

## **TOWN OF WILTON**

### **ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE) ORDINANCE**

#### **Section 1. Preamble**

**§1.1** The Town owns and operates a Municipal Separate Storm Sewer System MS4 (as defined herein), that collects and discharges stormwater into the waters of the State of New Hampshire. The MS4 is not permitted or designed to accept, process or eliminate contaminated or unauthorized discharges, which could adversely impact local and State water resources, degrade water quality, and threaten aquatic, wildlife and human health.

**§1.2** Illicit Discharges that enter into the MS4 either through direct connections (such as wastewater piping either mistakenly or deliberately connected to the storm drains) or by indirect connections (such as failing septic systems cracked sanitary pipes, spills collected by drain outlets, or by discharging any Pollutant directly into the storm basin) may result in high levels of Pollutants including heavy metals, toxins, oil and grease, solvents, nutrients, viruses, and bacteria being released directly into the receiving waters of the State of New Hampshire or the United States.

**§1.3** Therefore, to protect and safeguard the public, health, safety, and welfare of the Town, its citizens, and its environs, the Select Board hereby adopts this Illicit Discharge Detection and Elimination Ordinance pursuant to its authority set forth in RSA 149-I:6, I-a.

#### **Section 2. Purpose**

**§2.1** The purpose of this Ordinance is to:

- A. Protect, maintain and preserve water quality in the Town and provide for the health, safety and general welfare of the citizens of the Town by detecting and eliminating illicit stormwater discharge.
- B. 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.
- C. Enable the Town to comply with the requirements of the Town's MS4 Permit issued by the EPA under the NPDES program and applicable regulations for stormwater discharge, as said MS4 Permit may be amended.

#### **Section 3. Definitions**

**§3.1** For the purposes of this Ordinance, the following terms shall have the meanings indicated:

- A. CONNECTION: “Connection” means a pipe, drain, open channel, gutter, ditch or conveyance directly or indirectly connecting a residential, commercial, agricultural, industrial or other property or land use to the MS4 or allowing for a Discharge. By way of example, direct connections may include, but are not limited to, storm drains and underground pipes. By way of further example, indirect connections may include, but are not limited to, illicitly connected indoor drywell drains from any source, roadside gutters and other surface flows.
- B. CONTAMINATED: “Contaminated” means containing a Pollutant.
- C. DISCHARGE: “Discharge” means the spilling, releasing, leaking, pumping, pouring, emptying, dumping, conveying, introducing, or otherwise disposing of any solid, liquid, or gaseous matter, or any combination thereof, into the MS4 or the waters of the State of New Hampshire.
- D. ENVIRONMENTAL PROTECTION AGENCY (EPA): “Environmental Protection Agency” or “EPA” means the Federal agency responsible for implementing the Federal Water Pollution Control Act, (3 U.S.C. § 1251 et seq.) AKA the “Clean Water Act”.
- E. ILLICIT CONNECTION: “Illicit Connection” means an unauthorized or illegal Connection, including, but not limited to: (1) any Connection allowing for the Discharge of sewage, process wastewater, wash water (aka grey water), or other Non-Stormwater Discharge to enter the MS4 or (2) Connections that have not been documented in plans, maps, or equivalent records and have not received all necessary permits and approvals from all applicable federal, state or local government agencies.
- F. ILLICIT DISCHARGE: “Illicit Discharge” means any direct or indirect discharge of Non-Stormwater discharge other than (a) those Discharges that are expressly exempt under this Ordinance, (b) Discharges authorized or exempt pursuant to a duly issued and valid NPDES permit, and (c) discharges from firefighting activities.
- G. MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4): “Municipal Separate Storm Sewer Systems” or “MS4” means publicly owned and operated facilities by which storm water is collected and transported , 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, filtration ponds, reservoirs or other drainage structures that discharge to the waters of the State of New Hampshire or the United States.
- H. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES): “National Pollutant Discharge Elimination System” or “NPDES” means 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.

- I. NON-STORMWATER DISCHARGE: “Non-Stormwater Discharge” means Discharge to the MS4 not composed entirely of Stormwater.
- J. OWNER: “Owner” means a person with a legal or equitable interest in the property.
- K. PERSON: “Person means any individual, firm, corporation, trust, partnership, municipality, or other legal entity.
- L. POLLUTANT: “Pollutant” means any element or property of sewage, residential, agricultural, industrial or commercial waste, runoff, leachate, heated effluent or other matter, whether originating at a point or nonpoint source United States. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petrochemicals, oil, and other automotive fluids; non-hazardous liquid or 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; uncontrolled and/or unpermitted erosion or sedimentation resulting from excavation or construction activities; pesticides, herbicides, algicides, and fertilizers; hazardous substances and waste; identified contaminants, as defined by any applicable state or federal environmental law; 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.
- M. UNCONTAMINATED: “Uncontaminated” means not containing any Pollutant.
- N. STORMWATER: “Stormwater” means any natural precipitation including rain water, seepage, storm water runoff, snowmelt, or floodwaters. “Stormwater” has the same meaning as “Storm Water.”
- O. STORMWATER MANAGER: “Stormwater Manager” means the Select Board designee for administering, enforcing, and managing the MS4 Permit for the Town of Wilton and the provisions of this Ordinance.
- P. STORMWATER REGULATIONS. “Stormwater Regulations” means the Town of Wilton Land Use Regulations, Section H – Stormwater Management and Erosion Control Regulations as amended.
- Q. STORMWATER RUNOFF: “Stormwater Runoff” means any Stormwater that is not absorbed, evaporated or otherwise stored within the contributing drainage area.

## **Section 4. Illicit Discharge and Detection Elimination (IDDE)**

**§ 4.1 – Prohibition of Illicit Discharges.** Illicit Discharges are prohibited. It shall be a violation of this Ordinance for any Person to Illicitly Discharge or if the person is an owner or otherwise can exert control over a property or operation from which an illicit discharge is made, or permit, cause, or suffer an Illicit Discharge into the MS4 or waters of the State of New Hampshire.

**§4.2 – Permitted Discharges of Non-Stormwater:** The following items are not considered Illicit Discharges:

- A. Stormwater, as defined herein;
- B. Uncontaminated Discharge from (i) Stormwater or Stormwater Runoff; (ii) ground water infiltration (as defined by 40 C.F.R. Section 35.2005(20)); (iii) pumped ground water; (iv) water from foundation and footing drains, including crawl space pumps; (v) runoff from watering lawns; and (vi) potable sources;
- C. Uncontaminated water-line flushing;
- D. Air conditioning condensation;
- E. Rising groundwater;
- F. Diverted/pumped stream flows, springs, riparian habitats, wetlands;
- G. Individual resident car washing;
- H. Lawn watering;
- I. Dechlorinated and algicide free swimming pool discharges;
- J. Discharge from municipal street sweeping;
- K. Dye testing, provided such dye testing is performed in response to a lawful order issued by a government agency or with the prior authorization of the Stormwater Manager;
- L. Non-Stormwater Discharge permitted under an NPDES permit, waiver or waste discharge order administered under the authority of the EPA, provided that the discharge is in full compliance with the requirements of the permit, waiver or order and applicable laws and regulations; and
- M. Discharges for which advanced written approval is received from the Stormwater Manager, the Department of Environmental Services, or EPA.

**§ 4.3 – Prohibition of Illicit Connections** – Illicit Connections are prohibited. It shall be a violation of this Ordinance for any Person to make, construct, use, or continue the use or existence of any Connection to the MS4, or to suffer the same, without the prior authorization and approval of the Select Board. It shall further be a violation of this Ordinance for any Person to make, construct, maintain, or use an Illicit Connection, including Connections made prior to the adoption of this Ordinance, regardless of whether the Connection was permissible under law or practices applicable or prevailing at the time of Connection

**§ 4.4 –Protection from Damage** – No Person shall maliciously, willfully, recklessly, or negligently break damage, destroy, deface or otherwise tamper with, any pipe, drain, equipment, or other part of the MS4.

## **Section 5. Notification to Stormwater Manager**

**§ 5.1 – Notification of Spills or Other Non-Stormwater Discharges** – As soon as any Person responsible for property, facility, site activity, or operation has information of: (a) any known or suspected Discharge of Pollutants or Non-Stormwater from the property, facility, site activity, or operation which constitutes or may result in an Illicit Discharges; (b) the Discharge or release of Pollutants into waters of the State or the United States from that property or facility, or resulting from that site activity; or (c) the creation of an Illicit Connection or damage to a Connection from that property or facility that may result in a Illicit Discharge or adverse impact to waters of the State or the United States, or the environment, said Person shall immediately notify the Stormwater Manager and the Health Officer, in addition to such other government agencies for which notice may be required.

## **Section 6. Administration and Enforcement**

**§ 6.1 – IDDE Responsibility for Administration.** The Select Board and/or the Stormwater Manager shall administer, implement and enforce the provisions of the IDDE provisions of this Ordinance. Any powers granted or duties imposed upon the Select Board may be further delegated in writing by the Select Board to persons or entities acting in the beneficial interest of or employed by the Town of Wilton, including, but not limited to, third-party consultants, contractors, and non-employees of the Town. Such delegation may be made on a case-by-case basis or for an indefinite period of time, as the Select Board deems appropriate.

**§ 6.2 – Monitoring and Inspections.** To guarantee compliance with this Ordinance or to determine the suitability and condition of any Connection, the Stormwater Manager may enter upon any property, improvement, or facility with the consent of the owner, tenant, or other authorized person, or, in the absence of such consent, pursuant to an administrative inspection warrant issued in accordance with RSA 595-B. The Stormwater Manager shall have the power to inspect any property, improvement, or facilities and Connections thereon to the MS4 and to conduct monitoring, sampling, and testing as often as may be necessary to determine compliance with this Ordinance.

### **§ 6.3 – IDDE Enforcement of Prohibitions**

- A. Notice of Violation. Whenever the Select Board or the Stormwater Manager believe that a Person has violated this Ordinance, the Select Board or Stormwater Manager may order compliance with this Ordinance by written notice of violation to that Person. That notice of violation shall specify the nature of the violation and order the action necessary to correct it, including, without limitation:

- i. Disconnection of the Premises to the MS4;
- ii. The removal of any Illicit Connection;
- iii. The cessation of Illicit Discharges or other practices or operations in violation of this Ordinance;
- iv. Eliminate the Illicit Connection or Illicit Discharge, restore any affected property, and/or repair any impacted infrastructure;
- v. Perform any necessary analysis, studies, investigation, testing, or other steps necessary to identify the extent of any damage to the MS4, environmental contamination, or violation of this Ordinance;
- vi. Restoration of any impacted land, soils, waters, or environs, to its condition prior to the Violation of this Ordinance, including the remediation and/or removal of any Pollutants;
- vii. The Repair of the MS4 or any Connections;
- viii. To the extent authorized by law, pay fines, administrative costs, remediation costs (including permitting, investigating, monitoring, testing, engineering, studying, surveying, or restoration), and attorney's fees and costs;
- ix. Take measures to minimize the discharge of Pollutants until such time as the Illicit Connection or Illicit Discharge shall be eliminated; and/or
- x. Such other actions as the Select Board and/or the Stormwater Manager may identify or require to address the violation of the Ordinance.

Such notice of violation shall also specify any fines or penalties for which the Person is responsible. Such notice of violation shall identify a reasonable period of time for the initiation and completion of the required corrective action. The Select Board reserves the right to require any Person who violates this Ordinance to reimburse or pre-pay the costs for any consultants, engineers, scientists, contractors, attorneys, or other third parties necessary to determine the sufficiency of the corrective action taken in response to a violation or to evaluate the extent of or any impacts arising from the violation of the Ordinance.

**B. Penalties/Fines/Injunctive Relief.**

- i. Any Person who knowingly violates the provisions of this Ordinance may be fined an amount not to exceed One Thousand Dollars (\$1,000.00), for each offense. Each day on which any such violation shall continue shall be deemed a separate offense and shall be subject to a separate fine.
- ii. To the extent authorized by law, any Person who violates this Ordinance shall be responsible for any and all fines, penalties, damages, and costs, including, but not limited to attorneys' fees and costs incurred by the Town violation of federal or state environmental laws, permits, 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.
- iii. To the extent authorized by law, any Person who violates this Ordinance shall be responsible for any and all costs, including, but not limited to attorneys' fees and

costs related to engineering, studying, sampling, investigating, and remediating any violation of this Ordinance. This responsibility shall be in addition to any penalties, fines, or injunctive relief imposed under this Section.

- iv. Any Person who violates this Ordinance may be subject to orders for injunctive relief and shall be responsible for the Town's attorneys' fees and costs related thereto if injunctive relief is ordered by the Court.

C. Consent Agreements. The Select Board may enter into a written consent agreement with a party or parties found to be violating a provision of this ordinance, to address timely abatement of the violation(s) of this Ordinance, for the purpose of eliminating violations of this Ordinance, and of recovering fines, costs and for fees without court action.

D. Restoration/Remediation/Losses. The Select Board shall have the right to levy an assessment of costs upon any Person that violates this Ordinance related to the restoration or impacted property, all costs owed pursuant to §§6.3(B), the remediation of Illicit Discharges, and such other quantifiable losses and damages caused by any Illicit Discharge and/or Illicit Connection.

E. Concurrent Jurisdiction. Nothing in this Ordinance precludes the Town's Zoning Enforcement Officer from exercising concurrent enforcement powers arising from the Town's planning, subdivision, site review, and zoning laws and regulations as they may relate to Stormwater. Nothing in this Ordinance shall be construed to alter, amend, or modify the Stormwater Regulations or any other regulation, Ordinance, or bylaw enacted by the Town. To the extent that any regulation, ordinance, or bylaw of the Town conflicts with this Ordinance, the stricter and/or more protective provision shall apply.

## **Section 7. Transitional Provisions.**

**§7.1** – Residential property owners who have an Illicit Connection due to the installation or construction of said Connection prior to the enactment of this Ordinance shall have sixty (60) days from the effective date of this Ordinance to comply with the provisions of this Ordinance, including but not limited to seeking all necessary permits and approvals necessary to lawfully establish a connection to the MS4 or remove the Connection. The deadline set forth in this Section 7.1 may be extended by the Select Board or Stormwater Manager for good cause.

## **Section 8. General Provisions**

**§ 8.1** – The standards set forth herein are promulgated pursuant to these ordinances and are minimum standards. Therefore, this ordinance does not intend, nor does it imply, that compliance by any person will ensure there will be no contamination, pollution or unauthorized discharge.

**§ 8.2** – The Town of Wilton may adopt, and periodically amend, regulations, rules and/or written guidance relating to the terms, conditions definitions, enforcement, fees, procedures and

administration of this Ordinance by majority vote of the Select Board in accordance with the laws of the State of New Hampshire. Failure of the Town of Wilton 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 Connections or Discharges. Administrative review applications that meet all the standard requirements may be issued by one or more agents designated in writing by the Town of Wilton without the requirement of a public hearing as detailed in this Ordinance.

**§8.3** This Ordinance shall not create liability on the part of the Town or any officer, agent or employee of the Town, for any damages that result from any Person's reliance on this Ordinance or any administrative decisions lawfully made hereunder.

**§8.4** – 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.



**Town of Wilton Select Board**

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Kermit R. Williams, Chair

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Date

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D.J. Garcia, Selectmen

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Date

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Matt Fish, Selectmen

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Date