

Appendix B

Proposed Dumping and Illicit Discharge Ordinance

Illicit Discharge Definition:

(1). **Scope.** This section shall apply to all water generated on developed or undeveloped land under the City of Ferndale's jurisdiction.

(2). **Prohibition of illicit discharges.** It is unlawful for any person to discharge either directly or indirectly, any organic or inorganic matter into the storm and surface water system that may cause or tend to cause water pollution, including but not limited to the following:

- trash or debris;
- construction materials;
- petroleum products including but not limited to oil, gasoline, grease, fuel oil, heating oil;
- antifreeze and other automotive products;
- metals in either particulate or dissolved form;
- flammable or explosive materials;
- radioactive material;
- batteries;
- acids, alkalis, or bases;
- paints, stains, resins, lacquers or varnishes;
- degreasers and solvents;
- drain cleaners;
- pesticides, herbicides or fertilizers;
- steam cleaning wastes;
- washing of fresh concrete for cleaning and/or finishing purposes or to expose aggregates;
- soaps, detergents or ammonia;
- swimming pool backwash;
- chlorine, bromine and other disinfectants;
- heated water;
- domestic animal wastes;
- sewage;
- recreational vehicle waste;
- animal carcasses;
- food wastes;
- bark and other fibrous materials;
- collected lawn clippings, leaves or branches;
- silt, sediment or gravel;
- dyes, except as stated in subsection C.1. of this section;
- chemicals not normally found in uncontaminated water;

- any hazardous material or waste not listed above.

The commencement, conduct or continuance of any non-stormwater discharge to the municipal separate storm sewer system is prohibited except uncontaminated discharges from the following sources:

- Potable water;
- Potable water line flushing;
- Uncontaminated water from crawl space pumps or footing drains;
- Lawn watering with potable water or collected rainwater;
- Materials placed as part of an approved habitat restoration or bank stabilization project;
- Natural uncontaminated surface water or ground water;
- Flows from riparian habitats and wetlands;
- The following discharges from boats: engine exhaust; cooling waters; effluent from sinks; showers and laundry facilities; and treated sewage from Type I and Type II marine sanitation devices;
- Diverted stream flows,
- Groundwater infiltration to storm drains,
- Pumped groundwater,
- Air conditioning condensation,
- Springs,
- Non-commercial washing of vehicles, recreational vehicles, and boats,
- Swimming pools (if dechlorinated - typically less than one PPM chlorine),
- Fire fighting activities, and
- Any other uncontaminated water source.
- Discharges specified in writing by the City of Ferndale as being necessary to protect public health and safety.
- Dye testing is an allowable discharge if the City of Ferndale has so specified in writing.

(3). Pavement washing prohibited. In addition to the prohibitions listed, washing of public or private streets and parking areas is not permitted unless all of the following conditions are met:

- No other feasible alternative exists to remove the undesirable material; and
- Prior written utility approval is obtained from the Public Works Director; and
- Facilities are provided to treat the wash water runoff and affected drainage facilities are cleaned.

(4). Prohibition of illicit connections. Any connection identified by the Public Works Director that could convey anything not composed entirely of surface and storm water directly to surface and storm water or ground water is considered an illicit connection and is prohibited with the following exceptions:

- connections conveying allowable discharges;
- connections conveying discharges pursuant to an NPDES permit, other than an NPDES storm water permit, or a State Waste Discharge Permit; and
- connections conveying effluent from onsite sewage disposal systems to subsurface soils.

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.

(5). Reduction of stormwater pollutants by the use of best management practices. Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, is required to implement, at the person's expense, the BMP's necessary to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

(6). 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 in, or may result in, illicit discharges or pollutants discharging into surface and storm water or ground water, the 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 the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, the person shall notify the City of Ferndale in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the City of Ferndale within three (3) business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

(7). Emergency response activities. Actions that must be undertaken immediately or within a time too short to allow full compliance with this ordinance in order to avoid an imminent threat to public health or safety shall be exempt from this section. The Public Works Director by public rule may specify actions that qualify for this exception in city procedures. A person undertaking emergency response activities shall take steps to ensure that the discharges resulting from such activities are minimized. In addition, this person shall evaluate BMPs and the site plan, where applicable, to restrict recurrence.

Illicit Discharge Enforcement:

(1). Enforcement authority. The Public Works Director or their designees shall have the authority to issue notices of violation and citations, and to impose the civil penalties provided in this section.

The Public Works Director shall initially rely on education and informational assistance as much as possible to gain compliance with this ordinance, unless the Public Works Director determines

a violation is a result of a flagrant act that should be addressed through immediate penalties or poses a hazard to human health or welfare.

(2). Notification of violation. Whenever the Public Works Director finds that any permittee or any other person discharging stormwater has violated or is violating this ordinance or a permit or order issued hereunder, the Public Works Director may serve upon such person written notice of the violation. Within ten (10) days of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the Public Works Director. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.

(3). Hazards. Whenever the Public Works Director determines that any violation of this ordinance poses a hazard to public health, safety, or welfare; endangers any property; or adversely affects the safety and operation of city right-of-way, utilities, and/or other property owned or maintained by the city; the person holding title to the subject property, and/or other person or agent in control of said property, upon receipt of notice in writing from the Public Works Director shall within the period specified therein address the cause of the hazardous situation in conformance with the requirements of this ordinance.

Notwithstanding any other provisions of this ordinance, whenever it appears to the Public Works Director that conditions covered by this ordinance exist requiring immediate action to protect the public health and/or safety, the Public Works Director is authorized to enter at all times in or upon any such property, public or private, for the purpose of inspecting and investigating such emergency conditions. The Public Works Director may without prior notice order the immediate discontinuance of any activity leading to the emergency condition. Failure to comply with such order shall constitute a misdemeanor.

Illicit Discharge Penalties:

(1). Violations. The enforcement provisions for water quality are intended to encourage compliance with this ordinance. To achieve this, violators will be required to take corrective action and comply with the requirements of this ordinance, and may be required to pay a civil penalty for the redress of ecological, recreational, and economic values lost or damaged due to their unlawful action.

(2). Penalties. The provisions in this section are in addition to and not in lieu of any other penalty, sanction or right of action provided by law. Any person who, through an act of commission or omission, aids or abets in a violation shall be considered to have committed the violation for the purposes of the civil penalty. Any person in violation of this ordinance shall be subject to civil penalties assessed as follows:

- An amount reasonably determined by the Public Works Director to be equivalent to the economic benefit the violator derives from the violation as measured by: the greater of the resulting increase in market value of the property or business value received by the

violator, or savings of construction or retrofitting costs realized by the violator performing any act in violation of this ordinance; and

- An amount, not less than one hundred dollars (\$100.00) and not more than five thousand dollars (\$5,000.00) per day for each day of violation, that is reasonably based upon the nature and gravity of the violation and the cost to the city of enforcing this ordinance
- Payment of a monetary penalty pursuant to this ordinance does not relieve the person of the duty to correct the violation.

(3). Multiple violators. In the event more than one person is determined to have violated the provisions of this ordinance, all applicable civil penalties may be imposed against each person, and recoverable damages, costs, and expenses may be allocated among the persons on any equitable basis. Factors that may be considered in determining an equitable allocation include:

- Awareness of the violation;
- Ability to correct the violation;
- Ability to pay damages, costs, and expenses;
- Cooperation with government agencies;
- Degree of impact or potential threat to water or sediment quality, human health, or the environment.

(4). Measuring civil penalties. Each violator is jointly and severally liable for a violation of this ordinance. The Public Works Director may take enforcement action, in whole or in part, against any violator. The decisions whether to take enforcement action, what type of action to take, and which person to take action against, are all entirely within the Public Works Director's discretion. Factors to be used in taking such enforcement actions shall be:

- Awareness of the violation;
- Ability to correct the violation;
- Cooperation with government agencies;
- Degree of impact or potential threat to water or sediment quality, human health, or the environment.
- Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
- The economic benefit gained by the violator;
- Any unusual or extraordinary enforcement costs incurred by the municipality;
- The amount of penalty established by ordinance or resolution for specific categories of violations; and
- Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

(5). Reduction of penalties. Penalties may be reduced based upon one or more of the following mitigating factors:

- The person responded to city attempts to contact the person and cooperated with efforts to correct the violation;

- The person showed due diligence and/or substantial progress in correcting the violation; or
- An unknown person was the primary cause of the violation.

(6). Recovery of damages and costs. In addition to the civil penalty in subsection (4) above, the municipality may recover all damages proximately caused by the violator to the municipality, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this ordinance, or any other actual damages caused by the violation.

(7). Other remedies. The municipality may bring legal action to enjoin the continuing violation of this ordinance, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.

(8). Remedies cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted.

(9). Use of funds. All civil penalties recovered during the enforcement of this ordinance shall be deposited into a fund of the stormwater utility and shall be used for the protection of surface and storm water or ground water as set forth in this ordinance, through education or enhanced implementation.