

Implementing the IDDE Legal Authority

Many MS4 towns have expressed concerns about whether the IDDE legal authority can legally be implemented because of a requirement to regulate illicit discharges to the MS4, including those from private properties.

DEEP provided some additional guidance which is copied below. This guidance is intended to help clarify the requirement but not to serve as legal advice.

First thing, the MS4 general permit doesn't require towns to gain access to private property. From DEEP: "The General Permit is intentionally flexible and some towns have clearly found it best to adopt model ordinances that prohibit illicit discharges and call for inspection and regulation while still respecting the concept of private property and the need to secure an administrative search warrant or court order when denied access. The GP does not mandate unfettered access to private property. It is assumed that Town's would establish authority in line with all other legal requirements, including the State and U.S. Constitution."

The example IDDE ordinance we (NEMO) provided was developed from an EPA model ordinance. It includes provisions to gain access to private property in Section 10.B. This section and others, go beyond the minimum permit requirements. We decided to keep most of the EPA content in our example ordinance, make some changes to match the new permit language, and then provide an outline of the minimum permit requirements to help towns customize the ordinance to their needs.

DEEP also provided an overview of the General Statute that gives municipalities the ability to implement the legal authorities from the new permit:

There is a general provision related to municipalities ([sec. 7-148 of the General Statutes](#)) that provides the broad scope of municipal authority which individual cities and towns would then use to craft and enact their own specific ordinances or other legal authority to comply with the General Permit in accordance with their municipal charters. This general authority touches broadly on a lot of subject matters and relevant provisions include authority to:

- *Create, provide for, construct, regulate and maintain all things in the nature of public works and improvements*
- *Regulate plumbing and house drainage*
- *Prohibit or regulate the construction of dwellings, apartments, boarding houses, hotels, commercial buildings, youth camps or commercial camps and commercial camping facilities in such municipality unless the sewerage facilities have been approved by the authorized officials of the municipality;*
- *Provide for the health of the inhabitants of the municipality and do all things necessary or desirable to secure and promote the public health;*
- *Make and enforce police, sanitary or other similar regulations and protect or promote the peace, safety, good government and welfare of the municipality and its inhabitants*
- *Provide for the protection and improvement of the environment including, but not limited to, coastal areas, wetlands and areas adjacent to waterways in a manner not inconsistent with the general statutes;*

If you'd like some legal advice...

The Connecticut Conference of Municipalities and CT Coalition of Small Towns were involved in the formation of the GP. Individual towns can also be directed to those organizations for some insight on how to comply with the permit conditions through their own municipal authority. In addition, town counsel should more directly weigh in on the authority of individual towns and their compliance with the General Permit.