Municipal Stormwater General Permit

Guidance for Cities and Counties

Writing Regulations to Prohibit Illicit Discharges, Dumping, and Illicit Connections









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Introduction

Washington State's Municipal Stormwater General Permits require permitted cities and counties to adopt regulations to prohibit non-stormwater, illicit discharges and connections, and dumping into the permittee's municipal separate storm sewer system (MS4).

In this guidance, Ecology provides sample ordinance language for the minimum elements required by the illicit discharge detection and elimination (IDDE) component of the stormwater management program outlined in section 5 of the permit. The guidance also recommends some optional elements that benefit water quality.

Find IDDE requirements in the following permit sections:

Phase I permit – Section 5.C.8

Phase II Western Washington permit – Section 5.C.3

Phase II Eastern Washington permit - Section 5.B.3

Minimum Required Elements of the Regulations

The municipal permit requires cities and counties to adopt regulations that:

- Prohibit non-stormwater, illicit discharges and/or dumping into the MS4,
- Identify allowable discharges,
- Identify the discharges allowed under certain conditions,
- Prohibit illicit connections to the MS4,
- Define terms used in the code to be consistent with those in the permit,
- Provide administrative procedures within the limits of state and federal law to investigate the source of illicit discharges into the MS4, including procedures for inspections to identify sources of illicit discharges, and
- Include escalating enforcement and legal actions to ensure removal of the source or illicit connection if it is not eliminated by the responsible party.

Optional Provisions

1. Water quality protection

Ecology strongly encourages you to expand the code provisions beyond the impacts on the municipal drainage system to prohibit non-stormwater, illicit discharges, and dumping into all surface and ground waters throughout your jurisdiction. This is consistent with the intent of the stormwater permits to protect water quality. It would enable your local jurisdiction to address all illicit

¹ This guidance addresses both explicit and implicit permit requirements. For example, the requirement for regulations to prohibit illicit discharges does not explicitly list illicit connections. However, such a provision is necessary to meet the permit condition for implementing a program to effectively require removal of illicit connections.

discharges and dumping, no matter how the material may reach surface or ground waters. Many local jurisdictions already regulate discharges to surface and ground waters.

2. Best management practices

Ecology encourages you to require that existing pollution-generating land use activities implement operational best management practices (BMPs) to prevent illicit discharges. This is a good tool to prevent contaminants from entering the MS4 and surface or ground waters from potentially polluting sites. Volume IV of Ecology's *Stormwater Management Manual for Western Washington* and Chapter 8 of Ecology's *Stormwater Management Manual for Eastern Washington* include a list of operational source control BMPs for various land uses.

3. Requiring structural BMPs

Ecology encourages you to add provisions to require the implementation of structural BMPs if the operational BMPs are not effective at reducing or eliminating the illicit discharge. You can reference your adopted stormwater management/design manual's source control volume for information on both operational and structural BMPs or Ecology's manual references listed above in #2.

4. Public education as a compliance step

Ecology recommends that you take a public education approach to compliance for lower-impact residential activities like yard care and car washing. The permit requires you to adopt regulations to prohibit non-stormwater discharges. In that ordinance we recommend that you state that you will take a public education approach to achieving compliance for these lower impact discharges. This type of statement is often in the enforcement section. Clarifying this approach may help the public understand that the regulations, although enforceable, are reserved for specific or extreme situations.

5. Compensation for abatement

Enforcement regulations should include provisions to recover the cost of abatement if the responsible party does not comply with initial enforcement actions and the local government eliminates the source. This provision allows the local government to recover the cost of correcting the violation, and may encourage compliance.

Illicit Discharge Sample Regulations

This sample language covers the key requirements in the permits and several optional elements. Ecology recognizes that there is a wide range of existing provisions related to water pollution control in local codes. Some local governments will incorporate permit requirements into an existing code chapter, while others will develop a new chapter of their code.

Because local governments have a wide variety of existing approaches to inspection and enforcement, Ecology is not providing specific language for those elements. Instead, this guidance includes a narrative description of those elements as well as references to regional examples representing different approaches.

Notes	Sample Regulations
Required: The regulations must prohibit non-stormwater illicit discharges and/or dumping into the MS4. Optional: Ecology strongly encourages local governments to adopt language to prohibit all harmful discharges from entering surface or ground water.	1. Prohibited discharges. 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 municipal storm drain system and/or surface and ground waters any materials other than stormwater.
Optional: The permit does not require that the regulations include a list of contaminants, but many jurisdictions include it to provide examples of prohibited discharges. • The list can be tailored to address specific local concerns. • Many codes call these "Examples of prohibited discharges" to prevent confusion if a contaminant is not on the list. It's important to include items 28, 29 and 30 from the sample regulations list to clarify that the regulation prohibits other pollutants not listed.	 a. Examples of prohibited contaminants include but are not limited to the following: 1. Trash or debris. 2. Construction materials. 3. Petroleum products including but not limited to oil, gasoline, grease, fuel oil and heating oil. 4. Antifreeze and other automotive products. 5. Metals in either particulate or dissolved form. 6. Flammable or explosive materials. 7. Radioactive material. 8. Batteries. 9. Acids, alkalis, or bases. 10. Paints, stains, resins, lacquers, or varnishes. 11. Degreasers and/or solvents. 12. Drain cleaners. 13. Pesticides, herbicides, or fertilizers. 14. Steam cleaning wastes. 15. Soaps, detergents, or ammonia. 16. Swimming pool or spa filter backwash. 17. Chlorine, bromine, or other disinfectants. 18. Heated water. 19. Domestic animal wastes. 20. Sewage. 21. Recreational vehicle waste. 22. Animal carcasses. 23. Food wastes. 24. Bark and other fibrous materials. 25. Lawn clippings, leaves, or branches. 26. Silt, sediment, concrete, cement or gravel. 27. Dyes. 28. Chemicals not normally found in uncontaminated water. 29. Any other process-associated discharge except as otherwise allowed in this section. 30. Any hazardous material or waste not listed above.
Required: The permit lists these discharges as allowable. The code should include this list to identify what are allowable discharges.	2. Allowable discharges The following types of discharges shall not be considered illegal discharges for the purposes of this chapter unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

Notes	Sample Regulations
Required: Conditional discharges are listed in the permit. Optional: Regarding item #5, the permit allows discharges from facilities covered by another NPDES permit. This language allows those discharges as long as the facility is in compliance with its NPDES permit. This prevents a situation where the regulations may "allow" an illicit discharge. Optional: In item #6, Ecology recommends adding criteria for allowing additional nonstormwater discharges to require that the SWPPP apply AKART to prevent pollution of surface or ground water.	 Diverted stream flows. Rising ground waters. Uncontaminated ground water infiltration —as defined in 40 CFR 35.2005(20). Uncontaminated pumped ground water. Foundation drains. Air conditioning condensation. Irrigation water from agricultural sources that is commingled with urban stormwater. Springs. Water from crawl space pumps. Footing drains. Flows from riparian habitats and wetlands. Discharges from emergency fire fighting activities. 3. Conditional Discharges The following types of discharges shall not be considered illegal discharges for the purposes of this chapter if they meet the stated conditions, or unless the [director] determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater: Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system; Lawn watering and other irrigation runoff are permitted but shall be minimized; De-chlorinated swimming pool discharges. These discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system; Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street; Non-stormwater discharges covered by another NPDES permit, pr

Required: A code section prohibiting illicit connections to the stormwater system is required. This section may be separate from that for prohibiting illicit connections to the stormwater system is applied to connections made in the past, regardless of whether the connections made in the past. Optional: Definitions of terms should be consistent with those in the permit to ensure that the code is applied as intended. The permittee may make the permit the ensure that the code is applied as intended. The permittee may form the permit and define additional forms and additions and additions do not conflict with those in the permit. In some additions and additions do not conflict with those in the permit. In some cases they differ from the permit conflictions to improve clairly and/or implementation. Sample Regulations 4. Prohibition of Illicit Connections 1. The construction, use, maintenane, or continued existence of illicit connections to the past, regardless of whether the connections to the past, regardless of whether the connections and intended the permit the sample regulations and additions do not conflict with those in the permit. In some cases they differ from the permit. In some cases they differ from the permit. In some cases they differ from the permit definitions to improve clairly and/or implementation. Problems of the permit definitions to improve clairly and/or implementation. Problems of the permit definitions to improve clairly and/or implementation. Problems of the permit definitions to improve clairly and/or implementation. Problems of the permit definitions to improve clairly and/or implementation. Problems of the permit definitions to improve clairly and/or implementation. Problems of the permit definitions to improve clairly and/or implementation. Problems of the permit definitions to improve clairly and/or implementation. Problems of the permit definitions to improve clairly and/or implementation. Problems of the permit definitions to improve clairly and/or implementation. Probl		
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Notes	Sample Regulations
	drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): a. Owned or operated by the [city/county] of; b. Designed or used for collecting or conveying stormwater; c. Which is not part of a Publicly Owned Treatment Works (POTW). "POTW" means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned; and
	d. Which is not a combined sewer. "Combined sewer" means a system that collects sanitary sewage and stormwater in a single sewer system.
	11. "National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit" means a permit issued by the Environmental Protection Agency (EPA) (or by the Washington Department of Ecology under authority delegated pursuant to 33 USC Section 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.
	12. "Non-stormwater discharge" means any discharge to the storm drain system that is not composed entirely of stormwater.
	13. "Person" means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner of a premises or as the owner's agent.
	14. "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects 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.
	15. "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.
	16. "Storm drainage system" means publicly owned facilities, including the city's municipal separate storm sewer system, by which stormwater 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.
	17. "Stormwater" means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.18. "Stormwater pollution prevention plan" means a document which
	describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a premises and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

This guidance does not provide sample regulations for inspections or enforcement. The sections below, the examples that follow, and the Frequently Asked Questions at the end of this guidance provide information on meeting these requirements.

Inspections

Required: The permit requires that the local government initiate an investigation and follow procedures for removing source of the illicit discharge or the illicit connection.

Each local government should develop administrative provisions within the limits of state law for investigating the source of suspected illicit discharges, dumping and/or illicit connections. The provisions should outline a process that private property owners and operators of facilities can understand. In Washington State, in order to enter private property, a local government must have the owner's permission or authorization from a judge, except in an emergency situation that presents an imminent threat to public health or safety. Because there are legal issues around these local procedures, Ecology recommends you work with your legal counsel to develop these provisions.

Enforcement

Required: The permit requires that the local government enforce the elimination of illicit discharges, dumping and/or illicit connections. This includes escalating enforcement and legal actions if the discharge is not eliminated.

Each local government should evaluate how best to amend its existing code to meet permit requirements. A range of enforcement tools in escalating steps allows the local government to handle a wide range of situations effectively. The local government may rely on the existing code if it has escalating enforcement actions, or amend the code it to add new provisions. The provisions should include a process for the local government to remove the source of the illicit discharge or the illicit connection if the responsible party does not do so. Local governments should work with legal staff to develop procedures that apply to entry onto property to remove the source in situations where the owner refuses to give permission. (See discussion of escalating enforcement actions on page 11.)

Local Regulatory Examples

Ecology recommends that you consult with your legal counsel about whether the examples from other local governments referenced below can apply to your jurisdiction. These references provide examples of language for specific elements. Ecology recognizes the need for local government flexibility within the constraints of permit requirements. The examples below refer to specific sections of local ordinances that provide a range of approaches to form and content for those topics. Ecology cautions that other sections of these example regulations may not be consistent with the permit requirements.

To find the code, go to Municipal Research and Services Center of Washington at http://mrsc.org/codes and follow the city or county links the to the code sections in the following table.

Requiring structural and non-structural BMPs	City of Covington Municipal Code, Chapter 13.35.030(1) City of Federal Way Municipal Code, Chapter 21-39	
Inspections	City of Bellevue Municipal Code, Chapter 24.06.220	
	City of Redmond Municipal Code, Chapter 13.06.100 and 13.06.110	
	City of Everett Municipal Code, Chapter 14.56.060	
Public Education Approach to Compliance	City of Covington Municipal Code, Chapter 13.35.030(2)	
Public Involvement Alternative to Penalty	City of Redmond Municipal Code, Chapter 13.06.180.D	
Enforcement	City of Bellevue Municipal Code, Chapter 24.06.280	
	City of Redmond Municipal Code, Chapter 13.06.160 to 13.06.190	
	City of Everett Municipal Code, Chapter 14.56.090 to 14.56.150	
Compensation for Abatement	City of Everett Municipal Code, Chapter 14.56.110 City of Federal Way Municipal Code, Chapter 21-41(f)	

Frequently Asked Questions

Q: Where should we locate the regulations in our code structure?

- **A:** Local government code structures vary considerably from one jurisdiction to the next. As a result, there is no simple answer. The first approach is to evaluate your code to identify existing stormwater management or water quality regulations that you can revise to meet the permit requirements. This is the most common approach, but your local government instead may choose to create a new, stand-alone chapter. Options for locating the new chapter are generally:
 - The utilities or public services chapter; or
 - The land development chapter with other environmental regulations. For this
 option, you may want to place the language that specifically prohibits illicit
 connections in the code chapter that regulates the stormwater utility and crossreference to the illicit discharge and dumping provisions.
 - In a few cases, these regulations are in the Public Health section, but this is rare.

It is important that the IDDE regulations be in a logical place where the public can find them. Ecology recommends that you consult with your legal counsel regarding the best location for the regulations in your existing code. You should also consider how they fit with additional stormwater regulations you will adopt under the permit for controlling runoff from construction sites, new development, and redevelopment.

Q: What are examples of "escalating" enforcement?

A: Escalating enforcement actions increase gradually in severity to allow you to tailor the enforcement action to the offense. The local government may adopt administrative procedures to define the actions and the timeframes for response. The

enforcement strategy may start with notification or a warning and gradually apply the more severe actions if the offender does not correct the problem.

The choice of enforcement tool depends on factors such as the impact on water quality, whether it was intentional or accidental, or if is a repeat offense. Seeking voluntary compliance is appropriate for first-time, minor offenders. Serious violations or continued non-compliance may require a more aggressive enforcement approach using a stronger tool. Provisions should include a method for appeal.

Some local governments include innovative compliance approaches. For example, some first-time offenders might contribute time to a public involvement project tied to stormwater education or pollution prevention instead of paying a penalty. Other regulations may state that the local government will address lower-impact prohibited discharges from single-family residences primarily through public education. This would apply to discharges such as those from car washing, pet waste or yard care at single-family residences.

This table lists a range of escalating enforcement tools that communities have used to respond to illicit discharges.

Type of Enforcement Action	Description
Written Warning with Voluntary Compliance	 Applies to first time, minor violations (Field staff have the authority to do this).
Written Notice of Violation Ordering Compliance	 Should clearly state description of remedial measures necessary, time schedule, penalties assessed if it doesn't happen, and timeframe for appeal.
Civil penalties	 Daily financial penalty imposed by a judicial authority for each day the violation remains unfixed.
Community Service in Lieu of Penalty	 In lieu of enforcement proceedings or penalties, impose alternative community action related to stormwater education, e.g. storm drain stenciling.
	 Applies to intentional and flagrant violations of ordinance. Each day discharge continues is typically a separate offense.
Criminal Prosecution	Can result in fines and imprisonment.
Emergency Cease and Desist Order	 Applies when ordinance continues to be violated. Requires immediate compliance with ordinance by halting operations/terminating discharges.
Disconnection from the MS4	 Applies to illicit connections to MS4 or to illicit discharges in emergency situations or continued failure of the property owner to comply.

Modified from the Center for Watershed Protection's *Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments (2004).*

Q: Which local government department should administer the regulations?

A: Each local government determines how best to administer the regulations within its specific structure. The regulations you adopt should identify the responsible department. Many designate the public works director as the administrative authority.

However, some smaller jurisdictions might choose to have the planning director administer inspections and enforcement. Ecology recommends that each local government determine the most efficient and effective internal structure to implement the ordinance in the context of its entire stormwater management program.

Internal departments need to coordinate with each other to implement the regulations. Public works staff inspects and maintains the stormwater drainage system and may be more likely to observe illicit discharges and connections. Your local government may decide to have operations and maintenance (O&M) staff assume IDDE inspections. Public works staff must coordinate with the planning department if planning is authorized to administer the regulations.

The permits require that you also train other local government staff likely to encounter illicit discharges in the course of their work. Your program will be more effective if staff from planning, building inspection, assessor's office, law enforcement, emergency services, fire department, and water, and sewer-system maintenance know how to recognize, report, and respond to illicit discharges and connections.

Q: How does the municipal regulatory oversight interface with Ecology's Industrial Permit program?

A: The permit requirements to prohibit illicit discharges explicitly exempt non-stormwater discharges covered by another NPDES permit. This is in accordance with permit Section 2.B. This guidance (see page 5, section 3 conditional discharges, item #5) suggests optional language to condition that exemption upon compliance of the facility with its NPDES permit.

The local government is not responsible to regulate discharges from industries (and other facilities like sand and gravel operations and boatyards) that operate under another NPDES permit. However, it should coordinate with the facility and Ecology in situations such as a spill from the facility into the MS4.

The local government is responsible for preventing polluted discharges from entering its MS4 and should report spills and suspected permit violations to Ecology.² Ecology's Industrial Permit Inspectors will follow up with the facility and will coordinate with the jurisdiction as needed and with the Ecology Municipal Permit Manager.

Q. What requirements for protection of groundwater are included that apply to Underground Injection Control (UIC) wells?

A: UIC wells (also known as drywells) that receive discharges from the MS4 effectively function as outfalls to ground waters of the state. An MS4 is a stormwater conveyance system that discharges to surface water. At the same time, parts of that MS4 also may discharge to ground water via a drywell.

² Ecology guidance for reporting illicit discharges and spills is online at http://www.ecy.wa.gov/biblio/0710089.html . Ecology asks local governments to call your Regional office to report concerns and/or to use our online reporting form for environmental

Ecology regulates UICs under its UIC rule (WAC 173-218). The Municipal Stormwater General Permits do not regulate discharges to ground water (see permit Section 2.A.1). However, as described in Ecology's *Guidance for UIC Wells that Manage Stormwater* (Publication number 05-10-067, available at http://www.ecy.wa.gov/biblio/0510067.html), UIC wells must meet a "nonendangerment standard." Permittees can meet the non-endangerment standard and fulfill the operation and maintenance requirements of the UIC program by applying their Stormwater Management Program requirements to the areas served by UIC wells.

If the jurisdiction adopts the narrower scope of IDDE regulations limited to permit requirements to prohibit illicit discharges into the MS4, the regulations do not apply to stormwater discharges to ground water through a UIC. However, if the local government chooses to exceed permit requirements and adopt IDDE regulations that apply to all stormwater discharges to surface and ground water, the regulations would apply to all stormwater discharges to ground water, including UICs.

For more assistance:

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