

CHAPTER 1053
Illicit Discharge and Illegal Connection Control

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1053.01 PURPOSE AND SCOPE

The purpose of this regulation is to provide for the health, safety, and general welfare of the residents of the City of Avon through the regulation of illicit discharges to the municipal separate storm sewer system (MS4). This regulation establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process as required by the Ohio Environmental Protection Agency (Ohio EPA). The objectives of this regulation are:

- (a) To prohibit illicit discharges and illegal connections to the MS4.
- (b) To establish legal authority to carry out inspections, monitoring procedures, and enforcement actions necessary to ensure compliance with this regulation.

1053.02 APPLICABILITY

This regulation shall apply to all residential, commercial, industrial, or institutional facilities responsible for discharges to the MS4 and on any lands in the City of Avon, except for those discharges generated by the activities detailed in Section 1053.07 (a)(1) to (a)(3) of this regulation.

1053.03 DEFINITIONS

The words and terms used in this regulation, unless otherwise expressly stated, shall have the following meaning:

- (a) 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 to storm water. 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.

- (b) City Engineer shall mean the City’s Engineer, its Consulting Engineer or Engineering Firm, any Engineer or Engineering Firm hired by the City to perform work for the City on any given project or any designee of one of the above, e.g., a City Building Inspector designated to perform stormwater inspections
- (c) Community: means the City of Avon, its designated representatives, boards, or commissions.
- (d) Environmental Protection Agency or United States Environmental Protection Agency (USEPA): means the United States Environmental Protection Agency, including but not limited to the Ohio Environmental Protection Agency (Ohio EPA), or any duly authorized official of said agency.
- (e) Floatable Material: in general this term means any foreign matter that may float or remain suspended in the water column, and includes but is not limited to, plastic, aluminum cans, wood products, bottles, and paper products.
- (f) Hazardous Material: 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.
- (g) Illicit Discharge: as defined at 40 C.F.R. 122.26 (b)(2) means any discharge to an MS4 that is not composed entirely of storm water, except for those discharges to an MS4 pursuant to a NPDES permit or noted in Section 1053.07 of this regulation.
- (h) Illegal Connection: means any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the MS4.
- (i) Municipal Separate Storm Sewer System (MS4): as defined at 40 C.F.R. 122.26 (b)(8), municipal separate storm sewer system means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
 - (1) Owned or operated by a State, City, town, borough, county, parish, district, municipality, township, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over sewage, industrial wastes, including special districts under State law such as a sewer district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean

Water Act that discharges to waters of the United States;

- (2) Designed or used for collecting or conveying storm water;
 - (3) Which is not a combined sewer; and
 - (4) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R. 122.2.
- (j) 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 areawide basis.
- (k) Off-Lot Discharging Home Sewage Treatment System: means a system designed to treat home sewage on-site and discharges treated wastewater effluent off the property into a storm water or surface water conveyance or system.
- (l) Owner/Operator: means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or on the owner's behalf.
- (m) Pollutant: means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, solvents, oil and other automotive fluids, non-hazardous liquid and solid wastes, yard wastes, refuse, rubbish, garbage, litter or other discarded or abandoned objects, floatable materials, pesticides, herbicides, fertilizers, hazardous materials, wastes, sewage, dissolved and particulate metals, animal wastes, residues that result from constructing a structure, and noxious or offensive matter of any kind.
- (n) Storm Water: any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- (o) Wastewater: The spent water of a community. From the standpoint of a source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions.

1053.04 DISCLAIMER OF LIABILITY

Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this regulation are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property.

1053.05 CONFLICTS, SEVERABILITY, NUISANCES & RESPONSIBILITY

- (a) Where this regulation is in conflict with other provisions of law or ordinance, the most restrictive provisions, as determined by the City of Avon, shall prevail.
- (b) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.
- (c) This regulation shall not be construed as authorizing any person to maintain a nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.
- (d) Failure of the City of Avon to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility for the condition or damage resulting there from, and shall not result in the City of Avon, its officers, employees, or agents being responsible for any condition or damage resulting there from.

1053.06 RESPONSIBILITY FOR ADMINISTRATION

The City of Avon shall administer, implement, and enforce the provisions of this regulation. The City of Avon may contract with the Lorain County General Health District to conduct inspections and monitoring and to assist with enforcement actions. However, it should be noted that the standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore, this chapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

1053.07 DISCHARGE AND CONNECTION PROHIBITIONS

- (a) Prohibition of Illicit Discharges. No person shall discharge, or cause to be discharged, an illicit discharge into the MS4. The commencement, conduct, or continuance of any illicit discharge to the MS4 is prohibited except as described below:
 - (1) 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 condensate; irrigation water; springs; water from crawl space pumps; footing drains; lawn watering; individual residential car washing; charity car washes; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; street wash water; and discharges or flows from fire fighting activities. These discharges are exempt until such time as they are determined by the City of Avon to be significant contributors of pollutants to the MS4.

- (2) Discharges specified in writing by the City of Avon as being necessary to protect public health and safety.
- (3) Discharges from off-lot discharging home sewage treatment systems permitted by the Lorain County General Health District for the purpose of discharging treated sewage effluent in accordance with Ohio Administrative Code 3701-29-02(6) until such time as the Ohio Environmental Protection Agency issues an NPDES permitting mechanism for residential 1, 2, or 3 family dwellings. These discharges are exempt unless such discharges are deemed to be creating a public health nuisance by the Lorain County General Health District.
- (4) In compliance with the City of Avon Storm Water Management Program, discharges from all off-lot discharging home sewage treatment systems must either be eliminated or have coverage under an appropriate NPDES permit issued and approved by the Ohio Environmental Protection Agency. When such permit coverage is available, discharges from off-lot discharging home sewage treatment systems will no longer be exempt from the requirements of this regulation.
- (5) Dye testing. However, a verbal notification is required to be given to the City prior to the time of the test.
- (6) 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 Federal Environmental Protection Agency or the Ohio Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and chapters, and provided that written approval has been granted for any discharge to the storm drain system. Proof of compliance with said permit may be required in a form acceptable to the City prior to the allowing of discharges to the MS4.
- (7) The City will adopt requirements identifying best management practices (BMPs) 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 U.S. The owner or operator of a commercial or industrial establishment 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 premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and nonstructural BMPs 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 storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPPP) for compliance with requirements of the NPDES permit.

- (b) Prohibition of Illegal Connections. The construction, use, maintenance, or continued existence of illegal connections to the MS4 is prohibited.
 - (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
 - (2) A person is considered to be in violation of this regulation if the person connects a line conveying illicit discharges to the MS4, or allows such a connection to continue.
 - (3) 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 U.S., 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 City 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 City 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 three years.

1053.08 MONITORING OF ILLICIT DISCHARGES AND ILLEGAL CONNECTIONS

- (a) Establishment of an Illicit Discharge and Illegal Connection Monitoring Program: The City of Avon shall establish a program to detect and eliminate illicit discharges and illegal connections to the MS4. This program shall include the mapping of the MS4, including MS4 outfalls; the routine inspection of storm water outfalls to the MS4, and the systematic investigation of potential residential, commercial, industrial, and institutional facilities for the sources of any dry weather flows found as the result of these inspections.
- (b) Inspection of Residential, Commercial, Industrial, or Institutional Facilities.
 - (1) The City of Avon shall be permitted to enter and inspect facilities subject to this regulation as often as may be necessary to determine compliance with this regulation.
 - (2) The City of Avon shall have the right to set up at facilities subject to this regulation such devices as are necessary to conduct monitoring and/or sampling of the facility's storm water discharge, as determined by the City of Avon.

- (3) The City of Avon shall have the right to require the facility owner/operator to install monitoring equipment as necessary. This sampling and monitoring equipment shall be maintained at all times in safe and proper operating condition by the facility owner/operator at the owner/operator's expense. All devices used to measure storm water flow and quality shall be calibrated by the City of Avon to ensure their accuracy.
- (4) Any temporary or permanent obstruction to safe and reasonable access to the facility to be inspected and/or sampled shall be promptly removed by the facility's owner/operator at the written or oral request of the City of Avon and shall not be replaced. The costs of clearing such access shall be borne by the facility owner/operator.
- (5) Unreasonable delays in allowing the City of Avon access to a facility subject to this regulation for the purposes of illicit discharge inspection is a violation of this regulation.
- (6) If the City of Avon is refused access to any part of the facility from which storm water is discharged, and the City of Avon demonstrates probable cause to believe that there may be a violation of this regulation, or that there is a need to inspect and/or sample as part of an inspection and sampling program designed to verify compliance with this regulation or any order issued hereunder, or to protect the public health, safety, and welfare, the City of Avon may seek issuance of a search warrant, civil remedies including but not limited to injunctive relief, and/or criminal remedies from any court of appropriate jurisdiction.
- (7) Upon confirmation of an illicit discharge from a facility by the City of Avon, any costs associated with the review of proposed remediation plans, inspecting the facility to determine compliance with this regulation, and monitoring and/or sampling of the facility's storm water discharge, throughout the time period it takes to adequately resolve the illicit discharge, shall be assessed to the facility owner/operator.

1053.09 ENFORCEMENT

- (a) Notice of Violation. When the City of Avon finds that a person has violated a prohibition or failed to meet a requirement of this regulation, the City of Avon may order compliance by written Notice of Violation. Such notice must specify the violation and shall be hand delivered, and/or sent by registered mail, to the owner/operator of the facility. Such notice may require the following actions:
 - (1) The performance of monitoring, analyses, and reporting;
 - (2) The elimination of illicit discharges or illegal connections;

- (3) That violating discharges, practices, or operations 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;
 - (6) The implementation of source control or treatment BMPs.
- (b) If abatement of a violation and/or restoration of affected property is required, the Notice of Violation shall set forth a deadline within which such remediation or restoration must be completed. Said Notice shall further advise that, should the facility owner/operator fail to remediate or restore within the established deadline, a legal action for enforcement may be initiated.
- (c) Any person receiving a Notice of Violation must meet compliance standards within the time established in the Notice of Violation.
- (d) Injunctive Relief: It shall be unlawful for any owner/operator to violate any provision or fail to comply with any of the requirements of this regulation pursuant to O.R.C. 3709.211. If a owner/operator has violated or continues to violate the provisions of this regulation, the City of Avon may petition for a preliminary or permanent injunction restraining the owner/operator from activities that would create further violations or compelling the owner/operator to perform abatement or remediation of the violation.
- (e) Suspension Due to Illicit Discharges in Emergency Situations. The City 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 City 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.
- (f) Suspension Due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this chapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City Engineer will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a hearing for reconsideration. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the authorized enforcement agency.

1053.10 REMEDIES NOT EXCLUSIVE

The remedies listed in this regulation are not exclusive of any other remedies available under any applicable federal, state or local law and it is in the discretion of the City of Avon to seek cumulative remedies.

1053.11 PENALTY

- (a) Any person, firm, entity or corporation; including but not limited to, the owner and or operator of the property, his agents and assigns, occupant, property manager, and any contractor or subcontractor who violates or fails to comply with any provision of this regulation is guilty of a misdemeanor of the third degree and shall be fined no more than five hundred dollars (\$500.00) or imprisoned for no more than sixty (60) days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues beyond the date established in the Notice of Violation set forth in Section 1053.09.

- (b) All expenses incurred by the City of Avon to initiate an enforcement action, implement a mitigating event, remediation of damages caused or resolve a violation shall be the responsibility of the property owner and/or operator.