

Conservation Commission Acting as Stormwater Authority) –Adopt 2003 Municipal Storm Water Sewer System (MS4) Permit pursuant to The Clean Water Act (Act), U.S.C. § 1319(a)(3), and in accordance with Section 309(a)(5)(A) of the Act, 33 U.S.C. §1319(a)(5)(A) – To see if the Town will vote to add a new section to its General Bylaws, “Prohibition of Illicit Discharges to the Storm Drain System,” in accordance with the 2003 Municipal Storm Water Sewer System (MS4) Permit, with a Chapter number as assigned by the Town Clerk, and further, to vote that the Town may impose a lien upon real property for unpaid costs of abatement required hereunder, including administrative costs, in accordance with G.L. c. 40, §58, or take any other action relative thereto.

PROHIBITION OF ILLICIT DISCHARGES TO THE STORM DRAIN SYSTEM

SECTION 1. PURPOSE

Increased volumes and contamination of storm water lead to impaired water quality and flow in lakes, streams, rivers, wetlands, and groundwater; contamination of drinking water supplies; alteration or destruction of wildlife habitat; and flooding.

The purpose of this bylaw is to safeguard the environment and the health and general welfare of the citizens of the Town of Dudley through the regulation of illicit connections and illicit discharges to the municipal separate storm sewer system (MS4). The objectives of this bylaw are:

- (1) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this bylaw;
- (2) To comply with state and federal statutes and regulations related to storm water discharges;
- (3) To prevent pollutants from entering the MS4 by storm water discharges;
- (4) To prohibit illicit connections and discharges to the MS4 and;
- (5) To require the removal of such illicit connections.

SECTION 2. DEFINITIONS

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

A. Best Management Practices (BMPs): Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water 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.

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

C. Construction Activity: Activities subject to NPDES Construction Permits that result in a land disturbance of greater than or equal to one acre. This shall also include disturbances less than one acre if that disturbance is part of a larger common plan of development or sale that would disturb one or more acres. This would include any land disturbance resulting from but not limited to, clearing and grubbing, grading, excavating, and demolition.

D. 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.

E. Illegal Discharge: Any direct or indirect non-storm water discharge to the MS4, except as exempted in Section 8 of this bylaw.

F. Illicit Connections: A surface or subsurface drain or conveyance which allows an illicit discharge into the MS4, including, but not limited to, 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.

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

H. MS4: Municipal Separate Storm Sewer Systems, also known as the municipal storm drain system.

I. National Pollutant Discharge Elimination System (NPDES) Storm water Discharge Permit: A permit issued by U.S. Environmental Protection Agency or jointly with the State of Massachusetts under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the United States.

J. Non-Storm water Discharge: Any discharge to the MS4 that is not composed entirely of storm water.

K. 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.

L. Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to:

- a. Paints, varnishes, and solvents;
 - b. Oil, gasoline, and other automotive fluids;
 - c. Non-hazardous liquid and solid wastes` and yard wastes;
 - d. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, bylaws, and accumulations;
 - e. Floatables;
 - f. Pesticides, herbicides, and fertilizers;
 - g. Hazardous substances and wastes;
 - h. Sewage, fecal coliform and pathogens;
 - i. Dissolved and particulate metals;
 - j. Animal wastes;
 - k. Wastes and residues that result from constructing a building or structure;
 - l. Noxious or offensive matter of any kind.
- M. Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- N. Process Wastewater: Water that comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product in manufacturing or processing.
- O. Storm Drainage System: Publicly-owned facilities by which storm water is collected and/or conveyed, including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.
- P. Storm water: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- Q. Storm water Pollution Prevention Plan: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm water, Storm water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.
- R. Violator: Any person who has been issued a notice of violation of this bylaw.

S. Wastewater: Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

T. Watercourse: A manmade or natural channel through which water flows, such as a river, brook, or underground stream.

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

SECTION 3. APPLICABILITY

This bylaw shall apply to all water entering the municipal storm drainage system generated on any developed and undeveloped lands unless explicitly exempted by the Planning Board. The provisions in this bylaw shall take precedence over any conflicting provisions from previous bylaws.

SECTION 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 set forth in the federal Clean Water Act found at 40 CFR 122.34.

SECTION 5. RESPONSIBILITY FOR ADMINISTRATION AND ENFORCEMENT

The Conservation Commission shall administer, implement, and enforce the provisions of this bylaw. The Chairman of the Conservation Commission may delegate, in writing, any powers granted or duties of the Conservation Commission to its employees or agents.

SECTION 6. PROHIBITED ACTIVITIES

A. Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the MS4 or watercourses any materials, including, but not limited to, pollutants or waters containing any pollutants set forth in this bylaw.

B. Prohibition of Illicit Connections.

No person shall construct, maintain, use, or allow the continued existence of illicit connections to the MS4, regardless of whether the illicit connection was permissible under law, regulation, or custom at the time of connection.

C. Obstruction of MS4.

No person shall obstruct or interfere with the normal flow of storm water into or out of the MS4 without prior written approval from the Conservation Commission.

SECTION 7. EXEMPTIONS

The following discharges are exempt from discharge prohibitions established by this bylaw, unless the discharge is determined by the Conservation Commission or the United States Environmental Protection Agency (USEPA) to be a significant contributor of a pollutant to the MS4, in which case the following discharges may be subject to the terms of this bylaw:

- A. Water line and hydrant flushing;
- B. Flow from potable water sources;
- C. Flow from landscape irrigation or lawn watering;
- D. Wastewater from non-commercial washing of vehicles;
- E. Flow resulting from firefighting activities;
- F. Dechlorinated water from swimming pools (if dechlorinated to less than one part per million chlorine);
- G. Uncontaminated water originating from residential pumping including air conditioning condensation and water from exterior fountain or footing drains (not including active groundwater dewatering systems);
- H. Diverted stream flows, rising ground water, ground water infiltration to storm drains, springs, or natural flow from riparian habitats or wetlands;
- I. Dye testing, given a verbal notification to the Conservation Commission prior to the time of testing;
- J. Discharges specified in writing by the Conservation Commission as being necessary to protect public health and safety; and
- K. Any non-storm water discharge that is permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the U.S. Environmental

Protection Agency, 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.

SECTION 8. SUSPENSION OF MUNICIPAL STORM DRAIN SYSTEM ACCESS

D. Suspension Due to Illicit Discharges in Emergency Situations.

The Conservation Commission may, without prior notice, suspend MS4 discharge access to a person if it is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the Commonwealth. If the person fails to comply with a suspension order issued in an emergency, the Conservation Commission may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the Commonwealth or to minimize danger to persons.

E. Suspension Due to the Detection of Illicit Discharge.

Any person discharging to the MS4 in violation of this bylaw may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Conservation Commission will notify a violator of the proposed termination of its MS4 access. The person may petition the Conservation Commission for a reconsideration and hearing.

SECTION 9. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an industrial or construction activity 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 Conservation Commission prior to the allowing of discharges to the MS4.

SECTION 10. MONITORING OF DISCHARGES

A. Applicability.

This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

B. Access to Facilities.

1) The Conservation Commission may request to enter and inspect facilities subject to regulation under this bylaw as often as may be necessary to determine compliance with this bylaw. If a discharger has security measures in place which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Conservation Commission.

2) Facility operators shall allow the Conservation Commission 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 permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

3) The Conservation Commission shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Conservation Commission to conduct monitoring and/or sampling of the facility's storm water discharge.

4) The Conservation Commission has the right to require the discharger to install monitoring equipment as necessary. 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 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 facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Conservation Commission and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6). Unreasonable delays in allowing the Conservation Commission access to a permitted facility is a violation of a storm water discharge permit and of this bylaw. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the Conservation Commission reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this bylaw.

6) If the Conservation Commission 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 bylaw, 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 bylaw or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Conservation Commission may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 11. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The Conservation Commission will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the MS4, or waters of the Commonwealth. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

SECTION 12. WATERCOURSE PROTECTION

Every person owning property through which a watercourse passes, or such person's lessee, shall not place trash, debris, yard waste, vegetation, or other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

SECTION 13. NOTIFICATION OF SPILLS

Notwithstanding other requirements of local, state, or federal 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 storm water, the MS4, or waters of the Commonwealth, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release in accordance with this bylaw and any regulations promulgated pursuant to this bylaw. In the event of release of hazardous materials from the sanitary sewer, said person shall immediately notify the Board

of Health. In the event of release of any other hazardous material, said person shall immediately notify the Fire Department who shall then notify the Conservation Commission. In the event of a release of non-hazardous materials, said person shall notify the Conservation Commission no later than the next business day. Notification of a release to the Conservation Commission shall include all pertinent information regarding the release, including proof of notification to the Massachusetts Department of Environmental Protection, if such notification was required.

SECTION 14. ENFORCEMENT

A. Authorized Agent.

The Conservation Commission and any authorized agents shall enforce the provisions of this bylaw, issue and prosecute violation notices and enforcement orders, and may pursue all criminal and civil remedies for such violations.

B. Orders.

Whenever the Conservation Commission or its authorized agent finds that a person has violated a prohibition or failed to meet a requirement of this bylaw, it 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 of contamination hazards and the restoration of any affected property; and
- 5) Payment of a fine to cover administrative and remediation costs; and
- 6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. If elimination of illicit connections or discharges is required as abatement, such elimination must be completed within sixty (60) days from the identification of the illicit connection or discharge. The Conservation Commission may, for good cause extend the time for compliance after written request. If an extension beyond 60 days is necessary, the violator must submit to the Conservation Commission a written schedule for expeditious elimination of the illicit discharge at least ten (10) days prior to the 60-day deadline. The

violator shall provide a monthly progress report to the Conservation Commission summarizing the status of the elimination schedule. In the interim period, the violator may be required to take reasonable and prudent measures to minimize the discharge of pollutants to and from the MS4.

Should the violator fail to remediate or restore within a timeframe deemed reasonable by the Conservation Commission the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

Within thirty (30) days after abatement of the violation, the violator will be notified of the cost of abatement, including administrative costs. The violator may file a written protest objecting to the amount of the assessment within thirty (30) days of receipt of the notification of costs incurred. If the amount due is not paid within a timely manner, as determined by the decision of the Conservation Commission or its designated agent, or by the expiration of the time in which to file an appeal, the Conservation Commission may impose a municipal charges lien on the property pursuant to Massachusetts General Laws Chapter 40, Section 58.

C. Appeals.

The decisions or orders of the Conservation Commission or its designated agent shall be final. Further relief shall be to a court of competent jurisdiction.

D. Civil Relief.

If a person has violated or continues to violate the provisions of this bylaw, the Conservation Commission 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.

E. Criminal Penalty.

Any person that has violated or continues to violate this bylaw shall be fined \$300 per offense, the maximum allowable penalty under the Massachusetts General Laws, Chapter 40, Section 21. Each day such violation continues shall constitute a separate offense.

F. Non-Criminal Disposition.

In lieu of enforcement proceedings, penalties, and remedies authorized by this bylaw, the Conservation Commission may elect to use the non-criminal disposition procedure set forth in Massachusetts General Laws, Chapter 40, Section 21D, and the Town's General Bylaws. The penalty shall be \$300 per offense, with each day a violation continues constituting a separate offense.

G. 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 bylaw 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.

H. 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 and it is within the discretion of the Conservation Commission to seek cumulative remedies.

SECTION 15. SEVERABILITY

The provisions of this bylaw are hereby declared to be severable. If any provision, clause, sentence, or paragraph 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 bylaw.

SECTION 16. REGULATIONS

The Conservation Commission or selected designee may promulgate after due notice and public hearing Rules and Regulations to effectuate the purposes of this bylaw. Failure by the Conservation Commission or selected designee to promulgate such Rules and Regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

SECTION 17. TRANSITIONAL PROVISIONS

Property owners shall have sixty (60) days from the effective date of the bylaw to comply with its provisions or petition the Conservation Commission for an extension.