

ARTICLE 37

ILLICIT DISCHARGE BY-LAW

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- Section 2: a few definitions are not formatted in separate paragraphs in the current printed version of the bylaws; they are separated here for clarity.
- Section 2: deleted definitions that are not actually referenced in the bylaw
- Section 7: added an explicit prohibition on the application of coal-tar-based pavement sealants
- Section 8: removed item (16) – DPW sees no need or capability for the testing that item (16) required.
- Section 10: removed “[and other appropriate departments]” – no other departments expressed an interest in immediate notification of oil spills.

SECTION 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 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.

The objectives of this by-law are:

- to prevent pollutants from entering the town’s municipal separate storm sewer system (MS4);
- to prohibit illicit connections and unauthorized discharges to the MS4;
- to require the removal of all such illicit connections;
- to comply with state and federal statutes and regulations relating to stormwater discharges; and
- to establish the legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement.

SECTION 2: Definitions

For the purposes of this by-law, the following shall mean:

~~“Authority”: Select Board.~~

~~“Authorized Administrative Agency”: The Department of Public Works hereafter the DPW its employees or agents designated to enforce this by law.~~

~~“Best Management Practices (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 8. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit.

~~“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 rooftops.~~

“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 Grafton.

“National Pollutant Discharge Elimination System (NPDES) Storm Water 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”: 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 non-point 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; and
- (11) noxious or offensive matter of any kind.
- (12) coal tar-based asphalt pavement sealants

“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”: Storm water runoff, snow melt runoff, and surface water runoff and drainage.

“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.

“Waters of the Commonwealth”: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, ~~coastal~~ 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.
(TM 5/9/2022)

SECTION 3: Applicability

This by-law shall apply to flows entering the municipally owned storm drainage system.

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 of the federal Clean Water Act found at 40 CFR 122.34.

SECTION 5: Responsibility for Administration

The DPW shall administer, implement and enforce this by-law. Any powers granted to or duties imposed upon the DPW may be delegated in writing by the Select Board to the DPW.

SECTION 6: Regulations

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

SECTION 7: Prohibited Activities

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.

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.

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 Select Board.

Application of Coal Tar-Based Pavement Sealant. No person shall apply a coal tar-based pavement sealant to any surface from which runoff may reach the MS4. Coal tar-based sealers are a major source of polycyclic aromatic hydrocarbons (PAH), which are classified as probable human carcinogens and are highly toxic to aquatic life. Asphalt-based sealants are permitted, however, as they contain a much lower concentration of PAH.

SECTION 8: Exemptions

Discharge or flow resulting from fire fighting activities.

The following non-stormwater discharges or flows are exempt from the prohibition of ~~nonstormwater~~ non-stormwater 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;
- (8) Water from exterior foundation drains, footing drains not including active groundwater dewatering systems, crawl space pumps.
- (9) Discharge from landscape irrigation or lawn watering or air conditioning condensation;
- (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 writing notification is given to the DPW prior to the time of the test;
- (14) 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,
- (15) Discharge for which advanced written approval is received from the Select Board as necessary to protect public health, safety, welfare or the environment,
- (16) ~~For discharges pertaining to items defined in section 7 and 8 the Town shall require testing of currently conveyed or to be conveyed flow at the expense of the property owner. The town may also require a hydraulic capacity analysis of its drainage system to accommodate the flow conveyed or to be conveyed.~~

SECTION 9: Emergency Suspension of Storm Drainage System Access

The Select Board 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.

SECTION 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 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 ~~and [insert other appropriate 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.

SECTION 11: Enforcement

The Select Board through the DPW shall enforce this by-law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

Civil Relief. If a person violates the provisions of this by-law, regulations, permit, notice, or order issued thereunder, the Select Board 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.

Orders: The DPW may issue a written order to enforce the provisions of this by-law 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.

If the town 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.

Within thirty (30) days after completing all measures necessary to abate the violation or 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 Select Board 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 Select Board 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.

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 not more than \$ 250.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

Non-Criminal Disposition: As an alternative to criminal prosecution or civil action, the Select Board may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D in which case the DPW shall be the enforcing town department. The penalty for the 1st violation shall be \$100.00. The penalty for the 2nd violation shall be \$250.00. The penalty for the 3rd and subsequent violations shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

Entry to Perform Duties Under this By-Law: To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Select Board, 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 Board deems reasonably necessary.

Appeals: The decisions or orders of the Select Board shall be final. Further relief shall be to a court of competent jurisdiction.

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

SECTION 12: Severability

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

SECTION 13: Transitional Provisions

Residential property owners shall have (90) ninety 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.

(ATM 5/11/09)