

Chapter 132, ILLICIT DISCHARGES AND CONNECTIONS TO STORM SEWER SYSTEM

[HISTORY: Adopted by the Town Board of the Town of Salina 5-29-2007 by L.L. No. 13-2007. Amendments noted where applicable.]

GENERAL REFERENCES

Uniform Fire Prevention and Building Code -- See Ch. 121, Part 1.

Sewers -- See Ch. 190.

Stormwater management and erosion and sediment control -- See Ch. 203.

§ 132-1. Purpose and intent.

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the Town of Salina 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) permit process and the State Pollutant Discharge Elimination System (SPDES). The objectives of this chapter are:

- A. To meet the requirements of the SPDES general permit for stormwater discharges from the municipal separate storm sewer system (MS4), issued by the Department.
- B. To regulate the contribution of pollutants to the MS4 by discharges of pollutants that the system is not designed to accept or process, or discharge nonstormwater wastes, by any user.
- C. To prohibit illicit connections and discharges to the municipal separate storm sewer system.
- D. To establish legal authority to carry out required inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter.
- E. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet wastes, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous wastes, sediment and other pollutants into the MS4.

§ 132-2. Definitions.

For the purposes of this chapter, the following shall mean:

AUTHORIZED ENFORCEMENT AGENCY -- The Director of Planning and Development; the Highway Superintendent, and designated employees or designees of the Department of Planning and Development and/or the Highway Department.

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 requiring authorization under the SPDES permit for stormwater discharges from construction activity issued by the Department, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres or cumulatively resulting in one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

DEPARTMENT -- The New York State Department of Environmental Conservation.

DESIGN PROFESSIONAL -- A New York State licensed professional engineer or licensed architect.

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 nonstormwater discharge to the storm drain system, except as exempted in § 132-5 of this chapter.

ILLICIT CONNECTIONS -- 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 nonstormwater discharge, including sewage, process wastewater, and wash water, to enter the storm drain system and any connections to the MS4 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 any drain or conveyance connected from a commercial or industrial land use to the MS4 system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

INDIVIDUAL SEWAGE TREATMENT SYSTEM -- A facility serving one or more parcels of land or residential households, or a private, commercial or institutional facility, that treats sewage or other liquid wastes for discharge into the groundwaters of New York State, except where a permit for such a facility is required under the applicable provisions of Article 17 of the Environmental Conservation Law.

INDUSTRIAL ACTIVITY -- Activities subject to an SPDES permit for the discharges from industrial activities except construction, GP-98-03, as amended or revised.

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

NONSTORMWATER DISCHARGE -- Any discharge to the MS4 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 which causes or contributes to pollution, including but not limited to dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, 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, heat, wrecked or discarded equipment or objects, rock, sand and industrial, municipal, agricultural waste and ballast discharged into water, which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards.

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

SPECIAL CONDITIONS -- Conditions which meet any of the following requirements:

- A. Discharge compliance with water quality standards: the condition that applies where a municipality has been notified that the discharge of stormwater authorized under its MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of any applicable water quality standard. Under this condition, the municipality must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.
- B. 303(d)-listed waters: the condition in the municipality's MS4 permit that applies where the MS4 discharges into a 303(d)-listed water. Under this condition the stormwater management program must ensure no increase in the listed pollutant of concern to the 303(d)-listed water(s).
- C. Total maximum daily load (TMDL) strategy: The condition in the municipality's MS4 permit where a TMDL, including requirements for control of stormwater discharges, has been approved by the EPA for a water body or watershed into which the MS4 discharges.
- D. The condition in the municipality's MS4 permit that applies if a TMDL is approved in the future by the EPA for any water body or watershed into which an MS4 discharges. Under this condition, the municipality must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the municipality must, within six months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern in the TDML is achieved.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES)

STORMWATER DISCHARGE PERMIT -- A permit issued by the Department that authorizes the discharge of pollutants to waters of the state.

STORMWATER -- Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, including rainwater, surface runoff, snowmelt and drainage.

STORMWATER POLLUTION PREVENTION 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 stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

303(d) LIST -- A list of all surface waters in the state for which beneficial uses of water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the Department as required by Section 303(d) of the Clean Water Act. Section 303(d)-listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next two years.

TOTAL MAXIMUM DAILY LOAD (TMDL) -- The maximum amount of pollutant to be allowed to be released into a water body so as not to impair uses of the water, allocated among the sources of that pollutant.

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

§ 132-3. Applicability.

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

§ 132-4. Responsibility for administration.

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

§ 132-5. Discharge prohibitions.

- A. Prohibition of illegal discharges. No person shall discharge or cause to be discharged into the MS4 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. 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 chapter, unless the Department has determined them to be substantial contributors of pollutants: water line flushing or other potable water sources; landscape irrigation or lawn watering; diverted stream flows; rising ground water; ground water infiltration to storm drains; uncontaminated pumped ground water; foundation or footing drains (not including active groundwater dewatering systems); crawl space pumps; air-conditioning condensation; springs; noncommercial washing of vehicles; natural 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.
 - (2) Discharges specified in writing by the Director of Planning and Development as being necessary to protect public health and safety, provided that such approval

shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the Director of Planning and Development may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this chapter.

- (3) Dye testing in compliance with applicable state regulations is an allowable discharge but requires a verbal notification to the Highway Superintendent prior to the time of the test.
- (4) The prohibition shall not apply to any nonstormwater discharge permitted under an SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, 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 system.

B. Prohibition of illicit connections.

- (1) The construction, use, maintenance or continued existence of illicit connections to the MS4 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.
- (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.

§ 132-6. Prohibition against failing individual sewage treatment systems.

No persons shall operate a failing individual sewage treatment system in areas tributary to the municipality's MS4. A failing individual sewage treatment system is one which has one or more of the following conditions:

- A. The backup of sewage into a structure.
- B. Discharges of treated or untreated sewage onto the ground surface.
- C. A connection or connections to a separate stormwater sewer system.
- D. Liquid level in the septic tank above the outlet invert.
- E. Structural failure of any component of the individual sewage treatment system that could lead to any of the other failure conditions as noted in this section.
- F. Contamination of off-site groundwater.

§ 132-7. Prohibition against activities contaminating stormwater.

- A. Activities that are subject to the requirements of this section are those types of activities that:
 - (1) Cause or contribute to a violation of the municipality's MS4 SPDES permit.
 - (2) Cause or contribute to the municipality being subject to the special conditions as defined in § 132-2, Definitions, of this chapter.
- B. Such activities include individual sewage treatment systems as defined in § 132-6 of this chapter, improper management of pet wastes or any activity that causes or contributes to violations of the municipality's MS4 SPDES permit authorization.
- C. Upon notification to a person that he or she is engaged in activities that cause or

contribute to violations of the municipality's MS4 permit authorization, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

§ 132-8. Prevention, control and reduction of stormwater pollutants by the use of best management practices.

- A. Best management practices. Where the Director of Planning and Development has identified illicit discharges as defined herein or activities contaminating stormwater as defined in § 132-7, the Director may require the implementation of best management practices (BMPs) to control those illicit discharges and activities.
- (1) The owner or operator of a commercial or industrial establishment shall provide, at his own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and nonstructural BMPs.
 - (2) Any person responsible for a property or premises which is, or may be, the source of an illicit discharge, as defined herein, or an activity contaminating stormwater, as defined in § 132-7, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.
 - (3) Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.
- B. Individual sewage treatment systems; response to special conditions requiring no increase of pollutants or requiring a reduction of pollutants. Where individual sewage treatment systems are contributing to the municipality's being subject to the special conditions as defined herein, the owner or operator of such individual sewage treatment systems shall be required to:
- (1) Maintain and operate individual sewage treatment systems as follows:
 - (a) Inspect the septic tank annually to determine scum and sludge accumulation. Septic tanks must be pumped out whenever the bottom of the scum layer is within three inches of the bottom of the outlet baffle or sanitary tee or the top of the sludge is within 10 inches of the bottom of the outlet baffle or sanitary tee.
 - (b) Avoid the use of septic tank additives.
 - (c) Avoid the disposal of excessive quantities of detergents, kitchen wastes, laundry wastes, and household chemicals; and
 - (d) Avoid the disposal of cigarette butts, disposable diapers, sanitary napkins, trash and other such items.
 - (2) Repair or replace individual sewage treatment systems as follows:
 - (a) In accordance with 10 NYCRR Appendix 75A to the maximum extent practicable.
 - (b) A design professional licensed to practice in New York State shall prepare design plans for any type of absorption field that involves:
 - [1] Relocating or extending an absorption area to a location not previously approved for such.

- [2] Installation of a new subsurface treatment system at the same location.
- [3] Use of alternate system or innovative system design or technology.
- (3) A written certificate of compliance shall be submitted by the design professional to the municipality at the completion of construction of the repair or replacement system.

§ 132-9. Suspension of MS4 access.

- A. Suspension due to illicit discharges in emergency situations. The Department of Planning and Development 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, to the health or welfare of persons, or to the MS4 or state waters. If the violator fails to comply with a suspension order issued in an emergency, the Director of Planning and Development may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.
- B. Suspension due to detection of illicit discharge. Any person discharging to the MS4 in violation of this chapter may have its MS4 access terminated if such termination would abate or reduce an illicit discharge. The Department of Planning and Development will notify a violator of the proposed termination of its MS4 access. The violator may petition the Director of Planning and Development for a reconsideration and hearing.
- C. 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.

§ 132-10. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity SPDES 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 Department of Planning and Development prior to the allowing of discharges to the MS4.

§ 132-11. Monitoring of discharges.

- A. Applicability. This section applies to all facilities that the Director of Planning and Development must inspect to enforce any provision of this chapter, or whenever the Director has cause to believe there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this chapter.
- B. Access to facilities.
 - (1) The Director of Planning and Development shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance. 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 the Director of Planning and Development.
 - (2) Facility operators shall allow the Director of Planning and Development 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 SPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

- (3) The Director of Planning and Development shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Director to conduct monitoring and/or sampling of the facility's stormwater discharge.
- (4) The Director of Planning and Development has the right to require the discharger to install monitoring equipment as is reasonably necessary to determine compliance with this chapter. 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 Director of Planning and Development and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (6) Unreasonable delays in allowing the Director of Planning and Development 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 SPDES 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 Director of Planning and Development 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 authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

§ 132-12. 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.

§ 132-13. 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 system, or state waters, 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 Director of Planning and Development 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 as required by the state record retention schedule.

§ 132-14. Enforcement.

- A. Notice of violation. Whenever the Director of Planning and Development 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; and
 - (5) Payment of a fine to cover administrative and remediation costs; and
 - (6) The implementation of source control or treatment BMPs.
- B. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

§ 132-15. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination of the Director of Planning and Development. The notice of appeal must be received within five days from the date of the notice of violation to the Town Clerk. Hearing on the appeal before the Town Board shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the Town Board shall be final.

§ 132-16. Corrective 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 10 days of the decision of the Town

Board upholding the decision of the Director of Planning and Development, then representatives of the Department of Planning and Development 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.

§ 132-17. 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 five days. If the amount due is not paid within a timely manner as determined by the decision of the Town Attorney 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.

§ 132-18. 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 Director of Planning and Development 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.

§ 132-19. Compensatory action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the Director of Planning and Development, upon recommendation of the Town Attorney may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc. This would be available where the violation was unintentional, the violator has no previous violations of this chapter, environmental damage was minimal, the violator acted quickly to remedy the violation and the violator cooperated in the investigation and resolution.

§ 132-20. 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.

§ 132-21. Penalties for offenses.

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 \$350 per violation per day and/or imprisonment for a period of time not to exceed 60 days. The Director of Planning and Development may recover all attorneys' fees, court costs and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

§ 132-22. Remedies not exclusive.

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