

**Title 13 PUBLIC SERVICES**

**Chapter 13.08 STORMWATER MANAGEMENT AND DISCHARGE CONTROL**

Section 13.08.00A Article I. General Provisions.

Section 13.08.010 Title.

This chapter shall be known as the County of Alameda stormwater management and discharge control ordinance and may be so cited. (Prior gen. code § 3-350.1)

Section 13.08.020 Purpose and intent.

The purpose of this chapter is to ensure the future health, safety, and general welfare of county citizens by:

- A. Eliminating non-stormwater discharges to the municipal separate stormdrain;
- B. Controlling the discharge to municipal separate stormdrains from spills, dumping or disposal of materials other than stormwater;
- C. Reducing pollutants in stormwater discharges to the maximum extent practicable.

The intent of this chapter is to protect and enhance the water quality of our watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Clean Water Act. (Prior gen. code § 3-350.1)

Section 13.08.030 Definitions.

A. Any terms defined in the federal Clean Water Act and acts amendatory thereof or supplementary thereto, and/or defined in the regulations for the stormwater discharge permitting program issued by the Environmental Protection Agency on November 16, 1990 (as may from time to time be amended) as used in this chapter shall have the same meaning as in that statute or regulations. Specifically, the definition of the following terms included in that statute or regulations are hereby incorporated by reference, as now applicable or as may hereafter be amended; discharge, illicit discharge, pollutant, and stormwater. These terms presently are defined as follows:

"Discharge" means:

- 1. Any addition of any pollutant to navigable waters from any point source; or
- 2. Any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

"Illicit discharge" means any discharge to the county stormdrain system that is not composed entirely of stormwater except discharges pursuant to a NPDES permit, discharges resulting from fire fighting activities, and discharges further exempted at Section 13.08.070 of this chapter.

"Pollutant" means soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharge into water.

"Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

B. When used in this chapter, the following words shall have the meanings ascribed to them in this section:

"Authorized enforcement officer" means the director of public works and those individuals designated by the director of public works as authorized enforcement officers.

"Best management practices" (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to waters of the United States. BMPs also include treatment requirements, operating procedures, design specifications, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"County" means the county of Alameda.

"County stormdrain system" includes but is not limited to those facilities within the county by which stormwater may be conveyed to the waters of the United States, including flood control channels, any roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or stormdrains, which are not part of a publicly owned treatment works (POTW) as defined at 40 CFR Section 122.2.

"Director of public works" means the director of the Alameda County public works agency.

"Facility" means any nonresidential premises.

"Nonstormwater discharge" means any discharge that is not entirely composed of stormwater.

"Premises" means any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips. (Prior gen. code § 3-350.2)

#### Section 13.08.040 Responsibility for administration.

This chapter shall be administered for the county by the director of public works. (Prior gen. code § 3-350.3)

#### Section 13.08.050 Construction and application.

This chapter shall be construed to assure consistency with the requirements of the federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and NPDES Permit No. CA0029831 and any amendment, revision or reissuance thereof. (Prior gen. code § 3-350.4)

#### Section 13.08.060 Taking.

The provisions of this chapter shall not operate to deprive any landowner of substantially all of the market value of his/her property or otherwise constitute an unconstitutional taking without compensation. If application of this chapter to a specific project would create a taking then pursuant to the chapter the county board of supervisors may allow additional land uses, but only to the extent necessary to avoid a taking. Such uses shall be consistent with and carry out the purposes of this chapter as stated in Section 13.08.020 of this article. (Prior gen. code § 3-350.6)

#### Section 13.08.069A Article II. Discharge Regulations and Requirements

#### Section 13.08.070 Discharge of pollutants.

A. The discharge of nonstormwater discharges to the county stormdrain system is prohibited. All discharges of material other than stormwater discharges must be in compliance with a NPDES permit issued for the discharge (other than NPDES permit No. CA0029831).

B. Exceptions to Discharge Prohibition. The following discharges are exempt from the prohibition set forth in subsection A of this section:

1. The prohibition of discharges shall not apply to any discharge regulated under a National Pollutant Discharge Elimination System (NPDES) permit issued to the discharger and administered by the state under the authority of the United States Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations.

2. Discharges from the following activities will not be considered a source of pollutants to waters of the United States when properly managed: waterline flushing and other discharges from potable water sources, landscape irrigation and lawn watering, irrigation water, diverted stream flows, rising groundwaters, infiltration to separate stormdrains, uncontaminated pumped groundwater, foundation and footing drains, water from crawl space pumps, air conditioning condensation, springs, individual residential car washings, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges or flows from fire fighting, accordingly are not subject to the prohibition of discharges. (Prior gen. code § 3-351.0)

#### Section 13.08.080 Discharge in violation of permit.

Any discharge that would result in or contribute to a violation of NPDES Permit No. CA0029831 (this permit is available for viewing at the county public works agency building, 399 Elmhurst Street, Hayward, California) and any amendment, revision or reissuance thereof, either separately considered or when combined with other discharges, is prohibited.

Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such persons shall defend, indemnify and hold harmless the county in any administrative or judicial enforcement action relating to such discharge. (Prior gen. code § 3-351.1)

#### Section 13.08.090 Illicit discharge and illicit connections.

It is prohibited to establish, use, maintain, or continue illicit drainage connections to the county stormdrain system, and to commence or continue any illicit discharges to the county stormdrain system. This prohibition is expressly retroactive and applies to connections made in the past, regardless of whether made under a permit or other authorization or whether permissible under the law or practices applicable or prevailing at the time of the connection. (Prior gen. code § 3-351.2)

#### Section 13.08.100 Reduction of pollutants in stormwater.

Any person engaged in activities which will or may result in pollutants entering the county stormdrain system shall undertake all practicable measures to reduce such pollutants. Examples of such activities include ownership and use of facilities which may be a source of pollutants such as parking lots, gasoline stations, industrial facilities, stores fronting streets, etc. The following minimum requirements shall apply.

A. Littering. No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any portion of the county stormdrain system, any street, alley, sidewalk, stormdrain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private plot of land in the county, so that the same might be or become a pollutant, except containers or in lawfully established waste disposal facilities.

The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee, or proprietor of any real property in the county in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt or litter to the maximum extent practicable. Sweepings from said sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on said real property as required for the disposal of garbage.

No person shall throw or deposit litter in any fountain, pond, lake, stream, or any other body of water in a park or elsewhere within the county.

B. Standard for Parking Lots and Similar Structures. Persons owning or operating a paved parking lot, gas station pavement, paved private street or road, or similar structure, shall clean those structures as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants to the county stormdrain system.

C. Best Management Practices for New Developments and Redevelopments. The director of public works may adopt regulations establishing controls on the volume and rate of stormwater runoff from new developments and redevelopments as may be appropriate to minimize the discharge and transport of pollutants.

The director of public works may require of any construction contractor performing work in the unincorporated portion of the county a water pollution prevention plan prior to final map approval, or issuance of a building permit whichever first occurs.

D. Notification of Intent and Compliance with General Permits. Each industrial discharger, discharger associated with construction activity, or other discharger, described in any general stormwater permit addressing such discharges, as may be adopted by the United States Environmental Protection Agency, the State Water Resources Control Board, or the California Regional Water Quality Control Board, San Francisco Bay Region, shall provide notice of intent, comply with, and undertake all other activities required by any general stormwater permit applicable to such discharges.

Each discharger identified in an individual NPDES permit relating to stormwater discharges shall comply with and undertake all activities required by such permit.

E. Compliance with Best Management Practices. Where best management practices guidelines or requirements have been adopted by any federal, state, regional and/or county agency, for any activity, operation, or facility which may cause or contribute to stormwater pollution or contamination, illicit discharges, and/or discharges of nonstormwater to the stormwater system, every person undertaking such activity or operation, or owning or operating such facility shall comply with such guidelines or requirements as may be identified by the director of public works. (Ord. 98-48 § 1 (part); prior gen. code § 3-351.3)

### Section 13.08.109A Article III. Inspection and Enforcement

#### Section 13.08.110 Authority to inspect.

A. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever an authorized enforcement officer has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this chapter, the officer may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the officer by this chapter; provided that:

1. If such building or premises be occupied, he or she shall first present proper credentials and request entry; and

2. If such building or premises be unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

B. Any such request for entry shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a duly authorized magistrate. In the event the owner and/or occupant refuses entry after such request has been made, the officer is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

C. Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to random sampling and/or sampling in areas with evidence of stormwater contamination, illicit discharges, discharge of nonstormwater to the stormwater system, or similar factors.

D. Authority to Sample and Establish Sampling Devices. With the consent of the owner or occupant or pursuant to a search warrant, any authorized enforcement officer may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the officer may take any samples deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities on-site.

E. Notification of Spills. All persons in charge of a facility or responsible for emergency response for a facility have a person responsibility to train facility personnel and maintain notification procedures to assure immediate notification is provided to the county of any suspected, confirmed or unconfirmed release of material, pollutants or waste creating a risk of discharge into the county stormdrain system.

As soon as any person in charge of a facility or responsible for emergency response for a facility has knowledge of any suspected spill, which may result in pollutants or nonstormwater discharge entering the county stormdrain system, such person shall take all necessary steps to ensure the discovery and containment and clean up of such release and shall notify the county of the occurrence by telephoning 510-670-5543 and confirming the notification by correspondence to director of public works, 399 Elmhurst Street, Hayward, CA 94544, Attn: Spill Notification.

F. Requirement to Test or Monitor. Any authorized enforcement officer may request that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to stormwater pollution or contamination, illicit discharges, and/or discharge of nonstormwater to the stormwater system, undertake such monitoring activities and/or analyses and furnish such reports as the officer may specify. The burden, including costs, of these activities, analyses and reports shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such request shall undertake and provide the monitoring, analyses and reports required. (Prior gen. code § 3-352.0)

#### Section 13.08.120 Violations constituting misdemeanors.

Unless otherwise specified, the violation of any provision of this chapter, or failure to comply with any of the mandatory requirements of this chapter, shall constitute a misdemeanor; except that notwithstanding any other provisions of this chapter, any such violation constituting a misdemeanor under this chapter may, at the discretion of the authorized enforcement officer, be charged and prosecuted as an administrative penalty. (Ord. 98-48 § 1 (part))

#### Section 13.08.130 Penalty for violation.

Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in California Government Code Section

25132. Upon a person, firm or corporation's first violation of this chapter charged as an administrative violation, the person, firm or corporation will be subject to a fine of not more than one hundred dollars (\$100.00). Upon a second violation within a one-year period, the violator shall be subject to a fine of not more than two hundred dollars (\$200.00). Upon a third violation within a one-year period, the violator shall be subject to a fine of not more than five hundred dollars (\$500.00). If the fine is not paid within sixty (60) days of issuance thereof, a lien shall be placed upon and against the property involved in the violation. (Ord. 98-48 § 1 (part))

Section 13.08.140 Continuing violation.

Unless otherwise provided, a person, firm, corporation or organization shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or permitted by the person, firm, corporation or organization and shall be punishable accordingly as herein provided. (Prior gen. code § 3-352.3)

Section 13.08.150 Concealment.

Causing, permitting, aiding, abetting or concealing a violation of any provision

Section 13.08.160 Acts potentially resulting in violation of federal Clean Water Act and/or Porter-Cologne Act.

Any person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitations, may also be in violation of the federal Clean Water Act and/or Porter-Cologne Act and may be subject to the sanctions of those Acts including civil and criminal penalty. Any enforcement action authorized under this article should also include notice to the violator of such potential liability. (Prior gen. code § 3-352.5)

Section 13.08.170 Violations deemed a public nuisance.

In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety and welfare, is declared and deemed a nuisance, may be summarily abated and/or restored by any authorized enforcement officer, and/or civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken by county counsel.

The cost of such abatement and restoration shall be borne by the owner of the property and the cost thereof shall be invoiced to the owner of the property. If the invoice is not paid within sixty (60) days, a lien shall be placed upon and against the property. If the lien is not satisfied within three months, the property may be sold in satisfaction thereof in a like manner as the other real property is sold under execution.

If any violation of this chapter constitutes a seasonal and recurrent nuisance, the director of public works shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further hearing.

In any administrative or civil proceeding under this chapter in which the county prevails, the county shall be awarded all costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, costs of suit and reasonable attorney fees. (Prior gen. code § 3-352.6)

Section 13.08.180 California Code of Civil Procedure Section 1094.6.

The provisions of Section 1094.6 of the California Code of Civil Procedure are applicable to judicial review of the county decisions pursuant to this chapter. (Prior gen. code § 3-352.7)

Section 13.08.190 Civil actions.

In addition to any other remedies provided in this section, any violation of this section may be enforced by civil action brought by the county. In any such action, the county may seek, and the court shall grant, as appropriate, any or all of the following remedies:

- A. A temporary and/or permanent injunction;
- B. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;
- C. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;
- D. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life. Assessments under this subsection shall be paid to the county to be used exclusively for costs associated with monitoring and establishing stormwater discharge pollution control systems and/or implementing or enforcing the provisions of this chapter. (Prior gen. code § 3-352.8)

Section 13.08.200 Administrative enforcement powers.

In addition to the other enforcement powers and remedies established by this chapter, any authorized enforcement officer has the authority to utilize the following administrative remedies.

A. Cease and Desist Orders. When an authorized enforcement officer finds that a discharge has taken place or is likely to take place in violation of this chapter, the officer may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall:

- 1. Comply with the requirement;
- 2. Comply with a time schedule for compliance; and/or
- 3. Take appropriate remedial or preventive action to prevent the violation from recurring.

B. Notice to Clean. Whenever an authorized enforcement officer finds any oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel or land, or upon any parcel of land or grounds, which may result in an increase in pollutants entering the county stormdrain system or a nonstormwater discharge to the county stormdrain system, he or she may give notice to remove such oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or other material, in any manner that he or she may reasonably provide. The recipient of such notice shall undertake the activities as described in the notice.

In the event the owner or operator of a facility fails to conduct the required activities as described in the notice, the authorized enforcement officer may cause such required activities to be done as described in the notice and the cost thereof shall be invoiced to the owner of the property. If the invoice is not paid within sixty (60) days, a lien shall be placed upon and against the property. If the lien is not satisfied by the owner of the property within three months, the property may be sold in satisfaction thereof in a like manner as other real property is sold under execution. (Prior gen. code § 3-352.9)

Section 13.08.210 Authority to arrest or issue citations.

Authorized enforcement officers shall have and are hereby vested with the authority to arrest or cite and release any person who violates any section of this code in the manner provided by the California Penal Code for the arrest or release on citation of misdemeanors or infractions as prescribed by Chapter 5, 5c, and 5d of Title 3, Part 2 of the Penal Code (or as the same may be hereinafter amended.)

Such authorized enforcement officers or employees may issue a citation and notice to appear in the manner prescribed by Chapter 5c of Title 3, Part 2 of the Penal Code, including Section 853.6 (or as the same may hereafter be amended). It is the intent of the county board of supervisors that the immunities prescribed in Section 836.5 of the Penal Code be applicable to public officers or employees or employees acting in the course and scope of employment pursuant to this chapter. (Prior gen. code § 3-352.10)

Section 13.08.220 Remedies not exclusive.

Remedies under this article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. (Prior gen. code § 3-352.11)

Section 13.08.230 Appeal.

Any person, firm, corporation or organization required to perform monitoring, analyses, reporting and/or corrective activities by an authorized enforcement officer who is aggrieved by the decision of the authorized enforcement officer may appeal such decision to the director of public works within ten days following the effective date of the decision by writing to the director of public works. Upon receipt of such request, the director of public works shall request a report and recommendation from the authorized enforcement officer and shall set the matter for hearing at the earliest practical date. At said hearing, the director of public works may hear additional evidence, and may reject, affirm or modify the authorized enforcement officer's decision. Said decision shall be final. (Prior gen. code § 3-352.12)

Section 13.08.235 Appeals from administrative fines.

Any person, firm, corporation or organization receiving an administrative fine from an authorized enforcement officer may appeal such action to the director of public works by submitting a letter contesting the administrative fine to the director of public works at the address listed on the citation. This letter must be post-marked no later than ten (10) days following the date the administrative fine was imposed. Upon receipt of such request, the director of public works shall request a report and recommendation from the authorized enforcement officer and shall set the matter for hearing at the earliest practical date. At said hearing, the director of public works may hear additional evidence, and may reject, affirm or modify the administrative fine imposed. The director of public works may designate a public works employee to conduct the hearing. The decision of the director of public works or his designee shall be final. (Ord. 98-48 § 1 (part))



Section 13.08.240 Disclaimer of liability.

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering and other relevant technical considerations. The standards set forth herein are minimum standards and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the United States. This chapter shall not create liability on the part of the county, any officer or employee thereof for any damages that result from reliance on this chapter, or any administrative decision lawfully made thereunder. (Prior gen. code § 3-352.13)

Section 13.08.249A Article IV. Coordination with Other Programs

Section 13.08.250 Coordination with hazardous materials inventory and response program.

The first revision of the business plan for any facility subject to the county's hazardous materials inventory and response program shall include a program for compliance with the chapter, including the prohibitions on non stormwater discharges and illicit discharges, and the requirement to reduce stormwater pollutants to the maximum extent practicable. (Prior gen. code § 3-353.0)