

Local Law No. 6 of the Year 2007

Be it Enacted by the Town Board of the Town of Ossining as follows:

Section 1. The Code of the Town of Ossining is hereby amended by adding thereto a new chapter, Chapter 170 (Illicit Storm Sewer Discharges and Connections) to read as follows:

§ 170-1. Purpose/intent.

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the Town of Ossining through the regulation of nonstormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) process. The objectives of this chapter are:

- A. To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.
- B. To prohibit illicit connections and discharges to the MS4.
- C. To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this chapter.

§ 170-2. Definitions.

For the purposes of this chapter, the following terms shall have the meanings indicated:

AUTHORIZED ENFORCEMENT AGENCY — Employees or designees of the director of the municipal agency designated to enforce this chapter.

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 — The federal Water Pollution Control Act [33 U.S.C. § 1251 et seq.] and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY — Activities subject to NPDES construction permits. These include 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.

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.

ILLEGAL DISCHARGE — Any direct or indirect nonstormwater discharge to the storm drain system, except as exempted in § 170-8 of this chapter.

ILLICIT CONNECTION — Either of the following:

- A. Any drain or conveyance, whether on the surface or subsurface, that allows an illegal discharge to enter the storm drain system, including but not limited to any conveyances that 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
- B. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

INDUSTRIAL ACTIVITY — Activities subject to NPDES industrial stormwater permits as defined in 40 CFR 122.26(b)(14).

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) — The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the Town of Ossining and designed or used for collecting or conveying stormwater and that is not used for collecting or conveying sewage.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT — A permit issued by the EPA [or by a state under authority delegated pursuant to 33 U.S.C. § 1342 (b)] that authorizes the discharge of a pollutant to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

NONSTORMWATER DISCHARGE — Any discharge to the storm drain system that is not composed entirely of stormwater.

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.

POLLUTANT — Anything that 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.

PREMISES — Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

STORM DRAINAGE SYSTEM — Publicly owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or -altered drainage channels, reservoirs, and other drainage structures.

STORMWATER — Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

STORMWATER MANAGEMENT PLAN — A document that 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.

SUPERINTENDENT — All references herein to "Superintendent" shall mean the Town of Ossining Superintendent of Highways.

WASTEWATER — Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

§ 170-3. Applicability.

This chapter shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the Superintendent.

§ 170-4. Responsibility for administration.

The Superintendent shall administer, implement and provide for the enforcement of this chapter. Any powers granted or duties imposed upon the Superintendent, other than powers and duties in the areas of compliance monitoring (section 170-11) and enforcement (section 170-14) may be delegated by the Superintendent to persons employed by the Highway Department. Powers granted and duties imposed on the Superintendent in the aforementioned areas of compliance monitoring and enforcement shall be assigned by the Superintendent to, and such powers and duties shall be shared by the Superintendent with, the Building Inspector and/or the Code Compliance Officer of the Town of Ossining.

§ 170-5. Construal of provisions.

This chapter is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law.

The requirements of this chapter are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this chapter 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.

§ 170-6. Severability.

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

§ 170-7. Minimum standards.

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore, this chapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

§ 170-8. Discharge prohibitions.

A. Prohibition of illegal discharges; exemptions.

- (1) No person shall throw, drain, or otherwise discharge or cause or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater.
- (2) The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited, except as described as follows:
 - (a) The following discharges are exempt from discharge prohibitions established by this chapter: waterline flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air-conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water.
 - (b) Discharges or flow from fire fighting, and other discharges specified in writing by the Superintendent as being necessary to protect public health and safety.
 - (c) Discharges associated with dye testing; however, this activity requires a verbal notification to the Superintendent prior to the time of the test.
 - (d) The prohibition shall not apply to any nonstormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations and provided that written approval has been granted for any discharge to the storm drain system.

B. Prohibition of illicit connections; redirection of improper connection; documentation of drain or conveyance.

- (1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under the law or practices applicable or prevailing at the time of connection.
- (3) A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the MS4 or allows such a connection to continue.
- (4) Improper connections in violation of this chapter must be disconnected and redirected, if necessary, to an approved on-site wastewater management system or the sanitary sewer system upon approval of the

appropriate authority.

- (5) Any drain or conveyance that has not been documented in plans, maps or equivalent and which may be connected to the storm sewer system shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Superintendent requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Superintendent.

§ 170-9. 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 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.

§ 170-10. Industrial or construction activity discharges.

- A. Compliance with NPDES permit. 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 Superintendent prior to the allowing of discharges to the MS4.
- B. Submission of NOI.
 - (1) The operator of a facility, including construction sites, required to have an NPDES permit to discharge stormwater associated with industrial activity shall submit a copy of the notice of intent (NOI) to the Superintendent at the same time the operator submits the original notice of intent to the EPA as applicable.
 - (2) A person commits an offense if the person operates a facility that is discharging stormwater associated with industrial activity without having submitted a copy of the notice of intent to do so to the Superintendent.

§ 170-11. Compliance monitoring.

- A. Right of entry for inspection and sampling. The Superintendent shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter.
 - (1) If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Superintendent.
 - (2) Facility operators shall allow the Superintendent ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater and the performance of any additional duties as defined by state and federal law.
 - (3) The Superintendent shall have the right to set up on any permitted facility such devices as necessary in the opinion of the Superintendent to conduct monitoring and/or sampling of the facility's stormwater discharge.
 - (4) The Superintendent has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
 - (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Superintendent and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the Superintendent access to a permitted facility is a violation of a stormwater discharge permit and of this chapter. A person who is the operator of a facility with an NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Superintendent reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.

C. Search warrants. If the Superintendent has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this chapter or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder or to protect the overall public health, safety, and welfare of the community, then the Superintendent may seek issuance of a search warrant from any court of competent jurisdiction.

§ 170-12. Responsibility to prevent, control and reduce stormwater pollutants.

The owner or operator of such activity, operation, or facility shall provide, at his/her own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity shall be deemed compliance with the provisions of this section.

§ 170-13. Notification of spills.

- A. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation or responsible for the emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or waters of the United States, 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 emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the Superintendent 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 Superintendent 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.
- B. Failure to provide notification of a release as provided above is a violation of this chapter.

§ 170-14. Violations; enforcement; penalties.

- A. Violations; abatement of immediate danger.
- (1) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Any person who has violated or continues to violate the provisions of this chapter may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.
 - (2) In the event the violation constitutes an immediate danger to public health or public safety, the Superintendent is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Superintendent is authorized to seek costs of the abatement as outlined in § 170-17.
- B. Warning notice. When the Superintendent finds that any person has violated, or continues to violate, any provision of this chapter or any order issued hereunder, the Superintendent may serve upon that person a written warning notice specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the warning notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the warning notice. Nothing in this subsection shall limit the authority of the Superintendent to take any action, including emergency action or any other enforcement action, without first issuing a warning notice.

C. Notice of violation.

- (1) Whenever the Superintendent finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the Superintendent may order compliance by written notice of violation to the responsible person. The notice of violation shall contain:
 - (a) The name and address of the alleged violator;
 - (b) The address, when available, or a description of the building, structure or land in or upon which the violation is occurring or has occurred;
 - (c) A statement specifying the nature of the violation;
 - (d) A description of the remedial measures necessary to restore compliance with this chapter and a time schedule for the completion of such remedial action;
 - (e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
 - (f) A statement that the determination of a violation may be appealed to the Superintendent by filing a written notice of appeal within 10 days of service of notice of violation; and
 - (g) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.
- (2) Such notice may require without limitation:
 - (a) The performance of monitoring analyses and reporting;
 - (b) The elimination of illicit connections or discharges;
 - (c) That violating discharges, practices, or operations shall cease and desist;
 - (d) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
 - (e) The implementation of source control or treatment.

D. Suspension of MS4 access.

- (1) Emergency cease-and-desist orders.
 - (a) When the Superintendent finds that any person has violated, or continues to violate, any provision of this chapter or any order issued hereunder or that the person's past violations are likely to recur and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Superintendent may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:
 - [1] Immediately comply with all ordinance requirements; and
 - [2] Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.
 - (b) Any person notified of an emergency order directed to it under Subsection D(1)(a) shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Superintendent may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States and/or endangerment to persons or to the environment. The Superintendent may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Superintendent that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this chapter. A person that is responsible in whole or in part for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Superintendent within two days of receipt of the emergency order. Issuance of an emergency cease-and-desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

- (2) Suspension due to illicit discharges in emergency situations. The Superintendent may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that 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 United States. If the violator fails to comply with a suspension order issued in an emergency, the Superintendent may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States or to minimize danger to persons.
- (3) Suspension due to the detection of illicit discharge.
 - (a) Any person discharging to the MS4 in violation of this chapter may have his/her MS4 access terminated if such termination would abate or reduce an illicit discharge. The Superintendent will notify a violator of the proposed termination of its MS4 access. The violator may petition the Superintendent for a reconsideration and hearing.
 - (b) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the Superintendent.

§ 170-15. Penalties for offenses.

Any person that has violated or continues to violate this chapter shall be liable to criminal prosecution to the fullest extent of the law and shall be subject to a criminal penalty of \$100. to \$500. per violation per day and/or imprisonment for a period of time not to exceed 30 days. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

§ 170-16. Enforcement following notice of violation.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, then representatives of the Superintendent may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

§ 170-17. Responsibility for cost of abatement of violation.

Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 30 days to the Town Board. The Town Board, after a hearing, shall determine whether the assessment and the amount thereof is proper. Upon final determination of the assessment, the property owner shall have 10 days to pay the assessment. If not paid within that time, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. The charges shall be added to the next Town tax levy against the property which was the source of the violation.

§ 170-18. 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 chapter 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.

§ 170-19. Remedies not exclusive.

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law, and it is within the discretion of the Superintendent to seek cumulative remedies.

Section 2. This Local Law shall be effective immediately, as permitted by law.