

# **Town of Clinton, Massachusetts**

## **ILLICIT DISCHARGE DETECTION AND ELIMINATION BY-LAW**

### **I. AUTHORITY**

This By-Law is adopted in accordance with the authority granted, inter alia, by Amendment Article 89 to Article II of the Massachusetts Constitution and M.G.L. Chapter 43B Section 13. The Board of Selectmen is delegated hereby the responsibility and authority to enforce and administer this By-Law. The Board of Selectmen may delegate such aspects of By-Law enforcement and administration to the Superintendent of Public Works and such of his subordinates as the Board of Selectmen may from time-to-time determine and designate in writing.

### **II. PREAMBLE**

In partial fulfillment of the obligations of the Town under the Clean Water Act (33 U.S.C. 1251 & seq.) (the "Act") and under the Town's National Pollutant Discharge Elimination System Stormwater Permit, the Town hereby establishes a comprehensive and fair system of regulation of Discharge to the Town's Municipal Separate Storm Sewer System (sometimes referred to herein as the "MS4").

### **III. PURPOSE**

The purpose and intent of this By-Law is to:

- a. Protect the waters of the U.S. as defined in the Act and implementing Regulations from uncontrolled Discharges of Stormwater or Discharges of Contaminated Water which have a negative impact on the receiving waters by changing the physical, biological and chemical composition of the water resulting in an unhealthy environment for aquatic organisms, wildlife and people, and
- b. Reduce Discharges of Contaminated Water into the MS4 and resultant discharges from the MS4 into waters of the U.S. and improve surface water quality, and
- c. Permit and manage reasonable access to the MS4 to facilitate proper drainage, and
- d. Assure that the Town can continue to fairly and responsibly protect the public health, safety and welfare.

#### **IV. DEFINITIONS**

**BOARD:** The Board of Selectmen or its authorized agent(s).

**CLEAN WATER ACT:** The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

**CONTAMINATED WATER:** Water that contains higher levels of Pollutants, including without limitation implied, heavy metals, toxics, oil and grease, solvents, nutrients, viruses and bacteria than permitted in waters of the U.S. by the Act and implementing Regulations.

**DISCHARGE:** Any non-naturally occurring addition of water or of Stormwater to the MS4.

**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 of Massachusetts from any source.

**DUMPING:** An act or omission of any person or entity the proximate result of which is the introduction of a Pollutant into the MS4.

**GROUND WATER:** Water beneath the surface of the ground including confined or unconfined aquifers.

**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 VI. The term does not include a discharge in compliance with an NPDES Stormwater Discharge Permit or a Surface Water Discharge Permit, or resulting from firefighting activities exempted pursuant to Section VI of this Bylaw.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM OR MS4:** The Stormwater collection system which is made up of open water courses, swales, ditches, culverts, canals, streams, catch basins and pipes through which the stormwater flows and the Town Public Ways over which it flows which is owned and operated by the Town for the purpose of collecting or conveying stormwater to a discharge point.

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

**NPDES PERMIT:** The National Pollution Discharge Elimination System Permit issued by the federal Environmental Protection Agency to the Town.

**OWNER:** The owner of a parcel of land recorded in the Assessor's Office of the Town.

**PERSON:** An individual, partnership, association, firm, company, trust, corporation, agency, authority, department, or political subdivision of the Commonwealth of Massachusetts 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 considered toxic to humans or the environment and may be introduced into any sewage treatment works or waters of the Commonwealth of Massachusetts. Pollutants shall include, but not be limited to:

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, and soils;
10. construction wastes and residues; and
11. noxious or offensive matter of any kind.

**PUBLIC WAYS:** Any road (including such appurtenances such as berms, curbs, drains, catch basins, sewers, water mains, sidewalks and paved and unpaved shoulders within the paper layout) to which the public has access and that the Town is responsible for maintaining.

**STORMWATER:** Rainfall that exceeds the soil's capacity contemporaneously to absorb it and which, instead, runs across the surface of the ground as run-off.

**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 or organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under MGL Chapter 21C and Chapter 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 of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, groundwaters, and vernal pools.

**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.

## **V. ADMINISTRATION**

The Board, shall administer, implement and enforce this bylaw. Any powers granted to or duties imposed upon the Board may be delegated in writing by the Board to its employees or agents. The decisions or orders of the Board of Selectmen shall be final. Further relief shall be to a court of competent jurisdiction.

## **VI. APPLICABILITY AND EXEMPTIONS**

**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 Board.

## Exemptions

- a. Discharge or flow resulting from firefighting activities;
- b. Discharge or flow that results from exigent conditions and occurs during a State of Emergency declared by any agency of the federal or state government, or by the Board of Selectmen;
- c. 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:
  - i. Waterline flushing;
  - ii. Flow from potable water sources;
  - iii. Springs;
  - iv. Natural flow from riparian habitats and wetlands;
  - v. Diverted stream flow;
  - vi. Rising groundwater;
  - vii. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
  - viii. Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation.
  - ix. Discharge from landscape irrigation or lawn watering;
  - x. Water from individual residential car washing;
  - xi. 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;
  - xii. Discharge from street sweeping.
  - xiii. Dye testing, provided verbal notification is given to the Board prior to the time of the test;
  - xiv. 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
  - xv. Discharge for which advanced written approval is received from the Board as necessary to protect public health, safety, welfare or the environment.

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

The 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.

## **VIII. 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 the department of public works. 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.

## **IX. ENFORCEMENT**

- a. The Board of Selectmen shall enforce this Bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.
- b. The Board of Selectmen or an authorized agent 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 municipal storm drain system;
  - ii. Performance of monitoring, analyses, and reporting;
  - iii. That unlawful discharges, practices, or operations shall cease and desist; and/or
  - iv. Remediation of contamination in connection therewith.

- c. 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, with the approval of a court of competent jurisdiction, and all costs incurred by the Town shall be charged to the violator, to be recouped through all available means, including the placement of liens on the property.
- d. 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 Board of Selectmen 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 Board of Selectmen 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 MGL Chapter 59, §57 after the thirty-first day at which the costs first become due.

## **X. ENTRY TO PERFORM DUTIES UNDER THIS BYLAW**

To the extent permitted by Massachusetts law, or if authorized by the owner or other party in control of the property, the Board of Selectmen or its agents 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 Board of Selectmen deems reasonably necessary.

## **XI. CIVIL RELIEF**

If a person violates the provisions of this Bylaw, regulations, permit, notice, or order issued thereunder, the Board of Selectmen 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.

## **XII. CRIMINAL PENALTY**

- a. Any person who violates any provision of this Bylaw, regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- b. As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in MGL Chapter 40, §21D, in which case the Board of Selectmen or an authorized agent of the Board of Selectmen shall be the enforcing person. The penalty for each violation shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

## **XIII. 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.

## **XIV. SEVERABILITY**

If any provision, paragraph, sentence, or clause of this Bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect.