

TOWN OF PEMBROKE - ILLICIT DISCHARGE ORDINANCE

Section 1. Purpose & Intent

The Purpose is to protect water quality in the Town of Pembroke while providing for the health, safety and general welfare of the citizens of Town. The intent is to prohibit illicit discharges that often contain pathogens, nutrients, surfactants and various toxic pollutants by setting up and enforcing an Illicit Discharge and Detection Elimination program.

The Pembroke Board of Selectmen is authorized to enact this ordinance pursuant to their powers and duties granted by the State of New Hampshire, including RSA chapter 149-I and RSA 41:8.

Section 2. Definitions

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”.

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 Storm Sewer System (MS4).

ILLICIT CONNECTIONS

An Illicit, unauthorized or illegal connection that drains into or is connected to the Municipal Separate Storm Sewer System (MS4), shall mean any pipe, drain, open channel or conveyance connected from a residential, commercial or industrial land use, to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized federal, state or local enforcement agency.

ILLICIT DISCHARGE

Any direct or indirect non-storm water discharge to the Municipal Separate Storm Sewer System (MS4), excepting discharges pursuant to a specific NPDES permit and firefighting activities.

MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4)

Are publicly owned and operated facilities by which storm water is collected including but not limited to roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains, piped storm drains, pumping facility retention or detention basins, reservoir or other drainage structure that that are owned and/or maintained by the Town of Pembroke.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

The water quality program setup as part of the Clean Water Act, implemented by the EPA, to authorize the discharge of pollutants into surface waters of the United States.

NON-STORMWATER DISCHARGE

Discharge to the municipal storm drain system not composed entirely of stormwater.

OUTFALL

The point at which stormwater flows out from a point source discernible, confined and discrete conveyance.

OWNER

A person with a legal or equitable interest in the property.

POLLUTANT

The contamination or other alternation 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 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.

RUNOFF

That portion of the precipitation on a drainage area which is discharged from the area into the Municipal Separate Storm Sewer System.

STORMWATER

Stormwater runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration and drainage.

Section 3 – REGULATIONS

The Town of Pembroke may adopt, and periodically amend, regulations, rules and/or written guidance relating to the terms, conditions definitions, enforcement, fees, procedures and administration of this Illicit Discharge Ordinance by majority vote of the Governing Body (Pembroke Board of Selectmen) after conducting a public hearing to receive comments. Such hearing shall be advertised in a newspaper of general local circulation at least fourteen (14) days prior to the hearing date. Failure of the Town of Pembroke to issue such rules or regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this Ordinance.

Such regulations, rules and/or guidance may include without limitation, provisions for the establishment of one or more categories of administrative review approvals for specific types or sizes of projects. Administrative review applications that meet all the standard requirements may be issued by one or more agents designated in writing by the Town of Pembroke without the requirement of a public hearing as detailed in this Ordinance. Administrative review approval shall comply with all other provisions of this Ordinance.

Section 4 – SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable. If any provision, paragraph, sentence or clause 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.

Section 5 – NOTIFICATION

§ 5.1 – Notification of Spills or Other Non-Stormwater Discharges

1. As soon as any person responsible for a facility, site activity, or operation, or responsible for emergency response for a facility, site activity, or operation, has information of any known or suspected release of pollutants or non-stormwater discharges which are resulting or may result in illicit discharges or pollutants discharging into the Town of Pembroke municipal storm 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.
2. If the substance poses an immediate health or safety concern the Town of Pembroke and the State of New Hampshire Emergency Services shall be immediately notified.
3. If the substance does not pose an immediate health or safety concern than the Town of Pembroke Health Department should be notified as soon as possible, however, no later than twenty-four (24) hours post event.

Section 6 – TRANSITIONAL PROVISIONS

Residential property owners shall have 60 days from the effective date of this Ordinance to comply with its provisions provided good cause is shown for the failure to comply with the Ordinance during that period.

Section 7 – Illicit Discharge and Detection Elimination (IDDE)

§ 7.1 – Applicability

Illicit discharges enter the system through either direct connections (such as wastewater piping either mistakenly or deliberately connected to the storm drains) or by indirect connections. Indirect connections can include failing individual sewage disposal systems, cracked sanitary pipes, spills collected by drain outlets or by dumping an illicit discharge directly into the storm basin.

The Illicit discharges result in high levels of pollutants including heavy metals, toxics, oil and grease, solvents, nutrients, viruses and bacteria being released directly into the receiving waters of the State or the United States. The MS4 drainage system is not designed to accept, process, or discharge such non-stormwater wastes. The pollutant levels from these illegal discharges degrade the receiving water quality and threaten aquatic, wildlife and human health.

§ 7.2 – Prohibition of Illicit Discharges

No person shall illicitly discharge or cause to be discharged into the municipal storm drain system or watercourses 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 or permit requirements, including but not limited to State surface water quality standards and the Town's MS4 Permit. . Additionally, any discharge that fits in the allowed discharge category below that nonetheless is a significant contributor of pollutants to the MS4 would also be considered an illicit discharge.

The following discharges are specifically prohibited and are not meant to be all inclusive:

1. Connecting sanitary sewer to storm sewer (MS4);
2. Sanitary Sewer Overflows;
3. Any new or used motor oil, antifreeze, or other motor vehicle fluid;
4. Any industrial wastes;
4. Any hazardous waste, including hazardous household waste;
5. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
6. Any garbage, rubbish or yard waste;
7. Any wastewater from:
 - a. A commercial carwash facility;
 - b. Any vehicle washing, cleaning or maintenance at any new or used automobile, or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or
 - c. From any washing, cleaning or maintenance of any business or commercial or public service vehicle, including truck, bus, or heavy equipment, by a business or public entity that operates more than two such vehicles;
8. Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;
9. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any harmful quantities of soap, detergent, degreaser, solvent, or any other harmful cleaning substance;
10. Any wastewater from any floor, rug or carpet cleaning;
11. Any wastewater from the wash down or other cleaning of pavement that contains any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the wash down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substances has occurred, unless all harmful quantities of such released material have been previously removed;
12. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler (including fly ash, slag ash or similar);
13. Any ready-mixed concrete, mortar, ceramic, or asphalt base material, "urban fill," or hydro-mulch material, or from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying such material;

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14. Any runoff or wash down water from any animal pen, kennel, or fowl or livestock containment area;
15. Any water from a swimming pool, fountain or spa containing any harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in the pool cleaning;
16. Any water from a water curtain in a spray room used for painting vehicles or equipment;
17. Any containment runoff from an auto salvage yard or junk yard;
18. Any substance or material that will damage, block, or clog the MS4;
19. Any release from a petroleum storage tank, or any leachate or runoff from soil contaminated by a leaking petroleum storage tank, or any discharge of pumped, confined, or treated waste water from the remediation of any such petroleum storage tank release, unless it complies with state and federal standards and does not contain any harmful quantity of any pollutant;
20. Any pet waste from a commercial enterprise or livestock waste.

The following items are not considered as Illicit Discharges:

1. Water line flushing
2. Uncontaminated ground water infiltration
3. Uncontaminated pumped ground water
4. Discharges from potable water sources except landscape irrigation and lawn watering
5. Foundation & footing drains including crawl space pumps
6. Air conditioning condensation
7. Diverted/pumped stream flows, Springs & riparian habitats and wetlands and rising groundwater
8. Dechlorinated swimming pool discharges
9. Discharge from Street Sweeping
10. Dye testing as long as the officials are made aware prior to the test
11. Non-stormwater discharge permitted under an NPDES permit, waiver or waste discharge order administered under the authority of the US EPA, provided that the discharge is in full compliance with the requirements of the permit, waiver or order and applicable laws and regulations

12. Discharge for which advanced written approval is received from the Highway Department and the Planning Board.

§ 7.3. – 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 MS4, or allows such a connection to continue.

§ 7.4– IDDE Responsibility for Administration

The Highway Department shall administer, implement and enforce the provisions of the Illicit Discharge Ordinance.

The Highway Department of the Town of Pembroke may order anyone responsible for an illicit connection violation or discharge to an MS4 to:

1. Eliminate it;
2. Take measure to minimize the discharge of pollutants until such time as the illicit connection or discharge shall be eliminated; and,
3. Remediate the contamination.

An illicit discharge and/or illegal connection shall be removed by the responsible party immediately; there is no “grace period between the identification the discharge/connection and removal. Failure to remove the discharge/connection can, at the discretion of the Highway Department of the Town of Pembroke, result in an immediate fine in accordance with Section 7.6 below, until such discharge/connection is removed.

The Highway Department shall have the authority to enter private property to conduct investigations into alleged illicit discharges within 48 hours of the Highway Department becoming aware of the potential discharge. Such investigation shall occur only after the Department provides advance notice of inspection to the property owner as soon as is practical, with the investigation conducted at a reasonable time of day as determined between the Highway Department and the Property Owner.

The Highway Department shall have the authority to issue a written Notice of Violation to any entity or person who violates this Ordinance. The Highway Department may additionally impose fines for violations of this Ordinance, as provided in Section 7.6 below. The Board of Selectmen shall collect the fines on behalf of the Town of Pembroke.

Any entity or person may appeal a Notice of Violation, including accompanying fines, to the Board of Selectmen in writing within 30 days of receiving the Notice of Violation. The Board of Selectmen shall conduct a public hearing on the appeal.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation and no appeal has relieved the alleged violator from complying with the Notice of Violation, the Highway Department, its designee, or other person authorized by the Town may enter upon the subject private property and take any and all measures necessary to abate the violation or restore the property, at the violator's expense.

This Ordinance's standards 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.

§ 7. 6– Fines

The Highway Department of the Town of Pembroke has the authority to levy civil fines for violations. Civil fines may be imposed not to exceed \$10,000 per day for each occurrence and may be imposed for every day the violation continues.

Board of Selectmen Chair

Date

Town Clerk / Tax Collector

Date

