

## **New Municipal Separate Storm Sewer System Regulation Ordinance**

**Adopted by the Weston Board of Selectmen on October 4, 2018**

**Town Clerk Serial Number: TM Vol 9, pg 644**

### Sec. 1: Purpose/Intent

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

1. To regulate the contribution of pollutants to the Storm Drainage System through stormwater discharges by any user;
2. To prohibit and eliminate illicit connections and discharges to the Storm Drainage System;
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance; and
4. To ensure compliance with the State of Connecticut Department of Energy and Environmental Protection ("DEEP") General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems on January 20, 2016, effective July 1, 2017.

### Sec. 2: Definitions.

For the purposes of this ordinance, the following definitions shall apply:

*Best management practices (BMPs):* Schedules of activities, prohibition of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

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

*Code Enforcement Officer:* The Compliance Officer for the Town of Weston.

*Construction activity:* Activities subject to NPDES construction permits. Currently these include construction projects resulting in land disturbance of five (5) acres or more. Beginning in March 2003, NPDES storm water phase II permits have been required for construction projects resulting in land disturbance of one (1) acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

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

*First Selectman:* The First Selectman of the Town of Weston or his/her authorized designee.

*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-stormwater discharge to the storm drain system, except as exempted in Section 7 of this ordinance.

*Illicit connections:* 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-stormwater 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 the First Selectman; 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 First Selectman or other public official or body having jurisdiction thereof.

*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:* 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 stormwater.

*Person:* and 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.

*Storm drainage system [also known as Municipal Separate Storm Sewer System or MS4]:* Publicly-owned Facilities by which stormwater 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:* Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

*Stormwater pollution prevention plan:* A document that 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 stormwater, discharged from a Facility.

*Watercourse:* A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water. This includes but is not limited to lakes, ponds, rivers, streams and any other surface water defined as a watercourse by the town's inland wetland regulations.

### Sec. 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 First Selectman or Code Enforcement Officer in accordance with Section 7.B. of this ordinance.

### Sec. 4: Responsibility for Administration.

The First Selectman and the Code Enforcement Officer shall administer, implement, and enforce the provisions of this ordinance. The First Selectman may delegate his/her powers and duties under this ordinance to an authorized designee.

### Sec. 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.

### Sec. 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.

### Sec. 7: Discharge Prohibitions.

#### A. Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the Storm Drainage System 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 stormwater.

B. Exceptions.

1. The following discharges, provided that they do not contribute to a violation of water quality standards and are not significant contributors of pollutants to the Storm Drainage System: 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.

2. Discharges specified in writing by the First Selectman as being necessary to protect public health and safety.

3. Dye testing, provided that a written notification has been provided to the Code Enforcement Officer prior to the time of the test. Said written notification may be in the form of electronic mail, facsimile transmission or hard copy letter format.

4. 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 Federal Environmental Protection Agency, 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 to the storm drain system.

C. Prohibition of Illicit Connections.

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

2. 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.

3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the Storm Drainage System, or allows such a connection to continue.

Sec. 8: Suspension of Storm Drainage System Access.

A. Suspension Due to Illicit Discharges in Emergency Situations.

The First Selectman may, without prior notice, suspend Storm Drainage System discharge 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 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the First Selectman

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.

B. 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 access terminated if such termination would abate or reduce an illicit discharge. The Code Enforcement Officer will notify a violator of the proposed termination of its Storm Drainage System access. The violator may petition the Code Enforcement Officer for reconsideration and hearing.

A person commits an offense if the person reinstates Storm Drainage System access terminated pursuant to this subsection, without the prior approval of the Code Enforcement Officer.

Sec. 9: Industrial or Construction Activity Discharges.

Any person subject to an industrial or construction activity NPDES stormwater 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 Code Enforcement Officer prior to the allowing of discharges to the Storm Drainage System.

Sec. 10: Monitoring of Discharges.

A. Applicability.

This subsection applies to all Facilities that have stormwater discharges.

B. Access to Facilities.

1. Upon the consent of Facility owners, the Code Enforcement Officer 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. 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 the Code Enforcement Officer.

2. Facility operators shall allow the Code Enforcement Officer ready access to all parts of the Facility for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of a town, state or federal NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

3. The Code Enforcement Officer shall have the right to set up on any NPDES permitted Facilities such devices as are necessary in the opinion of the Code Enforcement Officer to conduct monitoring and/or sampling of the Facility's stormwater discharge.

4. The Code Enforcement Officer has the right to require the installation of sampling and monitoring equipment on any NPDES permitted Facility by the discharger at its own expense. 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.

5. 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 Code Enforcement Officer and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6. Unreasonable delays in allowing the Code Enforcement Officer access to a permitted Facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a Facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Code Enforcement Officer reasonable access to the permitted Facility for the purpose of conducting any activity authorized or required by this ordinance.

7. If the Code Enforcement Officer has been refused access to any part of the Facility 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 Code Enforcement Officer may seek issuance of a search warrant from any court of competent jurisdiction.

#### Sec. 11: Requirement to Prevent, Control and Reduce Stormwater Pollutants by the Use of Best Management Practices.

The First Selectman will adopt requirements identifying best management practices for any activity, operation, or Facility which may cause or contribute to pollution or contamination of stormwater, the Storm Drainage 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 Storm Drainage System or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or Facility, 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 Storm Drainage System as directed by the First Selectman. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial or construction activity, to the extent practicable, shall be deemed compliant with the provisions of this subsection. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

#### Sec. 12: Watercourse Protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property 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.

#### Sec. 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 stormwater, the Storm Drainage 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 Code Enforcement Officer in person or by phone, electronic mail 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 Code Enforcement Officer within three (3) business days of the 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 (3) years.

#### Sec. 14: Enforcement.

##### A. Notice of violation.

1. Whenever the Code Enforcement Officer finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, he or she shall order compliance by written Notice of Violation to the responsible person.

2. Said Notice of Violation may require, without limitation:

- a. The performance of monitoring, analyses, and reporting;
- b. The elimination of illicit discharges or connections;
- c. That violating discharges, practices, or operations shall cease and desist;
- d. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- e. Suspension of any discharge to the Storm Drainage System consistent with Section 8 of this ordinance;
- f. The implementation of source control or treatment BMPs; and
- g. Payment of a fine to recover administrative and remediation costs.

3. If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed.

4. Where elimination of an illicit discharge or connection is not possible within 60 days, a schedule for its elimination will be set for no more than 180 days.

5. Said Notice of Violation shall include a statement informing the violator that, should the violator fail to remediate or restore within the established deadline, the Code Enforcement Officer may order the work be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

6. Any Notice of Violation issued pursuant to this subsection shall be served by hand delivery, certified mail return receipt requested, leaving a true and attested copy of the citation at the usual place of abode or residence of the person in violation, or in the case of a corporate or business entity, delivery to the business address or the address of the statutory agent of said entity.

## B. Issuance of Citations

The Code Enforcement Officer may issue a citation and fine in the amount of \$250.00 per day of continuing violation to any person who violates this ordinance, in accordance with the procedures established in Chapter 39 of the Town of Weston Code of Ordinances.

## C. Payment of Fines

1. All fines imposed under this ordinance which are uncontested shall be made payable to the Town of Weston and shall be received by the Code Enforcement Officer within ten (10) business days from receipt of the citation. All fines collected by the Code Enforcement Officer shall be deposited into the Town of Weston General Fund.

2. If no payment is received for any fine imposed under this ordinance within the time allowed for payment, then the Code Enforcement Officer shall act in accordance with the procedures established in Chapter 39 of the Town of Weston Code of Ordinances.

### Sec. 15: Citation Hearing Procedure.

The hearing procedure for any citation issued pursuant to this ordinance shall be in accordance with the procedures established in Chapter 39 of the Town of Weston Code of Ordinances.

### Sec. 14: Appeal to Superior Court.

Any person or entity aggrieved by a finding, determination, notice order or action taken under the provisions of this ordinance may appeal and shall be advised of his right to appeal in accordance with the procedures established in Chapter 39 of the Town of Weston Code of Ordinances.

### Sec. 15: 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 Code Enforcement Officer may petition for a temporary 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.

### Sec. 16: Compensatory Action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the Code Enforcement Officer may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, watershed cleanup, or other related activities.

### Sec. 17: 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.

Sec. 18: 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. The Code Enforcement Officer may recover all attorneys' fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Sec. 19: 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 Code Enforcement Officer to seek cumulative remedies.