

ARTICLE XXXI

ILLICIT DISCHARGE DETECTION AND ELIMINATION

Section I: Purpose:

Regulations of illicit connections and discharges to the municipal drain system is necessary for the protection of the Town of Merrimac water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.

The objectives of this by-law are:

1. to prevent pollutants from entering the Town of Merrimac's municipal separate storm sewer system (MS4);
2. to prohibit illicit connections and unauthorized discharges to the MS4;
3. to require the removal of all such illicit connections;
4. 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: 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 3: Definitions:

Authorized Enforcement Agency: The Merrimac Board of Selectmen (hereafter the Board), its employees or agents designated to enforce this by-law.

Board: The Merrimac Board of Selectmen

Best Management Practices: An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

Clean Water Act: The Federal Water Pollution Control Act (33 A.S. C. Sec 1251 *et seq.*) as hereafter amended.

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.

Groundwater: Water beneath the surface of the ground.

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, toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this by-law.

Illicit Discharge: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Article XXXI Section 9. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a surface Water Discharge Permit, or resulting from fire fighting activities exempt pursuant for Article XXXI Section 9(14) of this by-law.

Impervious Surface: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and rooftops.

Municipal Separate Storm Sewer System (MS4) or Municipal Storm Drain System: 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 or operated by the Town of Merrimac.

National Pollutant Discharge Elimination System (NPDES)

Stormwater Discharge Permit: A permit issued by the United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to water of the United States

Non-Stormwater Discharge: Discharge to the municipal storm drain system not composed entirely of stormwater.

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.

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

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,

Recharge: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

Stormwater: Storm water runoff, snow melt runoff, and surface water runoff and drainage.

Surface Water Discharge Permit: A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to the 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 material 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 G. L. Ch. 12 and Ch. 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, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters and groundwater.

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 or byproduct or waste product.

Section 4: Applicability

This by-law shall apply to flows entering the municipally owned storm drainage system/

Section 5: Authority

This bylaw 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 6: Responsibility for 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 employees or agents of the Board.

Section 7: Regulations

The Board may promulgate rules and regulations to effectuate the purpose of this by-law. Failure by the Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

Section 8: Prohibited Activities

Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged any pollutants 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 drain system without prior written approval of the Board.

Section 9: Exemptions

Discharge or flow resulting from fire fighting activities

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, footings drains (not including active groundwater dewatering systems⁰, crawl space pumps, or air conditioning;
9. Discharge from landscape irrigation or lawn watering;
10. Water from individual residential car washing;
11. Discharge from dechlorinated swimming pool water (less than 1 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 Board prior to the time of the test; Non-stormwater discharge permitted under 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 ordered and applicable laws and regulations.

Section 10: 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 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.

Section 11: Notification of Spills

Notwithstanding other requirements of local, state, 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 clean up 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 Merrimac Highway Department. 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.

Section 12: Enforcement

12.1 The Board or an authorized agent of the Board shall enforce this by-law, regulations, orders, violation notices and enforcement orders, and may pursue all civil remedies for such violations

12.2 If an Illicit Discharge occurs or an Illicit Connection is maintained, the Board shall give or cause to be given written notice directed to the Owner of the parcel from which the Illicit Discharge is emanating, or on which the Illicit Connection is maintained, ordering an immediate cessation of any act or condition in violation of this By-law.

12.3 The Board either with such notice or at any reasonable time thereafter may order the Owner or any other person either responsible for violating this By-law to begin and thereafter diligently prosecute to compliance, such remediation efforts as the Board in its reasonable discretion may deem appropriate.

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 Merrimac may, at its option undertake such work, and expenses thereof shall be charged to the violator.

12.4 Within thirty (30) days after completing all measures 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 Merrimac including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Board 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 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. 59,-57 after the thirty-first day at which the costs first become due.

12.5 Any violation of this by-law, any regulation promulgated hereunder, will be punishable by non-criminal disposition under G.L. c. 40, Sec 21D. The Town of Merrimac, in which case, the Board of Selectmen or authorized agent shall be the enforcing person. The penalty for any person or entity which causes an illicit discharge shall be subject to a fine of \$100 per day for each day that the illicit discharge continues after notice thereof is given by or at the direction of the Board. This fee may be waived by the Board to allow time for compliance.

The penalties set out herein may be assessed by the Board and are in addition to and not in substitution for any remedial action the Board may order.

Section 13: Appeals

Any person or Owner aggrieved by an action of the Board which was neither (i) the assessment of a penalty for which the provisions of M.G.L. c 40, Sec21D apply, nor (ii) an action taken by the Board at a meeting of which the aggrieved person or Owner was given notice and was afforded the opportunity to present evidence and argument with a view to causing the Board to modify its earlier action (such action being a “final action”) shall, within thirty days of such Board action, request a hearing before the Board at which the aggrieved person or Owner may present evidence and argument concerning final action by the Board. The Board shall hold such hearing within thirty (30) days following said request and within thirty days thereafter shall either confirm the Board’s previous action or order such other final action as it may determine.

Any person or Owner aggrieved by a decision of the Board of Selectmen under this by-law may appeal such decision to the appropriate court of competent jurisdiction.

Section 14: Severability

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

Section 15: Transitional Provisions

Residential property owners shall have 30 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. (STM 10/22/07)

