

DRAFT

Model IDDE Ordinance for Municipalities

Section 1- Purpose

Increased and contaminated storm water runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding. Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the [city or town's] 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 entering [city or town's] municipally owned separate storm sewer system;
2. to prohibit illicit connections and unauthorized discharges to the MS4;
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, monitoring and enforcement activities necessary to ensure compliance with this ordinance.

Section 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* and in accordance with the Administrative Procedures Act, R.I.G.L. 42-35-1, *et seq.*

Section 3- Definitions

Allowable Non-Storm Water Discharges- Discharges not comprised of storm water are allowed under the MS4 General Permit 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.

Authorized Enforcement Agency- Employees or designees of the director of the municipal agency designated to enforce this ordinance.

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.

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

Construction Activity- Activities subject to RIPDES Construction Permits. As of March 2003, RIPDES Storm Water Phase II permits are required for construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

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, 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 an authorized enforcement agency 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 an authorized enforcement agency.

Illicit Discharge- Any discharge to a municipal separate storm sewer 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.

Municipal Separate Storm Sewer System (MS4)- A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- (i) Owned or operated by a city or town or the State district association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the State;
- (ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined in Rule 3 of the RIPDES Regulations.

Non-Storm Water Discharge- Any discharge 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 which 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, ordinances, 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 wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

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

Unauthorized Discharge- A discharge of storm water not authorized by a RIPDES permit, or an allowable storm water discharge found to be a significant contributor of pollutants to the MS4.

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.

Section 4- Discharge Prohibitions

Prohibition of Unauthorized Discharges

No person shall discharge or caused to be discharged into the municipal separate storm sewer system or watercourses 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. The allowable non-storm water discharges (described below) are permitted if deemed not to be a significant contributor of a pollutants to the municipal separate storm sewer system.

Allowable non-storm water discharges:

1. 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;
2. external building washdown where no detergents are used;

3. the use of water to control dust;
4. fire fighting activities;
5. fire hydrant flushings;
6. natural springs;
7. uncontaminated groundwater; dechlorinated pool discharges;
8. air conditioning condensate;
9. lawn watering; potable water sources including waterline flushings;
10. irrigation drainage;
11. 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;
12. 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;
13. uncontaminated utility vault dewatering; dechlorinated water line testing water;
14. hydrostatic test water that does not contain any treatment chemicals and is not contaminated with process chemicals.

Prohibition of Illicit Connections

The construction, use, maintenance or continued existence of illicit connections to the municipal separate storm sewer 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 allows such a connection to continue and must provide corrective action.

Section 5- Suspension of MS4 Access

Suspension due to Illicit Discharges in Emergency Situations.

The _____ [authorized enforcement agency] 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 authorized enforcement agency 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.

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 authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for reconsideration and a hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

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 authorized enforcement agency, its agents, officers, and employees 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 authorized enforcement agency deems reasonably necessary.

Section 6- 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 authorized enforcement agency prior to the allowing of discharges to the MS4.

Section 7- Inspections and Monitoring

The authorized enforcement agency 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 as required under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept as required under the conditions of the permit;
3. Inspect at reasonable times any equipment, practices, or operations regulated or required under this permit; and
4. Sample or monitor any substances or parameters at any location, at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA or R.I. law.

Section 8- Requirement to Prevent, Control and Reduce Storm Water Pollutants

In an attempt to prevent, control, and reduce storm water pollutants any person engaged in activities or operations, or owning facilities or property which will or may result in pollutants entering storm water, the storm sewer system or waters of the State shall implement 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 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.

Section 9- Watercourse Protection

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. The property owner or lessee shall be responsible for maintaining and stabilizing that portion of the watercourse that is within their property lines in order to protect against erosion and degradation of the watercourse originating or contributed from their property. Nothing in this section shall preclude any owner/lessee from compliance with relevant provisions of the Rhode Island Freshwater Wetlands Act, R.I.G.L. 2-1-18, *et seq.* or other applicable laws or regulations.

Section 10- 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 authorized enforcement agency no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the authorized enforcement agency within ____ 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.

Section 11-Enforcement

A. Notice of Violation

Whenever the authorized enforcement agency finds that any person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the 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
6. The implementation of source control or treatment BMPs.

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.

Section 12- Appeal of Notice of Violation

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within ____ days from the date of the receipt of the Notice of Violation. The notice of appeal shall be in writing and contain a detailed basis upon which the appeal was taken. The procedure for said appeal shall be in conformity with the Administrative Procedures Act, R.I.G.L. 42-35-1, et seq.

Section 13- Settlements of Appeal of Notice of Violation

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may enter into a negotiated settlement to resolve the appeal of the Notice of

Violation. Such settlement may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

Section 14-Enforcement Measures After Appeal

If no timely appeal of a Notice of Violation has been taken and the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within ___ days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall undertake all necessary actions, including requesting injunctive relief through the Superior Court, to enter upon the subject private property and take any and all measures necessary to abate the violation and/or restore the property

Section 15- Administrative Orders

The authorized enforcement agency is authorized to issue the following administrative orders at any time they 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 authorized enforcement agency 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. Compliance Order: The authorized enforcement agency may issue an order requiring a user to provide within a specified period of time, such treatment, pretreatment or discharge control facilities or related appurtenances as are necessary to correct a violation or to prevent a threatened violation. A compliance 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.

C. Show Cause Order: The authorized enforcement agency may issue an order to show cause why a proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for a meeting, the proposed enforcement action and the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. Whether or not a duly notified user appears as noticed, additional enforcement action may be initiated.

D. Consent Order: The authorized enforcement agency 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.

Section 16- Cost of Abatement of the Violation

Within ___ days after abatement of the violation, by or under the direction of the authorized enforcement agency, 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 the enforcement agency or municipality, 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 city 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 ___ st day following discovery of the violation.

Section 17- 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 authorized enforcement agency 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.

Section 18- 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.

Section 19- 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 _____ dollars per violation per day and/or imprisonment for a period of time not to exceed ___ days. The authorized enforcement agency may recover all attorney's fees, court costs and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

Section 20- 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.

Section 21- Adoption of Ordinance

This ordinance shall be in full force and effect ___ days after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed. PASSED AND ADOPTED this ___ day of _____, 20___, by the following vote: