

# ILLICIT DISCHARGE ORDINANCE

ORDINANCE NO. 276

ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF ELY, IOWA, BY  
ADDING A CHAPTER CALLED "ILLICIT DISCHARGE ORDINANCE"

Section 1. THE CODE OF ORDINANCES, CITY OF ELY, IA, is hereby amended to add an "ILLICIT DISCHARGE ORDINANCE," in the form attached hereto.

Section 2. Repealer Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. Severability Clause. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

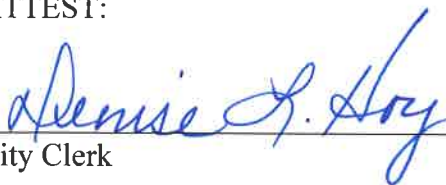
Section 4. Effective Date. This ordinance shall be effective from and after the final passage, approval and publication as provided by law.

PASSED AND APPROVED this 14 day of January, 2019.



Mayor

ATTEST:



City Clerk

**ORDINANCE NO. 276**

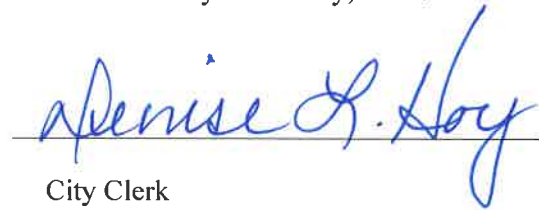
**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ELY,  
IOWA, BY ADDING A CHAPTER CALLED "ILLICIT DISCHARGE ORDINANCE"**

First Reading: 01/14/2019

Second Reading: Waived 01/14/19

Third Reading: Waived 01/14/19

I certify that the foregoing was posted as Ordinance No. 276 on the 14 day of January, 2019.

  
City Clerk

**SEAL**

## **CITY OF ELY, IOWA CODE OF ORDINANCE #276**

### **CHAPTER 148** **ILLICIT DISCHARGE ORDINANCE**

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#### **PART 1** **INTRODUCTION**

- 148.01      TITLE. An ordinance enforcing standards that prohibit anything other than storm water for which an NPDES permit has been issued from entering the MS4.
- 148.02      PURPOSE. The purpose of this Ordinance is to help protect the City's surface waters and quality of life by detecting and eliminating illicit discharges.
- 148.03      FINDINGS. The U.S.EPA's National Pollutant Discharge Elimination System ("NPDES") permit program administered by the Iowa Department of Natural Resources ("IDNR") requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System (MS4). The City of Ely is subject to the Program and is required to obtain, and has obtained, an MS4 Permit; the City's MS4 Permit is on file at City Hall and is available for public inspection during regular office hours.

148.04 through 148.10 Reserved

## PART 2 DEFINITIONS

148.11 DEFINITIONS. For the purpose of this Ordinance all words shall carry their customary meanings, except where specifically defined herein. The use of the present tense shall include the past and future tenses, and the future the present; the word “shall” is mandatory, while the word “may” is permissive; the singular number shall include the plural and the plural the singular.

- 148.11.1 **“Best management practice” (or “BMP”)** means structural and non-structural measures, practices, techniques or devices employed to avoid or minimize sediment or other pollutants carried in runoff.
- 148.11.2 **“Building Official”** means the officer designated and authorized by the City Council to carry out various functions as specified in this chapter.
- 148.11.3 **“Clean Water Act (CWA)”** means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water pollution Control Act Amendments of 1972).
- 148.11.4 **“Construction Activity”** means activities subject to NPDES construction permits that result in disturbance of one acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, filling, and demolition.
- 148.11.5 **“Discharge”** means the release of water and any elements, compounds and particles contained within or upon, from property owned or controlled by an individual, individuals, or entity.
- 148.11.6 **“Geothermal Pump and Dump System”** means a system that uses a pump to extract water from an underground aquifer, circulates the water through a heating or cooling system, and discharges the water as non-stormwater discharge.
- 148.11.7 **“Hazardous Materials”** means any material, including any substance, waste, or combination thereof, that 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.
- 148.11.8 **“Illicit Discharge”** means any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in subsection 148.32 of this chapter.
- 148.11.9 **“Illicit Connection”** means either of the following:
  - 1. Any drain or conveyance, whether on the surface or subsurface, which allows an illicit 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 the Building Official; or
2. 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 the Building Official.
- 148.11.10 **“Industrial Activity”** means activities subject to NPDES industrial permits as defined in 40 CFR 122.26 (b)(14).
- 148.11.11 **“Municipal Separate Storm Sewer System”** means the streets, gutters, conduits, natural or artificial drains, channels and watercourses, and other facilities that are owned, operated, maintained or controlled by the City and used for the purpose of collecting, storing, transporting, or disposing of stormwater.
- 148.11.12 **“National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit”** means a permit issued by the environmental protection agency 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 areawide basis.
- 148.11.13 **“Non-stormwater Discharge”** means any discharge to the storm drain system that is not composed entirely of stormwater.
- 148.11.14 **“Point Source”** means a discernible confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.
- 148.11.15 **“Pollutant”** means anything that 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, articles, and accumulations, so that same may cause or contribute to pollution; floatables; sediment from soil erosion; 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.

- 148.11.16 **“Premises”** means building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- 148.11.17 **“Significant Materials”** include but are not limited to: raw materials, fuels, materials such as solvents, detergent, and plastic pellets, finished materials such as metallic products, raw materials used in food processing or production: hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); any chemical the facility is required to report pursuant to Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.
- 148.11.18 **“Soil Erosion”** means the detachment and movement of soil or rock fragments by water, wind, ice or gravity.
- 148.11.19 **“Stormwater”** means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.
- 148.11.20 **“Stormwater Pollution Prevention Plan”** means a document that 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.
- 148.11.21 **“Surface Waters”** means all waters of the state other than ground waters, which include ponds, lakes, rivers, streams, tidal and nontidal wetlands, public ditches, tax ditches, and public drainage systems except those designed and used to collect, convey, or dispose of sanitary sewage.
- 148.11.22 **“Wastewater”** means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
- 148.11.23 **“Waters of the State”** means both surface waters and ground waters within the boundaries of the state of Iowa and subject to its jurisdiction.

148.12 through 148.20 Reserved

**PART 3  
GENERAL PROVISIONS**

- 148.21      **APPLICABILITY.** This chapter shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by the Building Official.
- 148.22      **ADMINISTRATION.** The Illicit Discharge Ordinance shall be administered by the Building Official.
- 148.23      **ULTIMATE RESPONSIBILITY.** 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.
- 148.24 through 148.30 Reserved

**PART 4  
DISCHARGE PROHIBITIONS**

- 148.31      **PROHIBITION OF ILLICIT DISCHARGES.** No person shall discharge or cause to be discharged into the MS4 or watercourses any of the following:
1.      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.
  2.      Geothermal pump and dump system discharges without the express written consent of the Building Official. The Building Official may allow such discharge if it does not present or will not present an imminent and substantial danger to the operation of the MS4, public property, private property, the environment, or to the health or welfare of persons, or waters of the state.
  3.      Sediment pollution originating from excessive erosion rates on a construction site not otherwise subject to the City's COSESCO ordinance or sediment pollution entering a municipal storm sewer that causes a water quality violation as determined by the DNR shall be deemed an illicit discharge in violation of this ordinance.

148.32

EXEMPTIONS. The commencement, conduct or continuance of any illicit discharge to the storm drain system is prohibited except as described as follows:

1. The following discharges are exempt from discharge prohibitions established by this chapter: 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, sump pump discharge, foundation or footing drains (not including active ground water dewatering systems), crawl space pumps, air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated - typically less than 1 PPM chlorine), firefighting activities, and any other water source not containing pollutants.
2. Discharges specified in writing by the Building Official as being necessary to protect public health and safety.
3. Dye testing is an allowable discharge, but requires a verbal notification to the Building Official prior to the time of the test.
4. 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 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.

148.33

PROHIBITION OF ILLICIT CONNECTIONS. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

1. 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.
2. 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.

148.34

INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES. Any person subject to an industrial or construction activity 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 Building Official prior to the allowing of discharges to the MS4.



148.35 through 148.50 Reserved

**PART 5  
SUSPENSION OF MS4 ACCESS**

- 148.51        **SUSPENSION DUE TO ILLICIT DISCHARGES IN EMERGENCY SITUATIONS.** The City 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 United States. 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.
- 148.52        **SUSPENSION DUE TO DETECTION OF ILLICIT DISCHARGE.** Any person discharging to the MS4 in violation of this chapter may have the person's MS4 access terminated if such termination would abate or reduce an illicit discharge. The City shall notify a violator of the proposed termination of its MS4 access. The violator may petition the City for a reconsideration and hearing.
- 148.53        **REINSTATEMENT WITHOUT APPROVAL.** A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the City.

148.54 through 148.65 Reserved

**PART 6  
MONITORING OF DISCHARGES**

- 148.66        **APPLICABILITY.** This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.
- 148.67        **ACCESS TO FACILITIES.** The City 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 that 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.
1.        Facility operators shall allow the City 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.

2. The City shall have the right to set up 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 storm water discharge.
3. The City shall have 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 stormwater flow and quality shall be calibrated to ensure their accuracy.
4. 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.
5. Unreasonable delays in allowing the City access to a permitted facility is a violation of a storm water discharge permit and of this chapter. A person who is the operator of a facility with an NPDES permit to discharge storm water associated with industrial activity commits an offense 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.
6. If the City has been refused access to any part of the premises from which storm water is discharged, and are 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.

**PART 7**  
**PREVENT, CONTROL AND REDUCE POLLUTANTS**  
**BY USE OF BMPS**

148.71      USE OF BMPS FOR PROTECTION. The owner or operator of a commercial, industrial or construction site shall provide, at the owner's or operator's 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, that is, or may be, the source of an illicit discharge, may be required to implement, at such 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 storm water associated with commercial, industrial or construction activities, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

148.72 through 148.80 Reserved

**PART 8**  
**WATERCOURSE PROTECTION**

148.81      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.

148.82 through 148.85 Reserved

**PART 9**  
**NOTIFICATION OF SPILLS**

148. 86      NOTIFICATION OF SPILLS. Notwithstanding other requirements of law, as soon as any person responsible for a facility or 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 illicit discharges or pollutants discharging into storm water, the storm drain system, or waters of the United States such 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 such person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, such person shall notify the City 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 within three (3) business days of the phone notice. If the discharge of prohibited materials emanates from a commercial, industrial or construction site, 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 (3) years.

148.87 through 148.90 Reserved

**PART 10**  
**ENFORCEMENT**

148. 91      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 discharges;
3.      That violating discharges, practices, or operations shall cease and desist;
4.      The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
5.      Payment of administrative and remediation costs; and
6.      The implementation of source control or treatment BMPs.

148.92 ABATEMENT OR RESTORATION. 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. Such 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.

148.93 through 148.95 Reserved

## **PART 11 APPEAL OF NOTICE OF VIOLATION**

148.96 APPEAL: Any person receiving a notice of violation may appeal the determination to the City Council. The notice of appeal must be received by the City Building Official within ten (10) business days from the date of the notice of violation. Hearing on the appeal before the City Council shall take place within thirty (30) days from the date of receipt of the notice of appeal. The City Council may rescind, modify or affirm the notice of violation. The decision of the City Council shall be final.

148.97 through 148.100 Reserved

## **PART 12 ENFORCEMENT MEASURES AFTER APPEAL**

148.101 ENFORCEMENT: 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 thirty (30) days of the decision of the City Council upholding the decision of the City, then representatives of the City may 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 City or designated contractor to enter upon the premises for the purposes set forth above.

148.102 through 148.105 Reserved

**PART 13**  
**COST OF ABATEMENT OF VIOLATION**

148.106      COST OF ABATEMENT OF VIOLATION: Within thirty (30) days after abatement of a violation of this chapter, the owner of the property shall be notified in writing by the City of the cost of abatement, including administrative costs. If the cost of abatement is not paid to the City within sixty (60) days after the date of the notice, the cost of abatement shall be certified by the City in the manner of a special assessment against the property and shall constitute a lien on the property.

148.107 through 148.110 Reserved

**PART 14**  
**INJUNCTIVE RELIEF**

148.111      INJUNCTIVE 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 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.

148.112 through 148.115 Reserved

**PART 15**  
**VIOLATIONS DEEMED PUBLIC NUISANCE**

148.116      VIOLATIONS DEEMED 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 chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance. (Chapter 50)

148.117 through 148.120 Reserved

**PART 16**  
**REMEDIES NOT EXCLUSIVE**

148.121      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.

148.122 through 148.125 Reserved