

DRAFT

X.XX Illicit Discharge Detection & Elimination (IDDE) Bylaw

PENALTIES FOR VIOLATION OF ILLICIT DISCHARGE & ELIMINATION BYLAW

Criminal Enforcement:

- \$300 fine

Noncriminal Disposition:

- First Violation: Warning
- Second Violation: \$100 penalty
- Third Violation: \$200 penalty
- Fourth and subsequent violations: \$300 penalty
- (Enforcement by Police Officers or Superintendent of Public Works)
- [See Section K for non-monetary penalties](#)

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A. Purpose and Authority

The purpose of this Bylaw is to protect the public health, safety, environment, and general welfare of the Town through the regulation of Non-Storm Water Discharges into the Municipal Separate Storm Sewer System (MS4). Increased and contaminated Stormwater Runoff is a major cause of water pollution in our ponds, streams, rivers, wetlands and groundwater. This Bylaw establishes methods for controlling the introduction of Pollutants into the MS4 system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process and protect our Town’s water bodies and groundwater from pollution. The objectives of this Bylaw are:

1. To prevent Pollutants from entering the Town’s Municipal Separate Storm Sewer System;
2. To prohibit Illicit Connections and unauthorized discharges to the MS4;
3. To require the removal of all such Illicit Discharges;
4. To comply with state and federal regulations relating to Stormwater discharges; and
5. To establish legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring, and enforcement.

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34, and as authorized by the Charter & Town Council.

Nothing in this Bylaw is intended to replace the requirements of the Zoning Bylaw, the Wetlands Bylaw, or any other Bylaw that may be adopted by the Town, or any Rules and Regulations adopted thereunder. Any activity subject to the provisions of the above-cited Bylaws must comply with the specifications of each.

B. Definitions

“Best Management Practices (BMPs)” means 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 Stormwater, receiving waters, or Stormwater 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.

“Clean Water Act” means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

“Hazardous Materials” means 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.

“Illicit Connections” means either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an Illicit Discharge to enter the Municipal Storm Drain System including but not limited to sewage, Process Wastewater, or wash water and any connections from indoor drains, sinks, or toilets regardless of whether said drain or connection was previously allowed, permitted, or approved before the effective date of this Bylaw; or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the Department of Public Works.

“Illicit Discharge” means any direct or indirect Non-Stormwater Discharge to the storm drain system, except as exempted in Section G of this Bylaw.

“Municipal Separate Storm Sewer System (MS4)” or “Municipal Storm Drain System” means 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 human-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town.

“National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit” means a permit issued by the United States Environmental Protection Agency (EPA) (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of Pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

“Non-Storm Water Discharge” means any discharge to the storm drain system that is not composed entirely of Stormwater.

“Person” means 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.

“Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; rock, sand, salt, soils; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

“Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“Process Wastewater” means 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. Process Wastewater includes water which has increased in temperature as a result of manufacturing or other processes.

“Stormwater” or “Runoff” means rainwater, snowmelt, and/or other water that flows off surfaces and across or over the ground surface rather than being absorbed into the soil.

“Stormwater Pollution Prevention Plan (SWPPP)” means 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 Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

“Surface Water Discharge Permit” means 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.

“Watercourse” means a natural or human-made channel through which water flows or a stream of water, including a river, brook, or underground stream.

“Wastewater” means any sanitary waste, sludge, or septic tank or cesspool contents or discharge, and/or Process Wastewater.

“Waters of the Commonwealth” means all waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

C. Applicability

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

D. Administration

1. The Town Manager through the Department of Public Works shall be responsible for the administration, implementation, and enforcement of this Bylaw.
2. The Town Manager may develop and periodically amend, regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of this Bylaw. Failure of the Town Manager to create such rules or regulations shall not have the effect of suspending or invalidating this Bylaw.

E. Ultimate Responsibility

The standards set forth herein and promulgated pursuant to this Bylaw are minimum standards; therefore, this Bylaw does not intend nor imply that compliance by any Person will ensure that there will be no contamination, pollution, nor unauthorized discharge of Pollutants.

F. 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, wetland resource area, or the Waters of the Commonwealth, except as exempted in Section G.
2. Illicit Connections. The construction, use, maintenance, or continued existence of Illicit Connections to the MS4 system is prohibited. This prohibition expressly includes, without limitation, Illicit Connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing 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 MS4 without prior written approval from the DPW Superintendent or their designee.
- G. Exemptions: This section shall not apply to any of the following non-Stormwater discharges or flows, provided that the source is not a significant contributor of a Pollutant to the MS4 system:
1. Waterline flushing and flow from potable water sources, provided verbal notification by telephone or email is given to the Department of Public Works at least 24 hours prior to the time of the test;
 2. Springs, natural flow from riparian habitats and wetlands, diverted stream flow, and rising groundwater;
 3. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
 4. Water from exterior foundation drains, footing drains, crawl space pumps, sump pumps, or air conditioning condensation;
 5. Discharge from landscape irrigation or lawn watering;
 6. Water from non-commercial car washing;
 7. Discharge from de-chlorinated swimming pool or hot tub water (less than one ppm chlorine) provided the pool or hot tub is drained in such a way as not to cause a nuisance;
 8. Discharge from street sweeping, and Stormwater Runoff containing sand and deicers used for public safety purposes on public or private property;
 9. Emergency repairs to the Municipal Storm Drain System, and any Stormwater management structure or practice that poses a threat to public health or safety, or as deemed necessary by the Superintendent of Public Works or their designee;
 10. Dye testing, provided verbal notification by telephone or email is given to the Department of Public Works at least 24 hours prior to the time of the test;
 11. 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
 12. Discharge for which advanced written approval is received from the Department of Public Works as necessary to protect public health, safety, welfare or the environment.

H. Suspension of Storm Drainage System Access

1. The Department of Public Works 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 Superintendent of Public Works [or their designee](#) may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.
2. 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 Superintendent of Public Works [or their designee](#) will issue a written order in compliance with Section K(4) of this Bylaw notifying the violator of the proposed termination of its MS4 access. The violator may appeal the order in accordance with Section K(5) of this Bylaw. A Person commits an offense if the Person reinstates MS4 access to Premises terminated pursuant to this Section, without the prior approval of the Public Works Department.

I. Use of Best Management Practices

The Department of Public Works has adopted requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of Stormwater, the storm drain system, or waters of the United States. The owner or operator of a commercial or industrial establishment or construction site shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the Municipal Storm Drain System or Watercourses through the use of these structural and non-structural BMPs. Further, any Person responsible for a property or Premises, 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 Stormwater 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 Stormwater Pollution Prevention Plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

J. 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 into the municipal drainage system, a wetland resource area, or the 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 Department of Public Works. In the event of a release of non-Hazardous Material, the reporting Person shall notify

the Department of Public Works no later than the next business day. The reporting Person shall provide to the Department of Public Works written confirmation of all telephone, email 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.

K. Enforcement

1. The Superintendent of Public Works [or their designee](#) shall enforce this Bylaw, and any regulations, permits, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for violations.
2. If a Person violates the provisions of this Bylaw or its regulations, or of any permit, notice, or order issued there under, the Town may seek injunctive relief in a court of competent jurisdiction to restrain the Person from activities which would create further violations, or to compel the Person to perform abatement or remediation of the violation.
3. The Superintendent of Public Works [or their designee](#) may, to the extent permitted by law, enter a property to perform their duties under this Bylaw and regulations including inspections, surveys, or sampling they deem necessary to investigate Illicit Discharges, connections, or obstructions of the MS4 system. The Superintendent of Public Works [or their designee](#) may, to the extent permitted by law, enter a property to inspect work being performed under a permit issued pursuant to this Bylaw to confirm work is being done in accordance with said permit. The Superintendent of Public Works [or their designee](#) may, to the extent permitted by law, enter a property where work is being done without a permit to determine if that work is in violation of this Bylaw or regulations.
4. The Superintendent of Public Works [or their designee](#) may issue a written order to enforce the provisions of this Bylaw or regulations, which may include but not be limited to requirements to:
 - a. eliminate Illicit Connections or discharges to the MS4;
 - b. perform monitoring, analyses, and reporting;
 - c. cease and desist unlawful discharges, practices, or operations;
 - d. remediate contamination in connection therewith.
 - 1.If the Superintendent of Public Works [or their designee](#) 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.
 2. 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 any costs incurred by the Town including administrative costs.

3. The violator or property owner may appeal the amount or basis of costs within thirty (30) days of receipt of the notification of the costs incurred in accordance with Section K(5) of this Bylaw.
4. 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 Superintendent of Public Works [or their designee](#) 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.
5. Appeals. The decisions or orders of the Superintendent of Public Works [or their designee](#) may be appealed to the Town Manager by the party who is the subject of the decision or order. A written notice of appeal shall be filed with the Town Manager within 30 days of receipt of the order or decision being appealed. The Town Manager shall hold a hearing within 30 days of receipt of the notice of appeal and shall issue a decision within 30 days of conclusion of the hearing. Further relief from a decision by the Town Manager shall be to a court of competent jurisdiction.
6. Compensatory Action. In lieu of enforcement proceedings, penalties, and remedies authorized by this Bylaw, the Superintendent of Public Works [or their designee](#) may impose upon a violator alternative compensatory actions consistent with the objectives of the Town's Stormwater management program, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.
7. Remedies Not Exclusive. The remedies listed in this Bylaw are not exclusive of any other remedies available to the Town under any applicable federal, state or local law.