

Burlington Illicit Discharge and Connection Stormwater Ordinance

ORDINANCE NO.

SECTION 1. PURPOSE/INTENT

The purpose of this ordinance is to (1) comply with requirements of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4) issued by the Connecticut Department of Energy and Environmental Protection (DEEP) pursuant to the authority delegated to it by the US Environmental Protection Agency pursuant to 33 USC § 1342(b) for permitting the discharge of pollutants to waters of the United States under the National Pollutant Discharge Elimination System (NPDES), and (2) provide for the health, safety, and general welfare of the citizens of Burlington through the regulation of non-stormwater discharges to Burlington's publicly owned stormwater drainage system to the maximum extent practicable as required by federal and state law. The objectives of this ordinance are:

- (1) To control the contribution of pollutants to the Burlington's MS4 by stormwater discharges by any person,
- (2) To prohibit and eliminate illicit connections and discharges to the municipal separate storm sewer system, and
- (3) To establish pursuant to § 7-157 of the Connecticut General Statutes the legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

SECTION 2. DEFINITIONS.

As used in this ordinance, the following definitions shall apply:

Best Management Practices or BMPs means the schedule(s) of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the state consistent with state, federal or other equivalent and technically supported guidance. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from material storage.

Board of Selectmen means the Burlington Board of Selectmen.

Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Connecticut Water Quality Standards means those standards adopted and amended by the DEEP pursuant to § 22a-426 of the Connecticut General Statutes.

Construction activity means any activity associated with construction at a site including, but not limited to, clearing and grubbing, grading, excavation, and dewatering.

Director means the Burlington Director of Public Works.

DEEP means the Connecticut Department of Energy and Environmental Protection.

Facility means anything that is built or installed to perform some particular function or anything that aids or makes easier the performance of activities involved in the business of a person or corporation.

Hazardous materials means 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 discharge means any discharge to waters of the state that does not consist entirely of stormwater or uncontaminated ground water except those discharges identified in Section 8 of this ordinance.

Illicit connection(s) means (1) any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter Burlington's MS4 including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter Burlington's MS4 and any connections to Burlington's MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by either the DEEP, the Burlington Planning and Zoning Commission, or Burlington Inland Wetlands Commission or, (2) any drain or conveyance connected from a commercial or industrial land use to Burlington's MS4 which has not been documented in plans, maps, or equivalent records and approved by either the DEEP, the Burlington Planning and Zoning Commission, or Burlington Inland Wetlands Commission.

Industrial activity means any activity subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

Municipal separate storm sewer system or MS4 means the conveyances for stormwater (including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made or altered drainage channels, piped storm drains, retention and detention basins, reservoirs, and other drainage structures) owned or operated by the Town of Burlington or by any state or federal institution and discharging to surface waters of the state.

National Pollutant Discharge Elimination System permit or NPDES permit means any permit issued by the DEEP pursuant to authority delegated to it by the US Environmental Protection Agency pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-stormwater discharge means any discharge to Burlington's MS4 that is not composed entirely of stormwater.

Person means any individual, partnership, association, firm, limited liability company, corporation or other entity recognized by law and acting as either the owner or as the owner's agent, except a municipality, and includes the federal government, the state or any instrumentality of the state, and any officer or governing or managing body of any partnership, association, firm or corporation or any member or manager of a limited liability company.

Pollutant means anything which causes or contributes to pollution.

Pollution means any harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters; 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.

Property means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips, equipment or facility.

Stormwater means waters consisting of rainfall runoff, including snow or ice melt, during a rain event.

Stormwater Pollution Prevention Plan or SPPP means 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 stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

Waters of the state means all rivers, brooks, watercourses, waterways, wells, springs, lakes, ponds, marshes, drainage systems and all other surface or underground streams, bodies or accumulations of water, natural or artificial, public or private, which are contained within, flow through or border upon the state of Connecticut any portion thereof.

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

SECTION 3. APPLICABILITY

This ordinance shall apply to all water entering Burlington's MS4 generated on any developed and undeveloped lands unless explicitly exempted by the Director.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION

The Director shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the Director may be delegated in writing by the Director to persons or entities acting in the beneficial interest of or in the employ of the Town of Burlington.

SECTION 5. COMPATIBILITY WITH OTHER REGULATIONS

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

SECTION 6. SEVERABILITY

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

SECTION 7. ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

SECTION 8. DISCHARGE AND CONNECTION PROHIBITIONS

8.1 Prohibition of Illicit Discharges and Exemptions.

No person shall throw, drain or otherwise discharge, cause or allow others under its control to throw, drain, or otherwise discharge into the Burlington's MS4 any pollutants or waters containing any pollutants that cause or contribute to a violation of Connecticut Water Quality Standards as amended.

The commencement, conduct or continuance of any illicit discharge to Burlington's MS4 is prohibited except as described as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this ordinance: uncontaminated ground water discharges including, but not limited to, pumped ground water, foundation drains, water from crawl space pumps and footing drains; irrigation water including, but not limited to, landscape irrigation and lawn watering runoff; residual street wash water associated with sweeping; discharges or flows from firefighting activities (except training); and naturally occurring discharges such as rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), springs, diverted stream flows and flows from riparian habitats and wetlands.
- (2) Any non-stormwater discharge to Burlington's MS4 authorized by a permit issued pursuant to § 22a-430 or § 22a-430b of the Connecticut General Statutes is also authorized under this ordinance.

8.2 Prohibition of Illicit Connections.

- (1) The construction, use, maintenance or continued existence of illicit connections to Burlington's MS4 is prohibited.
- (2) 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.
- (3) A person is considered to be in violation of this ordinance if the person makes a connection conveying sewage to Burlington's MS4, or allows such a connection to continue.

SECTION 9. INVESTIGATION OF SUSPECTED ILLICIT DISCHARGES

Upon the receipt of a complaint or evidence that an illicit discharge and/or connection exists, the Director shall conduct or cause an investigation to determine the existence and/or origin of the illicit discharge and/or illicit connection. The Director will make or cause preliminary contact with the property owner or facility operator and seek abatement of the illicit discharge and/or illicit connection. If the source appears to originate from property containing an industrial or construction site, the Director may or may cause additionally contact the DEEP to determine if the property is subject to permitting by the DEEP and assess if the illicit discharge and/or connection is in violation of the DEEP permit. If within 15 days of the preliminary contact the property owner or facility operator such permitted property does not willingly abate the illicit discharge/ connection the Director shall either issue an Order to Abate pursuant to the provision of this ordinance and/or notify the DEEP of the suspected permit violation for enforcement action by the

DEEP.

SECTION 10. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an industrial or construction activity NPDES stormwater 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 Burlington's MS4.

SECTION 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 illicit discharges or pollutants discharging into stormwater, Burlington's MS4, or water of the state 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 hazardous materials said person shall immediately notify DEEP Emergency Response Unit and Burlington's 911 emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Director in person or by phone or facsimile 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 of Public Works, Burlington Town Hall, within three 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.

SECTION 12. SUSPENSION OF MS4 ACCESS

12.1. Suspension due to Illicit Discharges in Emergency Situations

In the event the Director finds an actual or threatened discharge presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to Burlington's MS4 or waters of the state the Director will immediately notify the DEEP of such danger and may, without additional notice, take actions to cause the immediate suspension of the MS4 discharge access to Burlington's MS4. Such actions may include, but are not limited to the physical blockage to Burlington's MS4 and issuing an order to immediately abate the illicit discharge pursuant to Section 13 of this ordinance.

12.2 Suspension due to the Detection of Illicit Discharge

Any person discharging to Burlington's MS4 in violation of this ordinance may have their MS4 access terminated in accordance with Sections 13, 14 and 17 of this ordinance if such termination would abate or reduce an illicit discharge.

SECTION 13. ENFORCEMENT- ORDER TO ABATE

13.1 Whenever the Director finds that a person has created or is maintaining an illicit discharge and/or illicit connection to the Burlington MS4 in violation of Section 8 of this ordinance, the Director may issue by certified mail a written order to abate such discharge and/or connection and cause the termination of such discharge and/or connection. The order may require without limitation:

- (1) The elimination of illicit connections and/or discharges;
- (2) That violating discharges, practices, or operations shall cease and desist;
- (3) The abatement or remediation of stormwater pollution or contamination hazards and the restoration

of any affected property; and

(4) Payment to recoup costs incurred by the Director;

(5) Suspension of any discharge to Burlington's MS4 system consistent with Section 12 of this ordinance; and

(6) The implementation of source control or treatment BMPs.

If abatement of the violation and/or remediation of affected property is required, the order shall set forth a deadline within which such abatement and/or remediation must be completed. Where elimination is not possible within sixty (60) days of source confirmation, a schedule for its elimination will be set for no more than one hundred and twenty (120) days.

Said order shall further instruct that, should the actions required by the order fail to be completed within the established deadline, such actions may be performed at the Director's direction person to whom the order is issued is liable for any expenses incurred by the Director in abetting the violation.

SECTION 14. APPEAL OF ORDER TO ABATE

Any person receiving an Order to Abate may in writing appeal the order to the Board of Selectmen for reconsideration. The notice of appeal must be received within fourteen (14) days from the date of the Order to Abate. A hearing on the appeal before the Board of Selectmen designee shall take place within twenty-one (21) days from the date of receipt of the notice of appeal. The decision of the Board of Selectmen shall be final.

SECTION 15. ENFORCEMENT MEASURES AFTER APPEAL

If the illicit discharge or illicit connection has not been abated pursuant to the requirements set forth in the Order to Abate, or, in the event of an appeal, within fourteen (14) days of the decision of the Board of Selectmen upholding the decision of the Director, then the Director shall (1) in the case of industrial discharges refer the matter to the DEEP for its enforcement under § 22a-432 of the Connecticut General Statutes, or (2) in the case of construction activities causing pollution to waters of the state by the failure to control erosion and sedimentation refer the matter to either the DEEP, the Burlington Inland Wetlands Commission or the Burlington Planning & Zoning Commission, as the Director deems appropriate.

SECTION 16. COST OF ABATEMENT OF THE VIOLATION

Within forty-five (45) days after abatement of the violation, the owner of the property will be notified in writing by certified mail of the cost of abatement, including administrative costs, and the payment requirements. The property owner may file a written protest objecting to the amount of the assessed costs within fourteen (14) days of written notification. If the amount due is not paid within a timely manner as determined by the decision of the Board of Selectmen or by the expiration of the time in which to file an appeal, the cost of the abatement charges shall become a special tax assessment against the property and subject to collection pursuant to the provisions of §12-172 and § 12-173 of the Connecticut General Statutes. Payment and interest on abatement charges shall be in accordance with § 12-144 of the Connecticut General Statutes unless otherwise determined by the Board of Selectmen.

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 or order to abate, the Director or Board of Selectmen may petition for a 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 allowed by law, 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.

SECTION 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 Director to seek cumulative remedies.

SECTION 20. ADOPTION OF ORDINANCE

This ordinance shall be in full force and effect fifteen [15] days after its publication in a newspaper of general circulation in Burlington. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

PASSED AND ADOPTED this 6th day of June, 2023

Effective date 15 days after publication: June 28, 2023