

CHAPTER 157: STORM WATER; ILLICIT CONNECTIONS AND DISCHARGES

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Cross-reference:

Control of storm water runoff, see Ch. 158

§ 157.01 STATUTORY AUTHORITY AND TITLE.

This chapter is adopted in accordance with the Home Rule City Act, as amended, being M.C.L. 117.1 et seq.; the Drain Code of 1956, as amended, being M.C.L. 280.1 et seq.; the Land Division Act, as amended, being M.C.L. 560.1 et seq.; the Revenue Bond Act, as amended, being M.C.L. 141.101 et seq.; the Natural Resources and Environmental Protection Act, as amended, being M.C.L. 324.101 et seq.; Section 401(p) of the Federal Water Pollution Control Act (also known as the Clean Water Act), as amended, being 33 U.S.C. 1342(p) and 40 C.F.R. parts 9, 122, 123, and 124; and other applicable state and federal laws.

(Ord. 215, passed 9-7-04)

§ 157.02 FINDINGS.

The City Council finds that:

(A) Illicit discharges contain pollutants that will significantly degrade the water bodies and water resources of the city, thus threatening the health, safety and welfare of the citizenry;

(B) Illicit discharges enter the storm water drainage system through either direct connections (e.g., wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (e.g., infiltration into the storm drain system or spills connected by drain inlets);

(C) Establishing the measures for controlling illicit discharges and connections contained in this chapter and implementing the same will address many of the deleterious effects of illicit discharges; and

(D) Any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance.

(Ord. 215, passed 9-7-04)

§ 157.03 PURPOSE.

It is the purpose of this chapter to establish minimum storm water management requirements and controls to accomplish, among others, the following objectives:

(A) To regulate the contribution of pollutants to the storm water drainage system and water bodies by means of storm water discharges by any user;

(B) To prevent illicit discharges and connections to the storm water drainage system and water bodies;

(C) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this chapter; and

(D) To provide appropriate remedies for failure to comply with this chapter.

(Ord. 215, passed 9-7-04)

§ 157.04 APPLICABILITY AND GENERAL PROVISIONS.

This chapter shall apply to all discharges entering the storm water drainage system and water bodies in the city.

(Ord. 215, passed 9-7-04)

§ 157.05 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AUTHORIZED ENFORCEMENT AGENCY. The City Manager and/or any persons or agencies designated in writing by the City Manager to act as the AUTHORIZED ENFORCEMENT AGENCY.

BEST MANAGEMENT PRACTICES (BMPs). Structural devices or nonstructural practices that are designed to prevent pollutants from entering storm water flows, to direct the flow of storm water, or to treat polluted storm water flows. BMPs may include, but shall not be limited to, those described in the Michigan Department of Environmental Quality Guidebook of Best Management Practices for Michigan Watersheds. Equivalent practices and design criteria that accomplish the purposes of this chapter (including, but not limited to, minimizing storm water runoff and preventing the discharge of pollutants into storm water) shall be as determined by the City Engineer.

CLEAN WATER ACT. The Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., as amended, and the applicable regulations promulgated thereunder.

DISCHARGE. The introduction (intentionally or unintentionally, and directly or indirectly) of any liquid, substance, pollutant, or other material into a storm water drainage system or water body.

DISCHARGER. Any person who directly or indirectly discharges storm water from any premises. DISCHARGER also includes any employee, officer, director, partner, contractor, or other person who participates in, or is legally or factually responsible for, any act or omission that is, or results in, a violation of this chapter.

DRAIN. Any and all conduits, facilities, measures, areas, and structures that serve to convey, catch, hold, filter, store, and/or receive storm water or groundwater, either on a temporary or permanent basis.

DRAINAGE. The collection, conveyance, or discharge of groundwater.

DRAINAGE WAY. A drain, water body or floodplain.

EPA. The U.S. Environmental Protection Agency.

FLOODPLAIN. The area, usually low lands, adjoining the channel of a river, stream, or watercourse or lake, or other body of standing water, that has been or may be covered by floodwater.

HAZARDOUS MATERIALS. Any solid, liquid, semisolid, or gaseous substance or material that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed.

ILLCIT CONNECTION. Any method, means, or conduit for conveying an illicit discharge into a water body or a storm water drainage system.

ILLCIT DISCHARGE. Any discharge to a water body or a storm water drainage system that does not consist entirely of storm water, that is not authorized by the terms of an NPDES permit, and that is not an authorized discharge as defined by this chapter.

MDEQ. Michigan Department of Environmental Quality.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT. A permit issued by the EPA or a state under authority delegated pursuant to the Clean Water Act that authorizes the discharge of pollutants to waters of the United States.

NON-STORM WATER DISCHARGE. Any discharge to the storm water drainage system or a water body that is not composed entirely of storm water.

PERSON. An individual, firm, partnership, association, public or private corporation, public agency, instrumentality or other legal entity.

POLLUTANT. Includes, but is not limited to, the following: any dredged spoil, solid waste, vehicle fluids, yard wastes, animal wastes, agricultural waste products, sediment, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological wastes, radioactive materials, hazardous materials, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, commercial, and agricultural waste, or any other contaminant or other substance defined as a pollutant under the Clean Water Act. **POLLUTANT** also includes properties or characteristics of water, including, but not limited to, pH, heat, total suspended solids (TSS), turbidity, color, biological oxygen demand (BOD), chemical oxygen demand (COD), toxicity, and odor.

PREMISES. Any building, structure, lot, parcel of land, or portion of land or property, whether improved or unimproved, including adjacent sidewalks and parking strips.

PROPERTY OWNER. Any person having legal or equitable title to premises or any person having or exercising care, custody, or control over any premises.

STATE OF MICHIGAN WATER QUALITY STANDARDS. All applicable state rules, regulations, and laws pertaining to water quality, including the provisions of § 3106, part 31, 1994 P.A. 451, as amended.

STORM WATER DRAINAGE SYSTEM. Storm sewers, conduits, curbs, gutters, catch basins, drains, ditches, pumping devices, parking lots, roads, or other man-made channels that are designed or used, singly or together in combination with one another, for collecting or conveying storm water.

STORM WATER POLLUTION PREVENTION PLAN. A document that describes the BMPs and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, a storm water drainage system, and/or a water body to the maximum extent practicable.

STORM WATER RUNOFF (or STORM WATER). The runoff and drainage of precipitation resulting from rainfall, snowmelt, or other natural event or process.

TOXIC MATERIAL. Any pollutant or combination of pollutants that is or can potentially be harmful to the public health or the environment, including, without limitation, those listed in 40 C.F.R. 401.15 as toxic under the provisions of the Clean Water Act, or listed in the Critical Materials Register promulgated by the Michigan Department of Environmental Quality, or as otherwise provided by local, state, or federal laws, rules, or regulations.

WASTEWATER. Any water or other liquid, other than uncontaminated storm water, discharged from a premises. WASTEWATER includes any water that has in any way been used and degraded or physically or chemically altered.

WATER BODY. A river, lake stream, creek, or other watercourse or wetlands.

(Ord. 215, passed 9-7-04)

§ 157.06 PROHIBITED DISCHARGES.

(A) It is unlawful for any person to discharge, or cause to be discharged, to a storm water drainage system or water body any substance or material, including, but not limited to, hazardous materials, pollutants, toxic materials, wastewater, or waters containing any such materials that cause or contribute to a violation of applicable water quality standards, other than storm water or an authorized discharge. This prohibition includes the commencement, conducting, or continuance of any illicit discharge by any person to a storm water drainage system or water body.

(B) Any person discharging storm water shall effectively prevent hazardous materials, pollutants, toxic materials, and wastewater from being discharged with the storm water, except in accordance with BMPs.

(C) The authorized enforcement agency is authorized to require dischargers to implement pollution prevention measures, using storm water pollution prevention plans and BMPs, as determined necessary by the authorized enforcement agency to prevent or reduce the discharge of hazardous materials, pollutants, toxic materials, and wastewater to a storm water drainage system or water body.

(D) The discharge prohibitions of this section shall not apply to any non-storm water discharge authorized under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, provided the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm water drainage system.

(Ord. 215, passed 9-7-04) Penalty, see § 157.14

§ 157.07 PROHIBITED ILLICIT CONNECTIONS.

(A) It is unlawful for any person to construct, use, or maintain (or to allow the construction, use, maintenance or continued existence of) an illicit connection.

(B) This prohibition expressly includes, without limitation, illicit connections made prior to the effective date of this chapter, and regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(Ord. 215, passed 9-7-04) Penalty, see § 157.14

§ 157.08 AUTHORIZED DISCHARGES.

The following non-storm water discharges are permissible, but only if they do not result in a violation of State of Michigan water quality standards and provided that they are undertaken in compliance with any applicable or required BMPs and do not contain hazardous materials, pollutants, toxic materials, or wastewater:

- (A) Water supply line flushing;
- (B) Landscape irrigation runoff;
- (C) Diverted stream flows;
- (D) Rising groundwater;
- (E) Uncontaminated groundwater infiltration to storm drains;
- (F) Uncontaminated pumped groundwater;
- (G) Discharges from potable water sources;
- (H) Foundation drains;
- (I) Air conditioning condensate;

- (J) Irrigation water;
- (K) Springs;
- (L) Water from crawl space pumps;
- (M) Footing drains and basement sump pumps;
- (N) Lawn watering runoff;
- (O) Waters from non-commercial car washing;
- (P) Flows from riparian habitats and wetlands;
- (Q) Residential swimming pool water and other dechlorinated swimming pool water, provided that any filter backwash water that is present is treated;
- (R) Residual street wash water;
- (S) Discharges or flows from emergency fire fighting activities; and
- (T) Discharges specifically authorized in writing by the authorized enforcement agency as being necessary to protect public health, welfare, and safety or the environment.

(Ord. 215, passed 9-7-04) Penalty, see § 157.14

§ 157.09 STORAGE OF MATERIALS IN DRAINAGE WAY.

Except as permitted by law, it shall be unlawful for any person to store or stockpile within a drainage way hazardous materials, pollutants, toxic materials, or wastewater, unless adequate protection and/or containment has been provided so as to prevent any such materials from entering a storm water drainage system or water body.

(Ord. 215, passed 9-7-04) Penalty, see § 157.14

§ 157.10 INSPECTION AND SAMPLING.

The authorized enforcement agency may inspect and/or obtain samples from any discharger's premises as necessary to determine compliance with the requirements of this chapter. Upon request, the discharger shall allow properly identified representatives of the authorized enforcement agency to enter the premises of the discharger at all hours necessary for the purposes of such inspection or investigation, including, but not limited to, smoke/dye testing, televising pipes, sampling, and excavation. The authorized enforcement agency shall provide the discharger reasonable advance notice of the need for such access, if possible and consistent with protection of public health and safety and the environment. The properly identified representatives may place on the discharger's premises the equipment or devices used for such sampling or inspection. Unreasonable delays in allowing access to a premises is a violation of this chapter.

(Ord. 215, passed 9-7-04) Penalty, see § 157.14

§ 157.11 STORM WATER MONITORING FACILITIES.

If directed in writing to do so by the authorized enforcement agency, a discharger of storm water runoff from any premises used for commercial or industrial purposes shall provide and operate equipment or devices for the monitoring of storm water runoff to provide for inspection, sampling, and flow measurement of each discharge to a water body or storm water drainage system, as specified by the authorized enforcement agency. The authorized enforcement agency may require a discharger to provide and operate such equipment and devices if it is necessary or appropriate for the inspection, sampling, and flow measurement of discharges in order to determine whether adverse effects from, or as a result of, such discharges may occur. All such equipment and devices for the inspection, sampling, and flow measurement of discharges shall be installed and maintained at the discharger's expense in accordance with applicable laws, ordinances, and regulations.

(Ord. 215, passed 9-7-04) Penalty, see § 157.14

§ 157.12 ACCIDENTAL DISCHARGES.

Any discharger who accidentally discharges into a storm water drainage system or a water body any substance other than storm water or an authorized discharge shall immediately notify the authorized enforcement agency of the discharge. If the notification is given orally, a written report concerning the discharge shall be filed with the authorized enforcement agency within five days. The written report shall specify all of the following:

- (A) The composition of the discharge and the cause thereof;
- (B) The exact date, time and estimated volume of the discharge;
- (C) All measures taken to clean up the discharge, all measures taken or proposed to be taken to mitigate any known or potential adverse impacts of the discharge, and all measures proposed to be taken to reduce and prevent any recurrences; and
- (D) The names and telephone numbers of the individual making the report, and (if different) the individual who may be contacted for additional information regarding the discharge.

(Ord. 215, passed 9-7-04) Penalty, see § 157.14

§ 157.13 RECORD-KEEPING REQUIREMENT.

Any person that violates any requirement of this chapter or that is subject to monitoring under this chapter shall retain and preserve for no less than three years any and all books, drains, plans, prints, documents, memoranda, reports, correspondence, and records, including records on magnetic or electronic media, and any and all summaries of such records relating to monitoring, sampling, and chemical analysis of any discharge or storm water runoff from any premises connected with the violation or subject to monitoring.

(Ord. 215, passed 9-7-04) Penalty, see § 157.14

§ 157.14 SANCTIONS FOR VIOLATION.

(A) Except as provided by division (E) of this section, a person who violates any provision of this chapter (including, without limitation, any notice, order, permit, decision or determination promulgated, issued or made by the authorized enforcement agency under this chapter) is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$1,000 for each infraction and not more than \$2,500 for each infraction, plus costs and other sanctions. Each day of a violation is subject to a separate citation.

(B) Subject to the maximum and minimum fine amounts specified in division (A) of this section, the following factors shall be considered by a court in determining the amount of a municipal civil infraction fine following the issuance of a municipal civil infraction citation for a violation of this chapter: the type, nature, severity, frequency, duration, preventability, potential and actual effect, and economic benefit to the violator (such as delayed or avoided costs or competitive advantage) of a violation; the violator's recalcitrance or efforts to comply; the economic impacts of the fine on the violator; and such other matters as justice may require. A violator shall bear the burden of demonstrating the presence and degree of any mitigating factors to be considered in determining the amount of a fine. However, mitigating factors shall not be considered unless it is determined that the violator has made all good faith efforts to correct and terminate all violations.

(C) The following persons are designated as the authorized local officials to issue municipal civil infraction citations: the City Manager and any police officer.

(D) Except as otherwise provided by this section, the requirements and procedures for commencing municipal civil infraction actions; issuance and service of municipal civil infraction citations; determination and collection of court-ordered fines, costs and expenses; appearances and payment of fines and costs; failure to answer, appear or pay fines; disposition of fines, costs and expenses paid; and other matters regarding municipal civil infractions shall be as set forth in Act No. 236 of the Public Acts of 1961, as amended.

(E) Any person who (1) at the time of a violation knew or should have known that hazardous materials, pollutants, toxic materials, wastewater, or substance was discharged contrary to any provision of this chapter, or contrary to any notice, order, permit, decision or determination promulgated, issued or made by the authorized enforcement agency under this chapter; or (2) intentionally makes a false statement, representation, or certification in an application for or form pertaining to a permit, or in a notice, report, or record required by this chapter, or in any other correspondence or communication, written or oral, with the authorized enforcement agency regarding matters regulated by this chapter; or (3) intentionally falsifies, tampers with, or renders inaccurate any sampling or monitoring device or record required to be maintained by this chapter; or (4) commits any other act that is punishable under state law by imprisonment for more than 90 days; shall upon conviction, be guilty of a misdemeanor punishable by a fine of \$500 per violation, per day, or imprisonment for up to 90 days, or both in the discretion of the court.

(F) Any person who aids or abets another person in a violation of this chapter shall be subject to the sanctions provided in this section.

(Ord. 215, passed 9-7-04)

§ 157.15 FAILURE TO COMPLY; COMPLETION.

The authorized enforcement agency is authorized, after giving reasonable notice and opportunity for compliance, to correct any violation of this chapter or damage or impairment to the storm water drainage system caused by a discharge and to bill the person causing the violation or discharge for the costs of the work to be reimbursed. The costs reimbursable under this section shall be in addition to fees, amounts or other costs and expenses required to be paid to the authorized enforcement agency under other sections of this chapter.

(Ord. 215, passed 9-7-04)

§ 157.16 EMERGENCY MEASURES.

If emergency measures are necessary to respond to a nuisance, to protect public safety, health, and welfare, and/or to prevent loss of life, injury, or damage to property, the authorized enforcement agency is authorized to carry out or arrange for all such emergency measures. Property owners shall be responsible for the cost of such measures made necessary as a result of a violation of this chapter, and shall promptly reimburse the city of such costs.

(Ord. 215, passed 9-7-04) Penalty, see § 157.14

§ 157.17 COST RECOVERY FOR DAMAGE TO STORM WATER DRAINAGE SYSTEM.

Any person who discharges to a storm water drainage system or a water body, including, but not limited to, any person who causes or creates a discharge that violates any provision of this chapter, produces a deposit or obstruction or otherwise damages or impairs a storm water drainage system, or causes or contributes to a violation of any federal, state, or local law governing the city, shall be liable to and shall fully reimburse the city for all expenses, costs, losses or damages (direct or indirect) payable to incurred by the city as a result of any such discharge, deposit, obstruction, damage, impairment, violation, exceedence or noncompliance. The costs that must be reimbursed to the city shall include, but shall not be limited to, all of the following:

(A) All costs incurred by the city in responding to the violation or discharge, including expenses for any cleaning, repair or replacement work, and the costs of sampling, monitoring, and treatment, as a result of the discharge, violation, exceedence or noncompliance;

(B) All costs to the city of monitoring, surveillance, and enforcement in connection with investigating, verifying, and prosecuting any discharge, violation, exceedence, or noncompliance;

(C) The full amount of any fines, assessments, penalties, and claims, including natural resource damages, levied against the city, or any city representative, by any governmental agency or

third party as a result of a violation of applicable laws or regulations that is caused by or contributed to by any discharge, violation, exceedence, or noncompliance; and

(D) The full value of any city staff time (including any required overtime), consultant and engineering fees, and actual attorney fees and defense costs (including the city legal counsel and any special legal counsel), associated with responding to, investigating, verifying and prosecuting any discharge, violation, exceedence or noncompliance, or otherwise enforcing the requirements of this chapter.

(Ord. 215, passed 9-7-04) Penalty, see § 157.14

§ 157.18 COLLECTION OF COSTS; LIEN.

Costs which may be recovered by the city pursuant to § 157.15 shall constitute a lien on the premises, which shall be enforceable in accordance with Act No. 94 of the Public Acts of 1933, as amended from time to time, or as otherwise authorized by law. Any such charges that are delinquent for six months or more may be certified annually to the City Treasurer, who shall enter the lien on the next tax roll against the premises, the costs shall be collected, and the lien shall be enforced in the same manner as provided for in the collection of taxes assessed upon the roll and the enforcement of a lien for taxes. In addition to any other lawful enforcement methods, the city shall have all remedies authorized by Act No. 94 of the Public Acts of 1933, as amended, and by other applicable laws.

(Ord. 215, passed 9-7-04)

§ 157.19 SUSPENSION OF ACCESS TO THE STORM WATER DRAINAGE SYSTEM.

(A) Suspension due to illicit discharges in emergency situations. The authorized enforcement agency may, without prior notice, suspend access to the storm water drainage system to any person or premises when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm water drainage system or a water body. If the person fails to comply with a suspension order issued in any emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or to minimize damage to the storm water drainage system or the environment, or to minimize danger to persons, and bill the person for the costs to the city in taking such steps.

(B) Suspension due to the detection of illicit discharge. Any person discharging to the storm water drainage system in violation of this chapter may have their access to the system terminated, if the authorized enforcement agency determines that such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its access. It shall be unlawful for any person to reinstate access of the storm water drainage system to a premises terminated pursuant to this section without the prior written approval of the authorized enforcement agency.

(Ord. 215, passed 9-7-04) Penalty, see § 157.14

§ 157.20 APPEALS.

(A) Any person to whom any provision of this chapter has been applied may appeal in writing to the Ottawa County Circuit Court not later than 30 days after the action or decision being appealed. Such appeal shall identify the matter being appealed, and the basis for the appeal. The Circuit Court shall review the record and decision of the Board of Appeals to ensure that the decision:

- (1) Complies with the constitution and laws of the state;
- (2) Is based upon proper procedure;
- (3) Is supported by competent, material, and substantial evidence on the record;

and

(4) Represents the reasonable exercise of discretion granted by law to the Board of Appeals.

(B) The Circuit Court shall make a decision whereby it affirms, rejects, or modifies the action being appealed or may remand to the city.

(Ord. 215, passed 9-7-04)

§ 157.21 JUDICIAL RELIEF.

With the approval of the city, the authorized enforcement agency may institute legal proceedings in a court of competent jurisdiction to seek all appropriate relief for violations of this chapter or of any permit, order, notice or agreement issued or entered into under this chapter. The action may seek temporary or permanent injunctive relief, damages, penalties, costs, and any other relief, at law or equity, that a court may order. The authorized enforcement agency may also seek collection of fines, penalties and any other amounts due to the city that a person has not paid.

(Ord. 215, passed 9-7-04)

§ 157.22 CUMULATIVE REMEDIES.

This imposition of a single penalty, fine, order, damage, or surcharge upon any person for violation of this chapter, or of any permit, order, notice or agreement issued, or entered into under this chapter, shall not preclude the imposition by the city, the authorized enforcement agency, or a court of competent jurisdiction of a combination of any or all of those sanctions and remedies or additional sanctions and remedies with respect to the same violation, consistent with applicable limitations on penalty amounts under state or federal laws or regulations.

(Ord. 215, passed 9-7-04)

§ 157.23 RESPONSIBILITY TO IMPLEMENT BEST MANAGEMENT PRACTICES.

The owner or operator of a premises used for commercial or industrial purposes shall provide, at the owner or operator's own expense, reasonable protection from an accidental discharge of prohibited materials or other wastes into the storm water drainage system or water body through the use of structural and nonstructural best management practices (BMPs). Further, any person responsible for a premises that is, or may be, the source of an illicit discharge may be required to implement, at the person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the storm water drainage system or water body. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

(Ord. 215, passed 9-7-04) Penalty, see § 157.14

§ 157.24 INTERPRETATION.

Words and phrases in this chapter shall be construed according to their common and accepted meanings, except those words and phrases defined in § 157.05 shall be construed according to the respective definitions given in that section. Technical words and technical phrases not defined in this chapter, but which have acquired particular meanings in law or in technical usage, shall be construed according to such meanings.

(Ord. 215, passed 9-7-04)

§ 157.25 CATCH-LINE HEADINGS.

The catch-line headings of the articles and sections of this chapter are intended for convenience only, and shall not be construed as affecting the meaning or interpretation of the text of the articles of sections to which they may refer.

(Ord. 215, passed 9-7-04)