

Article XXXIV
Illicit Discharge to the Municipal Storm Drain Systems By Law

1. Purpose and Authority

A. **Introduction.** Increased volumes of stormwater and contaminated stormwater runoff are major causes of:

- i. Impairment of water quality and reduced flow in lakes, ponds, streams, rivers, wetlands, and groundwater;
- ii. Contamination of drinking water supplies;
- iii. Alteration or destruction of aquatic and wildlife habitat; and
- iv. Flooding.

The U.S. Environmental Protection Agency has identified land disturbance and polluted stormwater runoff as major sources of water pollution.

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

B. **Purpose.** The purpose of this bylaw is to manage connections and discharges to the Town of Shirley's municipal storm drain system and waters of the Commonwealth.

C. **Objectives.** The objectives of this bylaw are:

- i. To prevent pollutants from entering Shirley's municipal separate storm sewer system (MS4) and waters of the Commonwealth;
- ii. To prohibit illicit connections and unauthorized discharges to the MS4;
- iii. To require the removal of illicit connections;
- iv. To comply with state and federal statutes and regulations relating to stormwater discharges; and
- v. To establish the legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

D. **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.

2. Definitions

For the purposes of this bylaw, the following definitions shall apply:

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 from any source into the municipal storm drain system or into the waters of the United States or Commonwealth.

Enforcement Authority: The Director of Public Works and respective employees or agents, designated to administer, implement, enforce this Bylaw.

Groundwater: All water beneath the surface of the ground.

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. Hazardous materials include any synthetic or organic chemical, petroleum product, heavy metals, radioactive or infectious waste, acid and alkali, pathogens and any substance defined as Toxic or Hazardous under Massachusetts General Laws Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

Illicit Connection: Any surface or subsurface drain or conveyance, that allows an illegal discharge into the municipal storm drain system. Illicit connections include conveyances that allow a non-stormwater discharge to the municipal storm drain system including but not limited to: sewage, processed wastewater or wash water and also any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved prior to the effective date of this bylaw.

Illicit Discharge: Any direct or indirect non-stormwater discharge into the municipal storm drain system, not specifically exempted in Section 6. The term excludes a discharge in compliance with an NPDES Storm Water or 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 Shirley.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

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

Person: Any individual, partnership, association, firm, company, trust, corporation or other organization, and, any 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 constituent part 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 include, but are not limited to:

- A. Preservatives including paints, varnishes and other chemical agents, cleaning agents, disinfectants and solvents;
- B. Oil and other automotive or other vehicular fluids and any fuels irrespective of use;
- C. Non-hazardous liquids, solid wastes and yard wastes;
- D. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, accumulations and floatables;
- E. Pesticides, herbicides, and fertilizers;
- F. Hazardous materials and wastes; sewage, fecal coliform and other pathogens;
- G. Metals: dissolved, in suspension or in particulate form;
- H. Animal wastes;
- I. Rock, sand, salts, soils;
- J. Construction wastes and residues, including but not limited to sediments, slurries, and concrete rinsates;
- K. 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.

Stormwater: Storm (rain) runoff, snowmelt runoff, and surface water runoff and drainage.

Stormwater Committee: A committee comprised of the Director of Public Works, a representative of the Planning Board, and a resident, with the authority to promulgate rules, regulations and a permitting process to effectuate the purposes of this Bylaw.

Surface Water Discharge Permit: A permit issued by the Department of Environmental Protection 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 M.G.L. C. 21C and C. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

Uncontaminated: not containing pollutants.

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.

Watercourse: A natural or man-made channel through which water flows 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.

3. Applicability

This bylaw shall apply to flows entering the municipally-owned storm drainage system and waters of the Commonwealth.

4. Regulations

The Stormwater Committee may promulgate rules, regulations and a permitting process to effectuate the purposes of this bylaw. Failure by the Stormwater Committee to promulgate such rules and regulations shall neither suspend nor invalidate this bylaw.

5. Prohibited Activities

- A. **Illegal Discharges.** No person shall dump, discharge, cause or allow to be dumped or discharged any pollutant or non-stormwater discharge into the municipal storm drain system, watercourse, or into the waters of the Commonwealth.
- 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 approval from the designated Enforcement Authority.

6. Exemptions

- A. **Exemption for Fire-Fighting.** This section shall not apply to discharges or flows resulting from fire-fighting activities;
- B. **Exemptions.** This section shall not apply to any of the following non-stormwater discharges or flows provided that the source is not deemed by the Stormwater Committee to be a significant contributor of a pollutant to the municipal storm drain system:
- i. Waterline flushing;
 - ii. Flows from potable water sources;
 - iii. Springs;
 - iv. Natural flows from riparian habitats and wetlands;
 - v. Rising groundwater;
 - vi. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(b)(20), or uncontaminated pumped groundwater;
 - vii. Clean discharge from landscape irrigation or lawn watering;
 - viii. Water from individual residential car washing;
 - ix. Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems, such as dewatering excavations for foundation or pipelines), crawl space pumps, or air conditioning condensation;
 - x. Discharges from street sweeper operations of inconsequential amounts of water.;
 - xi. Dye testing, provided verbal notification is given to the designated Enforcement Authority and approval is obtained prior to the time of the test;
 - xii. Non-stormwater discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Massachusetts 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;
 - xiii. Discharges for which advanced written approval is received from the designated Enforcement Authority, if necessary, to protect public health, safety, welfare or the environment.

7. Suspension of Storm Drainage System Access

- A. **Suspension.** The designated Enforcement Authority 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 illegal discharge that presents or may present imminent risk of harm to the public health, safety, welfare or to the environment. If any person fails to comply with an emergency suspension order, the designated Enforcement Authority may take all reasonable steps necessary to prevent or minimize harm to the public health, safety and welfare or to the environment.
- B. **Termination.** Any person discharging to a municipal storm drain system in violation of this bylaw may have access to their municipal storm drain system terminated if such termination would abate or reduce an illicit discharge. The designated Enforcement Authority will notify a violator of the proposed termination of access to the municipal storm drain system. The violator may petition the Planning Board for reconsideration and hearing. An offense is committed if the person reinstates access to the municipal storm drain system from premises terminated pursuant to this section, without prior approval from the designated Enforcement Authority.

8. Notification of Spills

- A. Notwithstanding any 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 at that facility or operation that results or may result in illegal discharge of pollutants, that person shall take all steps necessary 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, DPW Director and Board of Health. In the event of a release of non-hazardous material, said person shall notify the DPW Director no later than the next business day. Written confirmation of all telephone, facsimile or in person notifications shall be provided to the DPW Director within three business days thereafter.
- B. 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.

9. Enforcement

- A. The Enforcement Authority will enforce this Bylaw, and the regulations promulgated thereunder, as well as the terms and conditions of all permits, notices, and orders, and

may pursue all civil and criminal remedies for such violations.

- B. **Civil Relief.** The designated Enforcement Authority may seek injunctive relief in a court of competent jurisdiction to restrain the person that violates the provisions of this bylaw, regulations, permit, notice, or order issued thereunder from activities that would create further violations and additionally compelling the person to abate or remediate the violation.
- C. **Compliance Orders.** The designated Enforcement Authority may issue a written order to enforce the provisions of this bylaw or the regulations thereunder, which may include:
 - i. Elimination of illicit connections or discharges to the storm drainage system;
 - ii. Termination of access to the storm drainage system;
 - iii. Performance of monitoring, analyses, and reporting;
 - iv. Cessation of unlawful discharges, practices, or operations;
 - v. Remediation of contamination in connection therewith.
- D. **Timeline.** If the designated Enforcement Authority determines that abatement or remediation of contamination is required, the order will set forth a deadline for completion of the abatement or remediation. Said order will further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Shirley may, at its option, undertake such work, and all costs incurred by the Town will be charged to the violator, to be recouped through all available means, including the placement of a lien on the property.

Within 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 designated Enforcement Authority within 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 30 days following a decision of the designated Enforcement Authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the Town of Shirley may impose a municipal-charges lien on the property, pursuant to General Laws Chapter 40, Section 58, for the total amount of said costs not paid by the violator or property owner. Interest will begin to accrue on any unpaid costs at the statutory rate after the 31st day at which the costs first become due.

- E. **Criminal and Civil Penalties.** Any person that violates any provision of this bylaw, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine not to exceed \$300.00 for each day such violation occurs or continues or be subject to a civil penalty, that may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.

- F. **Non-Criminal Disposition.** As an alternative to criminal prosecution or civil action, the Town of Shirley may elect to utilize the non-criminal disposition procedure set forth in Massachusetts General Laws Chapter 40, §21D. The designated Enforcement Authority, or other designee, shall be the enforcement officer for the non-criminal disposition procedure. The penalty for the 1st violation shall be \$100. The penalty for the 2nd violation shall be \$200. The penalty for the 3rd and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- G. **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 designated Enforcement Authority, his/her agents, officers, and employees 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 designated Enforcement Authority deems reasonably necessary
- H. **Appeals.** The decisions or orders of the designated Enforcement Authority may be appealed by petition to the Planning Board for a hearing. Said petition must be filed within seven (7) days of the date of notice of violation.
- I. **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.

10. 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 party, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this bylaw.

11. Transitional Provisions

Property owners shall have ninety (90) days from the effective date of this bylaw to comply with its provisions. An extension may be granted provided good cause is shown for the failure to comply with the bylaw during that period.

12. Effective Date

This Bylaw shall take effect upon approval of the Attorney General and upon compliance with the requirements of Massachusetts General Law Chapter 40, Section 32.

(As amended by May 10, 2021 ATM and approved by AG August 4, 2021)