

ORDINANCE

IT IS HEREBY ORDAINED BY THE TOWN OF SMITHFIELD AS FOLLOWS:

CHAPTER 225

REGULATION OF ILLICIT DISCHARGES INTO THE MUNICIPAL STORM DRAINAGE SYSTEM

§ 225-1. Purpose and Intent

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of Smithfield through the regulation of non-storm water discharges into the municipal storm drainage system and State Waters as authorized by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) and State Waters. The objectives of this ordinance are:

- (1) To prevent illicit discharges into the municipal separate storm sewer system.
- (2) To prohibit illicit connections to the municipal separate storm sewer system.
- (3) To require the cessation and removal of any and all such illicit connections and discharges.
- (4) To establish legal authority to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this ordinance.

§ 225-2. Definitions

BEST MANAGEMENT PRACTICES (BMPs): schedules of activities, prohibitions of practices, general good house-keeping 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.

CONSTRUCTION ACTIVITY: Land clearing and grubbing, grading, excavating, and demolition.

DISCHARGE PERMIT: A permit issued by the EPA (or by a State under authority delegated pursuant to 33 USC Section 1342) 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.

GROUND WATER: Natural water that occurs below the surface of the Earth, where it occupies spaces in soils or geologic strata and flows within aquifers below the water table. Groundwater is replenished from surface water which gradually percolates into the earth and eventually flows to the surface or streams naturally.

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.

ILLICIT CONNECTIONS: Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drainage system including but not limited to any conveyance which allows any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system, and any connections to the storm drainage system from indoor drains and sinks not authorized by the appropriate permitting authority.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): Any facility designed or used for collecting and/or conveying storm water, including but not limited to any roads with drainage systems, highways, Town of Smithfield streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural storm water controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is: a) Owned or maintained by the Town of Smithfield; b) Not a combined sewer; and c) Not part of a publicly-owned treatment works.

NON-STORM WATER DISCHARGE: Any discharge to the storm drainage system that is not composed entirely of storm water.

POLLUTANT: 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, sediment from land

disturbances, floatables, pesticides, herbicides, and fertilizers and nutrients, hazardous substances and wastes, sewage, pet waste, fecal coli form 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 that may cause or contribute to pollution.

SMITHFIELD ENGINEERING DEPARTMENT: The Town of Smithfield Department primarily responsible for administering, implementing, and enforcing the provisions of this ordinance.

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 the boundaries of the State of Rhode Island which are not entirely confined and retained completely upon the property of a single person.

STORM DRAINAGE SYSTEM: See MUNICIPAL SEPARATE STORM SEWER SYSTEM definition above.

STORM WATER: Any surface flow, runoff, and/or drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

TOWN: Town of Smithfield, Rhode Island.

WASTEWATER: Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

§ 225-3. Applicability

This ordinance shall apply to all non-storm water entering a storm drainage system generated on any developed and undeveloped lands unless explicitly authorized or exempted by the terms of this ordinance or a discharge permit.

§ 225-4. Responsibility for Administration

The Town of Smithfield Engineering Department shall administer, implement, and enforce the provisions of this ordinance. Other duly authorized officers of the Town of Smithfield may also enforce the provisions of this ordinance.

§ 225-5. Fees

A connection or discharge to the MS4 may be made only after the issuance of a permit from the Smithfield Engineering Department and the payment of a fifty dollar (\$50) permit fee.

§ 225-6. Discharge Prohibitions.

- (1) *Prohibition of Illicit Discharges:* No person shall discharge or cause to be discharged into a storm drainage system, directly or indirectly, any materials, including but not limited to pollutants, other than storm water except as authorized by this ordinance or a discharge permit.

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

- (a) 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), air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pool discharge (if de-chlorinated - typically less than one part per million chlorine), emergency fire fighting activities, and any other water source not containing pollutants.
- (b) Discharges specified in writing by the Rhode Island Department of Environmental Management (RIDEM) or the United States Environmental Protection Agency (EPA) as being necessary to protect public health and safety, and discharges authorized by a discharge permit.
- (c) Dye testing is an allowable discharge, but requires a verbal notification to the Smithfield Engineering Department prior to the event.

- (2) *Prohibition of Illicit Connections*

- (a) The construction, use, maintenance or continued existence of illicit connections to the storm drainage system is prohibited.
- (b) This prohibition expressly includes, without limitation, illicit connections made prior to the enactment of this ordinance.

- (c) Existing connections made prior to the adoption of this ordinance will require review and issuance of a permit in accordance with the provisions of this ordinance.
- (d) A person is in violation of this ordinance if the person connects a line conveying sewage or other non-storm water related flows to the MS4, or allows such a connection to continue.

§ 225-7. Suspension of MS4 Access

- (1) *Suspension due to Illicit Discharges in Emergency Situations:* The Town may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or State Waters. If the violator fails to comply with a suspension order issued in an emergency, the Town may take such steps as it deems necessary to prevent or minimize damage to the MS4 or State Waters, or to minimize danger to persons or property.
- (2) *Suspension due to the Detection of Illicit Discharge:* Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated by the Town if such termination would abate or reduce an illicit discharge.

§ 225-8. Unauthorized Connection.

It shall be unlawful for any person to make any connection to the Town's MS4 without written authorization from the Town, or to reconnect access when it has been suspended or terminated due to an illicit discharge without the prior approval of the Town.

§ 225-9. Litter and Refuse Control

- (1) It shall be the duty of the property owner to keep leaves from his or her property that have been piled for leaf collection or from lawn maintenance out of any gutter, inlet, catch basin, or ditch.
- (2) It shall be unlawful to place yard waste and/or pet waste into any storm drain, stream, or conveyance where concentrated storm water flows will wash such wastes into the storm drainage system.

§ 225-10. Industrial, Construction or Land Disturbing Activity Discharges

- (1) Any person subject to an industrial or construction activity RIPDES storm water discharge permit shall comply with all provisions of such permit, as issued by RIDEM. Proof of compliance with said permit may be required in a form acceptable to the Town Engineer prior to the allowance of discharges to the MS4.
- (2) Projects subject to the Town's Land Development and Subdivision Regulations and/or which require a building permit, including single-family residential building permits, must develop and adhere to a sediment and erosion control plan in accordance with the Soil Erosion and Sediment Control Ordinance, Chapter 299. Failure to properly implement the approved plan constitutes a violation of this ordinance.
- (3) The Town will require Best Management Practices implementation for any land disturbing activity, including construction activity, land or individual lot clearing, grubbing, landscaping, etc., that may cause or contribute to pollution or contamination of storm water, the MS4, or State Waters.

§ 225-11. Monitoring of Discharges

- (1) *Right of Entry:*
 - (a) To the extent permitted by State law, or if authorized by the owner or other party in control of the property, the Town Engineer and/or his/her designated representative may enter upon privately owned property for the purpose of performing their duties under this ordinance and may make or cause to be made such examinations, surveys or sampling as the Town deems reasonably necessary.
 - (b) The Town Engineer or his/her designee shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Town to conduct monitoring and/or sampling of the facility's storm water discharge.
 - (c) The Town Engineer or his/her designee has the right to require the discharger to install monitoring equipment as deemed necessary by the Town Engineer. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at the facility owner's expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

§ 225-12. 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 MS4, or State Waters, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release, and in addition to other notification requirements, the person responsible for a facility shall notify the Town Engineer in person or by phone no later than the next business day after the discharge.

Notifications in person or by phone shall be confirmed by written notice of the notifying person addressed and mailed to the Town Engineer and the RIDEM Office of Compliance and Inspection within five (5) business days of the original 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 years.

For facilities that operate under existing RIPDES permits for storm water discharge, spill reporting shall be made to the permitting authority in accordance with the permit. The Town Engineer shall be provided with copies of any written notification required by the RIPDES permit.

Nothing in this section shall authorize any owner/lessee to fail to comply with relevant provisions of the Rhode Island Clean Water Act, R.I.G.L. 46-12, et seq. or other applicable laws or regulations.

§ 225-13. Enforcement

- (1) Any individual or other party is prohibited from discharging waste, including construction waste, building material, truck washout, chemicals, litter, pet wastes, sanitary wastes, sewerage, or other waste into the Municipal Separate Storm Sewer System (MS4). If such a violation occurs the individual or other party must comply with the directive issued by the Smithfield Engineering Department.
- (2) If an illicit discharge enters directly or indirectly into the Municipal Separate Storm Sewer System or an illicit connection is detected, the property owner shall cease the discharge or connection. If the discharge or connection does not cease within the time frame given in the notice of violation, the owner may be fined in accordance with the provisions of §1-9, General Provisions, Article II – Violation and Penalties, of the Smithfield Code of Ordinances.

- (3) If the illicit discharge is not stopped, the Town shall have the right to take all available appropriate remedies it deems necessary to correct the violations and to place a lien on the subject property in an amount equal to the cost of the remedial actions.

The lien shall be enforced in the manner provided or authorized by law for the enforcement of liens on real property. The lien shall be recorded in the Land Evidence Records of the Town of Smithfield and the amount thereof shall accrue legal interest from the date of the recording.

The imposition of any penalty shall not exempt the offender from compliance with the provisions of this ordinance, and shall not preclude the Town from revoking a performance bond or assessing a lien on the property.

§ 225-14. Appeal of Notice of Violation

Any person receiving a Notice of Violation may appeal the determination of the Town Engineer or his/her designee to the Town Council. The notice of appeal must be filed with the office of the Town Manager within 10 business days from the date of the Notice of Violation.

During the pendency of the appeal, and until a final decision thereon is rendered by the Town Council, the required actions described in the Notice of Violation shall remain in effect.

The decision of the Town Council shall be final unless appealed in accordance with State law.

§ 225-15. 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 authorized enforcement agency to seek cumulative remedies.

§ 225-16. Conflict; Severability

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

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.