





## 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 168

### ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE)

HISTORY: Adopted by the Town Council of the Town of Merrimack on DATE TBD

#### GENERAL REFERENCES

Sewer Use — See Ch. 158.

Stormwater Management Standards — See Ch. 167.

#### § 168-1 Purpose & Intent

The intent will also 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.

#### § 168-2 Definitions

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

- A. ENVIRONMENTAL PROTECTION AGENCY (EPA) — The Federal agency responsible for implementing the Federal Water Pollution Control Act.
- B. EROSION — Detachment or movement of soil or rock fragments by water, wind or ice.
- C. EROSION CONTROL — The prevention or reduction of the movement of soil particles or rock fragments due to stormwater runoff
- D. 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
- E. ILLICIT CONNECTIONS — An Illicit, unauthorized or illegal connection that drains into or is connected to the Municipal Separate Storm Sewer System (MS4), shall mean either of the following:
  - (1) Any pipe, drain, open channel or other conveyances that have the potential to allow an illicit discharge to enter the MS4 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. This includes 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 an authorized enforcement agency.
  - (2) Any pipe, drain, open channel or conveyance connected from a residential, commercial or industrial land use, to the storm drain system which has not been documented in plans, maps, or equivalent records or approved by an authorized federal, state or local enforcement agency.
- F. 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.
- G. MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) — Are 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

## ILLICIT DISCHARGE DETECTION AND ELIMINATION

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.

- H. 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.
- I. 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.
- J. 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.
- K. OWNER — A person with a legal or equitable interest in the property.
- L. 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.
- M. PROJECT AREA — Disturbed area plus any area with associated off-site improvements.
- N. 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.
- O. 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 IDDE Chapter 168 by majority vote after conducting a public hearing to receive comments. Such hearing shall be advertised on the Town website and media 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 168.

### § 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,

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establishment or circumstances shall be held invalid such invalidity shall not affect the other provisions or application of this bylaw.

### **§ 168-5 Responsibilities and authority**

- A. The Merrimack (Fire Chief) or designee, in accordance with the EPA MS4 General Permit, section 2.3.4, shall implement IDDE program, assessment, and investigation procedures
- B. The Health Official shall serve as the primary entity to investigate, inspect and report to the appropriate state and/or federal authorities.

### **§ 168-6 Notification of non-stormwater discharges or illicit connections**

- A. Any person responsible for a facility, site activity or operation who knowledge of, informed of or suspects a release of pollutants non-stormwater discharges or illicit connections which result or may result in an illicit discharge or pollutant discharging into the Town of Merrimack MS4, State waters or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release so as to minimize the effects of the discharge.
- B. If the substance poses an immediate health or safety concern, the Town of Merrimack and the State of New Hampshire Emergency Services shall be immediately notified.
- C. If the substance does not pose an immediate health or safety concern, the Town of Merrimack Fire Chief, Health Officer, and Public Works Director should be notified as soon as possible, however, no later than twenty four (24) hours post event.
- D. The construction, use, maintenance, or continued existence of illicit connections to the 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.
- E. A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the Municipal Separate Storm Sewer System (MS4), or allows such a connection to continue.

### **§ 168.7 Enforcement**

- A. It shall be unlawful for any person or entity to violate any provision or fail to comply with any of the requirements of the Illicit Discharge Detection and Elimination (IDDE) Ordinance and may be subject to the enforcement actions.
- B. The Town Council retains the authority to enter into a written consent agreement with the violators to address timely abatement of the violations of this chapter, for the purpose of eliminating violations of the same and recovering fines, costs and fees without court action RSA 147, RSA 149-I & RSA 153.]

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Town Council Chair

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Date

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Town Clerk / Tax Collector

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Date