

Chapter 16

WATER, SEWERS AND SEWAGE DISPOSAL*

Section. 16-1. Connections to or Draining into Town Sewers.

Any person who shall connect with or drain, or attempt to connect with or drain, into any common sewer built or owned by the Town, without authority therefor having first been obtained from the Board of Selectmen, shall be punished by a fine not exceeding twenty dollars (\$20.00) and shall also be liable to pay all such damages as may be caused by such acts to be recovered by the Board of Selectmen in the name of the town.

(Bylaws, Art. 14, § 15, 11-12-40, Art. 11, 12-10-07)

Section. 16-2. Interest on Unpaid Sewer Use Fees

Interest on Town sewer use fee bills which remain unpaid after their due date shall accrue at the same rate of interest as may be charged on property tax bills under the provisions of General Laws, Chapter 59, Section 57. Such bills may also be charged a demand fee to recover any administrative costs associated with issuing an overdue payment notice, such fee to be established by the Board of Sewer Commissioners. (Bylaws, Art. 3, § 14, 2-27-2001)

Section. 16-3. Post-construction Stormwater Management of New Developments and Redevelopments.

Section 1. Purpose.

Regulation of discharges to the municipal separate storm sewer system (MS4) is necessary for the protection of the Town of Millbury's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment. Increased and contaminated stormwater runoff associated with developed land uses and the accompanying increase in impervious surface 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. erosion of stream channels;
- d. alteration or destruction of aquatic and wildlife habitat; and
- e. flooding.

Therefore, this bylaw establishes stormwater management standards for the final conditions that result from development and redevelopment projects to minimize adverse impacts offsite and downstream which would be borne by abutters, townspeople and the general public.

The objectives of this by-law are:

- a. To require practices to prevent increased stormwater and groundwater flow from new and redeveloped sites from impacting abutters.
- b. To require practices to control the flow of stormwater from new and redeveloped sites into the Town of Millbury storm drainage system in order to prevent flooding and erosion;
- c. To protect groundwater and surface water from degradation;
- d. To promote groundwater recharge;
- e. To prevent pollutants from entering the town's municipal separate storm sewer system (MS4) and to minimize discharge of pollutants from the MS4;
- f. To ensure adequate long-term operation and maintenance of structural stormwater best management practices so that they work as designed;
- g. To comply with state and federal statutes and regulations relating to stormwater discharges; and
- h. To establish the Town of Millbury's legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement.

Section 2. Definitions.

Alteration of Drainage Characteristics: Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete discharge, change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

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

Board: Town of Millbury Planning Board.

Clearing: Any activity that removes the vegetative surface cover.

Development: The modification of land to accommodate a new use or expansion of use, usually involving construction.

Disturbance of Land: Any action that causes a change in the position, location, or arrangement of soil, sand rock, gravel of similar earth material.

Grading: Changing the level or shape of the ground surface.

Grubbing: The act of clearing land surface by digging up roots and stumps.

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

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parking lots, sidewalks, and roof tops.

Massachusetts Stormwater Management Policy: The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 § 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

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 Millbury.

Normal Maintenance: Includes activities generally recognized as tasks relating to the use of fertilizers, compost materials and other soil amendments; mowing and brush cutting; maintenance and repair of existing fences; and the cleaning, clearing, repairing or restoring of existing man-made or natural water management systems, such as ditches, channels, or other waterways. In all cases, normal maintenance does not include placing fill, or dredging water bodies.

Operation and Maintenance Plan: A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to insure that it continues to function as designed.

Outfall: The point at which stormwater flows out from a point source discernible, confined and discrete conveyance into waters of the Commonwealth.

Outstanding Resource Waters (ORWs): Waters designated by Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards (314 CMR 4.00) and the Massachusetts Stormwater Management Standards. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.

Owner: A person with a legal or equitable interest in property.

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.

Point Source: Any discernible, confined, and discrete conveyance, including but not limited to,

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any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

Redevelopment: Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.

Runoff: Rainfall, snowmelt, or irrigation water flowing over the ground surface.

Stormwater Management Plan: A plan required as part of the application for a Stormwater Management Permit. See Section 7.

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

TSS: Total Suspended Solids.

Section 3. Authority.

This bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

Section 4. Applicability.

- a. No person may undertake a construction activity, including clearing, grading and excavation that results in a land disturbance which would exceed the following thresholds without a permit from the Planning Board.
 1. Any activity that will result in soil disturbance of 5,000 square feet or more, or more than twenty-five percent (25%) of the parcel or lot, whichever is less;
 2. Any land disturbance activity greater than 5,000 square feet which would result in an increased amount of stormwater runoff from the property to public/private property or resource areas;
 3. Any activity which would increase the flow to the municipal storm or sanitary sewer systems;
 4. Any activity which would alter or modify an existing drainage system; and
 5. Any activity that will disturb land with 15% or greater slope and where the land disturbance is greater than or equal to 2,000 square feet within the sloped area.

Activities will be classified as major and minor projects. Major projects are defined as projects which have activities that result in the land disturbance of one acre or more. All other activities will be considered minor projects (see section 7(b).) Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity or the original purpose of the site.

b. Exemptions

1. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04;
2. Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling;
3. The construction of fencing that will not substantially alter existing terrain or drainage patterns;
4. Construction of utilities other than drainage (gas, water, sewer, electric, telephone, etc.) which will not alter terrain or drainage patterns;
5. As authorized in the Phase II Small MS4 General Permit for Massachusetts storm water discharges resulting from the activities identified in Section 4 that are wholly subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Policy as reflected in an Order of Conditions issued by the Conservation Commission are exempt from compliance with this bylaw.
6. Construction of a project approved in accordance with Section 5.3 of Millbury Rules and Regulations Governing the Subdivision of Land.

Section 5. Administration.

- a. The Planning Board, hereinafter 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 its employees or agents.

- b. Rules and Regulations. The Planning Board may adopt, and periodically amend, rules and regulations relating to the procedures and administration of this Stormwater Management By-law, by majority vote of the Board, after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least seven (7) days prior to the hearing date.

Section 6. Permits and Procedure.

- a. Application. The site owner or his agent shall file with the Board twelve (12) copies of a completed application package for a Stormwater Management Permit (SMP) with the Board and one (1) original Application Form, the Stormwater Management Plan, the Operation & Maintenance Plan, and the list of abutters application package with the Town Clerk. Permit issuance is required prior to any site altering activity. While the applicant can be a representative, the permittee must be the owner of the site.

The SMP Application package shall include:

1. Completed Application Form with original signatures of all owners;
 2. List of abutters, certified by the Assessors Office;
 3. One (1) copy of the Stormwater Management Plan and project description as specified in Section 7.a;
 4. One (1) copy of the Operation and Maintenance Plan as required by Section 8 of this bylaw;
 5. Application and Technical Review Fees.
- b. Entry. Filing an application for a permit grants the Board, or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with the resulting permit.
 - c. Other Boards. The Board shall give one copy of the application package

to each of the other relevant boards, including the Conservation Commission, Department of Public Works, Board of Health, and Building Department.

- d. **Fee Structure.** The Board shall obtain with each submission an Application Fee established by the Board to cover expenses connected with the public hearing and application review of the Stormwater Management Permit and a Technical Review Fee sufficient to cover professional review. The Board is authorized to retain a Registered Professional Engineer and other professional consultant to advise the Board on any or all aspects of a project to ensure compliance with all relevant laws, bylaws and regulations. Professional review may include, but not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decision, or inspecting a project during construction or implementation. Applicants must pay review fees before the review process may begin.

- e. **Public Hearing.** The Board shall hold a public hearing within forty-five (45) days of the receipt of a complete application and shall take final action within twenty-one (21) days from the close of the hearing unless such time is extended by agreement between the applicant and the Planning Board. Notice of the public hearing shall be given by publication in a local paper of general circulation, by posting and by first-class mailings to abutters at least seven (7) days prior to the hearing.

- f. **Actions.** The Board's action, rendered in writing, shall consist of either:
 1. Approval of the Stormwater Management Permit Application based upon determination that the proposed plan meets the Standards in Section 7 and will adequately protect the water resources of the community and is in compliance with the requirements set forth in this by-law;
 2. Approval of the Stormwater Management Permit Application subject to any conditions, modifications or restrictions required by the Board which will ensure that the project meets the Standards in Section 7 and adequately protect water resources, set forth in this by-law;
 3. Disapproval of the Stormwater Management Permit Application based upon a determination that the proposed plan, as submitted, does not meet the Standards in Section 7 or adequately protect water resources, as set forth in this by-law.

- g. Failure of the Board to take final action upon an Application within the time specified above shall be deemed to be approval of said Application. Upon certification by the Town Clerk that the allowed time has passed without Board action, the Board must issue a Stormwater Management Permit.

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- h. The permittee, or their agent, shall notify the Board in writing of any change or alteration of a land-disturbing activity authorized in a Stormwater Management Permit before any change or alteration occurs. If the Board determines that the change or alteration is significant, based on the design requirements listed in Section 7(a) and accepted construction practices, the Board may require that an amended Stormwater Management Permit application be filed and a public hearing held. If any change or deviation from the Stormwater Management Permit occurs during a project, the Board may require the installation of interim measures before approving the change.
- i. Project Completion. At completion of the project, the permittee shall submit as-built record drawings of all structural stormwater controls and treatment best management practices required for the site. The as-built drawing shall show deviations from the approved plans, if any, and be certified by a Registered Professional Engineer.

Section 7. Stormwater Management Plan

The application for a stormwater management permit shall consist of submittal of a Stormwater Management Plan at a scale of one inch equals twenty feet (1" = 20') or such other scale as may be approved by the Planning Board. This Stormwater Management Plan shall contain sufficient information for the Board to evaluate the environmental impact, effectiveness, and acceptability of the measures proposed by the applicant for reducing adverse impacts from stormwater. The Plan shall be designed to meet the Massachusetts Stormwater Management Standards as set forth in Part b of this section and DEP Stormwater Management Handbook Volumes I and II. The Stormwater Management Plan shall fully describe the project in drawings and narrative. It shall include:

1. Names, addresses and telephone numbers of the owner, applicant and person(s) or firm(s) preparing the plan.
2. Name of project, property address, assessor's map and lot number, the date, north arrow, names of abutters, and scale.
3. A locus map;
4. The existing zoning, and land use at the site;
5. The proposed land use;
6. The location(s) of existing and proposed easements;
7. The location of existing and proposed utilities;

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8. The site's existing & proposed topography with contours at one (1) foot intervals;
9. The existing site hydrology;
10. A description & delineation of existing stormwater conveyances, impoundments, and wetlands on or adjacent to the site or into which stormwater flows;
11. A delineation of 100-year flood plains, if applicable;
12. Estimated seasonal high groundwater elevation (November to April) in areas to be used for stormwater retention, detention, or infiltration;
13. The existing and proposed vegetation and ground surfaces with runoff coefficient for each; each;
14. A drainage area map showing pre and post construction watershed boundaries, drainage area and stormwater flow paths;
15. A description and drawings of all components of the proposed drainage system including:
 - (a) locations, cross sections, and profiles of all brooks, streams, drainage swales and their method of stabilization;
 - (b) all measures for the detention, retention or infiltration of water;
 - (c) all measures for the protection of water quality;
 - (d) the structural details for all components of the proposed drainage systems and stormwater management facilities;
 - (e) notes on drawings specifying materials to be used, construction specifications, and typicals;
 - (f) expected hydrology with supporting calculations;
16. Proposed improvements including location of buildings or other structures, impervious surfaces, and drainage facilities, if applicable;
17. Timing, schedules, and sequence of development including clearing, stripping, rough grading, construction, final grading, and vegetative stabilization;
18. A maintenance schedule for the period of construction; and
19. Any other information requested by the Board.

b. Design Standards

All projects shall meet the stormwater runoff control standards of the Massachusetts Stormwater Management Policy, which are as follows:

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1. No new stormwater conveyances (e.g. outfalls) may discharge untreated stormwater directly to or cause erosion in wetlands or water of the Commonwealth.
2. Stormwater management systems must be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates.
3. Loss of annual recharge to groundwater should be minimized through the use of infiltration measures to the maximum extent practicable. The annual recharge from the post-development site should approximate the annual recharge rate from the pre-development or existing site conditions, based on soil types.
4. For new development, stormwater management systems must be designed to remove eighty percent (80%) of the average annual load (post development conditions) of Total Suspended Solids (TSS). It is presumed that this standard is met when:
 - a. Suitable nonstructural practices for source control and pollution prevention and implemented;
 - b. Stormwater management best management practices (BMPs) are sized to capture the prescribed runoff volume; and
 - c. Stormwater management BMPs are maintained as designed.
5. Stormwater discharges from areas with higher potential pollutant loads require the use of specific stormwater management BMPs (see Stormwater Management Volume I: Stormwater Policy Handbook). The use of infiltration practices without pretreatment is prohibited.
6. Stormwater discharges to critical areas must utilize certain stormwater management BMPs approved for critical areas (see Stormwater Management Volume I: Stormwater Policy Handbook). Critical areas are Outstanding Resource Waters (ORWs), shellfish beds, swimming beaches, cold water fisheries and recharge areas for public water supplies.
7. Redevelopment of previously developed sites must meet the Stormwater Management Standards to the maximum extent practicable. However, if it is not practicable to meet all the Standards, new (retrofitted or expanded) stormwater management systems must be designed to improve existing conditions.
8. Erosion and sediment controls must be implemented to prevent impacts during disturbance and construction activities.
9. All stormwater management systems must have an operation and maintenance plan to ensure that systems function as designed.

10. Major and Minor Projects: Activities will be classified as major and Minor projects. Major projects are defined as projects which have activities resulting in the land disturbance of one acre or more. All other activities will be considered minor projects. Major projects must either meet the requirements listed above, or demonstrate that an equivalent level of environmental protection is provided in the event that one or more of the standards are not met. Minor projects must meet the standards above, however, at the discretion of the Planning Board, certain aspects of the Stormwater Management Plan may be waived. In general, projects which fall into this category will not require the submission of an operation and maintenance plan.

Section 8. Operation and Maintenance Plans

An Operation and Maintenance plan (O&M Plan) is required at the time of application for all projects. The maintenance plan shall be designed to ensure compliance with the Permit, this Bylaw and that the Massachusetts Surface Water Quality Standards, 314, CMR 4.00 are met in all seasons and throughout the life of the system. The Board shall make the final decision of what maintenance option is appropriate in a given situation. The Board will consider natural features, proximity of site to water bodies and wetlands, extent of impervious surfaces, size of the site, the types of stormwater management structures, and potential need for ongoing maintenance activities when making this decision. The Operation and Maintenance Plan shall remain on file with the Board and shall be an ongoing requirement. The O&M Plan shall include:

- a. The name(s) of the owner(s) for all components of the system
- b. Maintenance agreements that specify:
 1. The names and addresses of the person(s) responsible for operation and maintenance.
 2. The person(s) responsible for financing maintenance and emergency repairs.
 3. A Maintenance Schedule for all drainage structures, including swales and ponds.
 4. A list of easements with the purpose and location of each.
 5. The signature(s) of the owner(s)
- c. Stormwater Management Easement(s).
 1. Stormwater management easements shall be provided by the property owner(s) as necessary for:
 - (a) access for facility inspections and maintenance,

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- (b) preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100-year storm event.
 - (c) direct maintenance access by heavy equipment to structures requiring regular cleanout.
 - 2. The purpose of each easement shall be specified in the maintenance agreement signed by the property owner.
 - 3. Stormwater management easements are required for all areas used for off-site stormwater control, unless a waiver is granted by the Board.
 - 4. Easements shall be recorded with the Worcester County Registry of Deeds prior to issuance of a Certificate of completion by the Board.
- d. Changes to Operation and Maintenance Plans
- 1. The owner(s) of the stormwater management system must notify the Board of changes in ownership or assignment of financial responsibility.
 - 2. The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this by-law by mutual agreement of the Board and the Responsible Parties. Amendments must be in writing and signed by all Responsible Parties. Responsible Parties shall include owner(s), persons with financial responsibility, and persons with operational responsibility.

Section 9. Surety.

The Board shall require the permittee to post, before the start of land disturbance or construction activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by town counsel, and be in an amount deemed sufficient by the Board to ensure that the work will be completed in accordance with the permit. If the project is phased, the Board may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the Board has received the final inspection report as required by Section 10 and issued a Certificate of Completion.

Section 10. Inspections

The Board, or its agent, shall inspect the project site at the following stages:

- a. Initial Site Inspection: prior to approval of any plan.
- b. Erosion Control Inspection: to ensure erosion control practices are in accord with the filed plan.

- c. Bury Inspection: prior to backfilling of any underground drainage or stormwater conveyance structures.

- d. Final Inspection. After the stormwater management system has been constructed and before the surety has been released, the applicant must submit a record plan detailing the actual stormwater management system as installed. The Board, or its agent, shall inspect the system to confirm its "as-built" features. The inspector(s) shall also evaluate the effectiveness of the system in an actual storm. If the inspector finds the system to be adequate he shall so report to the Board which will issue a Certificate of Completion.

If the system is found to be inadequate by virtue of physical evidence of operational failure, even though it was built as called for in the Stormwater Management Plan, it shall be corrected by the permittee before the performance guarantee is released. If the permittee fails to act, the Town of Millbury may use the surety bond to complete the work. Examples of inadequacy shall be limited to: errors in the infiltrative capability, errors in the maximum groundwater elevation, failure to properly define or construct flow paths, or erosive discharges from basins.

Section 11. Waivers.

- a. The Board may waive strict compliance with any requirement of this by-law or the rules and regulations promulgated hereunder, where:
 - 1. such action is allowed by federal, state and local statutes and/or regulations,
 - 2. is in the public interest, and
 - 3. is not inconsistent with the purpose and intent of this by-law.

- b. Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the by-law does not further the purposes or objectives of this bylaw.

- c. All waiver requests shall be discussed and voted on at the close of the public hearing for the project.

Section 12. Certificate of Completion

The Board will issue a letter certifying completion upon receipt and approval of the final inspection reports and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this bylaw.

Section 13. Enforcement

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- a. 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 and criminal remedies for such violations.
- b. Orders
 1. The Board or an authorized agent of the Board may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include requirements to:
 - (a) cease and desist from construction or land disturbing activity until there is compliance with the by-law and the stormwater management permit;
 - (b) repair, maintain, or replace the stormwater management system or portions thereof in accordance with the operation and maintenance plan;
 - (c) perform monitoring, analyses, and reporting;
 - (d) remediate adverse impact resulting directly or indirectly from malfunction of the stormwater management system.
 2. If the enforcing person determines that abatement or remediation of adverse impacts 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 may, at its option, undertake such work, and the property owner shall reimburse the Town's expenses.
 3. 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 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. Ch. 59, § 57, after the thirty-first day at which the costs first become due.

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- c. **Criminal Penalty.** Any person who violates any provision of this by-law, or regulation, order or permit issued thereunder by indictment or complaint brought to the Superior Court, Housing Court or Worcester District Court, shall be punished by a fine of not more than three hundred dollars (\$300.00). Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- d. **Non-Criminal Disposition.** As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, 21D and Section 1-7 of the General Bylaws of the Town of Millbury, in which case the Planning Board or its designee shall be the enforcing person. The penalty for the 1st violation and each subsequent violation shall be three hundred dollars (\$300.00). Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- e. **Appeals.** The decisions or orders of the Board shall be final. Further relief shall be to a court of competent jurisdiction.
- f. **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 14. Severability.

If any provision, paragraph, sentence, or clause of this by-law shall be held invalid for any reason, all other provisions shall continue in full force and effect.

(Bylaws Art. 53, 5-1-2007)

Section. 16-4. Discharges to the Municipal Drain System.

Section 1. Purpose.

The purpose of this section is to eliminate non-stormwater discharges to the Town of Millbury's Municipal Storm Drain System. Non-stormwater discharges contain contaminants and supply additional flows to the Town's storm drain system. Increased and contaminated stormwater runoff 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

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(d) flooding.

Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the Town of Millbury's natural resources, municipal facilities, and to safeguard the public health, safety, welfare and the environment.

The objectives of this section are:

- (a) To prevent pollutants from entering the Town's municipal separate storm sewer system (MS4);
- (b) To prohibit illicit connections and unauthorized discharges to the MS4;
- (c) To require the removal of all such illicit connections;
- (d) To comply with state and federal statutes and regulations relating to stormwater discharges; and
- (e) To establish the legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement.

Section 2. Definitions.

Unless a different definition is indicated in other sections of this by-law, the following definitions and provisions shall apply throughout Section 16-4, as this by-law or Section.

AUTHORIZED ENFORCEMENT AGENCY: The Department of Public Works (hereafter "the Department"), its employees or agents designated to enforce this by-law.

BEST MANAGEMENT PRACTICE (BMP): 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 U.S.C. § 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, or 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 Section 6. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from fire fighting activities exempted pursuant to Section 7(D)(2), 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 roof tops.

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 Millbury.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT: A permit issued by United States Environmental Protection Agency or jointly with the Commonwealth of Massachusetts that authorizes the discharge of pollutants to waters 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, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;

(5) pesticides, herbicides, and fertilizers;

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(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;

(11) and 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: Runoff from precipitation or snow melt.

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 G.L. Ch.21C 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, costal 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, byproduct or waste product.

Section 3. Applicability.

This section shall apply to flows entering the municipally owned storm drainage system.

Section 4. Authority.

This Article is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and the regulations of the federal Clean Water Act found at 40 CFR 122.34.

Section 5. Responsibility for Administration.

The Department shall administer, implement and enforce this by-law. Any powers granted to or duties imposed upon the Department may be delegated in writing by the Department to employees or agents of the Department.

Section 6. Regulations.

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

Section 7. Prohibited Activities.

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 (MS4), 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 consent from the Department.

D. Exemptions

- (1) Discharge or flow resulting from fire fighting activities;

- (2) 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:
- 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 (e.g. sump pump), provided that where a pump intake exists inside a structure, the operator seeks a permit from the Department prior to discharge, and thereafter discharges in accordance with the requirements of the permit and applicable laws and regulations to be issued by the Department;
 - h. Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, 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 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;
 - l. Discharge from street sweeping;
 - m. Dye testing, provided verbal notification is given to the Department 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 United States 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 Department as necessary to protect public health, safety, welfare or the environment.

Section 8. Emergency Suspension of Storm Drainage System Access.

The Department 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.

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. 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 10. Enforcement.

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

a. Civil Relief

If a person violates the provisions of this section, regulations, permit, notice, or order issued thereunder, the Department 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.

b. Orders

The Department or an authorized agent of the Department may issue a written order to enforce the provisions of this section or the regulations thereunder, which may include: (a) elimination of illicit connections or discharges to the MS4; (b) performance of monitoring, analyses, and reporting; (c) that unlawful discharges, practices, or operations shall cease and desist; and (d) remediation of contamination in connection therewith.

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 or property owner fail to abate or perform remediation within the specified deadline, the Town may, at its option, undertake such work, and

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expenses thereof shall be charged to the violator.

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, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Department 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 Department 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. Ch. 59, § 57 after the thirty-first day at which the costs first become due.

c. 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 three hundred dollars (\$300.00). Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

d. Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D and Section 1-7 of the Town of Millbury General Bylaws, in which case Director of the Department of Public Works or other authorized agent of the Town shall be the enforcing person. The penalty for the 1st violation shall be three hundred dollars (\$300). The penalty for the 2nd and subsequent violations shall be three hundred dollars (\$300). Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

e. Entry to Perform Duties Under this Section

To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Department, 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 Department deems reasonably necessary.

f. Appeals

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

g. Remedies Not Exclusive

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

Section 11. Severability

The provisions of this section are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this section or the application thereof to any person, establishment, or

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circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this section or by-law.

Section 12. Transitional Provisions

Residential property owners shall have ten (10) days from the effective date of the by-law section to comply with its provisions provided good cause is shown for the failure to comply with the by-law during that period.

(Bylaws Art. 11, 12-10-07)

* **Cross references** – Garbage, Trash and Refuse, Ch. 7; Health and Sanitation, Ch. 8; Sewer Department Rules and Regulations, App. C.

State law references – Water Supply of Town, G. L. c.40, § 38 et seq.; Authority of Town as to Use of Reservoirs, c.40 § 21 (8); Water Commissioners, c.41, §§ 69A, 69B; Collection of Water Rates, c.40, §§ 42A-42F; Authority of Town to Regulate Water Supply Pipes, c. 40§ 21, (7); Authority of Town to Establish Common Sewers, c.40, § 21 (5); Regulation of Sewer Use, c. 40, § 21 (6).