

STORMWATER ORDINANCE

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Sec. 1. - Purpose.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the residents of Durham 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 storm drainage system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the storm drainage system through stormwater discharges by any user.
- (2) To prohibit 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.

Sec. 2. - Definitions.

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

Best management practices (BMPs) shall mean 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 shall mean the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

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

First Selectman shall mean the Durham First Selectman or his/her authorized designee.

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.

Hearing officer shall mean the person designated from time to time by the First Selectman to hear appeals in accordance with section 15 herein.

Illegal discharge shall mean any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in section 7 of this ordinance.

Illicit connections shall mean the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-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 shall mean 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 shall mean 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 shall mean any discharge to the storm drain system that is not composed entirely of stormwater.

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

Pollutant 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, 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 shall mean the 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 shall mean 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 shall mean 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 shall mean any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Watercourse shall mean 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 other public official or body having jurisdiction thereof.

Sec. 4. - Responsibility for administration.

The First Selectman shall, in consultation with the town engineer, 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.

- (1) *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.

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

- (a) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one (1) PPM chlorine), fire fighting activities, and any other water source not containing pollutants.
- (b) Discharges specified in writing by the First Selectman as being necessary to protect public health and safety.
- (c) Dye testing is an allowable discharge, but requires a written notification to the First Selectman 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.
- (d) The prohibition shall not apply to 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.

- (2) *Prohibition of illicit connections.*

- (a) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- (b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection

was permissible under law or practices applicable or prevailing at the time of connection.

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

Sec. 8. - Suspension of storm drainage system access.

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.

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 First Selectman will notify a violator of the proposed termination of its storm drainage system access. The violator may petition the First Selectman for reconsideration and hearing.

A person commits an offense if the person reinstates storm drainage system access to premises terminated pursuant to this section, without the prior approval of the First Selectman.

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 First Selectman prior to the allowing of discharges to the storm drainage system.

Sec. 10. - Right of entry, evaluation, and monitoring of damages.

- (a) *Applicability.* This section applies to all facilities that have stormwater discharges associated with industrial or construction activity, and any other commercial or residential facilities that discharge stormwater to the storm drainage system.
- (b) *Access to facilities.*

- (1) The First Selectman 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 representatives or designees of the First Selectman.
- (2) Facility operators shall allow the First Selectman 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 First Selectman shall have the right to set up on any NPDES permitted facilities such devices as are necessary in the opinion of the First Selectman to conduct monitoring and/or sampling of the facility's stormwater discharge.
- (4) The First Selectman has the right to require the installation of sampling and monitoring equipment on any NPDES permitted facility by the discharger at it's 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 First Selectman and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (6) Unreasonable delays in allowing the First Selectman 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 First Selectman reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- (7) If the First Selectman 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 First Selectman may seek

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

- (8) While performing the necessary work on private properties referred to in subsections (b)(1) through (5) of this section, the First Selectman shall observe all safety rules applicable to the premises established by the facility.

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

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 First Selectman 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 First Selectman within three (3) business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

Sec. 14. - Enforcement.

(a) *Notice of violation.* Whenever the First Selectman finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, he/she shall order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit discharges or connections;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
- (5) The implementation of source control or treatment BMPs.

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. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the First Selectman may order the work be done by a designated governmental agency or a contractor and the violator fined an amount equal to the expense thereof. in addition to any fines imposed in subsections (b) or (c) of this section.

(b) *Procedure for issuance of citations.*

- (1) The First Selectman shall issue a written notice to any person who violates any provision of this ordinance. No written notice may be issued against the state or any state official or state employee acting within the scope of his employment. Such written notice shall explain the nature of the violation and the steps required for compliance, and shall allow a seventy-two-hour period within which

to correct the violation or within which a written plan for correction shall be submitted to the First Selectman, setting forth a reasonable time period for correction of the violation as agreed upon by the First Selectman. A written notice issued pursuant to this subsection shall be served: 1) by hand delivery, at which time the seventy-two-hour period shall begin; or 2) by certified mail return receipt requested and by regular first class mail. Three (3) business days shall be allowed for mail delivery of the notice prior to the commencement of the seventy-two-hour period.

- (2) Within two (2) business days after the period for correction established in subsection (a) expires, the First Selectman shall reinspect the subject property to determine compliance.
- (3) If the violations set forth in the written notice have not been corrected at the time of reinspection, the First Selectman, in his/her capacity as chief executive officer, may issue a citation and fine of up to one hundred dollars (\$100.00) for each violation by hand, by certified return receipt requested, by 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. No such fine shall be levied against the state or any state official or state employee acting within the scope of his employment. All citations issued pursuant to this section shall state the violation for which the citation is being issued, the fine imposed for the violation, the time period within which the fine must be paid, and an address for remittance of the fine.

(c) *Compliance periods after citation.*

- (1) Any violation for which a citation is issued and which is not corrected within the time period specified in subsection (b) of this section shall be a new violation of this ordinance, and every twenty-four-hour period thereafter in which the violation is not corrected shall constitute a new violation. The citation shall include a notice to the alleged violator that each twenty-four-hour period of noncompliance after the time period specified in section 14(b) shall constitute a new violation and a new fine of up to one hundred dollars (\$100.00).
- (2) The First Selectman shall not be responsible for a daily reinspection. Rather, the person to whom the citation has been issued shall be responsible for reporting subsequent compliance by way of written report to the First Selectman. The First Selectman shall reinspect to confirm compliance within one (1) business day of receipt of such report.

(d) *Payment of fines.*

- (1)** All fines imposed under this ordinance which are uncontested shall be made payable to the Town of Durham and shall be received by the First Selectman within ten (10) calendar days from date of notice of the citation. All fines collected by the First Selectman shall be deposited into the Town of Durham General Fund.

Sec. 15. - Appeals.

- (a)** If the First Selectman issues a notice of violation, the First Selectman shall send written notice of action and a statement of the right to an appeal to the facility operator or facility owner.
- (b)** The facility operator or facility owner may appeal a notice of violation to the First Selectman by setting forth in writing the reasons for the appeal within fifteen (15) calendar days after date of the notice of violation.
- (c)** The facility operator or facility owner may appeal the decision of the First Selectman to the hearing officer as follows:
 - (1)** The facility operator or facility owner may file a written request for a review by paying an appeal fee of twenty-five dollars (\$25.00) and setting forth the reasons for the appeal within twenty (20) calendar days after the date of notification of the decision from the First Selectman. Appeal fees shall be returned to the appealing facility operator or facility owner if the appeal is upheld.
 - (2)** The hearing officer shall conduct a hearing within thirty (30) calendar days of the receipt of the request. The hearing shall be informal in nature. The person requesting the hearing may testify concerning the facts, circumstances and nature of his/her appeal and may present supporting documentation.

The hearing officer shall render a written decision within fifteen (15) calendar days of the hearing. The decision will affirm or reverse the decision of the First Selectman.
- (d)** Filing of a request for appeal shall stay the action by the First Selectman requiring payment of a surcharge until the hearing officer has completed his review. If a request for appeal is not made within the twenty-calendar day period, the action of the First Selectman is final.

Sec. 16. - 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 First Selectman may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

Sec. 17. - Compensatory action.

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

Sec. 18. - 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. 19. - 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 First Selectman may recover all attorneys' fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Sec. 20. - 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 First Selectman to seek cumulative remedies.

Sec. 21. - Adoption of ordinance.

This ordinance shall be in full force and effect fifteen (15) days after publication. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.