



Ordinance 628

An Ordinance amending Chapter 190 Stormwater Management of the Code of the Town of Elsmere.

First and Second Reading: May 11, 2017 Council Meeting

Results: _____

Third and Final Reading: June 8, 2017 Council Meeting

Results: _____

Ordinance 628

An Ordinance amending Chapter 190 Stormwater Management of the Code of the Town of Elsmere.

WHEREAS, the Town of Elsmere is a co-permittee with New Castle County and DelDOT for their NPDES Permit; and

WHEREAS, a requirement of the permit is to update the our code to bring it into compliance with the approved permit;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF ELSMERE, AS FOLLOWS:

That Chapter 190 Stormwater Management be deleted in its entirety and a new Chapter 190 be inserted to read as follows:

CHAPTER 190

ILLICIT DISCHARGES TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM

§ 190-1. Purpose and intent.

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens and businesses of the Town of Elsmere through the regulation of non-stormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by Federal and State law. This chapter establishes methods for controlling the discharge of pollutants into the MS4 in order to comply with requirements of the Town's National Pollutant Discharge Elimination System (NPDES) permit. The objectives of this chapter are:

- A. To regulate the discharge of pollutants to the municipal separate storm sewer system (MS4) by any user.
- B. To prohibit illicit connections and discharges to the municipal separate storm sewer system.
- C. To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this chapter.

§ 190-2. Definitions.

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

AUTHORIZED ENFORCEMENT AGENCY — Employees or designees of the Town of Elsmere, including, but not limited to, the Town Manager and Code Enforcement Officers of the Town.

BEST MANAGEMENT PRACTICES (BMPS) — Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs can be applied before, during or after pollution generating activities to reduce or eliminate the introduction of pollutants into receiving waters.

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. Currently NPDES construction 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. All construction projects regardless of size must comply with the Delaware Sediment and Stormwater Regulations (DSSR).

HAZARDOUS MATERIALS — 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 — Any discharge to the municipal separate storm sewer that is not composed entirely of storm water except those sanctioned by a NPDES permit other than the NPDES permit for discharges from the municipal separate storm sewer and discharges resulting from fire fighting and other activities referenced in Part II.A.3. of the NPDES permit for discharges from the municipal separate storm sewer.

ILLICIT CONNECTIONS — Either of the following:

- A. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including but not limited to any conveyances which allow any non-stormwater discharge, including sewage, process wastewater, and wash water, to enter the MS4 and any connections to the MS4 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

- C. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

D.

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

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) — (1) a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by a city, town, county, district, association, or other public body created by or pursuant to State law having jurisdiction over the disposal of sewage, industrial waste, storm water, or other wastes, storm water management, drainage or flood control, which is: (2) designed or used for collecting or conveying storm water; (3) is not a combined sewer; and (4) which is not part of a publicly owned treatment works as defined at 40 C.F.R. § 122.2.

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 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 — Any discharge to the MS4 that is not composed entirely of stormwater.

PERSON — Any individual, trust, firm, corporation (including a government corporation), partnership, association, institution, enterprise, state, municipality, commission, agency, political subdivision of a state or an interstate body, or an agent or employee thereof.

POLLUTANT — Any substance, which causes or contributes to, or may cause or contribute to, the degradation of water, air, and soil resources or to the health of humans, animals, or aquatic life. Examples may include, but are not limited to excess nutrients, chemicals, toxic substances, industrial, municipal or agricultural wastes, etc.

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

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

STORMWATER POLLUTION PREVENTION PLAN (SWPPP)— 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.

TOWN — The Town of Elsmere, Delaware, a municipal corporation located in New Castle County, Delaware, and any of its officers and employees or their designee.

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

§ 190-3. Applicability.

This chapter shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

§ 190-4. Responsibility for administration.

The Code Enforcement Department shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Town Manager to persons or entities acting in the beneficial interest of or in the employ of the Town.

§ 190-5. 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.

§ 190-6. Minimum standards.

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

§ 190-7. Discharge and connection prohibitions.

A. Prohibition of illegal discharges.

- (1) No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.
- (2) The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:
 - (a) The following discharges are exempt from discharge prohibitions established by this chapter: (a) water line flushing; (b) diverted stream flows; (c) rising groundwaters; (d) uncontaminated groundwater infiltration to separate storm sewers; (e) uncontaminated pumped groundwater; (f) discharges from potable water sources; (g) foundation drains; (h) air conditioning condensate; (i) irrigation water; (j) springs; (k) water from crawl space pumps; (l) footing drains; (m) individual residential vehicle washing; (n) flows from riparian habitats and wetlands; (o) dechlorinated swimming pool discharges; and (p) discharges or flows from emergency fire fighting activities.

Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

- (3) The prohibition shall not apply to any non-stormwater 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, 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 MS4.

B. Prohibition of illicit connections.

- (1) The construction, use, maintenance or continued existence of illicit connections to the 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 chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

§ 190-8. Suspension of MS4 access.

- A. Suspension due to illicit discharges in emergency situations. The Code Enforcement Officer may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened 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 United States. 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 United States, or to minimize danger to persons.
- B. Suspension due to the detection of illicit discharge.
 - (1) Any person discharging to the MS4 in violation of this chapter 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 a reconsideration and hearing.
 - (2) 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.

§ 190-9. 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 Code Enforcement Officer prior to the allowing of discharges to the MS4.

§ 190-10. Monitoring of discharges.

- A. Applicability. This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.
- B. Access to facilities.
 - (1) The Code Enforcement Officers 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. 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 authorized enforcement agency.
- (2) Facility operators shall allow the Code Enforcement Officers 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 Town shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's stormwater discharge.
 - (4) The Town 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 Town and shall not be replaced. The costs of clearing such access shall be borne by the operator.
 - (6) Unreasonable delays in allowing the Town 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 a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.
 - (7) If the Town has been refused access to any part of the premises from which stormwater is discharged, and the Code Enforcement Officer 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 authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

§ 190-11. Use of best management practices to prevent, control, and reduce stormwater pollutants.

The Town requires best management practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the MS4, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at its own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of these structural and nonstructural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illicit discharge may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

§ 190-12. 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.

§ 190-13. 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 illegal discharges or pollutants discharging into stormwater, the MS4, 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 authorized enforcement agency 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 Town of Elsmere 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 five (5) years.

§ 190-14. Enforcement.

A. Notice of violation. Whenever the Town finds that a person has violated a prohibition or failed to meet a requirement of this chapter, 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;
- (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.

C. The Town at its discretion may file charges in Justice of the Peace (JP) Court for violating this chapter of the Town Code. If needed, the Town will contact DNREC's Office of Community Services' Environmental Crimes Unit. All of DNREC's Environmental officers are certified police officers with full police powers.

§ 190-15. 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 10 days from the date of the notice of violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the municipal authority or its designee shall be final.

§ 190-16. Enforcement measures after appeal.

If 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 15 days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then

representatives of the authorized enforcement agency shall 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.

§ 190-17. Cost of abatement of the violation.

Within 10 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 10 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, 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 chapter shall become liable to the Town by reason of such violation. The liability shall be paid in not more than 12 equal payments and shall also include per-annum interest on the total amount due, computed on the basis of the amortized amount outstanding at the rate provided by 6 Del. C. § 2301.

§ 190-18. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this chapter, the authorized enforcement agency may petition for a 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.

§ 190-19. Compensatory action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the authorized enforcement agency may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

§ 190-20. 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 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.

§ 190-21. Criminal prosecution.

Any person who 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 \$200 per violation per day and/or imprisonment for a period of time not to exceed 120 days. The authorized enforcement agency may recover all attorneys' fees, court costs and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

§ 190-22. 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 authorized enforcement agency to seek cumulative remedies.

First and Second Reading
May 11, 2017

Third and Final Reading
June 8, 2017

Eric Thompson, Mayor

Brian Hurst, Secretary

Approved as to form:

Town Solicitor

SYNOPSIS

This ordinance brings the Town's Stormwater Management regulations into compliance with its MS4, NPDES Permit.

Fiscal Impact

None