

Side-by-Side Comparison of Proposed and Current MCWD Rules
Rule 10. Illicit Discharge

This side-by-side comparison has been prepared to aid in review of the proposed rule changes. The existing and proposed rules can be found on the MCWD website, along with the Guidance on Proposed Revised Rules which provides a detailed explanation of all substantive changes: <https://minnehahacreek.org/permits/permitting-rule-revisions/>

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| <p>Key: Blue & bold font - Key language that represents a substantive change from current language Grey shading - Revised rule language is a relocation, consolidation, clarification, and/or simplification of the current language (i.e. housekeeping) <i>Italics</i> - removed text</p> |
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| Revised Section | Revised Language | Current Section | Current Language |
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| 1 | <p>POLICY.</p> <p>a. The District manages several pipe or channel stormwater conveyance systems within its boundaries. These systems are termed municipal separate storm sewer systems (MS4s) under the federal Clean Water Act. As an MS4 operator, the District regulates connections to, and discharges of pollutants to, its MS4 systems.</p> <p>b. The District's MS4s are identified in Addendum A to this rule. This rule applies only within those areas of the watershed that drain to the District's MS4s, as delineated on Addendum A. The boundaries shown on Addendum A will be determined more precisely, as necessary, on the basis of local conveyance connections and flow conditions.</p> | 1 | <p>POLICY.</p> <p>In fulfillment, in part, of its obligations as a municipal separate storm sewer system (MS4) owner and operator under the Clean Water Act, the District regulates illicit connections and discharges of pollutants to its MS4 system and watercourses in the watershed.</p> |
| 2 | <p>DEFINITIONS. As used in this rule, these terms have the following meanings:</p> <p>a. "Direct Connection" is: (i) a physical connection to an enclosed MS4 conveyance; or (ii) a conduit or similar point-source structure that outlets into or adjacent to an open MS4 conveyance, by which the discharge is introduced into the MS4.</p> <p>b. "Illicit Discharge" is a discharge, other than Stormwater or a Non-Regulated Discharge, into an MS4.</p> <p>c. "Indirect Connection" is a discharge outside of a closed structure, onto the ground or a surface, whereby through action of gravity, or of runoff under foreseeable conditions of rainfall or snowmelt, the discharge reasonably may be expected to enter an MS4 directly, or by means of a public stormwater conveyance.</p> <p>d. "Non-Regulated Discharge" is one of the following:</p> <ol style="list-style-type: none"> 1. Flushing of a water line or another potable water source; landscape irrigation; diverted stream flow; rising ground water; ground water infiltration into a storm drain; uncontaminated groundwater; foundation or footing drains (not including active groundwater dewatering systems); crawl space pump discharge; air conditioning condensation; springs; non-commercial vehicle washing; natural riparian habitat or wetland flows; dechlorinated swimming pool discharge; and street wash water; 2. Discharge pursuant to an NPDES permit; 3. Discharge resulting from firefighting activity, or that the District, in writing, specifically has exempted as necessary to protect public health and safety; 4. Dye testing, with prior written notice to the District; <p>5. A discharge associated only with a residential property use.</p> <p>e. "Stormwater" is stormwater runoff, snow melt runoff, and surface runoff and drainage.</p> | 5 | <p>EXCEPTIONS.</p> <p>(a) Discharges from the following sources are exempt from the prohibitions in this rule: flushing of a water line or another potable water source, landscape irrigation, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, dechlorinated swimming pools and street wash water.</p> <p>(b) Discharges subject to specific exemption in writing from the District as necessary to protect public health and safety.</p> <p>(c) Dye testing is an allowable discharge, but requires a verbal notification to the District prior to the time of the test.</p> <p>(d) 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.</p> |

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| 3 | <p>REGULATION.</p> <p>a. Illicit Discharges are prohibited.</p> <p>b. A Direct Connection that inlets directly to an MS4 inside a closed structure is prohibited, unless it is constructed so that the discharge consists entirely of a Non-Regulated Discharge. The property owner or operator is responsible to determine whether any drain, fixture or other point of discharge within a structure is prohibited under this paragraph, and if so to discontinue the connection or outlet. The owner or operator must keep a record of this determination, which the District may inspect on request.</p> <p>c. An Indirect Connection that inlets directly to an MS4 outside of a closed structure is permitted pursuant to owner or operator notice and District written approval. As a condition of approval, the District may require that the owner or operator maintain structural and non-structural practices to limit the risk of Illicit Discharge. A Direct Connection constructed so that the discharge consists entirely of a Non-Regulated Discharge is not subject to this paragraph.</p> <p>d. An owner or operator may maintain an Indirect Connection without notice to the District or District approval. However, on a determination by the District Board of Managers, after an opportunity to be heard, that an existing or proposed use of the property presents a risk of Illicit Discharge, it may require that the owner or operator maintain structural and non-structural practices to limit that risk.</p> <p>e. The prohibitions and restrictions of this section apply to new and existing Direct and Indirect Connections, including those made before this rule was adopted, and regardless of whether a connection was permitted under applicable law at the time of its construction.</p> | 2 | <p>REGULATION.</p> <p>(a) Permit required. A stormwater management plan must be submitted to and a permit obtained from the District for a new direct connection or for the replacement of an existing connection to the District's MS4.</p> <p>(b) Illicit connections prohibited. The construction, use, maintenance or continued existence of illicit connections to the storm drain system without a District permit is prohibited. This prohibition expressly includes, without limitation, illicit connections made prior to adoption of this rule, regardless of whether the connection was permissible under law applicable or prevailing at the time of connection.</p> <p>(1) A person is considered to be in violation of this rule if the person connects a line conveying sewage to the District's MS4 or allows such a connection to continue.</p> <p>(2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by a political subdivision will be located by the owner of the property on receipt of Notice of Violation from the District.</p> <p>(c) Illegal discharges prohibited. No one may throw, drain or otherwise discharge or permit or cause others to throw, drain or otherwise discharge any pollutants to the storm drain system or watercourses, including but not limited to pollutants that will cause or contribute to a violation of applicable water-quality standards.</p> |
| N/A | N/A | 3a-d | <p>CRITERIA.</p> <p><i>(a) Connection to the District's MS4 System.</i></p> <p><i>(1) New direct connections and replacement of existing connections will be completed using a method that is approved by the District.</i></p> <p><i>2) Peak flow rate, the total volume of flow and the timing of the flow for new connections must not cause new or exacerbate existing water conveyance problems in the District's MS4 system. Enlargement of existing connections is considered a new connection.</i></p> <p><i>(b) Illicit connections. Connections to the District's MS4 found to be in violation of this rule are found to be illicit connections, and must be disconnected and, if necessary, redirected to an approved onsite wastewater management system or a sanitary sewer system. This requirement notwithstanding, a property owner required by the operation of this rule to disconnect from the District MS4 retains sole responsibility for compliance with all regulatory and other requirements applicable to an alternative discharge-management system.</i></p> <p><i>(c) Suspension of MS4 Access.</i></p> <p><i>(1) Suspension due to illicit discharges in emergency situations. The District may, without prior notice, suspend discharge to its MS4 when necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment or to the health or welfare of persons, or to the District's MS4 or waters of the state.</i></p> <p><i>(2) Suspension due to the detection of illicit discharge. Any person discharging to the District's MS4 in violation of this rule may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The District will notify a violator of the proposed termination of its MS4 access. The violator may petition the District for a reconsideration and hearing. A person commits an offense subject to enforcement if the person reinstates MS4 access to premises terminated pursuant to this paragraph without a permit from the District.</i></p> <p><i>(d) Monitoring of Discharges.</i></p> <p><i>(1) Applicability. This subsection applies to all facilities that have stormwater discharges associated with industrial or construction activity.</i></p> |

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| | | | <p><i>(2) Access to Facilities.</i></p> <p><i>i. The District will be permitted to enter and inspect facilities subject to this rule as may be necessary to determine compliance with this rule. The discharger will make the necessary arrangements to allow access to representatives of the District.</i></p> <p><i>ii. Facility operators will allow the District 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 a National Pollution Discharge Elimination System (NPDES) stormwater permit.</i></p> <p><i>iii. If the District has been refused access to any part of the premises from which stormwater is discharged, the District may seek issuance of a search warrant from any court of competent jurisdiction.</i></p> |
| 4 | <p>RESPONSE.</p> <p>An owner or operator of a property where an Illicit Discharge has occurred promptly will take all feasible actions to minimize the discharge into the downgradient MS4, and notify the District in writing. The owner or operator will be responsible for costs incurred by the District to limit the impact of an Illicit Discharge on the MS4, on any downgradient waterbody, and on any beneficial public use thereof.</p> | <p>3e</p> <p>Requirement to prevent, control and reduce stormwater pollutants through the use of best management practices.</p> <p>The owner or operator of a commercial or industrial facility will provide, at its sole expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the storm drain system or watercourses through the use of structural and non-structural BMPs. The owner of a property that is or may be the source of an illicit discharge may be required by the District to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the District's MS4.</p> | |
| | | <p>3g</p> <p>Notification of Spills.</p> <p>Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which result or may result in illegal discharges or discharge of pollutants to stormwater, the storm drain system or waters of the state, said person will take all necessary steps to ensure the containment and cleanup of such release. In the event of a release of hazardous materials, said person will immediately notify emergency response agencies of the release. In the event of a release of nonhazardous materials, said person will notify the District in person or by phone or email no later than the next business day following discovery of the release.</p> | |
| N/A | N/A | <p>3f</p> <p><i>Watercourse Protection. No one may pollute or contaminate a watercourse in the Minnehaha Creek watershed. An owner of real property riparian to a watercourse in the Minnehaha Creek watershed will 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.</i></p> | |
| N/A | N/A | <p>3h</p> <p><i>Enforcement. In addition to pursuing enforcement actions as provided in the District Enforcement Rule, the District may utilize the following measures to enforce the provisions of this rule:</i></p> <p><i>(1) Notice of violation. Whenever the District finds that a person has violated a prohibition or failed to meet a requirement of this rule, the District may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:</i></p> <p><i>i. The performance of monitoring, analysis and/or reporting;</i></p> <p><i>ii. The elimination of illicit connections or discharges;</i></p> <p><i>iii. That violating discharges, practices or operations will cease and desist;</i></p> <p><i>iv. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;</i></p> <p><i>v. Payment of District costs of administrative and remediation;</i></p> <p><i>vi. The implementation of source control or treatment BMPs.</i></p> <p><i>(2) Enforcement Measures. If a violation is not corrected pursuant to the Notice of Violation and subsequent District order, the District may seek enforcement of the rule requirements and/or order through criminal prosecution, injunction, action to compel performance, restoration, abatement, and other appropriate action. The District may avail itself of any and all measures necessary to abate the violation and/or restore the property. It is unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the District or its agents to enter upon the premises for the purposes set forth herein.</i></p> | |

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| | | | <i>(3) Cost of Abatement. The District may assess costs of abatement or restoration against the property at which the abatement or restoration was required.</i> |
| 5 | <p>SUBMITTALS.</p> <p>The following exhibits must accompany a notice under paragraph 3.c, above:</p> <p>a. Property lines and delineation of lands identifying ownership and easements.</p> <p>b. Proposed and existing stormwater facilities' location, alignment and elevation.</p> <p>c. Identification of existing and proposed site contour elevations with at least a 2-foot contour interval.</p> <p>d. Construction plans and specifications of the proposed connection, including design details, connection method, and timing of connection.</p> <p>e. Stormwater runoff volume and rate analysis for the one or two-, 10-, and 100-year critical events, existing and proposed conditions.</p> | 4 | <p>EXHIBITS.</p> <p>The following exhibits must accompany an application for a permit under this rule. One set full size; one set reduced to 11 inches by 17 inches; and a copy of all submittals in electronic Adobe Acrobat (.pdf) format.</p> <p>(a) Property lines and delineation of lands identifying ownership and easements.</p> <p>(b) Proposed and existing stormwater facilities' location, alignment and elevation.</p> <p>(c) Identification of existing and proposed site contour elevations with at least a 2-foot contour interval.</p> <p>(d) Construction plans and specifications of the proposed connection, including design details, connection method, and timing of connection.</p> <p>(e) Stormwater runoff volume and rate analysis for the 2-, 10-, and 100-year critical events, existing and proposed conditions.</p> |