

ARTICLE 11: (Board of Selectmen)

To see if the Town will vote to amend the Town of Douglas General By-Laws by adding the following new Section.

ARTICLE 11: Illegal Discharges and Stormwater Connections

§11.1. Purpose/Intent.

The purpose of this bylaw is to provide for the health, safety, and general welfare of the citizens of the Town of Douglas through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This bylaw establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this bylaw are:

- A. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user
- B. To prohibit Illicit Connections and Illegal Discharges to the municipal separate storm sewer system
- C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this bylaw

§11.2. Definitions.

For the purposes of this bylaw, the following shall mean:

AUTHORIZED ENFORCEMENT AGENCY – Means the Conservation Commission and its employees or agents to enforce this bylaw.

BEST MANAGEMENT PRACTICES (BMPS) – Means schedules of activities, prohibitions of practices, general good house keeping 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.

CONSTRUCTION ACTIVITY – Means activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

DISCHARGE OF POLLUTANTS – Means the addition from any source of any pollutants or combination of pollutants into the municipal storm drainage system or into waters of the United States from any source.

GROUNDWATER – Means water beneath the surface of the ground.

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.

ILLEGAL DISCHARGE – Means any direct or indirect non-storm water discharge to the municipal storm drainage system, except as exempted in §11.7 of this bylaw.

ILLICIT CONNECTIONS – An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the municipal storm drainage system and any connections to the municipal storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been 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 municipal storm drainage system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

INDUSTRIAL ACTIVITY – Means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

MUNICIPAL AUTHORITY – Means the Douglas Board of Selectmen.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAINAGE SYSTEM – Means any facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT – Means a permit issued by the United States Environmental Protection Agency (EPA) or jointly with the Commonwealth of Massachusetts 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 storm water.

PERSON – Means any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and any officer, employee or agent of such person.

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, so that the same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; 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.

STORM WATER. – Means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORMWATER POLLUTION PREVENTION PLAN – 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 Massachusetts Department of Environmental Protection pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts

WASTEWATER – Means 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 – Means a natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

Other terms used in this bylaw and not specifically defined herein shall have the meaning set forth in the Clean Water Act.

§11.3. Applicability.

This bylaw shall apply to all water entering the municipal storm drainage system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

§11.4. Responsibility for administration.

The Town of Douglas Conservation Commission shall administer, implement, and enforce the provisions of this bylaw. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing to persons or entities acting in the beneficial interest of or in the employ of the Town.

§11.5. Severability.

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

§11.6. 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.

§11.7. Discharge prohibitions.

Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal storm drainage system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct, or continuance of any illegal discharge to the municipal storm drainage system is prohibited except as described as follows:

- A. The following discharges are exempt from discharge prohibitions established by this bylaw: water line flushing; flow from potable water sources; landscape irrigation or lawn watering; diverted stream flows; rising ground water; uncontaminated ground water infiltration to storm drains or uncontaminated pumped ground water; water from foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation; springs; non-commercial washing of vehicles; natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.

- B. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
- C. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
- D. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and 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 all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the municipal storm drainage system.

Prohibition of Illicit Connections.

- A. The construction, use, maintenance, or continued existence of illicit connections to the municipal storm drainage system is prohibited.
- B. 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.
- C. A person is considered to be in violation of this bylaw if the person connects a line conveying sewage to the municipal storm drainage system, or allows such a connection to continue.

§11.8. Suspension of MS4 access.

Suspension due to Illegal Discharges in Emergency Situations

The Conservation Commission may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If a person fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

Suspension due to the Detection of Illegal Discharge

Any person discharging to the MS4 in violation of this bylaw may have his MS4 access terminated if such termination would abate or reduce an illegal discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

§11.9. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Conservation Commission prior to the allowing of discharges to the MS4.

§11.10. Monitoring of discharges.

- A. Applicability.

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This subsection applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

B. Access to Facilities.

- (1) To the extent permitted by law, the Conservation Commission shall be permitted to enter and inspect facilities subject to regulation under this bylaw as often as may be necessary to determine compliance with this bylaw. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.
- (2) Facility operators shall allow the Conservation Commission ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
- (3) The Conservation Commission shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.
- (4) The Conservation Commission has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Conservation Commission and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (6) Unreasonable delays in allowing the Conservation Commission access to a permitted facility shall be a violation of a surface water discharge permit and of this bylaw. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this bylaw.
- (7) If the Conservation Commission has been refused access to any part of the premises from which stormwater is discharged, and is able to demonstrate probable cause to believe that there may be a violation of this bylaw, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this bylaw or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

§11.11. Requirement to prevent, control, and reduce storm water pollutants by the use of best management practices.

The Conservation Commission will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drainage system or watercourses through the use

of these structural and non-structural BMPs. Further, any person responsible for a property or premise, 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 storm drainage system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water 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 (SWPP) as necessary for compliance with requirements of the NPDES permit.

§11.12. Watercourse protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

§11.13. Notification of spills.

Notwithstanding other requirements of 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 which are resulting or may result in illegal discharges or pollutants discharging into storm water, the municipal storm drainage system, or waters of the United States said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies (including the Douglas Police and Fire Departments) of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Conservation Commission within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§11.14. Enforcement.

A. Notice of Violation.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Bylaw. The Conservation Commission and its employees and agents shall enforce this bylaw. Whenever the Conservation Commission finds that a person has violated a prohibition or failed to meet a requirement of this Bylaw, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed. Said notice shall further advise that, should the violator fail to abate or restore within the established deadline, the Town of Douglas may, at its option, undertake the work and the expense thereof shall be charged to the violator.

§11.15. Appeal of notice of violation.

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency to the Douglas Board of Selectmen. The notice of appeal must be received within ten (10) calendar days from the date of the Notice of Violation. A hearing on the appeal before the Board of Selectmen shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the Douglas Board of Selectmen shall be final.

§11.16. Enforcement measures after appeal.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within thirty (30) calendar days of the decision of the Douglas Board of Selectmen upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency may, to the extent permitted by law, enter upon the subject property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

§11.17. Cost of abatement of the violation.

Within fifteen (15) calendar days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs, which cost shall be assessed to the owner. The property owner may file with the Board of Selectmen, a written protest objecting to the amount of the assessment within ten (10) calendar days. If the amount due is not paid by the expiration of the time in which to file a protest or, if a protest is filed, within ten (10) calendar days after the decision of the Board of Selectmen upholding, in whole or in part, the amount of the cost, the cost shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. The cost shall be paid in not more than 12 equal payments. Interest at the statutory rate provided in G.L. c. 59, §57 shall be assessed on the balance beginning on the 31st day after the cost first becomes due.

§11.18. Injunctive relief.

If a person has violated or continues to violate the provisions of this bylaw, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

§11.19. Compensatory action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this bylaw, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

§11.20. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this bylaw is deemed to be a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and a civil action to abate, enjoin, or otherwise compel the cessation of, such nuisance may be taken by the authorized enforcement agency.

§11.21. Prosecution of Violations.

Any person that has violated or continues to violate this bylaw shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a penalty of \$500.00 dollars per violation per day. The authorized enforcement agency may recover all attorney's fees, court costs and other expenses associated with enforcement of this bylaw, including sampling and monitoring expenses. Notwithstanding the foregoing the Town may choose to employ the "noncriminal" remedies detailed elsewhere in this Bylaw.

§11.22. 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 and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.