

TITLE 18

WATER AND SEWERS¹

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CHAPTER 7

ILLICIT DISCHARGE ORDINANCE

SECTION

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18-701. Purpose. It is the purpose of this ordinance to:

(1) Protect, maintain, and enhance the environment of the City of Johnson City and the public health, safety and general welfare of the citizens of the city, by controlling discharges of pollutants to the city's storm water system and to maintain and improve the quality of the receiving waters into which the storm water outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the city.

(2) Maintain and improve the quality of the receiving waters into which storm water runoff flows, including without limitation, lakes, rivers, streams, ponds, and wetlands.

(3) Enable the City of Johnson City to comply with the National Pollution Discharge Elimination System permit (NPDES) and applicable regulations, 40 CFR 122.26 for storm water discharges. (Ord. #4063-04, Dec. 2004)

18-702. Definitions. For the purpose of this ordinance, the following definitions shall apply. Words used in the singular shall include the plural, and the plural shall include the singular. Words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive.

(1) "Best Management Practices (BMP)." Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage, or leaks, sludge or waste disposal, or drainage from raw material storage.

(2) "City." The City of Johnson City, TN.

(3) "Contaminant." Any physical, chemical, biological, or radiological substance or matter in water.

(4) "Director." The director of public works of the city or his/her designee, who is responsible for the implementation of the provisions of this ordinance.

(5) "Discharge." To dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means including any direct or indirect entry of any non-storm water solid or liquid matter into the municipal separate storm sewer system.

(6) "Illicit connections." Illegal and/or unauthorized connections to the municipal separate storm water system whether or not such connections result in discharges into that system.

(7) "Municipal separate storm sewer system (MS4)." The conveyances owned or operated by the municipality for the collection and transportation of storm water, including but not limited to, the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

(8) "National Pollutant Discharge Elimination System (NPDES) permit." A permit issued pursuant to 33 USC 1342.

(9) "Pollutant." Sewage, industrial wastes, other wastes or materials (liquids or solids).

(10) "Storm water runoff (also called storm water)." That portion of the precipitation on a drainage area that is discharged from the area into the municipal separate storm sewer system.

(11) "Surface water." Waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes and reservoirs.

(12) "TDEC." The Tennessee Department of Environment and Conservation.

(13) "Waters or Waters of the State." Any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters. (Ord. #4063-04, Dec. 2004)

18-703. Illicit discharges. (1) Applicability. This section shall apply to any discharge entering the municipal separate storm sewer system that is not composed entirely of stormwater.

(2) Prohibition of illicit discharges. (a) No person shall introduce or cause to be introduced into the municipal separate storm sewer system any discharge that is not composed entirely of storm water. The commencement, conduct, or continuance of any non-storm water discharge to the municipal separate storm sewer system is prohibited.

(i) Exceptions. Uncontaminated discharges from the following sources are permitted:

(A) Landscape irrigation or lawn watering with potable water or water from a natural surface water source;

- (B) Diverted stream flows permitted by the State of Tennessee;
- (C) Rising ground water;
- (D) Groundwater infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;
- (E) Pumped ground water;
- (F) Foundation or footing drains;
- (G) Water discharged from crawl space pumps;
- (H) Air conditioning condensate;
- (I) Springs;
- (J) Individual, residential washing of vehicles;
- (K) Flows from natural riparian habitat or wetlands;
- (L) Swimming pools (if dechlorinated--typically less than one part per million chlorine);
- (M) Street wash waters resulting from normal street cleaning and de-icing operations;
- (N) Discharges resulting from emergency fire fighting activities;
- (O) Discharges pursuant to a valid and effective NPDES permit issued by the State of Tennessee;
- (P) Discharges necessary to protect public health and safety, as specified in writing by the city; and
- (Q) Dye testing permitted by the city; and
- (R) Emergency public utility repair activities for breaks in water and sewer lines, discharges from water line flushing and blow-offs.

(3) Prohibition of illicit connections. (a) The construction, use, maintenance, continued existence of illicit connections to the separate municipal storm sewer system is prohibited.

(b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under laws or practices applicable or prevailing at the time of connection. (Ord. #4063-04, Dec. 2004)

18-704. Elimination of discharges or connections. (1) Any person responsible for a property or premises, including but not limited to an owner, operator, or occupant thereof, which is, or may be, the source of any illicit discharge, may be required to implement, at that person's expense, the best management practices necessary to prevent the further discharge of pollutants to the municipal separate storm sewer system.

(2) Any person responsible for a property or premises, including but not limited to an owner, operator, or occupant thereof, where an illicit connection is located may be required, at that person's expense, to eliminate the connection to the municipal separate storm sewer system.

(3) Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. (Ord. #4063-04, Dec. 2004)

18-705. Notification of spills. (1) Notwithstanding any other requirement of law, as soon as any person who is responsible for a facility or operation (including the owner, occupant, or operator thereof), or is responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting in, or may result in, illicit discharges or pollutants discharging into storm water and/or the municipal separate storm water system, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

(2) In the event of a release of hazardous materials, the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. The person shall notify the director in person or by telephone or facsimile no later than the next business day.

(3) In the event of a release of non-hazardous materials, the person shall notify the director in person or by telephone or facsimile no later than the next business day.

(4) Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the director within three (3) business days of the telephone notice.

(5) If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner, occupant, 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 five (5) years. (Ord. #4063-04, Dec. 2004)

18-706. Enforcement. (1) Authority. (a) The director or his/her designee(s) shall have the authority to issue notices of violation and citations.

(b) The director may require reports or records from the permittee or person responsible for eliminating the illicit discharge or illicit connection to insure compliance.

(2) Inspections by the city. (a) The director or his/her designee shall have the right to enter onto private properties for the purposes of investigating a suspected violation of this ordinance.

(b) The owner/operator of any facility, operation, or residence where an illicit discharge or illicit connection is known or suspected shall allow the director or his/her authorized representative to have access to and copy at reasonable times, any applicable state or federal permits related to the suspected or known discharge or connection, or any reports or records kept as a condition of this ordinance.

(c) Failure on the part of an owner or operator to allow such inspections by the director or his/her designee shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and/or civil penalties.

(3) Enforcement, penalties and liability. (a) Any person in violation of this ordinance shall be subject to a civil penalty, a stop work order, withholding of a certificate of occupancy, and civil damages.

(b) In order to gain compliance, the director may notify other city departments to deny service to the property until the site, facility, activity and/or residence has been brought into compliance with this ordinance.

(c) Any person who violates any provision of this ordinance may also be liable to the city in a civil action for damages.

(d) The remedies provided for in this ordinance are cumulative and not exclusive, and shall be in addition to any other remedies provided by law.

(e) Neither the approval of a discharge under the provisions of this ordinance nor compliance with the conditions of such approval shall relieve any person of responsibility for damage to other persons or property or impose any liability upon the city for damage to other persons or property.

(f) The City of Johnson City, pursuant to Tennessee Code Annotated, § 68-221-1106, hereby declares that any person who violates this ordinance is subject to a civil penalty of not less than fifty dollars (\$50.00) or more than five thousand dollars (\$5000.00) per day for each day of violations. Each day of violation constitutes a separate violation.

(g) In assessing a civil penalty, the following factors may be considered:

(i) The harm done to the public health or the environment;

(ii) Whether or not the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

(iii) The economic benefit gained by the violator from the violation;

(iv) The amount of effort put forth by the violator to remedy this violation;

(v) Any unusual or extraordinary enforcement costs incurred by the City of Johnson City;

(vi) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

(h) The City of Johnson City may also assess damages proximately caused by the violator to the city which may include any reasonable expenses incurred in investigating and enforcing violations of this ordinance or any actual damages caused by the violation.

(i) Appeal from any assessment of civil penalty or damages or both shall be to the Board of Commissioners of the City of Johnson City. A written petition for review of such damage assessment or civil penalty shall be filed by the aggrieved party in the office of the City Manager of the City of Johnson City within thirty (30) days after the damage assessment or civil penalty is served upon the violator either personally or by certified mail, or return receipt requested. Failure on part of the violator to file a petition for appeal in the office of the City Manager of the City of Johnson City shall be deemed consent to the damage assessment or civil penalty and shall become final.

(j) Whenever any damage assessment or civil penalty has become final because of a violator's failure to appeal the city's damage assessment or civil penalty, the city may apply to the chancery court for a judgment and seek execution of the same. (Ord. #4063-04, Dec. 2004)