



## MEMORANDUM

**TO:** Public Works Committee

**FROM:** Nick Hatfield, PE, Development Engineer

**DATE:** February 17, 2009

**SUBJECT:** §50.036 Illicit Discharge Detection and Elimination

Attached for your review and comment is proposed language that would revise Village Code §50.036, which currently states: *"It shall be unlawful to discharge to any natural outlet within the Village or in any area under the jurisdiction of said Village any sanitary sewage, industrial waste, or other polluted waters, without a valid NPDES permit."* It is necessary to update this Code in order to comply with existing requirements of the National Pollution Discharge Elimination System (NPDES) Phase II permit that the Village holds and maintains. Specifically, the permit requirements include that all owners of a "small municipal separate storm sewer system, (MS4)" have a program that addresses Illicit Discharge Detection and Elimination (IDDE). The revised Code lists the specifics of an "Illicit Discharge," which is basically any discharge into a watercourse from the storm sewer system that is not composed completely of storm water (rain or snowmelt). Further, the attached Code lists specific discharges that are permissible:

- 1) Discharges caused by governmental public works and stormwater management units as part of their standard operations in compliance with all applicable regulations.
- 2) Fire fighting and emergency services.
- 3) Discharges required by law or authorized by permit, including any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the USEPA and, or, IEPA.
- 4) Diverted stream flows.
- 5) Uncontaminated ground water.
- 6) Discharges of uncontaminated, dechlorinated and pH neutral (pH of 6.5 to 9.0 S.U.) water from swimming pools, foundation drains, sump pumps, air conditioning condensation, irrigation water, crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, gardening and building/pavement washing.
- 7) Discharges associated with dye testing of water line, sanitary sewers, storm sewers, private drains or septic systems.
- 8) Other discharges approved by the Director as being substantially like any of the discharge types enumerated above.

As with the NPDES permit, Village staff has worked closely with DuPage County staff and representatives from other DuPage County municipalities in developing this Code, using sample code from the USEPA as the framework. As with Lombard, all other DuPage County municipalities that have and NPDES Phase II permit are required to pass some version of this

code. The Village Attorney has reviewed the proposed language from the County and the attached version of the Code.

DuPage County is concurrently passing their version of this IDDE Code, which has a unique provision included where the County will perform the monitoring and tracing activities required to determine the location of an illicit discharge within the Village's boundaries. This work is subject to an annual IGA between the Village and the County, which is also attached for the Committee's review and comment. The County has committed to cover all costs associated with monitoring and tracing up to any enforcement action. The Village is responsible for prosecuting anyone that fails to correct an identified illicit discharge and is also responsible for sharing information with the County and assisting during monitoring and tracing. Enforcement actions under this Code are applicable for Administrative Adjudication.

Please review the attached and, if found acceptable, please recommend to the Board of Trustees for approval. Please contact me at 630-620-5973 if you have questions or comments.

NH:nh PWC IDDE Code

attachments: Draft IDDE Code and IGA

cc: William J. Heniff, Director of Community Development  
Carl S. Goldsmith, Director of Public Works  
David P. Gorman, PE, Asst. Dir. of Public Works  
Angela Podesta, Utilities Superintendent

**Current Village Code:**

**§ 50.036 PROHIBITED DISCHARGE TO NATURAL OUTLETS.**

It shall be unlawful to discharge to any natural outlet within the Village or in any area under the jurisdiction of said Village any sanitary sewage, industrial waste, or other polluted waters, without a valid NPDES permit.

('70 Code, § 13.10.010) (Ord. 2797, passed 11-14-85) Penalty, see § 50.999

**Proposed Code:**

**§ 50.036 ILLICIT DISCHARGE DETECTION AND ELIMINATION RULES/REGULATIONS/REQUIREMENTS**

(A) No person shall place, drain, or otherwise discharge, cause, or allow others under their control to place, drain, or otherwise discharge into the storm drainage system or MS4 any pollutants or waters containing any pollutants, other than normal storm water unless specifically exempted in §50.036(C).

(B) The following discharges into the MS4 or the storm drainage system shall be prohibited: discharges that are not a direct result of precipitation and or snow melt within the drainage area of the MS4; discharges containing litter or debris; and, discharges from an illicit connection.

(C) The following discharges are exempt from discharge prohibitions established herein provided the Director determines they do not cause an adverse effect on water quality:

- 1) Discharges caused by governmental public works and stormwater management units as part of their standard operations in compliance with all applicable regulations. This may include but is not limited to water line flushing and street wash water.
- 2) Fire fighting and emergency services.
- 3) Discharges required by law or authorized by permit, including any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the USEPA and, or, IEPA.
- 4) Diverted stream flows.
- 5) Uncontaminated ground water.
- 6) Discharges of uncontaminated, dechlorinated and pH neutral (pH of 6.5 to 9.0 S.U.) water from swimming pools, foundation drains, sump pumps, air conditioning condensation, irrigation water, crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, gardening and building/pavement washing.
- 7) Discharges associated with dye testing of water line, sanitary sewers, storm sewers, private drains or septic systems.
- 8) Other discharges approved by the Director as being substantially like any of the discharge types enumerated above.

(D) The construction, use, maintenance, or continued existence of illicit connections to the storm drainage system or MS4 is prohibited. Illicit connections made in the past are expressly prohibited, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(E) Connections in violation of this Section must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Director.

(F) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system or MS4, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Director requiring that such locating be completed. Such notice shall specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, MS4, sanitary sewer system, or other discharge point be identified. Results of these investigations are to be documented and provided to the Director.

(G) Any person operating a facility subject to an industrial activity NPDES stormwater discharge permit shall submit a copy of the Notice of Intent (NOI) to the Director at the same time the operator submits the original Notice of Intent to the IEPA as applicable. A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the Notice of Intent to do so to the Director.

(H) Notwithstanding other requirements of law, as soon as any person owning, leasing or exercising control over a property, or responsible for emergency response for a property, has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the storm drainage system, or Waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

1) In the event of such a release of hazardous materials said person shall immediately notify the appropriate emergency response agencies of the occurrence via emergency dispatch services and in accordance with Illinois Emergency Management Agency (IEMA) and IEPA regulations.

2) In the event of a release of non-hazardous materials, said person shall notify the IEPA and the Director in person or by phone, facsimile, or email no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the IEPA, and the Director within three (3) business days of the phone notice. 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 the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least five (5) years.

(I) Failure to provide notification of a release as provided above is a violation of this Section.

(J) A violation of this Section includes when a person: performs any act expressly prohibited by any provision of this Section; or disobeys, neglects, or fails to carry out or comply with any provision of this Section or of any order or notice issued by the Director; or allows any condition or act that violates any provision of this Section to continue unabated on property owned, leased, managed, or under the control of such person; or directs, orders, permits, or allows a second person to do any act expressly prohibited by any provision of this Section, or to maintain or continue unabated any

condition or act that violates any provision of this Section on property owned, leased, managed or under the control of the first person.

(K) The Director may issue a notice of violation ordering a person to take action to achieve compliance with the provisions of this Section and, or to cease and desist from any action conducted in violation of this Section. Failure to comply with the terms and conditions of a notice of violation and order to comply shall constitute a violation of this Section.

1) The Director shall set forth the form and content of any notices issued under this Section.

2) The Director may issue a warning of violation ordering a person to take action to achieve compliance with the provisions of this Section. If a person fails to comply with the terms and conditions of a warning, the Director may, thereafter, issue a notice of violation.

(L) When the Director finds that any person has violated, or continues to violate, any provision of this Section, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4, storm drainage system, or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Director may issue an emergency order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

1) Immediately comply with all Section requirements; and

2) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

3) Any person notified of an emergency order under this Subsection shall immediately comply and stop or eliminate its endangering discharge.

(M) In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Director may take such steps as deemed necessary to prevent or minimize harm to the MS4, storm drainage system, or Waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Director may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this Section. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Director within fifteen (15) days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

(N) Any condition caused or permitted to exist in violation of any provision of this Section shall constitute a threat to public health and safety and is declared and deemed a public nuisance.

(O) Any person violating any provision of this Section shall be fined not less than one hundred and no/100 dollars (\$100.00) nor more than seven hundred fifty and no/100

dollars (\$750.00) for each day, or portion of a day, during which such violation is committed, continued or permitted, with each day, or portion of a day, that said violation is committed, continued or permitted constituting a separate and distinct offense. In lieu of or in addition to a fine, in light of subsection (N) above, the Director may seek an order of the Court requiring the violator to correct the violation and allowing the Village to either correct the violation and lien the property in question for the cost thereof, or terminate water and/or sanitary sewer service to the property in question, in the event the violator does not make said correction. The Director may seek, at his discretion, cumulative remedies.

(P) In emergency situations, the Director 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, storm drainage system, or Waters of the United States

(Q) Where the conditions imposed by any provision of this Section are either more restrictive or less restrictive than comparable conditions imposed by any other applicable statute, law, code, regulation, or rule, the provision that is most restrictive or imposes the higher standards or requirements shall apply. The provisions of this Section shall be interpreted to be cumulative of, and to impose limitations in addition to, all other laws, codes, and regulations, in existence or which may be passed governing any subject matter of this chapter. To the greatest extent possible, the provisions of this Section shall be construed to be consistent with, and not in conflict with, the provisions of such other laws, codes, and regulations, and with each other, to the end that all such provisions may be given their fullest application.

(R) The Village is a willing participant in DuPage County's Illicit Discharge Detection and Elimination Program, subject to an annual intergovernmental agreement.

(S) Any person aggrieved by any decision, ruling, or determination by the Director, or by any interpretation or application of any provision of this Section may appeal such matter. A written appeal of any decision made by the Director shall be made within seven (7) days of the decision contested, excepting an appeal involving the assessment charge or calculation of any fine or penalty in which cases which an appeal shall be brought before said amount becomes thirty (30) days past due. Upon receipt of such Notice of Appeal, the Director shall set a date for a hearing. Such hearing shall take place no fewer than fourteen (14) days nor more than thirty (30) days from the date that the Director receives such Notice of Appeal unless the Director and party requesting the hearing agree to a different schedule. The Director shall notify the person making the appeal of the date of such hearing. At the hearing the person making the appeal may appear in person or represented by counsel, or submit his case in writing. The decision concerning the appeal shall be in writing shall be communicated to the person making the appeal, and shall state a finding upon which the decision is based. The Village Board of Trustees shall have the authority to reverse, modify, or affirm any decision, ruling, or determination by the Director.

**Proposed Code:**

**§ 50.001 DEFINITIONS.**

**ADD:**

**Building.** A structure that is constructed or erected partially or wholly above ground and is enclosed by walls and a roof. The term "building" includes manufactured homes and includes both the above-ground and the below-ground portions of the structure.

**Clean Water Act (CWA).** The Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), and any subsequent amendments thereto.

**Committee.** The Public Works Committee of the Village of Lombard.

**Director.** The Village of Lombard Director of Public Works.

**Drain.** Piping and appurtenances for conveying a fluid.

**Facility.** Something that is built, installed, or established to serve a particular purpose.

**Hazardous Materials.** Any material which may cause, or significantly contribute to, a substantial hazard to human health, safety, property, or the environment.

**Illicit Connections.** An illicit connection is defined as either of the following: 1.) Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter the storm drainage system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drainage system and any connections to the storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the Village or, 2.) Any drain or conveyance connected from a commercial or industrial land use to the storm drainage system that has not been documented in plans, maps, or equivalent records and approved by the Village.

**Illicit Discharge.** Any direct or indirect non-storm water discharge to the storm drainage system, except as exempted in 50.036.

**Industrial Activity.** Activities subject to NPDES Industrial Storm Water Permits as defined in 40 CFR, Section 122.26 (b)(14).

**Line.** A hollow conduit through which fluids are transported between two or more points.

**Municipal Separate Storm Sewer System (MS4).** A conveyance or system of conveyances (including but not limited to sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm sewers) owned or operated by a governmental entity and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

**Non-Stormwater Discharge.** Any discharge to the storm drainage system that is not the direct result of precipitation and or snowmelt in the tributary drainage basin.

**Notice of Intent (NOI).** Illinois Environmental Protection Agency Notice of Intent for new or renewal of General Permit ILR 40 for discharges from Small Municipal Storm Sewer Systems (MS4).

**Parcel.** Contiguous land under single ownership or control.

**Premises.** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**Runoff.** The waters derived from precipitation and or melting snow within a tributary drainage basin that exceeds the infiltration capacity of that basin.

**Sewer.** An artificial conduit to carry off sewage and/ or surface water (as from rainfall), including sanitation, stormwater, and/or combined sewers.

**Sewerage.** A system of sewers and appurtenances for the collection, transportation, pumping, and treatment of sewage.

**Storm Drainage System.** A facility 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.

**Structure.** Anything that is erected or constructed. The term "structure" includes, without limitation: buildings, manufactured homes, tanks, dams, sewers, constructed channels, outfalls, parking lots, driveways, roads, sidewalks, and concrete patios.

**Waters of the United States.** As defined in the CWA, "waters of the United States" applies only to surface waters, rivers, lakes, estuaries, coastal waters, and wetlands. Not all surface waters are legally "waters of the United States." Generally, those waters include the following: all interstate waters; Intrastate waters used in interstate and/or foreign commerce; Tributaries of the above; Territorial seas at the cyclical high tide mark; and Wetlands adjacent to all the above.

**CHANGE:**

**POLLUTANT.** Any dredged spoil, solid waste, incinerator residue, sewage garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, or industrial, municipal, and agricultural waste or any other contaminant exhibiting certain characteristics of wastewater (e.g. pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

**TO:**

**POLLUTANT.** Anything that 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, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, wastewater, dredged spoil, solid waste, incinerator residue, sewage garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, or industrial, municipal and agricultural waste or any other contaminant exhibiting certain characteristics of wastewater (e.g. pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor), 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.

**SEWAGE.** Water carried human or related wastes.

**TO:**

**SEWAGE.** Polluted stormwater, wastewater, or other refuse liquids usually conveyed by sewers.

**STORM WATER.** Any flow, including snowmelt, occurring during, following or resulting from any natural form of precipitation.

**TO:**

**STORMWATER.** Any flow, runoff, and drainage from any form of natural precipitation, and resulting from such precipitation.