

8/10 2006

RECEIVED FOR RECORD 8 O'CLOCK 30 MINUTES  
A.M., AND RECORDED IN BOOK 1 PAGE 30 (1-13)  
OF SHELBURNE Ordinance RECORDS  
ATTEST *Colleen Tracy* CLERKVol. 1  
Page 30-1**TOWN of SHELBURNE, VERMONT****The Selectboard of the Town of Shelburne hereby ordains:****STORMWATER DISCHARGE ORDINANCE****SECTION 1. AUTHORITY.**

This ordinance is adopted pursuant to 24 V.S.A. §3617 and Section 1.4(3) of the Town of Shelburne Charter. It shall be a civil ordinance within the meaning of 24 V.S.A. Chapter 59.

**SECTION 2. PURPOSE.**

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of Shelburne, Vermont through the regulation of non-storm water discharges 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 into the storm drainage system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the storm drainage system by storm water discharges by any user.
- (2) To prohibit illicit connections and discharges to the storm drainage system.
- (3) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

**SECTION 3. APPLICABILITY.**

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

**SECTION 4. DEFINITIONS.**

For the purposes of this ordinance, the following shall mean

**Authorized Enforcement Agency.** Employees or designees of the Shelburne Department of Public Works are designated to enforce this ordinance.

**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.

**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 National Pollution Discharge Elimination System (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.

**Direct Discharge.** Any discharge that flows directly into the storm water system by means of a connected pipe.

**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.

**Illegal Discharge.** Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 5 of 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 that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water 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 that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

**Indirect Discharge.** Any discharge to the storm water system that first flows outside of the system and may enter the system through the process of

infiltration or through a drainage structure.

**Industrial Activity.** Activities subject to NPDES Industrial Storm Water Permits as defined in 40 CFR, Section 122.26 (b)(14).

**National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit.** means 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.

**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 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 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 facilities, retention and detention basins, natural and human-made or altered 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.

**Storm Water Management Plan.** 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 storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

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

**Watercourse.** Any perennial, intermittent or ephemeral stream, and any natural or human-made channel that carries storm water to any perennial, intermittent or ephemeral stream or the storm drainage system.

## **SECTION 5. DISCHARGE PROHIBITIONS.**

### **5.1. Prohibition of Illegal Discharges.**

No person shall discharge, cause to be discharged, or allow others under its control to discharge into the storm drainage system any pollutants or waters containing any pollutants, other than storm water. Nor shall any person fail to install or maintain on any property storm water management improvements or utilize any BMPs that are required pursuant to any land use permit issued by the Town of Shelburne. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this ordinance, unless the discharge results in a direct discharge and the discharge is identified as containing pollutants or chemicals that are required to be controlled by state or federal regulation:
  - (a) water line flushing,
  - (b) landscape irrigation or lawn watering,
  - (c) diverted stream flows,
  - (d) rising ground waters,
  - (e) uncontaminated ground water infiltration,
  - (f) uncontaminated pumped ground water,
  - (g) discharges from potable water sources,
  - (h) foundation drains,
  - (i) air conditioning condensation,
  - (j) uncontaminated irrigation water,
  - (k) uncontaminated springs,
  - (l) water from sump pumps,
  - (m) footing drains,
  - (n) individual residential (non-commercial) car washing,
  - (o) flows from riparian habitats and wetlands,
  - (p) dechlorinated swimming pool discharges, and
  - (q) street wash water.
- (2) Discharges or flow from firefighting, and other discharges specified in writing by the Shelburne Selectboard as being necessary to protect public health and safety.
- (3) Discharges associated with dye testing, however this activity requires a verbal notification to the Department of Public Works prior to the time of the test.
- (4) The prohibition shall not apply to any non-storm water 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 by the Department of Public Works for any discharge to the storm drain system.

## **5.2. Prohibition of Illicit Connections.**

- (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 law or practices applicable or prevailing at the time of connection.

## **5.3. Waste Disposal Prohibitions**

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or water of the U.S., any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purposes of collection are exempted from this prohibition.

## **5.4. Industrial and Construction Activity Discharges**

- (1) Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Director of Planning prior to the allowing of discharges to the storm drainage system.
- (2) The operator of a facility, including construction sites, required to have an NPDES permit to discharge storm water associated with industrial activity shall submit a copy of the Notice of Intent (NOI) to the Director of Planning at the same time the operator submits the original Notice of Intent to the EPA as applicable.
- (3) The copy of the Notice of Intent may be delivered to the Director of Planning either in person or by mailing it to:  
Notice of Intent to Discharge Storm Water  
Director of Planning  
P.O. Box 88  
5420 Shelburne Road  
Shelburne, VT 05482
- (4) A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the Notice of Intent to do so to the Director

of Planning.

## **SECTION 6. STORMWATER MANAGEMENT REQUIREMENTS**

### **6.1 Best Management Practices**

The Director of Public Works will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States. The owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the storm drainage system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water 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 storm water management plan (SWMP) as necessary for compliance with requirements of the NPDES permit.

### **6.2 Watercourse Protection**

Every Person owning property through which a water course passes, or such person's lessee, shall not dump or dispose of trash, debris or 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. Riparian Buffers established as part of the development and required by Town regulations shall be maintained by the developer and all other subsequent property owners or associations within the development.

### **6.3 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 storm water, 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 non-hazardous materials, said person shall notify the Director of Public Works in person or by phone or facsimile no later than the next business day. Notifications in person or

by phone shall be confirmed by written notice addressed and mailed to the Director of Public Works within 3 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 3 years. Failure to provide notification of a release as provided above is a violation of this ordinance.

#### **6.4 Undocumented Discharges or Connections**

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 Town 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 Director of Public Works.

#### **6.5 Elimination of Illegal Discharges**

The Public Works Director may require by written notice that a person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges.

#### **6.6 Elimination of Illicit Connections**

The Public Works Director may require by written notice that a person responsible for an illicit connection to the storm drain system comply with the requirements of this Ordinance to eliminate or secure approval for the connection by a specified date, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of this Ordinance.

### **SECTION 7. COMPLIANCE MONITORING**

#### **7.1. Right of Entry: Inspection and Sampling.**

The Director of Public Works, or other authorized representatives, shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.

- (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 Town.
- (2) Facility operators shall allow the Town 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 storm water, 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 Town to conduct monitoring and/or sampling of the facility's storm water 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 storm water 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 storm water discharge permit and of this ordinance. A person who is the operator of a facility with an NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the Town reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

#### **7.2. Search Warrants.**

If the Town 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 ordinance, 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 ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Town may seek issuance of a search warrant from any court of competent jurisdiction.

#### **SECTION 8. ULTIMATE RESPONSIBILITY.**

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance 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. RESPONSIBILITY FOR ADMINISTRATION.**

The Department of Public Works shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the Department of Public Works may be delegated in writing by the Director of Public

Works to persons or entities acting in the beneficial interest of or in the employ of the Town.

## **SECTION 10. VIOLATIONS, ENFORCEMENT, AND PENALTIES.**

### **10.1. Violations.**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, 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. In the event the violation constitutes an immediate danger to public health or public safety, the Town is authorized to proceed in the manner provided for in Section 11.

### **10.2. Notice of Violation.**

Whenever the Town finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the Town may order compliance by written Notice of Violation to the responsible person. The Notice of Violation shall contain:

- (1) The name and address of the alleged violator;
- (2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (6) A statement that the determination of violation may be appealed to the Selectboard by filing a written notice of appeal within seven (7) days of service of notice of violation; an
- (7) 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.

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;
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

**10.3. Issuance of Municipal Complaint**

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation within thirty [30] days of its issuance, then the Director of Public Works may, in addition to taking any other action to address the violation, issue a municipal complaint pursuant to 24 V.S.A. §1977.

**10.4. Waiver**

Any person who declines to contest a municipal complaint and, within ten (10) days of issuance of the complaint, takes those actions necessary to correct the violation may pay a waiver fee to the Town Clerk within fifteen (15) days of issuance of the complaint as follows:

First offense	\$50
Second offense	\$100
Third offense	\$150
Fourth offense	\$250
Fifth and subsequent offenses	\$400

Offenses shall be counted on a calendar year basis.

**10.5. Civil Fine for Ordinance Violation**

Any person who fails to take the corrective action and pay the waiver fee provided for in Section 10.6 above shall be required to pay a civil fine in the amount set forth below :

First offense	\$100
Second offense	\$200
Third offense	\$300
Fourth offense	\$400
Fifth and subsequent offenses	\$500

Offenses shall be counted on a calendar year basis.

**10.6. Injunctive Relief**

In addition to any other remedy available to the Town to obtain compliance with this Ordinance, the Town may commence any appropriate civil action to seek an injunction or other appropriate relief, including an order authorizing the Town to enter upon the subject private property, take any and all measures necessary to abate the violation and/or restore the property, and recover from the property owner the Town's costs in performing such work.

**10.7. Compensatory Action.**

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

## **SECTION 11. EMERGENCY SITUATIONS AND SUSPENSION OF STORM DRAIN SYSTEM ACCESS**

### **11.1. Emergency Cease and Desist Orders**

When the Town finds that any person has violated, or continues to violate, any provision of this ordinance, 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 Storm Drainage System 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 Town 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.

Any person notified of an emergency order directed to it under this Subsection 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 Town may take such steps as deemed necessary to prevent or minimize harm to the storm drainage system or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Town may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Director of Public Works that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this ordinance. 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 Director of Public Works within seven [7] 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.

### **11.2. Suspension due to Illicit Discharges in Emergency Situations**

The Town may, without prior notice, suspend storm drainage system 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 storm drainage system or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Town may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system or waters of the United States. or to minimize danger to persons.

**SECTION 12. 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 ordinance 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.

**SECTION 13. REMEDIES NOT EXCLUSIVE.**

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Town to seek cumulative remedies. The Town may seek to recover all attorney's fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

**SECTION 14. COMPATIBILITY WITH OTHER REGULATIONS.**

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

**SECTION 15. SEVERABILITY.**

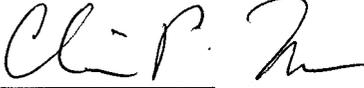
The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

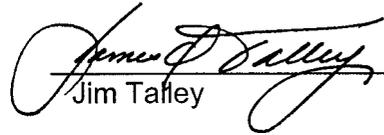
**SECTION 16. EFFECTIVE DATE.**

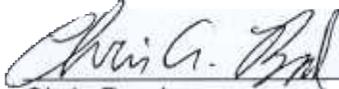
This ordinance shall be effective upon passage.

ADOPTED at Shelburne, Vermont this 8th day of August, 2006.

SHELBURNE SELECTBOARD

  
\_\_\_\_\_  
Chris Neme, Chairperson

  
\_\_\_\_\_  
Jim Talley

  
\_\_\_\_\_  
Chris Boyd

\_\_\_\_\_  
Bob Roesler

\_\_\_\_\_  
Jane Osborne McKnight

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DOCUMENT**