

TOWN OF ROCK
ORDINANCE NO. 2009 - 01

An ordinance to promote the health, safety, and general welfare of the townspeople of the Town of Rock, County of Rock, State of Wisconsin, enacted under authority granted by Chapter 283 of the Wisconsin Statutes and NR 216.07(3) of the Wisconsin Administrative Code. THE TOWN BOARD OF THE TOWN OF ROCK, ROCK COUNTY, WISCONSIN, DOES ORDAIN AS FOLLOWS:

SECTION 1. TITLE

This ordinance shall be cited as the Town of Rock Illicit Discharge Ordinance

SECTION 2. AUTHORITY

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

SECTION 3. RESPONSIBILITY FOR ADMINISTRATION AND APPEALS

The Town Board of the Town of Rock shall designate and appoint at its regular monthly meeting in May of each year a member of the Town Board or other qualified person (the "Ordinance Administrator") to administer and enforce the provisions of this ordinance. The Ordinance Administrator will be responsible for the administration and enforcement of this ordinance. The Town Board of Adjustment, functioning in accord with Chapter 92, Wis. Stats., shall hear and decide appeals where it is alleged that there is an error in any order, decision, or determination made by the Ordinance Administrator upon written request by a person to the board chair. A responsible person or landowner may appeal within 30 calendar days of the date of any order, decision, or determination made by the Ordinance Administrator in administering this ordinance, relative to sites in which such person has an interest.

SECTION 4. PURPOSE AND INTENT

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

A. To prohibit the discharge, spilling, or dumping of non-storm water substances or materials into waters of the state or the MS4;

B. To identify non-storm water discharges or flows that are not considered illicit discharges;

C. To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this ordinance.

SECTION 5. JURISDICTION

This ordinance shall apply to unincorporated lands within the Permitted Area of the Town of Rock's Municipal WPDES Permit as amended and revised unless explicitly exempted by this ordinance.

SECTION 6. SEVERABILITY

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

SECTION 7. REMEDIES NOT EXCLUSIVE

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state, or local law, and it is within the discretion of the Ordinance Administrator to seek cumulative remedies.

SECTION 8. ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

SECTION 9. DISCHARGE PROHIBITIONS

No person shall discharge or cause to be discharged into the MS4 or waters of the state any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

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

A. The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, individual

residential car washing, nature riparian habitat or wetland flows, swimming pools (if dechlorinated – typically less than one PPM chlorine), fire fighting activities, and any other water source not containing pollutants.

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

C. The prohibition shall not apply to any non-storm water discharge permitted under a WPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the DNR, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

SECTION 10. NOTIFICATION OF SPILLS

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into storm water, the MS4, or water of the state, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Ordinance Administrator in person or by phone or facsimile immediately. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Ordinance Administrator c/o Rock Town Hall, 5102 S. County Road D, Afton, Wisconsin 53501 within three business days of the phone notice.

SECTION 11. INDUSTRIAL OR CONSTRUCTION SITE DISCHARGES

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

SECTION 12. INSPECTIONS

A. The Ordinance Administrator and his/her representatives shall be permitted to enter and inspect any property subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the Ordinance Administrator and his/her representatives.

B. The Ordinance Administrator and his/her representatives shall be permitted ready access to all parts of the premises for the purposes of inspection, sampling, examination and

copying of records that must be kept under the conditions of a WPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

C. If the Ordinance Administrator and/or his/her representatives have been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Ordinance Administrator may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 13. ENFORCEMENT AND PENALTIES

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

B. Every violation of this ordinance is a public nuisance. Compliance with this ordinance may be enforced by injunctive order at the suit of the Town pursuant to sec. 823.02, Wis. Stats. It shall not be necessary to prosecute for forfeiture before resorting to injunctive proceedings.

C. When the Ordinance Administrator finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the Ordinance Administrator may order compliance by written notice of violation to the responsible person via certified mail. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
- (5) The implementation of source control or treatment BMPs.

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

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

premises to refuse to allow the Ordinance Administrator or designated contractor to enter upon the premises for the purposes set forth above.

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

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

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

SECTION 14. COST OF ABATEMENT OF THE VIOLATION

Within 60 days after abatement or remediation of the violation, the owner of the property will be notified of the cost of abatement or remediation, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 30 days. If the amount due is not paid in a timely manner as determined by the decision of the Ordinance Administrator or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

SECTION 15. DEFINITIONS

For purposes of this ordinance, the following shall mean:

Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention, and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

DNR. Wisconsin Department of Natural Resources.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit Discharge. Any discharge to the MS4 that is not composed entirely of storm water except discharges authorized by a WPDES permit or exempted in this ordinance.

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

- (1) Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4 regardless of whether said drain or connection has been previously allowed, permitted, or approved by the Ordinance Administrator; or
- (2) Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by the Ordinance Administrator.

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

Jurisdiction. The area where MS4 permittee (Town of Rock) has authority to enforce its ordinance(s) or otherwise has authority to exercise control over a particular area of concern.

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

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

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. A permit issued by EPA (or by a state under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.

Permittee. The owner or operator of a MS4 authorized to discharge storm water into waters of the state (in this case, the Town of Rock).

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

- (1) An "urbanized area," adjacent developing areas, and areas whose runoff will connect to a MS4 regulated under subch. I of NR 216 Wis. Adm. Code; or

(2) An area associated with a municipal population of 10,000 or more and a population density of 1,000 or more per square mile, adjacent developing area, and areas whose runoff will connect to a MS4 regulated under subch I of NR 216 Wis. Adm. Code; or

(3) An area that drains to a MS4 that is designated for permit coverage pursuant to s. NR 216.02(2) or 216.025, Wis. Adm. Code.

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

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and waste; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

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

Storm Drainage System. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping drainage channels, reservoirs, and other drainage structures.

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

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

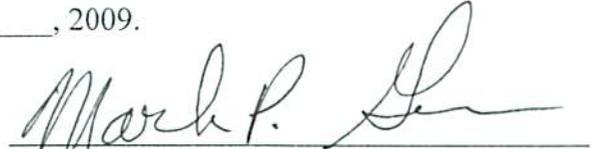
Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

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

SECTION 16. EFFECTIVE DATE

This ordinance shall take effect and shall be in full force from and after its passing and posting and/or publication as provided by law.

Dated this 4th day of May, 2009.



Mark Gunn, Chairperson



Dean Connell, Town Supervisor



Pete Parker, Town Supervisor

ATTEST:



Deborah Bennett, Town Clerk

CERTIFICATION

I hereby certify that the above ordinance was adopted by the Town Board of the Town of Rock on the _____ day of _____, 2009, and that on the _____ day of _____, 2009, a copy of the ordinance was published in *The Janesville Gazette*, the official newspaper of the Town of Rock.

Deborah Bennett, Town Clerk
Town of Rock, Rock County, Wisconsin.

Subscribed and sworn to before me
this _____ day of _____, 2009.

Notary Public, Rock County, Wisconsin
My Commission is permanent
or expires: _____

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