

Storm Water Ordinance

Section 1. Purpose

The purpose of this ordinance is to:

- A. Protect, maintain, and enhance the environment of the Town of Derry, New Hampshire and the public health, safety and the general welfare of the citizens of the town, by
 1. Controlling discharges of pollutants to the town's storm water system and maintaining and improving the quality of the receiving waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the town, and
 2. Establishing minimum requirements and procedures to control the adverse affects of increased post-development stormwater runoff, decreased groundwater recharge, and non-point source pollution associated with new development and redevelopment.
- B. Enable the Town of Derry to comply with requirements of the Town's Municipal Separate Storm Sewer System (MS4) General Permit issued by USEPA under the National Pollution Discharge Elimination System (NPDES) program and applicable regulations, including 40 CFR §122.26 for stormwater discharges.
- C. Allow the Town of Derry to exercise the powers granted by the State of New Hampshire through RSA 149-I and other applicable statutes to:
 1. Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the municipality, whether or not owned and operated by the municipality;
 2. Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;
 3. Establish standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants as may be necessary to protect water quality;
 4. Review and approve plans for stormwater management in proposed subdivisions or commercial developments;
 5. Issue permits or approvals for storm water discharges, or for the construction, alteration, extension, or repair of stormwater facilities;

6. Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance or condition of the permit;
7. Regulate and prohibit discharges into stormwater facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and
8. Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of storm water contamination, whether public or private.

Section 2. Definitions

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Third New International Dictionary.

1. **Accidental Discharge** - A discharge prohibited by these Regulations, which occurs by chance, and without planning or thought prior to occurrence.
2. **Best Management Practices or BMPs** – A proven or accepted physical, structural, vegetative, and/or managerial practices that, when used singly or in combination, prevent or reduce erosion, sediment, peak storm discharge, and pollution of water, that have been approved by the Town of Derry, and that have been incorporated by reference into the Storm Water Regulations as if fully set out therein. (See Section 4 of the Stormwater Regulations for recommended Best Management Practices manuals).
3. **Channel** - A natural or artificial watercourse with a definite bed and banks that conducts flowing water continuously or periodically.
4. **Construction Activity** - Activities subject to the EPA Phase II Storm Water Program and the NPDES General Construction Permits. These include construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.
5. **Contaminant** - Any physical, chemical, biological, or radiological substance or matter in water.
6. **Department of Public Works (DPW)** - The Town of Derry Department of Public Works and associated divisions including, but not limited to, Code Enforcement.

7. **Director of Public Works** - The chief administrator of DPW who is authorized to assign DPW staff to oversee the implementation and enforcement of the Storm Water Regulations and the Town of Derry's Storm Water Ordinance.
8. **Discharge** - To dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means including any direct or indirect entry of any solid or liquid matter into the municipal separate storm sewer system.
9. **Illicit Discharge** - Any discharge to the Municipal Storm Sewer System (MS4) that is not composed entirely of storm water and not specifically permitted through an existing NPDES discharge permit.
10. **Industrial Activity** - Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).
11. **Land Disturbing Activity** - Any activity on property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land-disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling, and excavation.
12. **Maintenance** - Any activity that is necessary to keep a stormwater facility in good working order so as to function as designed. Maintenance shall include complete reconstruction of a stormwater facility if reconstruction is needed in order to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any problem on the site property that may directly impair the functions of the stormwater facility.
13. **Maintenance Agreement** - A document duly executed and recorded in the Registry of Deeds that acts as a property deed restriction, and which provides for long-term maintenance of storm water management practices.
14. **Municipal Separate Storm Sewer System (MS4)** - The conveyances owned or operated by the municipality for the collection and transportation of stormwater, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, pump stations, and storm drains.
15. **National Pollutant Discharge Elimination System Permit (NPDES permit)** - A permit issued 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.

16. **Non-Storm Water Discharge** - Any discharge to the storm drain system that is not composed entirely of storm water.
17. **Notice of Intent (NOI)** – Application to apply for coverage under the EPA's General Permit for Construction Activities.
18. **Person** - Any and all persons, natural or artificial, including any individual, firm or association and any municipal or private corporation organized or existing under the laws of this or any other state or country.
19. **Pollutant** - Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; sediment; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.
20. **Pollution** - The contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.
21. **Premises** - Any building, lot, parcel of land, or portion of land whether improved or unimproved including sidewalks and parking strips
22. **Recharge** – The amount of water from precipitation that infiltrates into the ground and is not evaporated or transpired.
23. **Runoff** - That portion of the precipitation on a drainage area that is discharged from the area into the municipal separate storm water system.
24. **Sediment** - Solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface either above or below sea level.

25. **Stabilization/Stabilized** - Providing adequate measures, vegetative and/or structural, that will prevent erosion from occurring or reducing the soil erosion rate such that it approaches that of undisturbed soils. Soils which are disturbed will be considered stabilized and protected when covered with a healthy, mature growth of grass or a good covering of straw mulch (2 tons/acre). Mulch is only a temporary measure; ultimately, the site needs vegetation.
26. **Storm Water** - Storm water runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration and drainage.
27. **Storm Water Management** - The programs to maintain quality and quantity of storm water runoff to pre-development levels.
28. **Storm Water Management Facilities** - The drainage structures, conduits, ditches, storm sewers, and all device appurtenances by means of which storm water is collected, transported, pumped, treated or disposed.
29. **Storm Water Management Plan** - The set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, BMPs, concepts and techniques intended to maintain or restore quality and quantity of storm water runoff to pre-development levels.
30. **Storm Water Pollution Prevention Plan (SWPPP)** - A plan that clearly describes appropriate control measures that include a description of all pollution control measures (i.e., BMPs) that will be implemented as part of the construction activity to control pollutants in stormwater discharges and describes the interim and permanent stabilization practices for the site.
31. **Storm Water Runoff** - Flow on the surface of the ground, resulting from precipitation and drainage consisting entirely of water from any form of natural precipitation that is not absorbed or evaporated, and resulting from such precipitation.
32. **Stream** - Areas of flowing water occurring for sufficient time to develop and maintain defined channels but may not flow during dry portions of the year. Includes but is not limited to all perennial and intermittent streams located on U.S. Geological Survey Maps.
33. **Structural BMPs** - Devices that are constructed to provide control of storm water runoff.
34. **Structural Stormwater Control** - A structural storm water management facility or device that controls storm water runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

35. **Surface water** - Waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes and reservoirs.

Section 3 Administration

The Director of the Department of Public Works (or his/her designee) shall administer the provisions of this ordinance. The Town Council may promulgate and amend such regulations as may be necessary and convenient to effectuate the purposes and enforce the requirements of this ordinance.

Section 4 Prohibited Discharges

- A. Violation of Water Quality Standard - No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the Town to violate a state surface water quality standard, the Town's Phase II MS4 NPDES permit, or any state-issued discharge permit for discharges from its MS4.
- B. Introduction of Prohibited Substances - The following discharges are specifically prohibited and are not meant to be all inclusive:

No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced any of the following substances into the MS4.

1. Any new or used motor oil, antifreeze, or other motor vehicle fluid;
2. Any industrial wastes;
3. Any hazardous waste, including hazardous household waste;
4. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
5. Any garbage, rubbish or yard waste;
6. Any wastewater from
 - a. a commercial carwash facility;
 - b. any vehicle washing, cleaning or maintenance at any new or used automobile, or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or
 - c. from any washing, cleaning or maintenance of any business or commercial or public service vehicle, including truck, bus, or heavy equipment, by a business or public entity that operates more than two such vehicles;
7. Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;

8. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any harmful quantities of soap, detergent, degreaser, solvent, or any other harmful cleaning substance;
9. Any wastewater from any floor, rug or carpet cleaning;
10. Any wastewater from the wash down or other cleaning of pavement that contains any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the wash down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed;
11. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler;
12. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydro-mulch material, or from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;
13. Any runoff or wash down water from any animal pen, kennel, or fowl or livestock containment area;
14. Any water from a swimming pool, fountain or spa containing any harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in the pool cleaning;
15. Any water from a water curtain in a spray room used for painting vehicles or equipment;
16. Any contaminated runoff from an auto salvage yard;
17. Any substance or material that will damage, block, or clog the MS4;
18. Any release from a petroleum storage tank, or any leachate or runoff from soil contaminated by a leaking petroleum storage tank, or any discharge of pumped, confined, or treated waste water from the remediation of any such petroleum storage tank release, unless it complies with state and federal standards and does not contain any harmful quantity of any pollutant;
19. Any pet waste from a commercial enterprise or livestock waste.

C. Introduction of Earth-type Materials - No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with cleaning, grading, excavation or other construction activities, (or associated with landfilling or other placement or disposal of soil, rock, or other earth materials) in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable (under the prevailing circumstances).

D. Introduction of Sewage and Grey Water No person shall connect a line conveying domestic sanitary or industrial sewage to the MS4; this includes grey water discharge such as washing machine discharge, sink drains, etc. or allow such a connection to continue.

- E. Service Station Pavement Wash Water No person shall cause or allow any pavement wash water from a service station to be discharged into the MS4 unless such wash water has passed through a properly functioning and maintained, grease, oil, and sand interceptor before discharge into the MS4.
- F. Pesticide and Herbicide Use No person shall use or cause to be used any pesticide or herbicide contrary to any directions for use on any labeling required by state or federal statute or regulation. Any use of any pesticide, herbicide, or fertilizer in any manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States shall be prohibited.
- G. Disposal of Pesticide and Herbicide No person shall dispose of, discard, store, or transport a pesticide, herbicide, or fertilizer, or a pesticide, herbicide, or a fertilizer container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.
- H. Storage of Trash, Toxic Substances and Hazardous Wastes No person shall allow trash and debris to stand on property or collect on property nor allow the storage of toxic or hazardous substances on property so as to allow exposure to precipitation and stormwater runoff, which can affect stormwater discharge to the MS4 or the groundwater.
- I. Litter of Urban Ponds, Lakes, Streams or River Banks Any residential, commercial or industrial property boundary, located within 150 feet of any pond, lake, stream or river bank, shall assure that trash, debris, materials, containers, grass clippings, leaf and yard waste, wood chips, material used for cover or any such other material, does not litter this buffer area by means natural (wind or storm movement of material), by the careless discard of such material, or by any other means that displaces these objects from the owner's property boundary to anywhere within this 150 foot buffer zone area.
- J. Allowable Discharges: - Notwithstanding any provisions to the contrary, the following types of discharges into the storm drain system are exempt from the prohibitions set herein:
1. Watering of lawns, landscaping and gardens;
 2. Washing of personal motor vehicles by residents;
 3. Draining of water from swimming pools or spas, after chlorine content of such water according to a test kit, shows a zero reading of chlorine;
 4. Flushing of water lines or other discharges from potable water sources;
 5. Flows from fire fighting activities;
 6. Managed minimal amounts of air conditioning condensation;
 7. Uncontaminated pumped groundwater;

8. Discharges from rising groundwaters, springs, and flows from riparian habitats and wetlands;
9. Non-contact cooling water discharged in accordance with a valid NPDES permit.

Section 5. General Permitting and Approval Procedures

- A. Construction General Permit – No land owner or land operator shall begin any site work of any building(s), grading or other land development or any land disturbance activities as outlined in 1 – 4 below without first obtaining an EPA Construction General Permit from EPA and submitting a Notice of Intent (NOI) to EPA Region I, receiving acknowledgement, having an approved Storm Water Pollution Prevention Plan (SWPPP) and meeting the requirements of this ordinance.
1. Land disturbing activity disturbing one (1) or more acres of land;
 2. Land disturbing activity of less than one (1) acre of land, if such activity is part of a larger common plan of development that affects one (1) or more acres of land.
 3. Land disturbing activity of less than one (1) acre of land, if in the discretion of the Town of Derry's Director of Public Works such activity poses a unique threat to water, or public health or safety;
 4. The creation and use of borrow pits (the excavation of soils from one area to be used in another area) that would meet any of the criteria of 1, 2, or 3 above.

EPA's general permit contains eligibility restrictions, as well as permit conditions and requirements. Applicant(s) may have to take certain actions to be eligible for coverage under this permit. In such cases, the applicant must continue to satisfy those eligibility provisions to maintain permit authorization. If the applicant does not meet the requirements that are pre-condition to eligibility, then the resulting discharges constitute unpermitted discharges. By contrast, if the applicant does not comply with the requirements of the general permit, the applicant may be in violation of the general permit.

- B. Industrial General Permit – Any facility covered under the NPDES Multi-Sector General Permit for stormwater discharges associated with industrial activities at the facility, must apply for coverage with EPA through submittal of an NOI to EPA Region I, receive acknowledgement of coverage or continuation of coverage if it is a renewal of existing coverage, and have an SWPPP for the facility.

All operators of landfills, hazardous waste treatment, disposal, and recovery facilities and industrial facilities are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, USC (S) 11023, and industrial facilities that the Town determines are contributing a pollutant load to the Municipal Separate Storm Sewer System, which are sources

of storm water discharges associated with industrial activity shall comply with Best Management Practices outlined in the Town's Storm Water Regulations.

Section 6. Town Application and Approval Requirements

A. Any land owner or land operator who intends to obtain coverage for storm water discharge associated with land disturbing activities described in Section 5A above or associated with industrial activity under the NPDES Multi Sector General Permit for Storm Water Discharges Associated with Industrial Activity ("the Industrial General Permit") as described in Section 5B above shall, in addition to the federal permit requirements:

1. submit a signed copy of its NOI to the Director of Public Works for review and approval at least five (5) days prior to the commencement of the land disturbing activity on the property and/or industrial activity at the facility, or if such activity is already underway upon the effective date of the Storm Water Regulations, the NOI shall be submitted within thirty (30) days, and
2. submit to the Department of Public Works for review and approval a copy the SWPPP prepared and implemented in accordance with the requirements of the EPA Construction or Industrial General Permit or any individual or group NPDES permit issued for storm water discharges from the facility The SWPPP shall be prepared to meet the requirements of 40 CFR 122.26.

B Application Procedure The following application procedure will apply for any construction project that meets the criteria of 5A above, whether a new development or redevelopment as outlined within these Regulations:

1. Applications for land disturbance activity permits must be filed with the Town of Derry's Planning Department and/or Building Department as required by the Town of Derry land Development Control Regulations or Zoning Ordinance, on any regular business day.
2. A copy of this permit application shall be forwarded to the Department of Public Works for review.
3. Permit applications shall include two copies of the Storm Water Pollution Prevention Plan, two copies of the maintenance agreement, and any required review fees.
4. Within 30 business days of the receipt of the Storm Water Pollution Prevention Plan and maintenance agreement as required by these Regulations, the Department of Public Works shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved.
5. If the storm water pollution prevention plan or maintenance agreement are disapproved, the applicant may revise the storm water pollution prevention plan or agreement. If additional information is submitted, the Department

of Public Works shall have 30 business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.

Section 7 Stormwater Control Regulations

Any land owner or land operator subject to the General EPA permitting requirements described in Sections 5A and/or 5B above or whose land disturbance or industrial activity is otherwise determined by the Director of Public Works to have the potential to

- a.** degrade the quality of the receiving waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the Town or
- b.** significantly increase post-development stormwater runoff or decrease groundwater recharge, or result in any non-point source pollution or
- c.** introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the Town to violate a state surface water quality standard, the Town's Phase II MS4 NPDES permit, or any state-issued discharge permit for discharges from its MS4.

shall be required to comply with the Best Management practices of the Derry Stormwater Control regulations dated 10/31/2008 or latest revision thereto and to submit to the Director of Public Works for review and approval a SWPPP including any information so required by the Director to determine compliance with such regulations.

Section 8 Access and Inspection of Properties and Facilities

- A.** The representative of the Department of Public Works shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance
- B.** If a property or facility has security measures in force which require property identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the Department of Public Works.
- C.** The owner or operator shall allow the representative of the Department of Public works ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of a National Pollutions Discharge Elimination System Permit to discharge storm water.
- D.** The Department of Public Works shall have the right to set up on any property or facility such devices as are necessary in the opinion of the Department of Public Works to conduct monitoring and/or sampling of flow discharges.

- E. The Department of Public Works may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the Department of Public Works. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure accuracy.
- F. Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the Department of Public Works and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.
- G. Unreasonable delays in allowing the Department of Public Works access to a facility shall be a violation of this ordinance. A delay shall be considered unreasonable if the delay a) exceeds 1 week (7 days), or b) any length of time if it is determined that the delay allowed the continuation of a discharge to the MS4 that is specifically prohibited by this ordinance
- H. If the Department of Public Works has been refused access to any part of the premises from which stormwater is discharged, and the Department of Public Works 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 designated to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the Department of Public Works may seek issuance of a search warrant from any court of competent jurisdiction.

Section 9. Notification of Accidental Discharges and Spills

Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-storm water discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into storm water, the Town of Derry's Separate Storm Sewer System, State Waters, or Waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

Any person identified above that is required to respond as described in the previous paragraph, or is otherwise required to provide notification to the State in accordance with RSA 146-A:5 (NH Oil Spillage in Public Waters) or RSA 147-A:11 (NH Hazardous Waste Management Act), shall also provide notification to the Town of Derry Department of Public Works.

Section 10. Violations, Enforcement and Penalties

- A. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of the Town's Storm Water Ordinance or these Regulations. Any person who has violated or continues to violate these provisions 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 Department of Public Works is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Department of Public Works is authorized to seek costs of the abatement as outlined in Section 10.F.
- B. Whenever the Department of Public Works finds that a violation of this ordinance has occurred, the Public Works Director or designee may order compliance by written notice of violation. 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; and,
 - 6) A statement that the determination of violation may be appealed to the Administrator by filing a written notice of appeal within five (5) days of service of notice of violation.
- C. Such notice may require without limitation:
- 1) The performance of monitoring, analyses, and reporting;
 - 2) The elimination of illicit discharges and illegal connections;
 - 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 costs to cover administrative and abatement costs; and,
 - 6) The implementation of pollution prevention practices.
- D. Appeal of Notice of Violation - Any person receiving a Notice of Violation may appeal the determination of the Department of Public Works. The appeal must be received by end of the business day at the office of the Administrator within five (5) calendar days from the date of the Notice of Violation. Filing an appeal does not relieve the owner from full compliance with remedial actions outlined in the Notice of Violation. Hearing on the appeal from the Department of Public

Works shall take place within 30 days from the date of receipt of the notice of appeal. The decision of the Administrator shall be final.

- E. Enforcement Measures After Appeal - If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, then representatives of the Department of Public Works may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.
- F. Costs of Abatement of the Violation - Within ten (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 assessment or to the amount of the assessment within fifteen (15) days of such notice. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within five (5) days after a decision on said 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 article shall become liable to the Town of Derry by reason of such violation.
- G. Civil Penalties - In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within five (5) days, or such greater period as the Department of Public Works shall deem appropriate, after the Director of Public Works or designee has taken one or more of the actions described above, the Public Works Director may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.
- H. Criminal Penalties - For any wanton or malicious violations of the Storm Water Ordinance or the Rules & Regulations adopted pursuant to the authority stated in this ordinance, the Director of Public Works may issue a citation to the alleged violator requiring such person to appear in court to answer charges for such violation. Upon conviction, such person shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person and may be punished by a fine not to exceed \$1,000 for each day the violation has occurred, or imprisonment or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.
- I. Remedies Not Exclusive - The remedies listed in these Regulations are not exclusive of any other remedies available under any applicable Federal, State or local law and the Town of Derry may seek cumulative remedies.

The Town of Derry may recover attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Section 11. Severability Clause.

Should any Chapter or provision of this ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this Chapter as a whole, or any part thereof other than the part so declared to be invalid.

Section 12. Ordinance in Force.

This ordinance shall be in full force and effect from and after its passage, approval, recording and publications as provided by law.

This ordinance and its amendments have been duly Enacted and Ordained this _____ day of _____, 2008 by the Town Council of the Town of Derry in Rockingham County, State of New Hampshire, at a duly noticed and duly held session of the said Derry Town Council.

Derry Town Council

Richard Metts, Chairperson

Kevin Coyle

Janet Fairbanks

Brian Chirichiello

Brent Carney

Brad Benson

Neil Wetherbee

Received and recorded _____, 2008 by _____
Denise Neale, Town Clerk

Effective Date _____