

Chapter 149

STORM SEWERS

ARTICLE I Illicit Discharges and Connections

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[HISTORY: Adopted by the Town Board of the Town of Westmoreland as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Building code administration and enforcement — See Ch. 86.
Site plan review — See Ch. 138.

Stormwater management — See Ch. 152.
Zoning — See Ch. 180.

ARTICLE I Illicit Discharges and Connections [Adopted 7-10-2006 by L.L. No. 3-2006]

§ 149-1. Intent.

The intent of this article is to provide for the health, safety, and general welfare of the citizens of the Town of Westmoreland through the regulation of nonstormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the SPDES General Permit for Municipal Separate Storm Sewer Systems. The objectives of this article are:

- A. To meet the requirements of the New York State SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02 or as amended or revised;

- B. To reduce the contribution of pollutants to the municipal separate storm sewer system since such systems may not be designed to accept, process or discharge nonstormwater wastes;
- C. To prohibit illicit discharges to the municipal separate storm sewer system;
- D. To establish legal authority to implement appropriate enforcement procedures and actions that may be necessary to ensure compliance with this article.

§ 149-2. Definitions.

Whenever used in this article, unless a different meaning is stated in a definition applicable to only a portion of this article, the following terms will have meanings set forth below:

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. Best management practices published by the NYS DEC, US EPA or other similar professional organizations are generally acceptable for the purposes of this article.

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, GP-02-01, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres. 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 — 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.

ILLICIT DISCHARGE — Any direct or indirect nonstormwater discharge to the MS4, except as exempted in § 149-5 of this article. Examples of illicit discharges may include nonpermitted sanitary sewage, garage drain effluent, or waste motor oil discharges to the municipal separate storm sewer system.

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 requiring the SPDES Permit for Discharges from Industrial Activities Except Construction, GP-98-03, as amended or revised.

MS4 — Municipal separate storm sewer system.

MUNICIPALITY — The Town of Westmoreland.

MUNICIPAL SEPARATE STORM SEWER SYSTEM — A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- A. Owned or operated by the Town of Westmoreland;
- B. Designed or used for collecting or conveying stormwater;
- C. Which is not a combined sewer; and
- D. Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

NONSTORMWATER DISCHARGE — Any discharge to the MS4 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 — Dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, 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.

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 — Rainwater, surface runoff, snow melt and drainage.

STORMWATER MANAGEMENT OFFICER (SMO) — An employee, the municipal engineer or other public official(s) designated by the Town of Westmoreland to enforce this article. Within the Town of Westmoreland the Codes Enforcement Officer has been designated as the Stormwater Management Officer. For the purposes of inspection, monitoring and/or review of stormwater discharges, the municipality may designate a certified

professional, engineer, or consultant to assist the Codes Enforcement Officer in carrying out his/her duties.

303(d) LIST — A list of all surface waters in the state for which beneficial uses of the 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. 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.

TMDL — Total maximum daily load.

TOTAL MAXIMUM DAILY LOAD — The maximum amount of a 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 — Water that is not stormwater, is contaminated with pollutants and is or will be discarded.

§ 149-3. Applicability.

This article shall apply to all water entering the municipal separate storm sewer system within the entire Town of Westmoreland that may be generated on any developed and undeveloped lands unless explicitly exempted as provided for within these regulations.

§ 149-4. Responsibility for administration.

The Codes Enforcement Officer shall administer, implement, and enforce the provisions of this article.

§ 149-5. Illicit discharges; exemptions.

- A. Prohibition of illicit discharges. No person shall discharge or cause to be discharged into the municipal separate storm sewer system any materials other than stormwater. The commencement, conduct or continuance of any illicit discharge to the municipal separate storm sewer system is prohibited except as described within Subsections C and D of this section.
- B. Prohibition of discharges from failing individual sewage treatment systems. No persons shall operate a failing individual sewage treatment system in any area of the Town of Westmoreland that will result in an illicit discharge to the municipality's separate storm sewer system. A failing individual sewage treatment system is one which has one or more of the following conditions:
 - (1) The backup of sewage into a structure.
 - (2) A discharge of treated or untreated sewage onto the ground surface.
 - (3) A connection or connections to a separate stormwater sewer system.
 - (4) A liquid level in the septic tank that is above the outlet invert.

- (5) A 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.
 - (6) The contamination of off-site groundwater.
- C. Discharges exempt from regulation. The following discharges are exempt from the discharge prohibitions established by this article, unless the Department or the municipality has determined them to be substantial contributors of pollutants:
- (1) Discharges from water line flushing; discharges directly from potable water sources; residential landscape irrigation or lawn watering; existing diverted stream flows; rising groundwater or uncontaminated groundwater infiltration to storm drains; uncontaminated pumped groundwater; uncontaminated water from foundation or footing drains, crawl spaces or basement sump pumps; air-conditioning condensate; uncontaminated irrigation water; springs; water from individual residential car washing; natural riparian habitat or wetland flows; dechlorinated swimming pool discharges; residual street wash water; discharges or flows from fire-fighting activities; and any other water source not containing pollutants.
- D. Other permitted or approved discharges.
- (1) Certain discharges may be permitted if approved, in writing, by the Codes Enforcement Officer to protect life or property from imminent harm or damage, 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 Codes Enforcement Officer may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this article.
 - (2) Water discharges resulting from dye testing may be allowable if such discharge is in compliance with applicable state and local laws. Such discharges require a verbal notification to the Codes Enforcement Officer prior to the time of the test.
 - (3) The prohibition of certain discharges shall not apply to any 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.

§ 149-6. Stormwater pollutants; prevention; use of best management practices.

Where the Codes Enforcement Officer has identified an illicit discharge, the municipality may require the implementation of best management practices (BMPs) to prevent, control and/or reduce those illicit discharges.

- A. Any person responsible for a property or premises which is or may be the source of an illicit discharge may be required to implement, at said person's expense, structural and

nonstructural BMPs to further prevent, control, reduce or eliminate the source of pollutant(s) to the municipal separate storm sewer system.

- B. In an effort to prevent potential illicit discharges, the owner or operator of a commercial or industrial establishment within the Town of Westmoreland shall provide, at his/her own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal separate storm sewer system through the use of structural and nonstructural BMPs. Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity shall be deemed in compliance with the provisions of this section. 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 municipality prior to the allowing of discharges to the municipal storm sewer system.
- C. Where an individual sewage treatment system has been identified as an illicit discharge to the municipal separate storm sewer system or may be contributing to the municipality being subject to the special conditions as defined in Subsection D of this section, the owner or operator of such individual sewage treatment system 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. The septic tank shall 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.
 - (e) Pump out the tank every two to three years as necessary. Pumping may be more or less frequent depending on use. Inspection of the tank for cracks, leaks and blockages should be done by the septage hauler at the time of pumping of the tank contents.
 - (f) Maintain records of inspection and pumping as outlined above and provide such records to the Codes Enforcement Officer upon request.
 - (2) Repair or replace individual sewage treatment systems as follows:
 - (a) Repair or replace individual sewage treatment systems 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.
- (c) 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.

D. Special conditions.

- (1) Discharge compliance with water quality standards: the condition that applies where a municipality has been notified that the discharge of stormwater authorized under their MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an 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.
- (2) 303(d) listed waters: the condition in the municipality's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.
- (3) 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 EPA for a water body or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the municipality was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.
- (4) The condition in the municipality's MS4 permit that applies if a TMDL is approved in the future by 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 specified in the TMDL is achieved.

§ 149-7. Suspension of access to the municipal separate storm sewer system.

- A. The Codes Enforcement Officer may, without prior notice, suspend discharge access to the municipal separate storm sewer system 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 municipal separate storm sewer system. The Codes Enforcement Officer shall notify the owner or operator, in writing, of such suspension within a reasonable time thereafter of the reasons

for the suspension. If the owner or operator fails to comply with a suspension order issued in an emergency, the Codes Enforcement Officer may take such steps as deemed necessary to prevent or minimize damage to the municipal separate storm sewer system or to minimize danger to persons.

- B. Suspension due to the detection of illicit discharge. Any person discharging to the municipality's separate storm sewer system who is in violation of this article may have his/her discharge access terminated if such termination would abate or reduce an illicit discharge. The Codes Enforcement Officer will notify the owner or operator, in writing, of the proposed termination of its discharge access and the reasons therefor. The owner or operator may petition the Codes Enforcement Officer for a reconsideration or hearing. Access may be granted by the Codes Enforcement Officer if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may continue to be denied if the Codes Enforcement Officer determines, in writing, that the illicit discharge has not ceased or is likely to recur. No owner or operator shall reinstate access to the municipal storm sewer system without the prior approval of the Codes Enforcement Officer.

§ 149-8. Access and monitoring relating to illicit discharges.

- A. This section applies to all facilities and/or properties that the Codes Enforcement Officer and/or other designated representative of the municipality must inspect to enforce any provision of this article, or whenever the municipality has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this article.
- B. Access to facilities.
- (1) Upon written notice to the owner or operator, the Codes Enforcement Officer and/or other designated representative of the municipality shall be permitted to enter and inspect facilities subject to regulation under this article as often as may be necessary to determine compliance with this article. If the owner or operator has security measures in force which require proper identification and clearance before entry into its premises, he/she shall make the necessary arrangements to allow access by the Codes Enforcement Officer and/or other designated representative of the municipality within 24 hours.
 - (2) The owner or operator of a facility subject to this article will be in violation of this article if he/she denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this article. Unreasonable delays in allowing the municipality access to a facility subject to this article will be considered a violation of this article.
 - (3) The owners or operators of such facilities shall allow the municipality ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this article.
 - (4) The municipality shall have the right to set up on any facility subject to this article such devices as are necessary in the opinion of the Codes Enforcement Officer or

other designated representative of the municipality to conduct monitoring and/or sampling of the facility's stormwater discharge.

- (5) The municipality has the right to require the facilities subject to this article to install monitoring equipment as is reasonably necessary to determine compliance with this article. 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.
- (6) If the Codes Enforcement Officer or other designated representative of the municipality 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 article, 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 article or any order issued hereunder, then the Codes Enforcement Officer may seek issuance of a search warrant from any court of competent jurisdiction.

§ 149-9. Notification of spills.

Notwithstanding other requirements of law, as soon as any owner, operator and/or 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 the municipality's separate storm sewer system, 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 municipality in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the municipality within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§ 149-10. Enforcement; penalties for offenses.

- A. Notice of violation. When the Codes Enforcement Officer finds that a person has violated a prohibition or failed to meet a requirement of this article, he/she may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
 - (1) The elimination of illicit discharges;
 - (2) That violating discharges, practices, or operations shall cease and desist;

- (3) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 - (4) The performance of monitoring, analyses, and reporting;
 - (5) Payment of a fine; and
 - (6) The implementation of source control or treatment BMPs. 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.
- B. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

§ 149-11. Appeal of notice of violation.

Any person, owner or operator receiving a notice of violation may appeal the determination of the Codes Enforcement Officer to the Town Board within 15 days of its issuance. The Town Board shall hear the appeal within 30 days after the filing of the appeal, and, within five days of making its decision, shall file its decision in the office of the Municipal Clerk and mail a copy of its decision by certified mail to the person, owner or operator.

§ 149-12. Corrective measures after appeal.

- A. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, then the Codes Enforcement Officer shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property. In the event of an appeal, within five business days of the decision of the municipal authority upholding the decision of the Codes Enforcement Officer, then the Codes Enforcement Officer shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.

- B. If refused access to the subject private property, the Codes Enforcement Officer may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the Code Enforcement Officer may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.

§ 149-13. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. If a person has violated or continues to violate the provisions of this article, the Codes Enforcement Officer 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.

§ 149-14. Alternative remedies.

- A. Where a person has violated a provision of this article, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Municipal Attorney and concurrence of the Code Enforcement Officer, where:
- (1) The violation was unintentional.
 - (2) The violator has no history of previous violations of this article.
 - (3) Environmental damage was minimal.
 - (4) Violator acted quickly to remedy violation.
 - (5) Violator cooperated in investigation and resolution.
- B. Alternative remedies may consist of one or more of the following:
- (1) Attendance at compliance workshops.
 - (2) Storm drain stenciling or storm drain marking.
 - (3) River, stream or creek cleanup activities.

§ 149-15. Violations deemed 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 article 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.

§ 149-16. Remedies not exclusive.

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