

Chapter 31
Storm Water Protection

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History: This Chapter was Ordinance 07-0409-01 (adopted July 16, 2007).

Sections 31-21through 31-31 was Ordinance 14-1215-02 adopted on 3-4-15

Section 31-1 Purpose and Intent

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the City of Delaware City through the regulation of non-stormwater discharges to the storm drainage system as required by federal and state law. This chapter establishes 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 the chapter are:

- A. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user.
- B. To prohibit illicit connections and discharges to the municipal separate storm sewer system.
- C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter.

Section 31-2 Definitions

As used in this chapter, the following terms shall have the meanings indicated:

AUTHORIZED ENFORCEMENT AGENCY-Employees or designees of the City of Delaware City, (“City”) including, but not limited to the City Manager and Law Enforcement Officers of the City.

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 designed to limit exposure of activities to wet weather and 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.

CITY - The City of Delaware City, Delaware, a municipal corporation located in New Castle County, Delaware, and any of its officers and employees or their designees.

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 discharge permits, including but not limited to clearing, grubbing, grading, excavating, and demolition which result in a land disturbance equal to or greater than one (1) acre, including the disturbance of less than one acre of land that is part of a larger common plan of development or sale that will ultimately disturb more than one acre.

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.

ILLEGAL DISCHARGE- Any direct or indirect non-stormwater discharge to the storm drain system.

ILLICIT CONNECTIONS- Either of the following:

- a.) 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-stormwater 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
- b.) 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.

INDUSTRIAL ACTIVITY- Activities subject to NPDES industrial stormwater discharge permits as defined in 40 CFR 122.26(b)(14) and in the State of Delaware *Regulations Governing the Control of Water Pollution*, Section 9.1.01.1.A

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) – A conveyance system, which is not intended to convey anything but stormwater and is owned by a municipal or public entity.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT- A permit issued by the State of Delaware that authorizes the discharge of pollutants to waters of the State, under prescribed conditions, pursuant to Section 6 of the Delaware *Regulations Governing the Control of Water Pollution*, whether the permit is applicable on an individual, group, or general area-wide basis.

NON-STORMWATER DISCHARGE- Any discharge to the storm drain system that is not composed entirely of stormwater.

PERSON- 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, or parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

STORM DRAINAGE SYSTEM - Facilities owned by a government entity 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, ditches, swales, reservoirs, and other drainage structures.

STORMWATER - 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 (SWPP) - 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- Any water or other liquid, other than stormwater, discharged from a facility.

WATERS OF THE STATE – All water, on the surface and under the ground, wholly or partially within, or bordering the State of Delaware or within its jurisdiction, as defined in the Delaware *Regulations Governing the Control of Water Pollution*, Section 9.1.01.0.

Section 31-3 Applicability

This chapter shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City.

Section 31-4 Responsibility for Administration

The City Manager shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the City as the authorized enforcement agency may be delegated in writing by the City Manager to persons or entities acting in the beneficial interest of or in the employ of the City.

Section 31-5 Minimum Standards

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore, this chapter 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 31-6 Discharge and Connection Prohibitions

a.). Prohibition of illegal discharges.

(1) No person shall throw, drain, or otherwise discharge, cause to be discharged, or allow others under its control to throw, drain, or otherwise discharge into the

municipal storm drain system or water courses any pollutants, other than stormwater.

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

(a) The following discharges are exempt from the discharge prohibitions established by this chapter: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if de-chlorinated, typically less than one PPM chlorine), fire-fighting activities, and any other water source not containing pollutants.

(b) Discharges specified in writing by the City as being necessary to protect public health and safety.

(c) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

(3) 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 (USEPA) or the Delaware Department of Natural Resources and Environmental Control (DNREC), 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) 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 chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue

(4) Existing connections in violation of this chapter must be disconnected and redirected, if necessary, to an approved wastewater management system or sanitary sewer upon approval of the City and New Castle County.

(5) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that premises upon receipt of written notice of violation from the City requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City in a form specified by the City.

Section 31-7 Suspension of MS4 Access

a.). Suspension due to illicit discharges in emergency situations. The City Manager 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 State. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the State, or to minimize danger to persons.

b.) Termination due to the detection of illicit discharge.

(1) Any person discharging to the MS4 in violation of this chapter may have his or her MS4 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 MS4 access. The violator may petition the City for a reconsideration and hearing.

(2) A person violates this Chapter if the person reinstates MS4 access to premises terminated or suspended pursuant to this section, without the prior approval of the City.

Section 31-8 Industrial or Construction Activity Discharges-Notice of Intent

a.) Any person subject to an industrial or construction activity NPDES stormwater 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 City Manager prior to the allowing of discharges to the MS4.

b.) The operator of a facility, including construction sites, required to have an NPDES permit to discharge storm water associated with industrial activity shall submit a copy of the Notice of Intent (NOI) to the City at the same time the operator submits the original NOI to DNREC or EPA as applicable.

c.) The copy of the Notice of Intent may be delivered to the City either in person to Town Hall at 407 Clinton Street, Delaware City or by mailing to:

Notice of Intent to Discharge Storm Water
City of Delaware City
P.O. Box 4159
Delaware City, DE 19706

d.) A person is in violation of this Chapter if the person operates a facility that is discharging storm water associated with industrial activity, including construction, without having submitted a copy of the Notice of Intent to do so to the City.

Section 31-9 Monitoring of Discharges

a.) Applicability. This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

b.) Access to facilities.

(1) The City Manager or his authorized designees shall be permitted to enter and inspect facilities subject to regulation under this Chapter as often as may be necessary to determine compliance with this chapter. 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 City.

(2) Facility operators shall allow the City Manager or his designees 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 stormwater, and the performance of any additional duties as defined by state and federal law.

(3) The City shall have the right to set up, utilize, maintain, repair, and replace on any permitted facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's stormwater discharge

(4) The City has the right to require the discharger to install, at discharger's expense, monitoring equipment as the City deems 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 as necessary 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 City and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delay in allowing the City access to a permitted facility is a violation of an NPDES stormwater discharge permit and of this Chapter. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity is in violation of this Chapter if the person denies the City reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.

(7) If the City has been refused access to any part of the premises from which stormwater is discharged, and it is able to demonstrate probable cause to believe that there may be a violation of this chapter, 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 chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City may seek issuance of a search warrant from any court of competent jurisdiction.

Section 31-10 Use of Best Management Practices (BMPs) to Prevent, Control, and Reduce Stormwater Pollutants

The owner or operator of a commercial or industrial establishment shall provide, at its 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 structural and nonstructural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illegal discharge may be required to implement, at said person's expense,

additional structural and nonstructural 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 stormwater associated with industrial activity shall be deemed compliance with the provisions of this section. BMPs may be part of a stormwater pollution prevention plan (SWPP), as necessary, for compliance with requirements of the NPDES permit.

Section 31-11 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 31-12 Notification of Spills

Notwithstanding other requirements of law, as soon as any person responsible for a facility of 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 stormwater, 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 City Manager 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 Delaware City 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

Section 31-13 Enforcement

a.) Notice of violation. Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the City 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 illegal discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

b.) If abatement of a violation and/or restoration of affected premises 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 as its personal obligation. Such costs shall constitute a lien on the premises until paid which shall accrue interest at the rate by 6 Del. C. Section 2301, and the City shall be entitled to an award of all court costs, legal fees, and expert witness fees associated with the perfection and execution of such lien or the collection of the underlying obligation.

Section 31-14 Appeal of Notice of Violation

Any person receiving a notice of violation may appeal the determination of the City Manager to the Delaware City Board of Adjustment. The notice of appeal must be in writing, shall specify the reasons and grounds for the appeal, and must be received within 10 days from the date of the notice of violation. A hearing on the appeal by the Board of Adjustment shall take place within 25 days from the date of receipt of the notice of appeal.

Section 31-15 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 15 days of the decision of the Mayor & Council upholding the decision of the City Manager, then representatives of the City may enter upon the subject private premises and are authorized to take any and all measures necessary to abate the violation and/or restore the premises. It shall be unlawful for any person, owner, agent or person

in possession of any premises to prevent the City or its designated contractor to enter upon the premises for the purposes set forth above.

Section 31-16 Cost of Abatement of the Violation

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 with 10 days. If the amount due is not paid within a timely manner as determined by the decision of Mayor & Council 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 chapter shall become personally liable to the City by reason of such violation for all costs, fees, damages and expenses incurred or caused by the violation and the remediation of same. The liability shall include per-annum interest on the total amount due, computed on the amount outstanding at the rate provided by 6 Del. C. § 2301.

Section 31-17 Injunction Relief

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this chapter, the City may petition for a temporary restraining order, 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 31-18 Compensatory Action

In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the City may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

Section 31-19 Violations Deemed a Public Nuisance

Any person who has violated or continues to violate this chapter shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$200 per violation per day and/or imprisonment for a period of time not to exceed 120 days. The City may recover all attorneys' fees, court costs and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

Section 31-20 Remedies Not Exclusive

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law, and it is within the discretion of the City to seek cumulative remedies.”

Section 31-21 Adoption of Delaware Sediment and Stormwater Management Regulations

A certain document, a copy of which is on file at City Hall of the City of Delaware City, being marked and designated as the Delaware Sediment and Storm Water Regulations issued by the Delaware Department of Natural Resources and Environmental Control (“DNREC”), as may be amended by DNREC from time to time, is hereby adopted by the City of Delaware City as if set forth fully herein. Except as exempted in the Delaware Sediment and Stormwater Regulations, no person or entity shall engage in any land-disturbing activity in the City until such person or entity has submitted and obtained approval for a sediment and stormwater permit.

Section 31-22 Applicable Definitions

The definitions in the Delaware Sediment and Stormwater Management Regulations shall apply to Section 31-21 through Section 31-30 of this Chapter and shall not apply to Sections 31-1 through 31-20 of this Chapter.

Section 31-23 Delegation and Variances

The Delegated Agency under the Delaware Sediment and Storm Water Regulations for all districts, except for the Historic Preservation and Redevelopment (“HPR”) District, is the New Castle County Conservation District. The Delegated Agency for the HPR District is DNREC. The New Castle County Conservation District or DNREC (as applicable) shall be responsible for, among other things, plan reviews, and enforcement pursuant to the Delaware Sediment and Stormwater Management Regulations (Section 3.0-10.0). All requests for variances from the requirements of the Delaware Sediment and Stormwater Regulations adopted hereunder by the City of Delaware City shall be directed to DNREC, as provided for in Section 1.5 of the Delaware Sediment and Storm Water Regulations as may be amended from time to time. The decision and appeals provision therein shall govern all variances and other requests.

Section 31-24 Plans and Approvals

Whenever a sediment and/or stormwater management plan is required, the plans shall conform to the most current Delaware Sediment and Stormwater Regulations. Applicants are

required to pay all fees and fines assessed or charged by DNREC or the New Castle County Conservation District. No subdivision approvals, building permit approvals, or other land use related approvals shall be granted unless and until DNREC or the New Castle Conservation District confirms, in writing, that all necessary approvals have been received, and that all financial guarantees (if applicable) have been implemented.

Section 31-25 Right of Entry and Certified Construction Reviewer Reports

Whenever the Delaware Sediment and Stormwater Regulations allow for a site visit, a construction review, or a maintenance review, the City Manager or persons authorized by the City Manager in writing may visit the site, perform a review, inspect, or attend meetings in the same manner as a representative of DNREC or the New Castle County Conservation District is authorized. Copies of all Certified Construction Reviewer Reports shall be submitted to the City at the same time such reports are submitted to DNREC or the New Castle County Conservations District.

Section 31-26 Maintenance Responsibility Obligations

Delaware City shall not accept maintenance responsibility for any stormwater management system unless a legal agreement between the Owner of the system and the City is approved by the City Council.

Section 31-27 Violations and Withholding of Permit Approvals

If DNREC or the New Castle County Council Conservation District find violations, seek enforcement, or if fines and penalties are outstanding, upon request of the requesting agency, the City of Delaware City shall withhold any future permits for the project until DNREC or the New Castle County Council Conservation District confirm in writing that the violations or applicable penalties are remedied.

Section 31-28 Liability

Nothing in this Chapter shall create any liability for loss for damage resulting from the failure of the City to perform any responsibility stated in this Chapter or obligate the City to make any appropriation or to expend any money not appropriated for any purpose stated in this Chapter.

Section 31-29 Minimum Requirements

The Delaware Sediment and Stormwater Regulations are minimum requirements. The City, DNREC, or the New Castle County Conservation District may require more stringent requirements in certain situations based on historical drainage, flooding problems, preservation or environmentally sensitive areas, or based on site specific circumstances.

Section 31-30 Conflict

Where there is a conflict between a provision in this Chapter and another chapter of the City Code or the Delaware Sediment and Stormwater Regulations, the more restrictive provision or interpretation shall apply.

Section 31-31 Injunctive Relief

In addition to the penalties and enforcement mechanisms available to DNREC or the New Castle County Conservation District, the City Manager or the City Council may authorize the City to seek injunctive relief for violations of the Delaware Sediment and Stormwater Management Regulations adopted by reference hereunder. If the City prevails in an action for injunctive relief, the City shall receive an award of all attorneys' fees and costs incurred, which may be enforced against the violator and /or the property owner jointly and severally.¹

¹ Section 31-21 through 31-31 was created by Ordinance 14-1215-02 (adopted on March 4, 2015)