

## Chapter 939

### Illicit Discharge and Connection Ordinance

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#### **939.01 PURPOSE/INTENT.**

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of **The City of Marysville** through the regulation of illicit discharges to the municipal separate storm sewer system (MS4). This ordinance 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 (OEPA). The objectives of this ordinance are:

- a) To regulate the contribution of pollutants to the MS4 by storm water discharges
- b) To prohibit illicit connections and discharges to the MS4.
- c) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

#### **939.02 DEFINITIONS**

Refer to Section 937.01 for definitions.

#### **939.03 APPLICABILITY.**

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City Engineer and approved by the Public Service Director.

#### **939.04 RESPONSIBILITY FOR ADMINISTRATION.**

The City Engineer and the Public Service Director shall work together to administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the City Engineer or the Public Service Director may be delegated in writing by the City Engineer or the Public Service Director to persons or entities acting in the beneficial interest of or in the employ of the City of Marysville.

### **939.05 COMPATIBILITY WITH OTHER REGULATIONS.**

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

### **939.06 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.

### **939.07 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.

### **939.08 DISCHARGE PROHIBITIONS.**

#### **a) 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.

#### **Exemptions**

The following discharges are **exempt** from discharge prohibitions established by this ordinance:

- 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 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.
- 2) Discharges or flow from firefighting.
- 3) Discharges associated with dye testing, however this activity requires a verbal notification to the City Engineer prior to the time of the test.
- 4) Discharges from off lot household sewage treatment systems permitted by the Union County Board of Health for the purpose of discharging treated sewage effluent, in accordance with Ohio Administrative Code 3701-29-02(6), until such time as the Ohio EPA issues a NPDES permitting mechanism for residential 1, 2, 3 family dwellings. These discharges are exempt unless such discharges are deemed to be creating a public nuisance by the Union County

Board of Health. When NPDES permit coverage is available, discharges will no longer be exempt until an appropriate NPDES permit has been issued and approved by the Ohio EPA.

- 5) 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.
- 6) Other discharges specified in writing by the City Engineer as being necessary to protect public health and safety.

**b) PROHIBITION OF ILLICIT CONNECTIONS.**

- 1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- 2) 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.
- 3) 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.
- 4) Improper connections in violation of this ordinance must be disconnected and redirected, as necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the City Engineer.
- 5) 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 City Engineer 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 City Engineer.

**939.09 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, 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.

## **939.10 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.**

### **(Submission of NOI)**

- a) 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 City Engineer prior to the allowing of discharges to the MS4.
- b) The owner or 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 City Engineer at the same time the operator submits the original Notice of Intent to the OEPA as applicable.
- c) The copy of the Notice of Intent may be delivered to the City Engineer either in person or by mailing it to:  

**Notice of Intent to Discharge Storm Water  
City Engineer  
125 East Sixth Street  
Marysville, Ohio 43040**
- d) 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 City Engineer.

## **939.11 COMPLIANCE MONITORING**

### **a) RIGHT OF ENTRY: INSPECTION AND SAMPLING.**

The City Engineer 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.

- 1) 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 City Engineer.
- 2) Facility owners and operators shall allow the City Engineer 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.
- 3) The City Engineer shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City Engineer to conduct monitoring and/or sampling of the facility's storm water discharge.
- 4) The City Engineer 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.
- 5) 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 owner or operator at the written or oral request of the City Engineer and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.

- 6) Unreasonable delays in allowing the City Engineer access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the owner or operator of a facility with an NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the City Engineer reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

**b) SEARCH WARRANTS.**

If the City Engineer has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City Engineer may seek issuance of a search warrant from any court of competent jurisdiction.

**939.12 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES. (BMP)**

City Engineer 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 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. These BMPs shall be part of a storm water management plan (SWMP) as necessary for compliance with requirements of the NPDES permit.

**939.13 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 City Engineer 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 Engineer within two [2] 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 [5] years.

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

#### **939.14 VIOLATIONS, ENFORCEMENT, AND PENALTIES.**

##### **a) 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 City Engineer 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 City Engineer is authorized to seek costs of the abatement as outlined in 939.17.

##### **b) Warning Notice.**

When the City Engineer finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the City Engineer 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 will in no way relieve 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 City Engineer to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

##### **c) Notice of Violation.**

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

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 ordinance 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 Utility Claims Board of Appeals by filing a written notice of appeal within ten **[10]** days of service 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.

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.

**d) Compensatory Action.**

In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the City Engineer may impose alternative compensatory actions upon a violator, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

**e) Suspension Of MS4 Access.**

**1) Emergency Cease and Desist Orders**

When the City Engineer 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 City Engineer may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- A) Immediately comply with all ordinance requirements; and
- B) 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 City Engineer 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 City Engineer may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the City Engineer 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 City Engineer within ten **10** 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.

**2) Suspension due to Illicit Discharges in Emergency Situations**

The City Engineer 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 Engineer 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.

**3) Suspension due to the Detection of Illicit Discharge**

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City Engineer will notify a violator of the proposed termination of its MS4 access. The violator may petition the City Administrator for a 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 City Engineer.

**f) Civil Penalties.**

In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within fourteen **[14]** days, or such greater period as the City Engineer shall deem appropriate, after the City Engineer has taken one or more of the actions described above, the City Engineer may impose a penalty not to exceed one thousand dollars **[\$1000]** (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

**g) Criminal Prosecution.**

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of one thousand dollars **[\$1000]** per violation per day and/or imprisonment for a period of time not to exceed thirty **[30]** days. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

### **939.15 APPEAL OF NOTICE OF VIOLATION.**

Any person receiving a Notice of Violation may appeal the determination of the City Engineer. The notice of appeal must be received within ten **[10]** days from the date of the Notice of Violation. Hearing on the appeal before the Utility Claims Board of Appeals shall take place within thirty **[30]** days from the date of receipt of the notice of appeal. The decision of the Utility Claims Board of Appeals shall be final.

### **939.16 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 fourteen **[14]** days of the decision of the municipal authority upholding the decision of the City Engineer, then representatives of the City Engineer 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.

### **939.17 COST OF ABATEMENT OF THE VIOLATION.**

Within thirty **[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 ten **[10]** days. Delinquent accounts after such final notice shall be forwarded to the County Auditor who shall place such amount on the tax duplicate of the owner's property and collect such charges and penalties in the same manner as other taxes are collected.

### **939.18 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.

### **939.19 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 City Engineer to seek cumulative remedies.

The City Engineer may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

