

## *DIVISION 2. SURFACE WATER MANAGEMENT PLAN*

### **Sec. 30-41. Applicability.**

Every applicant for a building permit, subdivision approval or any permit involving land disturbing activities greater than 2,000 sq. ft., excluding agricultural activities, must submit a surface water management plan to the city engineering department. No building permit, subdivision approval or permit involving land disturbing activities shall be issued until approval of the surface water management plan and issuance of a drainage/land disturbance permit in strict conformance with the provisions of this article.

(Ord. No. 693 2nd series, § 1, 4-28-2015)

### **Sec. 30-42. Application.**

A written application for a drainage/land disturbance permit, along with the proposed surface water management plan, shall be filed with the city engineering department and shall include adequate evidence showing that the proposed use will conform to the standards set forth in this article. Prior to applying for approval of a surface water management plan, an applicant may have the surface water management plans reviewed by the appropriate departments of the city. One set of clearly legible blue or black lined drawings and required information shall be submitted to the city engineer and shall be accompanied by a receipt from the city engineer's office evidencing the payment of all required fees for processing and approval as set forth in section 30-44(e) and a bond when required by section 30-44(d) in the amount to be calculated in accordance with that section. Drawings shall be prepared to a scale appropriate to the site of the project and suitable for the review to be performed. At a minimum, the scale shall be one inch equals 100 feet.

(Ord. No. 693 2nd series, § 1, 4-28-2015)

### **Sec. 30-43. Surface water management plan.**

**ADOPTED BY REFERENCE.** The City of Marshall hereby adopts and incorporates by reference the erosion, sediment, and waste control standards established by the Minnesota Pollution Control Agency's NPDES/SDS Construction Stormwater General Permit MNR100001 (CSW Permit) as now constituted and from time to time amended.

~~Unless otherwise directed by city engineer, at a minimum the surface water management plan shall contain the following information:~~

- ~~(1) Existing site map. A map of existing site conditions showing the site and immediately adjacent areas, including:
  - ~~a. The name and address of the applicant, the section, township and range, northpoint, date and scale of drawing and number of sheets;~~
  - ~~b. Location of the tract by an insert map at a scale sufficient to clearly identify the location of the property and giving such information as the names and numbers of adjoining roads, railroads, utilities, subdivisions, towns and districts or other landmarks;~~~~

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- c. Existing topography with a contour interval appropriate to the topography of the land but in no case having a contour interval greater than two feet;
  - d. A delineation of all streams, rivers, public waters and wetlands located on and immediately adjacent to the site, including depth of water, a statement of general water quality and any classification given to the water body or wetland by the state department of natural resources, the state pollution control agency, and/or the United States Army Corps of Engineers;
  - e. Locations and dimensions of existing stormwater drainage systems and natural drainage patterns on and immediately adjacent to the site, delineating in which direction and at what rate stormwater is conveyed from the site, identifying the receiving stream, river, public water or wetland, and setting forth those areas of the unaltered site where stormwater collects;
  - f. A description of the soils of the site, including a map indicating soil types of areas to be disturbed, as well as a soil report containing information on the suitability of the soils for the type of development proposed and for the type of sewage disposal proposed, and describing any remedial steps to be taken by the developer to render the soils suitable;
  - g. Vegetative cover and clearly delineating any vegetation proposed for removal; and
  - h. 100-year floodplains, flood fringes and floodways.
- (2) *Site construction plan.* A site construction plan including:
- a. Locations and dimensions of all proposed land disturbing activities and any phasing of those activities;
  - b. Locations and dimensions of all temporary soil or dirt stockpiles;
  - c. Locations and dimensions of all construction site erosion control measures necessary to meet the requirements of this article;
  - d. Schedule of anticipated starting and completion date of each land disturbing activity, including the installation of construction site erosion control measures needed to meet the requirements of this article; and
  - e. Provisions for maintenance of the construction site erosion control measures during construction.
- (3) *Plan of final site conditions.* A plan of final site conditions on the same scale as the existing site map showing the site changes, including:
- a. Finished grading shown at contours at the same interval as provided above or as required to clearly indicate the relationship of proposed changes to existing topography and remaining features;
  - b. A landscape plan, drawn to an appropriate scale, including dimensions and distances and the location, type, size and description of all proposed landscape materials which will be added to the site as part of the development;
  - c. A drainage plan of the developed site delineating in which direction, and at what rate, surface water will be conveyed from the site and setting forth the areas of the site where stormwater will be allowed to collect;
  - d. The proposed size, alignment and intended use of any structures to be erected on the site;
  - e. A clear delineation and tabulation of all areas which shall be paved or surfaced, including a description of the surfacing material to be used; and

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f. ~~Any other information pertinent to the particular project which, in the opinion of the applicant, is necessary for the review of the project.~~

(Ord. No. 693 2nd series, § 1, 4-28-2015)

### **Sec. 30-44. Plan review procedure.**

- (a) *Process.* Surface water management plans meeting the requirements of sections 30-42 and 30-43 shall be submitted to the city engineer for review in accordance with the standards of section 30-45. The city engineer, or his/her appointed designee, shall recommend approval, recommend approval with conditions, or recommend denial of the surface water management plan. City engineer action on the surface water management plan must be accomplished within 120 days following the date the application for approval is filed with the city engineer.
- (b) *Duration.* Approval of a plan submitted under the provisions of this article shall expire one year after the date of approval unless construction has commenced in accordance with the plan. However, if prior to the expiration of the approval, the applicant makes a written request to the city engineer for an extension of time to commence construction setting forth the reasons for the requested extension, the engineering department may grant one extension of not greater than one single year. Receipt of any request for an extension shall be acknowledged by the city engineer within 15 days. The city engineer shall make a decision on the extension within 30 days of receipt. Any plan may be revised in the same manner as originally approved.
- (c) *Conditions.* A surface water management plan may be approved subject to compliance with conditions at least as stringent as the requirements for erosion and sediment controls and waste controls as established by the current Minnesota Pollution Control Agency's General Permit to Discharge Stormwater Associated with Construction Activity No. MN R100001 and necessary to ensure that the requirements contained in this article are met. Such conditions may, among other matters, limit the size, kind or character of the proposed development, require the construction of structures, drainage facilities, storage basins and other facilities, require replacement of vegetation, establish required monitoring procedures, stage the work over time, require alteration of the site design to ensure buffering, and require the conveyance to the city or other public entity of certain lands or interests therein.
- (d) *Performance bond.* For projects, developments, or subdivisions larger than one acre, prior to approval of any surface water management plan, the applicant shall submit an agreement to construct such required physical improvements, to dedicate property or easements, or to comply with such conditions as may have been agreed to. Such agreement shall be accompanied by a bond to cover the amount of the established cost of complying with the agreement. The agreement and bond shall guarantee completion and compliance with conditions within a specific time, which time may be extended in accordance with subsection (b). The adequacy, conditions and acceptability of any agreement and bond shall be determined by the city or any official of the city as may be designated by resolution of the city council.
- (e) *Fees.* All applicants for surface water management plan approval shall be accompanied by a processing and approval fee as set by resolution of the council.

(Ord. No. 693 2nd series, § 1, 4-28-2015)

### **Sec. 30-45. Surface Water Management Criteria. ~~Approval and construction standards.~~**

- (a) **ADOPTED BY REFERENCE.** The City of Marshall hereby adopts and incorporates by reference the surface water management criteria for permanent facilities established by the Minnesota Pollution Control Agency's Small

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Municipal Separate Storm Sewer Systems (MS4) General Permit MNR040000 as now constituted and from time to time amended.

- (a) ~~No surface water management plan which fails to meet the following standards shall be approved by the city council:~~
- (1) ~~*Site dewatering.* Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydro cyclones, swirl concentrators or other appropriate controls as appropriate. Water may not be discharged in a manner so that nuisance conditions will result from the discharge or that causes erosion or flooding of the site or receiving channels or a wetland.~~
  - (2) ~~*Waste and material disposal.* All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, toxic materials or hazardous materials) shall be properly disposed of off-site and not allowed to be carried by runoff into a receiving channel or storm sewer system. Additionally, all waste material disposal containers shall be tarped or otherwise covered, as needed, to prevent wind-blown pollution.~~
  - (3) ~~*Tracking.* Temporary rock entrances are required on every construction site. Rock driveways will also be required during the winter months after backfilling the foundation. Each site shall have graveled roads, access drives and parking areas of sufficient width and length to prevent sediment from being tracked onto public or private roadways. Any sediment reaching a public or private road shall be removed by street cleaning (no flushing) before the end of each workday. If cleanup of the mud, dirt or other sediment is not carried out as required above, the city engineer, or designee, may direct city crews and/or contract a third party to complete the cleanup and bill the property owner or contractor for all associated costs, or deduct these amounts from any required bond or security. Unpaid charges will be certified by the city for collection with taxes.~~
  - (4) ~~*Drain inlet protection.* All storm drain inlets shall be protected during construction in accordance with accepted methods, design criteria, standards and specifications contained in the MPCA publication "Protecting Water Quality in Urban Areas."~~
  - (5) ~~*Site erosion control.* The following criteria (subsections (a)(5)a.—d.) apply only to construction activities that result in runoff leaving the site.~~
    - a. ~~Channelized runoff from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected as described below. Sheetflow runoff from adjacent areas greater than 10,000 square feet in area shall also be diverted around disturbed areas, unless shown to have resultant runoff rates of less than 0.5 ft.<sup>3</sup> /sec. across the disturbed area for the one year storm. Diverted runoff shall be conveyed in a manner that will not erode the conveyance and receiving channels. After connecting drainage ditches or swales that drains water from the site, the last 200 lineal feet must be stabilized within 24 hours after connecting to surface water.~~
    - b. ~~All activities on the site shall be conducted in a logical sequence to minimize the area of bare soil exposed at any one time. Appropriate erosion and sediment control measures shall be taken throughout the construction process. They include, but are not necessarily limited to, the use of erosion control fences, wood fiber blankets, rock construction entrances, seeding and/or mulch. If silt fence is required for erosion control, the builder is responsible for properly installing erosion control immediately after land disturbing activities commence. If the required erosion control is not installed within 24 hours the builder will be issued a stop work order until erosion control measures meet city requirements. The builder is responsible to maintain the silt fence during the construction process. Other techniques or combinations of the above may be used. The erosion and sediment control measures shall be maintained and repaired throughout~~

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construction and until such time as the property has been either sodded or a seeded vegetative cover has taken hold.

- c. ~~Runoff from the entire disturbed area on the site shall be controlled by meeting either subsection (a)(5)c.1. and 2. or (a)(5)c.1. and 3.~~
1. ~~All disturbed ground left inactive for 14 or more days shall be stabilized by seeding or sodding (only available prior to September 15) or by mulching or covering or other equivalent control measures.~~
  2. ~~For sites with more than ten acres disturbed at one time, or if a channel originates in the disturbed area, one or more temporary or permanent sedimentation basins shall be constructed. Each sedimentation basin shall have a surface area of at least one percent of the area draining to the basin and at least three feet of depth and constructed in accordance with accepted design specifications. Sediment shall be removed to maintain a depth of three feet. The basin discharge rate shall also be sufficiently low as to not cause erosion along the discharge channel or the receiving water.~~
  3. ~~For sites with less than ten acres disturbed at one time, silt fences, straw bales or equivalent control measures shall be placed along all sideslope and downslope sides of the site. If a channel or area of concentrated runoff passes through the site, silt fences shall be placed along the channel edges to reduce sediment reaching the channel. The use of silt fences, straw bales or equivalent control measures must include a maintenance and inspection schedule.~~
- d. ~~Any soil or dirt storage piles containing more than ten cubic yards of material should not be located with a downslope drainage length of less than 25 feet from the toe of the pile to a roadway or drainage channel. If remaining for more than seven days, they shall be stabilized by mulching, vegetative cover, tarps or other means. Erosion from piles which will be in existence for less than seven days shall be controlled by placing straw bales or silt fence barriers around the pile. In street utility repair or construction soil or dirt storage piles located closer than 25 feet of a roadway or drainage channel must be covered with tarps or suitable alternative control, if exposed for more than seven days, and the storm drain inlets must be protected with straw bale or other appropriate filtering barriers.~~

(b) ~~Surface water management criteria.~~ Surface water management criteria for permanent facilities are as follows:

- (1) ~~An applicant shall install or construct, on or for the proposed land disturbing development activity, all surface water management facilities necessary to manage increased runoff so that the two year, ten-year and 100-year storm peak discharge rates existing before the proposed development shall not be increased and accelerated channel erosion will not occur as a result of the proposed land disturbing or development activity. An applicant may also make an in-kind or monetary contribution to the development and maintenance of community stormwater management facilities designed to serve multiple land disturbing and development activities undertaken by one or more persons, including the applicant.~~
- (2) ~~The applicant shall give consideration to reducing the need for stormwater management facilities by incorporating the use of natural topography and land cover such as wetlands, ponds, natural swales and depressions as they exist before development to the degree that they can accommodate the additional flow of water without compromising the integrity or quality of the wetland or pond.~~
- (3) ~~The following surface water management practices shall be investigated in developing a surface water management plan in the following descending order of preference:~~
  - a. ~~Natural infiltration of precipitation on site;~~

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- b. — Flow attenuation by use of open vegetated swales and natural depressions;
  - c. — Stormwater retention facilities;
  - d. — Stormwater detention facilities.
- (4) — A combination of successive practices may be used to achieve the applicable minimum control requirements specified in subsection (a). Justification shall be provided by the applicant for the method selected.
- (5) — Volume control and pollutant management. Post-construction stormwater management requires significant attention to stormwater pollution mitigation practices, including limitations on volume, total suspended solids (TSS) and total phosphorus (TP) on both new construction and re-construction sites. These practices should seek to utilize pervious areas for stormwater treatment and to infiltrate stormwater runoff from driveways, sidewalks, rooftops, parking lots and landscaped areas to the maximum extent practical to provide treatment for both water quantity and quality.

The following rules apply:

- a. — Green infrastructure techniques and practices (including, but not limited to, infiltration, evapotranspiration, reuse/harvesting, conservation design, urban forestry, and green roofs), shall be given preference as design options consistent with zoning, subdivision and planned unit development requirements.
- b. — New development projects shall achieve no net increase from pre-project conditions (on an annual average basis) of stormwater discharge volume; discharges of total suspended solids (TSS); and discharge of total phosphorus (TP). New developments that create one or more acres of new impervious surface shall manage stormwater volume and pollutants by infiltrating or retaining the first one inch of precipitation over the impervious surface of the site.
- c. — Redevelopment projects shall achieve a net reduction from pre-project conditions (on an annual average basis) of stormwater discharge volume; discharges of total suspended solids (TSS); and discharges of total phosphorus (TP). Redevelopments that create one or more acres of new and/or fully reconstructed impervious surfaces shall manage stormwater volume and pollutants by applying the new development treatment requirements in (b)(5)b. above to the net increase of impervious surfaces. Additional treatment must also be included to reduce the volume, TSS and TP loads from the existing impervious surfaces.
- d. — Infiltration prohibited. The use of infiltration techniques are prohibited when the infiltration structural stormwater BMP will receive discharges from, or be constructed in, the following areas:
  - 1. — Where industrial facilities are not authorized to infiltrate industrial stormwater under an NPDES/SDS Industrial Stormwater Permit.
  - 2. — Where vehicle fueling and maintenance occur.
  - 3. — Where less than three feet of separation from the bottom of the infiltration system to the elevation of the seasonally saturated soils or the top of bedrock exists.
  - 4. — Where high levels of contaminants in soil or groundwater will be mobilized by infiltrating stormwater.
- e. — Infiltration restricted. The use of infiltration techniques will be restricted when the infiltration device will be constructed in areas:
  - 1. — With predominately hydrologic soil group D (clay) soils.
  - 2. — Within 1,000 feet up gradient, or 100 feet down gradient of active karst features.

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3. ~~Within a drinking water supply management area (DWSMA) as defined in Minn. R. 4720.5100, subp. 13.~~

4. ~~Where soil infiltration rates are more than eight and three tenths inches per hour.~~

~~In these restricted areas, the city engineer may request additional information and/or testing to ensure that infiltration basins will perform properly and that groundwater is adequately protected.~~

f. ~~Roads and other linear projects. Road reconstruction projects, mill and overlay projects, sidewalk projects and trail projects that do not create one or more acres of new impervious surfaces are exempt from these stormwater requirements. These projects may be subject to other requirements.~~

g. ~~Exceptions. A lesser volume control standard on the site of the original construction activity may be applied, at the discretion of the city, under the following circumstances:~~

1. ~~The owner and/or operator of a construction activity is precluded from infiltrating stormwater due to limitations under (b)(5)d., e. or f., and~~

2. ~~The owner and/or operator of the construction activity implements volume reduction techniques, other than infiltration, on the site of the original construction activity that reduce stormwater discharge volume but may not meet the requirements of post-construction stormwater management.~~

h. ~~Mitigation. If the owner and/or operator of a construction activity believe that the requirements for TP and/or TSS cannot be met on the site of the original construction activity, the owner and/or operator must provide appropriate documentation to the city as support. Stormwater discharges that do not meet the TP and/or TSS standards on the site of the original construction activity may be mitigated off-site at the city's discretion. The proposed mitigation must meet the following criteria:~~

1. ~~Mitigation project areas should be selected in the following order of preference and in consultation and with approval by the city:~~

i. ~~Locations that yield benefits to the same receiving water that receives runoff from the original construction activity.~~

ii. ~~Locations within the same department of natural resource (DNR) catchment area as the original construction activity.~~

iii. ~~Locations in the next adjacent DNR catchment area up stream.~~

iv. ~~Locations within the city.~~

2. ~~Mitigation projects must involve the creation of new structural stormwater BMPs, the retrofit of existing structural stormwater BMPs, or the use of a properly designed regional structural stormwater BMP.~~

3. ~~Routine maintenance of structural stormwater BMPs required by this section cannot be used to meet mitigation requirements.~~

4. ~~Mitigation projects must be completed within 24 months after the start of the original construction activity.~~

5. ~~If the mitigation project is a private structural stormwater BMP and the city is not responsible for long-term maintenance of the project, the city will require written and recorded documentation of maintenance responsibilities.~~

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i. ~~Maintenance of private structural stormwater BMPs. Any structural stormwater BMP that the city determines to be private shall meet the following requirements:~~

~~A) A permanent public easement shall be provided to the city for access for inspection and/or maintenance purposes. Costs incurred by the city for any maintenance of private systems will be billed and/or assessed to the owner/operator.~~

~~B) Recorded inspection and maintenance agreements that define inspection and maintenance responsibilities are required. A minimum annual inspection for private systems shall be required. These requirements are transferrable to any party that becomes the owner/operator of the site.~~

~~C) If site configurations or structural stormwater BMPs change, causing decreased BMP effectiveness, new or improved structural stormwater BMPs must be implemented to meet the requirements of this section.~~

(eb) *Design standards.* Stormwater detention facilities constructed in the city shall be designed according to the most current technology as reflected in the MPCA publication, "Protecting Water Quality in Urban Areas," and shall contain, at a minimum, the following design factors:

- (1) A permanent pond surface area equal to two percent of the impervious area draining to the pond, whichever amount is greater;
- (2) An average permanent pool depth of four to ten feet;
- (3) A permanent pool length-to-width ratio of three to one or greater;
- (4) A minimum protective shelf extending ten feet into the permanent pool with a slope of ten to one, beyond which slopes should not exceed three to one;
- (5) A protective buffer strip of vegetation surrounding the permanent pool at a minimum width of one rod (16.5 feet);
- (6) All stormwater detention facilities shall have a device to keep oil, grease and other floatable material from moving downstream as a result of normal operations;
- (7) Stormwater detention facilities for new development must be sufficient to limit peak flows in each subwatershed to those that existed before the development for the 100-year storm event. All calculations and hydrologic models/information used in determining peak flows shall be submitted along with the surface water management plan;
- (8) All stormwater detention facilities must have a forebay to remove coarse-grained particles prior to discharge into a watercourse or storage basin;
- (9) Ponds shall be designed so postdevelopment runoff is no greater than predevelopment runoff;
- (10) Where a detention pond site is sized or located such that it will impact or otherwise benefit other property or future subdivisions, a drainage service area shall be identified. All of the required detention pond site shall be dedicated to the city with the cost of that portion benefitting other developments to be reimbursed by the city to the developer at the time of completion and certification of the improvement. The cost shall be based on actual construction costs obtained by the city and shall be prorated to future developments within such drainage service area;
- (11) Where a detention pond site is required to be located outside of the development area that will contribute to the stormwater flow, the city may be requested to acquire and develop the pond site,



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with the acquisition costs to be prorated to the developing property and to future development within the drainage service area.

(eb) *Wetlands.*

- (1) Runoff shall not be discharged directly into wetlands without pre-settlement of the runoff.
- (2) A protective buffer strip of natural vegetation at least 25 feet in width shall surround all wetlands.
- (3) Wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value. Replacement must be guided by the following principles in descending order of priority:
  - a. Avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;
  - b. Minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;
  - c. Rectifying the impact by repairing, rehabilitating or restoring the affected wetland environment;
  - d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity; and
  - e. Compensating for the impact by replacing or providing substitute wetland resources or environments.

(ec) *Steep slopes.* No land disturbing or development activities shall be allowed on slopes of 18 percent or more.

(fd) *Catch basins.* All newly installed and rehabilitated catch basins shall be provided with a sump area for the collection of coarse-grained material. Such basins shall be cleaned when they are half-filled with material.

(ge) *Drain leaders.* All newly constructed and reconstructed buildings will route drain leaders to pervious areas wherein the runoff can be allowed to infiltrate. The flow rate of water exiting the leaders shall be controlled so no erosion occurs in the pervious areas.

(hf) *Inspection and maintenance.* All stormwater management facilities shall be designed to minimize the need of maintenance, to provide access for maintenance purposes and to be structurally sound. All stormwater management facilities shall have a plan of operation and maintenance that ensures continued effective removal of pollutants carried in stormwater runoff. The city engineer, or designated representative, shall inspect all surface water management facilities during construction, during the first year of operation, and at least once every five years thereafter. The inspection records will be kept on file at the office of the city engineer for a period of six years. It shall be the responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the stormwater management facilities for inspection and maintenance purposes.

(ig) *Models/methodologies/computations.* For project sites one acre or larger, hydrologic models and design methodologies used for the determination of runoff and analysis of stormwater management structures shall be approved by the city engineer. Plans, specification and computations for stormwater management facilities submitted for review shall be sealed and signed by a registered professional engineer. All computations shall appear on the plans submitted for review, unless otherwise approved by the city engineer.

(jh) *Watershed management plans/groundwater management plans.* Surface water management plans shall be consistent with adopted watershed management plans and groundwater management plans prepared in accordance with Minn. Stat. §§ 103B.231 and 103B.255, respectively, and as approved by the state board of water and soil resources in accordance with state law.

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- (ki) *Easements.* If a surface water management plan involves direction of some or all runoff off of the site, it shall be the responsibility of the applicant to obtain from adjacent property owners any necessary easements or other property interests concerning flowage of water.
  - (kj) Failure to comply with any of the above requirements will result in the issuance of a stop work order halting construction until the project area is brought into compliance. Failure to remedy the situation within a reasonable time determined by the city engineer or designee will result in the issuance of a citation for violation of this section. Failure to have erosion and sediment control measures in place may also result in denial of a certificate of occupancy for the structure under construction.

(Ord. No. 693 2nd series, § 1, 4-28-2015)

State law reference(s)—Wetlands, Minn. Stat. § 103G.221 et seq.

### **Sec. 30-46. Illicit connection.**

- (a) *Purpose/intent.* The purpose of this section 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 section 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 section are:

- (1) To regulate the contribution of pollutants to the MS4 by storm water discharges.
- (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 section.

- (b) *Definitions.* For the purposes of this section, the following shall mean:

*Authorized enforcement agency* means employees or designees of the director of the municipal agency designated to enforce this section.

*Best management practices (BMPs)* means 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 storm water, receiving waters, or storm water 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* means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

*Construction activity* means activities subject to NPDES construction permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

*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-storm water discharge to the storm drain system, except as exempted in subsection (h).

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*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 illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system 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

Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by the city.

*Industrial activity* means activities subject to NPDES industrial storm water permits as defined in 40 CFR, Section 122.26(b)(14).

*Municipal separate storm sewer system (MS4)* means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the city and designed or used for collecting or conveying storm water, and that is not used for collecting or conveying sewage.

*National Pollutant Discharge Elimination System (NPDES) storm water discharge permit* means general, group, and individual storm water discharge permits which regulate facilities defined in federal NPDES regulations pursuant to the Clean Water Act. The Minnesota Pollution Control Agency (MPCA) has adopted general stormwater discharge permits, including but not limited to the general construction activity and general industrial activity permits.

*Non-storm water discharge* means any discharge to the storm drain system that is not composed entirely of storm water.

*Person* means 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* means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, 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.

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

*Storm drainage system* means publicly-owned facilities by which storm water 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, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

*Storm water* means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

*Storm water management plan* means 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 storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

*Wastewater* means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

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- (c) *Applicability.* This section shall apply to all water entering the storm drain system generated on any developed and undeveloped lands within the city, including any amendments or revisions thereto.
- (d) *Responsibility for administration.* The public works department shall administer, implement, and enforce the provisions of this section. Any powers granted or duties imposed upon the public works department may be delegated in writing by the director of the public works department to persons or entities acting in the beneficial interest of or in the employ of the agency.
- (e) *Compatibility with other regulations.* This section is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this section are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this section 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.
- (f) *Severability.* The provisions of this section are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this section 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 section.
- (g) *Ultimate responsibility.* The standards set forth herein and promulgated pursuant to this section are minimum standards; therefore this section does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into waters of the state caused by said person. This section shall not create liability on the part of the city or any agent or employee thereof for any damages that result from any discharger's reliance on this section or any administrative decision lawfully made thereunder.
- (h) *Discharge prohibitions.*
- (1) *Prohibition of illegal 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.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

- a. The following discharges are exempt from discharge prohibitions established by this section: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, 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 public works department as being necessary to protect public health and safety.
- c. Discharges associated with dye testing, however this activity requires a verbal notification to the public works department prior to the time of the test.
- d. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA), 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.

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- (2) *Prohibition of illicit connections.*
- a. The construction, use, maintenance or continued existence of illicit connections to the storm drain system 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 section 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 section must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the public works department.
  - 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 public works department 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 public works department.
- (i) *Watercourse protection.* Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, compost, grass clippings, 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.
- (j) *Industrial or construction activity discharges—Submission of NOI to the city.*
- (1) Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the public works department prior to the allowing of discharges to the MS4.
  - (2) The operator of a facility, including construction sites, required to have an NPDES permit to discharge storm water associated with industrial activity shall submit a copy of the notice of intent (NOI) to the public works department at the same time the operator submits the original notice of intent to the EPA as applicable.
  - (3) The copy of the notice of intent may be delivered to the public works department either in person or by mailing it to:  
  
Notice of Intent to Discharge Storm Water  
City of Marshall  
Attn: Director of Public Works  
344 West Main Street  
Marshall, MN 56258
  - (4) A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the notice of intent to do so to the public works department.

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(k) *Compliance monitoring.*

(1) *Right of entry—Inspection and sampling.* The public works department shall be permitted to enter and inspect facilities subject to regulation under this section as often as may be necessary to determine compliance with this section.

- 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 public works department.
- b. Facility operators shall allow the public works department ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
- c. The public works department shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the public works department to conduct monitoring and/or sampling of the facility's storm water discharge.
- d. The public works department 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 storm water 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 public works department and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- f. Unreasonable delays in allowing the public works department access to a permitted facility is a violation of a storm water discharge permit and of this section. A person who is the operator of a facility with an NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the public works department reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this section.

(2) *Search warrants.* If the public works department 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 section, 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 section or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the public works department may seek issuance of a search warrant from any court of competent jurisdiction.

(l) *Requirement to prevent, control, and reduce storm water pollutants by the use of best management practices.*

(1) *Authorization to adopt and impose best management practices.* The city will adopt requirements identifying best management practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States. The owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional

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structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this subdivision. These BMPs shall be part of a storm water management plan (SWMP) as necessary for compliance with requirements of the NPDES permit.

- (2) *New development and redevelopment.* The city may adopt requirements identifying appropriate best management practices to control the volume, rate, and potential pollutant load of storm water runoff from new development and redevelopment projects as may be appropriate to minimize the generation, transport and discharge of pollutants. The city shall incorporate such requirements in any land use entitlement and construction or building-related permit to be issued relative to such development or redevelopment. The owner and developer shall comply with the terms, provisions, and conditions of such land use entitlements and building permits as required herein and the city surface water management utility ordinance, chapter 78, article III.
- (3) *Responsibility to implement best management practices.* Notwithstanding the presence or absence of requirements promulgated pursuant [to] subsections (l)(1) and (2), any person engaged in activities or operations, or owning facilities or property which will or may result in pollutants entering storm water, the storm drain system or waters of the United States shall implement best management practices to the extent that they are technologically achievable to prevent and reduce such pollutants. The owner or operator of a commercial or industrial establishment shall provide reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses. Facilities to prevent accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner or operator's expense.
- (m) *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 storm water, the storm drain system, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the public works department 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 public works department within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least five years. Failure to provide notification of a release as provided above is a violation of this section.
- (n) *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 section. Any person who has violated or continues to violate the provisions of this section, shall constitute a misdemeanor and shall be punished as set forth in this Code.
- In the event the violation constitutes an immediate danger to public health or public safety, the public works department 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 public works department is authorized to seek costs of the abatement as outlined in subsection (q).
- (2) *Warning notice.* When the public works department finds that any person has violated, or continues to violate, any provision of this section, or any order issued hereunder, the public works department may serve upon that person a written warning notice, specifying the particular violation believed to have

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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 subdivision shall limit the authority of the public works department to take any action, including emergency action or any other enforcement action, without first issuing a warning notice.

- (3) *Notice of violation.* Whenever the public works department finds that a person has violated a prohibition or failed to meet a requirement of this section, the public works department may order compliance by written notice of violation to the responsible person.
- a. 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 section 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 administrator by filing a written notice of appeal within seven days of the date 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.
- b. 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.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the city or a contractor designated by the director of public works and the expense thereof shall be charged to the violator.

- (4) *Administrative fines.* The city council may, by resolution, establish a schedule of administrative fines authorized by this section. The amount of the fine shall reflect the costs associated with inspection, notice and order, posting, and/or abatement of violations. Administrative fines shall be imposed according to the schedule adopted by the city council and may be imposed in addition to any criminal charges or fines or actual abatement costs.



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(5) *Compensatory action.* In lieu of enforcement proceedings, penalties, and remedies authorized by this section, the public works department may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

(6) *Suspension of MS4 access.*

a. *Emergency cease and desist orders.* When the public works department finds that any person has violated, or continues to violate, any provision of this section, 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 public works department 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 subdivision 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 public works department 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 public works department may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the public works department that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this section. 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 public works department within three 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.

b. *Suspension due to illicit discharges in emergency situations.* The public works department 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 public works department 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.

c. *Suspension due to the detection of illicit discharge.* Any person discharging to the MS4 in violation of this section may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The public works department will notify a violator of the proposed termination of its MS4 access. The violator may petition the public works department for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this subdivision, without the prior approval of the public works department.

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- (7) *Criminal prosecution.* Any person that has violated or continues to violate this section shall be liable to criminal prosecution to the fullest extent of the law. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.
- (o) *Appeal of notice of violation.* Any person receiving a notice of violation may appeal the determination of the public works department. The notice of appeal must be filed with the office of the city administrator within seven days from the date of the notice of violation. A hearing on the appeal before the city administrator or his/her designee shall take place within 15 days from the date of filing of the notice of appeal. The decision of the city administrator or his/her designee shall be final.
- (p) *Enforcement measures after appeal.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within seven days of the decision of the municipal authority upholding the decision of the public works department, then representatives of the public works department 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 government agency or designated contractor to enter upon the premises for the purposes set forth above.
- (q) *Cost of abatement of the violation.* Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 15 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the city by reason of such violation. The liability shall be paid in not more than eight equal payments. Interest at the rate of six percent per annum shall be assessed on the balance beginning on the 50th day following discovery of the violation.

- (r) *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 section 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.
- (s) *Remedies not exclusive.* The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the public works department to seek cumulative remedies.

The city has the right to charge and assess violators for all costs to the city for damages from any discharge or other action in violation of the city ordinance or in violation of a permit issued by the city, including all attorney's fees, court costs, sampling and monitoring expenses, and other expenses associated with enforcement of this section. Administrative fines or other enforcement actions are not considered to be payment of these costs.

(Ord. No. 693 2nd series, § 1, 4-28-2015)