

ILLICIT DISCHARGE AND CONNECTION STORMWATER ORDINANCE

Section 1. Purposes/Intent.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Essex through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4; STORMWATER DRAINAGE SYSTEM) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To prohibit and eliminate illicit connections and discharges to the municipal separate storm sewer system
- (2) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

Section 2. Definitions.

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency: The First Selectman of the Town of Essex, or employees or designees of the First Selectman designated to enforce this ordinance. Such employee or designee shall be duly qualified where such enforcement involves determinations to be made under the Connecticut Public Health Code, the Clean Water Act or Town of Essex Ordinances involving both stormwater and non-storm water discharges to the storm drainage system of the Town of Essex.

Best Management Practices (BMPs): schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the state consistent with state, federal or other equivalent and technically supported guidance. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from material storage.

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity. Any activity associated with construction at a site including, but not limited to, clearing and grubbing, grading, excavation, and dewatering.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 7 of this ordinance.

Illicit Connections. An illicit connection is defined as either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agent or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the authorized enforcement agent.

Industrial Activity. Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Stormwater Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.

Person. 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.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

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

Storm Drainage System Facilities owned or operated, by easement or otherwise, by the Town of Essex by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Stormwater. Waters consisting of rainfall runoff, including snow or ice melt, during a rain event.

Stormwater Pollution Prevention Plan. A document which describes the Best Management Practices 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 Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Section 3. Applicability.

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the Enforcement Agent.

Section 4. Responsibility and Administration

The Enforcement Agent shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agent may be delegated in writing by the Enforcement Agent to persons or entities acting in the beneficial interest of the Town and duly qualified to make determinations under the Connecticut Public Health Code, the Clean Water Act or Town of Essex Ordinances.

Section 5. Severability.

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance 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 Ordinance.

Section 6. Ultimate Responsibility.

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

Section 7. Discharge Prohibitions.

Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

(a) The following discharges are exempt from discharge prohibitions established by this ordinance: uncontaminated ground water discharges including, but not limited to, pumped ground water, foundation drains, water from crawl space pumps and footing drains; irrigation water including, but not limited to, landscape irrigation and lawn watering runoff; residual street wash water associated with sweeping; discharges or flows from firefighting activities (except training); and naturally occurring discharges such as rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), springs, diverted stream flows and flows from riparian habitats and wetlands.

(b) Any non-stormwater discharge to the storm drainage system authorized by a permit issued pursuant to Section 22a-430 or 22a-430b of the Connecticut General Statutes is also authorized under this ordinance.

Prohibition of Illicit Connections.

(a) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

(b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(c) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the storm drainage system discharge or allows such a connection to continue.

Section 8. Suspension of Storm Drainage System Discharge.

Suspension due to Illicit Discharges in Emergency Situations

The Enforcement Agent may, without prior notice, suspend stormwater drainage system access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system discharge or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the

authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system or Waters of the United States, or to minimize danger to persons.

Suspension due to the Detection of Illicit Discharge

Any person discharging to the storm drainage system in violation of this ordinance may have their storm drainage system discharge access terminated if such termination would abate or reduce an illicit discharge. The Enforcement Agent will notify a violator of the proposed termination of its storm drainage system discharge access. The violator may petition the Enforcement Agent for a reconsideration and hearing.

A person commits an offense if the person reinstates storm drainage system discharge access to premises terminated pursuant to this Section, without the prior approval of the Enforcement Agent.

Section 9. Industrial or Construction Activity Discharges.

Any person subject to an industrial or construction activity NPDES Storm Water Discharge Permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town Agent(s) prior to the allowing of discharges to the MS4 stormwater drainage system.

Section 10. Monitoring of Discharges.

A. Applicability.

This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

B. Access to Facilities.

(a) The Enforcement Agent shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance, subject to applicable law. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

(b) Facility operators shall allow the Enforcement Agent ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of a permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(c) The Enforcement Agent shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Enforcement Agent to conduct monitoring and/or sampling of the facility's storm water discharge.

(d) The Enforcement Agent has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Enforcement Agent and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(f) Unreasonable delays in allowing the Enforcement Agent access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the Enforcement Agent reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

(g) If the Enforcement Agent has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Enforcement Agent may seek issuance of a search warrant from any court of competent jurisdiction.

Section 11. Requirement To Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices (Bmps).

The Enforcement Agent, or the duly qualified designee, may adopt, or may promulgate requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. 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 compliant with the provisions of

this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

Section 12. Watercourse Protection.

Every person owning property through which a watercourse passes, or such person's lessee, or the person in control of the property, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Section 13. Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the First Selectman, Essex Town Hall, 29 West Avenue, Essex, CT 06426 within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Section 14. Enforcement.

Notice of Violation.

Whenever the Enforcement Agent finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Enforcement Agent, or the duly qualified designee, may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
- (e) Payment of a fine or penalty to recoup costs incurred by the Enforcement Agency;

- (f) Suspension of any discharge to the MS4 storm drainage system consistent with Section 8 of this ordinance; and
- (g) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Where elimination is not possible within 60 days of source confirmation, a schedule for its elimination will be set for no more than 180 days. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

Section 15. Appeal of Notice of Violation.

Any person receiving a Notice of Violation may appeal the determination of the Enforcement Agent, or his/her designee, to the Board of Selectman or to a Hearing Officer. The notice of appeal must be received within 10 days from the date of the Notice of Violation. Hearing on the appeal before the Board of Selectmen or its designee or Hearing Officer shall take place within not less than 15 days nor more than 30 days from the date of receipt of the notice of appeal. The Hearing Officer shall conduct the Hearing in a manner and with such method of proof as deemed appropriate by the Hearing Officer to meet a reasonable standard of due process. The Hearing Officer shall make a written decision which shall be filed within 15 calendar days of the completion of the Hearing. The decision will affirm, modify and affirm, or reverse the decision of the Enforcement Agent. If an appeal to a court of competent jurisdiction is not taken within 15 calendar days after the filing of the written decision, the decision of the Hearing Officer shall be final.

Filing of the written decision shall be to the office of the First Selectman with a copy mailed to the Violator.

Section 16. Enforcement Measures After Appeal.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 15 calendar days of the decision of the authorized entity upholding the decision of the Enforcement Agent, then the Enforcement Agent, or the duly qualified designee may take any and all measures authorized under the Connecticut Public Health Code or Town of Essex Ordinances to abate the violation and/or restore the property, or to seek injunctive relief under Section 18 of this Ordinance.

Section 17. Cost of Abatement of the Violation.

The Enforcement Agent may take legal action to collect the cost of abatement, including administration costs.

Section 18. Injunctive Relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the Enforcement Agent may petition 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.

Section 19. Costs of Enforcement.

The Town of Essex may recover all attorneys' fees, court costs and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

Section 20. Violations Deemed a Public Nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken. Any action under this Section may be taken by the Enforcement Agent.

Section 21. Criminal Prosecution.

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law.

Section 22. Remedies Not Exclusive.

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Enforcement Agent to seek cumulative remedies.

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