

**ORDINANCE
ROCK COUNTY BOARD OF SUPERVISORS**

Land Conservation Committee
INITIATED BY



Andrew Baker, County Conservationist
DRAFTED BY

Land Conservation Committee
SUBMITTED BY

October 20, 2020
DATE DRAFTED

**CREATION OF THE ROCK COUNTY ILLICIT DISCHARGE ORDINANCE
(CHAPTER 4 PART 13)**

1 The County Board of Supervisors of the County of Rock at its regular meeting this 14th day of
2 January, 2021 does ordain as follows:

3
4 I. Chapter 4, Part 13, of the Rock County Ordinances shall be created to read as follows:

Part 13 – Illicit Discharge

5
6
7
8 **4.1301 TITLE**

9 This ordinance shall be cited as the Rock County Illicit Discharge Ordinance.

10
11 **4.1302 AUTHORITY**

12 This ordinance is adopted under authority granted by sec. 283 Wis. Stats and NR 216.07(3) Wis. Adm. Code. The
13 provisions of this ordinance are not intended to limit any other lawful regulatory powers of the County of Rock.

14
15 **4.1303 RESPONSIBILITY FOR ADMINISTRATION AND APPEALS**

16 The Rock County Board of Supervisors designates the Rock County Land Conservation Department (LCD) to
17 administer and enforce the provisions of this ordinance. LCD staff will be responsible for the administration and
18 enforcement of this ordinance. The Land Conservation Committee (LCC), functioning in accord with sec. 92 Wis.
19 Stats, shall hear and decide appeals where it is alleged that there is an error in any order, decision or determination
20 made by the LCD upon written request by a person to the Committee chair. A responsible person or landowner
21 may appeal within 30 calendar days of the date of any order, decision, or determination made by the LCD in
22 administering this ordinance, relative to sites in which such person has an interest.

23
24 **4.1304 PURPOSE AND INTENT**

25 The purpose of this ordinance is to provide for the health, safety, and general welfare of citizens through the
26 regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as
27 required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants
28 into the municipal separate storm sewer system (MS4) in order to comply with requirements of the Wisconsin
29 Pollutant Discharge Elimination System (WPDES) permit process. The intent of this ordinance is:

- 30
31 (1) To prohibit the discharge, spilling or dumping of non-storm water substances or materials into waters of the
32 state or the MS4;
33
34 (2) To identify non-storm water discharges or flows that are not considered illicit discharges;
35
36 (3) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures
37 necessary to ensure compliance with this ordinance.
38

39 **4.1305 JURISDICTION**

40 This ordinance shall apply to unincorporated lands within the Permitted Area of the County of Rock's Municipal
41 WPDES Permit as amended and revised unless explicitly exempted by this ordinance.

42
43 **4.1306 SEVERABILITY**

44 If a court of competent jurisdiction judges any section, clause, provision, or portion of this ordinance
45 unconstitutional or invalid, the remainder of the ordinance shall remain in force and not be affected by such
46 judgment.

47
48 **4.1307 REMEDIES NOT EXCLUSIVE**

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

51 **4.1308 ULTIMATE RESPONSIBILITY**

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

56 **4.1309 DISCHARGE PROHIBITIONS**

57 No person shall discharge or cause to be discharged into the MS4 or waters of the state any materials, including
58 but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable
59 water quality standards, other than storm water. This prohibition expressly includes, without limitation, illicit
60 connections made in the past, regardless of whether the connection was permissible under law or practices
61 applicable or prevailing at the time of connection.

63 The commencement, conduct or continuance of any illicit discharge to the MS4 is prohibited except as described
64 as follows:

- 66 (1) The following discharges are exempt from discharge prohibitions established by this ordinance: water line
67 flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising
68 ground water, ground water infiltration, uncontaminated pumped ground water, foundation or footing drains
69 (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation,
70 springs, individual residential car washing, natural riparian habitat or wetland flows, swimming pools (if
71 dechlorinated - typically less than one PPM chlorine), firefighting activities, and any other water source not
72 containing pollutants.
- 74 (2) Dye testing is an allowable discharge, but requires a verbal notification to the LCD prior to the time of the
75 test.
- 77 (3) The prohibition shall not apply to any non-storm water discharge permitted under an WPDES permit, waiver,
78 or waste discharge order issued to the discharger and administered under the authority of the Wisconsin DNR,
79 provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and
80 other applicable laws and regulations, and provided that written approval has been granted for any discharge
81 to the storm drain system.

83 **4.1310 NOTIFICATION OF SPILLS**

84 Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or
85 responsible for emergency response for a facility or operation has information of any known or suspected release
86 of materials which are resulting or may result in illicit discharges or pollutants discharging into storm water, the
87 MS4, or water of the state, said person shall take all necessary steps to ensure the discovery, containment, and
88 cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify
89 emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-
90 hazardous materials, said person shall notify the LCD in person or by phone or facsimile immediately.
91 Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the LCD within
92 three business days of the phone notice.

94 **4.1311 INDUSTRIAL OR CONSTRUCTION SITE DISCHARGES**

95 Any person subject to an industrial or construction site WPDES storm water discharge permit or a Rock County
96 Construction Site Erosion Control or Storm Water Management Permit shall comply with all provisions of such
97 permit. Proof of compliance with said permit may be required in a form acceptable to the LCD prior to the allowing
98 of discharges to the MS4.

100 **4.1312 INSPECTIONS**

- 101 (1) The LCD shall be permitted to enter and inspect any property subject to regulation under this ordinance as
102 often as may be necessary to determine compliance with this ordinance. If a discharger has security
103 measures in force that require proper identification and clearance before entry into its premises, the
104 discharger shall make the necessary arrangements to allow access to representatives of the LCD.
- 106 (2) LCD shall be permitted ready access to all parts of the premises for the purposes of inspection, sampling,
107 examination and copying of records that must be kept under the conditions of a WPDES permit to discharge
108 storm water, and the performance of any additional duties as defined by state and federal law
- 110 (3) If the LCD has been refused access to any part of the premises from which storm water is discharged, and
111 he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or
112 that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed
113 to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public
114 health, safety, and welfare of the community, then the LCD may seek issuance of a search warrant from any
115 court of competent jurisdiction.

117 **4.1313 ENFORCEMENT AND PENALTIES**

118 (1) Any illicit discharge initiated after the effective date of this ordinance by any person, firm, association,
119 or corporation subject to the provisions of this ordinance shall be deemed a violation unless conducted in
120 compliance with the requirements of this ordinance.

- 121 (2) Every violation of this ordinance is a public nuisance. Compliance with this ordinance may be enforced by
 122 injunctive order at the suit of the County pursuant to sec. 59.69 (11), Wis. Stats. It shall not be necessary
 123 to prosecute for forfeiture before resorting to injunctive proceedings.
 124
- 125 (3) When the LCD finds that a person has violated a prohibition or failed to meet a requirement of this
 126 ordinance, the LCD may order compliance by written notice of violation to the responsible person via
 127 certified mail. Such notice may require without limitation:
 128 (A) The performance of monitoring, analyses, and reporting;
 129 (B) The elimination of illicit connections or discharges;
 130 (C) That violating discharges, practices, or operations shall cease and desist;
 131 (D) The abatement or remediation of storm water pollution or contamination hazards and the restoration
 132 of any affected property; and
 133 (E) The implementation of source control or treatment BMPs.
 134
- 135 (4) Upon receipt of written notification from the LCD, the responsible person shall correct the activity as
 136 necessary to meet the specifications and schedule set forth in the notice.
 137
- 138 (5) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a
 139 deadline within which such remediation or restoration must be completed. Said notice shall further advise
 140 that, should the violator fail to remediate or restore within the established deadline, the work will be done by
 141 the LCD or a contractor and the expense thereof shall be charged to the violator. It shall be unlawful for any
 142 person, owner, agent or person in possession of any premises to refuse to allow the LCD or designated
 143 contractor to enter upon the premises for the purposes set forth above.
 144
- 145 (6) If the responsible person does not comply with the provisions of a notice of violation, the LCD may request
 146 the Corporation Counsel to obtain a cease and desist order in any court with jurisdiction.
 147
- 148 (7) Any person, firm, association or corporation violating any of the provisions of this ordinance shall be
 149 subject to a forfeiture of no less than 500 dollars, nor more than 5,000 dollars, and the costs of prosecution,
 150 including staff time, per offense. Each day a violation exists shall constitute a separate offense.
 151
- 152 (8) In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the LCD may
 153 impose upon a violator alternative compensatory actions, such as attendance at compliance workshops,
 154 creek cleanup, etc.
 155

156 4.1314 COST OF LCD ABATEMENT OF THE VIOLATION

157 In the instance of LCD abatement of the violation due to lack of compliance above, within 15 days after LCD
 158 abatement of the violation, the owner of the property will be notified of the cost of abatement, including
 159 administrative costs. The property owner may file a written protest objecting to the amount of the assessment
 160 within 30 days. If the amount due is not paid within a timely manner as determined by the decision of the LCD or
 161 by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the
 162 property and shall constitute a lien on the property for the amount of the assessment.
 163

164 4.1315 DEFINITIONS

165 For the purposes of this ordinance, the following shall mean:
 166

167 **Best Management Practices (BMPs):** schedules of activities, prohibitions of practices, general good
 168 housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other
 169 management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water,
 170 receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating
 171 procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw
 172 materials storage.
 173

174 **DNR:** Wisconsin Department of Natural Resources
 175

176 **Hazardous Materials:** Any material, including any substance, waste, or combination thereof, which because of
 177 its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly
 178 contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when
 179 improperly treated, stored, transported, disposed of, or otherwise managed.
 180

181 **Illicit Discharge:** Any discharge to the MS4 that is not composed entirely of storm water except discharges
 182 authorized by a WPDES permit or exempted in by this Ordinance
 183

184 **Illicit Connections:** An illicit connection is defined as either of the following: Any drain or conveyance, whether
 185 on the surface or subsurface, which allows an illicit discharge to enter the MS4 regardless of whether said drain or
 186 connection had been previously allowed, permitted, or approved by an LCD or, any drain or conveyance
 187 connected from a commercial or industrial land use to the MS4 which has not been documented in plans,
 188 maps, or equivalent records and approved by the LCD.
 189
 190

189 **Industrial Activity:** Activities subject to WPDES or NPDES Industrial Permits as defined in 40 CFR,
 190 Section 122.26 (b)(14).

191
 192 **Jurisdiction:** The area where the MS4 permittee (County of Rock) has authority to enforce its
 193 ordinance(s) or otherwise has authority to exercise control over a particular area of concern.

194
 195 **LCC:** Rock County Land Conservation Committee

196
 197 **LCD:** Rock County Land Conservation Department

198
 199 **Municipal Separate Storm Sewer System (MS4):** A conveyance or system of conveyances including
 200 roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels
 201 or storm drains, which meet all of the following criteria:

- 202 (1) Owned or operated by a municipality.
 203 (2) Designed or used for collecting or conveying storm water
 204 (3) Which is not a combined sewer conveying both sanitary and storm water
 205

206 **National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit:** means a permit
 207 issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the
 208 discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or
 209 general area-wide basis.

210
 211 **Non-Storm Water Discharge:** Any discharge to the storm drain system that is not composed entirely of storm
 212 water.

213
 214 **Permittee:** The owner or operator of a MS4 authorized to discharge storm water into waters of the state (in this
 215 case the County of Rock).

216
 217 **Permitted Area:** The areas of land under the jurisdiction of the County of Rock that contribute to discharge from
 218 the County's MS4 which are regulated under a Municipal WPDES Permit pursuant to subch. I of NR 216 Wis.
 219 Adm. Code. The Permitted Area is limited to any of the following:

- 220 (1) An "urbanized area", adjacent developing areas and areas whose runoff will connect to a
 221 municipal separate storm sewer regulated under subch. I of NR 216 Wis. Adm. Code; or
 222 (2) An area associated with a municipal population of 10,000 or more and a population
 223 density of 1,000 or more per square mile, adjacent developing areas and areas whose runoff will
 224 connect to a MS4 regulated under subch. I of NR 216 Wis. Adm. Code; or
 225 (3) An area that drains to a MS4 that is designated for permit coverage pursuant to s. NR
 226 216.02(2) or 216.025, Wis. Adm. Code.
 227

228 **Person:** means any individual, association, organization, partnership, firm, corporation or other entity recognized
 229 by law and acting as either the owner or as the owner's agent.

230
 231 **Pollutant:** Anything which causes or contributes to pollution. Pollutants may include, but are not limited to:
 232 paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard
 233 wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations,
 234 so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous
 235 substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes;
 236 wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any
 237 kind.

238
 239 **Premises:** Any building, lot, parcel of land, or portion of land whether improved or unimproved including
 240 adjacent sidewalks and parking strips.

241
 242 **Storm Water:** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural
 243 precipitation, and resulting from such precipitation.

244
 245 **Urbanized Area:** A place and the adjacent densely settled surrounding territory that together have a minimum
 246 population of 50,000 people, as determined by the US Bureau of the Census based on the latest decennial federal
 247 census.

248
 249 **Wastewater:** means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

250
 251 **WPDES Permit:** A Wisconsin Pollutant Discharge Elimination System permit issued pursuant to ch 382 Wis.
 252 Stats by the DNR.

253
 254 II. This ordinance shall be effective upon publication.
 255

Respectfully submitted:

LAND CONSERVATION COMMITTEE

/s/ Richard Bostwick
Richard Bostwick, Chair

/s/ Alan Sweeney
Alan Sweeney, Vice Chair

/s/ Stephanie Aegerter
Stephanie Aegerter

/s/ West Davis
Wes Davis

/s/ Kaelyb Lokrantz
Kaelyb Lokrantz

/s/ Mike Mulligan
Mike Mulligan

Vacant
Vacant

/s/ James Quade
James Quade, USDA-FSA Rep.

FISCAL NOTE:

Undetermined fiscal impact.

/s/ Sherry Oja

Sherry Oja
Finance Director

LEGAL NOTE:

Rock County maintains a WPDES MS4 general permit to operate a municipal storm sewer system (the "MS4"). As a condition of that permit, the County is required to "implement and enforce a program to detect and remove illicit connections and discharges to the MS4." This ordinance attempts to comply with those permit conditions.

/s/ Richard Greenlee

Richard Greenlee
Corporation Counsel

ADMINISTRATIVE NOTE:

Recommended.

/s/ Josh Smith

Josh Smith
County Administrator

CREATION OF THE ROCK COUNTY ILLICIT DISCHARGE ORDINANCE

Executive Summary

The County of Rock was authorized by the Department of Natural Resources on November 13, 2006 to discharge storm water from the County owned Municipal Separate Storm Sewer Systems (MS4, i.e. road ditches and curb and gutter systems) in the Urbanized Area in Rock County under a Wisconsin Pollutant Discharge Elimination System (WPDES) General Permit. The most recent permit update occurred in May 2019 and is referenced as Permit No. WI-S050075-3. The original permitted Urbanized Area was determined by population density based on the 2000 census. The permitted area was revised based on the 2010 census population density. The County's WPDES MS4 general permit outlines certain minimum programs and documentation that must be developed to maintain compliance with the permit conditions of approval. One element is policies and procedures to detect and eliminate sources of illicit discharges. An Illicit Discharge is defined in the Ordinance as "any discharge to the MS4 that is not composed entirely of storm water except discharges authorized by a WPDES permit or exempted in by this Ordinance." Exemptions are included in the Ordinance on page 2 starting at line 14. It is the intention that approval of this Ordinance, along with an internal policy to be finalized at a later date, will meet this requirement of the Permit.

The Ordinance will be implemented in the County's Permitted Area, which, as noted above, is comprised of certain census blocks that are served by County Highways surrounding the Cities of Janesville and Beloit. The Ordinance will not be administered county-wide nor within any city or village.

The Land Conservation Department will take the lead on the administration of this Ordinance, though it is likely that the Public Works Department and Health Department will be asked to assist if an enforcement action is necessary. It is not foreseen that this Ordinance will take substantial staff time or other resources to administer.