

Town of Kittery Planning Board Meeting August 25, 2016

ITEM 1 – Town Code Amendments – 16.4.4.14 – Non-stormwater Discharge; 16.9.7 Non-stormwater Discharge

Action: Review amendment. Schedule a public hearing. The proposed amendments provide clarity concerning restrictions related to non-stormwater discharges required under the Town’s MS4 obligations.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Initial Planning Board Meeting	Scheduled for 8/25/2016	PENDING
NO	Secondary Planning Board Meeting		
YES	Public Hearing (special notice requirements)		TBD
YES	Review/Approval/ Recommendation to Town Council		TBD

Background

Following the November 9, 2015 audit of South Berwick’s MS4 (Municipal Separate Storm Sewer System), the Maine Department of Environmental Protection (MDEP) requested that municipality amend their non-stormwater discharge ordinance. To provide consistency statewide among MS4 regulated communities, Staff is recommending the proposed ordinance amendments:

- Correct the referenced chapter from “8.10” to “9.7” in Title 16.4.4.14.
- Adding the phrase “*as long as it does not cause or contribute to a violation of the State’s water quality standards*” to subsection B of 16.9.7.5 to clarify that upholding water quality standards is required (Line 89).
- Adding “*and dechlorinated swimming pool discharges*” as another permissible discharge if no water quality standards are violated. This was inadvertently omitted from the model ordinance that Kittery and many other towns used when they first implemented their local versions years ago (Line 99).
- According to the Town’s MS4 consultant, Kristie Rabasca, Integrated Environmental Engineering, the amendments “*allows the Town a little more latitude in enforcing the ordinance. But with that latitude comes the responsibility to make determinations about what might cause an exceedance and what might not. For example – landscape irrigation that clearly has an excess of fertilizer or pesticide could need an enforcement action. The Town will mostly take their cues from the DEP on what might or might not cause an exceedance.*”
- Correct spelling of stormwater and change unnecessary capitalization throughout the entirety of 16.9.7 to reflect nationally accepted stormwater-related terminology.

Review

Attached for the Board’s consideration are amendments to Article IV of Title 16.4 Non-stormwater Discharge and Article 7 of Title 16.9 Non-stormwater Discharge.

Recommendation

If the Planning Board is amenable to the proposed amendments and/or along with any revisions they find is warranted, the Board can...

...move to schedule a public hearing for Town Code Amendments, *Title 16.4.4.14 Non-stormwater Discharge; Title 16.9.7 Non-stormwater Discharge* for September 29, 2016.

1 **16.4 ADMINISTRATION and ENFORCEMENT**

2
3 **Article IV. Enforcement – General.**

4
5 **16.4.4.14 Non-stormwater Discharge.**

6 No person, except where exempted in ~~Chapter 8-10~~ 16.9.7, may create, initiate, originate or maintain a non-
7 stormwater discharge to the storm drainage system. Such non-stormwater discharges are prohibited
8 notwithstanding the fact that the municipality may have approved the connections, drains or conveyances
9 by which a person discharges unallowable non-stormwater discharges to the storm drainage system.
10

11
12 **16.9 DESIGN AND PERFORMANCE STANDARDS – NATURAL ENVIRONMENT**

13
14 **Article VII. ~~Non-Storm Water~~ Non-stormwater Discharge.**

15
16 **16.9.7.1 Basis/Purpose/Objectives.**

17
18 A. The Town of Kittery, enacts this ~~Non-Storm Water~~ Non-stormwater Discharge Ordinance (the
19 “Ordinance”) pursuant to 30-A M.R.S. § 3001 (municipal home rule ordinance authority), 38 M.R.S. § 413
20 (the “Wastewater Discharge Law”), 33 U.S.C. § 1251 et seq. (the “Clean Water Act”), and 40 CFR Part
21 122 (U.S. Environmental Protection Agency’s regulations governing the National Pollutant Discharge
22 Elimination System (“NPDES”).
23

24 The Maine Department of Environmental Protection, through its promulgation of the “General Permit for
25 the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems” dated June 2008, has
26 listed the Town of Kittery as having a Regulated Small Municipal Separate Storm Sewer System (“Small
27 MS4”); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this
28 Ordinance as part of the Municipality’s Storm Water Management.
29

30 B. The purpose of this ~~Non-Storm Water~~ Non-stormwater Discharge Ordinance is to provide for the health,
31 safety, and general welfare of the citizens of the Town of Kittery, through the regulation of ~~Non-Storm~~
32 ~~Water~~ non-stormwater Discharges to the Municipality’s Storm Drainage System as required by federal
33 and State law. This Ordinance establishes methods for controlling the introduction of pollutants into the
34 Town’s Storm Drainage System in order to comply with requirements of the federal Clean Water Act
35 and State law.
36

37 C. The objectives of this Article are:

- 38 1. To prohibit unpermitted or unapproved ~~Non-Storm Water~~ non-stormwater Discharges to the
39 Storm Drainage System; and
40 2. To set forth the legal authority and procedures to carry out all inspection, monitoring and
41 enforcement activities necessary to ensure compliance with this Ordinance.
42
43

44 **16.9.7.2 Definitions**

45
46 **Municipal Separate Storm Sewer System, or MS4** means conveyances for ~~storm water~~ stormwater,
47 including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters,
48 ditches, human-made channels or ~~storm drains~~ stormdrains (other than publicly owned treatment works and
49 combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State
50 agency or Federal agency or other public entity that discharges directly to surface waters of the State.

51
52 **National Pollutant Discharge Elimination System (NPDES) Storm-Water Stormwater Discharge**
53 **Permit** means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to
54 waters of the United States, whether the permit is applicable on an individual, group, or general area-
55 wide basis.

56
57 ~~Non-Storm-Water~~ Non-stormwater **Discharge** means any ~~D~~discharge to an MS4 that is not composed
58 entirely of ~~Storm-Water~~ stormwater.

59
60 **Premises** means any building, lot, parcel of land, or portion of land, whether improved or unimproved,
61 including adjacent sidewalks and parking strips, located within the Municipality from which ~~D~~discharge
62 into the ~~S~~storm ~~D~~drainage ~~S~~system are or may be created, initiated, originated or maintained.

63
64 **Regulated Small MS4** means any Small MS4 regulated by the State of Maine “General Permit for the
65 Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems” dated June 2008 (“General
66 Permit”), including all those located partially or entirely within an Urbanized Area (UA) and those
67 additional Small MS4s located outside a UA that as of the issuance of the General Permit have been
68 designated by the DEP as Regulated Small MS4s.

69
70 ~~Storm-Water~~ Stormwater means any ~~Storm-Water~~ stormwater runoff, snowmelt runoff, and surface runoff
71 and drainage; ~~“Stormwater” has the same meaning as “Storm-Water.”~~

72
73

74 **16.9.7.3 Applicability.**

75 This ordinance shall apply to all Persons discharging ~~Storm-Water~~ stormwater and/or ~~Non-Storm-Water~~
76 non-stormwater ~~D~~discharge from any premise into the ~~S~~storm ~~D~~drainage ~~S~~system.

77
78

79 **16.9.7.5 Prohibition of ~~Non-Storm-Water~~Non-Stormwater Discharges**

80
81 A. General Prohibition. Except as allowed or exempted herein, no Person shall create, initiate, originate or
82 maintain a ~~Non-Storm-Water~~ non-stormwater ~~D~~discharge to the ~~s~~Storm ~~d~~Drainage ~~s~~System. Such ~~Non-~~
83 ~~Storm-Water~~ non-stormwater ~~D~~discharge are prohibited notwithstanding the fact that the Municipality may
84 have approved the connections, drains or conveyances by which a Person ~~D~~discharge unallowable ~~Non-~~
85 ~~Storm-Water~~ non-stormwater ~~D~~discharge to the ~~S~~storm ~~D~~drainage ~~S~~system.

86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128

B. Allowed ~~Non-Storm-Water~~ non-stormwater ~~D~~discharge. The creation, initiation, origination and maintenance of the following ~~Non-Storm-Water~~ non-stormwater ~~D~~discharge to the ~~S~~storm ~~D~~rainage ~~S~~system is allowed as long as it does not cause or contribute to a violation of the State's water quality standards:

1. Flow:
Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire-fighting activity runoff; water line flushing and discharges from potable water sources; ~~and~~ individual residential car washing; and dechlorinated swimming pool discharges.
2. Discharges specified in writing by the Enforcement Authority as being necessary to protect public health and safety; and
3. Dye testing, with verbal notification to the Enforcement Authority prior to the time of the test.

16.9.7.7 Suspension of Access to the Municipality's Storm Drainage System.

- A. The Enforcement Authority may, without prior notice, physically suspend Discharge access to the ~~S~~storm ~~D~~rainage ~~S~~system to a Person when such suspension is necessary to stop an actual or threatened ~~Non-Storm-Water~~ non-stormwater ~~D~~discharge to the ~~S~~storm ~~D~~rainage ~~S~~system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the ~~S~~storm ~~D~~rainage ~~S~~system, or which may cause the Municipality to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the ~~d~~Discharge to prevent or minimize a ~~Non-Storm-Water~~ non-stormwater ~~D~~discharge to the ~~S~~storm ~~D~~rainage ~~S~~system.
- B. If the Person fails to comply with a suspension order issued in an emergency, the Enforcement Authority may take such steps as deemed necessary to prevent or minimize damage to the ~~S~~storm ~~D~~rainage ~~S~~system, or to minimize danger to persons, provided, however, that in taking such steps the Enforcement Authority may enter upon the Premises that are the source of the actual or threatened ~~Non-Storm-Water~~ non-stormwater ~~D~~discharge to the ~~S~~storm ~~D~~rainage ~~S~~system only with the consent of the Premises' owner, occupant or agent.

129 **16.9.7.8 Monitoring of Discharges.**

130 In order to determine compliance with this Ordinance, the Enforcement Authority may enter upon and
131 inspect Premises subject to this Ordinance at reasonable hours with the consent of the Premises' owner,
132 occupant or agent: to inspect the Premises and connections thereon to the ~~S~~storm ~~D~~rainage ~~S~~system; and
133 to conduct monitoring, sampling and testing of the ~~D~~ischarge to the ~~S~~storm ~~D~~rainage ~~S~~system.