

## ARTICLE XXXI ILLICIT DISCHARGE

### 1. PURPOSE

Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding. Regulation of illicit connections and discharges to the Town of Weston municipal storm drain system is necessary for the protection of the town's water bodies and groundwater and to safeguard the public health, safety, welfare and the environment.

a) The objectives of this By-law are:

1. to prevent pollutants from entering Weston's municipal separate storm sewer system (MS4);
2. to prohibit illicit connections and unauthorized discharges to the MS4;
3. to require the removal of all such illicit connections;
4. to comply with state and federal statutes and regulations relating to stormwater discharges; and
5. to establish the legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring, and enforcement.

### 2. DEFINITIONS

For the purposes of this bylaw, the following shall mean:

Authorized Enforcement Agency - The Board of Selectmen or other employees or agents designated by the Board of Selectmen.

Clean Water Act - The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

Discharge of Pollutants - The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

Groundwater - Water beneath the surface of the ground and not confined in a conduit or container.

Illicit Connection - A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or

toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this bylaw.

Illicit Discharge - Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 8. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit.

Municipal Separate Storm Sewer System (MS4) or Municipal Storm Drain System - The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Weston.

National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges - A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of stormwater to waters of the United States.

Non-Stormwater Discharge - Discharge to the municipal storm drain system not composed entirely of stormwater.

Person - Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agency, public or quasi-public corporation or body, the Town of Weston, and any other legal entity, its legal representatives, agents, or assigns.

Pollutant - Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include, but not be limited to, the following:

- (1) paints, varnishes, and solvents;
- (2) oil and other automotive fluids;
- (3) non-hazardous liquid and solid wastes and yard wastes;
- (4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- (5) pesticides, herbicides, and fertilizers;
- (6) hazardous materials and wastes; sewage, fecal coliform and pathogens;

- (7) dissolved and particulate metals;
- (8) animal wastes;
- (9) rock, sand, salt, soils;
- (10) construction wastes and residues; and
- (11) noxious or offensive matter of any kind.

Process Wastewater - Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product. Process wastewater includes water which has increased in temperature as a result of manufacturing or other processes.

Stormwater/Runoff - Rainwater, snowmelt and/or other water that flows off surfaces and across or over the ground surface rather than being absorbed into the soil.

Surface Water Discharge Permit - A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.

Toxic or Hazardous Material or Waste - Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under G.L. Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

Watercourse - A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

Wastewater - Any sanitary waste, sludge, or septic tank or cesspool contents or discharge, and/or process wastewater.

Waters of the Commonwealth - All waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

### **3. APPLICABILITY**

This bylaw shall apply to flows entering the municipally owned storm drainage system.

### **4. AUTHORITY**

This bylaw is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

## **5. ADMINISTRATION**

The Board of Selectmen is delegated hereby the responsibility and authority to administer, implement and enforce this By-Law. The Board of Selectmen may appoint the DPW Director or the Town Engineer or such other town employee as the Board of Selectmen may from time-to-time determine and designate in writing to aid the Board of Selectmen in the enforcement and/or administration of the By-Law (herein referred to as Authorized Enforcement Agency).

- 5.1 Entry to Perform Duties Under this Bylaw. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Town Engineer, and other employees designated by the Board of Selectmen may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Town Engineer deems reasonably necessary.

## **6. REGULATIONS**

The Board of Selectmen shall promulgate rules and regulations to effectuate the purposes of this By-law. Failure to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw.

## **7. PROHIBITED ACTIVITIES**

- a) Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal separate storm sewer system (MS4), into a watercourse, into a wetland resource area, or into the waters of the Commonwealth, except as exempted in Section 8.
- b) Illicit Connections. No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
- c) Obstruction of Municipal Storm Drain System. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the DPW Director or the Town Engineer.

## **8. EXEMPTIONS**

Discharge or flow resulting from fire fighting activities are exempt from the prohibition of non-stormwater discharges.

The following non-stormwater discharges or flows are also exempt from the prohibition of non-stormwaters provided that the source is not a significant contributor of a pollutant to the municipal storm drain system, and will not damage or threaten public health and the environment:

- a) Waterline flushing and flow from potable water sources;
- b) Springs, natural flow from riparian habitats and wetlands, diverted stream flow and rising groundwater;
- c) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- d) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, sump pumps or air conditioning condensation;
- e) Discharge from landscape irrigation or lawn watering;
- f) Water from non-commercial car washing;
- g) Discharge from de-chlorinated swimming pool or hot tub water (less than one ppm chlorine) provided the pool or hot tub is drained in such a way as not to cause a nuisance;
- h) Discharge from street sweeping, and stormwater runoff containing sand and deicers used for public safety purposes on public or private property;
- i) Emergency repairs to the municipal storm drain system, and any stormwater management structure or practice that poses a threat to public health or safety, or as deemed necessary by the DPW Director or the Town Engineer;
- j) Dye testing, provided verbal notification is given to the DPW Director or the Town Engineer prior to the time of the test;
- k) Non-stormwater discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations, and
- l) Discharge for which advanced written approval is received from the Authorized Enforcement Agency as necessary to protect public health, safety, welfare or the environment.

## **9. EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS**

The Authorized Enforcement Agency may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the DPW Director or the Town Engineer may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

## **10. NOTIFICATION OF SPILLS**

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants into the municipal drainage system, a wetland resource area or the waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the Authorized Enforcement Agency. In the event of a release of non-hazardous material, the reporting person shall notify the Authorized Enforcement Agency no later than the next business day. The reporting person shall provide to the Authorized Enforcement Agency written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

## **11. ENFORCEMENT**

**11.1** The Board of Selectmen, the DPW Director, the Town Engineer, or other authorized agent of the Board of Selectmen shall enforce this By-Law and any regulations, and may pursue all civil and criminal remedies for violations.

**11.2 Civil Relief.** If a person violates the provisions of this By-Law or regulations, or of any permit, notice or order issued thereunder, the Board of Selectmen may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities that would create further violations or to compel the person to perform abatement or remediation of the violation.

**11.3 Orders.** The DPW Director or the Town Engineer or other authorized agent of the Board of Selectmen may issue a written order to enforce the provisions of this bylaw or the regulations thereunder, which may include:

- (1) elimination of illicit connections or discharges to the MS4;
  - (2) performance of monitoring, analyses, and reporting;
  - (3) that unlawful discharges, practices, or operations shall cease and desist; and
  - (4) remediation of contamination in connection therewith.
- a) If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the town may, at its option, undertake such work, and expenses thereof shall be charged to the violator.
- b) Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the town including administrative costs.
- c) The violator or property owner may file a written protest objecting to the amount or basis of costs with the DPW Director or the Town Engineer within thirty (30) days of receipt of the notification of the costs incurred.
- d) If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the DPW Director or the Town Engineer affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, 57 after the thirty-first day at which the costs first become due.

#### **11.4 Criminal Penalties.**

Any person who violates any provision of this By-law, regulation, order or permit issued hereunder, shall be punished by a fine of not more than \$300. Each day a violation exists shall constitute a separate violation.

#### **11.5 Non-Criminal Disposition.**

As an alternative to criminal prosecution or civil action, the town may utilize the noncriminal disposition procedure set forth in M.G.L. Ch. 40, §21D and Article V of the Town By-laws, in which case any police officer of the Town of Weston, the DPW Director, the Town Engineer, and such other persons as are authorized by the Board of Selectmen shall be the enforcing person. If non-criminal disposition is used, any person who violates any provision of this By-law, regulation, order or permit issued thereunder, shall be punished as follows:

- (1) First violation: Warning
- (2) Second violation: \$100
- (3) Third violation: \$200
- (4) Fourth and subsequent violations: \$300
- (5) Each day a violation exists shall constitute a separate violation.

## **12. APPEALS**

The decisions or orders shall be final. Further relief shall be to a court of competent jurisdiction.

**12.1 Remedies Not Exclusive.** The remedies listed in this bylaw are not exclusive of any other remedies available under any applicable federal, state or local law.

## **13. SEVERABILITY**

The provisions of this bylaw are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this By-law.

## **14. TRANSITIONAL PROVISIONS**

Residential property owners shall have 180 days from the effective date of the by-law to comply with its provisions provided good cause is shown for the failure to comply with the by-law during that period.

*(Effective May 12, 2010)*