

# Non-Stormwater Discharge Ordinance



## Town of York, Maine

Most Recently Amended: May 20, 2023

Prior Dates of Amendment:

Date of Original Enactment: November 4, 2014

### ENACTMENT BY THE LEGISLATIVE BODY

Date of the vote to amend this Ordinance: May 20, 2023.

Certified by the Town Clerk:

(signature)

on

(date)

5/23/23

## Non-Stormwater Discharge Ordinance

1. **Purpose.** The purpose of this Ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of York through regulation of non-stormwater Discharges to the Town's storm sewer system as required by Federal and State law. This Ordinance establishes methods for controlling the introduction of pollutants into the Town's storm sewer system in order to comply with requirements of the Federal Clean Water Act and State law. Objectives are to prohibit unpermitted non-stormwater discharges to the storm sewer system and to set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this Ordinance.
2. **Authority.** The Town of York enacts this Ordinance pursuant to 30-A M.S.R.A. §3001 (municipal home rule ordinance authority), 38 M.S.R.A §413 (the "Wastewater Discharge Law"), 33 U.S.C. §1251 et seq. (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollution Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer System ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Ordinance as part of the Town's Stormwater Management Program in order to satisfy the minimum control measures.
3. **Definitions.** For the purposes of this Ordinance, the terms listed below are defined as follows:

CLEAN WATER ACT: The Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

CODE ENFORCEMENT OFFICER (CEO): Any of the individuals appointed by the York Selectboard to fulfill duties of code enforcement for shoreland zoning and/or land use within the Town.

DISCHARGE: Any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the State". "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

EXEMPT PERSON OR DISCHARGE: Any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for discharge of stormwater from the Maine Department of Transportation or the Maine Turnpike Authority storm sewer systems, or a general permit for the discharge of

stormwater from state-owned or federally-owned storm sewer system facilities; and any non-stormwater discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U. S. Environmental Protection Agency (“EPA”) or the Maine Department of Environmental Protection (“DEP”).

MUNICIPALITY: The Town of York.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): Conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by the Town of York, Maine.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

STORMWATER DISCHARGE: A permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable to an individual, group, or general area.

NON-STORMWATER DISCHARGE: Any Discharge to an MS4 that is not composed entirely of stormwater.

PERSON: Any individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity which creates, initiates, originates or maintains a discharge of stormwater or non-stormwater.

POLLUTANT: Dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agriculture wastes of any kind.

PREMISES: Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Town of York from which a discharge into the storm sewer system has or may be created, initiated, originated or maintained.

REGULATED SMALL MS4: Any Small MS4 regulated by the State of Maine “General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems,” dated July 1, 2013 (“General Permit”), renewed October 15, 2020, modified November 23, 2021 and any amendment or renewal thereof; including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4’s located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4’s.

SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM, OR SMALL MS4: Any MS4 that is not already covered by the Phase I MS4 stormwater program, including municipally owned or operated storm sewer systems.

STORM SEWER SYSTEM: The entire storm sewer system owned and/or operated by the Town of York.

STORMWATER: Any stormwater runoff, snowmelt runoff, or surface runoff and drainage. “Stormwater” has the same meaning as “Storm Water.”

STORMWATER MANAGER: The CEO designated by the Town Manager to be responsible for oversight of the Town’s MS4 program and compliance with the State General Permit.

URBANIZED AREA (UA): Areas of the State of Maine so defined by the cumulative 2000 and 2010 (2010, as amended) decennial census by the U.S. Bureau of Census.

4. **Applicability.** This Ordinance shall apply to all stormwater and/or non-stormwater discharges from any premises into the storm sewer system.
5. **Administration and Enforcement.** The Stormwater Manager shall administer the provisions of this Ordinance. CEO’s shall enforce the provisions of this Ordinance.
6. **Prohibition of Non-Stormwater Discharges**
  - A. General Prohibition - Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-stormwater discharge to the Town’s storm sewer system. Such non-stormwater discharges are prohibited notwithstanding the fact that the Town may have approved the connections, drains or conveyances through which the non-stormwater discharges flow.
  - B. Allowed Non-Stormwater Discharge - The creation, initiation, origination and maintenance of the following non-stormwater discharges to the storm sewer system are allowed provided the discharge does not contribute to a violation of water quality standards defined by the Maine Department of Environmental Protection:
    1. Landscape irrigation;
    2. Diverted stream flows;
    3. Rising ground waters;
    4. Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
    5. Uncontaminated pumped ground water;
    6. Uncontaminated flows from foundation drains;
    7. Air conditioning and compressor condensate;
    8. Irrigation water;
    9. Flows from uncontaminated springs;
    10. Uncontaminated water from basement or crawl space pumps;
    11. Uncontaminated flows from footing drains;
    12. Lawn watering runoff;

13. Flows from riparian habitats and wetlands;
14. Residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used);
15. Hydrant flushing and firefighting activity runoff;
16. Water line flushing and discharges from potable water sources; and
17. Individual residential car washing.
18. Dechlorinated swimming pool discharges (less than 0.05 mg/L total residual chlorine).
19. Discharges specified in writing by the Enforcement Authority as being necessary to protect public health and safety; and
20. Dye testing, with verbal notification to the Stormwater Manager or CEO prior to the time of the test.

C. Exempt Person or Discharge - The Ordinance shall not apply to an exempt person or discharge, except that the CEO may request from the exempt person, or from persons with exempt discharges, copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

7. **Suspension of Access to the Town's Storm Sewer System** – The CEO may, without prior notice, order or initiate action to physically suspend discharge access to the storm sewer system when such suspension of access is necessary to stop an actual or threatened non-stormwater discharge to the storm sewer system which presents or may present imminent and substantial danger to the environment, or to the health, safety or welfare of persons, or to the storm sewer system, or which may cause the municipality to violate the terms of its environmental permits.

Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-stormwater discharge into the storm sewer system. If the person responsible for the discharge fails to comply with a suspension order issued in an emergency, the CEO may take steps as deemed necessary to prevent or minimize damage to the storm sewer system, or to minimize danger to persons, provided, however, that in taking such steps the CEO may enter upon the premises that are the source of the actual or threatened non-stormwater discharge to the storm sewer system only with the consent of the premises' owner, occupant or agent.

8. **Monitoring of Discharges.** In order to determine compliance with this Ordinance, the CEO may enter upon and inspect premises subject to this Ordinance at reasonable hours with the consent of the premises' owner, occupant or agent; to inspect the premises and connection thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm sewer system.

9. **Enforcement.**

**A. Notice of Violation and Order for Corrective Action:** Whenever the CEO believes that a person has violated this Ordinance, the CEO may order compliance with this Ordinance by written Notice of Violation and Order for Corrective Action. This shall indicate the nature of the violation and order actions necessary to correct the violation, including, without limitation:

1. The elimination of non-stormwater discharges to the storm sewer system within 60 days of identification of the source, including, but not limited to, disconnection of the premises from the MS4;
2. The cessation of discharges, practices, or operations in violation of this Ordinance;
3. At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-stormwater discharges to the storm sewer system and the restoration of any affected property; and/or
4. The payment of fines, of the Town's remediation costs and of the Town's reasonable administrative costs and attorneys' fees and costs.
5. If abatement of a violation and/or restoration of affected property is required, or if elimination of the Non-Stormwater Discharge is not possible within 60 days of identification of the source, the notice shall set forth a deadline within which such elimination, abatement, or restoration must be completed.

Any Notice of Violation and Order for Corrective Action must be consistent with the legal requirements of the *Freeport v. Greenlaw* (1992) case. Such Notices/Orders must: be appropriately titled; be official in tenor but written in plain English as to be understandable to the average citizen; cite the specific code section allegedly violated; specify actions required to fix the violation, with specific and reasonable deadlines; explain the consequences of failure to comply (next steps, loss of rights to other permitting, monetary penalties, etc.); and provide notice of the recipient's appeal rights (right to appeal, deadlines, process, and consequences of failure to appeal).

**B. Penalties/Fines/Injunctive Relief:** Any person who violates this Ordinance shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Town's attorney's fees and costs all in accordance with 30-A M.R.S.A. §4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this Ordinance also 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 for violation of Federal and State environmental laws 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.

- C. Consent Agreement:** With the approval of the Selectboard, the CEO may enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance for the purposes of eliminating violations of this Ordinance and of recovering fines, costs and fees without court action.
- D. Appeal:** Any action or inaction of the CEO relative to this Ordinance may be appealed to the York Board of Appeals. This shall be treated as an administrative appeal and shall be processed pursuant to the provisions of York Zoning Ordinance §18.8. The appeal must be received by the Town within 30 days of the action being appealed. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt. The Board of Appeals may affirm, reverse, modify or remand the decision of the CEO. A suspension under Section 7 of this Ordinance remains in place unless or until lifted by the Board of Appeals or by a reviewing court. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- E. Enforcement Measures:** If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation and Order for Corrective Action, or in the event of an appeal to the Board of Appeals within 45 days of a decision of the Board of Appeals affirming the CEO's decision, then the CEO may recommend that the Selectboard the Town pursue legal action. The Selectboard may direct the Town's attorney to file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedures. The Selectboard may initiate this action without a recommendation from the CEO, and may act sooner, provided the Selectboard finds that the polluting activity poses an immediate and unacceptable threat to the public health, safety and welfare.
- F. Ultimate Responsibility of Discharger:** The standards set forth herein are minimum standards; therefore the Ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into waters of the U.S. caused by said person. This Ordinance shall not create liability on the part of the Municipality, or any officer, agent or employee thereof, for any damages that result from any person's reliance on this Ordinance or any administrative decision lawfully made hereunder.
- 10. Effective Date.** This Ordinance shall take effect on the date of passage by the voters. Future amendments shall take effect on the date of passage by the voters unless otherwise specified in the amendment.
- 11. Saving Clause.** In the event any provision of this Ordinance is found by a court of competent jurisdiction to be invalid, this finding shall not affect the remainder of this Ordinance.