



Town of Londonderry

STORM WATER ORDINANCE

Adopted: September 16, 2019

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STORM WATER ORDINANCE

SECTION 1 PURPOSE

The purpose of this ordinance is to:

- A. Protect, maintain, and enhance the environment of the Town of Londonderry, New Hampshire ("Town") and the public health, safety and the general welfare of the citizens of the Town, by controlling discharges of pollutants to the town's storm water system and maintaining and improving the quality of the receiving waters into which the storm water outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the town.
- B. Enable the Town to comply with requirements of the Town's Municipal Separate Storm Sewer System ("MS4") General Permit issued by USEPA under the National Pollution Discharge Elimination System ("NPDES") program and applicable regulations, including 40 CFR §122.26 for storm water discharges.
- C. Allow the Town to exercise the powers granted by the State of New Hampshire through RSA 149-I and other applicable statutes to:
 - 1. Exercise general regulation over the planning, location, construction, and operation and maintenance of storm water facilities in the town, whether or not owned and operated by the town;
 - 2. Adopt any rules and regulations deemed necessary to accomplish the purposes of this ordinance, including the adoption of a system of fees for services and permits;
 - 3. Establish standards to regulate the quantity of storm water discharged and to regulate storm water contaminants as may be necessary to protect water quality;
 - 4. Review and approve plans for storm water management in proposed subdivisions, commercial and industrial developments;
 - 5. Issue permits for storm water discharges, or for the construction, alteration, extension, or repair of storm water facilities;
 - 6. Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance or condition of the permit;
 - 7. Regulate and prohibit illicit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and
 - 8. Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of storm water contamination, whether public or private.

SECTION 2. DEFINITIONS

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Third New International Dictionary.

1. Accidental Discharge - A discharge prohibited by these Regulations, which occurs by chance, and without planning or thought prior to occurrence.
2. Best Management Practices ("BMPs") – Physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce the increase in rate of storm water runoff, and pollution of water, that have been approved by the Town and that have been incorporated by reference into the Storm Water Regulations as if fully set out therein. (See Section 6 of the Storm water Regulations for recommended Best Management Practices manuals).
3. Channel - A natural or artificial watercourse with a definite bed and banks that conveys flowing water continuously or periodically.
4. Code Enforcement Officer – A Town employee assigned to enforce the implementation of Town Ordinances
5. Construction Activity - Activities subject to the EPA Phase II Storm Water Program and the NPDES General Construction Permits, including construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.
6. Contaminant - Any physical, chemical, biological, or radiological substance or matter in water.
7. Department of Public Works and Engineering ("DPWE") - The Town of Londonderry Department of Public Works and Engineering.
8. Director of Public Works and Engineering ("Director") - The chief administrator of DPWE who is authorized to assign DPWE staff to oversee the implementation of the Town's Storm Water Regulations and Storm Water Ordinance (SWO).
9. Discharge - To dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means including any direct or indirect entry of

any solid or liquid matter into the municipal separate storm sewer system or ponds, streams, lakes and wetlands.

10. Environmental Protection Agency (EPA) – The Federal agency responsible for implementing the Federal Water Pollution Control Act, (3 U.S.C § 1251 et seq.) AKA the “Clean Water Act”.
11. Illicit Connections - Illegal and/or unauthorized connections to the municipal separate storm water system whether or not such connections result in discharges into that system. A Illicit Connection is:
 - (1) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit 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, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or
 - (2) Any pipe, open channel, drain or conveyance connected to the municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
12. Illicit Discharge - Any discharge to the Municipal Storm Sewer System (MS4) that is not composed entirely of storm water and not specifically permitted through an existing NPDES Discharge Permit.
13. Industrial Activity - Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).
14. Land Disturbing Activity - Any activity that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land-disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling, and excavation.
15. Maintenance - Any activity that is necessary to keep a storm water facility in good working order so as to function as designed. Maintenance shall include complete reconstruction of a storm water facility if reconstruction is needed in order to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any problem on the site property that may directly impair the functions of the storm water facility.
16. Maintenance Agreement - A document duly executed and recorded in the Registry of Deeds that acts as a property deed restriction, and which provides for long-term maintenance of storm water management practices.

17. Municipal Separate Storm Sewer System ("MS4") - The conveyances owned or operated by the municipality for the collection and transportation of storm water, including the roads and streets and their drainage systems, catch basins, pipes, curbs, gutters, ditches, man-made channels, and storm water detention ponds.
18. National Pollutant Discharge Elimination System Permit ("NPDES permit") - A permit issued 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.
19. Non-Storm Water Discharge - Any discharge to the storm drain system that is not composed entirely of storm water.
20. Notice of Intent ("NOI") – Application to apply for coverage under the EPA's General Permit for Construction Activities.
21. Person - Any and all persons, including any individual, firm or association and any municipal or private corporation or other entity organized or existing under the laws of this or any other state or country.
22. Pollutant - Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; 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; sediment; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.
23. Pollution - The contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.
24. Premises - Any building, lot, parcel of land, or portion of land whether improved or unimproved including sidewalks and parking strips
25. Recharge – The amount of water from precipitation that infiltrates into the ground

and is not evaporated or transpired.

26. Runoff - That portion of the precipitation on a drainage area that is discharged from the area into the municipal separate storm sewer system.
27. Sediment - Solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface either above or below sea level.
28. Stabilization/Stabilized - Providing adequate measures, vegetative and/or structural, that will prevent erosion from occurring.
29. State Waters - Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of a boundary of the State of New Hampshire which are not entirely confined and retained completely upon the property of a single person.
30. Storm Water - water from any form of natural precipitation that is not absorbed or evaporated, and resulting from such precipitation. Street wash waters related to street cleaning or maintenance.
31. Storm Water Management - The programs to maintain quality and quantity of storm water runoff to pre-development levels.
32. Storm Water Management Facilities - The drainage structures, conduits, ditches, storm sewers, and all device appurtenances by means of which storm water is collected, transported, pumped, treated or disposed of.
33. Storm Water Management Plan - The set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, BMPs, concepts and techniques intended to maintain or restore quality and quantity of storm water runoff to pre-development levels.
34. Storm Water Pollution Prevention Plan ("SWPPP") - A plan that clearly describes appropriate control measures that include a description of all pollution control measures (*i.e.*, BMPs) that will be implemented as part of the construction activity to control pollutants in storm water discharges and describes the interim and permanent stabilization practices for the site, including maintenance agreement.
35. Storm Water Regulations ("Regulations") - A supplement to this Storm Water Ordinance ("SWO") that includes additional conditions and requirements. Copies are available at the DPWE and the Office of the Town Clerk.
36. Storm Water Runoff - Flow on the surface of the ground, resulting from precipitation and drainage consisting entirely of water from any form of natural precipitation that

is not absorbed or evaporated, and resulting from such precipitation.

37. Stream - Areas of flowing water occurring for sufficient time to develop and maintain defined channels but may not flow during dry portions of the year. Includes but is not limited to all perennial and intermittent streams located on U.S. Geological Survey Maps.
38. Structural BMPs - Devices that are constructed to provide control of storm water runoff.
39. Structural Stormwater Control - A structural storm water management facility or device that controls storm water runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.
40. Surface Water - Waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, ponds and reservoirs.

SECTION 3. ADMINISTRATION

The Director (or his/her designee) shall administer the provisions of this ordinance and is hereby authorized to promulgate and amend such regulations as may be necessary and convenient to effectuate the purposes of this ordinance.

SECTION 4. PROHIBITED DISCHARGES

No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the Town to violate a state surface water quality standard, the Town's Phase II MS4 NPDES permit, or any state-issued discharge permit for discharges from its MS4.

The specific prohibited discharges outlined in the Regulations are not inclusive of all discharges prohibited by this ordinance and the Regulations.

SECTION 5. PERMITTING REQUIREMENTS

A. Construction General Permit

No land owner or land operator shall begin any site work of any building(s), grading or other land development or any land disturbance activities as outlined in 1 – 4 below without first obtaining an EPA Construction General Permit from EPA and submitting a

Notice of Intent (NOI) to EPA Region I, receiving acknowledgement, having an approved Storm Water Pollution Prevention Plan and meeting the requirements of this ordinance.

1. Land disturbing activity of one (1) or more acres of land;
2. Land disturbing activity of less than one (1) acre of land, if such activity is part of a larger common plan of development that affects one (1) or more acres of land.
3. Land disturbing activity of less than one (1) acre of land, if in the discretion of the Director such activity poses a unique threat to water, or public health or safety;
4. The creation and use of borrow pits (the excavation of soils from one area to be used in another area) that would meet any of the criteria of 1, 2, or 3 above.

The EPA's general permit contains eligibility restrictions, as well as permit conditions and requirements. Applicant(s) may have to take certain actions to be eligible for coverage under this permit. In such cases, the applicant must continue to satisfy those eligibility provisions to maintain permit authorization. If the applicant does not meet the requirements that are pre-condition to eligibility, then the resulting discharges constitute unpermitted discharges. By contrast, if the applicant does not comply with the requirements of the general permit, the applicant may be in violation of the general permit.

B. Industrial General Permit

Any facility covered under the NPDES Multi-Sector General Permit for storm water discharges associated with industrial activities at the facility, must apply for coverage with EPA through submittal of an NOI to EPA Region I, receive acknowledgement of coverage or continuation of coverage if it is a renewal of existing coverage, and have a SWPPP for the facility.

All operators of landfills, hazardous waste treatment, disposal, and recovery facilities and industrial facilities are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, USC (S) 11023. Industrial facilities that the Town determines are contributing a pollutant load to the Municipal Separate Storm Sewer System, shall comply with Best Management Practices outlined in the Town's Storm Water Regulations.

C. Chloride Usage for Winter Maintenance

The owners and operators of private street and private parking lots with 10 or more parking spaces that are draining to MS4 located within any watershed that is impaired for Chlorides shall be required:

(1) that any commercial salt applicators used for applications of salt to their parking lots or streets be trained and certified in accordance with Env-Wq 2203, and

(2) to report annual salt usage within the municipal boundaries using the UNH Technology Transfer Center online tool (<http://roadsalt.unh.edu/Salt>)

SECTION 6. TOWN APPROVAL PROCEDURES

Any land owner or land operator who intends to obtain coverage for storm water discharge associated with land disturbing activities described in Section 5A above whether a new development or redevelopment or associated with industrial activity under the NPDES Multi Sector General Permit for Storm Water Discharges Associated with Industrial Activity ("the Industrial General Permit") as described in Section 5B above shall, in addition to the state and federal permit requirements:

1. Secure required approvals through the Town of Londonderry's Planning Board ("Planning Board") if appropriate, and
2. At least five (5) days prior to the commencement of the land disturbing activity on the property and/or industrial activity at the facility submit to the Director for review and approval, a signed copy of its NOI and a copy the SWPPP prepared and implemented in accordance with the requirements of the EPA Construction or Industrial General Permit or any individual or group NPDES permit issued for storm water discharges from the facility. The SWPPP shall be prepared to meet the requirements of 40 CFR 122.26.

SECTION 7. STORM WATER CONTROL REGULATIONS

Any land owner or land operator subject to the General EPA permitting requirements described in Sections 5A and/or 5B above or whose land disturbance or industrial activity is otherwise determined by the Director to have the potential to;

1. Degrade the quality of the receiving waters into which the storm water outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the Town or and
2. Increases post-development rate of storm water runoff or
3. Introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the Town to violate a state surface water quality standard, the Town's Phase II MS4 NPDES permit, or any state- issued discharge permit for discharges from its MS4.

shall be required to comply with the Best Management Practices of the Londonderry Storm Water Control Regulations dated August 16, 2019 or latest revision thereto.

SECTION 8. ACCESS AND INSPECTION OF PROPERTY AND FACILITIES

- A. A DPWE representative shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance
- B. If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to DPWE representatives.
- C. The owner or operator shall allow DPWE representatives ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of a National Pollutions Discharge Elimination System Permit to discharge storm water.
- D. DPWE shall have the right to set up on any property or facility such devices as are necessary in the opinion of the DPWE to conduct monitoring and/or sampling of flow discharges.
- E. DPWE may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to DPWE. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure accuracy.
- F. Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of DPWE and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.
- G. Unreasonable delays in allowing DPWE access to a facility shall be a violation of this ordinance. A delay shall be considered unreasonable if the delay a) exceeds 1 week (7 days), or b) any length of time if it is determined that the delay allowed the continuation of a discharge to the MS4 that is specifically prohibited by this ordinance.
- H. If DPWE has been refused access to any part of the premises from which storm water is discharged, and DPWE 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 designated to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then DPWE may seek

issuance of a search warrant from any court of competent jurisdiction.

SECTION 9. NOTIFICATION OF ACCIDENTAL DISCHARGES AND SPILLS

Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non- storm water discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into storm water, the Town's Separate Storm Sewer System, State Waters, or Waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

Any person identified above that is required to respond as described in the previous paragraph, or is otherwise required to provide notification to the State in accordance with RSA 146-A:5 (NH Oil Spillage in Public Waters) or RSA 147-A:11 (NH Hazardous Waste Management Act), shall also provide immediate notification to DPWE and the Londonderry Fire Department.

SECTION 10. VIOLATIONS ENFORCEMENT AND PENALTIES

- A. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of the Town's SWO or Regulations. Any person who has violated or continues to violate these provisions may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law. In the event the violation constitutes an immediate danger to public health or public safety, DPWE is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. D P W E is authorized to seek costs of the abatement as outlined in Section 10.F below.
- B. Whenever DPWE finds that a violation of this ordinance has occurred, a Code Enforcement Officer may order compliance by written notice of violation ("NOV"). The NOV shall contain:
 - 1. The name and address of the alleged violator;
 - 2. The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
 - 3. A statement specifying the nature of the violation;
 - 4. A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;

5. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and,
6. A statement that the determination of violation may be appealed to the Town Manager by filing a written notice of appeal within five (5) days of service of notice of violation.

C. An NOV may require without limitation:

1. Performance of monitoring, analyses, and reporting;
2. Elimination of illicit discharges and illegal connections;
3. Violating discharges, practices, or operations shall cease and desist;
4. Abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
5. Payment of costs to cover administrative and abatement costs; and,
6. Implementation of pollution prevention practices.

D. Appeal of Notice of Violation - Any person receiving an NOV may appeal the determination of DPWE. The appeal must be received by end of the business day at the office of the Town Manager within five (5) calendar days from the date of the NOV. Filing an appeal does not relieve the owner from full compliance with remedial actions outlined in the NOV. The decision of the Town Manager shall be final.

E. Enforcement Measures After Appeal - If the violation has not been corrected pursuant to the requirements set forth in the NOV, then DPWE representatives may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow DPWE or its designee to enter upon the premises for the purposes set forth above.

F. Costs of Abatement of the Violation - Within ten (10) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file to the Town Manager a written protest objecting to the assessment or to the amount of the assessment within fifteen (15) days of such notice. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within five (5) days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the Town by reason of such violation.

G. Civil Penalties -In the event the alleged violator fails to take the remedial measures set forth

in an NOV or otherwise fails to cure the violations described therein within five (5) days, or such greater period as DPWE shall deem appropriate, after the Director or the Director's designee has taken one or more of the actions described above, the Code Enforcement Officer may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the NOV.

- H. Criminal Penalties - For any wanton, willful, or malicious violation of the SWO or the Regulations adopted pursuant to the authority stated in this ordinance, the Code Enforcement Officer may issue a citation to the alleged violator requiring such person to appear in court to answer charges for such violation. Upon conviction, such person shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person and may be punished by a fine not to exceed \$1,000 for each day the violation has occurred, or imprisonment or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.
- I. Violations Deemed a Public Nuisance – In addition to the enforcement process and penalties provided in this SWO any threat to public health, safety, welfare and environment is declared and deemed a nuisance, which may be abated by injunctive or other equitable relief as provided by law.
- J. Remedies Not Exclusive_- The remedies listed in this SWO and the Regulations are not exclusive of any other remedies available under any applicable federal, state or local law and the Town may seek cumulative remedies.
- K. The Town may recover attorney's fees, court costs, engineering fees and other expenses associated with enforcement of this SWO and the Regulations, including sampling and monitoring expenses.

SECTION 11. ELIGIBILITY

EPA reissued the Construction General Permit ("CGP") on January 18, 2017. The CGP now covers both the Phase I large construction sites greater than five acres and "Storm Water Associated with Small Construction Activity," which includes construction sites from one to five acres (or smaller than one acre if part of a larger "common plan of development or sale" that totals one acre). The permit contains conditions to protect endangered species and historic properties.

The EPA's general permit contains eligibility restrictions, as well as permit conditions and requirements. Applicant(s) may have to take certain actions to be eligible for coverage under this permit. In such cases, the applicant must continue to satisfy those eligibility provisions to maintain permit authorization. If the applicant does not meet the requirements that are pre-condition to eligibility, then the resulting discharges constitute unpermitted discharges. By contrast, if the applicant does not comply with the requirements of the general permit, the applicant may be in violation of the general permit.

SECTION 12. SEVERABILITY CLAUSE

Should any Chapter or provision of this SWO be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this SWO as a whole, or any part thereof other than the part declared to be invalid.

SECTION 13. ORDINANCE IN FORCE

This SWO shall be in full force and effect from and after its passage, approval, recording and publications as provided by law.