

TOWN OF ATKINSON, NEW HAMPSHIRE
ILLICIT DISCHARGE DETECTION AND ELIMINATION
ADMINISTRATIVE PROGRAM
Adopted September 16, 2020

SECTION 1. PROHIBITION OF ILLICIT CONNECTIONS

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
2. Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Board of Selectmen requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Board of Selectmen.

SECTION 2. RESPONSIBILITY FOR ADMINISTRATION

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

SECTION 3. DEFINITIONS

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

Authorized Enforcement Agency. Employees or designees of the director of the municipal agency designated to enforce this ordinance.

Best Management Practices (BMPs). Schedules of activities, prohibitions 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 storm water, receiving waters, or storm water 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.

Construction Activity. Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

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 8 of this ordinance.

Illicit Connections. An illicit connection is defined as either of the following:

- 1• Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that 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 agency or,

- 2• Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

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

Municipal Separate Storm Sewer System (MS4). The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the Town of Atkinson and designed or used for collecting or conveying storm water, and that is not used for collecting or conveying sewage.

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

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. Publicly-owned facilities 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.

Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

Storm Water Management 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 Storm Water, Storm Water 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 4. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Submission of NOI to the Town of Atkinson.

1. 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 Board of Selectmen prior to the allowing of discharges to the MS4.
2. The operator of a facility, including construction sites, required to have an NPDES permit to discharge storm water associated with industrial activity shall submit a copy of the Notice of Intent (NOI) to the Board of Selectmen at the same time the operator submits the original Notice of Intent to the EPA as applicable.
3. The copy of the Notice of Intent may be delivered to the Board of Selectmen either in person or by mailing it to:

Notice of Intent to Discharge Storm Water
Town of Atkinson, New Hampshire, Board of Selectmen
21 Academy Ave, Atkinson, NH 03811

4. A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the Notice of Intent to do so to the Board of Selectmen.

SECTION 5. COMPLIANCE MONITORING

1.1 Right of Entry: Inspection and Sampling

The Board of Selectmen shall be permitted to enter and inspect facilities subject to regulation under these procedures as often as may be necessary to determine compliance with these procedures and to require certain additional measures as deemed necessary.

1. 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 Board of Selectmen.
2. Facility operators shall allow the Board of Selectmen 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 an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
3. The Board of Selectmen shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Board of Selectmen to conduct monitoring and/or sampling of the facility's storm water discharge.
4. The Board of Selectmen 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 storm water 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 Board of Selectmen and shall not be replaced. The costs of clearing such access shall be borne by the operator.
6. Unreasonable delays in allowing the Board of Selectmen access to a permitted facility is a violation of a storm water discharge permit and of these procedures. A person who is the operator of a facility with an NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the Board of Selectmen reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by these procedures.

SECTION 6. Search Warrants

If the Board of Selectmen has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of these procedures, 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 these procedures or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Board of Selectmen may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 7. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The Board of Selectmen will adopt 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 United States. The owner or operator of such activity, operation, or facility 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 that 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 MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water management

plan (SWMP) as necessary for compliance with requirements of the NPDES permit.

SECTION 8. 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 waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. Failure to provide notification of a release as provided above is a violation of these procedures. 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 Board of Selectmen 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 Board of Selectmen within [] 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 [] years.

SECTION 9. NOTICE OF VIOLATION

Whenever the Board of Selectmen finds that a person has violated a prohibition or failed to meet a requirement of these procedures, the Board of Selectmen may order compliance by written notice of violation to the responsible person.

The Notice of Violation 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 these procedures 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;
6. A statement that the determination of violation may be appealed to the Board of Selectmen by filing a written notice of appeal within [] days of service of notice of violation; and
7. A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.
8. 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
 - e. Payment of a fine to cover administrative and remediation costs; and
 - f. The implementation of source control or treatment BMPs.

SECTION 10. SUSPENSION OF MS4 ACCESS AND EMERGENCY CEASE AND DESIST ORDERS

When the Board of Selectmen finds that any person has violated, or continues to violate, any provision of these procedures, or any order issued hereunder, or that the person's past violations are likely to recur, and that the

person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Board of Selectmen may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

1. Immediately comply with all procedural requirements; and
2. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Board of Selectmen may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Board of Selectmen may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Board of Selectmen that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under these procedures. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Board of Selectmen within [] days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

SECTION 11. 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 [] days of the decision of the municipal authority upholding the decision of the Board of Selectmen, then representatives of the Board of Selectmen shall 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 the government agency or designated contractor to enter upon the premises for the purposes set forth above.

SECTION 12. VIOLATIONS, ENFORCEMENT AND PENALTIES

12.1. Compensatory Action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the Board of Selectmen may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

12.2. Civil Penalties

In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within [] days, or such greater period as the Board of Selectmen shall deem appropriate, after the Board of Selectmen has taken one or more of the actions described above, the Board of Selectmen may impose a penalty not to exceed \$[] (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

12.3. Prosecution. Any person that has violated or continues to violate these procedures shall be liable to criminal prosecution to the fullest extent of the law and shall be subject to a criminal penalty of \$[] per violation per day. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

SECTION 13. APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation may appeal the determination of the Board of Selectmen. The notice of appeal must be received within [] days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within [] days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

SECTION 14. COST OF ABATEMENT OF THE VIOLATION

Within [] 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 a written protest objecting to the amount of the assessment within [] days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an 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.

SECTION 15. 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 these procedures 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.

SECTION 16. REMEDIES NOT EXCLUSIVE

The remedies listed in these procedures are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Board of Selectmen to seek cumulative remedies.

The Board of Selectmen may recover all attorney's fees court costs and other expenses associated with enforcement of these procedures, including sampling and monitoring expenses.