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## **PORTAGE COUNTY ILLICIT DISCHARGE AND STORM WATER RULES**

### **I. PURPOSE and INTENT**

The purpose of these rules is to provide for the health, safety, and general welfare of the citizens of Portage County through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. These rules establish methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

The objectives of these rules are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with these rules

### **II. EFFECTIVE DATE**

These rules shall become effective on January 1, 2010.

### **III. APPLICABILITY**

These rules shall apply to all water entering the storm drain system generated on any lands unless explicitly exempted by the Portage County Board of Commissioners.

### **IV. RESPONSIBILITY FOR ADMINISTRATION**

The Portage County Board of Commissioners shall administer, implement, and enforce the provisions of these rules. Any powers granted or duties imposed upon the Portage County Board of Commissioners may be delegated in writing by the Portage County Board of Commissioners to persons or entities acting in the beneficial interest of or in the employ of the Portage County Board of Commissioners.

### **V. SEVERABILITY**

The provisions of these rules are hereby declared to be severable. If any provision, clause, sentence, or paragraph of these rules 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 these rules.

### **VI. ULTIMATE RESPONSIBILITY**

The standards set forth herein and promulgated pursuant to these rules are minimum standards; therefore these rules do not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

### **VII. DISCHARGE PROHIBITIONS**

#### **A. Prohibition of Illegal Discharges.**

No person shall discharge or cause to be discharged into the storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

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

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1. The following discharges are exempt from discharge prohibitions established by these rules:
  - a. Water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing pollutants.
  - b. Discharges specified in writing by the Portage County Board of Commissioners as being necessary to protect public health and safety.
2. 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, 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.

## **B. Prohibition of Illicit Connections**

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
2. A person is considered to be in violation of these rules if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

## **VIII. SUSPENSION OF MS4 ACCESS**

### **A. Suspension due to Illicit Discharges in Emergency Situations**

The Portage County Board of Commissioners 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 Portage County Board of Commissioners 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.

### **B. Suspension due to the Detection of Illicit Discharge**

Any person discharging to the MS4 in violation of these rules may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Portage County Board of Commissioners will notify a violator of the proposed termination of its MS4 access.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Portage County Board of Commissioners.

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

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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 Portage County Board of Commissioners prior to the allowing of discharges to the MS4.

## **X. MONITORING OF DISCHARGES**

### **A. Applicability**

This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

### **B. Access to Facilities**

1. The Portage County Board of Commissioners may, upon identification to the owner or person in charge of a facility, enter any premises upon obtaining an agreement with the owner, tenant, or manager of the land in order to determine whether there is compliance with these rules.
2. If the Portage County Board of Commissioners is unable to obtain such an agreement, the Portage County Board of Commissioners may apply for, and a judge of the Portage County Court of Common Pleas may issue, an appropriate inspection warrant as necessary to achieve the purposes of these rules. The Portage County Board of Commissioners, if it is able to demonstrate probable cause to believe that there may be a violation of these rules 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 these rules or any order issued hereunder, or to protect the overall public health, safety, and welfare of citizens; may seek, as part of the inspection warrant:
  - a. 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.
  - b. Permission to set up on any NPDES permitted facility such devices as are necessary in the opinion of the Portage County Board of Commissioners to conduct monitoring and/or sampling of the facility's storm water discharge.
  - c. Removal of any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled with the costs of clearing such access borne by the owner, tenant, or manager of the property.

## **XI. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES**

The Portage County Board of Commissioners 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 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 premise, which 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 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

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extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWP3) as necessary for compliance with requirements of the NPDES permit.

## **XII. 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.

## **XIII. 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 State, 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 Portage County Board of Commissioners 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 Portage County Board of Commissioners 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.

## **XIV. ENFORCEMENT**

- A. Whenever the Portage County Board of Commissioners finds that a person has violated a prohibition or failed to meet a requirement of these rules in conjunction with a failure to obtain any federal, state, or local permit necessary for sediment and erosion control, earth movement, clearing, or cut and fill activity; the Portage County Board of Commissioners may issue a stop work order to the responsible person.
  
- B. Notwithstanding the provisions of Paragraph A of this Section, whenever the Portage County Board of Commissioners finds that a person has violated any prohibition or failed to meet any requirement of these rules, the Portage County Board of Commissioners may order compliance by written notice of violation to the responsible person. 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; and
  - 5. Payment of a fine to cover administrative and remediation costs; and
  - 6. The implementation of source control or treatment BMPs.

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- C. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the Portage County Board of Commissioners may seek to have the work done by a designated governmental agency or a contractor, and the expenses charged to the violator.
- D. If, after a period of not less than thirty days has elapsed following the issuance of the notice of violation, the violation continues, the Portage County Board of Commissioners may issue a second notice of violation, including any relevant updated information.
- E. If, after a period of not less than fifteen days has elapsed following the issuance of the second notice of violation, the violation continues, the Portage County Board of Commissioners may issue a stop work order in accordance with R.C. 307.79.
  - 1. In the case of any issuance of a stop work order, the Portage County Board of Commissioners shall request, in writing, the Portage County Prosecuting Attorney to seek an injunction or other appropriate relief in the court of common pleas, in accordance with Section XV of these rules.
  - 2. The person to whom a stop work order is issued under this section may appeal the order to the Portage County Court of Common Pleas.

## **XV. INJUNCTIVE RELIEF**

Notwithstanding the provisions of Section XIV of these rules, if a person has violated or continues to violate the provisions of these rules, the Portage County Board of Commissioners may request in writing that the Portage County Prosecutor's Office petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation. Each day of violation of any of these rules shall be considered a separate violation subject to a civil fine.

## **XVI. COMPENSATORY ACTION**

In lieu of enforcement proceedings, penalties, and remedies authorized by these rules, the RESPONSIBLE LOCAL JURISDICTION may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc. The RESPONSIBLE LOCAL JURISDICTION may recover all attorneys' fees court costs and other expenses associated with enforcement of these rules, including sampling and monitoring expenses.

## **XVII. REMEDIES NOT EXCLUSIVE**

The remedies listed in these rules are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Portage County Board of Commissioners to seek cumulative remedies.

## **XVIII. DEFINITIONS**

For the purposes of these rules, the following shall mean:

Authorized Enforcement Agency: The Portage County Board of Commissioners, its authorized employees, or its designees, including without limitation other County departments, boards, etc. not under the direct authority of the Portage County Board of Commissioners.

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Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

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

Construction Activity. Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

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.

Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section VII of these rules.

Illicit Connections. An illicit connection is defined as either of the following:  
Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an Authorized Enforcement Agency or, Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an Authorized Enforcement Agency.

Illicit Discharge. Any discharge to a municipal separate storm sewer that is not entirely composed of storm water, except discharges authorized under an NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from fire fighting activities.

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

Municipal Separate Storm Sewer System (MS4) is a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that are:

- (a) Owned or operated by the federal government, state, municipality, township, county, district, or other public body (created by or pursuant to state or federal law) including special district under state law such as a sewer district, flood control district or drainage districts, or similar entity, or a designated and approved management agency under section 208 of the act that discharges into

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- surface waters of the state; and
- (b) Designed or used for collecting or conveying solely storm water,
  - (c) Which is not a combined sewer, and
  - (d) Which is not a part of a publicly owned treatment works.

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.

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

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

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

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

Storm Drainage System. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

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

Storm Water Pollution Prevention Plan: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm water, Storm water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Surface Waters of the State means all streams, lakes, reservoirs, ponds, marshes, wetlands, or other waterways which are situated wholly or partly within the boundaries of the State, except those private waters which do not combine or affect a junction with a surface water. Waters defined as sewerage systems, treatment works, or disposal systems in Section 6111.01 of the ORC are not included.

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