

# Local Law 2 of 2007

## *Local Law Filing*

NEW YORK STATE DEPARTMENT OF STATE  
41 State Street, Albany NY 12231

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### Village of Muttontown

#### Local Law 2 of 2007

**A local law adding Chapter 78 (“Illicit Discharges, Activities, and Connections to Separate Storm Sewer System”), sections 78-1 to 7-17 of the Code of Muttontown to regulate non storm water discharges to the Municipal Separate Stormwater System.**

**Be it enacted by the Board of Trustees of the Village of Muttontown as follows:**

#### **Chapter 78: ILLICIT DISCHARGES, ACTIVITIES, AND CONNECTIONS TO SEPARATE STORM SEWER SYSTEM**

[HISTORY: Adopted by the Board of Trustees of the Village of Muttontown April 10, 2007 by L.L. No. 1-2007.]

##### **§ 78-1. Intent.**

A. It is the intent of this legislation to adopt a local law prohibiting Illicit Discharges, Activities, and Connections to the Village of Muttontown (Village) Separate Storm Sewer System that will satisfy the relevant part of the Phase II Stormwater Management requirements of the National Pollutant Discharge Elimination System regulations, administered by New York State through the State Pollutant Discharge Elimination System (SPDES) regulations and to provide for the health, safety, and general welfare of the citizens of the Village through the regulation of non-stormwater discharges to the Municipal Separate Stormwater System (MS4) to the maximum extent practicable as required by federal and state law. This Chapter establishes methods for controlling the introduction of Pollutants into the MS4 in order to comply with requirements of the SPDES General Permit for MS4s.

B. The objectives of this Chapter are:

- (1) To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit no. GP-02-02 or as amended or revised;
- (2) To regulate the contribution of Pollutants to the MS4 since such systems are not designed to accept, process, or discharge non-stormwater wastes;
- (3) To prohibit Illicit Connections, Activities, and Discharges to the MS4;
- (4) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this law; and
- (5) To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment, and other Pollutants into the MS4.

**§ 78-2. Definitions.**

A. For the purposes of this Chapter, certain terms and words are hereby defined. Words used in the present tense include the future, words in the singular include the plural, and words in the plural include the singular; the word "shall" is mandatory.

B. As used in this Chapter, the following terms shall have the meanings indicated.

**BEST MANAGEMENT PRACTICES** - Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of Pollutants directly or indirectly to Stormwater, receiving waters, or Stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

**BMPs** - Best Management Practices.

**CLEAN WATER ACT** - The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

**CONSTRUCTION ACTIVITY** - An activity requiring authorization under the SPDES permit for Stormwater discharges from Construction Activity, GP-02-0 1, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

**DEC** - The New York State Department of Environmental Conservation.

**DESIGN PROFESSIONAL** - A professional engineer or architect licensed by the State.

**EPA** - The federal Environmental Protection Agency.

**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.

**ILLICIT CONNECTIONS** - Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including but not limited to:

A. Any conveyances which allow any non-stormwater discharge including treated or untreated sewage, process Wastewater, and wash water to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or

B. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

**ILLICIT DISCHARGE** - Any direct or indirect non-stormwater discharge to the MS4, except as

exempted in this Chapter.

**INDIVIDUAL SEWAGE TREATMENT SYSTEM** - An on site sewage treatment system generally found in an area without public sewers, commonly consisting of a septic tank, leaching facilities and/or other appurtenant components, that serves a single residence or building.

**INDUSTRIAL ACTIVITY** - An activity requiring a SPDES permit for discharges from industrial activities except construction, GP-98-03, as amended or revised.

**MS4** - Municipal Separate Stormwater System.

**MUNICIPAL SEPARATE STORMWATER SYSTEM** - A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- A. Owned or operated by the Village;
- B. Designed or used for collecting or conveying Stormwater;
- C. Which is not a combined sewer; and
- D. Which is not part of a Publicly Owned Treatment Works as defined at 40CFR 122.2.

**NYCRR** - New York Code, Rules, and Regulations

**NON-STORMWATER DISCHARGE** - Any discharge to the MS4 that is not composed entirely of Stormwater.

**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** - Dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, and industrial, municipal, agricultural waste and ballast discharged into water; which may cause or reasonably be expected to cause pollution of the waters of the State in contravention of pertinent standards promulgated by the federal government, the State, the Village, or any other municipality or department thereof, having legal jurisdiction to impose such standards.

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

**SMO** - The Stormwater Management Officer.

#### **SPECIAL CONDITIONS**

**A. Discharge Compliance with Water Quality Standards** - A condition that applies when the Village has been notified that the discharge of Stormwater authorized under its MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition the Village must take necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.

**B. 303(d) Listed Waters** - A condition in the Village's MS4 permit that applies when the MS4 discharges to a 303(d) listed water. Under this condition the Stormwater Management Program must ensure no increase of the listed Pollutant of Concern to the 303(d) listed water.

**C. Total Maximum Daily Load Strategy** - A condition in the Village's MS4 permit where a TMDL, including requirements for control of Stormwater discharges, has been approved by EPA for a

waterbody or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL Stormwater allocations prior to September 10, 2003, the Village shall modify its Stormwater Management program to ensure that reduction of the Pollutant of concern specified in the TMDL is achieved.

D. A condition in the Village's MS4 permit that applies if a TMDL is approved in the future by EPA for any waterbody or watershed into which an MS4 discharges. Under such condition the Village shall review the applicable TMDL to see if it includes requirements for control of Stormwater discharges. If an MS4 does not meet the TMDL Stormwater allocations, the Village shall, within six (6) months of the TMDL's approval, modify its Stormwater Management program to ensure that reduction of the Pollutant of concern specified in the TMDL is achieved.

SPDES – State Pollutant Discharge Elimination System.

STATE-The State of New York.

SPDES General Permit for Construction Activities GP-02-01 - A DEC SPDES permit issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02 - A DEC SPDES permit issued to municipalities to regulate discharges from Municipal Separate Storm Sewers for compliance with EPA established water quality standards and/or to specify Stormwater control standards.

SPDES STORMWATER DISCHARGE PERMIT - A permit issued by DEC that authorizes the discharge of Pollutants to waters of the State.

STORMWATER - Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT OFFICER - A designated officer of the Village to enforce this Chapter, to be appointed at the Village annual organizational meeting.

303(d) LIST - A list of all surface waters in the State for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by Pollutants, prepared periodically by the DEC as required by Section 303(d) of the Clean Water Act. 303(d) listed waters are estuaries, lakes, and streams that fall short of state surface water quality standards and are not expected to improve within the next two years.

TMDL - Total Maximum Daily Load.

TOTAL MAXIMUM DAILY LOAD - The maximum amount of a Pollutant allowed to be released into a waterbody so as not to impair uses of the water, allocated among the sources of that Pollutant.

WASTEWATER - Water that is not Stormwater, is contaminated with Pollutants, and is or will be discarded.

### **§ 78-3. Applicability.**

This Chapter shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

### **§ 78-4. Responsibility for administration.**

The SMO shall administer, implement, and enforce the provisions of this Chapter.

### **§ 78-5. Discharge and illicit connection prohibitions.**

#### A. Prohibition of Illegal Discharges.

No person shall discharge, cause or knowingly allow to be discharged into the MS4 any materials other than Stormwater. The commencement, conduct, or continuance of any illegal discharge to the MS4 is prohibited, except as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this Chapter, unless DEC or the Village has determined them to be substantial contributors of Pollutants: water line flushing or other potable water source flushing, landscape irrigation or lawn watering, existing diverted stream flows, rising ground water, uncontaminated ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains, crawl space or basement sump pumps, air conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire fighting activities, and any other water source not containing Pollutants.
- (2) Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that, such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this Chapter.
- (3) Dye testing in compliance with applicable State, County and Village regulations is an allowable discharge, but requires a notification to the SMO prior to the time of the test.
- (4) The prohibition shall not apply to any discharge permitted under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of DEC, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

#### B. Prohibition of Illicit Connections.

- (1) The construction, use, maintenance, or continued existence of Illicit Connections to the MS4 is prohibited.
- (2) This prohibition expressly includes, without limitation, Illicit Connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (3) A person is considered to be in violation of this Chapter if the person connects a line conveying sewage to the Village's MS4, causes or allows such a connection to continue.

#### **§ 78-6. Prohibition against failing Individual Sewage Treatment Systems.**

No persons shall operate a failing Individual Sewage Treatment System in areas tributary to the municipality's MS4. A failing Individual Sewage Treatment System is one which has one or more of the following conditions:

- A. The backup of sewage into a structure.
- B. Discharges of treated or untreated sewage onto the ground surface.
- C. A connection or connections to a separate Stormwater sewer system.

D. Liquid level in the septic tank above the outlet invert.

E. Structural failure of any component of the Individual Sewage Treatment System that could lead to any of the other failure conditions as noted in this subsection.

F. Contamination of off-site groundwater.

**§ 78-7. Prohibition against activities contaminating Stormwater.**

A. The following activities are prohibited:

(1) Those types of activities that cause or contribute to:

(a) a violation of the Village's MS4 SPDES permit; and/or

(b) the Village being subject to Special Conditions.

(2) Failing Individual Sewage Treatment Systems;

(3) Improper management of pet waste; and

(4) Any other activity that causes or contributes to a violation of the Village's MS4 SPDES permit authorization.

B. Upon notification to a person that such person is engaged in activities that cause or contribute to violations of the Village's MS4 SPDES permit or permit authorization, such person shall immediately commence and continue thereafter with all due diligence to take all reasonable actions to correct such activities such that such person no longer causes or contributes to violations of the Village's MS4 SPDES permit authorization.

**§ 78-8. Requirement to prevent, control, and reduce Stormwater Pollutants by the use of BMPs.**

A. Best Management Practices.

(1) Where the SMO has identified Illicit Discharges or activities contaminating Stormwater, the Village may require implementation of BMPs to control those Illicit Discharges and activities.

(2) The owner or operator of a commercial or industrial establishment shall provide, at its own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and non-structural BMPs.

(3) Any person responsible for a property or premise, which is, or may be, the source of an Illicit Discharge or an activity contaminating Stormwater, may be required to implement, at said person's expense, additional structural and non-structural BMPs to reduce or eliminate the source of Pollutant(s) to the MS4.

(4) Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of Stormwater associated with Industrial Activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

B. Individual Sewage Treatment Systems - Response to Special Conditions Requiring No Increase of Pollutants or Requiring a Reduction of Pollutants.

(1) Where Individual Sewage Treatment Systems are contributing to the Village's being subject to the Special Conditions, the owner or operator of such Individual Sewage Treatment Systems shall be required to:

(a) Maintain and operate Individual Sewage Treatment Systems as follows:

[1] Inspect the septic tank annually to determine scum and sludge accumulation. Septic tanks must be pumped out whenever the bottom of the scum layer is within three inches of the bottom of the outlet baffle or sanitary tee or the top of the sludge is within ten inches of the bottom of the outlet baffle or sanitary tee.

[2] Avoid the use of septic tank additives.

[3] Avoid the disposal of excessive quantities of detergents, kitchen wastes, laundry wastes, and household chemicals; and

[4] Avoid the disposal of cigarette butts, disposable diapers, sanitary napkins, trash, and other such items.

[5] Most tanks should be pumped out every two to three years. However, pumping may be more or less frequent depending on use. Inspection of the tank for cracks, leaks and blockages should be done by the septage hauler at the time of pumping of the tank contents.

(b) Repair or replace Individual Sewage Treatment Systems as follows:

[1] In accordance with 10 NYCRR Appendix 75A, as the same may be amended or superseded from time to time, to the maximum extent practicable.

[2] A Design Professional shall prepare design plans for any type of absorption field that involves:

a) Relocating or extending an absorption area to a location not previously approved for such.

b) Installation of a new subsurface treatment system at the same location.

c) Use of alternate system or innovative system design or technology.

[3] A written certificate of compliance shall be submitted by the Design Professional to the Village at the completion of construction of the repair or replacement system.

## **§ 78-9. Emergency situations.**

### **A. Suspension of access to MS4.**

The SMO shall, without the need for prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4. The SMO shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.

### **B. Suspension due to the detection of Illicit Discharge.**

Any person discharging, causing a discharge or knowingly allow a discharge to the Village's MS4 in violation of this Chapter may have its MS4 access terminated if such termination would abate or reduce an Illicit Discharge. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the Board of Trustees for a reconsideration and hearing. Access may be granted by the Board of Trustees if the Board of Trustees finds that the Illicit Discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the Board of Trustees determines in writing that the Illicit Discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to Premises terminated pursuant to this subsection, without the prior approval of the SMO or the Board of Trustees.

**§ 78-10. Industrial or Construction Activity discharges.**

Any person subject to an industrial or Construction Activity SPDES Stormwater 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 SMO prior to the allowing of discharges to the MS4.

**§ 78-11. Access and monitoring of discharges.**

A. Applicability.

This section applies to all facilities that the SMO must inspect to enforce any provision of this Chapter or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any Premises any condition which constitutes a violation of this Chapter.

B. Access to Facilities.

(1) The SMO shall be permitted to enter and inspect facilities subject to regulation under this Chapter as often as may be necessary to determine compliance with this Chapter. If a discharger has security measures in force which require proper identification and clearance before entry into its Premises, the discharger shall make the necessary arrangements to allow access to the SMO.

(2) Facility operators shall allow the SMO ready access to all parts of the Premises for the purposes of inspection, sampling, examination, and copying of records as may be required to implement this Chapter.

(3) The Village shall have the right to set up on any facility subject to this Chapter such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's Stormwater discharge.

(4) The Village has the right to require the facilities subject to this Chapter to install monitoring equipment as is reasonably necessary to determine compliance with this Chapter.

(5) The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure Stormwater flow and quality shall be calibrated to ensure their accuracy.

(6) Unreasonable delays in allowing the Village access to a facility subject to this Chapter is a violation of this Chapter. A person who is the operator of a facility subject to this Chapter commits an offense if the person denies the Village reasonable access to the facility for the purpose of conducting any activity authorized or required by this Chapter.

(7) If the SMO has been refused access to any part of the Premises from which Stormwater is discharged, and the SMO is able to demonstrate reasonable 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, then the SMO may seek issuance of a search warrant from the Village Court or, at its option, any other court of competent jurisdiction.

#### **§ 78-12. Notification of spills.**

A. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or Pollutants discharging into the MS4, said person shall take necessary steps to ensure the discovery, containment, and cleanup of such release.

B. In the event of such a release of Hazardous Materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.

C. In the event of a release of non-hazardous materials, said person shall notify the Village in person or by telephone or facsimile no later than the next business day.

D. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Village within three business days of the telephone notice.

E. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

#### **§ 78-13. Enforcement and penalties.**

A. Notice of violation.

When the SMO or other designee of the Board of Trustees determines that a person has violated a prohibition or failed to meet a requirement of this Chapter, the SMO or such designee shall order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:

- (1) The elimination of Illicit Connections or discharges;
- (2) That violating discharges, practices, or operations shall cease and desist;
- (3) The abatement or remediation of Stormwater pollution or contamination hazards and the restoration of any affected property;
- (4) The performance of monitoring, analyses, and reporting;
- (5) The implementation of source control or treatment BMPs.

(6) 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 Village may perform or have independent contractors perform the remediation or restoration and the cost thereof shall become a lien upon the land until paid, and if not paid, at the option of the Mayor, may be added to the current tax bill for the subject Premises and collected in the same manner and with the annual Village real estate taxes.

#### B. Violations.

Any activity that is commenced or is conducted contrary to this Chapter may be enforced by injunction or otherwise abated in a manner provided by law.

#### C. Penalties.

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Chapter shall be guilty of a violation punishable by a fine not exceeding three hundred fifty dollars (\$350) or imprisonment for a period not to exceed 15 days, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars nor more than seven hundred dollars (\$700) or imprisonment for a period not to exceed 15 days, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars nor more than one thousand dollars (\$1,000) or imprisonment for a period not to exceed 15 days, or both. Violations of this Chapter shall be not be deemed misdemeanors. Each week's continued violation shall constitute a separate additional violation.

#### **§ 78-14. Injunctive relief.**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this law. If a person has violated or continues to violate the provisions of this law, the Board of Trustees may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

#### **§ 78-15. Violations deemed a public nuisance.**

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

#### **§ 78-16. Remedies not exclusive.**

The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

**§ 78-17. Severability.**

If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this local law shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section., subsection, paragraph, subdivision, or clause of this local law.

This local law is effective upon filing with the Secretary of State.

**Final adoption by the Board of Trustees of the Incorporated Village of Muttontown.**

I hereby certify that the local law annexed hereto, designated as Local Law 1 of 2007 of the Village of Muttontown was duly passed by the Board of Trustees on April 10, 2007, in accordance with the applicable provisions of law.

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript thereof and of the whole of such original local law, and was finally adopted by the Board of Trustees of the Incorporated Village of Muttontown.

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Vivien Van Wagner  
Village Clerk/Treasurer

Village of Muttontown  
Date: April 10, 2007

*Seal*

Certification by the Village Attorney

STATE OF NEW YORK  
COUNTY OF NASSAU

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

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Steven G. Leventhal  
Village Attorney

Village of Muttontown

Date: April 10, 2007