

## NOTICE OF ADOPTION

### ADOPTION OF ILLICIT STORMWATER DISCHARGE ORDINANCE #288

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GROTON:

#### SECTION 1. PREAMBLE

##### 1.1. Purpose

- a) This Ordinance is adopted under the authority of Chapter 98 of the Connecticut General Statutes ("C.G.S.") (Section 7-148 et seq.) in order to implement the *General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems* (the "MS4 Permit") issued by the Connecticut Department of Energy and Environmental Protection ("DEEP").
- b) Adoption of this Ordinance is required by Connecticut law and provides for the health, safety and general welfare of the citizens of the Town of Groton through the regulation of non-stormwater discharges, and prohibition of any ***illicit discharge or illicit connection***, to the ***stormwater drainage system*** owned and operated by the Town of Groton.

##### 1.2. General Provisions

- a) Those technical words and terms used herein and identified in ***bold italic font*** are defined as provided in Section 5 of this Ordinance - Glossary.
- b) Other words and terms relevant to this Ordinance may be defined in:
  - C.G.S. sections 22a-423, as may be amended;
  - Section 22a-430-3(a) of the Regulations of Connecticut State Agencies (General conditions applicable to water discharge permits), as may be amended; and/or
  - The MS4 Permit issued by DEEP, as may be amended.

#### SECTION 2. APPLICABILITY

##### 2.1. Geography

- a) Unless exempted or excluded as provided in Section 2.2 of this Ordinance, this Ordinance shall apply to water and other discharges entering and/or connections to the ***stormwater drainage system*** owned and operated by the Town of Groton excluding therefrom any water entering from any ***stormwater drainage system*** under the jurisdiction of:
  1. the City of Groton,
  2. the Groton Long Point Association,
  3. any surrounding municipality,
  4. the Connecticut Department of Transportation, and/or
  5. any state or federal agency or institution or other institution required to manage their own ***stormwater drainage system*** under the MS4 Permit issued by DEEP, as may be amended.

##### 2.2. Exemptions And Exclusions

- a) The following ***non-stormwater*** discharges are exempt from this Ordinance provided that such discharges are controlled to the ***maximum extent practicable***, do not contribute to a violation of water quality standards, and are not significant contributors of ***pollutants*** to any ***stormwater drainage system***:
  1. Uncontaminated ground water discharges including, but not limited to, pumped ground water, foundation drains, water from crawl space pumps and footing drains;
  2. Irrigation water including, but not limited to, landscape irrigation and lawn watering runoff;
  3. Residual street wash water associated with sweeping;
  4. Discharges or flows from firefighting activities (except training);
  5. Naturally occurring discharges such as rising ground water, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), springs, diverted stream flows and flows from riparian habitats and wetlands; and
  6. Other discharges meeting the above standards.
- b) This Ordinance shall not apply to any ***non-stormwater*** discharge which is:
  1. authorized by a permit issued pursuant to C.G.S. sections 22a-430 or 22a-430b, as may be from time to time amended; or
  2. permitted by permit, waiver, or waste discharge order issued to the discharge under the National Pollutant Discharge Elimination System (NPDES).

### SECTION 3. ILLICIT DISCHARGES AND ILLICIT CONNECTIONS PROHIBITED

- a) Any *illicit discharge* to the *stormwater drainage system* is prohibited and no *person* shall discharge or cause to be discharged into the *stormwater drainage system* any material other than *stormwater*.
- b) The construction, use, maintenance or continued existence of any *illicit connection* to the *stormwater drainage system* is prohibited. This prohibition expressly includes, without limitation, any *illicit connection* made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- c) Any *illicit discharge* and/or *illicit connection* to the *stormwater drainage system* or other non-compliance with this Ordinance (each a "violation") is unlawful and shall cease and be eliminated.

### SECTION 4. ENFORCEMENT

#### 4.1. Citation Hearing Procedure; Appointment of Officers

- a) In addition to and not in limitation of other applicable rights and remedies available to the Town at law, in equity and/or pursuant to this Ordinance, Section 4 of this Ordinance establishes a citation hearing procedure pursuant to the provisions of C.G.S. sections 7-148(c)(10)(A) and 7-152c, respectively, as amended.
- b) The Town Manager shall appoint a municipal employee or officer of the Town of Groton as the "Stormwater Compliance Officer" to administer, implement and enforce this Ordinance. The Town Manager shall also appoint a person or persons, other than the Stormwater Compliance Officer, to serve as a "Citation Hearing Officer" to conduct hearings authorized by Section 4.3 of this Ordinance. The Stormwater Compliance Officer and Citation Hearing Officer shall both serve at the pleasure of the Town Manager. The Town Manager shall retain all rights to appoint and/or remove the Stormwater Compliance Officer and Citation Hearing Officer, respectively.
- c) The Stormwater Compliance Officer's powers and/or duties shall include, but not be limited to, the authority to:
  1. Administer, implement and enforce this Ordinance;
  2. Sample, test, monitor, inspect and otherwise investigate the *stormwater drainage system* owned and operated by the Town of Groton, and connections thereto, in order to determine whether this Ordinance has been violated and/or prevent and eliminate any existing or potential future violation;
  3. Identify as soon as possible the *person* or *persons* responsible for any violation and order compliance with this Ordinance;
  4. Issue notices of violation with this Ordinance;
  5. Suspend or terminate any *person's* access to the *stormwater drainage system* pursuant to section 4.4(c) and/or (d) hereof;
  6. Issue Citations for any fines, penalties, costs or fees due for violation of this Ordinance;
  7. Make assessments for expenses, costs or fees due for violation of this Ordinance and/or related to any investigation, testing, monitoring, abatement, remediation, restoration or other actions required as a result of such violation or the elimination thereof, take actions to recoup costs and/or take such other actions deemed necessary or appropriate to enforce with this Ordinance;
  8. Immediately take all reasonable and prudent measures, commence or require any other actions necessary or advisable, including but not limited to pursuit of legal and/or injunctive relief and remedies, to minimize or eliminate the discharge of *pollutants* to the *stormwater drainage system* and/or to eliminate and abate any violation of this Ordinance as soon as possible; and
  9. Notwithstanding anything in this Ordinance to the contrary, in the event any violation of this Ordinance constitutes an immediate danger to public health or safety, the Stormwater Compliance Officer is authorized to enter upon the subject property, without giving prior notice, and to take any and all measures necessary to investigate, test, monitor, remediate, abate and otherwise eliminate the violation and to restore the property(ies) affected thereby, and may seek and recoup costs against the *persons* responsible and/or lien and/or levy and impose a special assessment against the property(ies) that are the subject matter of the violation.

#### 4.2. Notification of Violation; Citations

- a) Whenever the Stormwater Compliance Officer finds that a violation of this Ordinance has occurred, and identifies the *person* or *persons* responsible for such violation, such Stormwater Compliance Officer shall order compliance by sending written notice to the owner and occupant of the subject property(ies) and any other *person* or *persons* responsible as soon as possible (each a "respondent"). The Written Notice may require, without limitation, the following:
  - i. Immediate cessation and/or elimination of the *illicit discharge* and/or *illicit connection* causing such *illicit discharge*;
  - ii. The performance of monitoring, analysis and reporting;
  - iii. The abatement or remediation caused by the *illicit discharge* or *illicit connection* and the restoration of any affected property(ies);
  - iv. A warning that a Citation may result from failure to correct the violation, including the payment of fines, penalties, costs or fees due, and that failure to correct the violation may result in additional costs, fees or assessments to cover administrative and/or monitoring, testing, investigation, abatement, remediation and/or restoration work related thereto;
  - v. Implementation of pollution prevention practices; and/or

- vi. Such other actions or directives as shall be within the scope of the Stormwater Compliance Officer's powers and duties.
- b) The written notice shall explain the nature of violation and the steps required for compliance and shall constitute a written warning before the issuance of any Citation pursuant to this Ordinance. If investigation, testing, monitoring, abatement, remediation and/or restoration of and/or any other correction of a violation and/or property(ies) affected thereby is required ("Abatement Work"), the written notice shall also set forth a deadline within which such Abatement Work must be completed, and shall further advise that, should the respondent fail to perform such Abatement Work and correct the violation within the established deadline, such Abatement Work may be done by the Town of Groton and/or its designee, including but not limited to employees, licensed environmental professionals and/or contractors selected by the Town of Groton in its sole discretion, and the expense thereof shall be charged to each respondent and/or shall constitute a special assessment and/or lien against the property(ies) that are the subject matter thereof; provided, nothing in this Ordinance shall restrict the Town's rights, without prior notice, to pursue relief under section 4.1(c)(9) of this Ordinance and to recoup all costs and expenses related thereto through lien, special assessment or other applicable rights or remedies available to the Town.
- c) Nothing herein shall prohibit the Stormwater Compliance Officer, in such officer's discretion, from allowing the respondent to whom the written warning is directed to submit a plan acceptable to such Stormwater Compliance Officer to correct the violation on a timely basis provided that the timeframe is reasonable considering the environmental impact of the violation and the cost and/or difficulty of eliminating such violation.
- d) After the deadline for correction established pursuant to subsection 4.2(b) has expired, the Stormwater Compliance Officer shall re-inspect the subject violation to determine compliance. If the violation set forth in the written notice has not been corrected at the time of re-inspection, the Stormwater Compliance Officer may issue a citation ("Citation") to the respondent. Any Citation shall state: (1) the allegations against such respondent and the amount of any fines, penalties, costs or fees due; (2) that such respondent may contest liability before a Citation Hearing Officer by delivering in person or by mailing written notice of such hearing request to the Stormwater Compliance Officer within ten (10) days of the date of the Citation; (3) that if such respondent does not demand such a hearing, a judgment and, if applicable, an assessment may be entered against such respondent and/or special assessments and/or liens attached to the subject property(ies) involved with the violation; and (4) that such judgment and assessment may issue without further notice.
  - i) The written notice required by section 4.2(a), and any resulting Citation issued pursuant to section 4.2(c), shall be served by the Stormwater Compliance Officer upon the respondent: 1) by hand delivery; (2) mailed, by certified mail, return receipt requested, to the last known address on file with the Groton Tax Collector of the respondent to whom it is directed; (3) if the respondent to whom such notice is issued is a registrant, such notice may be delivered in accordance with C.G.S. section 7-148ii; (4) by leaving a true and attested copy of the citation at the usual place of abode or residence of the respondent to whom it is directed, (5) in the case of a business entity, delivery to the business address or address of the statutory agent of such entity; or (6) through any other manner permitted by applicable law.
  - ii) Further, while the MS4 Permit issued by DEEP provides that the period between identification and elimination of an *illicit discharge* or *illicit connection* is not a grace period and may be subject to a fine, the starting date for imposition of any fine shall be at the discretion of the Stormwater Compliance Officer based on progress being made towards timely remediation following initial written notice of the non-compliance.
- e) The Stormwater Compliance Officer may, but shall not be obligated, to perform daily re-inspections. Rather, the respondent to whom the Citation has been issued shall be responsible for reporting subsequent compliance to the Stormwater Compliance Officer. The Stormwater Compliance Officer shall re-inspect to confirm compliance within two (2) business days of receipt of such report of compliance absent extenuating circumstances.
- f) Each day that non-compliance continues on and after the deadline imposed pursuant to section 4.2(b) hereof shall constitute a separate offense for which a fine may be imposed. No fine issued hereunder shall exceed \$250.00 per day. Any fine collected in connection with this Ordinance shall be deposited into the Town of Groton's general fund account.
- g) An original or certified copy of the initial written notice issued pursuant to section 4.2(a) of this Ordinance and any resulting Citation shall be filed and retained by the Town of Groton and shall be deemed to be a business record within the scope of C.G.S. section 52-180 and evidence of the facts contained therein. In addition, such initial written notice and any Citation issued thereunder may be reported to DEEP, and may also be reported to any other agency with jurisdiction (including another municipality, a regional health district, a State agency, a federal agency, or other entity).

#### 4.3. Payment of Fines; Hearings; Appeals; Other Remedies

- a) Admission of Liability by Payment of Fine. If any respondent who is sent a Citation pursuant to section 4.2(d) of this Ordinance wishes to admit to liability for any alleged non-compliance with this Ordinance, such respondent may, without requesting a hearing, pay the full amount of the fines, penalties, costs or fees admitted to. Payment may be made by cash, credit card, check or money order payable to the Town of Groton and submitted in person or mailed in accordance with the instructions specified in the Citation. Such payment shall be inadmissible in any proceeding, civil or criminal, to establish the conduct of such respondent or other person making the payment. Any respondent who does not

deliver or mail written demand for a hearing within ten (10) days of the date of the Citation shall be deemed to have admitted liability, and the designated Stormwater Compliance Officer shall certify such person's failure to respond to the Citation Hearing Officer. The Citation Hearing Officer shall thereupon enter and assess the fines, penalties, costs or fees provided for by this Ordinance and shall follow the procedures set forth in this Section 4.3. Payment of the fine shall in no way relieve such respondent from liability and responsibility to abate the violation and/or to comply with other directives issued by the Stormwater Compliance Officer, nor from liability to the Town of Groton for the cost of any such Abatement Work incurred or performed by or at the direction of the Town pursuant to this Ordinance.

- b) Hearing on Notice of Violation. Any respondent issued a Citation pursuant to this Ordinance may request a hearing with the Citation Hearing Officer by delivering in person or by mail written notice in accordance with the hearing request instructions set forth on the Citation within ten (10) days of the date of the Citation; provided that such request for a hearing shall not stay or delay response to the violation that is the subject of such Citation. Any respondent who requests a hearing shall be given written notice of the date, time and place for the hearing. Such hearing shall be held not less than fifteen (15) days nor more than thirty (30) days from the date of the mailing of the Citation, provided the Citation Hearing Officer shall grant upon good cause shown any reasonable request by any interested party for postponement or continuance.
- c) Procedure. The presence of the Stormwater Compliance Officer shall be required at the hearing if the respondent so requests. A respondent wishing to contest liability shall appear at the hearing and may present evidence in such respondent's behalf. The Stormwater Compliance Officer and/or any other designated municipal official, other than the Citation Hearing Officer, may present evidence on behalf of the Town of Groton. If the alleged respondent fails to appear, the Citation Hearing Officer may enter an assessment by default against such respondent upon a finding of proper notice and liability under this Ordinance. The Citation Hearing Officer may accept from such Stormwater Compliance Officer copies of police reports, investigatory and citation reports, and other official documents and may determine thereby that the appearance of such Stormwater Compliance Officer is unnecessary. The Citation Hearing Officer shall conduct the hearing in the order and form and with such methods of proof as such Citation Hearing Officer deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation. The Citation Hearing Officer shall announce his or her decision at the end of the hearing. If the Citation Hearing Officer determines that the respondent is not liable, such officer shall dismiss the matter and enter his or her determination in writing accordingly. If the Citation Hearing Officer determines that the respondent is liable for the non-compliance, he or she may affirm or modify the notice of non-compliance, and shall forthwith enter and assess fines, penalties, costs or fees against such respondent as provided in the Citation and as permitted by this Ordinance, in writing, with a copy to such respondent.
- d) Failure to Pay. If an assessment is not paid on the date of its entry, the Citation Hearing Officer shall send by first class mail a notice of the assessment to each respondent found liable and shall file, not less than thirty (30) days or more than twelve (12) months after such mailing, a certified copy of the notice of assessment with the Clerk of the Connecticut Superior Court together with an entry fee of eight (\$8.00) dollars, against such person in favor of the Town of Groton, pursuant to C.G.S. section 7-152c, as amended. Notwithstanding any provision of the C.G.S., the Citation Hearing Officer's assessment, when so entered as a judgment, shall have the effect of a civil money judgment and a levy of execution on such judgment may issue without further notice to such respondent.
- e) Appeals. A respondent against whom a determination of violation of this Ordinance and/or an assessment has been entered is entitled to judicial review by way of appeal. An appeal shall be instituted within thirty (30) days of the mailing of notice of such assessment by filing a petition to reopen assessment, together with an entry fee in an amount equal to the entry fee pursuant to C.G.S. section 52-259, at a superior court facility designated by the Chief Court Administrator, which shall entitle such person to a hearing in accordance with the rules of the superior court.

#### 4.4 Other Rights and Remedies

##### a) Cost of Abatement of the Non-Compliance.

As required by the MS4 Permit issued by DEEP, it is hereby declared that the Stormwater Compliance Officer has the authority under this Ordinance to recoup costs incurred by the Town of Groton while undertaking actions to eliminate any *illicit discharge* or *illicit connection* on a timely basis, including but not limited to administrative costs and costs of Abatement Work.

If any violation has not been corrected by the deadline and pursuant to the requirements set forth in the Stormwater Compliance Officer's written notice of violation, or in the event of an appeal to and decision of a Citation Hearing Officer or of a court in the case of an appeal, within five (5) days of the decision upholding the action of the Stormwater Compliance Officer or Citation Hearing Officer, as applicable, then the Town of Groton and its designees, including but not limited to employees, licensed environmental professionals and/or contractors selected by the Town of Groton in its sole discretion, may enter upon the subject property(ies) and are authorized to perform such Abatement Work. It shall be unlawful for any property owner, person in possession of the property or any other person to refuse to allow the Town to enter upon the subject property(ies) for such Abatement Work. No later than thirty (30) days after completion of such Abatement Work, the respondents shall be notified of the cost such Abatement Work, including but not limited to administrative costs, which costs shall become the liability of the respondent, a special assessment against the property(ies) that are the subject(s) of the violation and/or shall constitute a lien on such property(ies) for the amount of the assessment until paid in full. A certificate of the lien shall be recorded on the land records within such thirty (30) day time period, and simultaneously with such filing, notice shall be given to the owner of the property(ies) that are the subject matter thereof and the Town shall make reasonable efforts to mail a copy of the certificate by first class mail to any lienholder's current or last known address.

Notwithstanding anything in this Ordinance to the contrary, nothing in this Ordinance shall restrict the Town's rights, without prior notice, to immediately pursue relief under section 4.1(c)(9) of this Ordinance and to recoup all costs and expenses related thereto through lien or other applicable rights or remedies available to the Town.

- b) **Non-compliance deemed a public nuisance.** In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any provision of this Ordinance is a threat to public health, safety, welfare and environment and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and /or civil action may be brought to abate, enjoin or otherwise compel the cessation and elimination of such nuisance.
- c) **Suspension.** The Stormwater Compliance Officer may suspend, without prior notice in the event of an emergency, ***stormwater drainage system*** access to a person when such suspension is necessary to stop an actual or threatened ***illicit discharge*** or ***illicit connection*** which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the ***stormwater drainage system*** or to minimize danger to persons.
- d) **Termination.** Any ***person*** discharging to the ***stormwater drainage system*** in violation of this Ordinance may have their ***stormwater drainage system*** access terminated, after Citation by the Stormwater Compliance Officer, if such termination would abate or reduce the violation. The Stormwater Compliance Officer shall notify a ***person*** of the proposed termination of such respondent's ***stormwater drainage system*** access. The ***person*** may petition the Citation Hearing Officer of the Town of Groton for reconsideration and a hearing in accordance with this section 4.3(b) of this Ordinance.
- e) **Injunctive Relief.** If a ***person*** has violated or continues to violate any provision of this Ordinance, the Stormwater Compliance Officer may petition for a preliminary or permanent injunction restraining such ***person*** from activities which would create further violation or compelling the person to perform Abatement Work to comply with such other order of the Stormwater Compliance Officer related to such violation.
- f) **Remedies Not Exclusive.** The remedies described 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 Stormwater Compliance Officer and Citation Hearing Officer to seek cumulative remedies. The Town of Groton may recover attorney's fees, court costs and other expenses associated with enforcement of this Ordinance.

## SECTION 5. GLOSSARY.

### 5.1 Specific Words And Terms

For the purposes of this Ordinance, the following words and terms shall have the meaning specified:

***Illicit Discharge*** - any unpermitted discharge that does not consist entirely of ***stormwater*** or uncontaminated ground water except those discharges identified in Section 2.2 of this Ordinance when such ***non-stormwater*** discharges are not significant contributors of pollution. Illicit discharges include but are not limited to:

- any ***pollutants***,
- any liquids or materials containing ***pollutants*** that cause or contribute to a violation of applicable water quality standards,
- a discharge of untreated sanitary wastewater from a municipal sanitary sewer (a sanitary sewer overflow),
- residential, industrial and/or commercial wastes,
- trash,
- used motor vehicle fluids,
- pesticides and/or fertilizers,
- food preparation waste,
- leaf litter, grass clippings, and
- animal wastes.

***Illicit Connection:*** An illicit connection is defined as either of the following:

- (a) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the ***stormwater drainage system*** including but not limited to any conveyance which allow any ***non-stormwater*** discharge to enter the ***stormwater drainage system***, and any connections to the ***stormwater drainage system*** from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by the Town; or
- (b) Any drain or conveyance connected to the ***stormwater drainage system*** which has not been documented in plans, maps or equivalent records and approved by the Town.

**Maximum Extent Practical** - a technology-based standard established by Congress in the Clean Water Act which allows the Town of Groton to exercise some flexibility when trying to reduce **pollutants** provided the following conditions exist:

- there must be a serious attempt to comply,
- practical solutions may not be lightly rejected.

**Non-Stormwater** - a discharge consisting of anything other than **stormwater**.

**Person** - any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner, occupant or as the owner's or occupant's agent.

**Pollutant(s)** - anything which causes or contributes to pollution including but 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, and accumulations, so that same may cause or contribute to pollution;
- floatables;
- pesticides, herbicides, and fertilizers;
- hazardous materials 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;
- sewage, fecal coliform and pathogens;
- dissolved and particulate metals;
- animal wastes; and
- wastes and residues that result from constructing a building or structure.

**Stormwater** - waters consisting of rainfall runoff, including snow or ice melt during a rain event.

**Stormwater Drainage System** - conveyances for **stormwater** (including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains).

## SECTION 6. CONFLICT AND SEPARABILITY

- a) The provisions of this Ordinance shall not be construed to prevent the enforcement of other statutes, codes, ordinances or regulations which prescribe standards other than are provided in this Ordinance.
- b) If any other ordinance or parts of ordinances are in conflict herewith, the more restrictive provisions shall apply.
- c) If a court of competent jurisdiction finds any provision of this ordinance to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this ordinance shall continue to be separately and fully effective.

This Ordinance Amendment shall be effective forty-five (45) days after its enactment by the Town Council, unless vetoed by the RTM.

Dated at Groton, Connecticut. 1<sup>st</sup> day of May, 2018.

Attest:

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Betsy Moukawsher  
Groton Town Clerk