

LOCAL LAW NO. "K" FOR 2007

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK PROHIBITING ILLICIT DISCHARGES, ACTIVITIES AND CONNECTIONS TO THE ALBANY COUNTY SEPARATE STORM SEWER SYSTEM

Introduced: 7/9/07

By Mr. Ward, Ms. McKnight, Messrs. Aidala, Aylward, Collins, McCoy and Shafer:

BE IT ENACTED by the Legislature of the County of Albany as follows:

SECTION 1. Legislative intent and purpose.

a. This Legislature finds and determines that the regulation of non-stormwater discharges to the County-owned municipal separate storm sewer system to the maximum extent practicable is essential to protect the health, safety and general welfare of the citizens of Albany County.

b. This Legislature further finds and determines that controlling the introduction of pollutants into the County-owned municipal separate storm sewer system is critical in order to comply with requirements of the State Pollution Discharge Elimination System General Permit no. GP-02-02 for Municipal Separate Storm Sewer Systems.

c. Therefore, the purpose of this Local law is to regulate the contribution of pollutants to the County-owned municipal separate storm sewer system by prohibiting illicit connections, activities and discharges and to establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Local law.

d. The further purpose of this Local law is to promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the County-owned municipal separate storm sewer system.

e. 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 Local law 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.

SECTION 2. DEFINITIONS.

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

Best Management Practices (also referred to as 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 stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act. The Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), and any subsequent amendments thereto.

Construction Activity. Activities requiring authorization under the SPDES permit for stormwater discharges from construction activity, 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.

County-owned municipal separate storm sewer system (also referred to as MS4). A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by the County of Albany which includes roads and facilities, designed or used for collecting or conveying stormwater which is not a combined sewer and which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. A copy of County owned roads and properties is on file with the Clerk of the Albany County Legislature.

Department. The New York State Department of Environmental Conservation.

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 Connections. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the County-owned municipal separate storm sewer system, including but not limited to:

a. Any conveyances which allow any non-stormwater discharge including treated or untreated sewage, process wastewater, and wash water to enter the County-owned municipal separate storm sewer system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or

b. Any drain or conveyance connected from a commercial or industrial land use to the County-owned municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Illicit Discharge. Any direct or indirect non-stormwater discharge to the County-owned municipal separate storm sewer system, except as exempted in Section 6 of this Local law.

Industrial Activity. Activities requiring the SPDES permit for discharges from industrial activities except construction, GP-98-03, as amended or revised.

Municipality or County. The County of Albany.

Non-Stormwater Discharge. Any discharge to the County-owned municipal separate storm sewer system that is not composed entirely of stormwater.

Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by Local 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, structure, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Special Condition. Discharge Compliance with Water Quality Standards. The condition that applies where a municipality has been notified that the discharge of stormwater authorized under its County-owned municipal separate storm sewer system 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.

Special Condition. 303(d) Listed Waters. The condition in the County-owned municipal separate storm sewer system permit that applies where the County-owned municipal separate storm sewer system 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.

Special Condition. Total Maximum Daily Load (TMDL) Strategy. The condition in the County-owned municipal separate storm sewer system permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a waterbody or watershed into which the County-owned municipal separate storm sewer system discharges.

Special Condition. The condition in the County-owned municipal separate storm sewer system permit that applies if a TMDL is approved in the future by EPA for any waterbody or watershed into which an County-owned municipal separate storm sewer system 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 (6) 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.

State Pollutant Discharge Elimination System. (also referred to as 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, snowmelt and drainage.

Stormwater Management Officer. (also referred to as SMO). A person, persons, or other public official(s) designated by the County Executive to enforce this Local law. The Stormwater Management Officer may also be designated to accept, review, and inspect stormwater pollution prevention plans.

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.

Total Maximum Daily Load. (also referred to as TMDL). The maximum amount of a pollutant to be allowed to be released into a waterbody 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.

SECTION 3. APPLICABILITY.

This Local law shall apply to all water entering the County-owned municipal separate storm sewer system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.

The Stormwater Management Officer(s) (SMO(s)) shall administer, implement, and enforce the provisions of this Local law. Such powers granted or duties imposed upon the authorized enforcement official may be delegated in writing by the Stormwater Management Officer as may be authorized by the County.

SECTION 5. PROHIBITION OF ILLEGAL DISCHARGES.

No person shall discharge or cause to be discharged into the County-owned municipal separate storm sewer system any materials other than stormwater except as provided in Section 6. The commencement, conduct or continuance of any illegal discharge to the County-owned municipal separate storm sewer system is prohibited except as described in Section 6.

SECTION 6. DISCHARGE EXEMPTIONS.

a. The following discharges are exempt from discharge prohibitions established by this Local law, unless the Department or the County has determined them to be substantial contributors of pollutants: water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising ground water, uncontaminated ground water infiltration to

storm drains, uncontaminated pumped ground water, foundation or footing drains, crawl space or basement sump pumps, air conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire fighting activities, and any other water source not containing pollutants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants.

b. Discharges approved in writing by the Stormwater Management 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 Stormwater Management Officer may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this Local law.

c. Dye testing in compliance with applicable State and local laws is an allowable discharge, but requires a verbal notification to the Stormwater Management Officer prior to the time of the test.

d. The prohibition shall not apply to any discharge permitted under a 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 County-owned municipal separate storm sewer system.

SECTION 7. PROHIBITION OF ILLICIT CONNECTIONS.

The construction, use, maintenance or continued existence of illicit connections to the County-owned municipal separate storm sewer system is prohibited. 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. A person is considered to be in violation of this Local law if the person connects a line conveying sewage to the County-owned municipal separate storm sewer system, or allows such a connection to continue.

SECTION 8. PROHIBITION AGAINST ACTIVITIES CONTAMINATING STORMWATER.

a. Activities are prohibited that cause or contribute to a violation of the County-owned municipal separate storm sewer system SPDES permit or cause or contribute to the County being subject to the Special Conditions as defined in Section 2 of this Local law.

b. Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the County-owned municipal separate storm sewer system SPDES permit authorization, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the County's MS4 SPDES permit authorization.

SECTION 9. REQUIREMENT TO PREVENT, CONTROL AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

a. Where the Stormwater Management Officer has identified illicit discharges as defined in Section 2 or activities contaminating stormwater as defined in Section 8, the County may require the implementation of Best Management Practices (BMPs) to control those illicit discharges and activities.

b. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the County-owned municipal separate storm sewer system through the use of structural and non-structural BMPs.

c. Any person responsible for a property or premise, which is or may be, the source of an illicit discharge as defined in Section 2 or an activity contaminating stormwater as defined in Section 7, may be required to implement, at said person's expense, additional structural and non-structural BMPs to reduce or eliminate the source of pollutant(s) to the County-owned municipal separate storm sewer system.

d. Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

SECTION 10. SUSPENSION OF ACCESS TO COUNTY-OWNED MUNICIPAL SEPARATE STORM SEWER SYSTEM. ILLICIT DISCHARGES IN EMERGENCY SITUATIONS.

a. Imminent danger. The Stormwater Management Officer may, without prior notice, suspend County-owned municipal separate storm sewer system discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the County-owned municipal separate storm sewer system. The Stormwater Management Officer shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the Stormwater Management Officer may take such steps as deemed necessary to prevent or minimize damage to the County-owned 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 County-owned municipal separate storm sewer system in violation of this Local law may have their County-owned municipal separate storm sewer system access terminated if such termination would abate or reduce an illicit discharge. The Stormwater Management Officer will notify a violator in writing of the proposed termination of its County-owned municipal separate storm sewer system access and the reasons therefor. The violator may petition the Stormwater Management Officer for a reconsideration and hearing. Access may be granted by the Stormwater Management Officer if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the Stormwater Management Officer determines in writing that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates County-owned municipal separate storm sewer system access to premises terminated pursuant to this Section, without the prior approval of the Stormwater Management Officer.

SECTION 11. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity SPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the County prior to the allowing of discharges to the County-owned municipal separate storm sewer system.

SECTION 12. ACCESS AND MONITORING OF DISCHARGES.

a. **Applicability.** This section applies to all facilities that the Stormwater Management Officer must inspect to enforce any provision of this Local law, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Local law.

b. **Access to Facilities.** The Stormwater Management Officer shall be permitted to enter and inspect facilities subject to regulation under this Local law as often as may be necessary to determine compliance with this Local law. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the Stormwater Management Officer.

1. Facility operators shall allow the Stormwater Management Officer 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 Local law.

2. Unreasonable delays in allowing the County access to a facility subject to this Local law is a violation of this Local law. A person who is the operator of a facility subject to this Local law commits an offense if the person denies the County reasonable access to the facility for the purpose of conducting any activity authorized or required by this Local law.

3. If the Stormwater Management Officer 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 Local law, 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 Local law or any order issued hereunder, then the Stormwater Management Officer may seek issuance of a search warrant from any court of competent jurisdiction.

c. **Monitoring.** The County shall have the right to set up on any facility subject to this Local law such devices as are necessary in the opinion of the Stormwater Management Officer to conduct monitoring and/or sampling of the facility's stormwater discharge.

1. The County has the right to require the facilities subject to this Local law to install monitoring equipment as is reasonably necessary to determine compliance with this Local law. 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.

SECTION 13. NOTIFICATION OF SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the County-owned municipal 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 and the County Stormwater Management Officer. In the event of a release of non-hazardous materials, said person shall notify the County Stormwater Management Officer 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 County within three (3) 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 ten (10) years.

SECTION 14. ENFORCEMENT.

When the County's Stormwater Management Officer finds that a person has violated a prohibition or failed to meet a requirement of this Local law, he/she may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- a The elimination of illicit connections or discharges;
- b That violating discharges, practices or operations shall cease and desist;
- c. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- d. The performance of monitoring, analyses and reporting;
- e. Payment of a fine; and

- f. 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.

SECTION 15. APPEAL OF NOTICE OF VIOLATION.

Any person receiving a Notice of Violation may appeal the determination of the Stormwater Management Officer to Albany County within 15 days of its issuance, which shall hear the appeal within 30 days after the filing of the appeal, and within five (5) days of making its decision, file its decision in the office of the County Clerk and mail a copy of its decision by certified mail to the discharger.

SECTION 16. CORRECTIVE MEASURES AFTER APPEAL.

- a. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or in the event of an appeal, within five (5) business days of the decision of the County authority upholding the decision of the Stormwater Management Officer, then the Stormwater Management 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 Stormwater Management 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 Stormwater Management 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.

SECTION 17. PENALTIES.

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Local law shall be guilty of a violation punishable by a fine not exceeding three hundred fifty dollars (\$350.00) or imprisonment for a period not to exceed six (6) 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 (5) years, punishable by a fine not less than three hundred fifty dollars (\$350.00) nor more than seven hundred dollars (\$700.00) or imprisonment for a period not to exceed six (6) months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five (5) years, punishable by a fine not less than seven hundred dollars (\$700.00) nor more than one thousand dollars (\$1000.00) or imprisonment for a period not to exceed six (6) months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this Local law 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.

SECTION 18. INJUNCTIVE RELIEF.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Local law. If a person has violated or continues to violate the provisions of this Local law, the Stormwater Management 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.

SECTION 19. ALTERNATIVE REMEDIES.

a. Where a person has violated a provision of this Local law, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the County Attorney and concurrence of the Stormwater Management Officer, where a determination is made that:

1. the violation was unintentional;
2. the violator has no history of previous violations of this Local law;
3. the environmental damage was minimal;
4. the violator acted quickly to remedy violation; and
5. the 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.

SECTION 20. REMEDIES NOT EXCLUSIVE.

The remedies listed in this Local law 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.

SECTION 21. SEVERABILITY.

If any article, section, subsection, paragraph, phrase or sentence of this local law is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof.

SECTION 22. EFFECTIVE DATE.

This local law shall take effect immediately.

Referred to Conservation and Improvement Committee. 7/9/07