

## **DIVISION 5. - ILLICIT DISCHARGES**

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### **Sec. 12-391. - Purpose/intent.**

(a)

The purpose of this division is to regulate nonstormwater discharges to the storm drainage system as required by federal and state law. This division 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 this division are:

(1)

To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user.

(2)

To prohibit illicit connections and discharges to the municipal separate storm sewer system (MS4).

(3)

To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with these regulations.

*(Ord. No. 2007-38, 4.5.1, 8-13-2007)*

### **Sec. 12-392. - Applicability.**

The regulations contained in this division shall apply to all water entering the city's storm drain system, generated on any developed and undeveloped lands, unless explicitly exempted by the City of Florence or an authorized enforcement agency.

*(Ord. No. 2007-38, 4.5.2, 8-13-2007)*

### **Sec. 12-393. - Responsibility for administration.**

The City of Florence shall administer, implement, and enforce the provisions of these regulations. Any powers granted or duties imposed upon any authorized enforcement agency may be delegated in writing by the City of Florence to persons or entities acting in the beneficial interest of or in the employ of the city.

*(Ord. No. 2007-38, 4.5.3, 8-13-2007)*

### **Sec. 12-394. - Severability.**

The provisions of this division are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this division or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this division.

**Sec. 12-395. - Limitations.**

The standards set forth herein are minimum standards; therefore these regulations do not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

(Ord. No. 2007-38, 4.5.5, 8-13-2007)

**Sec. 12-396. - Permission required to connect to the municipal separate storm sewer system.**

As stated in chapter 17 of the City's Code of Ordinances, It shall be unlawful for any person to connect a private drain with a public drain without first obtaining the consent of the city engineer. This consent shall be in the form of a written encroachment permit. Connection fees may be required or established by the city. Pre-existing connections that contribute only stormwater discharges are grandfathered and do not require a permit.

(Ord. No. 2007-38, 4.5.6, 8-13-2007)

**Sec. 12-397. - Prohibition of illegal discharges and illicit connections.**

(a)

The city prohibits illegal/illicit discharges and illicit connections, as defined in article I of this chapter.

(b)

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

(1)

The following discharges are exempt from discharge prohibitions established by this division: 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, uncontaminated pumped ground water, 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 dechlorinated - typically less than one (1) mg/L chlorine), fire fighting activities, and any other water source not containing pollutants.

(2)

Discharges specified in writing by the City of Florence as being necessary to protect public health and safety.

(3)

Dye testing may be allowable, but requires prior approval by the City of Florence.

(4)

The prohibition shall not apply to any nonstormwater 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, 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.

(c)

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

(d)

A person is considered to be in violation of these regulations if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(Ord. No. 2007-38, 4.5.7, 8-13-2007)

**Sec. 12-398. - Suspension of municipal separate storm sewer (MS4) access.**

(a)

The City of Florence 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 United States, or to minimize danger to persons.

(b)

All persons discharging to the MS4 in violation of these regulations may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City of Florence will notify a violator of the proposed termination of its MS4 access. The violator may petition the city for a reconsideration and hearing.

(c)

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 of Florence.

(Ord. No. 2007-38, 4.5.8, 8-13-2007)

### **Sec. 12-399. - Industrial or construction activity discharges.**

All persons 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 shall be required in a form acceptable to the City of Florence prior to the allowing of discharges to the MS4.

(Ord. No. 2007-38, 4.5.9, 8-13-2007)

### **Sec. 12-400. - Monitoring of discharges.**

(a)

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

(b)

The City of Florence shall be permitted to enter and inspect facilities subject to these regulations as often as may be necessary to determine compliance. 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 by city representatives.

(c)

Facility operators shall allow the City of Florence 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.

(d)

The City of Florence 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 stormwater discharge.

(e)

The City of Florence has 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 expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(f)

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 of Florence and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(g)

Unreasonable delays in allowing City of Florence access to a permitted facility is a violation of a stormwater discharge permit and of these regulations. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this article.

(h)

If City of Florence 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 these regulations, 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 these regulations or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City of Florence may seek issuance of a search warrant from any court of competent jurisdiction.

(Ord. No. 2007-38, 4.5.10, 8-13-2007)

### **Sec. 12-401. - Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.**

(a)

The City of Florence reserves the right to require best management practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the U.S.

(b)

The owner or operator of a commercial or industrial establishment shall provide, at his 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.

(c)

Any person responsible for a property or premise which has been determined to contribute to an illicit discharge, shall 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.

(d)

Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. The associated BMPs shall be part of a stormwater pollution prevention plan (SWP3), as necessary for compliance with requirements of the NPDES permit.

(Ord. No. 2007-38, 4.5.11, 8-13-2007)

### **Sec. 12-402. - Protection of open stormwater conveyances and designated waterways.**

Every person owning property through which an open stormwater conveyance or designated waterway 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. In addition, the owner or lessee shall maintain existing privately owned structures within these areas, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

(Ord. No. 2007-38, 4.5.12, 8-13-2007)

### **Sec. 12-403. - Notification of spills.**

(a)

Notwithstanding other requirements of law, as soon as any person responsible for the operation or emergency response of a facility has information pertaining to any known or suspected release of materials which may result in an illegal discharge, the responsible person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

(1)

In the event of a release of hazardous materials, said person shall immediately notify the appropriate emergency response agencies of the occurrence via emergency dispatch services.

(2)

In the event of a release of nonhazardous materials, said person shall notify the City of Florence in person or by phone, fax, or email 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 Florence within three (3) business days of the phone notice.

(b)

If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall 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.

(Ord. No. 2007-38, 4.5.13, 8-13-2007)

### **Sec. 12-404. - Enforcement.**

(a)

*Administrative remedies.*

(1)

Notification of violation. Whenever the city finds that any user has violated or is violating the requirements of this division, the city may serve upon such a person a written notice stating the nature of the violation.

a.

Within thirty (30) days from the date of this notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the city by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of notice of violation.

(2)

Consent orders. The city is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance.

a.

Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order.

b.

Consent orders shall have the same force and effect as an administrative order, issued pursuant to subsection (a)(3) below.

(3)

Show cause hearing. The city may order any user who has violated the requirements of this division to show cause why a proposed enforcement action should not be taken.

a.

In the event the city determines that a show cause order should be issued, a notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken.

b.

The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.

c.

The city shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

d.

A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty nor is any action or inaction taken by the city under this section subject to an administrative appeal.

(4)

Administrative orders. When the city finds that a user has violated or continues to violate the requirements of this division, the city may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:

a.

Immediately comply with all requirements;

b.

Comply in accordance with a compliance time schedule set forth in the order;

c.

Take appropriate remedial or preventive action in the event of a continuing or threatened violation;

d.

Disconnect or suspend access.

(5)

Suspension of municipal separate storm sewer (MS4) access. The City of Florence 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.

a.

All persons discharging to the MS4 in violation of these regulations may have their MS4 access terminated if such termination would abate or reduce an illicit discharge.

b.

The City of Florence will notify a violator of the proposed termination of its MS4 access. The violator may petition the city for a reconsideration and hearing.

c.

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 of Florence.

d.

If the violator fails to comply with a suspension order, the city may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

(6)

Termination of permit. Any permitted user who violates the following conditions of this division, or applicable state and federal regulations, is subject to having its MS4 encroachment permit terminated:

a.

Failure to report a pollutant discharge;

b.

Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or

c.

Violation of any conditions of the permit.

(b)

*Civil penalties.* Any user who is found to have failed to comply with any provisions of this article, or the orders, rules, regulations and permits issued hereunder, may be fined up to two thousand dollars (\$2,000.00) per day per violation. In addition to the penalties provided herein, the city may recover reasonable attorney's fees, court costs, court reporters' fees, and other expenses of litigation by appropriate suit at law against the person found to have violated this article or the orders, rules, regulations, and permits issued hereunder.

(c)

*Other available remedies.* Remedies, in addition to those previously identified in this article, are available to the city which may use any single one or combination against a noncompliant user. Additional available remedies include, but are not limited to:

(1)

Criminal violation. The district attorney for the judicial district may, at the request of the city, prosecute noncompliant users who violate the provisions of this division.

(2)

Injunctive relief. Whenever a user is in violation of the provisions of this division or an order or permit issued hereunder, the city may petition the superior court of justice for the issuance of a restraining order or a preliminary and permanent injunction, which restrains or compels the activities in question.

(3)

Severance of city services. Whenever a user is in violation of the provisions of this article or an order or permit issued hereunder, then water, sewer, solid waste, or other city services may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply.

(4)

Public nuisance. Any violation of the provisions of this division or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the city. Any person(s) creating a public nuisance shall be subject to the provisions of the Florence City Code governing such nuisances, including reimbursing the city for any costs incurred in removing, abating or remedying said nuisance.

(d)

*Reconnection.* It shall be unlawful for any person to reconnect to the MS4 when access to the same has been cut off for noncompliance with provisions of this division, or any other reason, until specifically approved in writing by the city. Said approval shall be contingent upon satisfaction of all provisions of this division including, but not limited to, payment of all penalties, charges, claims, damages, judgments, and costs incident thereto.

(e)

*Hearings.*

(1)

Initial adjudicatory hearing. An applicant whose MS4 encroachment permit is denied, or is granted subject to conditions the applicant deems unacceptable, a user assessed a civil penalty, or a user issued an administrative order shall have the right to an adjudicatory hearing before a hearing officer designated by the city upon making such written demand, identifying the specific issues to be contested within thirty (30) days following receipt of the MS4 encroachment permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding. The hearing officer shall make a final decision of the contested action within sixty (60) days of the receipt of the demand for a hearing.

a.

New permits. Upon appeal, including judicial review in the general courts of justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of the judicial review or until the parties reach a mutual resolution.

b.

Renewed permits. Upon appeal, including judicial review in the general courts of justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach mutual resolution.

(2)

Final appeal hearings. Any decision of a hearing officer made as a result of an adjudicatory hearing may be appealed, to the city council upon filing a written demand within ten (10) days of receipt of notice of the decision. Hearings held under this subsection shall be conducted in accordance with City Code. Failure to make written demand within the time specified herein shall bar further appeal. The city council shall make a final decision on the appeal within ninety (90) days of the date the appeal was filed.

(3)

Official record. When a final decision is issued, the city council shall prepare an official record of the case that shall include all notices, motions, and other like pleadings; a copy of all documentary evidence introduced; a certified transcript or narrative summary of any testimony taken; and a copy of the final decision of the city council.

(4)

Judicial review. Any person against whom a final order or decision of the city council is entered, may seek judicial review of the order or decision by filing a written petition within thirty (30) days after receipt of notice, but not thereafter, with the Superior Court of Florence County along with a copy to the city. Within thirty (30) days after receipt of the copy of the petition of judicial review, the city council shall transmit to the reviewing court the official record.

(f)

*Annual publication of significant noncompliance.* The city reserves the right to publish in the Morning News or other public media a list of those MS4 users which were found to be in significant noncompliance with the provisions of this division during the previous twelve (12) months.

(Ord. No. 2007-38, 4.5.14, 8-13-2007)

