

**The Charter Township of Vienna
Illicit Discharge and Connection Stormwater Ordinance 442**

THE CHARTER TOWNSHIP OF VIENNA ORDAINS:

Article I—Statement of Purpose

1.01 Purpose: The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Charter Township of Vienna through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law.

1.02 Methods: This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System permit process.

1.03 Objectives: The objectives of this ordinance are:

A. To regulate the contribution of pollutants to the municipal separate storm sewer system by stormwater discharge by any user; and

B. To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system; and

C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

Article II—Definition

2.01 Authorized Enforcement Agency means employees or designees of the director of the municipal agency designated to enforce this ordinance.

2.02 BMP means Best Management Practices which are the schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

2.03 Clean Water Act means the Federal Water Pollution Control Act (33 USC §1251 et seq.), and any subsequent amendments thereto.

2.04 Construction Activity means activities subject to NPDES construction permits which include construction projects resulting in land disturbance of 5 acres or more.

2.05 Facility means any permanent, semi-permanent, or temporary structure, located on any parcel in the Township which has an industrial or commercial use.

2.06 Facility Operator means any person who is the owner, occupant, or tenant of any Facility in the Township, or the agent or employee of the owner, occupant or tenant of any Facility located in the Township or any other person who has any control of any Facility located in the Township.

2.07 Hazardous materials means 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 when improperly treated, stored, transported, disposed of, or otherwise managed.

2.08 *Illegal Discharge* means any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in **Article VII** of this Ordinance.

2.09 *Illicit Connections* means 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.

2.10 *Industrial Activity* means any activity subject to NPDES Industrial Permits as defined in **40 CFR §122.26(b)(14)**.

2.11 *MDEQ* means the Michigan Department of Environmental Quality.

2.12 *MS4* means the Township Municipal Separate Storm Sewer System.

2.13 *NPDES* means National Pollutant Discharge Elimination System.

2.14 *NPDES Discharge Permit* means a permit issued by EPA (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 area-wide basis.

2.15 *Non-Stormwater Discharge* means any discharge to the storm drain system that is not composed entirely of stormwater.

2.16 *Parcel of Property* means that property which is identified by a single parcel number by the Township Treasurer.

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

2.18 *Pollutant* means 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; floatable; 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.

2.19 *Storm Drainage System* means publicly-owned facilities 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, reservoirs, and other drainage structures.

2.20 *Stormwater* means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

2.21 *Stormwater Pollution Prevention Plan* means 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.

2.22 *Township* means the Charter Township of Vienna.

2.23 *Township Board* means the Township Board of Trustees for the Charter Township of Vienna.

2.24 *Wastewater* means any water or other liquid, other than uncontaminated stormwater, discharged from a Facility.

Article III—Permit

3.00 *NPDES Stormwater Phase II Permits*: The owner of any Parcel of Property must obtain a NPDES Stormwater Phase II permit for any construction projects resulting in activities involving land disturbance of 1 acre or more, including but not limited to clearing and grubbing, grading, excavating, and demolition.

Article IV—Applicability

4.00 *Applicability*: This ordinance applies to all water entering the storm drain system generated on any developed and undeveloped Parcel of Property unless explicitly exempted by an authorized enforcement agency.

Article V—Responsibility for Administration

5.01 *Responsibility for Administration*: The Township and/or its Engineer shall be the authorized enforcement agency and shall administer, implement, and enforce the provisions of this ordinance.

5.02 *Delegation of Powers and Duties*: The Township Board may by resolution delegate any powers granted or duties imposed upon the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the authorized enforcement agency.

Article VI—Ultimate Responsibility

6.01 *Minimum Standards*: The standards set forth herein and promulgated pursuant to this ordinance are minimum standards.

6.02 *Ultimate Responsibility*: This ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

Article VII—Discharge Prohibitions

7.01 Discharge Prohibition: The commencement, conduct or continuance of any non-authorized discharge to the storm drain system on or from any Parcel of Property is prohibited except as provided in *Paragraph 7.04*.

7.02 Prohibition of Illegal Discharges: No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any 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 stormwater.

7.03 Prohibition of Illicit Connections: The construction, use, maintenance or continued existence of illicit connections to the storm drain system on any Parcel of Property is prohibited, provided as follows:

A. This prohibition 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.

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

7.04 Exemptions: The following discharges are exempt from discharge prohibitions established by this ordinance, providing they are not identified as significant contributors to violations of water quality standards:

A. Water line flushing or other potable water sources;

B. Landscape irrigation or lawn watering, and irrigation waters;

C. Diverted stream flows and flows from riparian habitats and wetlands;

D. Rising ground water and springs;

E. Uncontaminated ground water infiltration and seepage;

F. Uncontaminated pumped ground water except for groundwater cleanups specifically authorized by NPDES permits;

G. Foundation drains, water from crawl space pumps, footing drains and basement sump pumps (not including active groundwater dewatering systems);

H. Air conditioning condensation; waters from non-commercial washing of vehicles;

I. Street wash water; de-chlorinated swimming pool water from single, two, or three family residences;

J. Firefighting activities;

K. Any other water source not containing Pollutants.

L. Dye testing done under the authorization of the MDEQ (General Rule 97) provided that the MDEQ receives a complete Notice of Intent to the MDEQ at least 21 days prior to the time of the test.

M. Any non-stormwater 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.

Article VIII—Suspension of MS4 Access

8.01 *Suspension due to Illicit Discharges in Emergency Situations:* The Township Engineer 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 water of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency 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.

8.02 *Suspension due to Detection of Illicit Discharge:* Any person discharging to the MS4 in violation of this Ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge.

8.03 *Notice of Termination of MS4 Access:* The Township Engineer must notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

8.04 *Continued Violation:* A person is in violation of this Ordinance if the person reinstates MS4 access to a Parcel of Property terminated pursuant to this **Article VIII**, without the prior approval of the Township.

Article IX—Industrial or Construction Activity Discharges

9.00 *Industrial or Construction Activity Discharges:* 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 authorized enforcement agency prior to the allowing of discharges to the MS4.

Article X—Monitoring of Discharges

10.01 *Applicability:* This **Article X** applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

10.02 *Access to Facilities:* Inspection of facilities subject to regulation under this Ordinance must be permitted, as follows:

A. A Facility Operator must permit the Township to enter and inspect Facilities subject to regulation under this Ordinance as often as may be necessary to determine compliance with this Ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its Parcel of Property or Facility, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

B. A Facility Operator must grant the Township ready access to all parts of the Parcel of Property and Facility 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.

C. A Facility Operator must grant the Township ready access to all parts of the Parcel of Property and Facility required for the purposes of setting up such devices as are necessary, in the opinion of the authorized enforcement agency, to conduct monitoring and/or sampling of the Facility's stormwater discharge.

D. The Township 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 own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

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

F. Unreasonable delays in allowing the Township access to a permitted Facility is a violation of a stormwater discharge permit and of this Ordinance. 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 the authorized enforcement agency reasonable access to the permitted Facility for the purpose of conducting any activity authorized or required by this Ordinance.

G. If the Township has been refused access to any part of the Parcel of Property or Facility from which stormwater is discharged, and is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, 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 ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Township may seek issuance of a search warrant from any court of competent jurisdiction.

Article IX—Requirement to Prevent, Control and Reduce Stormwater Pollutants by the Use of Best Management Practices

11.01 Requirement to Prevent, Control and Reduce Stormwater Pollutants by the Use of Best Management Practices: The Township will adopt requirements identifying Best Management Practices 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 United States.

11.02 Reasonable Protection from Accidental Discharge: A Facility Operator must 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 these structural and non-structural BMPs.

11.03 Additional BMPs: Any person responsible for any Parcel of Property, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.

11.04 Compliance with Valid NPDES Permit: 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 compliance with the provisions of this **Article XI**.

11.05 Stormwater Pollution Prevention Plan: The BMPs set forth in this **Article XI** shall be part of a stormwater pollution prevention plan as necessary for compliance with requirements of the NPDES permit.

Article XII—Watercourse Protection

12.02 Watercourse Protection: Every person owning Parcel of Property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the Parcel of Property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse.

12.02 Privately Owned Structures: Every person owning or leasing Parcel of Property must 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.

Article XIII—Notification of Spills

13.01 Discovery Actions: Notwithstanding other requirements of law, any person responsible for a Facility or operation must take all actions necessary to ensure the discovery of any known or suspected release of materials which result or may result in illegal discharges or pollutants or hazardous materials discharging into any stormwater, the Township storm drain system, or any water of the United States.

13.02 Notification of Spills: Notwithstanding other requirements of law, any person responsible for a Facility or operation must immediately notify the Township and all emergency response agencies via emergency dispatch services of any known or suspected release of materials which result or may result in illegal discharges or pollutants or hazardous materials discharging into any stormwater, the Township storm drain system, or any water of the United States.

13.03 Containment and Cleanup: Notwithstanding other requirements of law, any person responsible for a Facility or operation or responsible for emergency response for a Facility or operation must forthwith must take all necessary steps to ensure the containment, and cleanup of any known or suspected release of materials which result or may result in illegal discharges or pollutants or hazardous materials discharging into any stormwater, the Township storm drain system, or any water of the United States.

13.04 Non-Hazardous Materials: In the event of a release of non-hazardous materials, any person responsible for a Facility or operation or responsible for emergency response for a Facility or operation must provide the Township with notice thereof in person or by phone or facsimile no later than the next business day. Notifications in person or by phone must be confirmed by written notice addressed and mailed to the Township within 3 business days of the personal or phone notice.

13.05 Commercial or Industrial Establishments: 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 any known or suspected release of materials which result or may result in illegal discharges or pollutants or hazardous materials discharging into any stormwater, the Township storm drain system, or any water of the United States and the actions taken to prevent its recurrence. Such records shall be retained for at least 3 years.

Article XIV—Enforcement

14.01 Notice of Violation: Whenever the Township finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Township Engineer may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:

- A. The performance of monitoring, analyses, and reporting;
- B. The elimination of illicit connections or discharges;
- C. That violating discharges, practices, or operations shall cease and desist;
- D. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected Parcel of Property;
- E. Payment of a fine to cover administrative and remediation costs; and
- F. The implementation of source control or treatment BMPs.

14.02 Abatement of a Violation and/or Restoration: If abatement of a violation and/or restoration of affected Parcel of Property 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.

Article XV—Appeal of Notice of Violation

15.00 Appeal of Notice of Violation: Any person receiving a Notice of Violation may appeal the determination of the Township Engineer, subject to the following:

- A. The notice of appeal must be received within 7 days from the date of the Notice of Violation.
- B. Hearing on the appeal before the Township Board shall take place within 21 days from the date of receipt of the notice of appeal.
- C. The decision of the Township Board shall be final.

Article XVI—Enforcement Measures after Appeal

16.01 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 35 days of the decision of the Township Board upholding the decision of the Township Engineer, then representatives of the Township shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the Parcel of Property.

16.02 Refusal Prohibited: A person who is an owner, agent or occupant of any Parcel of Property is prohibited from refusing to allow the Township, or designated contractor to enter upon the Parcel of Property for the purposes taking any and all measures necessary to abate the violation and/or restore the Parcel of Property.

Article XVII—Cost of Abatement of the Violation

17.01 *Cost of Abatement of the Violation:* Within 14 days after abatement by the Township of any violation of this Ordinance, the owner of the Parcel of Property will be notified by regular mail sent to the address of record for the Owner of the Parcel of Property of the assessment for the cost of abatement, including administrative costs.

17.02 *Objection to Assessment:* The Parcel of Property owner must pay the assessment or file with the Township Clerk a written objection to the amount of the assessment within 14 days of the mailing of the Notice of the Assessment.

17.03 *Payment of Assessment:* If the Parcel of Property owner does not pay the amount due is not paid within 14 days of mailing of the Notice of Assessment, and the Parcel of Property owner does not file with the Township Clerk a written objection to the amount of the assessment within 14 days of the mailing of the Notice of Assessment, the charges shall become a special assessment against the Parcel of Property and shall constitute a lien on the Parcel of Property for the amount of the assessment.

Article XVIII—Injunctive Relief

18.00 *Injunctive Relief:* It shall be unlawful for any person to violate any provision or fail to comply with any Article of this Ordinance. If a person has violated or continues to violate the provisions of this Ordinance, the authorized enforcement agency may petition a court of competent jurisdiction for a preliminary or permanent injunction restrain the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

Article XIX—Penalties

19.01 *Civil Infraction:* Any person who violates this Ordinance is guilty of a civil infraction and will, upon being found responsible for a first offense thereof, be fined not more than \$500, plus the cost of prosecution. Each day that a violation continues is deemed a separate offense.

19.02 *Misdemeanor:* Any person who violates this Ordinance is guilty of a misdemeanor and will, upon conviction of a second or more offense thereof, be punished by a fine not to exceed \$500 and the cost of prosecution, or in default of payment thereof, by imprisonment in the County Jail for a period not to exceed 92 days, or by both such fine and imprisonment as ordered by the Court in its discretion. Each day that a violation continues is deemed a separate offense.

19.03 *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 Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expenses, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

19.04 *Actual Costs:* The Township may recover actual attorney fees, court costs, and other expenses associated with the enforcement of this Ordinance, including sampling and monitoring expenses.

19.05 *Rights and Remedies are Cumulative:* The prohibitions and penalties provided by this article are in addition to, and not exclusive of, prohibitions and penalties provided by other applicable laws, articles, rules, or regulations.

Article XX—Severability

20.0 Severability: The provisions of this ordinance are hereby declared to be severable, and if any clause, sentence, paragraph, section, or subsection is declared void or inoperable for any reason, it will not affect any other part or portion thereof.


Article XXI—Effective Date

21.0 Effective Date: This ordinance becomes effective 30 days following publication of its final passage. A summary of this ordinance must be published in a newspaper circulated within the Charter Township of Vienna, Genesee County, Michigan and the entire ordinance will be published on the Charter Township of Vienna's website, www.viennatwp.com, and available at the Charter Township of Vienna's offices located at 3400 West Vienna Road, Clio, MI 48420.

CERTIFICATION:

We, the undersigned, being respectively the Township Supervisor and Township Clerk of Vienna Charter Township, Genesee County, Michigan, do hereby certify that the above Vienna Township Ordinance was duly adopted by the Township Board of the Charter Township of Vienna, at which meeting a quorum was present.


Joseph A. Rizk, Supervisor


Cynthia J. Bryan, Clerk