

Chapter U: Discharges to the Municipal Storm Drain System
[Adopted _____]

U1. Purpose

1.1 Regulation of Illicit Connections, Illicit Discharges, Obstructions and Discharges of Pollutants to the Municipal Storm Drain System is necessary for the protection of the Town of Acton’s water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.

1.2 The objectives of this bylaw are:

- 1.2.1 To prevent pollutants from entering the Town of Acton’s Municipal Separate Storm Sewer System (MS4);
- 1.2.2. To prevent unauthorized flows from entering the MS4 and adding to total storm water runoff flow volumes;
- 1.2.3. To prohibit Illicit Connections and Illicit Discharges to the MS4;
- 1.2.4. To require the removal of all such Illicit Connections and Illicit Discharges;
- 1.2.5. [To comply with state and federal statutes and regulations relating to storm-water discharges; and
- 1.2.6. To establish the legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

Comment [rb1]: Would it make sense to specifically state as a purpose compliance with the NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL PERMIT FOR STORM WATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS?

U2. Definitions

The following definitions shall apply in the interpretation and enforcement of this bylaw:

Authorized Enforcement Agency shall mean the Board and its employees or agents designated by the Board to enforce this bylaw.

Comment [rb2]: Technically the Board of Health does not have employees or agents, rather they are employees or agents of the Town of Acton.

Board shall mean the Acton Board of Health.

Clean Water Act shall mean the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

Discharge of Pollutants shall mean 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 shall mean water beneath the surface of the ground.

Illicit Connection shall mean a surface or subsurface drain or conveyance, which allows an Illicit Discharge into the Municipal Storm Drain System, including without limitation any discharge of 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 bylaw.

Illicit Discharge shall mean a direct or indirect discharge to the Municipal Storm Drain System that is not composed entirely of storm-water, except as exempted in Section U9.

Impervious Surface shall mean 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.

Comment [rb3]: What about heavily compacted soil or ground. Maybe set an infiltration rate below which it is deemed impervious?

Municipal Separate Storm Sewer System (MS4) or Municipal Storm Drain System or Municipal Storm Sewer System are used interchangeably and shall mean a conveyance or system of conveyances designed or used for collecting or conveying storm water, including any road with a drainage system, municipal street, catch basins, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, ditch, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Acton.

Comment [rb4]: Why not settle for one term?

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit shall mean a permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the Discharge of Pollutants to waters of the United States.

Non-Storm Water Discharge shall mean a discharge to the Municipal Storm Drain System not composed entirely of storm water.

Obstruction shall mean materials introduced to the MS4 that impede the design flow conditions of the MS4. Typical examples include lawn clipping, brush, gravel and other solid materials.

Person shall mean 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.

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Pollutant shall mean 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 the MS4, groundwater or surface water of the Town of Acton.

Comment [rb5]: Are there not also Federal and State definitions that could be referred to here?

Pollutants shall include without limitation:

- a. paints, varnishes, and solvents;
- b. oil and other automotive fluids;
- c. non-hazardous liquid and solid wastes and yard wastes;
- d. refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;

Comment [rb6]: I would recommend replacing this phrase with "", but not be limited to"

- e. pesticides, herbicides, and fertilizers;
- f. hazardous materials and wastes; sewage, fecal coliform and pathogens;
- g. dissolved and particulate metals which are not naturally occurring;
- h. animal wastes;
- i. rock, sand, salt, soils;
- j. construction wastes and residues; and
- k. noxious or offensive matter of any kind.

Process Wastewater shall mean 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 shall mean the process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

Storm water shall mean storm water runoff, snow melt runoff, and surface water runoff and drainage.

Surface Water Discharge Permit shall mean 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.

Threat of Release shall mean an observed indication of impending danger or discharge or an unconfirmed indication of loss of a non permitted material into the MS4

Toxic or Hazardous Material or Waste shall mean 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 G.L. Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

Watercourse shall mean 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 shall mean all waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, wetlands, and groundwater.

Wastewater shall mean 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.

Comment [rb7]: Are there not also Federal definitions that could be referred to here?

U3. Applicability

3.1 This bylaw shall apply to all Illicit Connections, Illicit Discharges, Obstructions and Discharges of Pollutants to the Municipal Separate Storm Sewer (MS4.)

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

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U4. Authority

4.1 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.

U5. Responsibility for Administration

5.1 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 Town of Acton.

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U6. Regulations

6.1 The Board may promulgate rules and regulations to effectuate the purposes of this bylaw. Failure by the Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw.

U7. Permits

7.1 No Person shall be allowed to discharge in any manner by way of pipes or hoses from sump pumps, crawl space pumps or sub-drains from private property onto a public way or into the MS4 without first obtaining a permit from the Board and, in the case of a public way, written permission from the Town Engineer. All sump pumps that eventually discharge into the MS4 shall require such a permit. These permits shall become part of the public record for the property that will be maintained in the Department of Health files.

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7.2 Permit conditions shall take into account potential public health hazards from freezing on public ways.

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7.3 The Board may stipulate additional permit conditions at time of permitting, requiring the permit holder, or approved other Person, to perform and submit water quality monitoring results.

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Comment [rb8]: I do not think it is a good idea to obligate the Board to anything in a Town Bylaw.

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7.4 Fees necessary for issuance of permits or licenses under this bylaw shall be set by the Board of Selectmen at the recommendation of the Board. Fees shall be payable at the time of application.

7.5 Said permits shall require a reissuance upon transfer of title of property or upon change or increase in flow of the discharge source.

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U8. Prohibited Activities

8.1. Illicit Discharges. No Person shall dump, discharge, cause or allow to be discharged any Illicit Discharge, Discharge of Pollutants or Non-Storm Water Discharge into the Municipal Separate Storm Sewer System (MS4) or into a Watercourse, or into the Waters of the Commonwealth, except as exempted in Section U9.

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8.2 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.

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Comment [rb9]: Use MS4 instead

8.3. Obstruction of Municipal Storm Drain System. No Person shall cause an obstruction or otherwise interfere with the normal flow of storm water into or out of the Municipal Storm Drain System without prior written approval from the Authorized Enforcement Agency.

Comment [rb10]: Use MS4 instead

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Comment [rb11]: Use MS4 instead

Comment [rb12]: Or did you mean "without a permit from the Board?"

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U9. Exemptions

9.1 Discharge or flow resulting from fire fighting activities is exempt from this bylaw.

9.2. Discharges from the following activities will not be considered a source of pollutants to the storm drain system and to waters of the U.S. when properly managed to ensure that no potential pollutants are present, and therefore they shall not be considered illegal discharges unless determined to cause a violation of the provisions of the Clean Water Act or this bylaw:

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;

Comment [rb13]: Where does roof runoff fall here? Exempt? Illicit Discharge? Permit Required? Same question about driveway runoff; many residential driveways drain into the street and many commercial driveway do, too, at least for the few feet closest to a street.

Comment [rb14]: Not defined. Did you mean MS4?

Comment [rb15]: Not defined. Did you mean Waters of the Commonwealth?

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), French drain systems in place and connected to the MS4 on or before (date), or air conditioning condensation;
9. Discharge from landscape irrigation or lawn watering;
10. Indirect discharge of pesticides, herbicides and fertilizers to an MS4 from surface runoff as a result of lawn/crop application, under the condition, however that such applications are conducted pursuant to the intended use of the product and within the recommended application concentrations as indicated by the manufacturer and/or any Federal, State, and local guidelines for those products;
11. Water from individual residential car washing;
12. Water discharge from street sweeping that occurs during the active sweeping process;
13. Application of de-icing materials as required for public safety.
14. Dye testing, provided notification is given to the Authorized Enforcement Agency prior to the time of the test;
15. Non-Storm Water Discharge permitted under a NPDES permit, a Surface Water Discharge Permit, or a 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
16. Discharge for which advanced written approval is received from the Authorized Enforcement Agency as necessary to protect public health, safety, welfare or the environment.

Comment [rb16]: I recommend inserting a specific date, say, April 15, 2010. That way nobody has to scramble in the future to find the date of adoption.

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Comment [rb17]: Or, did you mean a permit from the Board?

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U10. Emergency Suspension of Storm Drainage System Access

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

Comment [rb18]: Use defined term – MS4

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Comment [rb19]: Use MS4 instead

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U11. Notification of Spills

- 11.1 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 a

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Discharge of Pollutants to the Municipal Storm Drain 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, or threat of release, of oil, petroleum products or hazardous materials, the Person shall, notify the Acton Fire and Police Departments, the Authorized Enforcement Agency, the Acton Water District, and the Acton Engineering Department within two hours. 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, electronic, 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.

- Comment [rb20]: Use MS4 instead
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- Comment [rb21]: Would this need definition?
- Comment [rb22]: Not defined. The definitions use "Pollutant" and "Toxic or Hazardous Material or Waste".
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11.1 All notifications and records received by the Town Departments, the Authorized Enforcement Agency, and the Acton Water District shall become part of the public record for the property maintained in the Department of Health files and available for public review.

11.2 An annual summary of reported releases into the MS4 providing summary of number and type of reported residential and commercial spilled shall be reported in brief in the Annual Town report to the public in a form which conveys trends over a five year period.

U12. Enforcement

12.1 The Authorized Enforcement Agency shall enforce this bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

- Comment [rb23]: Is this a required element under NPDES? If not, I would take it out. The record in public information. Putting it in the Town Report is clutter.
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12.2. Civil Relief. If a Person violates the provisions of this bylaw, or any regulations, permits, notices, or orders issued thereunder, the Authorized 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.

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12.3. Orders. Once a determination of violation has been made, the Authorized Enforcement Agency may issue a written order to enforce the provisions of this bylaw or the regulations thereunder, within 15 calendar days of a confirmed violation, which may include but is not limited to the following requirements:

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1. elimination of an Illicit Discharge, Illicit Connection, Obstruction or Discharge of Pollutants to the MS4;
2. performance of monitoring, analyses, and reporting;

- Comment [rb24]: Does this mean that after 15 days the order is too late and therefore not enforceable? Also, I would move this phrase to after "may issue".

3. that unlawful discharges, practices, or operations shall cease and desist; and/or
4. remediation of contamination in connection therewith.

Failure to issue a written order shall not relieve the violator of the Person's responsibilities under this bylaw.

Comment [rb25]: So, what is the point of the 15 day time period above?

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Copies of all orders shall be made available for public inspection at the Health Department during normal business hours, beginning the next business day after issuance. Inspection and copying shall be permitted according to the provisions of Massachusetts law. These records shall be retained to the extent required by Massachusetts law.

Comment [rb26]: Is it Health Department or Department of Health? Use same term throughout bylaw!

- 12.4. If the Authorized Enforcement Agency 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 of Acton may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

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- 12.5. Within thirty (30) days after completion of all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be invoiced for the costs incurred by the Town of Acton, including administrative costs. The violator or property owner may file a written protest objecting to the invoice 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 within thirty (30) days from a final decision of a court of competent jurisdiction, the invoice amount 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 payment for the invoice first become due.

Comment [rb27]: What about a performance bond; or tying up future permits, licenses etc. until remediated?

Comment [rb28]: Does this mean after 30 days the violator gets off the hook financially? Consider extending the time period for notice!!

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- 12.6. Criminal Penalty. Any Person who violates any provision of this bylaw, regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$ 300.00 per day, excluding the cost of damages. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

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- 12.7. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Town of Acton may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D and the Town of Acton General Bylaws Chapter E 45 in which case the Authorized Enforcement Agency shall be the enforcing person. The penalty for the 1st violation shall be \$100.00 per

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day. The penalty for the 2nd violation shall be \$200.00 per day. The penalty for the 3rd and subsequent violations shall be \$300.00 per day. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

12.8. 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 Authorized Enforcement Agency may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Authorized Enforcement Agency deem reasonably necessary.

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12.9. Appeals. Appeals of orders of an Agent of the Board may be made in writing to the Board within seven business days from receipt of order and reviewed at the next regularly scheduled meeting of the Board. The decisions or orders of the Board may be appealed in writing to the Board of Selectmen within seven business days of the decision and reviewed at the next regularly scheduled meeting of the Board of Selectmen. Further relief shall be to a court of competent jurisdiction.

Comment [rb29]: Why get the BoS involved? They have enough to do!

12.10. 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.

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U13. Severability

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

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U14. Transitional Provisions

14.1. Persons and property owners shall have 90 days from the effective date of the bylaw to comply with its provisions unless good cause is shown for the failure to comply with the bylaw within that period.

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U15. Variances

15.1. If and only if permissible under the NPDES Storm Water Discharge Permit for the Town of Acton Municipal Storm Drain System, the Board may grant a variance from the terms of this bylaw after notice to abutters and a public hearing, if the Board finds that a variance would satisfy each of the following conditions:

Comment [rb30]: Use MS4 instead

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1. The variance is consistent with the public health and environmental protection objectives of the Massachusetts General Laws and applicable Federal, State and local regulations;

2. The variance is consistent with the purpose and intent of this bylaw;
3. The variance prevents an undue burden on the permit applicant; and
4. The variance provides for adequate protection to the MS4, the Watercourse, and the Waters of the Commonwealth to meet the purposes of this bylaw as stated in Section U1.

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