

CHAPTER 103

ILLCIT DISCHARGE and CONNECTION

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103.01 PURPOSE. The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Grimes through the regulation of non-storm water discharges to the storm drainage 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 municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the MS4 by storm water discharges by any user.
- (2) To prohibit illicit connections and discharges to the MS4.
- (3) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

103.02 DEFINITIONS. For use in these chapters, unless the context specifically indicates otherwise, the following terms are defined:

1. “Allowable Non-Storm Water” – Discharges from fire fighting activities, fire hydrant flushing, potable water sources, waterline flushing, uncontaminated groundwater, foundation or footing drains where flows are not contaminated with process materials such as solvents, springs, riparian habitats, wetlands, irrigation water, air conditioning condensate, exterior building wash water when no detergents or other surfactants are used and pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred and when no detergents or other surfactants are used.
2. “Approval” - Formal, written consent by the City Council, or authorized representative of the City.
3. “Best Management Practices (BMPs)” - Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. Common BMPs are

described in the *Iowa SUDAS Standards and Specifications for Erosion and Sediment Control* and the recommendations provided on the SUDAS website: www.iowasudas.com. Those BMPs covered by SUDAS are not meant to be a comprehensive list of acceptable BMPs. BMPs must be adapted to the site and can be adopted from other sources.

4. “City” - City of Grimes, Iowa.
5. “City Council” - City Council of Grimes, Iowa.
6. “COSESCO” - Construction Site Erosion and Sediment Control
7. “CWA” – The Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972).
8. “Department” – The Iowa Department of Natural Resources (IDNR) or an authorized representative.
9. “Discharge” – The release of water and any elements, compounds and particles contained with or upon, from property owned or controlled by an individual, individuals, or entity.
10. “Hazardous Materials” – Any material, including any substance, waste, or combination thereof, which 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.
11. “Illegal Discharge” - Any direct or indirect non-storm water discharge to the storm drain system except as exempted in this ordinance.
12. “Illicit Connection” – An illicit connection is defined as either of the following:
 - a. Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain 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 drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,

- b. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

13. “Municipal Separate Storm Sewer System” (MS-4) - The conveyance or system of conveyances including storm sewers, roadways, road with drainage systems, catch basins, curbs, gutters, ditches, constructed channels, and storm drains owned or operated by the permittee.

14. “National Pollutant Discharge Elimination System (NPDES)” - Is the program for issuing, modifying, revoking, reissuing, terminating, monitoring and enforcing permits under the Clean Water Act (Sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Sections 1317, 1328, 1342, and 1345.

15. “Non-Storm Water Discharge” – Any discharge to the storm drain system that is not composed entirely of storm water.

16. “Owner” - The person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease holder, the party or individual identified as the leaseholder; or the contracting government agency responsible for the construction activity.

17. “Permittee” - A person or persons, firm or government agency or other institution that signs a permit which has not expired nor been revoked.

18. “Point Source” – A discernible confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

19. “Pollutant” – 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, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, 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.

20. “Property” – includes but is not limited to real estate, fixtures, facilities and premises of any kind located upon, under or above the real estate.
21. “Responsible Party” – is one or more persons that control or are in possession of or own property. Responsible parties shall be jointly and severally responsible for compliance with this ordinance and jointly and severally liable for any illicit discharge from the property controlled, possessed or owned.
22. “Sediment Control” - Methods employed to prevent sediment from leaving the site. Sediment control practices include but are not limited to silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection and temporary or permanent sedimentation basins.
23. “Significant Materials” – Includes but is not limited to: raw materials, fuels, materials such as solvents, detergent, and plastic pellets, finished materials such as metallic products, raw materials used in food processing or production: hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); any chemical the facility is required to report pursuant to Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.
24. “Stormwater” - Storm water runoff, snow melt runoff and surface runoff and drainage. (NOTE: Agricultural storm water runoff is excluded by federal regulation 40 CFR 122.3 (e) as amended through June 15, 1992).
25. “Storm Water Discharge Associated with Industrial Activity” – The discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified or activities identified in paragraphs (i) through (x) of this definition, the term includes but is not limited to storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waters (as defined at 40 CFR Part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment; storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all areas (except

access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purpose for this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (i) to (xi) of this definition include those facilities designated under 122.26 (a)(91)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

- i. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards that are exempted under category (xi) of this definition);
- ii. Facilities classified as standard industrial classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 31, 32 (except 323), 33, 3441, and 373;
- iii. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11 (1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations that have been released from applicable State or Federal reclamation requirements (after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products or waste products located on the site of such operation; inactive mining operations are mining sites that are not being actively mined, but that have an identifiable owner/operator;
- iv. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

- v. Landfills, land application sites, and operational dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle d of RCRA;
 - vi. Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but not limited to those classified as Standard Industrial Classification 5015 and 5093.
 - vii. Steam electric power generating facilities, including coal handling sites.
 - viii. Transportation facilities classified as Standard Industrial Classification 40, 41, 42 (except 4221-25), 43, 44, 45 and 5171 that have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication, equipment cleaning operations, airport deicing operations, or that are otherwise identified under paragraphs (i) to (vii) or (ix) to (xi) of this subsection are associated with industrial activity;
- ix. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and that are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR Part 503;
- x. Construction activity including clearing, grading and excavation activities that result in the disturbance of 1 acre or more of total land area or which result in the disturbance of less than 1 acre but are part of a larger common plan of development or sale of 1 acre or more;
- xi. Facilities under Standard Industrial Classification 20, 21, 22, 23, 265, 267, 27, 283, 285, 30, 31 (except 311) 323, 349 (except

3441), 35, 36, 37 (except 373), 38, 39, 422-25, (and that are not otherwise included within categories (i) to (x)).

26. "Surface Water or Waters" - All streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses and irrigation systems whether natural or artificial, public or private.
27. "Waters of the State" Iowa Code 455B.381 (10): "Waters of the state" - Rivers, streams, lakes and any other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common. "Waters of the state" includes waters of the United States lying within the state.

103.03 FINDINGS.

1. The U.S. EPA's National Pollutant Discharge Elimination System ("NPDES") permit program (Program) administered by the Iowa Department of Natural Resources ("IDNR") requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System (MS4). The City of Grimes is subject to the Program and is required to obtain, and has obtained, an MS4 Permit; the City's MS4 Permit is on file at the office of the city clerk and is available for public inspection during regular office hours.
2. As a condition of the City's MS4 Permit, the City is obliged to adopt and enforce an ILLICIT DISCHARGE and CONNECTION to STORM SEWER SYSTEM ordinance.
3. No state or federal funds have been made available to assist the City in administrating and enforcing the Program. Accordingly, the City shall fund its operations under this ordinance entirely by charges imposed on the owners of properties which are made subject to the Program by virtue of state and federal law, and/or other sources of funding established by a separate ordinance.
4. Terms used in this ordinance shall have the meanings specified in the Program.
5. Nothing in this ordinance shall be deemed to relieve a responsible party subject to an IDNR-issued industrial discharge permit or any other federal, state or City permit, statute, ordinance or rule from any obligation imposed by such permit, statute, ordinance or rule if any such obligation is greater than any obligation imposed by this ordinance.

103.04 ILLICIT DISCHARGES PROHIBITED.**1a. Residential**

- Septic systems
- Oil, chemicals
- Illegal connections to storm sewer
- Silt

1b. Commercial / Industrial

- All items included in residential
- Concrete wash out water
- Filling stations
- Outdoor washing
- Disposal of food waste
- Dumpster management
- Other items the City determines should be included

2. Any discharge into the City's storm sewer system prohibited by the City's MS4 Permit, the terms of which are hereby incorporated by reference, shall be deemed an "illicit discharge" in violation of this ordinance.

3. Sediment pollution originating from excessive erosion rates on a construction site not otherwise subject to the City's COSESCO ordinance or sediment pollution entering a municipal storm sewer that causes a water quality violation as determined by the DNR shall be deemed an illicit discharge in violation of this ordinance.

103.05 ILLICIT CONNECTIONS PROHIBITED.

1. For Purposes of this ordinance, an "illicit connection" to the City's storm sewer system is any physical connection or other topographical or other condition, natural or artificial, which is not specifically authorized by ordinance or written rule of the City, which causes or facilitates, directly or indirectly, an illicit discharge.

2. The construction, use, maintenance or continued existence of any illicit connection shall constitute a violation of this ordinance.

3. 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 connection.

103.06 INDUSTRIAL DISCHARGES.

1. Any responsible party subject an industrial NPDES discharge permit issued by the IDNR shall comply with all provisions of such permit.

2. Proof of compliance with said permit may be required in a form acceptable to the enforcement officer prior to discharges to the storm sewer system authorized by said permit.

103.07 ILLICIT DISCHARGE DETECTION AND REPORTING; COST RECOVERY.

1. All detection activities permitted under this ordinance shall be conducted by the City Appointed Representative or his or her designee, hereinbefore and after referred to as the “enforcement officer.”
2. The City shall not be responsible for the direct or indirect consequences to persons or property of an illicit discharge, or circumstances which may cause an illicit discharge, undetected by the City.
3. Every responsible party has an absolute duty to monitor conditions on property owned or controlled by them, to prevent all illicit discharges, and to report to the enforcement officer illicit discharges which the responsible party knows or should have known to have occurred. Failure to comply with any provision of this ordinance is a violation of this ordinance.
 - a. Notwithstanding other requirements of law, as soon as any responsible party has information of any known or suspected illicit discharge, the responsible party shall immediately take all necessary steps to ensure the discovery, containment, and cleanup of such discharge at the responsible party’s sole cost.
 - b. If the illicit discharge consists of hazardous materials, the responsible party shall also immediately notify emergency response agencies of the occurrence via emergency dispatch services.
 - c. If the illicit discharge 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 three years.
 - d. A report of an illicit discharge shall be made in person or by phone or facsimile or email to the enforcement officer immediately but in any event within twenty-four (24) hours of the illicit discharge; notifications in person or by phone shall be confirmed by written notice addressed and mailed or emailed to the enforcement officer within twenty-four (24) hours of the personal or phone notice.
4. Any person or entity shall also report to the City any illicit discharge or circumstances which such person or entity reasonably believes pose a risk of an illicit discharge.
5. Upon receiving a report pursuant to the previous subsections, or otherwise coming into possession of information indicating an actual or imminent illicit discharge, the enforcement officer shall conduct an inspection of the site as soon as reasonably possible and thereafter shall provide to the responsible party, and any third party reporter, a written report of the conditions which may cause or which have already caused an illicit discharge. The responsible party shall

immediately commence corrective action or remediation and shall complete such corrective action or remediation within twenty-four (24) hours.

6. The enforcement officer shall be permitted to enter and inspect property subject to regulation under this section as often as is necessary to determine compliance with this section. If a responsible party has security measures that require identification and clearance before entry to its property or premises, the responsible party shall make the necessary arrangements to allow access by the enforcement officer. By way of specification but not limitation:
- a. A responsible party shall allow the enforcement officer ready access to all parts of the property for purposes of inspection, sampling, examination and copying of records related to a suspected, actual, or imminent illicit discharge, and for the performance of any additional duties as defined by state and federal law.
 - b. The enforcement officer shall have the right to set up on any property such devices as are necessary in the opinion of the enforcement officer to conduct monitoring and/or sampling related to a suspected, actual or imminent illicit discharge.
 - c. The enforcement officer shall have the right to require any responsible party at responsible party's sole response to install monitoring equipment and deliver monitoring data or reports to the enforcement officer as the enforcement officer directs. The sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the responsible party at responsible party's sole expense. All devices shall be calibrated to ensure their accuracy.
 - d. Any temporary or permanent obstruction to safe and easy access to property to be inspected and /or sampled shall be promptly removed by the responsible party at the written or oral order of the enforcement officer and shall not be replaced. The costs of clearing such access shall be borne by the responsible party.
 - e. An unreasonable delay in allowing the enforcement officer access to a property is a violation of this ordinance.
 - f. If the enforcement officer has been refused access to any part of the property from an illicit connection and/or illicit discharge to a municipal storm sewer is occurring, suspected or imminent, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance or there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the enforcement officer may seek issuance of a search warrant from any court of competent jurisdiction.

7. If it is determined that an illicit discharge is imminent or has occurred, the actual administrative costs incurred by the City in the enforcement of this ordinance shall be recovered from the responsible party. The enforcement officer shall submit an invoice to the responsible party reflecting the actual costs and wages and expenses incurred by the City for the enforcement activities undertaken. Failure to pay charges invoiced under this ordinance within thirty (30) days of billing shall constitute a violation of this ordinance.

103.08 ENFORCEMENT BY STOP WORK ORDER.

1. Whenever the enforcement officer finds any violation of this ordinance, the enforcement officer may issue a stop work order as an alternative to enforcement under Section 103.10 below. Such stop work order is subject to the following conditions:

- a. The stop work order shall be in writing and shall be given to the applicant or the applicant's agent.
- b. Upon issuance of the stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order.
- c. The stop work order may be issued for a reasonable period to be determined by the City during which time the applicant will be allowed to correct the identified violations.
- d. The applicant may reject the order by notifying the City, in writing, within five (5) business days of receipt of the stop work order. Upon receipt of such written rejection, the stop work order shall be deemed null and void and the City may undertake enforcement pursuant to Section 103.10 below.

2. If the violations cannot be corrected within the time frame determined by the City, applicant may seek an extension of stop work order for such additional period of time as allowed by the enforcement officer.

3. If the applicant does not reject the stop work order and corrects the identified violations within the designated period, the applicant may immediately commence further activity at the site and no further penalties or orders shall issue against the applicant for the violations identified in the previously issued stop work order. Prior to commencing further activity at the site, the applicant shall establish correction of the violations by providing to the office of the enforcement officer, a written statement, signed under oath, that the violations have been corrected with a description, including photographs when appropriate, of the action taken to correct the violations.

103.09 WATERCOURSE PROTECTION. Every Person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property below the elevation of the 100 year flood free of trash, debris, grass clippings or other organic wastes and other obstacles that would

pollute, contaminate, or significantly alter the quality of water flowing through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

103.10 ENFORCEMENT BY LEGAL OR ADMINISTRATIVE ACTION.

1. Violation of any provision of this ordinance may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this ordinance.
2. Violation of any provision of this ordinance may also be enforced as a municipal infraction within the meaning of §364.22, pursuant to the City's municipal infraction ordinance.
3. Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney.

103.11 APPEAL.

1. Administrative decisions by city staff and enforcement actions of the enforcement officer may be appealed by the applicant to the City Council pursuant to the following rules:
 - a. The appeal must be filed in writing with the city clerk within twenty (20) business days of the decision or enforcement action.
 - b. The written appeal shall specify in detail the action appealed from, the errors allegedly made by the enforcement officer giving rise to the appeal, a written summary of all oral and written testimony the applicant intends to introduce at the hearing, including the names and addresses of all witnesses the applicant intends to call, copies of all documents the applicant intends to introduce at the hearing, and the relief requested.
 - c. The enforcement officer shall specify in writing the reasons for the enforcement action, a written summary of all oral and written testimony the enforcement officer intends to introduce at the hearing, including the names and addresses of all witnesses the enforcement officer intends to call, and copies of all documents the enforcement officer intends to introduce at the hearing.
 - d. The city clerk shall notify the applicant and the enforcement officer by ordinary mail, and shall give public notice in accordance with Chapter 21, Iowa Code, of the date, time and place for the regular or special meeting of the city council at which the hearing on the appeal shall occur. The hearing shall be scheduled for a date not less than four (4) nor more than twenty (20) days after the filing of the appeal. The rules of evidence and procedure, and the

standard of proof to be applied, shall be the same as provided by Chapter 17A, Code of Iowa. The applicant may be represented by counsel at the applicant's expense. The enforcement officer may be represented by the city attorney or by an attorney designated by the city council at City expense.

2. The decision of the city council shall be rendered in writing and may be appealed to the Iowa District Court.