

Illicit Discharge and Stormwater Connection Ordinance

Pursuant to Section 104 of the Town of Milton Charter, the Selectboard of the Town of Milton hereby adopts the following Ordinance:

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Section 1 Purpose

These Stormwater Regulations define what constitutes a public nuisance relating to Stormwater and Non-Stormwater Discharges to the Municipal Separate Storm Sewer System (MS4), and/or surface or ground water, and provide procedures for the abatement or removal of such public nuisance as the public health, safety, or welfare may require. This Ordinance also establishes methods for controlling the discharge of Stormwater and Non-Stormwater Discharges into the MS4 in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

Section 2 Definitions

Unless the context specifically indicates otherwise, the meanings of terms used in this Ordinance shall be as follows, listed alphabetically:

Best Management Practices or BMPs shall mean a schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce water pollution.

Construction Activity shall mean activities subject to NPDES Construction Permits. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Designated Enforcement Officer shall mean either the Town of Milton’s Health Officer, Deputy Health Officer or other Town Officers as may be designated by the Milton Selectboard.

Hazardous Materials shall mean 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 Connection shall mean any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the MS4, including, but not limited

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to, any conveyance that allows any non-stormwater discharge including sewage, process wastewater, and wash water to enter the MS4, and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the Officer.

Illicit Discharge shall mean any direct or indirect non-stormwater discharge to the MS4, except as exempted in Section 4 of this Ordinance.

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

Municipal Authority shall mean the Milton Selectboard.

Municipal Separate Storm Sewer System or MS4 shall mean a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) that is: (i) owned or operated by the Town of Milton and discharges to surface waters or groundwater.; (ii) designed or used for collecting or conveying stormwater; (iii) not a combined sewer; and (iv) not part of a Publicly Owned Treatment Works (POTW) as defined in 40 CFR, Section 122.2

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit shall mean a permit issued by EPA (or by the State of Vermont 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 shall mean any discharge to the MS4 that is not composed entirely of stormwater.

Officer shall mean the Health Officer, Deputy Health Officer or other Town Officials as may be designated by the Milton Town Manager.

Person shall mean any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as the owner, the owner's agent, or the operator of premises.

Pollutant shall mean 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, 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.

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

Stormwater shall mean precipitation and snowmelt that does not infiltrate into the soil, including material dissolved or suspended in it, but does not include discharges from undisturbed natural terrain.

Surface Waters shall mean any receiving waters existing on the surface of the ground, including but not limited to: brooks, streams, rivers, wetlands, ponds, or lakes.

Wastewater shall mean any water or other liquid, other than uncontaminated stormwater, discharged from premises.

Section 3 General

A. Applicability

This Ordinance shall apply to all water entering the MS4 and/or surface waters or groundwater, generated from, or on, any Premises unless explicitly exempted by the Officer or this Ordinance.

B. Responsibility for Administration

The Officer shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the Officer may be delegated by the Officer to persons or entities acting in the beneficial interest of or in the employ of the Town of Milton.

C. Relation to Other Ordinances of the Town of Milton

If the provisions of this Ordinance conflicts with the provisions of any other valid and enforceable Ordinance(s) of the Town of Milton, the stricter shall prevail.

D. 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 or discharge of pollutants.

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Section 4 Illicit Discharge and Stormwater Connection**A. Purpose/Intent**

1. Under the authority set forth in 24 V.S.A § 2291, specifically subsection (14), and to provide for the public health, safety, welfare and convenience, it is hereby declared that it shall be a public nuisance for anyone to contribute pollutants, illegally connect, or illegally discharge into the Municipal Separate Storm Sewer System, (MS4), or to otherwise discharge non-stormwater in violation of the requirements of this Ordinance. It is the purpose of this Ordinance to provide procedures for the regulation of Non-Stormwater Discharges to the MS4, and where required by public health, safety, or welfare, to provide for the abatement or removal of any public nuisance related thereto. This Ordinance establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this Ordinance are:

- a. To regulate the introduction of pollutants to the MS4 from Non-Stormwater Discharges by any user;
- b. To prohibit Illegal Connections and Illicit Discharges to the MS4;
- c. To establish legal authority to carry out all inspection, monitoring, and enforcement procedures necessary to ensure compliance with this Ordinance.

B. Prohibitions

1. Solid Waste Disposal
 - a. No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any Premise, public or private property, driveway, parking area, street, alley, sidewalk, component of the MS4, or any Surface Water of Milton, any object or material, including but not limited to refuse, rubbish, garbage, animal waste, litter, yard waste, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution, or interfere with the operation, maintenance and access to the MS4. Wastes deposited in streets in proper waste receptacles for the purposes of collection are exempted from this prohibition.
2. Illegal Connections
 - a. The construction, use, maintenance or continued existence of Illegal Connections to the MS4 is prohibited.

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b. This prohibition expressly includes, without limitation, Illegal 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. Illicit Discharges

a. No person shall discharge or cause to be discharged into the MS4, any materials, including but not limited to pollutants or waters containing any pollutants, other than Stormwater, or any materials that may impede the natural flow of Stormwater or the functionality of the MS4.

C. Exemptions

The commencement or continuance of any illicit discharge to the MS4 is prohibited except as described as follows:

1. The following discharges are exempt from discharge prohibitions established by this Ordinance: fire fighting activities, water line flushing, landscape irrigation, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street and bridge wash water, and any other water source not containing Pollutants.

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

3. Dye testing is an allowable discharge, but requires a written notification to the Officer prior to the time of the test.

4. The prohibition shall not apply to any Non-Stormwater Discharge permitted under a NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency or the Vermont Agency of Natural Resources, 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 MS4 by the Officer.

D. Industrial or Construction Activity Discharges

1. Any person subject to an Industrial or Construction Activity NPDES Stormwater discharge regulation and/or permit shall comply with all provisions of such regulation and/or permit. Proof of compliance with said regulation

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and/or permit may be required in a form acceptable to the Officer prior to the allowing of discharges to the MS4.

E. Monitoring of Discharges

1. Applicability

This section applies to all Premises that have stormwater discharges associated with Industrial Activity, including Construction Activity.

2. Access to Premises

a. The Officer shall be permitted to enter and inspect any Premise subject to regulation under this Ordinance as often as may be necessary to determine compliance with this Ordinance. If a Person has security measures in force which require proper identification and clearance before entry into its Premise, the Person shall make the necessary arrangements to allow access to representatives of the Town.

b. A Person shall allow the Officer ready access to all parts of the Premises for the purposes of inspection, sampling, and examination and copying of records that must be kept under the conditions of an NPDES permit to discharge Stormwater, and the performance of any additional duties as defined by state and federal law.

c. The Officer shall have the right to set up on any permitted Premises such devices as are necessary in the opinion of the Officer to conduct monitoring and/or sampling of the Premises Stormwater discharge.

d. The Officer has the right to require a Person to install monitoring equipment as necessary. The sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator of the Premise at their own expense. All devices used to measure Stormwater flow and quality shall be calibrated to ensure their accuracy. The owner or operator of the premise shall demonstrate calibration techniques and satisfactory operation of the devices to the Officer upon request.

e. Any temporary or permanent obstruction to safe and easy access to the Premises to be inspected and/or sampled shall be promptly removed by the owner or operator of the Premise at the written or oral request of the Officer and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator of the Premise.

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f. Unreasonable delays in allowing the Town Health Office access to permitted premises are a violation of this Ordinance. A person who is the operator of a Premise with a NPDES permit to discharge Stormwater associated with Industrial Activity commits an offense if the Person denies the Officer reasonable access to the permitted Premises for the purpose of conducting any activity authorized or required by this Ordinance.

g. If the Officer 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 Officer may seek issuance of a search warrant from any court of competent jurisdiction.

F. Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices

1. 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 MS4 through the use of structural and non-structural BMPs.

2. Further, any Person responsible for a property or Premise, which is, or which 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 MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of Stormwater associated with Industrial Activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

G. Notification of Spills

1. Notwithstanding other requirements of law, as soon as any Person responsible for a Premises or operation, or responsible for emergency response for a Premises or operation, has information of any known or suspected release of materials which are resulting or may result in Illicit Discharges or pollutants discharging into the MS4, 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 Officer either in person, 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 Officer within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or

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industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge, steps taken to remediate said Illicit Discharge, and the actions taken to prevent its recurrence. Such records shall be retained on-site by the owner or operator for at least three years from the date of each occurrence.

Section 5 Enforcement**A. Enforcement Remedies**

The Town, by and through its authorized agents, shall have the authority to enforce the provisions of this Ordinance, and any orders, violation notices, or enforcement orders issued hereunder, and may pursue all civil and criminal remedies in connection with any violation hereunder; as provided herein.

B. Remedies not Exclusive

The remedies set forth herein are not exclusive of any other remedies available, including criminal prosecution, under any applicable federal, state or local law. Election of one remedy shall not preclude pursuing other remedies and nothing herein shall prohibit the Town from seeking multiple remedies.

C. Judicial Bureau Municipal Civil Complaint Ticket

Pursuant to 24 V.S.A., Chapters 59 and 61 and 4 V.S.A., Chapter 29, a Designated Enforcement Officer may commence prosecution in the Judicial Bureau for any violation of this Ordinance by serving two copies of a municipal civil complaint ticket either in person or by first class mail on the alleged offender, and thereafter promptly filing the original with the Judicial Bureau. The issuing officer shall follow the procedure set forth by the Judicial Bureau for municipal complaint tickets. The first offense ticketed for a violation shall be punishable by a fine of one hundred dollars (\$100.00), the waiver fee shall be fifty dollars (\$50.00); a second offense ticketed for the same violation shall be punishable by a fine of two hundred dollars (\$200.00), the waiver fee shall be one hundred dollars (\$100.00); a third offense ticketed for the same violation shall be punishable by a fine of five hundred dollars (\$500.00), the waiver fee shall be two hundred and fifty dollars (\$250.00). Upon the fourth offense, the Town may request that the case be transferred to the Superior Court or any other court of competent jurisdiction.

D. Other Enforcement Remedies Generally; Fines, Injunctive Relief

1. Pursuant to the authority granted under 24 V.S.A. Section 2291, the Town may commence an enforcement action for abatement and removal of a violation and/or for fines in connection with any violation of this Ordinance. Said enforcement action shall be commenced in the Superior Court or any other court of competent jurisdiction.

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a. Fines. If the Town elects to seek fines under this Subsection, any Person who violates any provision of this Ordinance, or any notice or order issued hereunder, shall be fined not more than one hundred dollars (\$100.00) for each offense. No action may be brought under this subsection unless the alleged offender has had at least seven (7) days warning notice by certified mail. An action may be brought without the seven (7) day notice and opportunity to cure if the alleged offender repeats the violation of the by-law or Ordinance after the seven (7) day notice period and within the next succeeding twelve (12) months. The seven (7) day warning notice shall state that a violation exists; that the alleged offender has an opportunity to cure the violations within seven (7) days; and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven (7) days. In default of payment of the fine, such Person shall pay double the amount of such fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of these regulations shall be paid over to the Town.

b. Injunctive Relief. An action, injunction, or other enforcement proceeding may be instituted by the Town to prevent, restrain, correct, or abate any violation or activity causing a violation. The relief sought may include the right to enter onto private property to abate or correct the violation, to restrain any activity that would create further violations, or to compel a Person or Persons to perform abatement or remediation of the violation; and to seek damages for all costs, including reasonable attorney's fees, incurred by the Town in pursuing and obtaining such relief. In addition to any other remedies authorized in law or equity, the Town may seek an order specifically requiring:

- i. The elimination of Illegal Connections and/or Non-Stormwater Discharges to the MS4;
- ii. The discontinuance of practices, activities, or operations that lead to violations of this Ordinance;
- iii. The abatement or remediation of Stormwater pollution or contamination hazards and the restoration of any affected property;
- iv. The implementation of source control or treatment through the use of Best Management Practices;
- v. The performance of monitoring, analysis, and reporting.

Section 6 Separability

This Ordinance has been adopted pursuant to Section 104 of the Town of Milton Charter.

The validity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts.

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All prior Ordinances, parts of Ordinances, or policies governing the subject matter covered by this Ordinance are hereby repealed. Existing rules and regulations are also hereby repealed, to the extent they conflict with the provisions of this Ordinance.

This Ordinance shall take effect forty (40) days from date of adoption, unless a petition is properly filed in accordance with Section 104 of the Town of Milton Charter.

Public Hearing held: **February 5, 2007**

This Ordinance was adopted: **February 5, 2007**

Effective Date: **March 17, 2007**

This Ordinance shall be posted in four (4) public places not later than (fourteen (14) days from adoption).

Date: 2-5-07

Town of Milton Selectboard

(signed, as on file in the Town Clerk's Office)

Kenneth Nolan, Chairperson

Daniel FitzGerald, Vice Chairperson

George Caban, Clerk

Randall Barrows

Filed with the Town Clerk: February 6, 2007