

BARBERTON ILLICIT DISCHARGE DETECTION & ELIMINATION PROGRAM

SECTION 1. PURPOSE/INTENT.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Barberton Ohio, County of Summit, 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. This ordinance establishes methods for controlling the introduction of pollutants into the City of Barberton's Separate Stormwater System in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

1. To regulate the contribution of pollutants to the storm sewer system 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 this ordinance.

SECTION 2. DEFINITIONS.

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

AUTHORIZED ENFORCEMENT AGENCY – The City of Barberton is the Authorized Enforcement Agency and shall enforce this ordinance. The Barberton City Departments of Building, Engineering, Fire, Utilities and Stormwater shall assist in the implementation and enforcement of the ordinance. The City of Barberton may request assistance from the Summit County Health District.

BEST MANAGEMENT PRACTICES (BMPs) - 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 directly or indirectly to stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material 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 resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition. The City of Barberton's "Comprehensive Storm Water Management" Ordinance (Ord. # 172-2008) requires stormwater management for all construction activity with the exception of residential lots less than one-quarter acre in size.

HAZARDOUS MATERIALS. Hazardous material means a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter. Any material, including any substance, waster, 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 drainage system, except as exempted in Section 7 of this ordinance.

ILLCIT 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 Summit County.

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

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) - An MS4 is a conveyance or system of conveyances that is owned by a state, city, town, village, or other public entity that discharges to waters of the U.S.; is designed or used to collect or convey stormwater (including storm drains, pipes, ditches, etc.); not a combined sewer; and not part of a Publicly Owned Treatment Works (sewage treatment plant).

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMITS (NPDES) - 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 - Any individual, corporation, partnership, association, company or body politic, including any agency of the County of Summit and the United States Government.

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 water bodies 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 (SW3P): 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 to the Maximum Extent Practicable.

WASTEWATER - Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

WATERCOURSE - Any body of water, including, but not limited to lakes, ponds, rivers, streams, and bodies of water delineated as waters of the State of Ohio.

WATERS OF THE STATE OF OHIO - All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial which are situated wholly within, partly within or border upon this state or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters.

SECTION 3. APPLICABILITY.

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.

The City of Barberton is designated as the authorized enforcement agency and shall administer, implement, and enforce the provisions of this ordinance.

SECTION 5. CONFLICTS, SEVERABILITY, NUISANCES, AND 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 Barberton shall prevail.
- B. 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 invalid, such invalidity shall not affect the other provisions or application of this Ordinance.
- 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 authorized enforcement agency or other delegated agents 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 authorized enforcement authority, its officers, employees, or agents being responsible for any condition or damage resulting therefrom.

SECTION 6. DISCHARGE PROHIBITIONS.

Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal 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 described as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this ordinance: 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, street wash water, natural riparian habitat or wetland flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.
- (2) Discharges specified in writing by the City of Barberton Stormwater Management Utility as being necessary to protect public health and safety.
- (3) Discharges from off-lot household sewage treatment systems permitted by the Summit County Health District for the purpose of discharging treated sewage effluent in accordance with Ohio Administrative Code 3701-29-02 until such time as the Ohio Environmental Protection Agency issues as a 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 Summit County of Health District. In compliance with the Barberton Storm Water Management Program, discharge from all off-lot household sewage 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, discharge from off-lot household sewage treatment systems will no longer be exempt from the requirement of this legislation.
- (4) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
- (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 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.

Prohibition of Illicit Connections.

- (a) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- (b) 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.
- (c) A person is considered in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

SECTION 7. SUSPENSION OF MS4 ACCESS.

Suspension due to Illicit Discharges in Emergency Situations. The City of Barberton may, without prior notice, suspend 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 storm drainage system or Waters of the State of Ohio. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system or Waters of the State of Ohio, or to minimize danger to persons.

Suspension due to the Detection of Illicit Discharge.

a) Any person discharging to the storm drainage system in violation of this ordinance may have their storm drainage system access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its storm drainage system access. The violator may petition the Barberton Board of Zoning Appeals for a reconsideration and hearing. A person commits an offense if the person reinstates storm drainage system access to premises terminated pursuant to this Section, without the prior approval of the City of Barberton.

SECTION 8. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity STORM WATER POLLUTION PLAN (SWP3) or EROSION CONTROL PERMIT (ECP) Permit and/or 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 Barberton Stormwater Management Utility prior to the allowing of discharges to the Municipal Separate Storm Sewer System (MS4).

SECTION 9. MONITORING OF DISCHARGES.

1. Applicability. This section applies to all facilities that have storm water discharges associated with industrial, residential, institutional, or commercial activity, including construction activity.

2. Access to Facilities.

(1) The authorized enforcement agency 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 authorized enforcement agency 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 authorized enforcement agency shall have the right to set up 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 authorized enforcement agency 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 operator at the written or oral request of the authorized enforcement agency and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the authorized enforcement agency 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 SWP3 or ECP and/or 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 authorized enforcement agency have 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 authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 10. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The City of Barberton's "Comprehensive Storm Water Management" Ordinance (Ord. # 172-2008 has adopted requirements identifying Best Management Practices for activities, operations, or facilities which may cause or contribute to pollution or contamination of storm water, the storm drain system, or Waters of the State of Ohio. 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 storm water system. Compliance with all terms and conditions of a valid SWP3 or ECP Permit and/or NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. The BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

SECTION 11. 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.

SECTION 12. NOTIFICATION OF SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible person 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 of Ohio, 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 the City of Barberton Fire Department, the Summit County Emergency Management Agency and the Ohio Environmental Protection Agency of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City of Barberton Stormwater Management Utility or the Barberton Service Department 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 of Barberton Stormwater Management Utility 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. A copy of such records shall be forwarded to the City of Barberton Stormwater Management Utility and retained by the owner or operator of such establishment for at least three years.

SECTION 13. ENFORCEMENT.

I. Notice of Violation. Whenever the authorized enforcement agency finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency shall order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
- (e) The payment of a fine to cover administrative and remediation costs; and
- (e) The implementation of source control or treatment BMPs.

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.

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency to the Board of Zoning Appeals. The notice of appeal must be filed with the office of the authorized enforcement agency within 20 days of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 45 days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

SECTION 15. 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 20 days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the

authorized enforcement agency 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 or designated contractor to enter upon the premises for the purposes set forth above.

SECTION 16. COST OF ABATEMENT OF THE VIOLATION.

Within 15 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 20 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority 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. Any person violating any of the provisions of this article shall become liable to the city by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at a rate determined by the Barberton Finance Department shall be assessed on the balance beginning on the 1st day following discovery of the violation.

SECTION 17. INJUNCTIVE RELIEF.

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 authorized enforcement agency 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.

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency 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.

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, as is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

SECTION 20. 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 \$500.00 dollars per violation per day and/or imprisonment for a period of time not to exceed 30 days. The authorized enforcement agency may recover all attorneys' fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

SECTION 21. 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 authorized enforcement agency to seek cumulative remedies.