

TOWN OF HARMONY

**CHAPTER 15 OF THE MUNICIPAL CODE
OF THE TOWN OF HARMONY, WISCONSIN**

ILLICIT DISCHARGE

Section 1. TITLE. This Chapter shall be cited as the Town of Harmony Illicit Discharge Ordinance.

Section 2. AUTHORITY. This Chapter is adopted under authority granted by Chapter 283, Wis. Stats., and NR 216.07(3), Wis. Adm. Code. The provisions of this Chapter are not intended to limit any other lawful regulatory powers of the Town of Harmony.

Section 3. RESPONSIBILITY FOR ADMINISTRATION AND APPEALS. The Town Board of the Town of Harmony shall administer and enforce the provisions of this ordinance. The Board of Adjustment, functioning in accord with Chapter 92, Wis. Stats., shall hear and decide appeals where it is alleged that there is an error in any order, decision, or determination previously made by the Town Board upon written request by a person to the Town Chair. A responsible person or landowner may appeal within 30 calendar days of the date of any order, decision, or determination made by Town Board in administering this Chapter, relative to sites in which such person has an interest.

Section 4. PURPOSE AND INTENT. The purpose of this Chapter is to provide for the health, safety, and general welfare of citizens through the regulation of non-storm water discharged to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants in the municipal separate storm sewer system (MS4) in order to comply with the requirements of the Wisconsin Pollutant Discharge Elimination System (WPDES) permit process. The intent of this ordinance is:

- A.** To prohibit the discharge, spilling, or dumping of non-storm water substances or materials into waters of the state or the MS4;
- B.** To identify non-storm water discharges or flows that are not considered illicit discharges;
- C.** To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this ordinance.

Section 5. JURISDICTION. This Chapter shall apply to lands located within both the Town and the Permitted Area of the Town of Harmony's Municipal WPDES Permit as amended and revised unless explicitly exempted by this Chapter.

Section 6. SEVERABILITY. If a court of competent jurisdiction judges any section, clause, provision, or portion of this Chapter unconstitutional or invalid, the remainder of the Chapter shall remain in full force and not be affected by such judgment.

Section 7. 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 Town Board to seek cumulative remedies.

Section 8. ULTIMATE RESPONSIBILITY. 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.

Section 9. DISCHARGE PROHIBITIONS. No person shall discharge or cause to be discharged into the MS4 or waters of the state 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 storm water. 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.

The commencement, conduct or continuance of any illicit discharge to the MS4 is prohibited except as follows:

A. The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, individual residential car washing, nature riparian habitat or wetland flows, swimming pools (if dechlorinated – typically less than one PPM chlorine), fire fighting activities, and any other water source not containing pollutants.

B. Dye testing is an allowable discharge, but requires a verbal notification to the Town Chair prior to the time of the test.

The prohibition shall not apply to any non-storm water discharge permitted under a WPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the DNR, 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

Section 10. 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

storm water, the 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 emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Town Chair in person or by phone or facsimile immediately. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town Chair within three business days of the phone notice.

Section 11. INDUSTRIAL OR CONSTRUCTION SITE DISCHARGES. Any person subject to an industrial or construction site WPDES storm water discharge permit or a Rock County Construction Site Erosion Control or Storm Water Management Permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town Chair prior to the allowing of discharges to the MS4.

Section 12. INSPECTIONS.

A. The Town Chair or any representative designated by the Town Chair shall be permitted to enter and inspect any property 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 that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the Town Chair or designated representative.

B. The Town Chair or any representative designated by the Town Chair shall be permitted 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 a WPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

C. If the Town Chair or any representative designated by the Town Chair has been refused access to any part of the premises from which storm water 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 Town Chair or designee may seek issuance of a search warrant from any court of competent jurisdiction.

Section 13. ENFORCEMENT AND PENALTIES.

A. Any illicit discharge initiated after the effective date of this Chapter by any person, firm, association, or corporation subject to the provisions of this Chapter shall be deemed a violation unless conducted in compliance with the requirements of this Chapter.

B. Every violation of this Chapter is a public nuisance. Compliance with this ordinance may be enforced by injunctive order at the suit of the Town pursuant to sec.

823.02, Wis. Stats. It shall not be necessary to prosecute for forfeiture before resorting to injunctive proceedings.

C. When the Town Board finds that a person has violated a prohibition or failed to meet a requirement of this Chapter, the Town Board may order compliance by written notice of violation to the responsible person via certified mail. 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 storm water pollution or contamination hazards and the restoration of any affected property; and
- (5) The implementation of source control or treatment BMPs.

D. Upon receipt of written notification from the Town Chair or the designee of the Town Chair, the responsible person shall correct the activity as necessary to meet the specifications and schedule set forth in the notice.

E. If abatement or remediation of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or remediation and/or restoration must be completed. Said notice shall further advise that, should the violator fail to abate or remediate and/or restore within the established deadline, the work will be done by a contractor designated by the Town Board, and the expense thereof shall be charged to the violator. It shall be unlawful for any person, owner, or agent or person in possession of any premises to refuse to allow the designated contractor to enter upon the premises for the purposes set forth above.

F. If the responsible person does not comply with the provisions of a notice of violation, the Town Board may request the Town Attorney to obtain a cease and desist order in any court with jurisdiction.

G. Any person, firm, association, or corporation violating any of the provisions of this Chapter shall be subject to a forfeiture of no less than \$500.00 nor more than \$5,000.00, and the cost of prosecution, including staff time and attorney fees, per offense. Each day a violation exists shall constitute a separate offense.

H. In lieu of enforcement proceedings, penalties, and remedies authorized by this Chapter, the Town Board may impose upon a violator alternate compensatory actions, such as attendance at compliance workshops, creek cleanup, etc.

Section 14. COST OF ABATEMENT OF THE VIOLATION. Within 30 days after abatement or remediation of the violation, the owner of the property will be notified of the cost of abatement or remediation, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 20 days. If the amount due is not paid in a timely manner as determined by the decision of the Town Board 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.

Section 15. DEFINITIONS.

For purposes of this Chapter, the following shall mean:

Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention, and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water 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.

DNR. Wisconsin Department of Natural Resources.

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 MS4 that is not composed entirely of storm water except discharges authorized by a WPDES permit or exempted in this ordinance.

Illicit Connections. An illicit connection is defined as either of the following:

(1) Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4 regardless of whether said drain or connection has been previously allowed, permitted, or approved by the Town Board; or

(2) 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 the Town Board.

Industrial activity. Activities subject to WPDES or NPDES Industrial Permits as defined in 40 CFR, Section 122.26(b)(14).

Jurisdiction. The area where the Town of Harmony has authority to enforce its ordinance(s) or otherwise has authority to exercise control over a particular area of concern.

Municipal Separate Storm Sewer System (MS4). A conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains which meet all of the following criteria:

- (1) Owned or operated by a municipality;
- (2) Designed or used for collecting or conveying storm water;
- (3) Is not a combined sewer conveying both sanitary and storm water.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. A permit issued by 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-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.

Permittee. The Town of Harmony.

Permitted Area. The areas of land under the jurisdiction of the Town of Harmony that contribute to discharges from the Town's MS4 which are regulated under a Municipal WPDES Permit pursuant to subch. I of NR 216 Wis. Adm. Code and receive runoff from any of the following:

- (1) An "urbanized area," adjacent developing areas, and areas whose runoff will connect to a MS4 regulated under subch. I of NR 216 Wis. Adm. Code; or
- (2) An area associated with a municipal population of 10,000 or more and a population density of 1,000 or more per square mile, adjacent developing area, and areas whose runoff will connect to a MS4 regulated under subch I of NR 216 Wis. Adm. Code; or
- (3) An area that drains to a MS4 that is designated for permit coverage pursuant to s. NR 216.02(2) or 216.025, Wis. Adm. Code.

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 which causes or contributes to pollution. 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 waste; 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 storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping drainage channels, reservoirs, and other drainage structures.

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

Urbanized Area. A place and the adjacent densely settled surrounding territory that together have a minimum population of 50,000 people, as determined by the U.S. Bureau of the Census based on the latest decennial federal census.

Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

WPDES Permit. A Wisconsin Pollutant Discharge Elimination System permit issued pursuant to ch. 382, Wis. Stats., by the DNR.

Section 16. EFFECTIVE DATE. This Chapter shall take effect and shall be in full force from and after its passing and posting and/or publication as provided by law.

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