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DAKOTA COUNTY STORM SEWER SYSTEM

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DAKOTA COUNTY

ORDINANCE NO. 132

DAKOTA COUNTY STORM SEWER SYSTEM

SECTION 1.00 PURPOSE, INTENT, AND AUTHORITY

1.01 PURPOSE.

The purpose of this ordinance is to provide for the health, safety and general welfare of the citizens of Dakota County and protect the quality of water bodies in Dakota County through the regulation of stormwater and non-stormwater discharges via the County owned or operated storm sewer system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the County's municipal separate storm sewer system (MS4) in order for the County to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit.

1.02 INTENT.

- A. To regulate the contribution of pollutants to the MS4 by stormwater discharges by any permanent or temporary user or activity.
- B. To prohibit illicit connections and discharges of non-stormwater to the MS4.
- C. To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

1.03 AUTHORITY.

This ordinance is adopted pursuant to Minn. Stat. chs. 115, 116, 145A, 375, or successor statutes, and Minn. R. chs. 7090, or successor rules.

SECTION 2.00 DEFINITIONS

Unless the context clearly indicates otherwise, the following words and phrases shall have the meanings ascribed to them in this section. Unless specifically defined herein, terms used in this ordinance shall have the same definition as provided in Minn. Stat. chs. 115, 116, 145A, Minn. R. ch. 7090, and 33 U.S.C. § 1251 et seq. and if not defined there, shall have common usage meaning. For purposes of this ordinance, the words "must" and "shall" are mandatory and not permissive unless a different definition appears in this ordinance.

- 2.01 "BEST MANAGEMENT PRACTICES (BMPs)" means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

- 2.02** "CLEAN WATER ACT" means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- 2.03** "COMMON PLAN OF DEVELOPMENT OR SALE" means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.
- 2.04** "CONSTRUCTION ACTIVITY" means activities subject to NPDES construction permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to, clearing and grubbing, grading, excavating and demolition.
- 2.05** "COUNTY" means Dakota County, Minnesota.
- 2.06** "COUNTY BOARD" means the Dakota County Board of Commissioners.
- 2.07** "DEPARTMENT" means the Environmental Resources Department (or its successor) of the Dakota County Physical Development Division, its staff and designated agents.
- 2.08** "DNR CATCHMENT AREA" means the Hydrologic Unit 08 areas delineated and digitized by the Minnesota Department of Natural Resources (DNR). The catchment areas are available for download at the Minnesota Geospatial Commons website. DNR catchment areas may be locally corrected, in which case the local corrections may be used.
- 2.09** "EPA" means the United States Environmental Protection Agency.
- 2.10** "HAZARDOUS MATERIALS" means any material, including any substance, waste, or combination thereof, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- 2.11** "ILLEGAL DISCHARGE" means any direct or indirect non-stormwater discharge to the MS4, except as exempted in this ordinance.
- 2.12** "ILLICIT CONNECTION" means any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the MS4 including, but not limited to, any conveyances that allow any non-stormwater discharge including municipal and household wastewater, process wastewater and wash water to enter the MS4 and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the County or, any drain or conveyance connected from a commercial or industrial land use to the MS4 that has not been documented in plans, maps, or equivalent records and approved by the County.
- 2.13** "INDUSTRIAL ACTIVITY" means activities subject to NPDES Industrial Storm Water Permits as defined in 40 CFR, Section 122.26 (b)(14).
- 2.14** "MUNICIPAL SEPARATE STORMWATER SEWER SYSTEM (MS4)" means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm sewer elements owned and operated by the County and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying wastewater.
- 2.15** "MPCA" means the Minnesota Pollution Control Agency.

- 2.16 "NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT"** means a permit issued by the MPCA that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable on an individual, group, or general area-wide basis.
- 2.17 "NEW DEVELOPMENT"** means all construction activity that is not defined as redevelopment.
- 2.18 "NON-STORMWATER DISCHARGE"** means any discharge to the MS4 that is not composed entirely of stormwater.
- 2.19 "PERSON"** means any human being, any municipality or other governmental or political subdivision, or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity.
- 2.20 "POLLUTANT"** means anything which 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, pesticides, herbicides, and fertilizers; hazardous substances and wastes; residues that result from constructing a building or structure; any noxious or offensive matter of any kind that, because of its quantity, concentration, or physical, chemical or infectious characteristic may cause or significantly contribute to a substantial present or potential hazard to human health, safety, property or the environment, or that may degrade, impair or pollute ground or surface waters.
- 2.21 "PREMISES"** means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- 2.22 "RECEIVING WATER"** means any lake, river, stream or wetland that receives stormwater discharges from the MS4.
- 2.23 "REDEVELOPMENT"** means any construction activity where, prior to the start of construction, the areas to be disturbed have 15 percent or more of impervious surface(s).
- 2.24 "STATE"** means the State of Minnesota.
- 2.25 "STORMWATER"** means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.
- 2.26 "STORMWATER POLLUTION PREVENTION PLAN (SWPPP)"** means a document that describes the best management practices and activities to be implement by a person to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.
- 2.27 "WASTEWATER"** means a subset of non-stormwater defined by any water or other liquid, other than uncontaminated stormwater, discharged from a property, vehicle, facility, building, pipe, or other structure and intended to be a liquid waste stream not meant for disposal in the storm sewer system. Examples include: wastewater in the sanitary sewer network, industrial process water, and hauled liquid waste.

SECTION 3.00 APPLICABILITY

This ordinance shall apply to all water entering the MS4 generated on any developed or undeveloped lands unless explicitly exempted by this ordinance. The Dakota County MS4 area is limited to the portions of the County located in the urbanized areas; that is, areas with stormwater conveyance systems and infrastructure. A website featuring the MS4 mapping tool is maintained by the MPCA and shows the current MS4 area for the County.

MPCA MS4 Mapping Tool (search layer "MS4 – County" for Dakota County)
<http://pca-gis02.pca.state.mn.us/ms4/index.html>

In general, the County does not maintain zoning and land use authority for development within the MS4 area and outside of County road right-of-way. Therefore, sections of this ordinance have been written with indicators describing when the applicable MS4 municipality located adjacent to the County MS4 performs the NPDES permit-required activities. For construction and post-construction activities, this ordinance shall apply to all County projects within the County MS4 and in the event that a project located in or adjacent to the County MS4 area does not receive MS4 review processes by the local MS4 municipality.

SECTION 4.00 HIGHEST STANDARDS PREVAIL

Where the conditions imposed by a provision of this ordinance are either more restrictive or less restrictive than comparable conditions imposed by a provision of this ordinance or any other applicable law, ordinance, rule, or regulation, the provision that establishes the higher standard for the promotion and protection of the public health, safety, and general welfare shall prevail.

SECTION 5.00 COMPLIANCE MONITORING

5.01 DUTIES OF THE DEPARTMENT.

The department shall administer, implement and enforce the provisions of this ordinance. At appropriate times, the County shall review, revise and update this ordinance as necessary.

5.02 RIGHT OF ENTRY AND INSPECTIONS.

- A. **RIGHT OF ENTRY.** Whenever necessary to perform an inspection to enforce any of the provisions of this ordinance, the department or its authorized agent may enter and inspect any facility, including construction activity sites, subject to regulation under this ordinance at all reasonable times to inspect the same or to perform any duty imposed upon the department by this ordinance, provided that if such facility be occupied, the department shall first present proper credentials and demand entry, and if such facility be unoccupied, the department shall first make reasonable efforts to locate the owner or other person having charge or control of the facility and demand entry. If such entry is refused, the department shall have recourse to every remedy provided by law to secure entry including, but not limited to, administrative and criminal search warrants.
- B. **INSPECTIONS.** Inspection and evaluation of any facility, including construction activity sites, subject to regulation under this ordinance may be made by the department to ensure compliance with the provisions of this ordinance. The facility owner or operator shall allow the department or its authorized agent access for the purpose of making such inspections as may be necessary to determine compliance with the requirements of this ordinance. The facility owner or operator shall provide requested samples, free of charge, to the department to allow for appropriate tests. The facility owner or operator shall also allow the department, free of charge, to take samples and do tests, as appropriate, of soils, surface waters, ground water, air, raw materials, products, or other material or residual present at or emanating from the facility if such samples and tests will

demonstrate whether the owner or operator is in compliance with this ordinance. If deemed necessary by the department, the facility owner or operator shall allow the department to set up any devices necessary to conduct monitoring and/or sampling of the facility's stormwater discharge.

The facility owner or operator shall allow free access at reasonable times to inspect and copy, at a reasonable cost, all business records related to the owner's or operator's NPDES permit to discharge stormwater and the performance of any additional duties required by state and federal law. The facility owner or operator shall allow the department to record and document its findings in any reasonable and appropriate manner, including, but not limited to notes, photographs, photocopies, read outs from analytical instruments, videotapes, audio recordings, and computer storage systems or other electronic media.

The department may require the facility owner or operator to install monitoring equipment as deemed necessary by the department. The facility owner or operator shall maintain the sampling and monitoring equipment in a safe and proper manner at its own expense. All devices used to measure stormwater flow and quality shall be calibrated according to the manufacturer's instructions to ensure their accuracy.

SECTION 6.00 DISCHARGE PROHIBITIONS

6.01 PROHIBITION OF ILLEGAL DISCHARGES.

No person shall discharge or cause to be discharged into the MS4 any materials, including but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater. The commencement or continuance of any such illegal discharge to the MS4 is prohibited.

Except as provided in section 6.03 below, the following discharges are exempt from discharge prohibitions established by this ordinance:

- A. Water line flushing; landscape irrigation runoff; diverted stream flows; rising groundwater or flood water; uncontaminated groundwater infiltration; uncontaminated pumped groundwater; flow from springs; water from foundation drains, air conditioning condensate, irrigation water, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, water from firefighting activities, street wash water, or any other water source not containing pollutants. The use of fertilizers, herbicides or pesticides for agricultural or landscaping purposes when applied for their intended purpose in accordance with label directions and with all applicable local, state and federal ordinances, laws and regulations does not result in an illegal discharge when combined with runoff.
- B. Discharges specified in writing by the department as being necessary to protect public health and safety.
- C. Dye testing is an allowable discharge, but this activity requires a verbal notification to the department to the time of the test.
- D. The prohibition shall not apply to 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 MPCA, 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 MS4.

6.02 PROHIBITION OF ILLICIT CONNECTIONS.

- A. The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
- B. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connections.
- C. A person is considered to be in violation of this ordinance if the person connects a line conveying wastewater or other pollutants to the MS4, or allows such a connection to continue.

6.03 PROHIBITION OF EXCESSIVE WATER DISCHARGE.

No person shall discharge or cause to be discharged into the MS4 quantities of water that cause the capacity of the MS4 to be exceeded.

SECTION 7.00 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

7.01 INDUSTRIAL STORMWATER DISCHARGERS

Any person subject to an industrial NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit will be required in a form acceptable to the department prior to allowing discharges to the MS4.

The operator of a facility required to have a NPDES permit to discharge stormwater associated with industrial activity shall submit a copy of the Notice of Intent to the department at the same time the operator submits the original Notice of Intent to the EPA or MPCA as applicable.

7.02 CONSTRUCTION ACTIVITY DISCHARGERS

Construction activities with a land disturbance of greater than or equal to one (1) acre, including projects that are less than one acre and part of a larger common plan of development are subject to a NPDES general construction stormwater permit administered by the MPCA. In addition to meeting the requirements of the NPDES general construction stormwater permit, the construction activity discharger must follow the requirements outlined below:

- A. **PROJECT SWPPP AND REVIEW.** Prior to the start of construction activity, defined by the beginning of earth disturbing activities, the construction activity discharger must submit its SWPPP to the County for review and approval. If a construction activity discharger has submitted documents to a local municipality also having MS4 authority in the form of a SWPPP or other acceptable erosion control plan consistent with the requirements of the NPDES permit for MS4s, then the review by the County shall be waived.

The site plan at a minimum must meet the requirements of the MPCA NPDES general construction stormwater permit, including but not limited to: BMPs to minimize erosion, BMPs to minimize the discharge of sediment and other pollutants, BMPs for dewatering activities, a plan for documentation of site inspections and records of rainfall events, procedures for BMP maintenance, procedures for management of solid and hazardous wastes on the project site, a plan for final stabilization upon completion of the construction activity, and criteria for the use of temporary sediment basins. Required SWPPP information must be submitted prior to or concurrent with submittals for any applicable Highway permits. County approval of site plans for erosion and sediment controls will take no more than twenty (20) calendar days.

- B. **MORE STRINGENT LOCAL REQUIREMENTS.** Projects in the County MS4 that are also located in a local, municipal MS4, must comply with any local municipality requirements for plan reviews and submittals,

which may require plan review and that permits be obtained for sites with less than one (1) acre of disturbance.

7.03 POST-CONSTRUCTION STORMWATER MANAGEMENT FOR CONSTRUCTION ACTIVITY DISCHARGERS

For construction activities involving new development and redevelopment with land disturbance greater than or equal to one (1) acre, including projects that are less than one acre and part of a larger common plan of development, post-construction stormwater management BMPs are also required as part of the NPDES general construction stormwater permit. In addition to meeting the requirements of the NPDES general construction stormwater permit, the construction activity discharger must follow the County MS4 requirements outlined below.

- A. **STRUCTURAL STORMWATER BMP REVIEW.** Construction activity dischargers to the County MS4 must submit site plans with post-construction stormwater management BMPs to the County for review and approval prior to the start of construction activity and concurrent with the submittal of the SWPPP. If a construction activity discharger has submitted documents to a local municipality also having MS4 authority in an acceptable form consistent with the requirements of the NPDES permit for MS4s, then the review by the County shall be waived.

Submittals shall include all construction plans for the post-construction stormwater management BMPs and any calculations and documentation to support compliance with the requirements of the NPDES general construction stormwater permit and the requirements outlined herein. Required BMP plans must be submitted along with the construction SWPPP and prior to or concurrent with a submittal for any applicable Highway permits. Dakota County approval of structural stormwater BMPs and post-construction management measures will take no more than twenty (20) calendar days.

- B. **COUNTY AND LOCAL BMP REQUIREMENTS.** In accordance with the Dakota County MS4 Post-Construction Stormwater Management Program, post-construction stormwater management BMPs shall incorporate infiltration and other green infrastructure techniques to meet the following conditions to the maximum extent practicable:
 - 1. **Local Requirements.** Projects in the County MS4 that are also located in a local, municipal MS4 must comply with any local municipality and watershed management organization requirements for post-construction stormwater management. This includes all requirements for volume control, rate control, pollutant reduction, and any other post-construction stormwater management requirements.
 - 2. **County requirements where local requirements do not apply.** In the event that a project in the County MS4 is not subject to the requirements of a local, municipal or other MS4, the project must, at a minimum, comply with the following requirements consistent with the general NPDES permit for MS4s:
 - a. For new development projects, construction activity shall result in no net increase from pre-project conditions on an annual average basis of: stormwater discharge volume, stormwater discharges of total suspended solids (TSS), and stormwater discharges of total phosphorus (TP).
 - b. For redevelopment projects, construction activity shall result in a net reduction from pre-project conditions on an annual average basis of: stormwater discharge volume, stormwater discharges of TSS, and stormwater discharges of TP.
- C. **STORMWATER MANAGEMENT LIMITATIONS.** Post-construction stormwater management BMPs shall meet the BMP requirements listed above to the maximum extent practicable when considering certain limitations and exceptions. In its review of BMPs, the County will consider the following limitations and exceptions in determining whether BMPs meet these requirements to the maximum extent possible:

1. **Limitation on infiltration BMPs.** Structural stormwater BMPs designed for infiltration are prohibited when the BMP will receive discharges from, or be constructed in, areas:
 - a. Where industrial facilities are not authorized to infiltrate industrial stormwater under an NPDES Industrial Stormwater Permit issued by the MPCA;
 - b. Where vehicle fueling and maintenance occur;
 - c. With less than three (3) feet of separation distance from the bottom of the infiltration system to the elevation of the seasonally saturated soils or top of bedrock;
 - d. Where high levels of contaminants in soil or groundwater will be mobilized by infiltrating the groundwater.

 2. **Limitation on infiltration BMPs without higher engineering review.** Infiltration techniques shall be restricted without higher engineering review sufficient to provide a functioning treatment system and prevent adverse impacts to groundwater when the infiltration device will be constructed in areas:
 - a. With predominantly Hydrologic Soil Group D (clay) soils;
 - b. Within 1,000 feet up-gradient, or 100 feet down-gradient of active karst features;
 - c. Within a Drinking Water Supply Management Area (DWSMA), as defined in Minn. R. 4720.5100, subp. 13;
 - d. Where soil infiltration rates are more than 8.3 inches per hour.

 3. **Limitation due to lack of right-of-way.** On linear projects where the lack of right-of-way precludes the installation of volume control practices, exceptions, as described in section 7.03.D, may be allowed to lessen the volume control requirements.
- D. EXCEPTIONS FOR MEETING BMP REQUIREMENTS.** Lesser volume control on the site of the original construction activity than that described in 7.03.B.2 may be allowed only under the following circumstances:
1. The construction activity discharger is precluded from infiltration of stormwater through a designed system due to the infiltration related limitations described in section 7.03.C, and
 2. The construction activity discharger implements to the maximum extent practicable, volume reduction techniques other than infiltration on the site of the original construction activity that reduces stormwater discharge volume, but may not meet the conditions for post-construction stormwater management outlined in section 7.03.B.
- E. MITIGATION PROVISIONS FOR ALTERNATIVE POST-CONSTRUCTION MANAGEMENT.** In cases where circumstances prevent the construction activity discharger from meeting the TSS or TP requirements of 7.03.B.2, the County shall then identify or require the construction activity discharger to identify locations where mitigation projects can be completed. If TSS or TP requirements are to be met through mitigation, the mitigation projects shall meet the following criteria:
1. Mitigation project locations or areas shall be selected per the following order of preference:
 - a. Locations that benefit the same receiving water to which the construction activity contributes runoff;
 - b. Locations within the same catchment area as the construction activity per DNR mapping;
 - c. Locations in the next adjacent DNR catchment area upstream;
 - d. Locations anywhere within the Dakota County MS4 jurisdictional boundary.

 2. Mitigation projects are to involve the use of a new structural stormwater BMP or the retrofit of an existing structural stormwater BMP. Use of a properly designed regional structural stormwater

BMP will be allowed only if other structural stormwater BMPs are determined to be impractical or not cost effective.

3. Routine maintenance of existing structural stormwater BMPs constructed to meet MS4 requirements cannot be used as mitigation projects.
 4. Mitigation projects shall be completed no more than 24 months after the start of the original construction activity.
 5. Maintenance of mitigation projects will be determined by the County through the maintenance provisions of section 7.03.F.
 6. A construction activity discharger unable to meet the conditions for post-construction management outlined in section 7.03.B. through on-site structural stormwater BMPs or mitigation projects shall make payment to the County in an amount to be determined during the BMP and SWPPP review process. The County will apply any payments made for mitigation to a public stormwater project in compliance with the requirements detailed in this section.
- F. **LONG-TERM MAINTENANCE OF STRUCTURAL STORMWATER BMPs.** For any permanent, structural stormwater BMPs that are directly connected to the County MS4 or sited in or adjacent to County right-of-way, a maintenance agreement establishing the long-term ownership of and maintenance responsibilities for the structural stormwater BMP must be agreed to by County and the construction activity discharger prior to completion of the construction activity. The agreement shall be a legal document that includes, at a minimum, the following provisions:
1. The agreement must include provisions to allow the County to conduct inspections of structural stormwater BMPs not owned or operated by the County, perform required maintenance, and assess costs to the owner and/or operator if it is determined from the inspection that required maintenance has not been completed.
 2. The agreement must allow for preservation of the County's allowance for inspections and maintenance in the event that ownership and/or operation of the structural stormwater BMPs is transferred to another party.
 3. The agreement must include provisions to preserve and protect the structural stormwater BMP from changed conditions and site configurations that render the structural stormwater BMP ineffective to an extent where the conditions of section 7.03.B. are no longer met. These provisions will create a requirement for the implementation of new structural stormwater BMPs if the existing structural stormwater BMP can no longer meet the conditions of section 7.03.B.

SECTION 8.00 NOTIFICATION OF RELEASES

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 are resulting or may result in illegal discharges or pollutants discharging into stormwater, the MS4, or waters of the State, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of a release of hazardous materials, said person shall immediately notify emergency response agencies and the Minnesota State Duty Officer.

In the event of a release of nonhazardous materials, said person shall notify the County Transportation Department in person or by phone or through the County Transportation "report a roadway concern" website no later than the next business day. Contact information is:

Phone: (952) 891-7000

Website: <https://www.co.dakota.mn.us/Environment/WaterQuality/Stormwater/Pages/stormwater-pollution-prevention-program.aspx>

Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the department within three business days of the in person or 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 3 years.

SECTION 9.00 ORDINANCE VIOLATIONS

For violations of this ordinance, including the provisions of the general NPDES permit for construction activities (as referenced in Section 7.03), the County may take the following actions: issuance of a warning notice; issuance of a notice of violation; issuance of a citation or complaint; abatement; issuance of a cease and desist order; suspension or termination of MS4 access; execution of a stipulation agreement; and/or commencement of other civil proceedings.

9.01 WARNING NOTICE.

The Department may issue a warning notice to any person alleged to have committed a violation of this ordinance. A warning notice shall serve to place the person on notice that compliance with specified ordinance requirements must occur to avoid additional enforcement actions. Service of the warning notice shall be made by first class mail or by personal service. The warning notice shall contain:

- A. A list of violations, including the ordinance section(s), rule(s), or statute(s) violated, the factual basis for the violations, and the date(s) of the violations.
- B. The specific actions required to be taken by the person to correct the violations and the timeframes within which the corrections are required to be made.
- C. A general description of the additional administrative and judicial enforcement actions that could be pursued by the department if the alleged violations are not satisfactorily corrected.

9.02 NOTICE OF VIOLATION (NOV).

The Department may issue a notice of violation (NOV) to any person alleged to have committed a violation of this ordinance. A NOV shall serve to place the person on notice that compliance with specified ordinance requirements must occur to avoid additional enforcement actions. Service of the NOV shall be made by certified mail or by personal service. The notice of violation shall contain:

- A. Findings of fact with corresponding conclusions of law, which describe the alleged violations and the corresponding ordinance section(s), statute(s), and/or rule(s) which are allegedly violated.
- B. Orders for corrective actions, which describe specifically how each alleged violation must be corrected and the timeframes within which the corrections are required to be made.
- C. Notice of further action, which describes in general terms, the additional administrative and judicial enforcement actions that could be pursued by the Department if the alleged violations are not satisfactorily corrected.

9.03 CITATIONS.

Any person who fails to comply with the provisions of this ordinance is guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

An authorized representative of the Department shall have the power to issue citations for violations of this ordinance, but shall not be permitted to physically arrest or take into custody any violator.

- A. **ISSUANCE OF THE CITATION.** Citations shall be issued to the person alleged to have committed the violation (alleged violator) either by personal service or by certified mail. In the case of a public, private, or municipal corporation, the citation shall be issued to any officer or agent with express or implied authorization to accept such issuance.
- B. **NOTICE OF CITATION.** Citations shall be made out in quadruplicate (4). One copy shall be issued to the alleged violator; one copy shall be filed with the Department; one copy shall be filed with the Dakota County Attorney's Office; and one copy shall be filed with the Dakota County District Court, First Judicial District.
- C. **FORM OF CITATION.** Citations shall be on such form(s) as approved by the Department and shall contain at least the following:
 - 1. The name and address of the alleged violator and when known, the owner or person in charge of the premises at which the violation occurred;
 - 2. The date, time (if known) and place of violation;
 - 3. A short description of the violation followed by reference to the section of this ordinance violated;
 - 4. The name of the person issuing the citation;
 - 5. The date, time, and place at which the alleged violator shall appear in court and notice that if such person does not appear, a warrant may be issued for such person's arrest; and
 - 6. Such other information as the court may specify.
- D. **COURT APPEARANCE.** The alleged violator shall appear at the place and on the date and time specified in the citation and either:
 - 1. Plead guilty to the citation and meet the requirements of the sentence imposed by the court; or
 - 2. Plead not guilty to the citation and schedule a court date for further hearing or trial.
- E. **FAILURE TO APPEAR ON THE CITATION.** If the alleged violator does not appear at the place and on the date and time specified on the citation, the court may issue a warrant for the person's arrest.
- F. **COMPLAINT.** A complaint may be issued in lieu of a citation as determined by the Dakota County Attorney's Office.

- G. **AIDING AND ABETTING.** As set forth in Minn. Stat. § 609.05, a person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime. A person liable for such crime is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended. A person who intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit a crime and thereafter abandons that purpose and makes a reasonable effort to prevent the commission of the crime prior to its commission is not liable if the crime is thereafter committed.

A person liable under this section may be charged with and convicted of the crime although the person who directly committed the crime has not been convicted, or has been convicted of some other degree of the crime or of some other crime based on the same act, or if the person is a juvenile who has not been found delinquent for the act. For purposes of this section, a crime also includes an act committed by a juvenile that would be a crime if committed by an adult.

9.04 ABATEMENT.

In the event of an emergency abatement by the County as described in section 9.04(E) below, or if a property owner does not complete corrective actions within the timeframes stated in a NOV, a stipulation agreement or a court order, the department may abate the violations by entering the property and performing the corrective actions and recover the costs of the same from the property owner through the following procedures:

- A. **ABATEMENT NOTICE.** The Department shall serve an abatement notice on the property owner or occupant.
1. **Contents of Abatement Notice.** An abatement notice shall include the following:
 - a. Notice that the property owner has not completed the corrective actions within the time frames required in the NOV, stipulation agreement or court order. The NOV, stipulation agreement, or court order shall be attached to the abatement notice;
 - b. Notice that the department or its agent intends to enter the property and commence abatement of the conditions on the property that violate this ordinance in thirty (30) days following the service of the abatement notice;
 - c. Notice that the property owner must correct the violation(s) within thirty (30) days following service of the abatement notice to avoid any civil liability for the costs of inspection and abatement that the County may incur; and
 - d. A statement that if the property owner desires to appeal, the property owner must file a request for an appeal hearing with the County board that meets the requirements of section 9.04(B) below within ten (10) County working days of service of the abatement notice, exclusive of the day of service.
 2. **Service.** The abatement notice must be served on a property owner by certified mail or personal service. Service by certified mail shall be deemed complete upon mailing. If the property owner is unknown or absent and has no known representative upon whom the abatement notice can be served, the department shall post the abatement notice at the property on which the violation is located for a period of thirty (30) days prior to commencing abatement of the conditions on the property that violate this ordinance. The

department must send a copy of the abatement notice to the Dakota County Attorney's Office.

B. RIGHT TO APPEAL THE ABATEMENT NOTICE.

1. **Request for Hearing.** The property owner has the right to appeal the abatement notice. To appeal the abatement notice, the property owner must serve on the County Board a written request for a hearing stating the grounds for the appeal. The written request must be served on the County Board by personal service or certified mail with a copy to the department within ten (10) County working days of service of the abatement notice, exclusive of the day of service. Following the timely service of an appeal, the County Board shall set a time and place for a hearing pursuant to section 11.
2. **Stay of Notice of Abatement.** Pending the appeal hearing and final determination by the County Board, the department shall take no further action on the abatement notice.

C. ABATEMENT BY THE COUNTY. In the event a property owner does not abate the ordinance violation(s) or does not timely appeal the abatement notice, the Department may expend funds necessary to abate the violation(s) from the Environmental Management fund balance in accordance with the Dakota County Bid Grant and Contracting Policy with the following qualifications:

1. The Department's authorization for payment of funds from the Environmental Management fund balance is subject to the approval of the Director of the Environmental Management Department and the monetary limits for approval of fund expenditures by department heads. The Director of the Physical Development Division shall be notified of all such expenditures; and
2. The County Board must approve by resolution all abatement expenditures, regardless of the amount, with regard to tax forfeited property and publicly owned property. Such expenditures will be reimbursed to the Environmental Management fund at the discretion of the County Board.

D. RECOVERY OF ABATEMENT COSTS.

1. The Department may pursue recovery of all enforcement and abatement costs from the property owner by any means allowable by law. The costs may be assessed and charged against the real property on which the violations are located.
2. The Department shall keep a record of the enforcement and abatement costs and report all work done for which assessments are to be made, stating and certifying the description of the real property, lots or parcels involved and the amount assessable to each to the County Manager by September 1 of each year.
3. On or before October 1 of each year, the County Manager shall list the total unpaid charges for each abatement made against each separate lot or parcel to which they are attributable under this ordinance to the County Board. The County Board may spread the charges or any portion thereof against the real property involved as a special assessment for certification to the County Auditor and for collection.
4. The Department's fund balance shall be reimbursed by the recovered costs. The County Auditor shall give notice of such reimbursement to the Director of Physical Development, or designee.

E. EMERGENCY ABATEMENT BY THE COUNTY. Notwithstanding the requirements of section 10.04(A) and (B) in the event of an imminent threat to the public's health, safety, or welfare, the

Department is authorized to immediately enter property and abate violations of this ordinance and recover the costs thereof as set out in section 3.14(C) and (D). The Department shall attempt to give verbal notice of the abatement to the property owner immediately, if possible, and written notice within ten (10) County working days following the first date of entry upon the property to abate the violations. The property owner shall have the right to appeal the assessment of enforcement and abatement costs to the County Board pursuant to section 12.

9.05 SUSPENSION/TERMINATION OF MS4 ACCESS.

The Department may suspend or terminate MS4 access in accordance with section 11.00 below.

9.06 STIPULATION AGREEMENT.

The County and a person alleged to have violated provisions of this ordinance may voluntarily enter into a stipulation agreement whereby the parties to the agreement: identify conditions that require corrective action; agree on the corrective actions that must be performed by the person; and agree on the time frames in which the corrective actions must be completed. If the person fails to fulfill the requirement of the agreement, the County may seek compliance with the terms of the agreement through a court of competent jurisdiction or pursue other enforcement action allowed by this ordinance.

9.07 COMMENCEMENT OF CIVIL COURT ACTION.

In the event of a violation or a threat of violation of this ordinance, the County Board may institute appropriate civil actions or proceedings in any court of competent jurisdiction requesting injunctive relief, to prevent, restrain, correct or abate such violations or threatened violations. The County may recover all costs, including reasonable attorney's fees, incurred for enforcement of this ordinance.

SECTION 10.00 SUSPENSION/TERMINATION OF MS4 ACCESS

10.01 CEASE AND DESIST ORDER.

- A. If the Department finds that any person has violated or continues to violate any provision of this ordinance or any order issued hereunder and that the person's violation(s) has caused or contributed to an actual or threatened discharge to the MS4 or waters of the State which reasonably appears to present an imminent threat to the environment or the health or welfare of persons, the Department may issue an order to the person directing the person to immediately cease and desist any violation(s) and directing the person to immediately comply with all ordinance requirements and take any necessary corrective actions to properly address the violation(s), including immediately halting operations and/or terminating the discharge. The cease and desist order shall be made by personal service or by certified mail. Service by certified mail shall be deemed complete upon mailing.
- B. Any person served with a cease and desist order shall immediately comply and stop or eliminate the endangering discharge. In the event of a person's failure to immediately comply with the order, the Department may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the State, and/or endangerment to person or to the environment, including summary suspension or termination of the person's MS4 discharge access as provided in sections 10.02 and 10.04 below.

10.02 SUMMARY SUSPENSION.

- A If a person fails to comply with a cease and desist order issued in accordance with section 10.01 above, the Department may order summary suspension of the person's MS4 discharge access, upon notification to the Dakota County Attorney's Office and the County Board, subject to County Board ratification at its next meeting. Written notice of such summary suspension shall be made by personal service or by certified mail. Service by certified mail shall be deemed complete upon mailing. The written notice shall state the effective date of the summary suspension, the nature of the violation(s) requiring emergency action, the facts which support the conclusion that the violation(s) occurred and a statement that if the person desires to appeal, the person must file a request for an appeal hearing with the County Board within 10 County working days of service, exclusive of the day of service. The appeal hearing request shall be in writing stating the grounds for appeal and served on the County Board by personal service or by certified mail with a copy to the department within 10 County working days of service, exclusive of the day of service. Following timely service of a request for a hearing, the County Board shall set a time and place for the hearing pursuant to section 11.00.
- B. The summary suspension shall not be stayed pending an appeal to the County Board or an informal review by the Department Director, but shall be subject to dismissal upon a favorable re-inspection by the Department or favorable appeal to the County Board.

10.03 SUSPENSION RE-INSPECTIONS.

Upon written notification from the person that all violations for which a summary suspension was invoked have been corrected, the Department shall re-inspect the system, device, site or activity within a reasonable length of time, but in no case more than three County working days after receipt of the notice from the person. If the Department finds upon re-inspection that the violations constituting the grounds for the suspension have been corrected or removed, the Department shall immediately dismiss the suspension by written notice to the person, served personally or by certified mail, with a copy to the Dakota County Attorney's Office.

10.04 TERMINATION OF MS4 ACCESS.

- A. Any person discharging to the MS4 in violation of this ordinance may have its MS4 access terminated if such termination would abate or reduce an illegal or excessive discharge into the MS4. Termination may be achieved through revocation of County permits, the use of other administrative measures, or through the facilitation of physical disconnection from the MS4.
- B. Termination shall not occur earlier than 10 County working days from the time that written notice of termination from the Department is served on the person, or if a hearing is requested, until written notice of the County Board's action has been served on the person. The notice of termination shall be made by personal service or by certified mail. Service by certified mail shall be deemed complete upon mailing. Such written notice of termination shall contain the effective date of the termination, the nature of the violation(s) constituting the basis for the termination, the facts which support the conclusion that the violation(s) occurred and a statement that if the person desires to appeal, the person must file a request for an appeal hearing with the County Board within 10 County working days of service of the termination notice, exclusive of the day of service. The appeal hearing request shall be in writing stating the grounds for appeal and served on the County Board by personal service or by certified mail with a copy to the Department within 10 County working days of service of the termination notice, exclusive of the day of service. Following timely service of a request for a hearing, the County board shall set a time and a place for the hearing to be held pursuant to section 11.00.

SECTION 11.00 HEARINGS

Hearings requested under this ordinance shall be held before the County Board, or a hearing examiner as provided below, and shall be open to the public.

- A. **TIMEFRAME FOR HEARING.** Unless an extension of time is requested by the appellant in writing directed to the chair of the County Board and is granted, the hearing will be held no later than 45 calendar days after the date of service of request for a hearing, exclusive of the date of such service. In any event, such hearing shall be held no later than 90 calendar days after the date of service of request for a hearing, exclusive of the date of such service.
- B. **NOTICE OF HEARING.** The County Board shall mail notice of the hearing to the appellant, with a copy to the department and the Dakota County Attorney's Office, at least 15 County working days prior to the hearing. Such notice shall include:
 - 1. A statement of time, place and nature of the hearing.
 - 2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
 - 3. A reference to the particular section of the ordinance and rules involved.
- C. **HEARING EXAMINER.** The County Board may by resolution appoint an individual, to be known as the hearing examiner, to conduct the hearing and to make findings of fact, conclusions and recommendations to the County Board. The hearing examiner shall submit the findings of fact, conclusions and recommendations to the County Board in a written report and the County Board may adopt, modify or reject the report.
- D. **CONDUCT OF THE HEARING.** The appellant and the department may be represented by counsel. The Department, the appellant, and additional parties, as determined by the County Board or hearing examiner, in that order, shall present evidence. All testimony shall be sworn under oath. All parties shall have full opportunity to respond to and present evidence, cross-examine witnesses, and present argument. The County Board or hearing examiner may also examine witnesses.
- E. **BURDEN OF PROOF.** The Department shall have the burden of proving its position by a preponderance of the evidence, unless a different burden is provided by substantive law, and all findings of fact, conclusions, and decisions by the County Board shall be based on evidence presented and matters officially noticed.
- F. **ADMISSION OF EVIDENCE.** All evidence that possesses probative value, including hearsay, may be admitted if it is the type of evidence on which prudent persons are accustomed to rely in the conduct of their serious affairs. Evidence that is incompetent, irrelevant, immaterial or unduly repetitious may be excluded. The hearing shall be confined to matters raised in the Department's written notice of suspension, summary suspension, revocation, or denial of a permit, or in the written request for a hearing.
- G. **PRE-HEARING CONFERENCE.** At the written request of any party, or upon motion of the County Board or hearing examiner, a pre-hearing conference shall be held. The pre-hearing conference shall be conducted by the hearing examiner, if the County Board has chosen to use one, or by a designated representative of the County Board. The pre-hearing conference shall be held no later than five County working days before the hearing. The purpose of the pre-hearing conference is

to:

1. Clarify the issues to be determined at the hearing.
 2. Provide an opportunity for discovery of all relevant documentary, photographic or other demonstrative evidence in the possession of each party. The hearing examiner or County Board's representative may require each party to supply a reasonable number of copies of relevant evidence capable of reproduction.
 3. Provide an opportunity for discovery of the full name and address of all witnesses who will be called at the hearing and a brief description of the facts and opinions to which each is expected to testify. If the names and addresses are not known, the party shall describe them thoroughly by job duties and involvement with the facts at issue.
 4. If a pre-hearing conference is held, evidence not divulged as provided above shall be excluded at the hearing unless the party advancing the evidence took all reasonable steps to divulge it to the adverse party prior to the hearing and:
 - a. The evidence was not known to the party at the time of the pre-hearing conference; or
 - b. The evidence is in rebuttal to matters raised for the first time at or subsequent to the pre-hearing conference.
- H. **FAILURE TO APPEAR.** If the appellant fails to appear at the hearing, appellant shall forfeit any right to a hearing before the County Board or hearing examiner. Appellant's failure to appear shall also be deemed as a waiver of appellant's right to appeal the department's decision and the Department's decision shall stand.
- I. **APPEAL OF COUNTY BOARD DECISION.** Any appellant aggrieved by the decision of the County Board may appeal that decision to any court with appropriate jurisdiction.

SECTION 12.00 SEVERABILITY

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

SECTION 13.00 REMEDIES CUMULATIVE

No remedy set forth in this ordinance is intended to be exclusive but each such remedy shall be cumulative and in addition to other remedies now or hereafter existing at law or in equity. No delay in the exercise of any remedy for violation of this ordinance shall later impair or waive any such right or power of the County.


SECTION 14.00 EFFECTIVE DATE

This ordinance shall be in full force and effect from and after its passage and publication according to law.


ATTEST:
COUNTY OF DAKOTA, STATE OF MINNESOTA



Matt Smith
County Manager
Date: 1-24-2017



Mike Slavik, Chair
Dakota County Board of Commissioners
Date: 1/24/17

 1-19-17

Approved as to Form/Date
Helen R. Brosnahan
Assistant County Attorney

 1-29-17

Approved as to Execution/Date
Helen R. Brosnahan
Assistant County Attorney

**BOARD OF COUNTY COMMISSIONERS
DAKOTA COUNTY, MINNESOTA**

November 15, 2016
Motion by Commissioner Egan

Resolution No. 16-554
Second by Commissioner Workman

Adopt Proposed Amendments To Dakota County Ordinance No. 132, Dakota County Storm Sewer System

WHEREAS, Ordinance No. 132 was adopted by the County Board on September 11, 2012 (Resolution No. 12-423) to comply with municipal separate storm sewer system (MS4) requirements and to protect the health and general welfare of Dakota County residents; and

WHEREAS, Dakota County is a small MS4 community regulated by the Minnesota Pollution Control Agency (MPCA) through the General National Pollutant Discharge Elimination System (NPDES) Permit for MS4s; and

WHEREAS, the MPCA reissued the General NPDES Permit for MS4s in 2013 to incorporate additional requirements for local regulatory mechanisms to control construction stormwater discharges, improve post-construction stormwater management, and meet other MS4 obligations; and

WHEREAS, Dakota County Ordinance No. 132 does not show the applicable MS4 area to which the ordinance applies; and

WHEREAS, Dakota County Ordinance No. 132 does not adequately address the new requirements for construction stormwater and permanent stormwater management; and

WHEREAS, proposed amendments to the ordinance address the previous deficiencies and provide clarity through additional language and the inclusion of a link to an MS4 area map; and

WHEREAS, the recommended ordinance amendments have been reviewed by the County Attorney's Office, and stakeholders will have the opportunity to comment during the public notice period; and

WHEREAS, notice of the public hearing was published in the newspaper of record for Dakota County on November 3rd, 2016; and

WHEREAS, the Dakota County Board of Commissioners wishes to make these amendments effective immediately upon adoption; and

WHEREAS, the Dakota County Board of Commissioners held a public hearing at 9:00 a.m. on November 15, 2016, in the Boardroom, Dakota County Administration Center, 1590 Highway 55, Hastings, Minnesota, for the purpose of receiving comments on the proposed amendment to Ordinance No. 132, Dakota County Storm Sewer System.

**STATE OF MINNESOTA
County of Dakota**

	VOTE
Slavik	Yes
Gaylord	Yes
Egan	Yes
Schouweller	Yes
Workman	Yes
Holberg	Yes
Gerlach	Yes

I, Jennifer Reynolds, Clerk to the Board of the County of Dakota, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Dakota County, Minnesota, at their session held on the 15th day of November, 2016, now on file in the County Administration Department, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal of Dakota County this 22nd day of November, 2016.



Clerk to the Board

NOW, THEREFORE, BE IT RESOLVED, That the Dakota County Board of Commissioners hereby adopts the amendment to Dakota County Ordinance No. 132, Dakota County Storm Sewer System, as presented on November 15, 2016; and

BE IT FURTHER RESOLVED, That staff shall publish, distribute, and file the amended ordinance pursuant to Minn. Stat. § 375.51.

STATE OF MINNESOTA
County of Dakota

	VOTE
Slavik	Yes
Gaylord	Yes
Egan	Yes
Schouweiler	Yes
Workman	Yes
Holberg	Yes
Gerlach	Yes

I, Jennifer Reynolds, Clerk to the Board of the County of Dakota, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Dakota County, Minnesota, at their session held on the 15th day of November, 2016, now on file in the County Administration Department, and have found the same to be a true and correct copy thereof.

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Clerk to the Board