

PROPOSED DAUPHIN COUNTY ILLICIT DISCHARGE ORDINANCE

WHAT IS AN ILLICIT DISCHARGE?

An illicit discharge is any illegal connection or dumping of any type of substance into a storm sewer system. In the context of this ordinance, the storm sewer system is any storm sewer system owned or operated by Dauphin County. The discharge does not need to be directly into the system. If a substance is dumped in an area that would drain to the system, this would also be an illicit discharge. For example, if an individual would dump used motor oil in their own driveway and this oil would be washed into the system, this would be an illicit discharge. The ordinance is applicable whether the pollutant was discharged intentionally or unintentionally.

WHAT IS A STORM SEWER SYSTEM?

A storm sewer system is any part of a system that is designed to collect, transport, treat and discharge storm water. This not only includes inlets, pipes and outlets. Swales, gutters, ditches, detention ponds and streets can also be part of a storm sewer system. Combined sewer systems, systems that transport both stormwater and sewage are not included.

WHY PROHIBIT ILLICIT DISCHARGES?

Storm sewer systems are designed to collect stormwater runoff. This runoff ultimately ends up in local streams, the Susquehanna River and the Chesapeake Bay. Pollutants that enter the storm sewer system (intentionally or unintentionally) also end up in local streams, the Susquehanna River and the Chesapeake Bay. These pollutants harm the fish and other aquatic organisms living in these waters. Some pollutants can also be absorbed by fish. If someone eats the fish, they may also be eating the pollutants. Also, these waters may be water sources for water systems that supply water to homes and businesses or waters where people swim and boat. So the intent of the ordinance is to help keep pollutants out of our streams and keep them clean and healthy.

WHAT WILL THE ORDINANCE DO?

The ordinance, when adopted, will make it illegal to intentionally or unintentionally discharge any substance other than stormwater into the storm sewer systems owned or operated by Dauphin County. There are exceptions to the "storm water only rule". These exceptions are listed in the ordinance. The ordinance provides several enforcement options including fines, prison, remedial action and community service.

CAN I COMMENT ON THE ORDINANCE?

Yes. The Dauphin County Commissioners will conduct a Public Hearing on the proposed ordinance on Wednesday, September 21, , 2011. The Hearing will be held at 9:00 a.m. in the Commissioners Hearing Room in the Dauphin County Administration Building, 2nd and Market Streets in Harrisburg

WHERE CAN I LEARN MORE ABOUT STORMWATER?

This website contains more information on watersheds, stormwater and water resources. Please feel free to look around.

Dauphin County Storm Sewer Discharge and Connection Ordinance

ORDINANCE NO. _____

SECTION 1. PURPOSE/INTENT.

1.00 The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Dauphin County and to protect the water resources of Dauphin County through the regulation of non-storm water discharges to the storm sewer systems to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

1.01 The objectives of this ordinance are:

1. To regulate and/or prohibit Illicit Connections and Illicit Discharges to the municipal separate storm sewer system.
2. To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this ordinance.

SECTION 2. DEFINITIONS.

2.00 For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency - employees or designees of the County of Dauphin designated to enforce this ordinance.

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 stormwater, receiving waters, or stormwater 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 amendments thereto.

Commissioners – The Commissioners of the County of Dauphin

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.

Illicit Discharge - Any direct or indirect non-storm water discharge to the storm sewer system, except as exempted in Section 7 of this ordinance.

Illicit Connections - An illicit connection is defined as either of the following:

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm sewer system including but not limited to any conveyances which allow any nonstorm 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 an authorized enforcement agency or,

2. Any drain or conveyance connected from a commercial or industrial land use to the storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

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

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 sewer 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 Sewer System - Facilities owned or operated by Dauphin County 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. Combined systems (systems that convey both storm water and sewage) are not included in this definition.

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

Stormwater 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 Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

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

SECTION 3. APPLICABILITY.

3.01 This ordinance shall apply to all storm sewer systems owned or operated by Dauphin County.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.

4.01 The Commissioners shall be responsible for the administration, implementation, and enforcement of the provisions of this ordinance. The Commissioners may delegate any duties, authorities or responsibilities provided for in this ordinance to other persons, agencies or entities.

SECTION 5. SEVERABILITY.

5.01 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.

SECTION 6. ULTIMATE RESPONSIBILITY.

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

SECTION 7. DISCHARGE PROHIBITIONS.

7.01 No person shall discharge or cause to be discharged into the storm sewer system any materials other than storm water. Other materials include, but are not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards. The commencement, conduct or continuance of any illegal discharge to the storm sewer system is prohibited except as described as follows:

1. The following discharges are exempt from discharge prohibitions established by this ordinance:
 - A. water line flushing or other potable water sources
 - B. landscape irrigation or lawn watering
 - C. diverted stream flows, rising ground water, ground water infiltration to storm drains
 - D. uncontaminated pumped ground water
 - E. foundation or footing drains (not including active groundwater dewatering systems)
 - F. crawl space pumps
 - G. air conditioning condensation
 - H. springs
 - I. non-commercial washing of vehicles
 - J. natural riparian habitat or wet-land flows
 - K. dechlorinated swimming pool water
 - L. fire fighting activities
 - M. any other water source not containing pollutants.
 - N. discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
 - O. dye testing, provided that a written notification is provided to the authorized enforcement agency at least two working days prior to the time of the test.
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 sewer system.

7.02 Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of illicit connections to the storm sewer 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 storm sewer system, or allows such a connection to continue.

SECTION 8. STORM SEWER SYSTEM ACCESS.

8.01 The Commissioners, or their designee, may suspend, prohibit or limit discharges to the storm sewer system if necessary to eliminate, prevent or reduce an illicit discharge. A person commits an offense if the person continues discharges which have been suspended, prohibited or limited to the sewer system pursuant to this Section, without the prior approval of the authorized enforcement agency.

SECTION 9. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

9.01 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 Commissioners, or their designee, prior to the allowing of discharges to the storm sewer system.

SECTION 10. MONITORING OF DISCHARGES

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

10.02 Access to Facilities.

1 The Commissioners, or their designee, 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. 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 authorized enforcement agency.

2 Facility operators shall allow the Commissioners, or their designee, 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 Commissioners, or their designee, shall have the right to install on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

4 The Commissioners, or their designee, have 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 stormwater 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 operator at the written or oral request of the Commissioners, or their designee, and shall not be replaced. The costs of clearing such access shall be borne by the operator.

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

7 If the Commissioners, or their designee, have been refused access to any part of the premises from which stormwater 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 authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 11. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

11.01 The owner, operator of, or person responsible for, a property, building, commercial or industrial establishment, or any other activity, structure or business shall be responsible for ensuring reasonable protection from accidental discharge of prohibited materials or other wastes into the storm sewer system. Further, any owner, operator of, or person responsible for, a property, building, commercial or industrial establishment, or any other activity, structure or business, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, measures including structural and non-structural BMPs to prevent the further discharge of pollutants to the storm sewer system.

SECTION 12. NOTIFICATION OF SPILLS.

12.01 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 illicit discharges or pollutants discharging into the storm sewer system, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

12.02 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 Dauphin County Emergency Management Agency in person or by phone or facsimile immediately if possible but no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Dauphin County Emergency Management Agency within three business days of the phone or in person notice.

12.02 If the discharge of any 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.

SECTION 13. ENFORCEMENT.

13.01. Notice of Violation.

Whenever the Commissioners, or their designee, finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Commissioners, or their designee, 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. Abatement or remediation of storm water pollution or contamination hazards and restoration of any affected property;
5. Payment of a fine to cover administrative, remediation and legal costs associated with the enforcement action
6. The implementation of source control or treatment BMPs.

13.02 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 work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

SECTION 14. APPEAL OF NOTICE OF VIOLATION

14.01 Any person receiving a Notice of Violation may appeal the determination of the Commissioners, or their designee. The appeal must be:

1. Submitted in writing to the Commissioners, or their designee.
2. State the reason(s) for the appeal
3. be received within 30days from the date of the Notice of Violation.

14.02 A Hearing on the appeal before the Commissioners, or their designee, shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the Commissioners, or their designee shall be final.

SECTION 15. ENFORCEMENT MEASURES AFTER APPEAL

15.01 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 10 days of the decision of the appropriate authority upholding the decision of the authorized enforcement agency, then the Commissioners, or their designee, shall enter upon the subject 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.

SECTION 16. COST OF ABATEMENT OF THE VIOLATION

16.01 Within 10 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 30 days. If the amount due is not paid within a timely manner as determined by the decision of the Commissioners, or their designee, or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

16.02 Any person violating any of the provisions of this article shall become liable to the County of Dauphin by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of 6.00 percent per annum shall be assessed on the balance beginning on the 1st day following discovery of the violation.

SECTION 17. INJUNCTIVE RELIEF

17.01 It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the Commissioners, or their designee, may 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.

SECTION 18. COMPENSATORY ACTION

18.01 In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the Commissioners, or their designee, may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

SECTION 19. VIOLATIONS DEEMED A PUBLIC NUISANCE

19.01 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.

SECTION 20. CRIMINAL PROSECUTION

20.01 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 up to 15,000 dollars per violation and/or imprisonment for a period of time not to exceed seven years. The Commissioners, or their designee, may recover all attorney fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

SECTION 21 . REMEDIES NOT EXCLUSIVE

21.01 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 authorized enforcement agency to seek cumulative remedies.

SECTION 22. ADOPTION OF ORDINANCE

22.01 This ordinance shall be in full force and effect 10 days after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

PASSED AND ADOPTED this ____ day of _____, 19__, by the following vote: