

**A RESOLUTION RECEIVING THE STAFF REPORT ON
THE TOWN'S STORMWATER PERMIT
AND SETTING A PUBLIC HEARING ON A
LAND USE ORDINANCE TEXT AMENDMENT
Resolution No. 145/2007-08**

WHEREAS, Carrboro entered into a 5-year NPDES stormwater permit on July 1, 2005 with the State of North Carolina; and

WHEREAS, Carrboro maintains a municipal separate storm sewer system (MS4); and

WHEREAS, Carrboro is committed to the ongoing high quality management of stormwater runoff within the Town's jurisdiction;

NOW THEREFORE, the Carrboro Board of Alderman does hereby:

1. Accept Staff recommendations for pursuing Year 3 NPDES stormwater permit to satisfy requirements for illicit discharge detection and elimination and Nutrient Sensitive Waters
2. Set a public hearing date of June 24, 2008 for the proposed land use ordinance amendments to satisfy Year 3 permit requirements.



TOWN OF CARRBORO

NORTH CAROLINA

TRANSMITTAL PLANNING DEPARTMENT

DELIVERED VIA: HAND MAIL FAX EMAIL

To: Steve Stewart, Town Manager
 Mayor and Board of Aldermen

From: Randy Dodd, Environmental Planner

Date: May 14th, 2008

Subject: Year 3 Report for NPDES Stormwater Permit

Background and Summary

Carrboro's is nearing completion of year 3 of its Phase II NPDES stormwater permit. Carrboro will need to report to NCDENR by the end of June on progress made in Year 3 towards permit requirements. In general terms, the permit requires the Town to design its program to: 1) reduce the discharge of pollutants to the "maximum extent possible" (MEP); 2) protect water quality; and 3) satisfy the appropriate water quality requirements of the Clean Water Act. Implementation generally requires the development and implementation of BMP's and measurable goals to satisfy each of six minimum control measures, as discussed below. The following report is an update to the report provided by staff to the BOA on April 15th, 2008

Information

The Town's NPDES permit requires the following new requirements for Year 3:

- II.D.2.a: Develop and implement an Illicit Discharge Detection and Elimination Program. This program is designed to detect and remove significant non-stormwater pollution sources being conveyed through the stormwater system. Include provisions for program assessment and evaluation.
- II.D.2.b: Establish and maintain adequate legal authorities to prohibit illicit discharges and enforce the approved Illicit Discharge Detection and Elimination Program.

- II.F.2.b: Develop and implement strategies that include a combination of structural and/or non-structural BMPs. Provide a mechanism to require long term operation and maintenance of structural BMPs. Require annual inspection reports of permitted structural BMPs performed by a qualified professional.
- II.F.2.d: For projects draining to Nutrient Sensitive Waters, develop, adopt, and implement an ordinance (or similar regulatory mechanism) to ensure that the best management practice for reducing nutrient loading is selected. In areas where the Environmental Management Commission has approved a Nutrient Management Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Develop and include a nutrient application (fertilizer and organic nutrients) management program in the Post-construction Stormwater Management Program.

Staff have prepared the following items to present to the BOA:

1. An illicit discharge program plan meeting the requirements for II.D.2.a to establish an illicit discharge detection and elimination program. This document is available for download at <http://www.townofcarrboro.org/pzi/Env/Water/swhome.htm>.
2. A proposed Town Code amendment meeting the requirements for II.D.2.b establishing the legal authority for illicit discharge detection and elimination.
3. Proposed Land Use Ordinance and Town Code text amendments meeting the requirements for II.F.2.d to address nutrient loading through BMP prioritization and landscape application of fertilizer and organic nutrients. (Staff are preparing this amendment to address the NPDES permit requirement in reference to Nutrient Sensitive Waters provisions for Jordan Lake as adopted in 1983; the amendments will not be intended to address draft Jordan Lake rules.) (TO BE DISTRIBUTED AT MEETING)

The Land Use Ordinance was updated in 2007 to satisfy requirements for II.F.2.b.

Staff Recommendation

Staff recommends that the Board of Aldermen adopt the attached resolution (Attachment A) accepting this memo and the draft Land Use Ordinance and Town Code amendments and setting a public hearing date.

AN ORDINANCE AMENDING THE CARRBORO TOWN CODE TO PROHIBIT
ILLCIT DISCHARGES INTO AND CONNECTIONS TO
THE TOWN'S STORM SEWER SYSTEM

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAIN:

Section 1. Chapter 5 (General Offenses) of the Carrboro Town Code is amended by adding thereto a new Article IV to read as follows:

ARTICLE IV

ILLCIT DISCHARGES INTO AND CONNECTIONS
TO STORM SEWER SYSTEM

Section 5-30. Purpose

The purpose of this article is to regulate illicit discharges into and connections to the storm sewer system in order to comply with the requirements of the town's National Pollutant Discharge Elimination System Permit.

Section 5-31. Definitions

Unless otherwise specifically provided, or unless otherwise clearly indicated by the context, the words and phrases defined in this section shall have the meaning indicated when used in this article.

(1) Administrator. The person assigned by the manager to enforce or otherwise perform any duties required under this article.

(2) Discharge. To put, place, dump, spill, pump, pour, or otherwise deposit any solid or liquid material.

(3) Illicit connection. Any drain, pipe, or other constructed or manufactured conveyance through which or by which any liquids, other than stormwater or those liquids listed in subsection 15-32(b), are conveyed and discharged directly into the storm sewer system or a surface water.

(4) Illicit discharge. A discharge that violates Subsection 5-32 (a)

(5) Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; soaps and cleaning solutions; kerosene, gasoline, oil and other automotive fluids; liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects or accumulations, to the extent that the same may cause or contribute to pollution; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, sewage sludge, fecal coliform and pathogens; dissolved and particulate metals; animal wastes;

ATTACHMENT C-2

dredged spoil; filter backwash; chemical wastes; biological materials; toxic materials; radioactive materials; wrecked or discarded equipment; sand; dirt; ashes and incinerator residue; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

(6) Pollution. The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water of the State or of the United States, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(7) Storm sewer system. A system of man-made structures owned by the Town of Carrboro or the North Carolina Department of Transportation or another State agency that is designed to collect or convey stormwater, including but not limited to streets (including associated curbs, gutters, drainage ditches, or swales), inlets, culverts, drainage pipes, detention or retention basins, and other drainage structures and facilities.

(8) Stormwater. Any surface flow, runoff, or drainage that occurs during or following any form of natural precipitation and that results from such precipitation.

(9) Surface waters. All, streams, lakes, and ponds that appear as surface waters on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS).

Section 5-32. Illicit Discharges Prohibited.

(a) No person may discharge or cause to be discharged, or allow to be discharged from property under such person's control, any pollutant directly or indirectly into the storm sewer system or into surface waters.

(1) A direct discharge occurs when a pollutant is discharged within the physical limits of the storm sewer system or within the banks of a stream or inside the mean high water level of a pond or lake.

(2) An indirect discharge occurs when a pollutant is discharged outside the physical limits of the storm sewer system or outside the banks of a stream or beyond the mean high water level of a pond or lake but takes place in such a manner or location that the pollutant is carried into the storm sewer system or surface water in some way other than by action of the wind or stormwater. By way of illustration without limitation, an indirect discharge would occur if water from a commercial car wash is discharged onto the area where the cars are washed and allowed to drain into a public street.

ATTACHMENT C-3

(3) An indirect discharge also occurs when a pollutant is discharged (i) outside the physical limits of the storm sewer system or outside the banks of a stream or beyond the mean high water level of a pond or lake, but (ii) with the specific intent that the pollutant be disposed of by being carried (by the wind or stormwater or otherwise) into the storm sewer system or a surface water, and (iii) the pollutant or some part or portion thereof does reach the storm sewer system or surface water. By way of illustration without limitation, dumping used oil near the edge of a stream with the intent that the next rain carry the oil into the stream constitutes an indirect discharge within the meaning of this subsection.

(b) Notwithstanding the other provisions of this article, the following shall not be regarded as constituting an illicit discharge:

- (1) Water line or hydrant flushing;
- (2) Landscape or garden irrigation or lawn watering;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources;
- (8) Foundation drains;
- (9) Air conditioning condensation;
- (10) Springs;
- (11) Water from crawl space pumps;
- (12) Footing drains;
- (13) Individual residential car washing or charity car washing;
- (14) Flows from riparian habitats and wetlands;
- (15) Dechlorinated swimming pool discharges;
- (16) Street wash water;
- (17) Flows from fighting fires
- (18) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina.

Section 5-33. Illicit Connections Prohibited

(a) No person may cause, suffer, or permit on property under such person's control any illicit connection to the storm sewer system, including without limitation connections of drains or lines that convey sewage, process wastewater, wastewater from washing machines, wash water from commercial vehicle washing or steam cleaning, or water from indoor sinks or floor drains.

(b) Subject to subsection (c), if, on the effective date of this article, an illicit connection as defined in this article exists, then such situation shall not be considered a violation of this article until ninety (90) days after the town mails by first class mail written notice to the owner (according to the most recent property records) of the

ATTACHMENT C-4

property where the condition exists, informing such owner of the nature of the violation and what must be done to correct it.

(c) The ninety day grace period provided for in subsection (b) of this section shall not apply if the administrator concludes that an illicit connection:

(1) Is likely to result in the discharge of hazardous materials or otherwise pose an immediate threat to health or safety, or is likely to result in immediate injury to real or personal property, natural resources, wildlife, or habitat; or

(2) Was made in violation of any applicable statute, regulation, or ordinance.

Section 5-34 Inspections

(a) Upon the presentation of proper credentials, town officers, agents, and employees engaged in the enforcement of this article shall have a right to enter on any premises within the town at all reasonable hours for the purpose of making inspections or carrying out other enforcement actions under this article.

(b) No person may obstruct or interfere with any town officer, agent, or employee of the town engaged in the lawful performance of any task authorized or required by this article.

Section 5-35 Enforcement

Penalties and remedies available for enforcement of the provisions of this article are set forth in Section 5-21 of this chapter. In addition, nothing in this article is intended to preclude the town from resorting in appropriate circumstances to the procedures set forth in Chapter 11, Article V, Part 2 of the Town Code dealing with the summary abatement of conditions dangerous or prejudicial to the public health.

Section 2. Section 5-21 of the Town Code is amended by revising subsection (b) and adding a new subsection (b1) as follows:

(b) Subsection to subsection (b1), a violation of any of the provisions of this chapter shall subject the offender to a civil penalty of twenty-five dollars for the first offense, fifty dollars for the second offense within a thirty-day period, and one hundred dollars for the third or any additional offense that occurs within any thirty-day period. If a person fails to pay this penalty within ten days after being cited for a violation, the town may seek to recover the penalty by filing a civil action in the nature of debt.

(b1) A violation of the provisions of Article IV of this chapter shall subject the offender to a civil penalty of up to five thousand dollars (\$5,000.00). In determining the amount of the civil penalty assessment, the administrator shall consider the following factors, and the decision levying a civil penalty shall cite those factors deemed applicable:

ATTACHMENT C-5

(1) The degree and extent of harm to the natural resources of the town, to the public health, or to private property resulting from the violation;

(2) The duration and gravity of the violation;

(3) The cost to the violator or others of rectifying the damage;

(4) The amount of money saved by the violator by noncompliance;

(5) Whether the violation was committed willfully or intentionally, negligently, or as the result of an unforeseeable or unavoidable accident;

(6) Whether the violator promptly ceased the violation upon notice by the town and took whatever steps were reasonably possible to limit or correct any damage caused by the violation;

(7) The prior record of the violator in complying or failing to comply with the provisions of Article IV of this chapter;

(8) The cost to the town of the enforcement procedures;

(9) Whether the civil penalty is levied for a single day's violation or a single event or whether it is levied on a daily basis for a continuing violation, as authorized under subsection (d) below. Civil penalties levied on a daily basis may cumulatively exceed the \$5,000.00 cap set forth in this subsection.

Section 3. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 4. This ordinance shall become effective upon adoption.