

CHAPTER 146A. ILLICIT DISCHARGE AND STORM WATER DISCHARGE

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146A.01. Purpose/Intent. Subdivision 1. The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Rochester by regulating the introduction of pollutants to the municipal separate storm sewer system (MS4) owned and operated by the City of Rochester, to the maximum extent practicable, as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the City's MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

Subd. 2. The objectives of this ordinance are:

- A. To regulate the introduction of pollutants to the storm water system by any user;
- B. To prohibit illicit connections and illegal discharges to the storm water system; and
- C. To establish legal authority to carry out all access, permitting inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance. (4337, 4/9/18)

Subd. 3. By virtue of this ordinance, it shall be unlawful for any person to allow pollutants to enter the MS4 and to place, deposit, or permit to be deposited pollutants plus illegal dumping incidents (e.g. dumped leaves, grass clippings, and garbage) on public or private property or in any watercourse within the City or in any area under the jurisdiction of the City, except where suitable treatment or exemptions have been provided in accordance with subsequent provisions of this ordinance.

146A.02. Definitions. Subdivision 1. For the purposes of this ordinance, the following shall mean:

Subd. 2. Best Management Practices (BMPs). A BMP is a method or technique that has consistently shown management results superior to those achieved with other means. In addition, a "best" practice can evolve to become better as improvements are discovered. BMPs include schedules of activities, prohibitions of 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

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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.

Subd. 3. Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Subd. 4. Development. Any land disturbance activity that changes the site's characteristics in conjunction with residential, commercial, industrial or institutional construction or alteration.

Subd. 5. Construction Activity. Activities include construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Subd. 6. 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.

Subd. 7. Illegal Discharge. Any direct or indirect non-storm water discharge to the storm sewer system, except as exempted in section 146A.08 of this ordinance.

Subd. 8. Illicit Connections. An illicit connection is either of the following:

- A. Any drain or conveyance, whether on the surface or subsurface, that allows an illegal discharge to enter the storm sewer system including but not limited to any conveyances that allows any non- storm water discharge including sewage, process wastewater, and wash water to enter the storm sewer system and any connections to the storm sewer system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the City; or
- B. Any drain or conveyance connected from a commercial or industrial land use to the storm sewer system that has not been documented in plans, maps, or equivalent records and approved by the City.

Subd. 9. Industrial Activity. Activities subject to NPDES Industrial Storm Water Permits as defined in 40 CFR, Section 122.26 (b) (14).

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Subd. 10. Municipal Separate Storm Sewer System (MS4). The conveyance or system of conveyances ditches, man-made channels, or storm drains:

Owned or operated by a state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district or similar entity, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management Agency under section 208 of the federal Clean Water Act, United States Code, title 33, section 1288, that discharges into waters of the state;

- A. Designed or used for collecting or conveying storm water;
- B. That is not a combined sewer;
- C. That is not part of a publicly owned treatment works as defined in 40 CFR § 122.2; and
- D. Municipal separate storm sewer systems do not include separate storm sewers in very discrete areas, such as individual buildings. (Minn. R. 7090.0080, subp. 8).

Subd. 11. National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Subd. 12. New Development. All construction activity that is not defined as redevelopment.

Subd. 13. Non-Storm Water Discharge. Any discharge to the storm sewer system that is not composed entirely of storm water.

Subd. 14. Notice of Violation (NOV). Written notification that documents and communicates violations observed during an inspection to the business or individual.

Subd. 15. Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Subd. 16. Pollutant. Anything that causes or contributes to pollution, that when

discharged, have the potential to do any of the following:

- A. Interfere with state designated water uses;
- B. Obstruct or cause damage to Waters of the State;
- C. Change water color, odor, or usability as a drinking water source through causes not attributable to natural processes affecting surface water or groundwater;
- D. Add an unnatural surface film on the water;
- E. Adversely change other chemical, biological, thermal, or physical condition, in surface water or groundwater; or
- F. Harm human life, aquatic life, or terrestrial plant and wildlife.

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, ammunition ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Subd. 17. Pollute. The discharge of pollutants.

Subd. 18. Pollution. The direct or indirect discharge of pollutants.

Subd. 19. Precipitation. A deposit on the earth of hail, mist, rain, sleet, or snow; also, the quantity of water deposited.

Subd. 20. Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Subd. 21. Redevelopment. Any construction activity where, prior to the start of construction, the areas to be disturbed have 15 percent or more of impervious surface(s).

Subd. 22. Sanitary Sewer System. The system of underground pipes that convey human wastewater from residential, commercial, industrial, institutional, and other buildings to Rochester's Water Reclamation Plant for treatment.

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Subd. 23. Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Subd. 24. Watercourse. Any channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods water may leave the confining beds and banks but under low and normal flows water is confined within the channel. A watercourse may be perennial or intermittent and natural or artificially constructed. A watercourse includes all public waters.

Subd. 25. Waters of the United States. As defined in 33 U.S.C. §1251 et seq. (1972) and as amended from time to time. (4337, 4/9/18)

146A.03. Applicability. This ordinance shall apply to all water entering Rochester's MS4 that is generated on any developed and undeveloped lands unless explicitly exempted by this ordinance.

146A.04. Responsibility for Administration. The Public Works Director 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 Public Works Director to persons or entities acting in the beneficial interest of or in the employ of the City of Rochester. In addition, the Rochester Police Department and Rochester Fire Department may enforce provisions of this ordinance.

146A.05. Compatibility With Other Regulations. This ordinance is not intended to modify or repeal any other local, state, or federal 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.

146A.06. 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.

146A.07. 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.

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146A.08. Prohibition of Illegal Discharges. Subdivision 1. 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 materials, including but not limited to Pollutants or waters containing any Pollutants, other than Storm Water, except for the Non-storm Water Discharges identified in (A) below. The commencement, conduct or continuance of any Illegal Discharge to the MS4 is prohibited except as described as follows:

- A. Certain categories of Non-storm Water Discharges are authorized under the City's MS4 permit because they have been evaluated by the City and identified as not being significant contributors of Pollutants: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined at 40 CFR § 35.2005(b)(20)), uncontaminated pumped groundwater, 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, street wash water, and discharges or flows from firefighting activities. These categories are hereby exempt from the discharge prohibitions established by this ordinance.
- B. Discharges specified in writing by the Public Works Director as being necessary to protect public health and safety.
- C. 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 MS4.
- D. The prohibition shall not apply to any sump pit water discharged to the storm sewer system, provided a connection permit has been issued by the Rochester Public Works Department.

Subd. 2. Prohibition of Illicit Connections.

- A. The construction, use, maintenance or continued existence of Illicit Connections to the MS4 is prohibited.

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- 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. Illicit Connections in violation of this ordinance must be disconnected and redirected, within the timeframe specified in the Notice of Violation (NOV), to an approved onsite wastewater management system or the Sanitary Sewer System upon approval of the Public Works Director.
- E. Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the MS4, shall be located by the owner or occupant of that property upon receipt of written Notice of Violation from the Public Works Director requiring that such locating be completed. The Notice of Violation shall specify a reasonable time period within which the location of the drain or conveyance is to be determined, and shall require that the drain or conveyance be identified as storm sewer, sanitary sewer, or other, and further require that the outfall location or point of connection to the MS4, Sanitary Sewer System, or other discharge point be identified. Results of these investigations are to be documented and provided to Public Works Director.

146A.09. Industrial or Construction Activity Discharges. Submission of Notice of Intent (NOI) to Discharge Storm Water to the City of Rochester.

- A. Any person subject to an Industrial Activity 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 Director prior to the allowing of discharges to the MS4.
- B. A person commits an offense if the person operates a facility that is discharging Storm Water associated with Industrial Activity without complying with their storm water permit.

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146A.091. Stormwater Management Plan Approval Standards. The Public Works Director shall not approve a stormwater management plan which fails to meet the standards set forth in state and federal regulations and other applicable City standards and regulations. Every applicant for a permit to allow land disturbing activities of one acre or greater, including projects that are less than one acre that are part of a larger common plan of development or sale, must meet the requirements of this ordinance and the standards set forth in the Land Development Manual. (4337, 4/9/18)

146A.092. Stormwater Management Plan Review. When any land disturbance project or a series of projects will disturb less than one acre of land, the Public Works Director shall determine if a stormwater management plan is required, and what submittals, if any are required. (4337, 4/9/18)

146A.093. Stormwater Management Plan Submittal Requirements. A written application for stormwater management plan approval, along with a proposed stormwater management plan, shall be submitted to the Public Works Director per the requirements of the Land Development Manual. (4337, 4/9/18)

146A.094. Stormwater Management Criteria for Permanent Facilities and BMPs. New development and redevelopment projects with land disturbance of one acre or greater, including projects less than one acre that are part of a larger common plan of development or sale, must include stormwater management BMPs in the stormwater management plan. Permanent stormwater control facilities included as part of the final design for land development and redevelopment shall be addressed in the stormwater management plan and shall meet the following to the maximum extent practicable (MEP).

A. Post-construction Stormwater Management must incorporate any combination of BMPs, with the highest preference given to green infrastructure techniques and practices (e.g., infiltration, evapotranspiration, reuse/harvesting, conservation design, urban forestry, green roofs, etc.), necessary to meet the following conditions on the site of a construction activity to the maximum extent practicable (MEP).

(1) New development projects: No net increase from pre-project conditions (on an annual average basis) of:

- a) Stormwater discharge volume, unless precluded by the stormwater management limitations in subsection B below.
- b) Stormwater discharges of Total Suspended Solids (TSS).
- c) Stormwater discharges of Total Phosphorus (TP).

(2) Redevelopment projects: A net reduction from pre-project

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conditions (on an annual average basis) of:

- a) Stormwater discharge volume, unless precluded by the stormwater management limitations in subsection B below.
- b) Stormwater discharges of TSS.
- c) Stormwater discharges of TP.

B. Stormwater Management Limitations: Infiltration is prohibited when the infiltration structural stormwater BMP will receive discharge 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 issued by the MPCA.
- (2) Where vehicle fueling and maintenance occur.
- (3) With less than three (3) feet of separation distance from the bottom of the infiltration system to the elevation of the seasonally saturated soils of the top of bedrock.
- (4) Where high levels of contaminants in soil or groundwater will be mobilized by the infiltrating stormwater.

C. Stormwater Management Restrictions: Infiltration is restricted, without higher engineering review, sufficient to provide a functioning treatment system and prevent adverse impacts to groundwater, when the infiltration device will be constructed in the following 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.
- (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 8.3 inches per hour.

D. Linear Projects: When a lack of right-of-way precludes the installation of volume control practices that meet the conditions for post-construction stormwater management, a reasonable attempt must be made and documented to obtain right-of-way during the project planning process.

E. Stormwater Management Exceptions: The City may allow for lesser volume control on the site of the original construction activity only under the following circumstances:

- (1) The owner and/or operator of a construction activity is precluded

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from infiltrating stormwater through a designated system due to any of the infiltration related limitations described above in subsection B.

- (2) The owner and/or operator of a construction activity implements to the MEP, volume reduction techniques, other than infiltration, (e.g., evapotranspiration, reuse/harvesting, conservation design, green roofs, etc.) on the site of the original construction activity that reduces stormwater discharge volume, but may not meet the conditions of post-construction stormwater management in subsection A above.

(4337, 4/9/18)

146A.10. Compliance Monitoring. Subdivision 1. Right of Entry: Inspection and Sampling. Department of Public Works employees 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 that 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 that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any related additional duties as defined by state and federal law.
- C. The Department of Public Works shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Public Works Director 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 to confirm or refute the alleged contribution of Pollutants. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at the discharger's 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

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

- F. No Person shall cause an unreasonable delay in allowing the Department of Public Works access to a permitted facility. No person who is the operator of a facility with an NPDES permit to discharge storm water associated with Industrial Activity shall deny the Department of Public Works reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

Subd. 2. Search Warrants. If the Department of Public Works has been refused access to any part of the premises from which storm water is discharged, and 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 Public Works Director may seek issuance of an administrative search warrant from any court of competent jurisdiction.

146A.11. Requirements to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices. Properties that discharge to the MS4 shall adopt Best Management Practices for any activity, operation, or facility that may cause or contribute to Pollution or contamination of Storm Water, the MS4, 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 Pollutants into the MS4, within City of Rochester limits, or into 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 Illegal 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 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 section.

146A.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 Illegal Discharges or Pollutants discharging into Storm Water, the MS4, 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

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the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Public Works Director in person, or by phone or via email as soon as possible and no later than the next business day. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such an 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 ten years. Such records shall be retained for at least ten years. Failure to provide notification of a release as provided above is a violation of this ordinance.

146A.13. Violations, Enforcement and Penalties. Subdivision 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 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 Director is authorized to seek costs of the abatement as outlined in section 146A.17.

Subd. 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 Public Works Director may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution, whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the Public Works Director to take any action, including emergency action or any other enforcement action, if a Warning Notice is not issued.

Subd. 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 Public Works Director 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 and the date

and time it started, along with its duration, if known;

- 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. Such a description may require without limitation:
 - (1) The performance of monitoring, analyses, and reporting;
 - (2) The elimination of Illicit Connections or Illegal 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; and
 - (6) The implementation of source control or treatment BMPs;
- 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 Rochester City Administrator or his designee by filing a written notice of appeal within ten business days of receipt of the Notice of Violation; and
- A. 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.

Subd. 4. Compensatory Action. In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the Public Works Director may impose upon violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

Subd. 5. Suspension of MS4 access may occur as follows:

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 persons or to the environment, the Public Works Director may forego the Notice of Violation Process and 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 Public Works Director 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 Department of Public Works may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Public Works Director that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this ordinance. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Public Works Director within one business day of receipt of the emergency order. Issuance of an emergency cease and desist order shall not

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be a bar against, or a prerequisite for, taking any other action against the violator.

- B. Suspension due to Illegal Discharges in Emergency Situations. The Public Works Director may, without prior notice, suspend access to the MS4 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 Director 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. Termination due to the Detection of Illegal 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 Public Works Director will notify a violator of the proposed termination of its MS4 access. The violator may petition the Public Works Director 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 Public Works Director.

Subd. 6. Civil Penalties. In the event the alleged violator fails to take the remedial measures set forth in any written notice or otherwise fails to cure the violations according to the schedule described in the notice then the City of Rochester may impose a penalty of up to \$1,000 for each day the violation remains unremedied after receipt of the notice of violation.

Subd. 7. Criminal Prosecution. Any Person that has violated or continues to violate this ordinance shall be subject to criminal prosecution. It shall be a misdemeanor to violate any provision of this chapter. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

146A.14. Appeal of Notice of Violation. Any person receiving a Notice of Violation may appeal the determination of the Director of Public Works. The appeal shall be filed with the City Administrator within ten business days from the date of the Notice of Violation. Thereafter the City Administrator or his designee shall provide notice of the time and place where the hearing will be held and shall notify the recipient of right to appear in person or by counsel. At the conclusion of the hearing the City Administrator or his designee may vacate

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the Notice of Violation or may affirm it and require the recipient to come into compliance within a reasonable time. The City Administrator or his designee shall inform the recipient that Public Works may abate the non-compliance and assess the costs should the recipient not comply within the time allowed.

146A.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, within seven business days of the decision of the City Administrator or his designee affirming the Notice of Violation, then representatives of the Department of Public Works shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore compliance. 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.

146A.16. Cost of Abatement of Violation. Costs of abatement may be assessed against the Premises pursuant to Minn. Stat. 429.101 if not paid following invoicing.

146A.17. 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 ordinance 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.

146A.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 Public Works Director to seek cumulative remedies. The Department of Public Works may recover all attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

(4190, 4/20/15; 4337, 4/9/18)