

**TOWN OF ALLENSTOWN  
ILLCIT DISCHARGE ORDINANCE**

**CO 217.01**     **Purpose**<sup>[M1]</sup>

The purpose of this ordinance is to:

- A. Protect, maintain, and enhance the environment of the Town of Allenstown, New Hampshire and the public health, safety and the general welfare of the citizens of the town, by:
  1. Controlling discharges of pollutants to the Town's MS4 storm water system and maintaining and improving the quality of the receiving waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the Town, and
  2. Establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff, decreased groundwater recharge, and non-point source pollution associated with new development and redevelopment.
  3. Prevent illicit discharges into the Allenstown MS4 system.
- B. Enable the Town of Allenstown to comply with the requirements of the Town's Municipal Separate Storm Sewer System (MS4) General Permit issued by USEPA under the National Pollution Discharge Elimination System (NPDES) program and applicable regulations, including 40 CFR § 122.26 for stormwater discharges.
- C. Allow the Town of Allenstown to exercise the powers granted by the State of New Hampshire through RSA 129-I, RSA 149-I, and other applicable statutes to:
  1. Exercise general regulation over the planning, location, construction and operation and maintenance of stormwater facilities in the municipality, whether or not owned and operated by the municipality;
  2. Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;
  3. Establish standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants as may be necessary to protect water quality;
  4. Review and approve plans for stormwater management in proposed subdivisions or commercial developments or redevelopment;
  5. Issue permits or approvals for stormwater discharges or for the construction, alternation, extension, or repair of stormwater facilities;
  6. Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance or condition of the permit;
  7. Regulate and prohibit discharges into stormwater facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and

8. Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private.
- D. To support and work in conjunction with the groundwater protection and stormwater management provisions of the Allenstown Site Plan Regulations, the Allenstown Subdivision Regulations, the Allenstown Groundwater Protection Overlay District, and the Allenstown Permanent (Post-Construction) Stormwater Management Ordinance. Nothing in this Ordinance or these Regulations shall be used to establish more lenient standards than those that may be described in the aforementioned Town documents.

**CO 217.02**     **Definitions**<sup>[M2]</sup>

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word “shall” is mandatory and not discretionary. The word “may” is permissive. Words not defined in this section shall be defined elsewhere in this Ordinance, the Zoning Ordinance of the Town of Allenstown, or the Site Plan or Subdivision Regulations of the Town of Allenstown, or shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster’s Third New International Dictionary.

1. **Accidental Discharge** - A discharge prohibited by these regulations, which occurs by chance, and without planning or thought prior to occurrence.
2. **Best Management Practices (BMPs)** - A proven or accepted physical, structural, vegetative, and/or managerial practices that, when used singly or in combination, prevent or reduce erosion, sediment, peak storm discharge, and pollution of water, that have been approved by the Town of Allenstown, and that have been incorporated by reference into the Stormwater Regulations as if fully set out therein (see Section IV of Article XXV, Allenstown Municipal Separate Storm Sewer System (MS4) Post-Construction Stormwater Management Ordinance for recommended Best Management Practices manuals).
3. **Building Inspector** - Town staff charged with enforcing the Zoning Ordinance, issuing building permits, and inspecting buildings prior to occupancy as prescribed in the Allenstown Zoning Ordinance. The Building Inspector is authorized to support the Road Agent in administering this Ordinance and these Regulations.
4. **Channel** - A natural or artificial watercourse with a definite bed and banks that conducts flowing water continuously or periodically.
5. **Construction Activity** - Activities subject to the EPA Phase II Stormwater Program and the NPDES General Construction Permits. These include construction projects resulting in land disturbance. Such activities include but are not limited to clearing, grubbing, grading, excavating, and demolition.
6. **Contaminant** - Any physical, chemical, biological, or radiological substance or matter in water or on land.

7. **Discharge** - To dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means including any direct or indirect entry of any solid or liquid matter into the Municipal Storm Sewer System (MS4).
8. **Groundwater Protection Ordinance (GWPO)** - Town of Allenstown Zoning Ordinance, Article XXIV, Groundwater Protection Overlay District, dealing with the protection of groundwater resources in the Town of Allenstown.
9. **Highway Department** - Town Department responsible for the administration of road maintenance and public works activities within the Town of Allenstown.
10. **Illicit Discharge** - Any discharge to the Municipal Storm Sewer System (MS4) that is not composed entirely of stormwater, except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.
11. **Industrial Activity** - Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).
12. **Land Disturbing Activity** - Any activity on property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land-disturbing activities include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, and excavation.
13. **Maintenance** - Any activity that is necessary to keep a stormwater facility in good working order so as to function as designed. Maintenance shall include complete reconstruction of a stormwater facility if reconstruction is needed in order to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any problem on the site property that may directly impair the functions of the stormwater facility.
14. **Maintenance Agreement** - A document duly executed and recorded at the Merrimack County Registry of Deeds that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.
15. **Municipal Separate Storm Sewer System (MS4)** - The conveyances owned or operated by the municipality for the collection and transportation of stormwater, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, pump stations, and storm drains.
16. **National Pollutant Discharge Elimination System Permit (NPDES permit)** - A permit issued pursuant to 33 USC Section 1342(b) that authorizes the discharge of pollutants to the waters of the United States, whether the permit is applicable to an individual, group, or general area-wide basis.
17. **Non-Stormwater Discharge** - Any discharge to the storm drain system that is not composed entirely of storm water.
18. **Notice of Intent (NOI)** - Application to apply for coverage under the EPA's General Permit for Construction Activities.

19. **Permanent Post Construction Stormwater Management Ordinance** - Town of Allenstown Zoning Ordinance, Article XXV, Allenstown Municipal Separate Storm Sewer System (MS4) Post-Construction Stormwater Management Ordinance, that details requirements for stormwater management and site grading.
20. **Person** - Any and all persons, natural or artificial, including any individual, firm or association and any municipal or private corporation organized or existing under the laws of this or any other state or country.
21. **Pollutant** - Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage or litter, or other discarded or abandoned objects and accumulations, so that the same may cause or contribute to pollution; sediment; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete or cement; and noxious or offensive matter of any kind.
22. **Pollution** - The contamination or other alternation of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.
23. **Premises** - Any building, lot, parcel of land, or portion of land whether improved or unimproved including sidewalks and parking strips.
24. **Recharge** - The amount of water from precipitation that infiltrates into the ground and is not evaporated or transpired.
25. **Road Agent** - The Chief Administrator of the Town of Allenstown's Highway Department and is authorized to oversee the day-to-day administration of the Department and to oversee the implementation of the Town of Allenstown's Illicit Discharge Ordinance and Stormwater Regulations.
26. **Runoff** - That portion of the precipitation on a drainage area which is discharged from the area into the Municipal Separate Storm Sewer System.
27. **Sanitary Sewer Overflow (SSO)** – A discharge of untreated sanitary wastewater from a municipal sanitary sewer.
28. **Sediment** - Solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface either above or below sea level.
29. **Site Plan Regulations** - The Site Plan Regulations of the Town of Allenstown.

30. **Stabilization/Stabilized** - Providing adequate measures, vegetative and/or structural, that will prevent erosion from occurring or reducing the soil erosion rate such that it approaches that of undisturbed soils. Soils which are disturbed will be considered stabilized and protected when covered with a healthy, mature growth of grass or a good covering of straw mulch (2 tons per acre). Mulch is only a temporary measure; ultimately, the site needs vegetation.
31. **Stormwater** - Stormwater runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration and drainage.
32. **Stormwater Management** - The programs to maintain quality and quantity of stormwater runoff to pre-development levels.
33. **Stormwater Management Facilities** - The drainage structures, conduits, ditches, storm sewers, and all device appurtenances by means of which storm water is collected, transported, pumped, treated or disposed.
34. **Stormwater Management Plan** - The set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, BMPs, concepts and techniques intended to maintain or restore quality and quantity of stormwater runoff to pre-development levels.
35. **Stormwater Pollution Prevention Plan (SWPPP)** - A plan that clearly describes appropriate control measures that include a description of all pollution control measures (i.e. BMPs) that will be implemented as part of the construction activity to control pollutants in stormwater discharges and describes the interim and permanent stabilization practices for the site.
36. **Stormwater Runoff** - Flow on the surface of the ground, resulting from precipitation and drainage consisting entirely of water from any form of natural precipitation that is not absorbed or evaporated, and resulting from such precipitation.
37. **Stream** - Areas of flowing water occurring for sufficient time to develop and maintain defined channels but may not flow during dry portions of the year. Includes but is not limited to all perennial and intermittent streams located on U.E. Geological Survey Maps.
38. **Structural BMPs** - Devices that are constructed to provide control of stormwater runoff.
39. **Structural Stormwater Control** - A structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.
40. **Subdivision Regulations** - The Subdivision Regulations of the Town of Allentown.
41. **Surface Water** - Waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes and reservoirs.
42. **Town Administrator** - The Chief Administrative Officer of the Town of Allentown and primary representative of the Allentown Board of Selectmen who is authorized to oversee the day-to-day administration of the Town of Allentown at the direction of the Board of Selectmen.

43. **Town Engineer** - Town staff or consultant who provides professional engineering services and advice to the Town and its various boards and committees as a Professional Engineer (PE) licensed to do business in the State of New Hampshire.
44. **Town Planner** - Town staff or consultant, including Central New Hampshire Regional Planning Commission Circuit Rider(s), tasked with Town Planning staff support of the Planning Board as described in the Town of Allenstown Subdivision Regulations.

**CO 217.03 Administration and Applicability<sup>[M3]</sup>**

- A. Enforcement Authority - The Town of Allenstown Road Agent (or his/her designee) shall administer the provisions of this Ordinance and these Regulations, unless specified otherwise herein. In administering this Ordinance and these Regulations, the Road Agent may seek input, assistance, and support, as needed, from the Building Inspector, Town Planner, Town Engineer, Town Administrator and any other official or consultant, as needed, and as provided for in this Ordinance or its Regulations, Federal and State law or regulation.
- B. Applicability - The provisions of this Ordinance and these Regulations shall apply town-wide within the Town of Allenstown.

**CO 217.04 Prohibited Discharges<sup>[M4]</sup>**

- A. Violation of Water Quality Standard - No person, organization, or the Town shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the Town to violate a state surface water quality standard, the Town's Phase II MS4 NPDES permit, or any state-issued discharge permit for discharges from its MS4. Any prohibited discharge or illicit discharge shall be immediately removed and suspended.
- B. Introduction of Prohibited Substances - The following **discharges** are specifically prohibited and are not meant to be all inclusive:
1. Connecting sanitary sewer to storm sewer (MS4).
  2. Sanitary Sewer Overflows
  3. Any new or used motor oil, antifreeze, or other motor vehicle fluid;
  4. Any industrial wastes;
  5. Any hazardous waste, including hazardous household waste;
  6. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
  7. Any garbage, rubbish or yard waste;
  8. Any wastewater from:
    - a. A commercial carwash facility;
    - b. Any vehicle washing, cleaning or maintenance at any new or used automobile, or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or
    - c. From any washing, cleaning or maintenance of any business or commercial or public service vehicle, including truck, bus, or heavy equipment, by a business or public entity that operates more than two such vehicles;
  9. Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;
  10. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any harmful quantities of soap, detergent, degreaser, solvent, or any other harmful cleaning substance;

11. Any wastewater from any floor, rug or carpet cleaning;
  12. Any wastewater from the wash down or other cleaning of pavement that contains any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the wash down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substances has occurred, unless all harmful quantities of such released material have been previously removed;
  13. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler (including fly ash, slag ash or similar);
  14. Any ready-mixed concrete, mortar, ceramic, or asphalt base material, "urban fill," or hydro-mulch material, or from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying such material;
  15. Any runoff or wash down water from any animal pen, kennel, or fowl or livestock containment area;
  16. Any water from a swimming pool, fountain or spa containing any harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in the pool cleaning;
  17. Any water from a water curtain in a spray room used for painting vehicles or equipment;
  18. Any containment runoff from an auto salvage yard or junk yard;
  19. Any substance or material that will damage, block, or clog the MS4;
  20. Any release from a petroleum storage tank, or any leachate or runoff from soil contaminated by a leaking petroleum storage tank, or any discharge of pumped, confined, or treated waste water from the remediation of any such petroleum storage tank release, unless it complies with state and federal standards and does not contain any harmful quantity of any pollutant;
  21. Any pet waste from a commercial enterprise or livestock waste.
- C. Introduction of Earth-type Materials - No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities, (or associated with landfilling or other placement or disposal of soil, rock, or other earth materials) in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable (under the prevailing circumstances).
- D. Introduction of Sewage and Grey Water - No person shall connect a line conveying domestic sanitary or industrial sewage to the MS4; this includes grey water discharges such as washing machine discharge, sink drains, etc. or allow such a connection to continue.
- E. Service Station Pavement Wash Water - No person shall cause or allow any pavement wash water from a service station to be discharged into the MS4 unless such wash water has passed through a properly functioning and maintained, grease, oil, and sand interceptor before discharge into the MS4.
- F. Pesticide and Herbicide Use - No person shall use or cause to be used any pesticide or herbicide contrary to any directions for use on any labeling required by state or federal statute or regulation. Any use of any pesticide, herbicide, or fertilizer in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States shall be prohibited.
- G. Disposal of Pesticide and Herbicide - No person shall dispose of, discard, store, or transport a pesticide, herbicide, fertilizer, or a fertilizer container, in a manner that the person knows, or

reasonably should know, is likely to cause, or does cause, a harmful quantity of pesticide, herbicide, or fertilizer to enter the MS4, the water of the United States, or be disposed upon an impervious surface.

- H. Storage of Trash, Toxic Substances and Hazardous Wastes - No person shall allow trash, debris, and demolition debris to stand on property or collect on property nor allow the storage of toxic or hazardous substances on property so as to allow exposure to precipitation and stormwater runoff, which can affect stormwater discharge to the MS4 or the groundwater.
- I. Litter of Urban Ponds, Lakes, Streams or River Banks - Any residential, commercial or industrial property boundary, located within 150 feet of any pond, lake, stream or river bank, shall assure that trash, debris, demolition debris, materials, containers, grass clippings, leaf and yard waste, wood chips, material used for cover or any such other material, does not litter this buffer area by means natural (wind or storm movement of material), by careless discard of such materials, or by any other means that displaces these objects from the owner's property boundary to anywhere within the 150 foot buffer zone area.
- J. Allowable Discharges - Notwithstanding any provisions to the contrary, the following types of discharges into the storm drain system are exempt from the prohibitions set herein:
  - 1. Watering of lawns, landscaping and gardens;
  - 2. Washing of personal motor vehicles by residents;
  - 3. Draining of water from swimming pools or spas, after chlorine content of such water according to a test kit, shows a zero reading of chlorine;
  - 4. Flushing of water lines or other discharges from potable water sources;
  - 5. Flows from firefighting activities;
  - 6. Managed minimal amounts of air conditioning condensation;
  - 7. Uncontaminated pumped groundwater;
  - 8. Discharges from rising ground waters, springs, and flows from riparian habitats and wetlands;
  - 9. Non-contact cooling water discharged in accordance with a valid NPDES permit.

**CO 217.05      General Permitting and Approval Process<sup>[M5]</sup>**

- A. Construction General Permit - No landowner or land operator within the MS4 area, as described by the EPA, shall begin any site work of any building(s), grading or other land development or any land disturbance activities as outlined in 1 - 4 below without first obtaining an EPA Construction General Permit from EPA and submitting an Notice of Intent (NOI) to EPA Region I, receiving acknowledgement, having an approved Stormwater Pollution Prevention Plan (SWPPP) and meeting the requirements of this Ordinance. Property outside of the MS4 area shall be exempt.

Land Disturbance criteria:

- 1. Land disturbing activity disturbing 1 or more acres of land;
- 2. Land disturbing activity of less than 1 acre of land, if such activity is part of a larger common plan of development that affects 1 or more acres of land.
- 3. Land disturbing activity of less than 1 acre of land, if in the discretion of the Town's Building Inspector, in consultation with the Town Engineer and Road Agent, such an activity poses a unique threat to water, or public health or safety;



4. The creation and use of “borrow pits” (the excavation of soils from one area to be used in another area) that would meet any of the criteria of 1, 2, or 3 above.

EPA’s general permit contains eligibility restrictions, as well as permit conditions and requirements. Applicant(s) may have to take certain actions to be eligible for coverage under this permit. In such cases, the applicant must continue to satisfy those eligibility provisions to maintain permit authorization. If the applicant does not meet the requirements that are pre-condition to eligibility, then the resulting discharges constitute unpermitted discharges. By contrast, if the applicant does not comply with the requirements of the general permit, the applicant may be in violation of the general permit.

- B. Industrial General Permit - Any facility within the MS4 area, as described by the EPA and covered under the NPDES Multi-Sector General Permit for stormwater discharges associated with the industrial activities at the facility, must apply for coverage with EPA through the submittal of an NOI to EPA Region I, receive acknowledgement of coverage or continue of coverage if it is renewal of existing coverage, and have a SWPPP for the facility. Property outside of the MS4 area shall be exempt.

All operators of landfills, hazardous waste treatment, disposal, and recovery facilities and industrial facilities anywhere in Allentown are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, USC (S) 11023, and industrial facilities that the Town determines are contributing a pollutant load to the Municipal Separate Storm Sewer System, which are sources of stormwater discharges associated with industrial activity shall comply with Best Management Practices outlined in this Ordinance and its Regulations, as well as relevant portions of the Allentown Groundwater Protection Overlay District and the Permanent Post-Construction Stormwater Management Ordinance.

#### **CO 217.06 Town Application and Approval Requirements<sup>[M6]</sup>**

- A. Any land owner or operator who intends to obtain coverage for stormwater discharge associated with land disturbing activities described in Section CO 217.05A above or associated with industrial activity under NPDES Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“the Industrial General Permit”) as described in Section CO 217.05 B above, shall, in addition to the federal permit requirements:
  1. Submit a signed copy of its NOI to the Road Agent for review and approval at least 5 business days prior to the commencement of the land disturbing activity on the property and/or industrial activity at the facility, or if such activity is already underway upon the effective date of the Stormwater Regulations, the NOI shall be submitted within 30 days, and
  2. Submit to the Road Agent for review and approval a copy of the SWPPP prepared and implemented in accordance with the requirements of the EPA Construction or Industrial General Permit or any individual or group NPDES permit issued for stormwater discharges from the facility. The SWPPP shall be prepared to meet the requirements of 40 CFT 122.26.

The applicant should note that the Road Agent’s decisions will be made after consultation with the Town Engineer, Building Inspector, and Town Planner, as applicable. Any fees incurred during this process shall be paid for by the applicant. If the Road Agent feels that the Town Engineer and/or Town Planner will be utilized, and such positions are filled by a consultant, an escrow will be provided by the applicant to the Town in an amount specified by the consultant. Similar to other escrows for consulting services, any unused amounts will be returned to the

applicant and any additional escrow funds will need to be provided by the applicant if the initial amount is insufficient.

- B. Application Procedure: The following application procedure will apply for any construction project that meets the criteria of CO 217.05A above, whether a new development or a redevelopment as outlined within these Regulations:
1. Applications for land disturbance activity permits under this Section must be filed electronically through the Town of Allentown website.
  2. A narrative describing the project, the mitigation provisions, and a request for approval under this section (CO 217.06) shall be submitted.
  3. A copy of the narrative described above shall be forwarded to the Road Agent for review, who will seek input from the Building Inspector, Town Planner, and Town Engineer during the process.
  4. Permit applications shall include two copies of the Stormwater Pollution Prevention Plan, two copies of the maintenance agreement, and any required review fees and escrow fees.
  5. Within 30 business days of the receipt of the Stormwater Pollution Prevention Plan and maintenance agreement as required by these Regulations, the Road Agent shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved.
  6. If the Stormwater Pollution Prevention Plan or maintenance agreement are disapproved, the applicant may revise the Stormwater Pollution Prevention Plan or agreement. If additional information is submitted, the Road Agent will have 30 business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved. The Road Agent will seek input from Building Inspector, Town Planner, and Town Engineer during the process.
  7. If approval is sought as part of a Site Plan or Subdivision Application being considered by the Planning Board, both this permit and the Planning Board approval can be processed concurrently. The Planning Board may also conditionally approve the Site Plan or Subdivision provided that one of the conditions of approval is that the permit indicated in this Section is granted by the Road Agent. Denial of the permit by the Road Agent will invalidate the Planning Board's conditional approval in accordance with RSA 676:4, I (i).

The applicant should note that the Road Agent's decisions will be made after consultation with the Town Engineer, Building Inspector, and Town Planner, as applicable. Any fees incurred during this process shall be paid for by the applicant. If the Road Agent feels that the Town Engineer and/or Town Planner will be utilized, and such positions are filled by a consultant, an escrow will be provided by the applicant to the Town in an amount specified by the consultant. Similar to other escrows for consulting services, any unused amounts will be returned to the applicant and any additional escrow funds will need to be provided by the applicant if the initial amount is insufficient.

#### **CO 217.07 Stormwater Control Regulations<sup>[M7]</sup>**

Any land owner or land operator subject to the General EPA permitting requirements described in Sections CO 217.05A and/or 05B above, or whose land disturbance or industrial activity is otherwise determined by the Road Agent, Building Inspector, Town Planner, or Town Engineer to have the potential to:

- a. Degrade the quality of the receiving waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the Town of Allentown; or

- b. Significantly increase post-development stormwater runoff or decrease groundwater recharge, or result in any non-point source pollution; or
- c. Introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the Town to violate a State surface water quality standard, the Town's Phase II MS4 NPDES permit, or any State-issued discharge permit for discharges from its MS4;

shall be required to comply with the Best Management practices of this Ordinance and these Regulations and submit to the Road Agent for review and approval a SWPPP (per the process previously outlined above) including any information so required by the Road Agent to determine compliance with such Regulations. This is done in addition to any relevant provisions required by the Groundwater Protection Overlay District and/or the Permanent Post Construction Stormwater Management Ordinance.

**CO 217.08 Access and Inspection of Properties and Facilities<sup>[M8]</sup>**

Inspection of properties and facilities controlled by this Ordinance and these Regulations are authorized for the purpose of locating and identifying any and all illicit discharges. Inspections shall be governed by the following:

- A. The representative(s) of the Highway Department, Road Agent, and/or other designee, shall be permitted to enter and inspect properties and facilities at reasonable times (such as regular business hours) as often as may be necessary to determine compliance with this Ordinance and these Regulations.
- B. If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to the representative(s) of the Highway Department, Road Agent, and/or other designee,
- C. The owner or operator shall allow the representative(s) of the Highway Department, Road Agent, and/or other designee, ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of a National Pollutions Discharge Elimination System Permit to discharge stormwater.
- D. The Highway Department, Road Agent, and/or other designee, shall have the right to set up on any property or facility such devices as are necessary in the opinion of the Highway Department, Road Agent, and/or other designee, to conduct monitoring and/or sampling of flow discharges.
- E. The Highway Department, Road Agent, and/or other designee, may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the Highway Department, Road Agent, and/or other designee,. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure accuracy.
- F. Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the Highway Department, Road Agent, and/or other designee, and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.
- G. Unreasonable delays in allowing the Highway Department, Road Agent, and/or other designee, access to a facility shall be a violation of this Ordinance and these Regulations. A delay shall be considered unreasonable if the delay a) secedes one week (7 days), or b) any length of time if it is determined that the delay allowed the continuation of a discharge to the MS4 that is specifically prohibited by this Ordinance or these Regulations.

- H. If the Highway Department, Road Agent, and/or other designee, has been refused access to any part of the premises from which stormwater is discharged, and the Highway Department, Road Agent, and/or other designee, is able to demonstrate probable cause to believe that there may be a violation of this Ordinance or these Regulations, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designated to verify compliance with this Ordinance and these Regulations or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the Highway Department, Road Agent, and/or other designee, may seek issuance of a search warrant from any court of competent jurisdiction.

**CO 217.09 Notification of Accidental Discharges and Spills<sup>[M9]</sup>**

Notwithstanding other requirements of law, as soon as any person, or the Town, responsible for a facility, activity, operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the Town of Allenstown's Separate Storm Sewer System, State waters or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

Any person identified above that is required to respond as described in the previous paragraph, or is otherwise required to provide notification to the State in accordance with RSA 146-A:5 (NH Oil Spillage in Public Waters) or RSA 147-A:11 (NH Hazardous Waste Management Act), shall also provide notification to the Town of Allenstown Road Agent, Building Inspector, Fire Chief, and Town Administrator. The Town will immediately (as soon as possible) then provide notification to New Hampshire Department of Environmental Services and the United States Environmental Protection Agency as required by State law, Federal Law, and the Town of Allenstown's NPDES.

**CO 217.10 Violations, Enforcement and Penalties<sup>[M10]</sup>**

Violations, enforcement and penalties shall be controlled by the following provisions:

- A. It shall be unlawful for any person, entity, or the Town to violate any provision or fail to comply with any of the requirements of the Town's Illicit Discharge Ordinance or these Regulations. Any person who has violated or continues to violate these provisions may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law. Enforcement may, as determined by the Road Agent, come in the form of the administrative enforcement process as described in this Ordinance and these Regulations and RSA 676, prosecution in a court of competent jurisdiction in accordance with the requirements of the New Hampshire Judicial Branch, or a combination of the two. In the event the violation constitutes an immediate danger to public health or public safety, the Road Agent, Building Inspector, or other designee, is authorized to enter upon the subject private property on behalf of the interests of the Town, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Town of Allenstown, through the Board of Selectmen, is authorized to seek costs of the abatement as outlined in Section CO 217.10.F. The period of time between the identification and elimination of an illicit discharge is not a "grace period" wherein enforcement actions shall not be taken.

- B. Whenever the Highway Department or the Building Inspector finds that a violation of this Ordinance or these Regulations has occurred, the Building Inspector, on behalf of the Town, may order compliance by written notice of violation. He/she may seek input from the Town Engineer and/or Town Planner in order to make such a determination or to develop the language of the written notice of violation and any fees accrued for such consultation(s) shall be reimbursed by the violator. Where elimination of an illicit discharge within 60 days of its identification as an illicit discharge is not possible, the Town and violator shall establish an expeditious schedule for its elimination, including immediate and interim measures, and report the dates of identification and schedules for removal in the Town's annual reports. The notice of violation delivered to the party who is in violation shall comply with the requirements of the New Hampshire Judicial Branch.
- C. Such notice may require without limitation, the following at the violator(s)'s expense:
- 1) The performance of monitoring, analyses, and reporting;
  - 2) The immediate elimination of illicit discharges and illegal connections;
  - 3) The violating discharges, practices, or operations shall cease and desist;
  - 4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
  - 5) Payment of the costs to cover the Town's administrative and abatement costs; and,
  - 6) The implementation of pollution prevention practices.
- D. Appeal of Notice of Violation - Any person receiving a Notice of Violation may appeal the determination of the Official to the Zoning Board of Adjustment. The appeal must be received in accordance with the Zoning Board of Adjustment's process for appeals of administrative decisions. Filing an appeal does not relieve the owner from full compliance with remedial actions outlined in the Notice of Violation. Hearing on the appeal will take place in accordance with State law and the Zoning Board of Adjustment's public hearing process for the same.
- E. Enforcement Measures After Appeal - If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation and no appeal has relieved the alleged violator(s) of such action, then a representative of the Highway Department, the Road Agent, or a designee, may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person(s), owner(s), agent(s) or person in possession of any of the premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.
- F. Costs of Abatement of the Violation - Within 60 days after abatement of the violation(s), the owner(s) of the property/properties will be notified of the Town's cost of abatement, including administrative costs. The property owner(s) may file a written protest objecting to the assessment or to the amount of the assessment within 15 days of such notice to the Board of Selectmen. If the amount due is not paid within 30 days after receipt of the notice, or if an appeal taken, within 5 days after the decision on said 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 and administrative costs. Any person violating any of the provisions of this article shall become liable to the Town of Allenstown by reason of such a violation.
- G. Civil Penalties - The Town may seek civil penalties for violations of this ordinance. Civil fines may be imposed not to exceed \$10,000 per day for each occurrence and may be imposed for every day the each violation continues.

- H. Remedies not Exclusive - The remedies listed in this Ordinance and/or these Regulations are not exclusive of any other remedies available under any applicable Federal, State or local law and the Town of Allentown may seek cumulative remedies. The Town of Allentown may recover attorney's fees, court costs, engineering consultant fees, and planning consultant fees associated with the enforcement of this Ordinance and these Regulations, including sampling and monitoring expenses.
- I. Consent Agreements - The Board of Selectmen retain the authority to enter into a written consent agreement with the violator(s) to address timely abatement of the violation(s) of this Ordinance and these Regulations, for the purpose of eliminating violations of the same, and recovering fines, costs and fees without court action.

**CO 217.11 Severability Clause<sup>[M11]</sup>**

Should any portion or provision of this Ordinance or these Regulations be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance or these Regulations as a whole, or any part thereof other than the part so declared to be invalid.

**CO 217.12 Ordinance and Regulations in Force<sup>[M12]</sup>**

This Ordinance and these Regulations shall be in full force and effect from and after its passage, approval, recording and publications as provided by law.