

Town



of Danvers,
Massachusetts 01923

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June 3, 2014

TO WHOM IT MAY CONCERN:

Certification is hereby made that the following is a true copy of Article 13 and the vote thereon of the Annual Town Meeting held on May 16, 2011, at the Holten Richmond Middle School, Conant Street, Danvers, Massachusetts:

ARTICLE 13: To see if the Town will vote to amend the Town By-laws by the addition of a new Chapter XL, as follows, or take any other action thereon.

Chapter XL

By-law to Regulate Illicit Discharges to the Municipal Storm Drain System

Section 1. Purpose

- A. 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.
- B. Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the Town of Danvers' water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.
- C. The objectives of this by-law are:
 - 1. To prevent pollutants from entering the Town of Danvers' municipal separate storm sewer system;
 - 2. To prohibit illicit connections and unauthorized discharges to the municipal separate storm sewer system;
 - 3. To require the removal of all such illicit connections;

4. To comply with state and federal statutes and regulations relating to stormwater discharges; and
5. To establish the legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement.

Section 2. Definitions

The following definitions shall apply in the interpretation and enforcement of this by-law. Terms not defined herein shall be construed according to their customary and usual meaning.

- A. **ENFORCEMENT AGENCY:** The Department of Public Works or its agents designated to enforce this by-law.
- B. **CLEAN WATER ACT:** The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.
- C. **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.
- D. **FACILITY or OPERATION:** Any business, establishment, or performance of work that uses, generates, or handles material that is considered a Pollutant.
- E. **GROUNDWATER:** Water below the land surface in a saturated zone, including perched groundwater and not confined in a conduit or container.
- F. **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.
- G. **ILLICIT DISCHARGE:** A direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 5.B.
- H. **MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) OR MUNICIPAL STORM DRAIN SYSTEM:** The system of conveyances designed, constructed, and used for collecting or conveying stormwater, including any 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 Danvers.

I. **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT:** A permit issued by United States Environmental Protection Agency (EPA) or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

J. **NON-POINT SOURCE POLLUTION:** Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, depositing them into water resources areas. Non-point sources include, but are not limited to, urban, agricultural, or silvicultural runoff.

K. **NON-STORMWATER DISCHARGE:** A discharge to the municipal storm drain system not composed 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. **POINT SOURCE:** Any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete, fissure, container, rolling stock concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

N. **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;
7. Sewage, fecal coliform and pathogens;
8. Dissolved and particulate metals;

9. Animal wastes;
 10. Rock, sand, salt, soils with the exception of winter salting and sanding in quantities that will not clog or otherwise impair the performance of stormwater conveyances;
 11. Construction wastes and residues; and
 12. Noxious or offensive matter of any kind.
- O. **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.
- P. **RECHARGE:** The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.
- Q. **RIPARIAN HABITAT:** The aquatic and terrestrial environment where a plant or animal naturally or normally lives and grows adjacent to streams, lakes, or other waterways.
- R. **STORMWATER:** Stormwater runoff, snow melt runoff, and surface water runoff and drainage.
- S. **BEST MANAGEMENT PRACTICE (BMP):** A structural or nonstructural technique for managing stormwater to prevent or reduce non-point source pollutants from entering surface waters or ground waters. A structural stormwater best management practice includes a basin, discharge outlet, swale, rain garden, biofilter or other stormwater treatment practice or measure either alone or in combination including without limitation any discharge pipe, overflow pipe, conduit, weir control structure that: (a) is not naturally occurring; (b) is not designed as a wetland replication area; and (c) has been designed, constructed, and installed for the purpose of conveying, collecting, storing, discharging, recharging or treating stormwater. Nonstructural stormwater best management practices include source control and pollution prevention measures.
- T. **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.
- U. **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 Massachusetts General Laws chapters 21C and 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

- V. **WATERCOURSE:** A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.
- W. **WATERS OF THE COMMONWEALTH:** All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, wetlands, and groundwater.
- X. **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.

Section 3. Authority

This by-law 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 4. Scope and Applicability

This by-law shall apply to flows entering the municipal separate storm sewer system.

Prohibited activities shall include:

- A. **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, into a watercourse, or into the waters of the Commonwealth.
- B. **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.
- C. **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 Enforcement Agency.

Section 5. Exemptions

- A. Discharge or flow resulting from fire fighting activities.
- B. 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:
 - 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, or air conditioning condensation;
 - 9. Discharge from landscape irrigation or lawn watering;
 - 10. Water from individual residential vehicle 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 verbal notification is given to the Enforcement Agency prior to the time of the test;
 - 14. Non-stormwater discharge permitted under an National Pollutant Discharge Elimination System 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
 - 15. Discharge for which advanced written approval is received from the Enforcement Agency as necessary to protect public health, safety, welfare or the environment.

Section 6. Coordination with Other Town Permits

This by-law is not intended to interfere with, abrogate, or annul any other by-law, rule or regulation, statute, or other provision of law. The requirements of this by-law should be considered minimum requirements, and where any provision of this by-law imposes restrictions different from those imposed by any other by-law, rule or regulation, or other provision of law, whichever

provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.

Section 7. Administration

A. Enforcement Agency

The Department of Public Works shall be the Enforcement Agency and may promulgate rules and regulations to effectuate the purposes of this by-law. Failure by the Department of Public Works to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

B. Illicit Discharge Rules and Regulations

The Department of Public Works shall administer, implement and enforce this by-law, and may issue and promulgate Rules and Regulations to that end.

C. Delegation of Authority

Any powers granted to or duties imposed upon the Enforcement Agency may be delegated in writing by the Enforcement Agency to employees or its authorized agent.

Section 8. Emergency Suspension of Storm Drainage System Access

The Enforcement Agency 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 Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

Section 9. 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 Enforcement Agency and the Department of Public Works. In the event of a release of non-hazardous material, the reporting person shall notify the Enforcement Agency no later than the next

business day. The reporting person shall provide to the 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 10. Enforcement

- A. The Enforcement Agency or an authorized agent of the Enforcement Agency shall enforce this by-law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.
- B. **Civil Relief.** If a person violates the provisions of this by-law, regulations, permit, notice, or order issued thereunder, the Enforcement Agency 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.
- C. **Orders.** The Enforcement Agency or an authorized agent of the Enforcement Agency may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include:
 - 1. Elimination of illicit connections or discharges to the municipal separate storm sewer system;
 - 2. Performance of monitoring, analyses, and reporting;
 - 3. That unlawful discharges, practices, or operations shall cease and desist; and
 - 4. Remediation of contamination in connection therewith.
- D. 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 fail to abate or perform remediation within the specified deadline, the Town of Danvers may, at its option, undertake such work, and expenses thereof shall be charged to the violator.
- E. 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 of Danvers, including administrative costs. The violator may file a written protest objecting to the amount or basis of costs with the Enforcement Agency 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 Enforcement Agency

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 violator and shall constitute a lien on the violator's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in Massachusetts General Laws chapter 59, section 57, after the thirty-first day at which the costs first become due.

- F. **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 \$300.00, excluding the cost of damages, for each offense. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

- G. **Non-Criminal Disposition.** As an alternative to criminal prosecution or civil action, the enforcement agency may elect to utilize the non-criminal disposition procedure set forth in Massachusetts General Laws chapter 40, section 21D in which case the Enforcement Agency or its authorized agent shall be the enforcing person. The penalty for the 1st violation shall be \$100.00. The penalty for the 2nd violation shall be \$200.00. 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.

- H. **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 Enforcement Agency, 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 Enforcement Agency deems reasonably necessary.

- I. **Appeals.** The decisions or orders of the Enforcement Agency shall be final. Further relief shall be to a court of competent jurisdiction.

- J. **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 11. Severability

The invalidity of any section, provision, paragraph, sentence, or clause of this by-law shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

Section 12. Transitional Provisions

Residential property owners shall have 180 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.

ARTICLE 13: The Finance Committee recommended that the Town vote to amend the Town By-laws by addition of a new Chapter XL, as it appears in the Warrant.

This recommendation being put to vote was voted unanimously.

ATTEST:

Joseph L. Collins

Joseph L. Collins
Town Clerk

JLC:kmw