

**Non-Storm Water Discharge
Ordinance**

Chapter 143

From the Code

Of the

Town of Windham Town Office

Adopted

January 11, 2005

Effective

February 11, 2005

County of Cumberland

State of Maine

Chapter 143

Non-Storm Water Discharge Ordinance

Section 143-1. Purpose/Objectives.

A. Purpose. The purpose of this Non-Storm Water Discharge Ordinance (the “Ordinance”) is to provide for the health, safety, and general welfare of the citizens of the Town of Windham through the regulation of Non-Storm Water Discharges to the Municipality’s Storm Drainage System as required by federal and State law. This Ordinance establishes methods for controlling the introduction of Pollutants into the Town/City’s Storm Drainage System in order to comply with requirements of the federal Clean Water Act and State law.

B. Objectives. The objectives of this Ordinance are:

1. To prohibit unpermitted or unallowed Non-Storm Water Discharges to the Storm Drainage System; and
2. To set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this Ordinance.

Section 143- 2. Definitions.

For the purposes of this Ordinance, the terms listed below are defined as follows:

A. Clean Water Act. “Clean Water Act” means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the “Clean Water Act”), and any subsequent amendments thereto.

B. Discharge. “Discharge” means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to “waters of the State.” “Direct discharge” or “point source” means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged.

C. Enforcement Authority. “Enforcement Authority” means the person(s) or department authorized under Section 4 of this Ordinance to administer and enforce this Ordinance.

D. Exempt Person or Discharge. “Exempt Person or Discharge” means any Person who is subject to a Multi-Sector General Permit for Industrial Activities, a General Permit for Construction Activity, a General Permit for the Discharge of Stormwater from the Maine Department of Transportation and the Maine Turnpike Authority Municipal Separate Storm Sewer Systems, or a General Permit for the Discharge of Stormwater from State or Federally Owned Authority Municipal Separate Storm Sewer System Facilities; and any Non-Storm Water Discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency (“EPA”) or the Maine Department of Environmental Protection (“DEP”).

F. Industrial Activity. “Industrial Activity” means activity or activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

G. Municipality. “Municipality” means the Town of Windham.

H. Municipal Separate Storm Sewer System, or MS4. “Municipal Separate Storm Sewer System” or “MS4,” means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State agency or Federal agency or other public entity that discharges directly to surface waters of the State

I. National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. “National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit” means a permit issued by the EPA or by the DEP 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.

J. Non-Storm Water Discharge. “Non-Storm Water Discharge” means any Discharge to an MS4 that is not composed entirely of Storm Water

K. Person. “Person” means any individual, firm, corporation, municipality, quasi-municipal corporation, State agency or Federal agency or other legal entity which creates, initiates, originates or maintains a Discharge of Storm Water or a Non-Storm Water Discharge.

L. Pollutant. “Pollutant” means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

M. Premises. “Premises” means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Municipality from which Discharges into the Storm Drainage System are or may be created, initiated, originated or maintained.

N. Regulated Small MS4. “Regulated Small MS4” means any Small MS4 regulated by the State of Maine “General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems” dated June 3, 2003 (“General Permit”), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4s.

O. Small Municipal Separate Storm Sewer System, or Small MS4. “Small Municipal Separate Storm Sewer System”, or “Small MS4,” means any MS4 that is not already covered by the Phase I MS4 Stormwater program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

P. Storm Drainage System. “Storm Drainage System” means the Municipality’s Regulated Small MS4 and areas outside the UA that drain into the Regulated MS4.

Q. Storm Water. “Storm Water” means any Storm Water runoff, snowmelt runoff, and surface runoff and drainage; “Stormwater” has the same meaning as “Storm Water.”

R. Urbanized Area (“UA”). “Urbanized Area” or “UA” means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of the Census.

Section 143-3. Applicability.

This Ordinance shall apply to all Persons discharging Storm Water and/or Non-Storm Water Discharges from any Premises into the Storm Drainage System.

Section 143-4. Responsibility for Administration.

The Town Manager or Designee is the Enforcement Authority who shall administer, implement, and enforce the provisions of this Ordinance.

Section 143-5. Prohibition of Non-Storm Water Discharges.

A. General Prohibition. Except as allowed or exempted herein, no Person shall create, initiate, originate or maintain a Non-Storm Water Discharge to the Storm Drainage System. Such Non-Storm Water Discharges are prohibited notwithstanding the fact that the Municipality may have approved the connections, drains or conveyances by which a Person Discharges unallowed Non-Storm Water Discharges to the Storm Drainage System.

B. Allowed Non-Storm Water Discharges. The creation, initiation, origination and maintenance of the following Non-Storm Water Discharges to the Storm Drainage System are allowed:

1. Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; and individual residential car washing;
2. Discharges specified in writing by the Enforcement Authority as being necessary to protect public health and safety; and
3. Dye testing, with verbal notification to the Enforcement Authority prior to the time of the test.

C. Exempt Person or Discharge. This Ordinance shall not apply to an Exempt Person or Discharge, except that the Enforcement Authority may request from Exempt Persons and Persons with Exempt Discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the Discharge(s).

Section 143-6. Suspension of Access to the Municipality's Small MS4.

The Enforcement Authority may, without prior notice, physically suspend Discharge access to the Storm Drainage System to a Person when such suspension is necessary to stop an actual or threatened Non-Storm Water Discharge to the Storm Drainage System 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 which may cause the Municipality to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the Discharge to prevent or minimize a Non-Storm Water Discharges to the Storm Drainage System. If the Person fails to comply with a suspension order issued in an emergency, the Enforcement Authority may take such steps as deemed necessary to prevent or minimize damage to the Storm Drainage System, or to minimize danger to persons, provided, however, that in taking such steps the Enforcement Authority may enter upon the Premises that are the source of the actual or threatened Non-Storm Water Discharge to the Storm Drainage System only with the consent of the Premises' owner, occupant or agent

Section 143-7. Monitoring of Discharges.

In order to determine compliance with this Ordinance, the Enforcement Authority may enter upon and inspect Premises subject to this Ordinance at reasonable hours with the consent of the Premises' owner, occupant or agent: to inspect the Premises and connections thereon to the Storm Drainage System; and to conduct monitoring, sampling and testing of the Discharge to the Storm Drainage System.

Section 143-8. Enforcement.

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance. Whenever the Enforcement Authority believes that a Person has violated this Ordinance, the Enforcement Authority may enforce this Ordinance in accordance with 30-A M.R.S.A. § 4452.

A. Notice of Violation. Whenever the Enforcement Authority believes that a Person has violated this Ordinance, the Enforcement Authority may order compliance with this Ordinance by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

1. The elimination of Non-Storm Water Discharges to the Storm Drainage System, including, but not limited to, disconnection of the Premises from the MS4;
2. The cessation of discharges, practices, or operations in violation of this Ordinance;
3. At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of Non-Storm Water Discharges to the Storm Drainage System and the restoration of any affected property; and/or
4. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

B. Penalties/Fines/Injunctive Relief. Any Person who violates this Ordinance shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any Person who violates this Ordinance also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the Municipality for violation of federal and State environmental laws and regulations caused by or related to that Person's violation of this Ordinance; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this Section.

C. Consent Agreement. The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address

timely abatement of the violation(s) of this Ordinance for the purposes of eliminating violations of this Ordinance and of recovering fines, costs and fees without court action.

D. Appeal of Notice of Violation. Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Enforcement Authority to the Board of Appeals [or change to the name of the Municipality's appropriate appellate authority] in accordance with the Board of Appeals Ordinance Section 140-15 of the Municipality's Land Use Ordinance. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the Enforcement Authority. A suspension under Section 6 of this Ordinance remains in place unless or until lifted by the Board of Appeals or by a reviewing court. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure

E. Enforcement Measures. 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 to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Enforcement Authority's decision, then the Enforcement Authority may recommend to the municipal officers that the municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

F. Ultimate Responsibility of Discharger.

The standards set forth herein 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 into waters of the U.S. caused by said Person. This Ordinance shall not create liability on the part of the Municipality, or any officer agent or employee thereof for any damages that result from any Person's reliance on this Ordinance or any administrative decision lawfully made hereunder.

Section 143-9. 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, clauses, sentences, or paragraphs or application of this Ordinance.

Section 143-10. Basis.

The Town of Windham enacts this Non-Storm Water Discharge Ordinance pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 *et seq* (the "Clean Water Act"),

and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")) The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems" dated June 3, 2003, has listed the Town of Windham as having a Regulated Small Municipal Separate Storm Sewer System ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Ordinance as part of the Municipality's Storm Water Management Program.

Enacted this 11th day of January 2005, by the following vote: Unanimous