



Memorandum

DATE: July 30, 2009

TO: Board of Public Works

FROM: Mark Radtke, Director of Public Works *MR*

RE: Illicit Discharge and Connection Ordinance

The attached ordinance is a requirement of our Storm Water Discharge Permit as regulated by Chapter NR 216 of the Wisconsin Administrative Code. The purpose of the ordinance is to minimize the discharge of pollutants carried by storm water runoff from industrial sites, construction sites and municipal storm sewer systems in general.

Some of the permit requirements include the development of an ordinance, initial outfall field screening, on-going dry weather field screening, development of procedures for responding to illicit discharges, and removal of illicit discharges. Sources of illicit discharges include spills, illegal dumping or washing into inlets, leaking or exposed dumpsters, exposed outdoor material storage and sanitary – storm sewer cross connections.

The Department of Public Works is responsible for coordinating this program.

Attachment

M:\word\BPW memo re illicit discharge ordinance 7-30-09.doc

AN ORDINANCE RELATING TO ILLICIT DISCHARGE AND CONNECTION

Introduced by Alderman Taylor

The Common Council of the City of Menasha does ordain as follows:

SECTION 1: Title 6, Chapter 8 is created as follows:

6-8-1 PURPOSE/INTENT

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Menasha through the regulation of non-storm water discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the Wisconsin Pollutant Discharge Elimination System (WPDES) 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.

6-8-2 DEFINITIONS

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency. Employees or designees of the Director of Public Works.

Best Management Practices (BMPs). Structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

Contaminated Stormwater. Stormwater that comes into contact with material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts or industrial machinery in the source areas listed in NR 216 (effective August 1, 2004).

Department (DNR). The Wisconsin Department of Natural Resources.

Discharge. As defined in Wisconsin Statute 283 (November 1, 2005), when used without qualification includes a discharge of any pollutant.

Discharge of pollutant or discharge of pollutants. As defined in Wisconsin Statute 283 (November 1, 2005), means any addition of any pollutant to the waters of this state from any point source.

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 Discharge. Any discharge to a municipal separate storm sewer system that is not composed entirely of storm water except discharges authorized by a WPDES permit or other discharge not requiring a WPDES permit such as landscape irrigation, individual residential car washing, fire fighting, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, flows from riparian habitats and wetlands, and similar discharges.

Illicit Connections. An illicit connection is defined as either of the following:

- Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter the MS4 including but not limited to any conveyances that allow any non-storm water 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 or,
- 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.

Industrial Activity. Activities subject to WPDES Industrial Permits per NR 216 (effective August 1, 2004) and Wisconsin Statute 283 (November 1, 2005)

Municipality. Any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law and having authority to collect, treat or dispose of sewage, industrial wastes, storm water or other wastes.

Municipal Separate Storm Sewer System (MS4). As defined in Wisconsin Administrative Code NR 216 (effective August 1, 2004), means a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all the following criteria:

- (a) Owned or operated by a municipality.
- (b) Designed or used for collecting or conveying storm water.
- (c) Which is not a combined sewer conveying both sanitary and storm water.

- (d) Which is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

Non-Storm Water Discharge. Any discharge to the MS4 that is not composed entirely of storm water.

Owner. Any person holding fee title, an easement or other interest in property.

Outfall. The point at which storm water is discharged to waters of the state or to a storm sewer.

Person. An individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.

Pollutant. As defined in Wisconsin Statute 283 (November 1, 2005), means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

Pollution. As defined in Wisconsin Statute 283 (November 1, 2005), means any man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

Pollution Prevention. Taking measures to eliminate or reduce pollution.

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

Stormwater. Runoff from precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.

Storm Water Management Plan/Stormwater Pollution Prevention Plan. A document which describes the Best Management Practices 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.

Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Watercourse. A natural or artificial channel through which water flows. These channels include: all blue and dashed lines on the USGS quadrangle maps, all channels shown on the soils maps in the NRCS soils book for Winnebago County and Calumet County, all channels identified on the site, and new channels that are created as part of a development. The term watercourse includes waters of the state as herein defined.

Waters of the State. As defined in Wisconsin Statute 283 (November 1, 2005), means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses,

drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.

Wisconsin Pollutant Discharge Elimination System (WPDES) Storm Water Discharge Permit. A Wisconsin pollutant discharge elimination system permit issued pursuant to Wisconsin Statute 283 (November 1, 2005).

6-8-3 APPLICABILITY

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

6-8-4 RESPONSIBILITY FOR ADMINISTRATION

The Department of Public Works and/or its agents shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the Department of Public Works 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 agency.

6-8-5 COMPATIBILITY WITH OTHER REGULATIONS

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

6-8-6 SEVERABILITY

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

6-8-7 ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

6-8-8 DISCHARGE PROHIBITIONS

(1) Prohibition of Illicit Discharges

No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than storm water.

(2) Allowed Discharges

- (a) Water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing,

flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water.

- (b) Discharges or flow from firefighting, and other discharges specified in writing by the Department of Public Works as being necessary to protect public health and safety.
- (c) Discharges associated with dye testing, however this activity requires a verbal notification to the Department of Public Works and the Department of Natural Resources a minimum of one day prior to the time of the test.
- (d) Any non-storm water 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. Any person subject to such a WPDES Stormwater discharge permit shall comply with all provisions of such permit.

(3) Prohibition of Illicit Connections

- (a) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
- (b) 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.
- (c) 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.
- (d) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Department of Public Works.
- (e) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Department of Public Works requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Department of Public Works.

6-8-9 WATERCOURSE PROTECTION

Every person owning property through which watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free to 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.

6-8-10 COMPLIANCE MONITORING

(1) Right of Entry: Inspecting and Sampling

The Department of Public Works 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.

- (a) 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 Department of Public Works.

- (b) Facility operators shall allow the Department of Public Works ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records.
- (c) The Department of Pubic Works shall have the right to set up on any facility such devices as are necessary in the opinion of the Department of Public Works to conduct monitoring and/or sampling of the facility's storm water discharge.
- (d) The Department 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.
- (e) 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 Department of Public Works and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (f) Unreasonable delays in allowing the Department of Public Works access to a facility is a violation. A person who is the operator of a facility commits an offense if the person denies the Department of Public Works reasonable access to the facility for the purpose of conducting any activity authorized or required by this ordinance.

(2) Special Inspection Warrant

If the Department of Public Works has been refused access to any part of the premises from which storm water 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 Department of Public works may seek issuance of a special inspection warrant per state statute 66.0119.

6-8-11 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The owner or operator of any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the MS4, or waters of the State shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal MS4 or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, that 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 MS4. Compliance with all terms and conditions of a valid WPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a Storm Water Management Plan (SWMP)/Stormwater Pollution Prevention Plan (SWPPP) as necessary for compliance.

6-8-12 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 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 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 Department of Public Works 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 the Department of Public Works within 3 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 5 years.

Failure to provide notification of a release as provided above is a violation of this ordinance.

6-8-13 VIOLATIONS, ENFORCEMENT, AND PENALTIES

(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 Department of Public Works is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures to abate the violation. The Department of Public Works is authorized to seek costs of the abatement as outlined in Section 16.

(2) Warning Notice

When the Department of Public Works finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the Department of Public Works 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 the subsection shall limit the authority of the Department of Public Works to take action, including emergency action or any other enforcement action without first issuing a Warning Notice.

(3) Notice of Violation

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

The Notice of Violation shall contain:

- (a) The name and address of the alleged violator;
- (b) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (c) A statement specifying the nature of the violation;
- (d) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;

- (e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (f) A statement that the determination of violation may be appealed to the Department of Public Works by filing a written notice of appeal within 3 days of service of notice of violation; and
- (g) 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 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 BMPs.

(4) Suspension of MS4 Access

(a) Emergency Cease and Desist Orders

When the Department of Public Works 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 the persons or to the environment, the Department of Public Works 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 Department of Public Works may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the State, 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 Department of Public Works may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Department of Public Works 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 measure taken to prevent any future occurrence, to the Department of Public Works within 3 days of receipt of the prerequisite for, taking any other action against the violator.

(b) Suspension due to Illicit Discharges in Emergency Situations

The Department of Public Works 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 State. If the violator fails to comply with a suspension order issued in an emergency, the Department of Public Works 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.

(c) 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 Department of Public Works will notify a violator of the proposed termination of its MS4 access. The violator may petition the Department of Public Works 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 Department of Public Works.

(5) Prosecution and Penalties

Any person that has violated or continues to violate this ordinance shall be liable to prosecution to the fullest extent of the law. 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 the set time period specified by the Department of Public Works, after the Department of Public Works has taken one or more of the actions described above, the Department of Public Works may impose a penalty not to exceed \$1000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

6-8-14 APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation may appeal the determination of the Department of Public Works. The notice of appeal must be filed with the Department of Public Works 3 days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 60 days from the date of receipt of the notice of appeal.

6-8-15 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, the municipal authority upheld the decision of the Department of Public Works, then representatives of the Department of Public Works are authorized to enter upon the subject private property and authorized to take any and all measures necessary to abate the violation. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

6-8-16 COST OF ABATEMENT OF THE VIOLATION

The owner of the property will be notified of the cost of abatement, including administrative costs. If the amount due is not paid by the date determined by the municipal authority, the

charges shall become a special charge against the property and shall constitute a lien on the property.

6-8-17 VIOLATIONS DEEMED A PUBLIC NUISANCE

Any condition in violation of any of the provisions of this ordinance and declared and deemed a nuisance, may be summarily abated or restored at the violator's expense.

6-8-18 REMEDIES NOT EXCLUSIVE

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Department of Public Works to seek cumulative remedies.

The Department of Public Works may recover all attorneys' fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

6-8-19 EFFECTIVE DATE

This ordinance shall be in force and effect from and after its adoption and publication. The above and foregoing ordinance was duly adopted by the Common Council of the City of Menasha on the ____ day of _____, 2009.

SECTION 2: this ordinance shall become effective upon its passage and publication as provided by law.

Passed and approved this ____ day of _____, 2009

Donald J. Merkes, Mayor

ATTEST: _____
Deborah A. Galeazzi, City Clerk