



# Focus on Illicit Discharge Policies for Secondary Permittees

from Ecology's Water Quality Program

*Secondary permittees are public entities such as school districts, ports, prison complexes, parks and recreation districts, colleges and universities, or diking and drainage districts that own or operate a stormwater sewer system located in a Phase I or Phase II city or county.*

## Developing policies for Illicit Discharge Detection and Elimination (IDDE) under municipal stormwater permits

Washington's municipal stormwater permits require that secondary permittees develop an Illicit Discharge Detection and Elimination (IDDE) program. The program must contain:

- Policies to prohibit illicit discharges and illegal dumping.
- Mechanisms to enforce policies prohibiting illicit discharges and illegal dumping.
- Procedures to identify and remove an illicit connection.
- Storm sewer system mapping.
- Staff training.
- Inspections.
- A spill response plan.
- Tracking and recordkeeping.

The purpose of this focus sheet is to help secondary permittees meet the permit requirement to adopt policies prohibiting illicit discharges and enforcement procedures for those policies (permit condition S6.D.3.b.). Policies must address illicit connections; non-stormwater discharges; and spilling, dumping, or otherwise improperly disposing of hazardous materials, pet waste, and litter. This guidance does not cover all of the permit requirements for illicit discharge detection and elimination but only this specific requirement. Permittees should check the permit for additional IDDE requirements.

## Two pathways for adopting an IDDE policy

As a secondary permittee, you have two pathways to meet requirements for adopting policies prohibiting illicit discharges and connections:

**Pathway 1: rely on the local government** for regulation, inspections, and enforcement,

**or**

**Pathway 2: adopt a separate IDDE policy** under your legal authority.

Secondary permittee entities have a range of different purposes, structures, and legal authorities. You should choose the pathway consistent with your authorities within the limits of state and federal law and local ordinances. You should determine the best way to apply your existing authorities to this program.

The pathway you choose depends in part on your legal authority for access to the properties you serve. To adopt separate IDDE policies under Pathway 2, you must have the legal authority to enter and inspect the properties you serve and a mechanism to enforce the policy on those properties. Ports, universities, schools, and parks that own the property they serve have clear legal authority. Where permittees lease the.



land they own, such as a port that leases property to tenants, the leases can require tenants to follow the port's operating policies

On the other hand, entities such as drainage districts that serve private property do not have legal access to those properties under state and federal law and local ordinances. The drainage district's best option for inspections and enforcement is Pathway 1: Rely on the local government's IDDE ordinance and authorities. Any local government covered under the permit must develop and implement an ordinance that, among other things, effectively prohibits non-stormwater, illegal discharges, and/or dumping into the permittee's Municipal Separate Storm Sewer System (MS4). The ordinance must also include enforcement procedures and actions.

## **Pathway 1: rely on the local government**

If you choose to rely on the local government IDDE ordinance and enforcement program, you will need to:

1. Develop an agreement with the local government to rely on its municipal ordinances and enforcement procedures. You may include this agreement in a broader co-permittee agreement or write it up as an agreement with another entity. Permittees may form agreements with local governments either as co-permittees or as an agreement with another entity to carry out some permit requirements. Conditions S1.D.3 of the Phase II permits and S3.B of the Phase I permit describe these options. You must submit this agreement to Ecology. Ecology will then expect your entity's schedule for adoption of this policy to be the same as that of the local government.
2. Adopt a policy under your operating rules stating that your entity will rely on and comply with the local ordinances for the areas you serve. The policy should state that your entity does not have the legal authority to enter and enforce on the properties it serves. Describe how your staff will inspect the system and report any illicit discharges to the local government or Ecology.
3. Provide opportunities for public involvement and participation:
  - Send notice of your policy to all the affected parties that you serve, before and after adoption.
  - Post the policy on your website or send it to Ecology to post on its website.
  - Support the local government's public involvement and participation process to adopt its IDDE ordinance. Notify the affected parties you serve of opportunities for public review and comment.
  - Keep records of your activities for your annual report to Ecology.
4. Coordinate with local government to stay informed of IDDE actions. Your annual report to Ecology must include a summary of illicit discharges discovered and the actions taken to eliminate the discharges, as well as other requirements under S6.D.3.b. In your stormwater management program (SWMP), you need to document this approach to meeting these requirements.

## **Pathway 2: adopt a separate IDDE policy**

If you choose to adopt a separate IDDE policy under your legal authority, you may not rely on the local government's ordinances and enforcement strategy.

Secondary permittees vary in types of entities, activities, governance structures, and local conditions. If you choose this pathway, you must tailor the guidance to your specific situation.

You may have some policies in place that you can amend to include the elements the permit requires. If you have no existing policies in place, you must draft and adopt new policies. The IDDE policy should address the components listed in the following table:

IDDE Policy Component	Considerations
1. Identify and establish the <b>legal authority</b> of your policy-making body.	The legal policy body is a Board, Executive Director, or other designated authority that will adopt the IDDE policy according to its operating rules.
2. State the <b>purposes</b> of the policy.	Examples include protecting water quality and public health and safety and meeting requirements of the state municipal stormwater permit.
3. <b>Define and prohibit</b> <i>illicit discharges</i> and <i>illicit connections</i> (these definitions are in the permit).	Consistent with your existing legal authority under state and local law, make the prohibition of illicit connections retroactive to include connections made in the past.
4. Identify the <b>department or staff person(s) responsible</b> to carry out the policies and procedures.	This may be an environmental or maintenance department or in smaller entities a manager or single operator.
5. Include the <b>exemptions</b> for non-stormwater discharges listed in the municipal stormwater permit.	These are listed in the permit in Condition S6.D.3.b.iii.
6. Include <b>provisions to require access</b> to property under your authority, including leased property, for illicit discharge investigations. Include a guaranteed right of entry in case of an emergency or a suspected discharge, as well as for routine inspections.	Clarify that for tenants, the right of entry applies to all land uses and that proof of discharge is not required to obtain entry. State that the tenant must disarm security systems and remove obstructions to safe access.
7. Establish <b>enforcement procedures</b> for tenants that refuse access to leased property or refuse to comply. Include enforcement tools that gradually increase in severity.	<p>Enforcement procedures can begin with warnings and escalate to, for example, lease termination. Include the escalating enforcement actions with timelines allowed for compliance before moving to the next level of enforcement. In choosing the enforcement tool, consider:</p> <ul style="list-style-type: none"> <li>▪ The volume and type of discharge.</li> <li>▪ The impact on water quality.</li> <li>▪ Whether it was intentional or accidental.</li> </ul> <p>You should apply voluntary compliance to first-time, minor offenders and a more aggressive approach to more serious violations or continued non-compliance.</p>
8. Provide methods for <b>appeal or review</b> of compliance decisions as appropriate.	Ensure consistency with your operating rules. This may be simply a review of the decision by the same policy body.
9. Provide <b>public notice</b> and opportunities for <b>public involvement and participation</b> to all affected parties from the beginning of the process through adoption of the policies and procedures.	Ensure consistency with Condition S6.D.2 requirements for public involvement and participation. You may hold a meeting for affected parties to review draft policies and take input.

IDDE Policy Component	Considerations
10. <b>Adopt the policies</b> according to procedures and provide public notice of adoption. Inform affected parties and post to your website.	Adoption procedures may include a public hearing or meeting to take oral or written comments. This helps meet public involvement and participation requirements in the permit.
11. Establish a <b>tracking and reporting</b> system to support the program and designate staff to maintain it.	The policy may state that, as a public entity, these records are available to the public on request.

## Ecology Contacts

The municipal stormwater permits and information on secondary permittees are available at: <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/index.html>. For questions about this guidance or details of the permit, Ecology contacts are:

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