



OFFICE MEMORANDUM

MAINTENANCE MEMO
MM 2003-06

DATE: September 16, 2003

TO: Region Associates with Maintenance Responsibilities
Region Superintendents

FROM: Calvin Roberts
Engineer of Maintenance

SUBJECT: Illicit Discharge Elimination Program Procedures

Attached is a September 10, 2003 memorandum from Leon Hanks, Chief Administrative Officer and Larry Tibbits, Chief Operations Officer to the Regions concerning the procedures associated with the Illicit Discharge Elimination Program. After reading this information it may appear to pertain mostly to construction projects. However, any time a maintenance crew is working on a storm sewer or drainage ditch they should be aware of these procedures. If one of your crews, or their county counter parts, finds what they believe to be an unauthorized discharge they should immediately contact the Region Storm Water Coordinator.

If you have any questions about these procedures please contact your Region Storm Water Coordinator.

Calvin Roberts
Engineer of Maintenance
(Signature on file)



OFFICE MEMORANDUM

DATE: September 10, 2003

TO: Region Engineers Calvin Roberts
John Friend Mark VanPortfleet
John Polasek Matt DeLong
Brenda O'Brien Susan Mortel

FROM: Leon Hank
Chief Administrative Officer

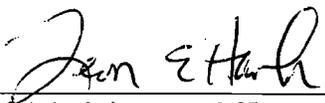
Larry Tibbits
Chief Operations Officer

SUBJECT: Illicit Discharge Elimination Program Procedure

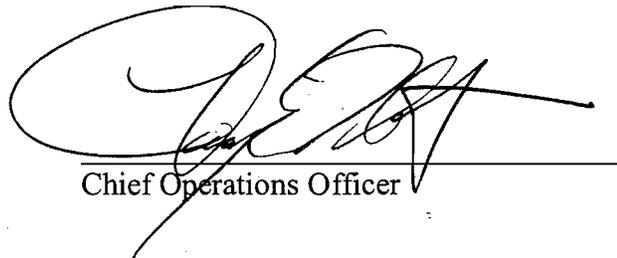
Attached is the final approved procedural guidance on the Michigan Department of Transportation's (MDOT's) Illicit Discharge Elimination Program (IDEP). The IDEP is a required element of MDOT's storm water management program. This procedure was developed by MDOT staff from the Regions, Planning and Highway Bureaus with input from the MDOT MS4 Team. The procedural concepts have been approved by the Environmental Committee.

Although the procedure was developed as part of the Utilities and Permits Section Construction Permit Manual, the roles and responsibilities described in this procedure extend to many different operating areas of the Department. We are directing that this procedure be incorporated into operating guides, manuals or other documents as appropriate to each applicable operating unit of MDOT where IDEP responsibilities exist in the manner best suited to ensure that staff are aware of this procedure and will have access to the information.

Question on this procedure can be directed to region storm water coordinators or to Seth Phillips, MDOT's Storm Water Program Manager.



Chief Administrative Officer



Chief Operations Officer

Attachment

cc: MS4 Team Members
Polly Kent
Eileen Phifer
Rob Beckon

**ILLICIT DISCHARGES INTO MDOT
STORM WATER DRAINAGE SYSTEMS**

September 4, 2003

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Purpose

Environmental contamination that migrates into MDOT's storm sewer system *may* affect MDOT's statewide National Pollution Discharge Elimination System (NPDES) storm water discharge permit, such that MDOT can be cited for violations; even though MDOT is not responsible for causing the contamination. Therefore, the following instructions shall be utilized when MDOT receives information or referrals regarding alleged illicit connections or discharges to MDOT storm sewer systems.

Authority

1925 PA 368, Highway Obstructions and Encroachments; Use of Highway by Public Utilities

General Information

Record Keeping

It is very important to record all information, including dates, times, and parties involved. Accurate field notes should be maintained on all items and information.

Timeliness

The complaint or referral must be investigated within a reasonable time frame. Failure to respond within a reasonable time frame can jeopardize future enforcement actions, should they become necessary.

**Scenarios where Illicit
Discharges and Connections
May Be Encountered**

Illicit discharges/connections will be encountered in three ways. They will be identified based on screening activities pursuant to MDOT's storm water discharge permit. They will be discovered as a result of complaints or referrals from other agencies or the public. They will also be encountered during construction activities. A separate section at the end of this procedure describes how to address those found during construction activities.

For Illicit Discharges/Connections Not Found During Construction:

**Field Inspector
Responsibility**

The Region Resource Specialist, utilities engineer, or other individual as designated by the Region Engineer shall be responsible for coordinating the investigation to confirm an illicit discharge/connection exists and the source of that connection/discharge. The designated staff shall also prepare "Notice and Order to Remove Encroachment" forms and letters as described later in this procedure, and make recommendations for future actions by using the following procedures and the MDOT

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IDEP Field Protocol Manual. If MDOT has hired a consultant to conduct investigations and evaluations of illicit connections/discharges, the MDOT staff indicated above should coordinate with the MDOT Storm Water Program Manager to have that consultant conduct necessary investigations. In all cases, if investigation of a discharge appears to be of an emergency nature, MDOT staff will contact the PEAS system to notify DEQ of the emergency. If possible, MDOT staff will also attempt to make direct contact with appropriate DEQ staff to report the emergency.

Complaint Documentation

The following information should be documented as applicable:

- Date of complaint/referral
- Principal parties involved
- Description (drain, storm sewer)
- Location
- Address
- Complexity (multiple or single points of discharge)
- Referral name, if any
- Connection location related to ROW

If a municipality is involved, contact shall be made with the appropriate municipal storm water system manager as soon as possible to coordinate complaint investigation.

**Complaint Validity &
Analysis**

The validity of the complaint shall be determined by the field inspector or MDOT consultant.

Complaint not Justified

If the information or referral is not justified, further action is not warranted. A written response shall be sent to the party making the referral, if any, and all documentation shall be filed at the Region/TSC and copied to MDOT's Storm Water Program Manager for reporting to DEQ. If a consultant conducts the investigation, the consultant shall document its findings to the MDOT staff requesting the investigation. That documentation shall be retained at the Region/TSC and copied to MDOT's Storm Water Program Manager for reporting to DEQ.

Complaint Justified

If, during the initial site investigation, it appears that there may be an illicit connection/discharge into MDOT's storm water system, further investigation is warranted. MDOT staff, or, if the investigation is being done by a consultant, the consultant, shall investigate in

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accordance with the MDOT IDEP Field Protocol Manual. Any analysis of the alleged illicit discharge characteristics shall be documented.

If investigation of an illicit connection/discharge requires activities on property outside of the MDOT right of way, MDOT staff will seek appropriate permission from relevant property owners for entry onto those properties to complete the investigation. If permission is granted, the permission will be documented and the investigation work will be completed as above. If permission is not obtained, that refusal will be documented and MDOT staff will notify the appropriate DEQ staff by letter (See attached Example A.) that access was refused and to request DEQ's assistance in gaining access to necessary properties for investigation purposes. The MDOT Storm Water Program Manager is to be copied on all correspondence.

If sufficient information has been gathered from investigations already performed to form a basis as to the likely source of the illicit discharge, letters will be sent to that party as indicated in the compliance section of this procedure seeking removal of the discharge/connection. If information gathered from the investigation is insufficient to determine the source of the illicit discharge/connection or DEQ is unable to assist in gaining access to necessary off ROW properties to allow the investigation to be completed, MDOT staff will document these facts and will refer the matter by letter (see attached Example B.) to the DEQ and any appropriate local agencies for further investigation and correction. A copy will be provided to the MDOT Storm Water Program Manager for reporting to DEQ.

**Illicit Connection/Discharge
is Confirmed**

When an illicit connection/discharge is confirmed, the following procedures shall be followed to eliminate the illicit connection/discharge:

1.

Notice and Order to Remove Encroachment

If the investigation confirms that an illicit connection/discharge does exist and the probable source of the discharge is identified, then the owner of the discharging facility shall be sent a letter by certified mail, return receipt requested (See attached Example C.) along with

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a completed "Notice and Order to Remove Encroachment" form (Form 2217, attached). If the investigation does not confirm the probable source of the discharge, Example letter C shall be sent to the owner of that portion of the storm water conveyance that connects to MDOT's storm water system and appears to be conveying the illicit discharge to MDOT's storm water system. The letter and form should be signed by the TSC Manager or Region Engineer. The notice shall describe the violation, provide specific response dates, compliance dates and provide a penalty section.

If the owner responds in a timely fashion to the notice, indicating a desire to comply with the conditions indicated in the notice, the "Compliance Section" of this procedure shall be used as a guide to provide specific removal and closure information to the owner.

If the owner responds indicating that some other party is the owner of the storm water conveyance in question, a letter as indicated above will be sent to that party as outlined herein.

If the owner does not respond to the notice, or indicates an intent not to comply with the conditions indicated in the notice, a second letter and notice should be sent, certified mail, return receipt requested. (See attached Example D.) If there is no response to the second notice or the respondent indicates it will not comply, the "Enforcement Section" of this procedure should be used as a guide.

Compliance

Use this section after an illicit discharge/connection is confirmed, or when the property owner voluntarily indicates an illicit discharge exists and desires to correct or eliminate the situation.

1. If the property owner desires to correct the violation, by eliminating the discharge, they should be asked to provide a timetable by which they will eliminate the connection or discharge that is causing the violation in a manner that will prevent it's reconnection or resumption. If the illicit discharge/connection can be resolved by issuance of an encroachment permit, MDOT staff will explain how the permit can be obtained and process any submitted permit application. If no timely permit application is submitted, removal of the illicit discharge/connection must be pursued as described herein.
2. Once correction of the illicit discharge/connection is completed the

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property owner must submit written documentation describing the correction. If such correction requires excavation or other work within MDOT's right of way, a permit must first be obtained from MDOT through the normal utility permit process before such work may commence.

3. Documentation of all actions taken to resolve these connections must be maintained by the Region/TSC, the Region Storm Water Coordinator (if different) and information documenting the notice and removal of the connection or cessation of the discharge provided to MDOT's Storm Water Program Manager for reporting to DEQ as part of annual NPDES permit reporting.

Enforcement

Use this section when there is no response to the second certified letter and Notice and Order to Remove Encroachment, or the owner indicates no voluntary compliance actions will be taken, or if the owner fails to submit a timely utility permit application if that compliance option was made available.

1. If the illicit connection/discharge point is within MDOT's right of way, all documentation of discovery, investigation and remediation efforts and responses, if any, from the owner of the discharge/connection shall be forwarded with a memo from the Region Engineer to the MDOT Storm Water Program Manager requesting the matter to be referred for enforcement. The MDOT Storm Water Program Manager will coordinate the referral with the Assistant Attorney General in Charge, Transportation Division, requesting that they file an action under the Encroachment Act or other legal authority as appropriate to enforce removal of the encroachment. If the Assistant Attorney General in Charge of the Transportation Division determines that a referral is not appropriate for their office to file litigation, this will be documented and the matter referred to the appropriate local government and DEQ for enforcement as indicated below.
2. If the illicit discharge/connection point is located outside of state trunkline ROW, a third letter will be prepared to refer the matter to the appropriate local government, the local health department and the appropriate DEQ Water Division District Supervisor for enforcement. The owner/owners of the discharge/connection in question will be copied on this letter. (See Example B.)

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Illicit Discharges/Connections Found During Construction

When an illicit discharge/or connection is found during construction activities the contractor should notify the engineer or other MDOT staff on site of the discovery, as described on the standard plan note. MDOT staff will determine if there appears to be an illicit discharge/connection present and if it poses a potential emergency situation or not. If the discharge appears to be of an emergency nature, MDOT staff will contact the PEAS system to notify DEQ of the emergency. If possible, MDOT staff will also attempt to make direct contact with appropriate DEQ staff to report the emergency.

If no emergency situation exists and an illicit discharge/connection appears to exist, MDOT staff will make an attempt to identify the party responsible for the illicit connection/discharge and seek removal of the illicit discharge/connection through direct contact with that party. If MDOT staff can not determine if an illicit discharge/connection exists or can not identify the party responsible in a period of time sufficiently brief as to not unduly delay necessary construction activities, the location of the connection/discharge will be noted, reported to the Region Stormwater Coordinator for follow up in accordance with the previous sections of this procedure, and construction will continue.

[EXAMPLE A]



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

GLORIA J. JEFF
DIRECTOR

September 4, 2003

Water Division District Supervisor
Department of Environmental Quality

Dear :

The Michigan Department of Transportation (MDOT) is currently investigating its storm sewer system within **{enter name of jurisdiction}**. Information gathered during the course of this investigation indicates that an illicit discharge/connection is originating from property adjacent to MDOT's right of way and entering into MDOT's storm sewer system. MDOT lacks legal authority to enter onto properties outside of MDOT's right of way and has been unable to obtain voluntary permission from adjacent property owners for MDOT to conduct investigations on these properties. As a result MDOT is unable to investigate this possible illicit discharge/connection as required under our NPDES Storm Water Discharge Permit.

This letter is to request your assistance in obtaining legal access for MDOT to complete the investigation described above. Attached to this letter is information describing the properties to which access is needed and the potential scope of investigatory activities MDOT or its consultant may need to undertake under such access. If DEQ is unable to obtain access to enable MDOT to conduct these investigations, MDOT will refer all further follow up actions for this potential illicit discharge or connection to the DEQ or appropriate local jurisdiction.

Please contact me at **{insert phone/e-mail}** to inform me of the status of this request or if you have any questions.

Sincerely,

Region Storm Water Coordinator

Attachments

Cc: local health department
Local municipality
TSC Manager/Region Engineer
MDOT MS4 consultant
MDOT Storm Water Program Manager

[EXAMPLE B]



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

GLORIA J. JEFF
DIRECTOR

September 4, 2003

CERTIFIED LETTER
RETURN RECEIPT REQUESTED

To DEQ Water Division District Supervisor and/or local jurisdiction as appropriate

Dear :

As part of the Michigan Department of Transportation's (MDOT) on going efforts to investigate its storm sewer system within **{enter name of jurisdiction}**, we identified potentially illicit connections/discharges to our storm sewer system. *{Pick one of the following as appropriate:*

We have been unable to obtain voluntary access to properties not within MDOT's right of way that are necessary in order to investigate the potential illicit discharge/connection. Upon MDOT's request DEQ has been unable to provide MDOT with access to these properties. As a result, MDOT is unable to complete investigation of this potential illicit discharge/connection and determine if one exists, who is responsible for it or take appropriate actions to have it eliminated.

or

Attached to this letter are copies of two certified letters and Orders to Remove Encroachment that were sent to the property owners that we identified as potentially responsible for these connections/discharges. To date this party has {not responded/failed to remedy the illicit connection or discharge}}

MDOT is required by its National Pollutant Discharge Elimination System permit for the discharge of its storm water to take enforcement actions to eliminate all illicit discharges/connections to its storm sewer system. The purpose of this letter is to inform you that because the illicit connection or discharge exists outside of MDOT's right of way, **{insert if appropriate – and MDOT has been unable to obtain access to off the right of way properties over which MDOT lacks jurisdiction to enable proper**

investigation} MDOT lacks the legal authority to take enforcement action against the offending party to remedy this matter. Therefore, by this letter, we are referring this matter to your agency and requesting that you use legal authority available to you to eliminate the identified illicit discharge/connection to MDOT's storm water system.

Please contact **{fill in name and phone}** if you have any questions or need additional information.

Sincerely,

TSC Manager or Region Engineer

Attachments

Cc:: property owner(s) in question
local health department
Local municipality
DEQ Water Division District Supervisor (if not addressee)
MDOT MS4 consultant
MDOT Storm Water Program Manager
Region Storm Water Coordinator

[EXAMPLE C]



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

GLORIA J. JEFF
DIRECTOR

September 4, 2003

CERTIFIED LETTER
RETURN RECEIPT REQUESTED

Address

Dear Property Owner:

The Michigan Department of Transportation (MDOT) is currently investigating its storm sewer system within **{enter name of jurisdiction}**. Information gathered during the course of this investigation indicates that an illicit discharge/connection is originating from your property and entering into MDOT's storm sewer system. Attached to this letter is a Notice and Order to Remove Encroachment and additional information describing the illicit discharge/connection.

The Federal Clean Water Act and Part 31, Water Resources Protection of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended and regulations promulgated pursuant to these statutes mandate that only clean storm water or potable water can be discharged to a system that discharges to the waters of the State. Your property could be discharging pollutants to MDOT's storm sewer system in violation of these laws and in violation of the Highways Obstructions and Encroachments Act, 1925 PA 368.

The attached Notice and Order directs that you remove this encroachment within 30 days after receipt of this letter. By **{insert date}** you must provide documentation to this office describing what actions you have taken to resolve this matter. If you are unable to remove this encroachment within that time, you must provide information to this office by **{insert date}**, describing the specific steps and schedule by which you will remove this encroachment. By copy of this letter we are notifying the Michigan Department of Environmental Quality and **{insert name of municipal jurisdiction and local health department if appropriate}** of this information.

Please contact **{fill in name and phone}** if you have any questions.

Sincerely,

Sincerely,

TSC Manager or Region Engineer

Attachments

Cc: local health department
Local municipality
DEQ Water Division District Supervisor (if not addressee)
MDOT MS4 consultant
MDOT Storm Water Program Manager
Region Storm Water Coordinator

[EXAMPLE D]



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

GLORIA J. JEFF
DIRECTOR

September 4, 2003

CERTIFIED LETTER
RETURN RECEIPT REQUESTED

Address

Dear Property Owner:

On {date} I sent you a letter indicating that the Michigan Department of Transportation (MDOT) is currently investigating its storm sewer system within **{enter name of jurisdiction}**. That letter also informed you that information gathered during the course of this investigation indicates that an illicit discharge/connection is originating from your property and entering into MDOT's storm sewer system. Attached to that letter was a Notice and Order to Remove Encroachment and additional information describing the illicit discharge/connection. My **{date}** letter required that you either remove the illicit discharge/connection by **{date}** or respond by **{date}** describing what actions you were going to take to eliminate this discharge/connection. To date we have not received a response from you to that letter (**or response indicated that you would not take actions to adequately resolve this matter**).

MDOT is required by its National Pollutant Discharge Elimination System permit for the discharge of its storm water to take enforcement actions to eliminate all illicit discharges/connections to its storm sewer system. The purpose of this letter is to inform you that if you do not remove the discharge/connection described in my **{date}** letter by **{insert date}**, MDOT will refer this matter for appropriate enforcement actions to eliminate this illicit connection/discharge to MDOT's storm sewer system.

By **{insert date}** you must provide documentation to this office describing what actions you have taken to resolve this matter. **{if within MDOT ROW insert the following: If you do not resolve this matter by this date, we will refer this matter to the Department of Attorney General to initiate appropriate enforcement actions to remove this illicit connection/discharge.}** By copy of this letter we are notifying the Michigan Department of Environmental Quality and **{insert name of municipal jurisdiction and local health department if appropriate}** of this information.

Please contact **{fill in name and phone}** if you have any questions.

Sincerely,

TSC Manager or Region Engineer

Attachments

Cc: local health department
Local municipality
DEQ Water Division District Supervisor (if not addressee)
MDOT MS4 consultant
MDOT Storm Water Program Manager
Region Storm Water Coordinator



STATE OF MICHIGAN

DEPARTMENT OF TRANSPORTATION

LANSING

JENNIFER M. GRANHOLM
GOVERNOR

GLORIA J. JEFF
DIRECTOR

2217 (01/03)
PREVIOUSLY 445A

NOTICE AND ORDER TO REMOVE ENCROACHMENT

*This information required by Act 368, PA. of 1925, in order to
remove all encroachments upon Michigan State Trunkline Highways.*

NOTICE TO (NAME): _____

ADDRESS _____

YOU ARE HEREBY NOTIFIED as the owner of _____

which is (are) located partly on or adjacent to the following described property: _____

that you cannot legally erect and/or maintain a certain _____

on said premises, which encroaches upon Michigan State Trunkline Highway _____

This encroachment is located in section _____, township _____, range _____,
county _____.

YOU ARE HEREBY ORDERED TO REMOVE THE SAID ENCROACHMENT WITHIN 30 DAYS AFTER
RECEIPT OF A COPY OF THIS ORDER.

YOU ARE FURTHER NOTIFIED that the Michigan Department of Transportation shall proceed
to remove such encroachment at your expense if you do not comply with this Order.

THAT ORDER SHALL BE FINAL 30 days after receipt of a copy unless proper action, as provided
by law, is taken.

TSC MANAGER (SIGNATURE)

DATE

**MICHIGAN DEPARTMENT
OF TRANSPORTATION
REGION OFFICE ADDRESS**