

Enforcement Response Procedure

**Bay Area Storm Water Authority
April 1, 2018**

Section 1:

IDEP Illicit Spill/Dumping Violations:

Three separate mechanisms will be used to address violations; The Michigan Drain Code, The Sanitary Code as enforced by the Bay County Health Department and Storm Water Quality Management and Discharge Control Regulations to be passed by Bay County Authority Member Municipalities. Within 90 days of DEQ approval the Townships approval process will begin. Any enforcement action will utilize the appropriate authorized vehicle depending on type and severity of violation

The Michigan Drain Code provides authority to the Bay County Drain Commissioner to address illicit discharges in county drains. Public Act 40 of 1956 states:

Sec. 423. (1) A person shall not continue to discharge or permit to be discharged into any county drain or inter-county drain of the state any sewage or waste matter capable of producing in the drain detrimental deposits, objectionable odor nuisance, injury to drainage conduits or structures, or capable of producing such pollution of the waters of the state receiving the flow from the drains as to injure livestock, destroy fish life, or be injurious to public health.

(10) Failure to comply with any of the provisions of this section subjects the offender to the penalties described in section 602.

Sec. 602. If any person shall willfully or maliciously remove any section or grade stake set along the line of any drain, or obstruct or injure any drain, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$100.00 and the costs of prosecution, or in default of the payment thereof, by imprisonment in the county jail not exceeding 90 days.

Sanitary Code of Bay County Michigan provides authority to the Bay County Health Department to take enforcement action on certain illicit discharges and water quality pollution. 61.000 - SANITARY CODE Res. No. 2004-057 Adopted: April 13, 2004

SECTION I TITLE, AUTHORITY, JURISDICTION, PURPOSE, AND ADMINISTRATION

61.102 Authority:

1-2 These regulations are hereby adopted pursuant to the authority conferred upon local health departments by Part 24 of the Michigan Public Health Code, Act 368 of the Public Acts of 1978, as amended, including, but not limited to, Sections 2435(d) and 2441(1) of that Act

61.103 Jurisdiction:

1-3

- a) The Health Department shall have jurisdiction throughout Bay County, including all municipalities located within the County, in the administration and enforcement of these regulations.*
- b) Nothing in this Code shall be construed to restrict or abrogate the authority of any municipality in Bay County to adopt more restrictive regulations or ordinances that do not conflict with or are not otherwise inconsistent with the requirements of this Code, as determined by the Health Officer. However, any conflicting or inconsistent local ordinance provisions are superseded by these regulations.*

61.106 Enforcement:

1-6 All Premises governed by these regulations are subject to inspection by the Health Officer (or the Health Officer's Authorized Representative) who may collect samples for laboratory analysis, or take such other actions as deemed necessary or appropriate for the implementation and enforcement of these regulations.

61.107 Right of entry and inspection:

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- a) The Health Officer (or the Health Officer's Authorized Representative) after providing proper identification, may inspect any matter, thing, Premises, place, record, vehicle, incident, or event as provided for by Section 2446 of the Michigan Public Health Code.*
- b) The Health Officer (or the Health Officer's Authorized Representative) may apply for an inspection or investigation pursuant to Sections 2241 to 2247 of the Michigan Public Health Code to assure compliance with these regulations.*
- c) No person shall refuse to permit the Health Officer (or the Health Officer's Authorized Representative) to inspect any Premises at any reasonable time. It shall*

be unlawful for any person to molest, willfully oppose, or verbally abuse the Health Officer (or the Health Officer's Authorized Representative) during the discharge of official duties including the enforcement of these regulations.

61.109 Guidelines:

1-9 The Health Officer shall establish administrative guidelines concerning the interpretation, implementation, and enforcement of this Code.

SECTION IV SEWAGE DISPOSAL ON ALL PREMISES

61.402 Overflow and improper disposal of sewage:

4-2 Under no condition may the overflow from a septic tank or the sewage from a Premises existing or hereafter constructed) be discharged or deposited upon the surface of the ground or into any lake, river, stream, county drain, ditch, storm sewer, or farm field tile.

Storm Water Quality Management and Discharge Control Regulations will be passed by municipalities in the urbanized area to protect waters of the state consistent with the Federal Clean Water Act. All violations and complaints are referred to the Bay County Drain Commissioner/BASWA Administrator. After investigation, notice of violation is provided to the person or persons in violation. If compliance is not achieved, the Storm Water Regulations provide for pursuing court injunctions, civil penalties of \$500 per day or the Administrator can issue municipal civil infraction or fines. These enforcement penalties are more clearly defined in Attachment 7, Bay Area Storm Water Authority Storm Water Regulations, Article V, pages 9-14.

Section 2:

Construction Storm Water Enforcement:

The Bay County Drain Commissioner (BCDC) is a Certified Enforcement Agent for Bay County. The County of Bay has adopted Part 91 of the Michigan Natural Resources and Environmental Protection Act by reference in Resolution 2007-177.

***Part 91
SOIL EROSION AND SEDIMENTATION CONTROLL***

324.9107 Notice of violation.

Sec. 9107.

If a local unit of government has notice that a violation of this part has occurred within the boundaries of that local unit of government, including but not limited to a violation attributable to an earth change by an authorized public agency, the local unit of

government shall notify the appropriate county enforcing agency and municipal enforcing agency and the department of the violation.

324.9112 Earth change; permit required; effect of property transfer; violation; notice; hearing; answer; evidence; stipulation or consent order; final order of determination.
Sec. 9112.

- (1) A person shall not maintain or undertake an earth change governed by this part, the rules promulgated under this part, or an applicable local ordinance, except in accordance with this part and the rules promulgated under this part or with the applicable local ordinance, and except as authorized by a permit issued by the appropriate county enforcing agency or municipal enforcing agency pursuant to part 13.*
- (2) The owner of property that is subject to a permit under this part is responsible for compliance with the terms of the permit that apply to that property.*
- (3) Except as provided in subsection (4), if property subject to a permit under this part is transferred, both of the following are transferred with the property:*
 - (a) The permit, including the permit obligations and conditions.*
 - (b) Responsibility for any violations of the permit that exist on the date the property is transferred.*
- (4) If property is subject to a permit under this part and a parcel of the property, but not the entire property, is transferred, both of the following are transferred with the parcel:*
 - (a) The permit obligations and conditions with respect to that parcel, but not the permit itself.*
 - (b) Responsibility for any violations of the permit with respect to that parcel that exist on the date the parcel is transferred.*
- (5) If property subject to a permit under this part is proposed to be transferred, the transferor shall notify the transferee of the permit in writing on a form developed by the department and provided by the county enforcing agency or municipal enforcing agency. The notice shall inform the transferee of the requirements of subsection (2) and, as applicable, subsection (3) or (4). The notice shall include a copy of the permit. The transferor and transferee shall sign the notice, and the transferor shall submit the signed notice to the county enforcing agency or municipal enforcing agency before the property is transferred.*
- (6) A county enforcing agency or municipal enforcing agency may charge a fee for the transfer of a permit under subsection (3) or (4). The fee shall not exceed the administrative costs of transferring the permit. Fees collected under this subsection shall only be used for the enforcement and administration of this part by the enforcing agency.*
- (7) If in the opinion of the department a person, including an authorized public agency, violates this part, the rules promulgated under this part, or an applicable local ordinance, or a county enforcing agency or municipal enforcing agency fails to enforce this part, the rules promulgated under this part, or an applicable local ordinance, the department may notify the alleged offender in writing of its determination. If the department places a county on probation under section*

9105, a municipality is not approved under section 9106, or a state agency or agency of a local unit of government is not approved under section 9110, or if the department determines that a municipal enforcing agency or authorized public agency is not satisfactorily administering and enforcing this part and rules promulgated under this part, the department shall notify the county, municipality, state agency, or agency of a local unit of government in writing of its determination or action. The notice shall contain, in addition to a statement of the specific violation or failure that the department believes to exist, a proposed order, stipulation for agreement, or other action that the department considers appropriate to assure timely correction of the violation or failure. The notice shall set a date for a hearing not less than 4 or more than 8 weeks from the date of the notice of determination. Extensions of the date of the hearing may be granted by the department or on request. At the hearing, any interested party may appear, present witnesses, and submit evidence. A person who has been served with a notice of determination Rendered Thursday, April 5, 2018 Page 7 Michigan Compiled Laws Complete Through PA 56 and includes 58-90 of 2018 may file a written answer to the notice of determination before the date set for hearing or at the hearing may appear and present oral or written testimony and evidence on the charges and proposed requirements of the department to assure correction of the violation or failure. If a person served with the notice of determination agrees with the proposed requirements of the department and notifies the department of that agreement before the date set for the hearing, disposition of the case may be made with the approval of the department by stipulation or consent agreement without further hearing. The final order of determination following the hearing, or the stipulation or consent order as authorized by this section and approved by the department, is conclusive unless reviewed in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in the circuit court of Ingham county, or of the county in which the violation occurred, upon petition filed within 15 days after the service upon the person of the final order of determination

324.9117 Notice of determination.

Sec. 9117.

If the county enforcing agency or municipal enforcing agency that is responsible for enforcing this part and the rules promulgated under this part determines that soil erosion or sedimentation of adjacent properties or the waters of the state has or will reasonably occur from land in violation of this part or the rules promulgated under this part or an applicable local ordinance, the county enforcing agency or municipal enforcing agency may seek to enforce a violation of this part by notifying the person who owns the land, by mail, with return receipt requested, of its determination. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply with this part and the rules promulgated under this part or an applicable local ordinance

324.9118 Compliance; time.

Sec. 9118.

Within 5 days after a notice of violation has been issued under section 9117, a person who owns land subject to this part and the rules promulgated under this part shall implement and maintain soil erosion and sedimentation control measures

324.9119 Entry upon land; construction, implementation, and maintenance of soil erosion and sedimentation control measures; cost.

Sec. 9119.

Except as otherwise provided in this section, not sooner than 5 days after notice of violation of this part has been mailed under section 9117, if the condition of the land, in the opinion of the county enforcing agency or municipal enforcing agency, may result in or contribute to soil erosion or sedimentation of adjacent properties or to the waters of the state, and if soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance are not in place, the county enforcing agency or municipal enforcing agency, or a designee of either of these agencies, may enter upon the land and construct, implement, and maintain soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance. However, the enforcing agency shall not expend more than \$10,000.00 for the cost of the work, materials, labor, and administration without prior written notice in the notice provided in section 9117 for the person who owns the land that the expenditure of more than \$10,000.00 may be made. If more than \$10,000.00 is to be expended under this

324.9121 Violations; penalties

Sec. 9121

- (1) A person who violates this part is responsible for either of the following:
 - (a) If the action is brought by a county enforcing agency or a municipal enforcing agency of a local unit of government that has enacted an ordinance under this part that provides a penalty for violation, the person is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00.*
 - (b) If the action is brought by the stat or a county enforcing agency of a county that has not enacted an ordinance under this part, the person is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00.**
- (2) A person who knowingly violates this part or knowingly makes a false statement in an application for a permit in a soil erosion and sedimentation control plan is responsible for the payment of a civil fine of not more than \$10,000 for each day of violation.*
- (3) A person who knowingly violates this part after receiving a notice of determination under section 9112 or 9117 is responsible for the payment of a civil fine of not less than \$2,500.00 or more than \$25,000.00 for each day of violation.*
- (4) Civil fines collected under subsections (2) and (3) shall be deposited as follows:
 - (a) If the state filed the action under this section, in the general fund of the state.*
 - (b) If a county enforcing agency or municipal enforcing agency filed the action under this section, with the county or municipality that filed the action.*
 - (c) If an action was filed jointly by the state and a county enforcing agency or municipal enforcing agency, the civil fines collected under this subsection shall be divided in proportion to each agency's involvement as mutually agreed upon by the agencies. All fines going to the department shall be deposited Ito the general fund of the state.**

- (5) *A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized un the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.*
- (6) *In addition to a fine assessed under this section a person who violates this part is liable to the state for damages for the injury to, destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this part to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.*
- (7) *This section applies to an authorized public agency, in addition to other persons. This section does not apply to a county enforcing agency or a municipal enforcing agency with respect to its administration and enforcement of this part and rules promulgated under this part.*

Section 3:

Post Construction Standards:

Jurisdiction remains with each municipality. There are two mechanisms to address post construction standards. First is the adoption of Storm water Management Plan and Design Standards. The second are Low Impact Design Ordinances.

Through Resolution, municipalities have adopted Storm Water Management Plan and Design Standards established by the Bay County Drain Commissioner. Building permits and subsequently occupancy permits are not issued unless a project plan meets the approved design standard and Occupancy permits are not issued until projects are built to design.

“Be it resolved that _____ Township formally adopts the Storm Water Management Plan and Design Standards for Commercial, Industrial, Subdivision, condominium and Manufactured Home Development issued by the Bay County Drain Commissioner on June 16, 2003,

Be it further resolved all proposed non-residential, condominium and subdivision developments within the Township are required to submit storm water management plans to the Bay County Drain Commissioner for review and approval prior to approval by the Township Planning Commission”.

Municipalities have also passed Low Impact Design Ordinances to maximize the potential for best management practices to be utilized in the design of new buildings or infrastructure. The ordinances are known as *Alternative Design for Storm Water Discharge and Preservation of Natural Water Resources Ordinance*, they remove any barriers best management designs may have in complying with zoning ordinances. They require design review and approval as well as as-built inspection prior to occupancy.