



City of Charleston  
Office of the City Clerk  
P.O. Box 2749  
Charleston, WV 25330  
(304) 348-8179

I, the undersigned City Clerk of Charleston, do hereby certify that the foregoing is a true, correct and complete copy of Committee Substitute, Bill No. 7648, enacted by the City Council of the City of Charleston on March 16, 2015.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 1<sup>st</sup> day of June, 2015.

James M. Reishman

City Clerk



Seal

**Committee Substitute for Bill No.7648**

**Introduced in Council:**

**March 2, 2015**

**Introduced by:**

**JOSEPH DENEALT**

**Adopted by Council:**

**March 16, 2015**

**Referred to:**

**STREETS AND TRAFFIC**

**Committee Substitute for Bill No. 7648-** A BILL to enact Division 1 of Article VIII, Chapter 102 of the Municipal Code of the City of Charleston, as amended, to be known as the "City of Charleston Illicit Discharge Detection and Elimination Ordinance."

**WHEREAS**, the 1972 amendments to the Federal Water Pollution Control Act (referred to as the Clean Water Act or "CWA"), 33 U.S.C. §§ 1251-1387, prohibit the discharge of any Pollutant to navigable waters of the United States from a point source unless the discharge is authorized by a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") required by CWA § 402, 33 U.S.C. §§ 1342; and

**WHEREAS**, Municipal Separate Storm Sewer Systems ("MS4s") which convey urban runoff, including, but not limited to Stormwater runoff, are point sources under the CWA; and

**WHEREAS**, the US EPA reports that in some municipalities illicit connections of sanitary, commercial and industrial discharges to storm sewer systems have had a significant adverse impact on the water quality of receiving waters; and

**WHEREAS**, pursuant to the CWA, the US EPA has defined "illicit discharges" as any discharge to a MS4 that is not composed entirely of Stormwater or not covered by a NPDES permit; and

**WHEREAS**, Section 402(p)(3)(B) of the CWA requires that NPDES permits for discharges from MS4s are to include a requirement to "effectively prohibit" Non-stormwater discharges into MS4s; and

**WHEREAS**, US EPA regulations implementing the CWA require a municipality to demonstrate that it has the authority to control, through ordinance or other authority, discharge to the MS4 of spills, dumping or disposal of materials other than stormwater; and

**WHEREAS**, the City of Charleston, as the owner and operator of its MS4, has the right and the duty to protect the integrity of its MS4 against Pollutants entering the MS4; and

**WHEREAS**, under the Constitution of West Virginia, West Virginia Code, and the City of Charleston Municipal Code, the City of Charleston has the authority to define public nuisances

and to protect the environment and the public health and safety of the residents of and visitors to the City, by abating public nuisances.

**Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:**

That Division I, Article VIII, Chapter 102 of the Municipal Code of the City of Charleston is hereby enacted to read as follows:

**CHAPTER 102 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**

**ARTICLE VIII – STORMWATER POLLUTION PREVENTION**

**DIVISION 1 – ILLICIT DISCHARGE DETECTION AND ELIMINATION**

**Sec. 102-290. – Purpose/Intent.**

The purpose of this Division is to provide for the protection of the health, safety, and general welfare of the citizens of the City of Charleston (“City”) through the regulation of Non-stormwater discharges into the Municipal Separate Storm Sewer System (“MS4”) to the Maximum Extent Practicable as required by federal and state law. This Division establishes methods for controlling the introduction of Pollutants into the MS4 in order to comply with the City’s National Pollutant Discharge Elimination System (“NPDES”) permit. The objectives of this Division are:

- (a) To regulate the contribution of Pollutants to the MS4 by Non-stormwater discharges;
- (b) To prohibit Illicit Connections and Discharges to the MS4;
- (c) To establish legal authority to carry out all inspection, enforcement, surveillance and monitoring procedures necessary to ensure compliance with this Division; and
- (d) To comply with applicable federal and state statutory and regulatory requirements and schedules regarding the City’s Stormwater management requirements.

**Sec. 102-291. – Definitions.**

The following words, terms and phrases when used in this Division shall have the meanings ascribed to them in this Section except where the context clearly indicates a different meaning:

- (a) *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 that, when used singly or in combination, contribute to the control of the discharge of Pollutants directly or indirectly into Stormwater, receiving waters, or

the MS4. BMPs also include treatment practices, operating procedures, and practices to contribute to the control of: site runoff of spillage or leaks, sludge or water disposal, or drainage from raw materials storage. BMPs can be non-structural, which is an action that does not require construction, or structural, which involves constructed facilities or measures.

- (b) *Clean Water Act* (“CWA”) means the federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), and any subsequent amendments thereto.
- (c) *Construction* means the act of building, grading, shaping, removing, demolishing, repairing, erecting, extending, installing equipment, or enlarging any building, structure, grounds, or Premises.
- (d) *Facility* means, for the purposes of this Division, a building, structure, installation, construction site or Premises in which Pollutants are produced and/or generated as a result of an activity conducted within or around such building, structure, installation, construction site or Premises.
- (e) *Hazardous materials* means 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 present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (f) *Illicit discharge* means any discharge to the MS4 or the waters of the state that does not consist entirely of Stormwater, is not a discharge containing no Pollutants covered under the City’s NPDES MS4 Permit, or is not one of those discharges listed in Section 5 of this Division.
- (g) *Illicit connection* means (1) any drain or conveyance, whether on the surface or subsurface, which allows an Illicit discharge to enter the MS4 or waters of the state including, but not limited to, conveyances which allow any Non-stormwater discharge to enter the MS4 and any connection to the MS4 from indoor drains and sinks, regardless of whether said drain or connection was previously allowed, permitted, or approved by the City or the WV Department of Environmental Protection (DEP) or (2) any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by a Stormwater Compliance Officer after the effective date of this ordinance and which has not been located, identified, documented, and provided to a Stormwater Compliance Officer after written notice.
- (h) *Industrial activity* means an activity subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26(b)(14).

- (i) *Maximum Extent Practicable* means a standard set forth in the CWA that requires NPDES permittees to have controls in place that are designed to reduce the discharge of Pollutants to the MS4 and waters of the state, including management practices, control techniques and system, design and engineering methods.
- (j) *Municipal Separate Storm Sewer System (MS4)* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that are:
- (1) owned or operated by the City;
  - (2) designed or used for collecting or conveying Stormwater;
  - (3) not a combined sewer; and
  - (4) not part of a Publicly Owned Treatment Works (POTW) as defined in 40 CFR, Section 122.2
- (k) *National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit* means a permit issued by the Federal Environmental Protection Agency (EPA) or by a state under authority delegated pursuant to 33 USC §1342(b) that authorizes the discharge of Pollutants into waters of the United States.
- (l) *Non-stormwater discharges* means, unless otherwise provided in Section 5, those discharges that include, but are not limited to, sanitary Wastewater, car wash Wastewater, radiator flushing disposal, spills from roadway accidents, carpet cleaning Wastewater, effluent from septic tanks, improper oil disposal, laundry Wastewater/gray water, improper disposal of auto and household toxics.
- (m) *Person* means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.
- (n) *Pollutant* means anything that causes or contributes to Pollution and may include, but is not limited to:
- (1) paints, varnishes, and solvents;
  - (2) oil and other automotive fluids;
  - (3) non-hazardous liquid and solid wastes and yard wastes;
  - (4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects;
  - (5) floatables;



- (6) pesticides, herbicides, and fertilizers;
- (7) hazardous substances and wastes;
- (8) sewage, fecal coliform and pathogens;
- (9) dissolved and particulate heavy metals;
- (10) animal wastes;
- (11) wastes and residues that result from constructing or renovating a building or structure;
- (12) noxious or offensive matter of any kind;
- (13) hyperchlorinated water; and
- (14) commercial car and building wash water.
- (o) *Pollution* means the degradation of the physical, thermal, chemical, biological or radioactive properties of the Watercourses and water supplies located in or running through the City and/or the discharge of any Pollutant into the Watercourses and water supplies located in or running through the City which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare or to impair the beneficial use of the water and/or the water environment.
- (p) *Premises* means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.
- (q) *Stormwater* means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation, including groundwater discharge and floodwater.
- (r) *Stormwater Compliance Officer* (hereinafter referred to as “*Compliance Officer*”) means an employee of the City of Charleston City Engineer’s Office or City Building Department designated by the City to administer, implement and enforce this article.
- (s) *Stormwater Pollution Prevention Plan (SWPPP)* means a document that describes the Best Management Practices and activities to be implemented by a Person to identify sources of Pollution or contamination at a site and the actions to eliminate or reduce Pollutant discharges into Stormwater, the MS4, and/or receiving waters to the Maximum Extent Practicable.

(t) *Wastewater* means any water or other liquid, other than uncontaminated Stormwater, discharged from a Facility.

(u) *Watercourse* means a body of water flowing in a reasonably defined channel with a bed and banks.

**Sec. 102-292. – Applicability.**

This Division shall apply to all Stormwater and Non-stormwater discharges entering the MS4 from any Premises located within the City unless explicitly exempted by the City or the West Virginia Department of Environmental Protection (WVDEP).

**Sec. 102-293. – Responsibility for administration.**

City of Charleston Stormwater Compliance Officers shall administer, implement, and enforce the provisions of this ordinance.

**Sec. 102-294. – Illicit discharge and connection prohibitions.**

(a) Prohibition of Illicit Discharges.

(1) Except for Stormwater, no Person shall discharge or cause to be discharged into the MS4 or waters of the state 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 or any other federal, state, or local regulations.

(2) The commencement or continuation of any Illicit discharge to the MS4 is prohibited except as described as follows:

a. discharges not containing Pollutants from the following:

1. potable water sources including waterline flushings from which chlorine has been removed to the Maximum Extent Practicable;
2. landscape irrigation or lawn watering with potable water;
3. diverted stream flows;
4. rising ground water;
5. groundwater infiltration to storm drains;
6. pumped groundwater;

7. foundation or footing drains where flows are not contaminated with Pollutants (e.g. do not contain process materials such as solvents, heavy metals, etc.);
  8. crawl space pumps;
  9. air conditioning condensation;
  10. uncontaminated groundwater or spring water;
  11. springs;
  12. dewatering of work areas of collected Stormwater and ground water (filtering or chemical treatment may be necessary prior to discharge);
  13. water used to control dust;
  14. routine external building washdown that does not use detergents or other chemicals;
  15. waters used to wash vehicles (of dust and soil, not process materials such as oils, asphalt or concrete) where detergents are not used and detention and/or filtering is provided before the water leaves the wash site;
  16. non-commercial washing of vehicles;
  17. natural riparian habitat or wetland flows;
  18. swimming pools (if dechlorinated to a concentration of one PPM chlorine or less);
  19. firefighting activities; or
  20. any other water source not containing Pollutants.
- b. discharges approved in writing by a Compliance Officer as being necessary to protect public health and safety.
  - c. dye testing is an allowable discharge, but requires written notification to a Compliance Officer prior 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 EPA, 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 into the MS4.

(b) Prohibition of Illicit Connections.

- (1) The construction, use, maintenance or continued existence of Illicit connections to the MS4 is prohibited.
- (2) This prohibition expressly includes, without limitation, Illicit connections made in the past, regardless of whether the connection was previously permitted by the City and/or permissible under law or practices applicable or prevailing at the time of connection. Where such connections exist in violation of this ordinance and said connections were made prior to the effective date of this ordinance or any other ordinance prohibiting such connections, the property owner or the Person using said connection shall remove the connection within six months following the effective date of this ordinance. However, the six-month grace period shall not apply to connections which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife or habitat.
- (3) This prohibition includes 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 a Compliance Officer after the effective date of this ordinance unless or until such drain or conveyance is located, identified, documented, and the documentation is provided to and approved by a Compliance Officer. The property owner or Person using such drain or conveyance shall locate the same upon receipt of written notice from a Compliance Officer. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the requesting Compliance Officer.
- (4) A Person ~~is considered to~~ shall be in violation of this Division if the Person connects a line conveying sewage to the MS4, or allows such a connection to continue.

354 **Sec. 102-295. – Watercourse protection.**

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356 Every Person owning property through which a Watercourse passes, or such Person's  
357 lessee as a condition of its lease, shall keep and maintain that part of the Watercourse located  
358 within the property free of trash, debris, excessive vegetation, and other obstacles that would  
359 pollute, contaminate, or cause the flow of water through the Watercourse to back up. In addition,  
360 the owner or lessee shall maintain existing privately owned structures within or adjacent to a  
361 Watercourse, so that such structures will not become a hazard to the use, function, or physical  
362 integrity of the watercourse.

363  
364 **Sec. 102-296. – Industrial or Construction activity discharges.**

365  
366 Any Person subject to an Industrial or Construction activity NPDES Stormwater  
367 discharge permit shall comply with all provisions of such permit. Proof of compliance with said  
368 permit may be required in a form acceptable to a Compliance Officer prior to the allowance of  
369 discharges into the MS4.

370  
371 **Sec. 102-297. – Requirement to prevent control, and reduce Stormwater Pollutants by the**  
372 **use of Best Management Practices.**

373  
374 The City's will adopt requirements identifying Best Management Practices for any  
375 activity, operation, or Facility which may cause or contribute to Pollution or contamination of  
376 Stormwater, the MS4, or waters of the State. The owner or operator of a commercial or industrial  
377 establishment shall provide, at his or her own expense, reasonable protection from accidental  
378 discharge of prohibited materials or other wastes into the MS4 or ~~w~~Watercourses through the use  
379 of these structural and non-structural BMPs. Further, any Person responsible for a property or  
380 premise, which is, or may be, the source of an Illicit discharge, may be required to implement, at  
381 said Person's expense, additional structural and non-structural BMPs to prevent the further  
382 discharge of Pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES  
383 permit authorizing the discharge of Stormwater associated with Industrial Activity, to the extent  
384 practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall  
385 be part of a Stormwater Pollution Prevention Plan (SWPPP) as is necessary for compliance with  
386 requirements of the NPDES permit.

387  
388 **Sec. 102-298. – Access to Facilities for inspection, monitoring, sampling, measuring, testing**  
389 **or copying records.**

390  
391 (a) Applicability:

392  
393 This section applies to all Facilities that have Stormwater discharges associated  
394 with Industrial activity, including Construction activity.

395  
396 (b) Access to Facilities:



- 398 | (1) To the fullest extent permitted by law, Compliance Officers bearing  
399 proper identification are authorized by this Division to enter and inspect  
400 regulated Facilities to determine compliance with this Division.  
401
- 402 (2) Facility operators shall allow Compliance Officers reasonable access to all  
403 parts of the premises for the purposes of inspecting, monitoring, sampling,  
404 measuring, or testing the Facility's Stormwater discharge. Compliance  
405 Officers shall also be allowed reasonable access for the purpose of  
406 copying records that must be kept under the conditions of an NPDES  
407 permit.  
408
- 409 (3) If a Compliance Officer has been refused access to any part of the  
410 premises of a Facility from which Stormwater is discharged, and he/she is  
411 able to demonstrate probable cause to believe that there may be a violation  
412 of this Division involving Illicit discharges or Pollutants discharging into  
413 Stormwater, the MS4 or waters of the State; or that there is a need to  
414 inspect and/or sample as part of a routine inspection and sampling  
415 program designed to verify compliance with this Division or any order  
416 issued hereunder; or to protect the overall public health, safety, and  
417 welfare of the community, then the Compliance Officer may seek issuance  
418 of a search warrant from any court of competent jurisdiction to conduct of  
419 an investigation concerning compliance with the terms of this Division.  
420

421 **Sec. 102-299. – Notification of spills.**  
422

423 Notwithstanding other requirements of state or federal law, as soon as any Person  
424 responsible for a Facility or responsible for emergency response for a Facility, has information of  
425 any known or suspected release of materials which are resulting, or may result, in Illicit  
426 discharges or Pollutants discharging into Stormwater, the MS4, or waters of the State, said  
427 Person shall take all necessary steps to ensure the discovery, containment, and cleanup of such  
428 release. In the event of such a release of Hazardous materials said Person shall immediately  
429 notify emergency response agencies of the occurrence via emergency dispatch services. In the  
430 event of a release of all other Illicit discharges, said Person shall notify the City's Stormwater  
431 Management Department in person or by phone or email, no later than the next business day. All  
432 relevant contact information shall be listed on the City's website. Notifications in person or by  
433 phone shall be confirmed by written notice addressed and mailed to the Stormwater Management  
434 Department within three business days of the notice. If the Illicit discharge emanates from a  
435 commercial or industrial establishment, the owner or operator of such establishment shall also  
436 retain an on-site written record of the discharge and the actions taken to prevent its recurrence.  
437 Such records shall be retained for at least three years.  
438

439 **Sec. 102-300. – Stormwater Management Board created.**  
440

- 441 (a) There is hereby created in and for the City, the City of Charleston Stormwater  
442 Management Board, which shall hear and decide appeals of any order or decision

443 of a Compliance Officer or any denial of a request for reconsideration by the City  
444 Engineer issued pursuant to this Division.  
445

446 (b) The Stormwater Management Board shall be comprised of the City Manager, the  
447 City Director of Emergency Services, and three persons appointed by the Mayor,  
448 two of whom must be current members of Charleston City Council (one of whom  
449 must serve on the Environmental and Recycling Committee) and one person not  
450 employed by the City who is qualified by knowledge and experience in matters  
451 pertaining to construction and/or engineering. Members of the Board shall serve  
452 for terms of three years and do not receive compensation, but shall be reimbursed  
453 for all reasonable and necessary expenses actually incurred in the performance of  
454 their official duties.  
455

456 (c) Notwithstanding any other provisions in this code to the contrary, any person  
457 employed by, owning an interest in or otherwise associated with an owner or  
458 Person that regularly conducts business in front of the Stormwater Management  
459 Board may also serve as a member of the Stormwater Management Board and  
460 shall not be disqualified from serving as a member because of a conflict of  
461 interest as defined in West Virginia Code §61-10-15 and shall not be subject to  
462 prosecution under provisions of that chapter when the violation is created solely  
463 as a result of his or her relationship with the owner or Person. The member must,  
464 however, recuse himself or herself from any vote, discussion, participation or  
465 other activity regarding any colorable conflict recognized under West Virginia  
466 law.  
467

468 (d) Notwithstanding any other provisions in this code to the contrary, any person  
469 employed by, owning an interest in or otherwise associated with an owner or  
470 Person that regularly conducts business in front of the Stormwater Management  
471 Board may also serve as a member of the Stormwater Management Board and  
472 shall not be in violation of WV Code §6B-2-5(g) if the member recuses himself or  
473 herself from any vote, discussion, participation or other activity regarding any  
474 conflict: *Provided*, That such members do not constitute a majority of the  
475 members of the Stormwater Management Board at the same time.  
476

477 **Sec. 102-301. – Notice of violation.**  
478

479 (a) When a Compliance Officer determines after reasonable observation or  
480 investigation that a Person has violated a prohibition or failed to meet a  
481 requirement of this Division, he/she may order compliance by written notice of  
482 violation to that Person. Such notice may require, without limitation:  
483

484 (1) the performance of monitoring, analyses and reporting;

485 (2) the elimination of Illicit connections or discharges;  
486  
487



- (3) that discharges, practices or operations that are in violation shall cease and desist;
- (4) the abatement or remediation of Stormwater Pollution or contamination hazards and the restoration of any affected property; and/or
- (5) the implementation of source control or treatment BMPs.
- (b) Notice(s) of violation shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that a method of service effectuated by a mailing by the clerk of a court (e.g., service pursuant to West Virginia Rule of Civil Procedure 4(d)(1)(D)) shall be deemed to be effectuated by a mailing by a Compliance Officer. If service is made by certified mail consistent with West Virginia Rule of Civil Procedure 4(d)(1)(D) and delivery of the notice of the violation is refused, the Compliance Officer, promptly upon the receipt of the notice of such refusal, shall mail to the Person being noticed, by first class mail, postage prepaid, (1) a copy of the notice of the violation(s) (2) a notice that despite such refusal, the notice of the violation(s) is valid, and (3) advising that the City will proceed to enforce the notice of violation(s). So long as such first class mailing is not returned as undeliverable by the U.S. Postal Service, service of the notice of violation(s) will be conclusively presumed to have been effectuated. Proof of service shall be made at the time of service by a written declaration, under oath, executed by the enforcement official effecting service and shall declare the time, date and manner by which service was made.
- (c) Any notice of violation(s) under this section shall be in writing and shall contain the following:
- (1) the date the notice of violation is given;
- (2) the name and address of the Person(s) charged with the violation;
- (3) the nature of the violation;
- (4) a statement of the action required to be taken in order to correct the violation and further prevent it;
- (5) the time period allowed for the violation to be corrected. When determining the time period allowed for correction, a Compliance Officer shall take into consideration the threat posed by the violation to the health, safety and welfare of the public and the nature of the work required to correct the violation;
- (6) the maximum fines that may be assessed if the violation is not corrected and a citation is issued; and

(7) the name, address and telephone number of the Compliance Officer issuing the notice of violation.

- (d) Nothing in this section shall limit the authority of Compliance Officers to take any other lawfully prescribed enforcement action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

**Sec. 102-302. – Request for reconsideration; ~~and~~ appeal of ~~Notice of Violation~~decision of the City Engineer.**

- (a) Any Person receiving a notice of violation from a Compliance Officer may submit a written request for reconsideration ~~from to~~ the City Engineer by mailing said request to The Office of the City Engineer, City of Charleston, P.O. Box 2749, Charleston, WV 25330, or by hand delivering said request to the Office of the City Engineer, 114 Dickinson Street, Charleston, West Virginia. The request for reconsideration must be received within 10 days from the date of the notice of violation and shall include a written explanation of the ~~reason-basis~~ for the request. Upon receipt of a timely request for reconsideration, the City Engineer shall review the request and ~~either grant or deny it in~~ shall (1) uphold the notice of violation (2) reverse the notice of violation or (3) modify the notice of violation and shall provide written notice by certified mail of his or her decision to the Person writing within 15 days of receipt thereof. ~~If the request for reconsideration is denied, the Person may appeal the denial to the Stormwater Management Board within 10 days of the date of receipt of the written denial by the City Engineer.~~
- (b) ~~Any Person denied a request for reconsideration~~ When a notice of violation is upheld by the City Engineer as outlined in (a) above, ~~or any Person receiving a notice of violation where no reconsideration is requested the Person~~ may appeal the ~~determination of the Compliance Officer~~decision of the City Engineer to the City of Charleston Stormwater Management Board by mailing a notice of appeal to City of Charleston Stormwater Management Board, c/o Office of the City Manager, P.O. Box 2749, Charleston, WV 25330, or by hand delivering said request to the City of Charleston Stormwater Management Board, Office of the City Manager, 501 Virginia Street East, Charleston, West Virginia. When appealing a decision by the City Engineer, the notice of appeal to the Stormwater Management Board must be received within 10 days from the date of the receipt of the written notice of the City Engineer's decision.~~notice of violation or denial of request for reconsideration.~~ Hearing on the appeal shall be before the City of Charleston Stormwater Management Board and said hearing shall take place within 30 business days from the date of receipt of the notice of appeal. At the conclusion of the hearing, the Stormwater Management Board shall either grant or deny the appeal in writing within 10 days, and provide written notice by certified mail of its decision to the Person who appealed. The decision of the Stormwater Management Board shall be final, ~~and within 10 days of making its decision, the Stormwater Management Board shall mail a copy of its decision by~~



certified mail to the Person who appealed the notice of violation. Failure to file a notice of appeal within the period set forth herein shall constitute a waiver of the right to appeal to the Stormwater Management Board, shall result in the decision of the City Engineer being final, and the notice of violation shall be fully enforceable as set forth in this Division. ~~result in the Compliance Officer or City Engineer's decision being final.~~

**Sec. 102-303. – Appeal of notice of violation.**

Any Person receiving a notice of violation who chooses not to request reconsideration by the City Engineer may appeal the notice of violation directly to the City of Charleston Stormwater Management Board by mailing a notice of appeal to the City of Charleston Stormwater Management Board, c/o Office of the City Manager, P.O. Box 2749, Charleston, WV 25330, or by hand delivering said request to the City of Charleston Stormwater Management Board, Office of the City Manager, 501 Virginia Street East, Charleston, West Virginia. When appealing a notice of violation where no reconsideration by the City Engineer has been requested, the notice of appeal to the Stormwater Management Board must be received within 10 days from the date of the notice of violation. Hearing on the appeal shall be before the City of Charleston Stormwater Management Board and said hearing shall take place within 30 business days from the date of receipt of the notice of appeal. At the conclusion of the hearing, the Stormwater Management Board shall either grant or deny the appeal in writing within 10 days, and provide written notice by certified mail of its decision to the Person who appealed. The decision of the Stormwater Management Board shall be final. Failure to file a notice of appeal within the period set forth herein shall constitute a waiver of the right to appeal to the Stormwater Management Board and the notice of violation shall be fully enforceable as set forth in this Division.

**Sec. 102-303~~4~~. – Enforcement measures after appeal.**

- (a) If the violation has not been corrected within 10 days or any other period specified by the Stormwater Management Board in its decision, then the Compliance Officer shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or bring the property into compliance.
- (b) If refused access to the subject ~~private~~ property, the Compliance Officer may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property.

**Sec. 102-30~~4~~5. – Injunctive relief.**

It shall be unlawful for any Person to violate any provision or fail to comply with any of the requirements of this Division. If a Person has violated or continues to violate the provisions of this Division, the ~~Compliance Officer~~ City may petition a court of competent jurisdiction for a preliminary or permanent injunction restraining the Person from activities which would create further violations or compelling the Person to perform abatement or remediation of the violation.



Any such Person against whom such an injunction is issued shall be responsible for paying all costs of the ~~Compliance Officer-City~~ in obtaining and enforcing such injunction, including the court costs and attorney's fees.

**Sec. 102-30~~56~~. – Violations deemed a public nuisance.**

(a) In addition to the enforcement processes and penalties provided in this article, any condition caused or permitted to exist in violation of any of the provisions of this Division shall be considered a threat to the public health, safety, welfare and the environment, may be declared and deemed a nuisance, and may be summarily abated and/or restored by, or at the direction of, the City, by and through its Compliance Officer. The ~~Compliance Officer-City~~ may initiate any administrative and civil actions as necessary to abate, enjoin or otherwise compel the cessation of such nuisance.

(b) The cost of such abatement and/or restoration shall be the sole responsibility of the owner of the property and the cost thereof shall be a lien upon and against the property. Such lien shall continue in existence until the same shall be paid.

**Sec. 102-30~~67~~. – Criminal prosecution.**

In addition to, and not in lieu of, any administrative remedy provided in this Division, violations of this Division shall be a criminal misdemeanor, subject to criminal citation and punishable by a fine of not less than Five Hundred Dollars (\$500.00). Every day or portion thereof that a Person fails or refuses to remedy a violation shall be considered a separate offense. Fines may be reduced by the municipal court only upon agreement of the City by and through its prosecutor.

**Sec. 102-30~~78~~. – Remedies not exclusive.**

The remedies listed in this Division are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the ~~Compliance Officer-City~~ to seek cumulative remedies.

**Sec. 102-30~~89~~. – Severability.**

The provisions of this Division are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any Person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Division.