

Section 49 Prohibition of Illicit Discharges to Storm Drain System (New Subsection- (Adopted 5/5/07)

49.1 PURPOSE

The purpose of this section is to eliminate non-stormwater discharges to the Town of Wilmington's Municipal Storm Drain System. Non-stormwater discharges contain contaminants and supply additional flows to the Town's storm drain system. Increased and contaminated stormwater runoff is a major cause of:

- (1) impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
- (2) contamination of drinking water supplies;
- (3) contamination of clam flats and other coastal areas;
- (4) alteration or destruction of aquatic and wildlife habitat; and
- (5) flooding.

Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the Town of Wilmington's natural resources, municipal facilities, and to safeguard the public health, safety, welfare and the environment.

49.2 OBJECTIVES

The objectives of this section are:

- (1) To prevent pollutants from entering the Town'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 existing illicit connections, regardless of whether such connections were permitted or otherwise acknowledged prior to the implementation of this by-law;
- (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 by-law through inspection, monitoring, and enforcement.

49.3 DEFINITIONS

Unless a different definition is indicated in other sections of this Section 49, the

following definitions and provisions shall apply throughout this Section 49, also referred to as this by-law or Section.

AUTHORIZED ENFORCEMENT AGENCY: The Wilmington Board of Health (hereafter “the BOH”), its employees or agents designated to enforce this by-law.

AUTHORIZED ADMINISTERING AGENCY: The Wilmington Department of Public Works (hereafter “the Department” or “DPW”), its employees or agents designated to administer and implement this by-law.

BEST MANAGEMENT PRACTICE (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

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.

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 by-law.

ILLICIT DISCHARGE: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 6. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from fire fighting activities exempted pursuant to Part G (4)(B), of this by-law.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and roof tops.

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 manmade or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Wilmington.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT: A permit issued by United States Environmental Protection Agency or jointly with the Commonwealth of Massachusetts that authorizes the discharge of pollutants to waters of the United States.

NON-STORMWATER DISCHARGE: Discharge to the municipal storm drain system not composed entirely of stormwater.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

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 without limitation:

- (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;
- (11) and 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.

RECHARGE: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

STORMWATER: Runoff from precipitation or snow melt.

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.

WATERS OF THE COMMONWEALTH: all waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

WASTEWATER: any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

49.4 APPLICABILITY

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

49.5 AUTHORITY

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

49.6 RESPONSIBILITY FOR ADMINISTRATION

The BOH shall enforce this by-law. The BOH will work with the Department of Public Works (“DPW”) to administer and implement this by-law. Any powers granted to or duties imposed upon the BOH may be delegated in writing by the BOH to employees or agents of the BOH and/or the DPW. References to the BOH, Department or DPW within this by-law are understood to denote either or both of these agencies.

49.7 REGULATIONS

The Department may promulgate rules and regulations to effectuate the purposes of this by-law. Failure by the Department to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

49.8 PROHIBITED ACTIVITIES

(1) 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, or into the waters of the Commonwealth.

(2) 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.

(3) 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 consent from the Department. No person shall dump or dispose of yard waste (leaves, grass clippings, etc.) into the open watercourses (swales, brooks and streams) that make up the stormwater system.

(4) Exemptions

A. Discharge or flow resulting from fire fighting activities;

B. The following non-stormwater discharges or flows are 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:

(1) Waterline flushing;

(2) Flow from potable water sources;

(3) Springs;

(4) Natural flow from riparian habitats and wetlands;

(5) Diverted stream flow;

(6) Rising groundwater;

(7) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater (e.g. sump pump), provided that where a pump intake exists inside a structure, the operator seeks a permit from the Department prior to discharge, and thereafter discharges in accordance with the requirements of the permit and applicable laws and regulations to be issued by the Department;

(8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;

(9) Discharge from landscape irrigation or lawn watering;

(10) Water from individual residential car washing;

(11) Discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;

(12) Discharge from street sweeping;

(13) Dye testing, provided verbal notification is given to the Department prior to the time of the test;

(14) Non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and

(15) Discharge for which advanced written approval is received from the Department as necessary to protect public health, safety, welfare or the environment.

(5) Other Prohibited Activities

No person shall discharge, or cause to be discharged, water or any other liquid, on to the streets, sidewalks or ways of the Town in such a manner as to cause an obstruction of traffic or to endanger travel by freezing or otherwise.

Drains – No one shall tie any pump, cellar, yard, roof or area drain directly into the storm water drainage system without a permit from the Department of Public Works.

Catch Basins – No person shall directly or indirectly dump, discharge or cause or allow to be discharged into any catchbasin, any solid waste, construction debris, paint or paint product, antifreeze, hazardous waste, oil, gasoline, grease and all other automotive and petroleum products, solvents and degreasers, drain cleaners, commercial and household cleaners, soap, detergent, ammonia, food and food waste, grease or yard waste, animal feces, dirt, sand gravel or other pollutant. Any person determined by the DPW to be responsible for the discharge of any of the above substances to a catchbasin may be held responsible for cleaning the catchbasin and any other portions of the storm water system impacted, paying the cost for such cleaning or for paying any penalties assessed by the Town.

Septage – No person shall discharge or cause or allow to be discharged any

septage, or septage tank or cesspool overflow into the Town's storm water drainage system.

Storage & Disposal of Hazardous Material – No one shall dispose of anything other than clear water into the Town's storm drainage system. The disposal of waste, gasoline or any other hazardous material into the storm drainage system is strictly prohibited and is in violation of various state and federal pollution laws.

Private drainage systems – It is prohibited for anyone with a private drainage system from tying into the public storm water disposal system without a permit from the Department of Public Works. The maintenance of any and all private drainage systems shall be the responsibility of the owners.

49.9 EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS

The Department 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 Authorized Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

49.10 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 Department of Public Works prior to the allowing of discharges to the MS4.

49.11 MONITORING OF DISCHARGES

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

1) Access to Facilities – The BOH and DPW (or other enforcement agency/delegated enforcement partner) shall be permitted to enter and inspect facilities subject to regulation under this by-law as often as may be necessary to determine compliance with this by-law, subject to applicable law. 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 representatives of the authorized enforcement agency.

2) Facility operators shall allow the BOH and DPW 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 laws.

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

4) The BOH and DPW have 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 they are accurate.

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 BOH and DPW and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6) Unreasonable delay in allowing the BOH or DPW access to a permitted facility constitutes a violation of a storm water discharge permit and of this by-law. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity violates this Section 49 if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this by-law.

7) If the BOH or DPW 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 by-law, 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 by-law or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

49.12 WATERCOURSE PROTECTION

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and 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. Compliance with this by-law does not waive the responsibility of the property owner or lessee for applying for and receiving any other required Town, State or Federal permits associated with activities or uses otherwise

regulated under other regulatory jurisdiction (e.g. Wetlands Protection Act).

49.13 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 to the municipal drainage system or 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 municipal fire and police departments. 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.

49.14 ENFORCEMENT

The BOH or an authorized agent of the BOH shall enforce this by-law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

49.14.1. Civil Relief

If a person violates the provisions of this Section 49, regulations, permit, notice, or order issued thereunder, the BOH may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

49.14.2. Orders

The BOH or an authorized agent of the BOH may issue a written order to enforce the provisions of this section or the regulations thereunder, which may include: (a) elimination of illicit connections or discharges to the MS4; (b) performance of monitoring, analyses, and reporting; (c) that unlawful discharges, practices, or operations shall cease and desist; and (d) 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. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Department within thirty (30) days of receipt of the notification of the costs incurred. 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 Department 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 pursuant to M.G.L. Ch. 40, §58. 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.

49.14.3. Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D and in which case the Health Director and DPW Director of the Town shall be the enforcing person. The penalty for the 1st and all subsequent violations shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

49.14.4. Criminal Penalty

Any person who violates any provision of this by-law, regulation, order or permit issued thereunder, shall be punished by a fine of \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

49.14.5. Entry to Perform Duties Under this Section

To the extent permitted by applicable law, or if authorized by the owner or other party in control of the property, the BOH and DPW, its agents,

officers, and employees may enter upon privately owned property for the purpose of performing their duties under this by-law and regulations and may make or cause to be made such examinations, surveys or sampling as the BOH and DPW deems reasonably necessary.

49.14.6. Appeals

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

49.14.7. Remedies Not Exclusive

The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law.

49.15 SEVERABILITY

The provisions of this section are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this section 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 section or by-law.