



TOWN OF MERRIMACK INTER-DEPARTMENT COMMUNICATION

DATE: October 6, 2023

AT (OFFICE): Department of Public Works

FROM: Leo Laviolette
Deputy DPW Director/Environmental

To: Paul Micali, Town Manager

SUBJECT: **Town Code Chapter 167 Stormwater Management and Chapter 168 Illicit Discharge Detection and Elimination**

With the EPA MS4 Year 5 Annual Report behind us, the Department of Public Works Administration & Engineering Division has a few items to complete for the Year 6 permit requirements. One of these items is the required update of the Town of Merrimack (Town) Code to include a regulatory vehicle for Illicit Discharge Detection and Elimination (IDDE) and revisions to the current Stormwater Management chapter.

The current Stormwater Management chapter (Ch 167) was revised to update the intent and purpose of the standards, include additional definitions of terms, and better defines the requirements to comply with the current MS4 permit and State and Federal Stormwater regulations. This covers construction related land disturbance, and post construction stormwater maintenance and reporting requirements.

The Illicit Discharge Detection and Elimination (IDDE) chapter (Ch 168) is proposed as an additional chapter in the Town Code because a dedicated municipal regulation regarding pollutant discharge to the stormwater system is a requirement of the MS4 permit (under MCM 3). This chapter is also needed to grant authorization to the Town to detect and eliminate non-stormwater discharges (ie sewage, oils, and other pollutants) that are intentionally or un-intentionally discharged to the Town stormwater system. The authority to enforce these regulations would be granted to the Fire Chief and Health officer. Overall management of the stormwater program and MS4 permit would still remain with the DPW Administration & Engineering Division, however when an illicit discharge is detected and the source location is proven, the Health Officer and Fire Chief would be notified in order to help eliminate the source by enforcing the regulation with the responsible party.

Should you have any questions please let me know,

Leo

CC: Dawn Tuomala; Director
File

Chapter 167

STORMWATER MANAGEMENT STANDARDS

[HISTORY: Adopted by the Town Council of the Town of Merrimack 7-21-2011; amended in its entirety 12-7-2017. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Waterlines — See Ch. 81.

Sewer use — See Ch. 158.

§ 167-1 Purpose & Intent

~~[The purpose of this chapter is to protect water quality in the Town of Merrimack (Town).]~~

[The Purpose is to protect water quality in the Town of Merrimack while providing for the health, safety and general welfare of the citizens of Merrimack. The intent is to protect the local natural resources of the Merrimack by establishing and enforcing the minimum pre-construction, post construction and reconstruction stormwater management and design control standards in a Stormwater Management program.]

§ 167-2 Definitions

As used in this chapter, the following terms shall have the meanings indicated:

- A. BEST MANAGEMENT PRACTICE (BMP) — As set forth in the New Hampshire Stormwater Manual, a proven or accepted structural, nonstructural or vegetative measure which reduces the quantity or improves the quality of stormwater runoff.
- B. DISTURBANCE — Any construction, land altering or grading activities, other than for agricultural practices.
- C. ENVIRONMENTAL PROTECTION AGENCY (EPA) — The Federal agency responsible for implementing the Federal Water Pollution Control Act.
- D. EROSION — Detachment or movement of soil or rock fragments by water, wind or ice.
- E. **[EROSION CONTROL — The prevention or reduction of the movement of soil particles or rock fragments due to stormwater runoff]**
- F. **[HEALTH OFFICIAL — (For the purposes of EPA MS4 Permit), an appointed official who enforces and investigates all health complaints. Administrative Code A198-12, RSA 128:1, RSA 128.5, RSA 147.1, RSA 147.3, RSA 147.4 and RSA 149-I]**
- G. **[ILLICIT DISCHARGE — Any direct or indirect non-storm water discharge to the Municipal Separate Storm Sewer System (MS4), except discharges pursuant to a specific MS4 General Permit.]**
- H. **[MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) — Are**

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publicly owned and operated facilities by which stormwater 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 discharges to the waters of the State of New Hampshire or the United States.]

- I. **[NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) — The water quality program, as part of the Clean Water Act, implemented by the EPA to control the discharge of pollutants into surface waters of the United States.]**
- J. **NEW HAMPSHIRE STORMWATER MANUAL** — Reference guide prepared by the New Hampshire Department of Environmental Services to manage stormwater, which, unless expressly exempted by the Town, shall include any and all amendments adopted subsequent to the enactment of these standards.
- K. **[NON-STORMWATER DISCHARGE — Discharge to the municipal storm drain system not composed entirely of stormwater.]**
- L. **[OPERATION AND MAINTENANCE PLAN — A plan setting up the future responsible parties along with the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to insure that it continues to function as designed.]**
- M. **[OUTFALL – The point at which stormwater flows out from a point source discernible, confined and discrete conveyance into waters of New Hampshire or of the United States.]**
- N. **[OWNER — A person with a legal or equitable interest in the property.]**
- O. **[PRE-CONSTRUCTION — All activity in preparation for construction.]**
- P. **[POLLUTANT — Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent or other matter, whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the State of New Hampshire or the United States.]**
- Q. **PROJECT AREA** — Disturbed area plus any area with associated off-site improvements.
- R. **RESPONSIBLE PARTY** — Entity responsible for submitting a SWMP such as the owner, developer, applicant or owner's legally designated representative. This requirement is to be transferred with the property and is to remain with the title of the property in perpetuity.
- S. **RUNOFF** – Water that is not absorbed, evaporated or otherwise stored within the contributing drainage area.
- T. **SEDIMENT** — Mineral or organic matter transported or deposited by water or air.
- U. **STORMWATER MANAGEMENT PLAN (SWMP)** — A plan, required by the

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Town, which manages stormwater runoff through site design, pollutant source controls, structural BMPs and construction phase practices. [The plan also designates the owner is the responsible party in perpetuity.]

- V. **[STORMWATER POLLUTION PREVENTION PLAN (SWPPP) — A plan, required by the Town, from a person or business to identify sources of pollution or contamination at a site and to eliminate or reduce pollutant discharges of the Stormwater Runoff through site design, pollutant source controls, structural BMPs and construction phase practices.]**
- W. **[STORMWATER RUNOFF — Any water coming from rainfall, snowmelt or irrigation systems etc. that is not absorbed, evaporated or otherwise stored within the contributing drainage area.]**
- X. **[WATER QUALITY STANDARDS (WQS) — Defines the water quality goals of a water body by designating the use or uses of the water and by setting criteria necessary to protect the uses. NH and EPA have adopted WQS through the “303(d)” list to protect public health and welfare, enhancing the quality of water and serve the purposes of the Clean Water Act (CWA). See also the NHDES – Alteration of Terrain Regulations (Chapter Env-Wq 1500 of the New Hampshire Code of Administration) for specific requirements.]**

[§ 167-3 Regulations]

[The Town of Merrimack may adopt, and periodically amend, regulations, rules and/or written guidance relating to the terms, conditions definitions, enforcement, fees, procedures and administration of this Stormwater Chapter 167 by majority vote 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 Merrimack 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 Chapter 167.]

[§ 167-4 Severability]

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

[§ 167-5 Transitional Provisions]

[Residential property owners shall have 60 days from the effective date of this bylaw to comply with its provisions provided good cause is shown for the failure to comply with the Chapter 167 during that period.]

[§ 167-6 Requirements for Stormwater Management]

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A. Applicability

1. Prior to disturbance, the responsible party shall submit a **[Stormwater Management Plan (SWMP)]** to the Community Development Department (CDD) for any tract(s) of land that results in a total disturbance of 20,000 or more square feet of land. **[The SWMP must contain the operation and maintenance requirements as well as pre and post construction management requirements. The SWMP must be issued and approved prior to construction.]**

B. Stormwater Management Plan (SWMP) Requirements

1. **[Construction Stormwater Pollution Prevention Plan (SWPPP). Prior to land disturbance the responsible party must develop the SWPPP that will include Construction Stormwater Management and a Draft Operations and Maintenance Plan.]**
 - a. **[General Construction Permit. Documentation of the EPA Construction General Permit (CGP) Notice of Intent (NOI) if applicable.]**
 - b. Design standards. Design of **[temporary construction]** erosion and sediment control BMPs **[and permanent water quality treatment BMPs]** shall be in accordance with, at a minimum, the design guidance set forth in the New Hampshire Stormwater Manual, which are hereby incorporated by reference.
 - c. Pre-construction meeting. Responsible party and its engineer or technical representative shall attend a mandatory pre-construction meeting with the CDD and the Department of Public Works (DPW) at least two weeks prior to commencement of disturbance. Two copies of the SWMP shall be provided at that time. All documents shall bear the seal and signature of a New Hampshire registered professional engineer (PE).
 - d. Responsibility. The responsible party shall install, inspect, report, operate and maintain all stormwater management and erosion control measures required by these standards. **[The responsible party must have qualified personnel perform these measures.]**
 - e. Bonding. A bond or other security shall be provided in an amount, with surety conditions satisfactory to CDD and DPW, for construction and installation of control measures.
 - f. Site development commencement. Development shall not commence before the SWMP receives approval from CDD and DPW. All BMPs must be installed in accordance with the approved **[SWPPP.]**
 - g. Reporting. A log and report must be submitted to CDD each week and within 24 hours of any storm event with greater than 0.5 inches of rainfall. Reports shall detail all inspections, actions taken per the SWMP, dates of action and follow-up action required.
- C. **[Post-Construction Stormwater Management. Upon completion of construction, installation of all permanent site stabilization and water quality BMPs, and removal of temporary erosion and sediment control BMPs, the**

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responsible party must follow the post construction stormwater management requirement as described in the SWMP. The SWMP must include provisions for the following including but not limited to:]

1. Post-construction meeting. The responsible party and its engineer or technical representative shall attend a post-construction meeting with CDD and DPW.
2. **[Operation and Maintenance Plan. The SWMP shall include a detailed Operation and Maintenance Plan of the permanent stormwater management and erosion control measures.]**
3. Responsibility. The responsible party shall inspect, operate, maintain and **[report on,]** any post-construction stormwater management and erosion control measures. **[This requirement is to run with the title of the property in perpetuity.]**
4. **[Ongoing Reporting. Each SWMP shall require post construction annual or biannual]** site inspections by the responsible party that shall be documented and, at a minimum, include review of stormwater flow paths, accumulation of any sediment, condition of contaminant control devices, stormwater quality observations, **[maintenance performed,]** corrective actions and time frames. All records of the inspections shall be submitted to CDD.
5. **[Bond release requirements:]**
 - a. **[Record of ongoing inspection and operational maintenance requirements for water quality measures required by the SWMP shall be a condition of bond release and/or certificate of occupancy (if applicable).]**
 - b. **[Record of Construction General Permit Notice of Termination (NOT) if applicable.]**
 - c. **[Attendance by the responsible party at a post-construction meeting.]**
 - d. **[As-built plans bearing the seal and signature of a New Hampshire registered PE.]**
 - e. **[Approval of the bond release by both CDD and DPW.]**

~~§ 167-5~~ § 167-7] **Enforcement; violations and penalties**

The purpose of this section is to enact locally, administrative and enforcement procedures set forth in RSA Title LXIV, specifically RSA 676:15, 17, 17-a and 17-b, and to authorize penalties and remedies for enforcement of the provisions of these standards. Any violation of these standards shall be subject to enforcement by either the **[Fire Chief, Health Officer]** or the Planning and Zoning Administrator or their designated agent.

~~§ 167-6~~ § 167-8] **Conflicts of law**

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Nothing contained herein, or any SWMP granted pursuant hereto, shall be construed to exempt any responsible party from complying with all applicable state or federal laws/regulations. In the event of conflicting requirements, the stricter standard shall apply.

~~[§ 167-7~~ § 167-9] **Waivers**

A waiver of these standards, in whole or in part, may be granted when the strict application of these standards would impose unnecessary hardship because of the unique characteristics of the land including, but not limited to, the size, character, location, nature of use, or other unspecified conditions of the project area. Waivers shall only be granted with approval of both CDD and DPW.

~~[§ 167-8~~ § 167-10] **SWMP validity**

All construction contemplated by the SWMP shall be completed within a period of four years from the date of approval.

Town Council Chair

Date

Town Clerk / Tax Collector

Date