of the authorized remedy and shall specify completion of the remedy within a period of time fixed by the Village Board and not exceeding one year. The bond shall be a surety, cash or savings account bond or letter of credit with security acceptable to and approved by the Village Board as to form, sufficiency and manner of execution and upon recommendation of the Village Attorney. The bond may be extended for one year upon recommendation of the SMO and the Village's Consulting Engineer and approval by the Village Board.
- (9) Inspection of the site shall be conducted by the SMO, his authorized representative, or the Village's Consulting Engineer during and after site remediation.
- D. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this chapter shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

§ 102-9. Prevention, control and reduction of stormwater pollutants by use of best management practices.

Where the SMO has identified illicit discharges or illicit connections or activities contaminating stormwater, as defined in § 102-3 and as set forth in §§ 102-6 and 102-7 above, the Village may require implementation of best management practices (BMPs) to control those illicit discharges, connections and

activities. Similarly, in response to a notice of violation, BMPs shall be employed, as necessary.

- A. The owner or operator of a commercial or industrial establishment shall provide, at his or her own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and nonstructural BMPs.
- B. Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge or connection, or an activity contaminating stormwater, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.
- C. Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

§ 102-10. Suspension of access to MS4.

The following provisions apply to illicit discharges resulting from emergency situations:

- A. The SMO 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, to the health or welfare of persons, or to the MS4. The SMO shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons. Any costs related to the emergency actions taken by the SMO shall be the responsibility of the violator.
- B. Suspension due to the detection of illicit discharge. Any person discharging to the Village's MS4 in violation of this chapter may have his or her MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO determines in writing that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the SMO.

§ 102-11. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity SPDES stormwater 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 Village prior to the allowing of discharges to the MS4.

§ 102-12. Applicability; access to facilities; monitoring of discharges.

This section applies to all facilities that the SMO must inspect to enforce any provision of this chapter, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this chapter.

- A. The SMO shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. 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 the SMO.

- B. Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this chapter.
- C. The Village shall have the right to set up on any facility subject to this chapter such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.
- D. The Village has the right to require the facilities subject to this chapter to install monitoring equipment as is reasonably necessary to determine compliance with this chapter. 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.
- E. Any unreasonable delay in allowing the Village access to a facility subject to this chapter is a violation of this chapter. A person who is the operator of a facility subject to this chapter commits an offense if the person denies the Village reasonable access to the facility for the purpose of conducting any activity authorized or required by this chapter.
- F. If the SMO has been refused access to any part of the premises from which a discharge is occurring, and the SMO 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, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

§ 102-13. 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 illegal discharges or pollutants discharging into the MS4, 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 (NYSDEC Spill Hotline: 1-800-457-7362). In the event of a release of nonhazardous materials, said person shall notify the Village in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Village within three business days of the telephone 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.

§ 102-14. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination of the SMO to the Village Board within 15 days of its issuance, which shall hear the appeal within 30 days after the filing of the appeal, and within five days of making its decision, file its decision in the office of the municipal clerk and mail a copy of its decision by certified mail to the discharger.

§ 102-15. Corrective measures after appeal.

- A. 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 five business days of the decision of the municipal authority upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property. Any costs incurred by the Village to abate the violation and/or restore the affected property or properties shall be the sole responsibility of the discharger.
- B. If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.

§ 102-16. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this chapter, the SMO 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.

§ 102-17. Alternative remedies.

- A. Where a person has violated a provision of this chapter, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Village Attorney and concurrence of the SMO, where:
 - (1) The violation was unintentional.
 - (2) The violator has no history of previous violations of this chapter.
 - (3) Environmental damage was minimal.
 - (4) The violator acted quickly to remedy violation.
 - (5) The violator cooperated in investigation and resolution.
- B. Alternative remedies may consist of one or more of the following:
 - (1) Attendance at compliance workshops;
 - (2) Storm drain stenciling or storm drain marking; and
 - (3) River, stream or creek cleanup activities.

§ 102-18. Violations deemed a 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 chapter is a threat to 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 compel the cessation of such nuisance may be taken.

§ 102-19. Remedies not exclusive.

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

§ 102-20. Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter 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 chapter.

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