

## MEMORANDUM

To: Robert Kosin, VBH Village Administrator

From: Daniel J. Strahan  
Gewalt Hamilton Associates

Date: December 17, 2010

Re: Illicit Discharge Ordinance  
Village of Barrington Hills

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It is understood that a proposed Illicit Discharge Ordinance is to be discussed at the December 20<sup>th</sup>, 2010 meeting of the Village Board. Pursuant to the requirements of the federal National Pollutant Discharge Elimination System (NPDES) program, our office had previously proposed adoption of a storm water management program. During discussion of this document, the Village Board had raised questions regarding the Village's legal authority to access private property as part of the program, and these questions were forwarded to the IEPA for review

The IEPA responded with the recommendation that the Village pass an Illicit Discharge Ordinance which would provide the legal framework for accessing private property as part of adoption of the stormwater management program.

**ORDINANCE REGULATING THE DISCHARGE OF POLLUTANTS  
INTO THE STORM WATER SYSTEM  
OF THE VILLAGE OF BARRINGTON HILLS**

**WHEREAS**, pursuant to the home rule powers of the Village of Barrington Hills (the “Village”), the President and Board of Trustees desire to provide for the regulation of pollutants into the storm water system of the Village.

**NOW, THEREFORE**, be it ordained by the President and Board of Trustees of the Village of Barrington Hills, Cook, Kane, Lake and McHenry Counties, Illinois, as a home rule municipality, the following:

Section One. Title Four of the Village Code shall be, and the same hereby is, amended by adding the following Chapter 7 titled Storm Water:

**4-7-1: INTENT AND PURPOSE.**

The purpose of this Chapter is to provide for the health, safety, and general welfare of the residents of the Village of Barrington Hills through the regulation of Non-Storm Water Discharges to the Village Storm Water System to the maximum extent practicable as required by federal and state law. This Chapter establishes methods for controlling the introduction of Pollutants into the Village's Storm Water System in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this Chapter are:

- (A) To regulate the contribution of Pollutants to the Village's Storm Water System by Storm Water discharges by any user;
- (B) To prohibit Illicit Connections and Illegal Discharges to the Storm Water System; and
- (C) To establish legal authority to carry out all inspection and monitoring procedures necessary to ensure compliance with this Chapter.

**4-7-2: DEFINITIONS.**

For the purposes of this Chapter 7, the following shall mean:

Authorized Enforcement Agency: The Village Enforcement Officer and Village Engineer.

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

Construction Activity. Activities subject to NPDES Construction Permits. NPDES Storm Water Phase II permits will be required for construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

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.

Illegal Discharge. Any direct or indirect Non-Storm Water Discharge to the Storm Water System, except as exempted in Section 4-7-3.

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

any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the Storm Water System including, but not limited to, any conveyances which allow any Non-Storm Water Discharge including sewage, process wastewater, and wash water to enter the Storm Water System and any connections to the Storm Water System from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the Authorized Enforcement Agency, or any drain or conveyance connected from a commercial or industrial land use to the Storm Water System which has not been issued an NPDES Storm Water Discharge Permit.

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

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

Non-Storm Water Discharge. Any discharge to the Storm Water System that is not composed entirely of Storm Water.

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

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

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

Storm Water System. Facilities by which Storm Water is collected and/or conveyed, including but not limited to any roads with drainage systems, roadside ditches, culverts, retention and detention basins, natural and human-made or altered drainage channels, streams, creeks, reservoirs, and other natural or man-made drainage facilities.

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

#### **4-7-3: DISCHARGE PROHIBITIONS.**

No person shall discharge or cause to be discharged into the Storm Water System any materials, including but not limited to Pollutants or waters containing any Pollutants that cause or contribute to a violation of applicable water quality standards, other than Storm Water. The commencement, conduct or continuance of any Illegal Discharge or Illegal Connection to the Storm Water System is prohibited, except as described as follows:

- (A) The following discharges are exempt from discharge prohibitions established by this Chapter: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming

pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.

- (B) Discharges specified in writing by the Authorized Enforcement Agency as being necessary to protect public health and safety.
- (C) The prohibition shall not apply to any Non-Storm Water Discharge permitted under an NPDES Storm Water Discharge Permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of such NPDES Storm Water Discharge Permit, waiver, or order and other applicable laws and regulations.

#### **4-7-4: INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.**

Any Person conducting Industrial Activities or Construction Activities that are subject to a NPDES Storm Water 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 Authorized Enforcement Agency prior to the allowing of discharges to the Storm Water System.

#### **4-7-5: MONITORING OF DISCHARGES.**

- (A) Applicability. This Section 4-7-5 applies to all Premises within the Village that have Storm Water discharges.
- (B) Access to Premises.
  1. The Authorized Enforcement Agency shall be permitted to enter and inspect the Premises subject to regulation under this Chapter as often as may be necessary to determine compliance with this Chapter. If the owner of the Premises has security measures in force which require proper identification and clearance before entry into the Premises, the owner shall make the necessary arrangements to allow access to representatives of the Authorized Enforcement Agency.
  2. Property owners shall allow the Authorized Enforcement Agency ready access to all parts of the Premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES Storm Water Discharge Permit to discharge Storm Water, and the performance of any additional duties as defined by state and federal law.
  3. The Authorized Enforcement Agency shall have the right to set up on any Premises such devices as are necessary, in the opinion of the Authorized Enforcement Agency, to conduct monitoring and/or sampling of the Premises' Storm Water discharge.
  4. The Authorized Enforcement Agency has the right to require the owner of the Premises to install monitoring equipment as necessary. Sampling and monitoring equipment installed on the Premises shall be maintained at all times in a safe and proper operating condition by the owner. All devices used to measure Storm Water flow and quality shall be calibrated to ensure their accuracy.
  5. Any temporary or permanent obstruction to safe and easy access to the part of the Premises to be inspected and/or sampled shall be promptly removed by the owner at the written or oral

request of the Authorized Enforcement Agency and shall not be replaced. The costs of clearing such access shall be borne by the owner.

6. Unreasonable delays in allowing the Authorized Enforcement Agency access to a Premises is a violation of this Chapter. A Person who is the owner of a Premises with a NPDES Storm Water Discharge Permit to discharge Storm Water associated with Industrial Activity commits an offense if the Person denies the Authorized Enforcement Agency reasonable access to the Premises for the purpose of conducting any monitoring or testing activity authorized or required by this Chapter.
7. If the Authorized Enforcement Agency has been refused access to any part of the Premises from which Storm Water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Chapter, 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 Chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Authorized Enforcement Agency may seek issuance of a search warrant from any court of competent jurisdiction.

#### **4-7-6: VIOLATIONS AND PENALTIES**

(A) Notice of Violation. Whenever the Authorized Enforcement Agency finds that a Person has violated a prohibition or failed to meet a requirement of this Chapter, the Authorized Enforcement Agency may order compliance by written notice of violation to the responsible Person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of Storm Water pollution or contamination hazards and the restoration of any affected property; and
5. Payment of a fine to cover administrative and remediation costs.

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) Appeals. Any Person receiving a Notice of Violation may appeal to the Village plan commission in accordance with the provisions of subsection 4-3-4(D) of this Title. Within 30 days following the plan commission hearing, the plan commission shall transmit its findings and recommendations in writing to the Village president and the board of trustees for final disposition.

**4-7-7 ENFORCEMENT MEASURES AFTER APPEAL.** 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 ten (10) days of the decision of the board of trustees upholding the decision of the Authorized Enforcement Agency, then representatives of the Authorized Enforcement Agency may enter upon the Premises and are authorized to take any and all measures necessary to abate the violation. It shall be unlawful for any

Person in possession of any Premises to refuse to allow the Authorized Enforcement Agency or its designated representatives to enter upon the Premises for such purposes.

**4-7-8 COST OF ABATEMENT OF THE VIOLATION.** Within thirty (30) days after abatement of the violation, the owner of the Premises will be notified of the cost of abatement, including administrative costs. If the amount due is not paid within a timely manner as determined by the decision of the Authorized Enforcement Agency, the charges shall become a special assessment against the Premises and shall constitute a lien on the Premises for the amount of the assessment.

**4-7-9 ULTIMATE RESPONSIBILITY.** The standards set forth herein and promulgated pursuant to this Chapter are minimum standards; therefore this Chapter does not intend nor imply that compliance by any Person will ensure that there will be no contamination, pollution, nor unauthorized discharge of Pollutants into the Storm Water System.

Section Two: Should any part or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance as a whole or any part thereof other than the part declared to be invalid.

Section Three: This ordinance shall be in full force and effect after its passage, approval and publication in pamphlet form.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

AYES: \_\_\_\_\_ NAYS: \_\_\_\_\_ ABSENT: \_\_\_\_\_

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Village President

ATTEST:

\_\_\_\_\_

Village Clerk