

## **REGULATION PROHIBITING ILLICIT CONNECTIONS AND DISCHARGES TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)**

### **1. PURPOSE**

The purpose of this regulation is to prohibit illicit connections and non-stormwater discharges to the Town of West Newbury's Municipal Separate Storm Sewer System (MS4). Non-stormwater discharges to the MS4 contain contaminants and supply additional flows which are major causes of:

- a. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, and groundwater;
- b. contamination of drinking water supplies;
- c. alteration or destruction of aquatic and wildlife habitat; and
- d. flooding.

Regulation of illicit connections and discharges to the MS4 is necessary for the protection of the Town of West Newbury's water bodies and groundwater, and to safeguard the public health, safety, welfare, and the environment.

The objectives of this regulation are:

- a. to prevent pollutants from entering the MS4;
- b. to prohibit illicit connections and unauthorized discharges to the MS4;
- c. to remove all such illicit connections and discharges;
- d. to comply with state and federal statutes and regulations relating to stormwater discharges;
- e. to establish the legal authority to ensure compliance with the provisions of this regulation through proper inspection, monitoring, and enforcement; and
- f. to prevent contamination of drinking water supplies.

### **2. AUTHORITY**

This regulation is adopted pursuant to Sections 31 and 127 of Chapter 111 of the Massachusetts General Laws as amended, and the regulations of the Federal Clean Water Act found at 40 CFR 122.34. The West Newbury Board of Health shall administer, implement, and enforce this regulation. Any powers granted to or duties imposed upon the Board may be delegated in writing by the Board to its employees or agents. The Board of Health may promulgate rules and regulations to effectuate the purposes of this regulation. Failure by the Board of Health to promulgate such rules and regulations shall not have the effect of suspending or invalidating this regulation.

### **3. DEFINITIONS**

For the purposes of this regulation, the following definitions and provisions shall apply:

- a. **Authorized Enforcement Agency** – The Board of Health, its employees or agents designated to enforce this regulation.
- b. **Best Management Practice (BMP)** – An activity, procedure, restraint, or structural improvement that helps reduce the quantity or improve the quality of stormwater runoff.
- c. **Clean Water Act** – The Federal Water Pollution Control Act (33 U.S.C. section 1251 *et seq.*) and as hereafter amended.

- d. **Discharge of Pollutants** – The addition from any source of any pollutant or combination of pollutants into the MS4 or into waters of the United States or Commonwealth of Massachusetts from any source.
- e. **Groundwater** – Water beneath the surface of the ground.
- f. **Illicit Connection** – A surface or subsurface drain or conveyance which allows an illicit discharge into the MS4, 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 regulation.
- g. **Illicit Discharge** – Direct or indirect discharge to the MS4 that is not composed entirely of stormwater, except as specifically exempted in Section 7 of this regulation. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from fire-fighting activities or municipal ice and snow control operations.
- h. **Impervious Surface** – Any material or structure on or above the ground that prevents water from infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and rooftops.
- i. **Municipal Separate Storm Sewer System (MS4)** – 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 and/or operated by the Town of West Newbury.
- j. **National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit** – A permit issued by the U.S. Environmental Protection Agency or jointly with the State of Massachusetts that authorizes the discharge of pollutants to waters of the United States or Commonwealth.
- k. **Non-Stormwater Discharge** – A discharge to the MS4 not comprised entirely of stormwater.
- l. **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.
- m. **Pollutant** – Any element or property of sewage, residential, 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 storm drainage system or waters of the United States and/or Commonwealth. Pollutants shall include without limitation:
  - 1) paints, varnishes, solvents;
  - 2) oil, grease, antifreeze, other automotive fluids and/or products;
  - 3) non-hazardous liquid and solid wastes;
  - 4) refuse, garbage, litter, rubbish, yard wastes, or other discarded or abandoned objects, ordnances, accumulations, or floatables;
  - 5) pesticides, herbicides, and fertilizers;
  - 6) hazardous materials and wastes;
  - 7) sewage;
  - 8) dissolved and particulate metals;
  - 9) metal objects or materials;
  - 10) animal wastes;
  - 11) rock, sand, salt, soils; and
  - 12) construction wastes and/or residues.
- n. **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.
- o. **Recharge** – The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.
- p. **Stormwater** – Runoff from precipitation or snowmelt.

- q. **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 without limitation:
- 1) any synthetic organic chemical;
  - 2) petroleum products;
  - 3) heavy metals;
  - 4) radioactive or infectious waste;
  - 5) acid and alkali substances;
  - 6) any substance defined as Toxic or Hazardous under M.G.L. Ch. 21C and Ch. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000; and
  - 7) Any substance listed as hazardous under 40 CFR 261.
- r. **Watercourse** – A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.
- s. **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.
- t. **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.

#### 4. APPLICABILITY

This regulation shall apply to flows entering the municipally owned and/or operated storm drainage system (MS4).

#### 5. PROHIBITED ACTIVITIES

The following activities are prohibited:

**Illicit Connections** – No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drainage system (MS4), regardless of whether the connection was permissible under applicable law, regulation, or custom at the time of connection.

**Illicit Discharges** – No person shall dump, discharge, cause, or allow to be discharged any pollutant or non-stormwater discharge into the municipal storm drainage system (MS4), into a watercourse, or into waters of the United States and/or Commonwealth.

**Obstruction of the MS4** – No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drainage system (MS4) without prior written approval from the Board of Health.

#### 6. EXEMPTIONS

Discharges or flows resulting from fire-fighting activities and Highway Department ice and snow control operations are exempt. In addition, the following non-stormwater discharges or flows are exempt provided that the source is not a significant contributor of pollution to the municipal storm drainage system (MS4):

- a. waterline flushing;
- b. flow from potable water sources;

- c. springs;
- d. natural flow from riparian habitats and wetlands;
- e. diverted stream flow;
- f. rising groundwater;
- g. uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- h. water from exterior foundation drains, footing drains (not including active groundwater dewatering systems, such as dewatering excavations for foundations or pipelines), crawl space/cellar sump pumps (if approved by the Board of Health), or air conditioning condensation;
- i. discharge from landscape irrigation or lawn watering;
- j. water from individual residential car washing;
- k. discharge from dechlorinated swimming pool water (less than one part per million chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as to not cause a nuisance;
- l. discharge of water from street sweepers;
- m. dye testing, provided verbal notification is given to the Board of Health prior to the time of the test;
- n. non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the U.S. 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
- o. discharge for which advanced written approval is received from the Board of Health as necessary to protect public health, safety, welfare, and the environment.

## **7. EMERGENCY SUSPENSION OF MUNICIPAL STORM DRAINAGE SYSTEM (MS4) ACCESS**

- a. The Board of Health may suspend access to the municipal storm drainage system (MS4) 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 the environment. In the event any person fails to comply with an emergency suspension order, the Board of Health may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.
- b. Any person discharging to the municipal storm drainage system (MS4) in violation of this regulation may have his/her access to the storm drainage system terminated if such termination would abate or reduce an illicit discharge. The Board of Health shall notify a violator of the proposed termination of storm drainage system access. The violator may petition the Board of Health for reconsideration and a hearing. A person commits an offense if he/she reinstates access to the storm drainage system without prior written approval from the Board of Health.

## **8. NOTIFICATION OF SPILLS**

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 which is resulting or may result in illegal discharge of pollutants, that 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 West Newbury Fire and Police Departments, the Highway Department, and the Board of Health. In the event of a release of non-hazardous material, said person shall notify the Board of Health no later than the next business day. Written confirmation of all telephone, facsimile, or in-person notifications shall be provided to

the Board of Health within three (3) business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for period of at least three (3) years.

## **9. ENFORCEMENT**

### **a. Board of Health**

The Board of Health or its authorized agent shall enforce this regulation and any rules and 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 violations of the regulation.

### **b. Civil Relief**

If anyone violates the provisions of this regulation or any rule, regulation, permit, notice, or order issued thereunder, the Board of Health may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or compelling the person to abate or remediate the violation.

### **c. Orders**

The Board of Health may issue a written order to enforce the provisions of this regulation and any rules and regulations thereunder, which may include: (1) elimination of illicit connections or discharges to the municipal storm drainage system; (2) termination of access to the storm drainage system; (3) performance of monitoring, analyses, and reporting; (4) cessation of unlawful discharges, practices, or operations; and (5) remediation of contamination in connection therewith. If the Board of Health determines that abatement or remediation of contamination is required, the order shall set forth a deadline for completion of the abatement or remediation. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of West Newbury may, at its option, undertake such work, and expenses thereof shall be charged to the violator or property owner.

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall 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 Health 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 Health 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 M.G.L. Chapter 59, Section 57 after the thirty-first day at which the costs first become due.

### **d. Criminal and Civil Penalties**

Any person who violates any provision of this bylaw, 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 for each day such violation occurs or continues, or to a civil penalty, which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.

**e. Non-Criminal Disposition**

As an alternative to criminal prosecution or civil action, the Town of West Newbury may elect to utilize the non-criminal disposition procedure set forth in M.G.L. Chapter 40, Section 21D. The Board of Health shall be the enforcing entity. The penalty for the 1st violation shall be up to \$100. The penalty for the 2nd violation shall be up to \$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.

**f. 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 Board of Health, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this regulation and may make or cause to be made such examinations, surveys, or sampling as the Board of Health deems reasonably necessary.

**g. Appeals**

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

**h. Remedies Not Exclusive**

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

**10. SEVERABILITY**

The provisions of this regulation are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this regulation shall be held invalid for any reason, all other provisions shall continue in full force and effect.


**11. TRANSITIONAL PROVISIONS**

Residential property owners shall comply with this regulation on a schedule set forth in the Board of Health compliance order, but such property owners shall in no case have more than six (6) months from the effective date of the regulation to comply with its provisions, unless good cause is shown for the failure to comply with the regulation during that period.

Adopted and Effective Date: 5/27/08 by vote of the West Newbury Board of Health

  
Robert James, Chairman

  
Blake Seale, Member

  
Kimberly Cole, Member