PART 13 OFFENSES*

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*Cross references: Offenses in*City* parks, §9-2011 et seq. ; *City* lakes, Part 9, Ch. 5; licensing and regulation for categorical areas of regulation, Part 12.

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Ch. 1. Offenses Against Property
Ch. 2. Offenses Against the Public
Ch. 3. Offenses Against Health, Welfare and Morals
Ch. 4. Regulation of Security and Fire Alarm Systems
Ch. 5. Offenses Against the Environment

CHAPTER 5. OFFENSES AGAINST THE ENVIRONMENT*

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*State law references:*G.S.* Chapter 113A Article 4 (Pollution Control Act); *G.S.* Chapter 143 Article 21 (Water and Air Resources); Emission of pollutants and contaminants, *G.S.* 160A-185; Raleigh *City* Charter §2.14(50); 1989 Session Law, Chapter 1043 (Authorizes *City* of Raleigh to regulate stormwater).

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Sec. 13-5001. TITLE.

This chapter*shall* be known and *may* be cited as the *City* of Raleigh's "Illicit Discharge Ordinance."
(Ord. No. 1995-573, §2, 3-7-95)

Sec. 13-5002. PURPOSES.

(a) This chapter is adopted for the purposes of:
(1) Protecting the public health, safety and welfare by controlling the discharge of pollutants into the*stormwater conveyance system;*
(2) Promoting activities directed toward the maintenance and improvement of surface and ground water quality;
(3) Satisfying the requirements imposed upon the*City* of Raleigh under its *National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS 4)* discharge permit issued by the *State* ; and
(4) Establishing administration and enforcement procedures through which these purposes can be fulfilled.
(b) The provisions of this regulation are supplemental to regulations administered by Federal and*State* governments.
(Ord. No. 1995-573, §2, 3-7-95)

Sec. 13-5003. ACRONYMS.

DEHNR: North Carolina Department of Environment Health and Natural Resources.
DEM: North Carolina Division of Environmental Management.
MS4 : Municipal separate storm sewer system.
NPDES: National Pollutant Discharge Elimination System.
(Ord. No. 1995-573, §2, 3-7-95)

Sec. 13-5004. DEFINITIONS.

As used in this chapter, unless the context clearly indicates otherwise, the*following* definitions apply:

Illicit connection . Any unlawful connection which allows the discharge of non-*stormwater* to the *stormwater conveyance system* or *waters of the State* in violation of this chapter.

Illicit discharge . Any unlawful disposal, placement, emptying, dumping, spillage, leakage, pumping, pouring, emission, or other discharge of any substance other than *stormwater* into a *stormwater conveyance* , the *waters of the State* , or upon the land in such proximity to the same, such that the substance is likely to reach a *stormwater conveyance* or the *waters of the State.*

Municipal separate storm sewer system (MS 4) . A *stormwater conveyance* or unified *stormwater conveyance system* (including without limitation: roads with drainage systems, municipal *streets* , catch basins, *stormwater* detention facilities, curbs, gutters, ditches, natural or man-made channels, or storm drains), that:

(1) Is located within the corporate limits of Raleigh, North Carolina; and
(2) Is owned or operated by the*State* , *County* , the *City,* or other public body; and
(3) Discharges to*waters of the State,* excluding publicly owned treatment works, and lawful connections thereto, which in turn discharge into the *waters of the State.*

National Pollutant Discharge Elimination System . A permitting system established pursuant to §402 of the Clean Water Act et seq.

Federal law reference: National Pollutant Discharge Elimination System Permits, 33 USC §1342.

Pollution . Man-made or man-induced alteration of the chemical, physical, biological, thermal, and/or radiological integrity of water.

Stormwater . Any flow resulting from, and occurring during or *following* , any form of natural precipitation.

Stormwater conveyance or stormwater conveyance system . Any feature, natural or man-made, that collects and transports *stormwater* , including but not limited to roads with drainage systems, *streets,* catch basins, curbs, gutters, ditches, man-made and natural channels, pipes, culverts, and storm drains, and any other natural or man-made feature or structure designed or *used for* collecting or conveying *stormwater.*

Waters of the State . Surface waters within or flowing through the boundaries of the *State* including the *following* : any intermittent or perennial stream, river, creek, brook, swamp, lake, sound, tidal estuary, bay, reservoir, wetland, or any other surface water or any portion thereof that is mapped as solid or dashed blue lines on United States Department of the Interior Geological Survey 7.5 minute series topographic maps. Treatment systems, consisting of man-made bodies of water, which were not originally created in *waters of the State* and which are not the result of impoundment of *waters of the State,* are not *waters of the State.*

(Ord. No. 1995-573, §2, 3-7-95)

Sec. 13-5005. SCOPE AND EXCLUSIONS.

This chapter*shall* apply within the territorial jurisdiction of the *City,* with the *following* exclusions:

(1) Federal,*State* , and local governments, including their agencies, unless intergovernmental agreements have been established giving the *City* enforcement authority.

(Ord. No. 1995-573, §2, 3-7-95)

Sec. 13-5006. OBJECTIVES.

The objectives of this chapter are to:

(1) Regulate the discharge of substances which*may* contaminate or cause *pollution* of *stormwater* , *stormwater conveyances,* or *waters of the State* ;

(2) Regulate connections to the*stormwater conveyance system* ;

(3) Provide for the proper handling of spills; and

(4) Provide for the enforcement of same.

(Ord. No. 1995-573, §2, 3-7-95)

Sec. 13-5007. NON-STORMWATER DISCHARGE CONTROLS.

(a) ***Illicit discharges*** .

No*person shall* cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any *stormwater conveyance,* the *waters of the State,* or upon the land in such proximity to the same (such that the substance is likely to reach a *stormwater conveyance* or the *waters of the State*), any fluid, solid, gas, or other substance, other than *stormwater* ; provided that non- *stormwater* discharges associated with the *following* activities are allowed provided that they do not significantly impact water quality:

(1) Filter backwash and draining associated with swimming pools;

(2) Filter backwash and draining associated with raw water intake screening and filtering devices;

(3) Condensate from residential or commercial air conditioning;

(4) Residential vehicle washing;

(5) Flushing and hydrostatic testing water associated with utility distribution systems;

(6) Discharges associated with emergency removal and treatment activities, for hazardous materials, authorized by the federal,*State,* or local government on-scene coordinator;

(7) Uncontaminated ground water [including the collection or pumping of springs, wells, or rising ground water and ground water generated by well construction or other construction activities];

(8) Collected infiltrated*stormwater* from foundation or footing drains;

(9) Collected ground water and infiltrated*stormwater* from basement or crawl space pumps;

(10) Irrigation water;

(11) *Street* wash water;

(12) Flows from fire fighting;

(13) Discharges from the pumping or draining of natural watercourses or waterbodies;

(14) Flushing and cleaning of*stormwater conveyances* with unmodified potable water;

(15) Wash water from the cleaning of the exterior of buildings, including gutters, provided that the discharge does not pose an environmental or health threat; and

(16) Other non-*stormwater* discharges for which a valid NPDES discharge permit has been approved and issued by DEM, and provided that any such discharges to the *municipal separate storm sewer system shall* be authorized by the *City.*

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

State law references: Emission of pollutants and contaminants,*G.S.* 160A-185, Raleigh *City* Charter §2.14(50), and 1989 Session Laws, Chapter 1043.

Cross reference: Discharge onto*City* *streets* , sidewalks, or gutters, §12-1032 and depositing waste on land in the *City* , §7-3005(c)(2), (3).

(b) ***Illicit connections*** .

(1) Connections to a*stormwater conveyance* or *stormwater conveyance system* which allow the discharge of non- *stormwater* , other than the exclusions described in section (a) above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.

(2) Where such connections exist in violation of §13-5007 and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the*property owner* or the *person* using said connection *shall* remove the connection within one (1) *year following* application of this regulation; provided that, this grace period *shall* not apply to connections which *may* result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal *property,* natural resources, wildlife, or habitat.

(3) Where it is determined that said connection:

a. *May* result in the discharge of hazardous materials or *may* pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal *property* , natural resources, wildlife, or habitat, or

b. Was made in violation of any applicable regulation or ordinance,

the*City* Manager or his designee *shall* designate the time within which the connection *shall* be removed. In setting the time limit for compliance, the *City* *shall* take into consideration:

a. The quantity and complexity of the work,

b. The consequences of delay,

c. The potential harm to the environment, to the public health, and to public and private *property,* and

d. The cost of remedying the damage.

Editor's note: This regulation first became applicable on March 12, 1995.

Permits are issued by the Inspections Department for connection to or modification of storm sewers located in*City* owned rights-of-way.

State law reference: Emission of pollutants and contaminants,*G.S.* 160A-185.

(c) Spills.

Spills or leaks of polluting substances discharged to, or having the potential to be indirectly transported to the*stormwater conveyance system,* *shall* be contained, controlled, collected, and removed promptly. All affected areas *shall* be restored to their preexisting condition.

Persons associated with the spill or leak *shall* immediately notify the *City* of Raleigh Fire Chief or his designee of all spills or leaks of polluting substances. Notification *shall* not relieve any *person* of any expenses related to the restoration, loss, damage, or any other liability which *may* be incurred as a result of said spill or leak, nor *shall* such notification relieve any *person* from other liability which *may* be imposed by *State* or other law.

(Ord. No. 1995-573, §2, 3-7-95)

Sec. 13-5008. ENFORCEMENT.

(a) Authority to enter.

Any authorized*City* personnel *shall* be permitted to enter upon public or private *property* for the purposes of observation, inspection, sampling, monitoring, testing, surveying, and measuring compliance. Should the *owner* or occupant of any *property* refuse to permit such reasonable access, the *City* Manager or his designee *shall* proceed to obtain an administrative search warrant pursuant to *G.S.* 15-27.2 or its successor.
No*person* *shall* obstruct, hamper or interfere with any such representative while carrying out his official duties.
(b) Civil penalties.
(1) ***Illicit discharges*** .
Any designer, engineer, contractor, agent, or any other*person* who allows, acts in concert, participates, directs, or assists directly or indirectly in the creation of a violation of this chapter *shall* be subject to civil penalties as follows:
a. For first time offenders, if the quantity of the discharge is equal to or less than five (5) gallons and consists of domestic or household products in quantities considered ordinary for household purposes, said*person* *shall* be assessed a civil penalty not to exceed one hundred dollars ($100.00) per violation or per day for any continuing violation, and if the quantity of the discharge is greater than five (5) gallons or contains non-domestic substances, including but not limited to process waste water, or if said *person* cannot provide clear and convincing evidence of the volume and nature of the substance discharged, said *person* *shall* be assessed a civil penalty not to exceed one thousand dollars ($1,000.00) per violation or per day for any continuing violation.
b. For repeat offenders, the amount of the penalty*shall* be double the amount assessed for the previous penalty, not to exceed ten thousand dollars ($10,000.00) per violation or per day for any continuing violation.
c. In determining the amount of the penalty, the*City* Manager or his designee *shall* consider:
1. The degree and extent of harm to the environment, the public health, and public and private*property* ;
2. The cost of remedying the damage;
3. The duration of the violation;
4. Whether the violation was willful;
5. The prior record of the*person* responsible for the violation in complying or failing to comply with this chapter;
6. The costs of enforcement to the public; and
7. The amount of money saved by the violator through his, her, or its noncompliance.
(2) Illicit connections.
Any*person* found with an *illicit connection* in violation of this chapter and any designer, engineer, contractor, agent, or any other *person* who allows, acts in concert, participates, directs, or assists directly or indirectly in the establishment of an *illicit connection* in violation of this chapter, *shall* be subject to civil penalties as follows:
a. First time offenders*shall* be subject to a civil penalty not to exceed five hundred dollars ($500.00) per day of continuing violation.
b. Repeat violators*shall* be subject to a civil penalty not to exceed one thousand dollars ($1,000.00) per day of continuing violation.
c. In determining the amount of the penalty, the*City* Manager or his designee *shall* consider:
1. The degree and extent of harm to the environment, the public health, and public and private*property* ;
2. The cost of remedying the damage;
3. The duration of the violation;
4. Whether the violation was willful;

5. The prior record of the*person* responsible for the violation in complying or failing to comply with this chapter;
6. The costs of enforcement to the public; and
7. The amount of money saved by the violator through his, her, or its noncompliance.

d. Procedures for assessing penalties pursuant to*illicit connections.*

Said penalties*shall* be assessed by the *City* Manager or his designee. No penalty *shall* be assessed until the *person* alleged to be in violation is served *written* notice of the violation by registered mail, certified mail-return receipt requested, or personal service. Refusal to accept the notice *shall* not relieve the violator of the obligation to pay the penalty. The notice *shall* describe the violation with particularity and specify the measures needed to come into compliance. The notice *shall* designate the time within which such measures must be completed. In setting the time limit for compliance, the *City* *shall* take into consideration:

1. The quantity and complexity of the work;
2. The consequences of delay;
3. The potential harm to the environment, the public health, and public and private*property* ; and
4. The cost of remedying the damage.

The notices*shall* warn that failure to correct the violation within the specified time period will result in the assessment of a civil penalty and/or other enforcement action. If after the allotted time period has expired, and the violation has not been corrected, the penalty *shall* be assessed from the date of receipt of notice of violation and each day of continuing violation thereafter *shall* constitute a separate violation under this section.

(3) Other violations.

Any*person* found in violation of other provisions of this chapter, not specifically enumerated elsewhere, *shall* be subject to a civil penalty not to exceed one hundred dollars ($100.00) per violation or per day for any continuing violation.

(4) Payment/collection procedures.

Penalties*shall* be assessed by the *City* Manager or his designee. No penalty *shall* be assessed until the *person* alleged to be in violation is served *written* notice of the violation by registered mail, certified mail-return receipt requested, or personal service. Refusal to accept the notice *shall* not relieve the violator of the obligation to pay the penalty. The *City* Manager or his designee *shall* make *written* demand for payment upon the *person* in violation. If the payment is not received or equitable settlement reached within thirty (30) days after demand for payment is made, the matter *shall* be referred to the *City* Attorney for institution of a civil action in the name of the *City* , in the appropriate division of the general court of justice in Wake County for recovering the penalty.

(c) Injunctive relief.

(1) Whenever the*City* Council has a reasonable cause to believe that any *person* is violating or threatening to violate this chapter, rule, regulation, order duly adopted or issued pursuant to this chapter or making a connection to a *stormwater conveyance* or *stormwater conveyance system* other than in accordance with the terms, conditions, and provisions of approval, the *City* *may* , either before or after the institution of any other action or proceeding authorized by the Code, institute a civil action in the name of the *City* for injunctive relief to restrain and abate the violation or threatened violation.

(2) The institution of an action for injunctive relief under subsection (c)*shall* not relieve any party to such proceeding from any further civil or criminal penalty prescribed for violations of this Code.

(d) Criminal penalties.

Any*person* who knowingly or willfully violates any provision of this chapter, rule, regulation, order duly adopted or issued pursuant to this chapter *shall* be guilty of a misdemeanor,

punishable by a fine not to exceed five hundred dollars ($500.00) or imprisonment for not longer than thirty (30)days. Each violation *shall* be a separate offense.
(Ord. No. 1995-573, §2, 3-7-95)

Cross reference: Declaration of public nuisance, §12-6002(p).