

ARTICLE V
[Adopted 7-19-2017 By Ord. No. 17-15]
Stormwater

§ 14-121. Purpose.

Increased and contaminated stormwater 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 Town's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment. The objectives of this article are to:

- (1) Prevent (or reduce to the maximum extent practicable) pollutants entering the Town's municipally owned separate storm sewer system;
- (2) Prohibit illicit connections and unauthorized discharges to the MS4;
- (3) Require the removal of all such illicit connections and discharges;
- (4) Comply with state law and federal statutes and regulations relating to stormwater discharges; and
- (5) Set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this article.

§ 14-122. Authority.

This article is promulgated pursuant to the Rhode Island Department of Environmental Management's ("DEM") General Permit Rhode Island Pollutant Discharge Elimination System Stormwater 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 provisions of R.I.G.L. § 45-6-1.

§ 14-123. Definitions.

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

ALLOWABLE NONSTORMWATER DISCHARGES — Discharges not comprised of stormwater 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; firefighting 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 waterline 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 Public Works of the Town of Cumberland.

BEST MANAGEMENT PRACTICES (BMPs) — Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater 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 Stormwater Phase II permits are required for construction projects resulting in land disturbance of one 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 — Either of the following:

- (1) 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 nonstormwater 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
- (2) 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 stormwater except discharges pursuant to a RIPDES permit (other than the RIPDES permit for discharges from the municipal separate storm sewer) and

discharges resulting from firefighting 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):

- (1) 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, stormwater, 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;
- (2) Designed or used for collecting or conveying stormwater;
- (3) Which is not a combined sewer; and
- (4) Which is not part of a "publicly owned treatment works (POTW)" as defined in the Department of Environmental Management Office of Water Resources Regulations for the Rhode Island Pollutant Discharge Elimination System.

NONSTORMWATER DISCHARGE — Any discharge that is not composed entirely of stormwater.

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; nonhazardous 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.

STORMWATER — 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 stormwater not authorized by a RIPDES permit, or an allowable stormwater 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 waters and groundwaters within the boundaries of the State of Rhode Island and subject to its jurisdiction.

§ 14-124. Discharge prohibitions.

(a) Prohibition of unauthorized discharges.

(1) No person shall discharge or caused to be discharged into the municipal separate storm sewer system or watercourses any pollutant or nonstormwater discharge unless such a nonstormwater discharge is outlined in Part I.B.3 of the MS4 general permit. The allowable nonstormwater discharges (described below) are permitted if deemed not to be a significant contributor of pollutants to the municipal separate storm sewer system.

(2) Allowable nonstormwater discharges:

- a. 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;
- b. External building washdown where no detergents are used;
- c. The use of water to control dust;
- d. Firefighting activities;
- e. Fire hydrant flushings;
- f. Natural springs;
- g. Uncontaminated groundwater; dechlorinated pool discharges;
- h. Air-conditioning condensate;
- i. Lawn watering; potable water sources, including waterline flushings;
- j. Irrigation drainage;
- k. 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;
- l. 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;
- m. Uncontaminated utility vault dewatering; dechlorinated waterline testing water;
- n. Hydrostatic test water that does not contain any treatment chemicals and

is not contaminated with process chemicals.

(b) Prohibition of illicit connections.

- (1) 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.
- (2) A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue and must provide corrective action.

§ 14-125. Suspension of MS4 access.

- (a) Suspension due to illicit discharges in emergency situations. The Director of Public Works may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened nonstormwater 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.
- (b) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this article may have his or her 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.
- (c) Entry to perform duties under this article. 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 article and may make or cause to be made such examinations, surveys or sampling as the authorized enforcement agency deems reasonably necessary.

§ 14-126. Industrial and construction activity discharge.

Any person subject to an industrial or construction activity RIPDES 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 authorized enforcement agency prior to the allowing of discharges to the MS4.

§ 14-127. 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 discharger's 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 Rhode Island law.

§ 14-128. Requirement to prevent, control and reduce stormwater pollutants.

In an attempt to prevent, control, and reduce stormwater pollutants, any person engaged in activities or operations, or owning facilities or property which will or may result in pollutants entering stormwater, 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.

§ 14-129. 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 his or her property lines in order to protect against erosion and degradation of the watercourse originating or contributed from his or her 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.

§ 14-130. 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 stormwater, 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 nonhazardous 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 five 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.

§ 14-131. 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 article, 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 stormwater 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.
- (b) 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.

§ 14-132. 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 filed with the Municipal Court of the Town of Cumberland within 14 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. Jurisdiction of said court is conferred by § 11-15(a) of the Town of Cumberland Code of Ordinances.

§ 14-133. Settlements of appeal of notice of violation.

In lieu of enforcement proceedings, penalties, and remedies authorized by this article, 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.

§ 14-134. 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 30 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 Municipal Court or 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.

§ 14-135. Administrative orders.

The authorized enforcement agency is authorized to issue the following administrative orders at any time it deems such action appropriate to secure timely and effective compliance with this article or a discharge permit or order issued pursuant to this article, whether or not any previous notifications of violation have been provided to the user:

- (1) 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.
- (2) 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.

- (3) 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.
- (4) 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.

§ 14-136. Cost of abatement of violation.

Within 30 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 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 Town by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of 12% per annum shall be assessed on the balance beginning on the 60th day following discovery of the violation.

§ 14-137. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. If a person has violated or continues to violate the provisions of this article, 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.

§ 14-138. Violations deemed 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 article 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.

§ 14-139. Criminal prosecution.

Any person that has violated or continues to violate this article shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty

of \$500 per violation per day and/or imprisonment for a period of time not to exceed 30 days. The authorized enforcement agency may recover all attorneys' fees, court costs and other expenses associated with enforcement of this article, including sampling and monitoring expenses.

§ 14-140. Remedies not exclusive.

The remedies listed in this article 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.