



Ordinance No. 90

**THE TOWN OF WEST GREENWICH  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
ILLCIT DISCHARGE STORM WATER ORDINANCE**

**Adopted: June 10, 2009**

IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WEST GREENWICH, RHODE ISLAND, AS  
FOLLOWS:

**ILLCIT DISCHARGE STORM WATER ORDINANCE**

In order to comply with the Illicit Discharge Detection and Elimination requirements of RIPDES  
Permit No. RIR040029 (West Greenwich coverage under the General Permit)

**Sec. 1 Purpose.**

Contaminated storm water runoff is a major cause of impairment of water quality in lakes, ponds, streams, rivers, wetlands, and groundwater; contamination of drinking water supplies; and alteration or destruction of aquatic and wildlife habitat. Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of Town water bodies and groundwater, and to safeguard the public health, safety, welfare, and the environment.

The objectives of this ordinance are:

1. to prevent (or reduce to the maximum extent practicable) pollutants from entering the Town owned storm drainage system;
2. to prohibit illicit connections and unauthorized discharges to the storm water drainage system;
3. to require the removal of all such illicit connections and discharges;
4. to comply with state law and federal statutes and regulations relating to storm water discharges; and



5. to set forth the legal authority and procedures to carry out all inspection, detection, monitoring, and enforcement activities necessary to ensure compliance with this ordinance.

## **Sec. 2 Authority.**

This ordinance is promulgated pursuant to the Rhode Island Department of Environmental Management's ("DEM") *General Permit Rhode Island Pollutant Discharge Elimination System Storm Water Discharge from Small Municipal Separate Storm Sewer Systems and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s* ("MS4 General Permit") and in accordance with the Administrative Procedures Act, R.I.G.L. 42-35-1, *et seq.*

## **Sec. 3 Definitions.**

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section:

*Allowable Non-Storm Water Discharges*- Discharges not comprised of storm water are allowed under the MS4 General Permit Part I.B.3 but are limited to the following, provided these are not significant contributors of pollutants to the MS4: discharges which result from the washdown of vehicles at retail dealers selling new and used automobiles where no detergents are used and individual residential car washing; external building washdown where no detergents are used; the use of water to control dust; fire fighting activities; fire hydrant flushings; natural springs; uncontaminated groundwater; dechlorinated pool discharges; air conditioning condensate; lawn watering; potable water sources including waterline flushings; irrigation drainage; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled materials have been removed) and where detergents are not used; discharges from foundation or footing drains where flows are not contaminated with process materials such as solvents, or contaminated by contact with soils where spills or leaks of toxic or hazardous materials have occurred; uncontaminated utility vault dewatering; dechlorinated water line testing water; hydrostatic test water that does not contain any treatment chemicals and is not contaminated with process chemicals.

*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; and structures, 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.

*Clean Water Act (CWA)*- The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), and any subsequent amendments thereto.

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**Construction Activity-** Activities subject to RIPDES Construction Permits, which includes construction projects resulting in land disturbance of one acre or more; and activities resulting in land disturbance of less than one acre which are subject to Planning Board approval. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

**Director** means the Director of Public Works, or his authorized deputy, agent or representative.

**Discharger-** Any person who causes, allows, permits, or is otherwise responsible for a discharge, including, without limitation, any operator of a construction site or industrial facility.

**Hazardous Material-** Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, radioactive, 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 Connection-** An illicit connection is defined as either of 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-storm water 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 Director, or,
- 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 Director .

**Illicit Discharge-** Any direct or indirect discharge to a municipal storm drainage system that is not composed entirely of storm water, except discharges pursuant to a RIPDES permit (other than the RIPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities. Illicit discharges include, but are not limited to, discharges in the form of: illegal dumping, hazardous waste/material spills, sewage and wastewater, construction waste, building material, truck washout, litter, and those allowable storm water discharges found to be a significant contributor of pollutants to the MS4.

**Industrial Activity-** Activities subject to RIPDES Industrial Storm Water Permits as defined in RIPDES Rule 31 (b) (15).

**Municipal Separate Storm Sewer System (MS4)-** A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, natural and man-made channels and watercourses, piped storm drains, retention and detention basins, and other drainage structures), owned or operated by the Town, or proposed for ownership or operation by the Town, and designed or used for collecting or conveying storm water, and that is not used for collecting or conveying sewage. (Also known as the 'storm drainage system'.)

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**Non-Storm Water Discharge-** Any discharge to the storm drain system, or that has the potential to enter the storm drain system, that is not composed entirely of storm water.

**Operator-** The party or parties that either individually or taken together have the day-to-day operational control over the facility activities and the ability to make modifications to such activities.

**Owner-** The party or parties that either individually or taken together has legal title to any premise.

**Person-** 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.

**Pollutants-** Anything that 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 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 and pet wastes; soil, sediment/ fines resulting from land disturbing activities; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

**RIPDES-** Rhode Island Pollution Discharge Elimination System means the Rhode Island system for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing point source discharge permits and imposing and enforcing pretreatment requirements pursuant to Title 46, Chapter 12 of the General Laws of Rhode Island and the Clean Water Act.

**Storm Water-** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

**Storm Water Management Program Plan (SWMPP)-** the municipal document describing a program to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, protect water quality, and satisfy the water quality requirements of the Federal Clean Water Act and Rhode Island Water Quality Standards; and which includes the following six minimum control measures: Public Education and Outreach, Public Involvement/ Participation, Illicit Discharge Detection and Elimination, Construction Site Storm Water Runoff Control, Post Construction Storm Water Management, and Pollution Prevention and Good House Keeping in Municipal Operations.

**Storm Water Pollution Prevention Plan (SWPPP)-** A document which 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 storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

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*Watercourse*- A natural or man-made surface drainage channel or body of water (including a lake or pond) through which a water flow occurs, either continuously or intermittently.

*Waters of the State*- Surface and ground waters within the boundaries of the State of Rhode Island and subject to its jurisdiction.

#### **Sec. 4 Discharge Prohibitions.**

##### **(a) Prohibition of Illicit Discharges**

No person shall throw, drain, or otherwise discharge or cause to be discharged into the municipal storm drainage system any pollutant or non-storm water discharge unless such a non-storm water discharge is outlined in Part I.B.3 of the MS4 General Permit as an Allowable Non-Storm Water Discharge, or is authorized by a specific RIPDES permit. The allowable non-storm water discharges are permitted if deemed not to be a significant contributor of pollutants to the municipal storm drainage system. Allowable non-stormwater discharges will not be permitted under any circumstance when said discharge adversely affects a municipal right-of-way or stormwater system.

Reports of illegal dumping, hazardous waste and material spills, and other complaints will be investigated under the purview of this ordinance, and Ordinance No. 28, and other applicable State and Federal laws.

The commencement, conduct, or continuance of any illicit discharge to the storm drainage system is prohibited.

##### **(b) Prohibition of Illicit Connections**

The construction, use, maintenance or continued existence of illicit connections to the municipal storm drain system is prohibited. 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.

A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4 or any watercourse, or allows such a connection to continue.

Improper connections in violation of this ordinance must be disconnected, and if necessary, redirected to an approved onsite wastewater management system upon approval of the RIDEM, or to the sanitary sewer system.

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## **Sec. 5 Right of Entry.**

### **Entry to Perform Duties Under this Ordinance.**

To the extent permitted by State law, or if authorized by the owner or other party in control of the property, the Director, and/or his designees 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 inspections, surveys, testing, or sampling as the Director deems reasonably necessary.

## **Sec. 6 Inspections and Monitoring.**

The Director shall be permitted, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter the dischargers premise(s) where a regulated activity is conducted, or where records must be kept related to storm water compliance;
2. Have access to and copy, at reasonable times, any records related to storm water compliance;
3. Inspect at reasonable times any equipment, practices, or operations related to storm water compliance; and
4. Take samples, perform testing, or monitor any substances or parameters at any location, at reasonable times, for the purposes of assuring compliance with this ordinance or as otherwise authorized by the CWA or R.I. law.
5. Require that the owner or occupant of the property locate any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm drain system; and to identify the drain or conveyance as storm drain, sanitary sewer, or other, and that the outfall location or point of connection to the storm drain system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Director.

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## **Sec. 7 Suspension of MS4 Access**

### **(a) Suspension due to Illicit Discharges in Emergency Situations.**

The Director may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the Director may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the State, or to minimize danger to persons.

### **(b) 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 if such termination would abate or reduce an illicit discharge. The Director will notify a violator of the proposed termination of its MS4 access. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Director.

## **Sec. 8 Requirement to Secure a RIPDES Permit**

The Director shall refer to RIDEM all non-storm water discharges not authorized in accordance with Part I.B.3 of the MS4 General Permit or by a specific RIPDES Permit, which the Director has deemed appropriate to continue discharging to the MS4, for consideration of an appropriate permit.

## **Sec. 9 Industrial and Construction Activity Discharge.**

Any person subject to an industrial or construction activity RIPDES storm water 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 Director prior to the allowing of discharges to the MS4, or as a condition of a subdivision map, site plan, building permit, or development or improvement plan.

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## **Sec. 10 Requirement to Prevent, Control and Reduce Storm Water Pollutants by the use of Best Management Practices.**

Upon confirmation of a violation of this ordinance, the Director may require, in an attempt to prevent, control, and reduce storm water pollutants, any person engaged in activities or operations, or owning facilities or property which has or may result in future pollutants entering storm water, the storm drainage system, or waters of the State shall develop and implement, at their own expense, a Storm Water Pollution Prevention Plan prescribing Best Management Practices to the extent they are technologically achievable to prevent and reduce such pollutants. The owner or operator of a commercial or industrial establishment found to be in violation of this ordinance shall provide reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses. Facilities to prevent accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner or operator's expense. The SWMPP shall be subject to review by the Town and/or RIDEM for approval, and the cost of such review shall be at the owner or operator's expense.

## **Sec. 11 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 unauthorized discharges or pollutants discharging into storm water, the storm drain system, or waters of the State from said facility, 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 a hazardous material said person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). In the event of a release of non-hazardous materials, said person shall notify the Director no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director within two (2) 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 years. Nothing in this section shall preclude any owner/lessee from compliance with relevant provisions of the Rhode Island Clean Water Act, R.I.G.L. 46-12-1, et seq. or other applicable laws or regulations.

## **Sec. 12 Enforcement.**

Notice of Violation: Whenever the Director finds that any person has violated a prohibition or failed to meet a requirement of this Ordinance, the Director may order compliance by written notice of violation to the land owner and/or responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
5. Payment of a fine to cover administrative and remediation costs; and

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6. The implementation of source control or treatment BMPs; and
7. The development and approval of a Storm Water Pollution Prevention Plan

If abatement of a violation and/or restoration of affected property is 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 work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

### **Sec. 13 Administrative Orders.**

The Director is authorized to issue the following administrative orders at any time he/ she deem such action appropriate to secure timely and effective compliance with this Ordinance or a discharge permit or order issued pursuant to this Ordinance, whether or not any previous notifications of violation have been provided to the user.

*A. Cease and Desist Order:* The Director may issue an order to cease and desist a violation or an action or inaction which threatens a violation and to direct the user to comply forthwith or to take such appropriate remedial or preventive action as may be needed to properly address the violation or threatened violation, including halting operations and terminating the discharge.

*B. Consent Order:* The Director may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with a user. Such orders shall include specific actions to be taken by the user and specific time frames to correct a violation or to remove the threat of a violation. A consent order may also direct that a user provide improved operation and maintenance of existing discharge facilities, conduct additional self-monitoring, or submit appropriate reports or management plans.

### **Sec. 14 Abatement by Town**

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, then the Town or a contractor designated by the Director shall enter upon the subject private property and is authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Town or designated contractor to enter upon the premises for the purposes set forth above.



### **Sec. 15 Cost of Abatement of the Violation.**

Within thirty days after abatement of the violation by or under the direction of the Director, the owner of the property will be notified by the enforcement agency or municipality of the cost of abatement, including administrative costs. If the amount due is not paid within a timely manner as determined by the Director, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this section shall become liable to the Town by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of 12 percent per annum shall be assessed on the balance beginning on the first day following discovery of the violation.

### **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 Director may petition for a temporary, 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 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 by the Town.

### **Sec. 18 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, and shall be subject to a criminal penalty of \$500 dollars per violation per day and/or imprisonment for a period of time not to exceed five (5) days.

The Director may recover all attorney's fees, court costs, and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.



**Sec. 19 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.

