

Chapter 19

STORMWATER MANAGEMENT & EROSION CONTROL

Sections:

- 19.010 Purpose
 - 19.020 Definitions
 - 19.030 Authority
 - 19.040 Applicability
 - 19.041 Regulated Activities
 - 19.042 Exempt Activities
 - 19.043 Activities Allowed to Request Exemption
 - 19.050 Administration
 - 19.060 Permits and Procedures
 - 19.070 Fees
 - 19.080 Surety
 - 19.090 Waivers
 - 19.100 Inspections
 - 19.110 Enforcement
 - 19.120 Stormwater Management Plan
 - 19.130 Operation and Maintenance Plans
 - 19.140 Severability
-

19.010 Purpose

- A. Increased volumes of stormwater, contaminated stormwater runoff from impervious surfaces, and soil erosion and sedimentation are major causes of:
1. impairment of water quality
 2. decreased flow in lakes, ponds, streams, rivers, wetlands and groundwater;
 3. contamination of drinking water supplies;
 4. erosion of stream channels;
 5. alteration or destruction of aquatic and wildlife habitat;
 6. flooding;
 7. overloading or clogging of municipal catch basins and storm drainage systems; and
 8. flooding and erosion on abutting properties.

The United States Environmental Protection Agency (EPA) has identified sedimentation from land disturbance activities and polluted stormwater runoff from land development and redevelopment as major sources of water pollution, impacting drinking water supplies, natural habitats, and recreational resources. Regulation of activities that result in the disturbance of land and the creation of stormwater runoff is necessary for the protection of the Town of Tewksbury water bodies and groundwater resources, to safeguard the health, safety, and welfare of the general public and protect the natural resources of the Town.

In addition, 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

- B. The objectives of this Bylaw are to:
1. protect water resources;
 2. require practices that eliminate soil erosion and sedimentation;

3. control the volume and rate of stormwater runoff resulting from land disturbance activities in order to minimize potential impacts of flooding;
4. require practices to manage and treat stormwater runoff generated from new development and redevelopment;
5. protect groundwater and surface water from degradation or depletion;
6. promote infiltration and the recharge of groundwater;
7. prevent pollutants from entering the municipal storm drain system;
8. prevent flooding and erosion to abutting properties.
9. ensure that soil erosion and sedimentation control measures and stormwater runoff management practices are incorporated into the site planning and design process and are implemented and maintained;
10. ensure adequate long-term operation and maintenance of stormwater best management practices so they work as designed;
11. require practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at construction sites that may cause adverse impacts to water quality;
12. comply with state and federal statutes and regulations relating to stormwater discharges; and
13. establish the Town of Tewksbury legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring and enforcement.

19.020 Definitions.

ABUTTER: The owner(s) of land abutting the land disturbance site.

AGRICULTURE: The normal maintenance or improvement of land in agricultural or aqua cultural use, as defined by the Massachusetts Wetlands Protection Act (M.G.L. c. 131 § 40) and its implementing regulations (310 CMR 10.00).

ALTERATION OF DRAINAGE CHARACTERISTICS: Any activity on an area of land that changes the water quality, or the force, quantity, 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.

APPLICANT: Shall be the owner of record of all of the land shown on any plan submitted for approval to the Planning Board in accordance with the Stormwater Management Bylaw and Regulations, any person or persons acting on behalf of the applicant for purposes of preparing and submitting plans and documents to the Planning Board , and may include engineers, surveyors, contractors or attorneys, and may also include any person or persons having an equitable interest in the land under an agreement or option to purchase the land. The owner shall certify in writing the identity of each applicant who is authorized to submit plans and/or documents and act on behalf of the owner. Without such certification an applicant shall not act on behalf of the owner. The applicant shall submit the title reference or references from the Middlesex County Registry of Deeds indicating the owner of record. All applications shall include original signatures of all owners.

AUTHORIZED ENFORCEMENT AGENCY: The Planning Board and its employees or agents who will be in charge of enforcing the requirements of this bylaw.

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

THE BOARD – Town of Tewksbury Planning Board

CONSTRUCTION AND WASTE MATERIALS: Excess or discarded building or construction site materials that may adversely impact water quality, including but not limited to discarded building materials, concrete truck washout, chemicals, litter and sanitary waste.

CLEARING: Any activity that removes the vegetative surface cover. Clearing activities generally include grubbing activity as defined below.

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

DISTURBANCE OF LAND: Any action, including clearing and grubbing, that causes a change in the position, location, or arrangement of soil, sand, rock, gravel, or similar earth material.

EROSION: The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

EROSION AND SEDIMENTATION CONTROL PLAN: A document containing narrative, drawings and details developed by a qualified professional engineer (PE) or a public land surveyor (PLS), which includes best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation during preconstruction and construction related land disturbance activities.

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

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

IMPAIRED WATER: A water is impaired if it does not meet one or more of its designated use(s). For purposes of the MS4 permit, "impaired" refers to categories 4 and 5 of the five-part categorization approach used for classifying the water quality standards attainment status for water segments under the Total Maximum Daily Load (TMDL) program. Impaired waters compilations are also sometimes referred to as "303(d) lists." Category 5 waters are impaired because at least one designated use is not being supported or is threatened and a TMDL is needed. Category 4 waters indicate that at least one designated use is not being supported but a TMDL is not needed (4a indicates that a TMDL has been approved or established by EPA; 4b indicates other required control measures are expected in result in the attainment of water quality standards in a reasonable period of time; and 4c indicates that the nonattainment of the water quality standard is the result of pollution (e.g. habitat) and is not caused by a pollutant.

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. Impervious surface also includes soils, gravel driveways, and similar surfaces with a runoff coefficient (Rational Method) greater than 85.

LAND DISTURBING ACTIVITY or LAND DISTURBANCE: Any activity, including clearing and grubbing, that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

LAND DISTURBANCE PERMIT: A permit issued by the Planning Board

LOT: An area or parcel of land or any part thereof, in common ownership, designated on a plan filed with the Town of Tewksbury by its owner or owners as a separate lot.

LOW-IMPACT DEVELOPMENT (LID): The use of innovative stormwater management systems that are modelled after natural hydrologic features. Rainfall is managed at the source using small, cost-effective landscape features located at the lot level.

MAJOR LAND DISTURBANCE: The disturbance of 40,000 square feet or more of land as listed in Section 19.041(B). Major land disturbances require a Land Disturbance Permit, as well as a Public Hearing.

MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS: The Stormwater Standards and accompanying Stormwater Handbook, as amended, issued by the Department of Environmental Protection pursuant to authority under the Wetlands Protection Act, M.G.L. c. 131, §40, and the Massachusetts Clean Waters Act, M.G.L. c. §26-53. The Stormwater Management Standards are incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k) and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

MINOR LAND DISTURBANCE: The disturbance of five hundred (500) cubic yards or more of material or clearing activity which disturbs an area of 20,000 square feet or more and less than 40,000 square feet within any twelve (12) month period. Minor land disturbances require a Land Disturbance Permit but are exempt from the Public Hearing requirement.

MUNICIPAL STORM DRAIN SYSTEM or MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): 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 manmade or altered drainage channel, swales, brooks, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Tewksbury.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) CONSTRUCTION GENERAL PERMIT: A permit issued under the authority of the Clean Water Act (CWA) by the Environmental Protection Agency (EPA) which authorizes the discharge of stormwater (and certain authorized non-stormwater discharges) from construction sites that disturb one acre or more of land, and from smaller sites that are part of a larger common plan of development. This permit requires operators of such construction sites to implement stormwater controls to minimize the amount of sediment and other pollutants associated with construction sites from being discharged in stormwater runoff.

NEW DEVELOPMENT: Any construction activities or land alteration resulting in total earth disturbances greater than or equal to one half acre (or activities that disturb less than one acre of land but are part of a larger common plan of development disturbing greater than one acre) on an area that has not previously been developed to include impervious cover.

OPERATION AND MAINTENANCE PLAN: A plan developed by a Massachusetts licensed professional engineer (PE) describing the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

OUTFALL: The point at which stormwater flows out from a discernible, confined point source or 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: Shall be the owner of record of all the land shown on any plan submitted. The owner shall submit the title reference or references from the Middlesex County Registry of Deeds indicating the owner of record.

PERMITTEE: The person who holds a land disturbance permit and therefore bears the responsibilities and enjoys the privileges conferred thereby.

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

PRECONSTRUCTION: All activity in preparation for construction.

PRIVATE STORM DRAIN SYSTEM or PRIVATE SEPARATE STORM SEWER 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 manmade or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system that is not owned and maintained by the Town.

REDEVELOPMENT: Any construction, land alteration, or improvement of impervious surfaces resulting in total earth disturbances greater than one half acre (or activities that disturb less than one acre of land but are part of a larger common plan of development disturbing greater than one acre) that does not meet the definition of new development (see above).

REGULATED ACTIVITY: Activities disturbing or substantially altering an area of 40,000 square feet or more. Regulated activities require a Land Disturbance Permit under this bylaw.

RESPONSIBLE PARTIES: Owner(s), persons with financial responsibility, and persons with operational responsibility.

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

SEDIMENT: Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

SEDIMENTATION: The process or act of deposition of sediment.

SITE: Any lot or parcel of land or area of property where land disturbing activities are, were, or will be performed.

SLOPE: The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

SOIL: Earth materials including duff, humic materials, sand, rock and gravel.

STABILIZATION: The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or retard erosion.

STORMWATER: Stormwater runoff, snow melt runoff, and surface water runoff and drainage

STORMWATER MANAGEMENT PLAN: A document containing narrative, drawings and details prepared by a qualified professional engineer (PE) or a professional public land surveyor (PLS), which includes structural and nonstructural best management practices to manage and treat stormwater runoff generated from regulated development activity. A stormwater management plan also includes an Operation and Maintenance Plan describing the maintenance requirements for structural best management practices.

STRIP: Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil.

TOTAL MAXIMUM DAILY LOAD (TMDL): A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive while still meeting water quality standards, and allocation of that amount to the pollutant's sources.

Total Suspended Solids (TSS): Material, including but not limited to trash, debris soils, sediment and sand suspended in stormwater runoff.

WATERCOURSE: A natural or man-made channel through which water flows, including a river, brook, or stream.

WETLAND RESOURCE AREA: Areas specified in the Massachusetts Wetlands Protection Act M.G.L. c. 131, s.40 and in the Town of Tewksbury Wetland Protection By-law.

19.030 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.

19.040 Applicability.

No person may undertake a construction activity, including clearing, grading and excavation that results in a land disturbance that will disturb equal to or greater than one half acre of land or will disturb less than one acre of land but is part of a larger common plan of development that will ultimately disturb equal to or greater than one acre of land draining to the Town of Tewksbury's municipal separate storm sewer system without a permit from the Planning Board. 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.

Except as permitted below or as otherwise provided in this Bylaw, no person shall perform any activity that results in disturbance or clearing of land without a land disturbance permit.

19.041 Regulated Activities.

- A. For minor land disturbance, defined as the disturbance of five hundred (500) cubic yards or more of material or clearing activity which disturbs an area of 20,000 square feet or more and less than 40,000 square feet within any twelve (12) month period, the activity shall be allowed only under a Land Disturbance Permit issued by the Planning Board. Said permit shall be considered an administrative action by the Planning Board and no public hearing shall be required. The Department of Community Development shall be the administrator of a minor land disturbance permit.
- B. Regulated activities by the Planning Board, which constitute major land disturbances, shall include, but not be limited to:

1. Land disturbance of 40,000 square feet or more of land, associated with construction or reconstruction of structures,
2. Development or redevelopment involving multiple separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that all together disturbs 40,000 square feet or more of land,
3. Paving or other change in surface material over an area of 40,000 square feet or more causing a significant reduction of permeability or increase in runoff,
4. Construction of a new drainage system or alteration of an existing drainage system or conveyance serving a drainage area of more than 40,000 square feet,
5. Any other activity altering the surface of an area exceeding 40,000 square feet that will, or may, result in increased stormwater runoff flowing from the property into a public way or the municipal storm drain system, OR
6. Land disturbance where there is a 15% or greater slope and where the land disturbance is greater than or equal to 200 square feet within the sloped area.

C. Minimum performance standards for regulated activities:

Applications for a Land Disturbance Permit for both Minor Land Disturbances and Regulated Activities (Major Land Disturbance) shall include an Erosion and Sediment Control Plan. This Plan shall be designed to ensure compliance with this Bylaw, and if applicable, the NPDES General Permit for Stormwater Discharges from Construction Activities. The Plan shall ensure that the Massachusetts Surface Water Quality Standards (314 CMR 4.00) are met in all seasons, and shall conform to the design standards outlined in the most recent version of the Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Areas.¹ The following minimum performance standards for erosion and sediment control shall be met on all regulated construction sites:

1. Erosion control structures will be located no closer than 15 feet from an abutting property line and will be designed so as not to create point discharges onto abutting properties.
2. Dust from all earthmoving activities shall be controlled.
3. Earth materials shall not be deposited onto any roadways.
4. The amount of disturbed area shall be minimized. Natural resources shall protected.
5. Vegetative stabilization measures shall be employed during the Regulated Activity and construction activity as required by the approving authority. All perimeter dikes and slopes, basin or trap embankments shall be stabilized with sod, seed, anchored mulch within seven (7) days of disturbance. All other disturbed areas shall be stabilized with sod, seed and anchored mulch within fourteen (14) days after disturbing activities are ceased.
6. Topsoil shall be stripped from disturbed areas and stockpiled in an approved area and stabilized with a temporary vegetative cover if left more than fifteen (15) calendar days. Perimeter sediment controls shall be installed around stockpiled topsoil.
7. During cold weather months, when seeding and sodding may be impractical, anchored mulch shall be applied as approved.
8. All storm drain inlets shall be protected, and all newly constructed outlets shall be armored in accordance with the above-mentioned guidelines.
9. Perimeter controls shall be used at the site.
10. All construction site entrances and exits shall be stabilized to prevent off-site tracking.
11. Stormwater controls shall be inspected at consistent intervals, including during or immediately after a storm.
12. Construction site operators shall control all construction and waste materials, as defined in Section 19.020 of this bylaw. These wastes may not be discharged to the MS4.

¹ <https://www.mass.gov/files/documents/2016/08/qz/esfull.pdf>

19.042 Exempt Activities.

The following activities are exempt from the requirements of this Bylaw:

1. Normal maintenance and improvement of Town owned public ways and appurtenances.
2. Normal maintenance and improvement of land in agricultural use.
3. Repair of septic systems when required by the Board of Health for the protection of public health.
4. Normal maintenance of currently existing landscaping, gardens or lawn areas associated with a single-family dwelling.
5. The construction of fencing that will not alter existing terrain or drainage patterns.
6. Construction of utilities other than drainage (gas, water, electric, telephone, etc.) that will not alter terrain or drainage patterns.
7. Maintenance of existing town drainage system, including, but not limited to removal of trees, debris, sediment and trash from swales, brooks, culverts, and any other impediment to the flow of the town's drainage system.
8. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04;
9. As authorized in the Phase II Small MS4 General Permit for Massachusetts, storm water discharges resulting from the activities that disturb less than one acre and are not part of a larger common plan of development that disturbs more than once acre that are wholly subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Stormwater Management Standards as reflected in an Order of Conditions issued by the Conservation Commission are exempt from compliance with this bylaw.

19.050 Administration.

- A. The Planning Board shall administer this bylaw. The Town of Tewksbury's Community Development Department shall serve as the Planning Board's primary staff support for this bylaw. The Department may use the Director, Conservation Administrator, Town Engineer, or others to implement this bylaw.
- B. The Planning Board and its agents shall review all applications for a land disturbance permit, conduct inspections, issue a final permit and conduct any necessary enforcement action.
- C. The Planning Board may adopt and periodically amend Stormwater Regulations relating to Land Disturbance Permits, exemption or waiver applications; permit terms or conditions, Design Criteria, additional definitions, enforcement, fees (including application, inspection, and/or consultant fees), or other procedures and administration of this Bylaw 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 before the hearing date. After public notice and hearing, the Planning Board may promulgate rules and regulations to effectuate the purposes of this Bylaw. Failure by the Planning Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this Bylaw.
- D. The Planning Board will refer to the criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Management Standards, the criteria required under Section 19.120 of this bylaw, or with Design Criteria that may be developed or in Tewksbury's Subdivision Regulations, whichever is more stringent, in the protection of the town's environmental and infrastructure resources, for execution of the provisions of this Bylaw.
- E. All meetings of the Planning Board are subject to the Open Meeting Law. A notice in the local newspaper of a hearing on the Land Disturbance Application and that the Planning Board is accepting comments on the Land Disturbance Application shall be published at the applicant's expense. The Land Disturbance Application shall be available for inspection by the public during normal business hours at the Town offices. Comments may be submitted to the Planning Board during business hours at the Town offices.
- F. Filing an application for a land disturbance permit grants the Planning Board or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with permit conditions.

- G. The Planning Board may:
 - i. Approve the Application and issue a permit if it finds that the proposed plan will protect water resources and meets the objectives and requirements of this Bylaw;
 - ii. Approve the Application and issue a permit with conditions, modifications, requirements for operation and maintenance requirements of permanent structural BMPs, designation of responsible party, or restrictions that the Planning Board determines are required to ensure that the project will protect water resources and will meet the objectives and requirements of this Bylaw; or
 - iii. Disapprove the application and deny a permit if it finds that the proposed plan fails to meet the objectives and requirements of this Bylaw and its Regulations. If the Planning Board finds that the applicant has submitted insufficient information to describe the site, the work, or the effect of the work on water quality and runoff volume, the Planning Board may disapprove the application, denying a permit.
- H. The Planning Board shall take final action on an Application within 30 days of receipt of a complete application. If in the Planning Board's opinion, additional time or information is required for review, the Planning Board by written agreement of the applicant may continue a consideration of the request to a date certain announced at the meeting.
- I. Failure to take action shall be deemed to be approval of said application. Upon certification by the Town Clerk that the allowed time has passed without the Planning Board's action, the Land Disturbance Permit shall be issued by the Planning Board.
- J. Appeals of Action by the Planning Board. A decision of the Planning Board shall be final. Further relief of a decision by the Planning Board made under this Bylaw shall be reviewable in the Superior Court or Land Court in accordance with the applicable law. The remedies listed in this Bylaw are not exclusive of any other remedies available under any applicable federal, state or local law. No work shall commence until the applicable appeal period has passed with no appeal or if an appeal has been filed, the appeal has been finally resolved by adjudication or otherwise.
- K. All activity permitted by the Land Disturbance Permit must be completed within one year of permit issuance. Extensions of time can be granted by the Planning Board upon formal written request by the applicant. Should the one year pass without an extension being granted the permit is then considered revoked.
- L. 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. As built drawings must comply with the Town's Digital data submission requirements.

19.060 Permits & Procedures.

Permit Procedures and Requirements are defined and included as part of the Stormwater Management and Erosion Control Regulations promulgated as permitted under Section 19.050 of this Bylaw.

19.070 Fees.

The Planning Board shall establish fees subject to cover expenses connected with application review and monitoring permit compliance. The fees shall be sufficient to cover Town secretarial staff and professional staff. The Planning Board is also authorized to charge the applicant fees to pay a Registered Professional Engineer or other professional consultant to advise the Planning Board on any or all aspects of the project. The applicant for a Land Disturbance Permit may be required to establish and maintain an escrow account to cover the costs of said consultants.

19.080 Surety.

The Planning Board may require the permittee to post before the start of land disturbance activity, a surety bond, or other acceptable security. The form of the bond shall be approved by the Planning Board, which may consult with town counsel when necessary, and be in an amount deemed sufficient by the Planning Board to insure that the work will be completed in accordance with the permit. If the project is phased, the Planning 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 Planning Board has issued a certificate of completion.

19.090 Waivers.

- A. The Planning Board may waive strict compliance with any requirement of this bylaw or the rules and regulations promulgated hereunder, where the activity:
 - 1. is allowed by federal, state or local statutes and/or regulations, or
 - 2. is in the public interest, and is not inconsistent with the purpose and intent of this bylaw and its regulations.
- B. Any applicant may submit a written request to be granted such a waiver at the time of submission. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that the activity is allowed by federal, state or local statutes and/or regulations or is in the public interest and is not inconsistent with the purpose and intent of this bylaw and its regulations.
- C. All waiver requests shall be discussed and a decision will be made at the time of final action by the Planning Board.
- D. If in the Planning Board's opinion, additional information is required for review of a waiver request, the Planning Board may continue a consideration of the waiver request to a date certain announced at the meeting. In the event the applicant fails to provide requested information, the waiver request shall be denied.

19.100 Inspections

- A. The Planning Board or its agents shall inspect the project site at the following stages:
 - 1. Initial Site Inspection: prior to approval of any plan.
 - 2. Erosion Control Inspection: to ensure erosion control practices are in accordance with the filed plan.
 - 3. Bury Inspection: prior to backfilling of any underground drainage or stormwater conveyance structures.
 - 4. 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 shall inspect the system to confirm its "as built" features. This inspector 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.
- B. 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 Tewksbury may use the surety bond to complete the work. Examples of inadequacy include, but shall not 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.

19.110 Enforcement.

The Planning Board or its authorized agent shall enforce this Bylaw, its regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

- A. Orders. The Planning Board or its authorized agent may issue a written order to enforce the provisions of this Bylaw or the regulations there under, which may include:
 - 1. a requirement to cease and desist from the land disturbing activity until there is compliance with the Bylaw or provisions of the land disturbance permit;
 - 2. maintenance, installation or performance of additional erosion and sediment control measures;
 - 3. monitoring, analyses, and reporting;
 - 4. remediation of erosion and sedimentation resulting directly or indirectly from the land disturbing activity;

5. compliance with the Operation and Maintenance Plan.

If the enforcing person determines that abatement or remediation of erosion and sedimentation 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 Tewksbury may, at its option, undertake such work, and the property owner shall reimburse the town's expenses. 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 of Tewksbury, 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.

- B. Fines. Any person who violates any provision of this Bylaw, regulation, order or permit issued there under, shall be punished by a fine of not more than \$ 300.00. Each day or part there under that such violation occurs or continues shall constitute a separate offense.
- C. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Planning Board may elect to utilize the noncriminal disposition procedure set forth in G.L. Ch. 40, §21D, which has been adopted by the Town, in which case the Planning Board or authorized agent shall be the enforcing person. The penalty for each violation shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

19.120 Stormwater Management Plan

- A. The 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, the requirements as set forth in Parts B through D 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. The Planning Board may adopt regulations for specific submittal requirements.
- B. Standards. All projects requiring a Land Disturbance Permit shall meet the Massachusetts Stormwater Management Standards as well as the requirements outlined in this section.
1. Low-Impact Development. Low-Impact Design (LID) practices shall be implemented in all projects to the maximum extent feasible. Applicants shall address each of the following LID principles in the project narrative:
- Preservation of natural areas;
 - Tree Protection;
 - Vegetation and landscaping;
 - Riparian buffer protection;
 - Limit land disturbance during construction;
 - Limit new impervious surfaces;
 - Promote the use of vegetative (green infrastructure) stormwater controls;
 - Disconnect flow paths;
 - Promote infiltration;
 - Capture and reuse stormwater.

Applicants not incorporating low-impact development practices into their plans must indicate why LID is not feasible at the site.

2. The design of treatment and infiltration practices shall follow the guidance in Volume 2 of the Massachusetts Stormwater Handbook, as amended, or other federally or State approved BMP design guidance.
3. Stormwater management systems for major land disturbances on new development sites shall be designed to meet an average annual pollutant removal equivalent to 90% of the average annual load of Total Suspended Solids (TSS) related to the total post-construction impervious area on the site AND 60% of the average annual

load of Total Phosphorus (TP) related to the total postconstruction impervious surface area on the site².

- a. Average annual pollutant removal requirements are achieved through one of the following methods;
 - installing BMPs that meet the pollutant removal percentages based on calculations developed consistent with EPA Region 1's BMP Accounting and Tracking Tool (2016)³ or other BMP performance evaluation tool provided by EPA Region 1, where available. If EPA Region 1 tools do not address the planned or installed BMP performance, then any federally or State-approved BMP design guidance or performance standards (e.g., the MA Stormwater Management Handbook)⁴ may be used to calculate BMP performance; or
 - retaining the volume of runoff equivalent to, or greater than, one (1.0) inch multiplied by the total post-construction impervious surface area on the new development site; or
 - meeting a combination of retention and treatment that achieves the above standards
4. Stormwater management systems for major land disturbances on redevelopment sites shall be designed to meet an average annual pollutant removal equivalent to 80% of the average annual post-construction load of Total Suspended Solids (TSS) related to the total post-construction impervious area on the site AND 50% of the average annual load of Total Phosphorus (TP) related to the total post-construction impervious surface area on the site⁵.
 - a. Average annual pollutant removal requirements are achieved through one of the following methods:
 - Installing BMPs that meet to pollutant removal percentages based on calculations developed consistent with EPA Region 1's BMP Accounting and Tracking Tool (2016)⁶ or other BMP performance evaluation tool provided by EPA Region 1, where available. If EPA Region 1 tools do not address the planned or installed BMP performance, then any federally or State-approved BMP design guidance or performance standards (e.g., the MA Stormwater Management Handbook)⁷ may be used to calculate BMP performance; or
 - retaining the volume of runoff equivalent to, or greater than, one (1.0) inch multiplied by the total post-construction impervious surface area on the new development site; or meeting a combination of retention and treatment that achieves the above standards.
 5. All Stormwater Management Best Management Practices employed on new development and redevelopment sites within a watershed of a water body with a phosphorus impairment shall be shown to be optimized for phosphorus removal by the standards set forth by the Massachusetts Stormwater Management Handbook or the approved TMDL, if it exists, whichever is more strict.
 6. Redevelopment activities that are exclusively limited to maintenance and improvement of existing roadways, (including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving projects) shall improve existing conditions where feasible and are exempt from Section 19.120.B.4. Roadway widening or improvements that increase the amount of impervious area on the redevelopment site by greater than or equal to a single lane width shall meet the requirements of Section 19.120.B.4 fully.

² Pollutant removal is calculated based on average annual loading and not on the basis of any individual storm event.

³ <https://www.epa.gov/tmdl/opti-tool-epa-region-1s-stormwater-management-optimization-tool>

⁴ <https://www.mass.gov/guides/massachusetts-stormwater-handbook-and-stormwater-standards>

⁵ Pollutant removal is calculated based on average annual loading and not on the basis of any individual storm event.

⁶ <https://www.epa.gov/tmdl/opti-tool-epa-region-1s-stormwater-management-optimization-tool>

⁷ <https://www.mass.gov/guides/massachusetts-stormwater-handbook-and-stormwater-standards>

19.130 Operation and Maintenance Plans

- A. A post construction Operation and Maintenance plan (O&M Plan) is required prior to final release of the project. The maintenance plan shall be designed to ensure compliance with the administered Land Disturbance 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. Once approved, The Operation and Maintenance Plan shall remain on file with the Town Engineer and shall be an ongoing requirement. The Planning Board may adopt regulations for specific submittal requirements.
- B. 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,
 - b. preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100year 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 offsite stormwater control, unless a waiver is granted by The Board.
 4. Easements shall be recorded with the Middlesex North County Registry of Deeds prior to issuance of a Certificate of Completion by the Board.
- C. Use of Storage of Road Salt
 1. Salt usage shall be minimized whenever feasible. Salt alternatives shall be used where deemed necessary by the Town.
 2. Operation and Maintenance Plans for commercial or industrial projects must include a provision to prevent the exposure of any salt stockpiles stored on the property to precipitation and/or stormwater runoff.
- D. Changes to Operation and Maintenance Plan
 1. The owner(s) of the stormwater management system must notify the Board and Town Engineer 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 bylaw by mutual agreement of the Board, the Town Engineer 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.
- E. Maintenance Responsibility

The responsibility party named in the Operation and Maintenance Plan shall maintain in good condition and promptly repair and restore all structural and nonstructural stormwater BMPs and all necessary access routes and appurtenances (grade surfaces, walls, drains, dams and structures, vegetation, erosion and sedimentation controls, and other protective devices). Such repairs or restoration and maintenance shall be in accordance with the approved stormwater management design plan, the stormwater maintenance agreement and the stormwater maintenance plan.

F. Maintenance Inspection by Planning Board, its agent, or Town Engineer

The Planning Board or its Representatives shall conduct periodic inspections for all stormwater practices for which a Stormwater Certificate of Completion has been issued in accordance with section 19.050. All inspections shall document any maintenance and repair needs and any discrepancies from the stormwater maintenance agreement and stormwater maintenance plan.

G. Record of Maintenance Activities

The responsible party shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five (5) years. These records shall be submitted to the Town Engineer on an annual basis.

19.140 Severability.

If any provision, paragraph, sentence, or clause of this Bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect. (STM, October, 2007/STM October 2011; ATM 6/22/2020)

Chapter 20

Municipal Storm Water Discharge ByLaw

Sections:

- 20.010 Purpose**
 - 20.020 Definitions**
 - 20.030 Applicability**
 - 20.040 Authority**
 - 20.050 Responsibilities for Administration**
 - 20.060 Regulations**
 - 20.070 Prohibited Activities**
 - 20.080 Exemptions**
 - 20.090 Watercourse Protection**
 - 20.100 Compliance Monitoring**
 - 20.110 Notification of Spills**
 - 20.120 Violation, Enforcement, and Penalties**
 - 20.130 Cost of Abatement of the Violation**
 - 20.140 Violations deemed a Public Nuisance**
 - 20.150 Severability**
 - 20.160 Transitional Provisions**
-

20.010 Purpose

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

1. to prevent pollutants from entering the Town's municipal separate storm sewer system (MS4);
2. to prohibit illicit connections and unauthorized discharges to MS4;
3. to require the removal of all such illicit connections;
4. to comply with state and federal statutes and regulations relating to storm water discharges; and
5. to establish the legal authority to ensure compliance with the provisions of this bylaw through inspection, surveillance, monitoring, and enforcement.

20.020 Definitions.

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

ALLOWABLE CONNECTION:

Drainage facility, part of or a component of a drainage system and/or discharge that has been reviewed and approved by the Town for construction.

AUTHORIZED ENFORCEMENT AGENCY:

The Town's Department of Public Works (DPW) Superintendent or his or her designee to enforce this bylaw.

BEST MANAGEMENT PRACTICE (BMP):

An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of storm water runoff or storm water discharge.

CLEAN WATER ACT:

The Federal Water Pollution Control Act (33 U. S. C §1251 et seq.) and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY:

Activities subject to National Pollutant Discharge Elimination System (NPDES) Construction Permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

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 of Massachusetts (“the Commonwealth”) from any source.

DRAINAGE SYSTEM:

A network by which storm water is collected and/or conveyed, including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human made or altered drainage channels, reservoirs, and other drainage structures.

FACILITY:

Often referred to as facilities, including, but not limited to, land, and/or buildings or structures within property limits to serve a specific function affording a convenience or service.

GROUNDWATER:

Water beneath the surface of the ground.

HAZARDOUS MATERIALS:

Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLICIT CONNECTION:

A surface or subsurface drain or conveyance, which allows any non-permitted or unlawful discharge into the municipal storm drain system, including, but not limited to, sewage, process wastewater, cooling waters or wash water, and any connections from the indoor drains, sinks, sumps or toilets, without limitation regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this bylaw.

ILLICIT DISCHARGE:

Direct or indirect discharge to the municipal storm drain system that is not composed entirely of storm water, except as exempted in Section 20.080. The term includes a discharge in compliance with NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from fire fighting activities exempted pursuant to Section 20.080, of this bylaw.

IMPERVIOUS SURFACE:

Any material or structure on or above or immediately below the ground that prevents water infiltrating the underlying soil. Impervious surface includes, but is not limited to, paved parking lots, sidewalks, and rooftops.

INDUSTRIAL ACTIVITY:

Activities subject to NPDES Industrial Storm Water Permits as defined in 40 CFR, Section 122.26 (b)(14).

LESSEE:

A person that leases, orally or in writing, the use and/or possession of property from its owner.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM:

The system of conveyances designed or used for collecting or conveying storm water, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or manmade or altered drainage channel, swale, gully, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT:

A permit issued by Environmental Protection Agency (EPA) (or by the Commonwealth under authority delegated pursuant to 33 USC §1342(B)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area wide basis.

NON-STORM WATER DISCHARGE:

Discharge to the municipal storm drain system not composed entirely of storm water.

NOTICE OF ADMINISTRATIVE APPEAL:

A written request by the alleged violator to the Town Manager as set forth in Section 20.120.6.

NOTICE OF APPEAL:

A written request with supplemental evidence by the alleged violator to the DPW Superintendent as set forth in Section 20.120.6.

NOTICE OF VIOLATION:

A written documentation from the Town to the person violating this bylaw as set forth in Section 20.120.3.

OWNER:

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

PERSON:

An individual, partnership, association, firm, company, trust, corporation, agency, authority, department, or political subdivision of the Commonwealth or the federal government, and any other officer, employee, or agent of such person.

POLLUTANT:

Anything which causes or contributes to pollution. Pollutants may include, but are not limited to, the following: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

PROCESS WASTEWATER:

Water which, during the 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.

STORM WATER:

Any surface flow, snow melt, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORM WATER MANAGEMENT PLAN:

A document containing narrative, drawings and details prepared by a registered professional engineer (PE) which includes structural and nonstructural best management practices to manage and treat stormwater runoff generated from regulated development activity. A stormwater management plan also includes an operation and maintenance plan describing the maintenance requirements for structural best management practices.

SURFACE WATER DISCHARGE PERMIT:

A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes discharges to waters of the Commonwealth.

TOTAL SUSPENDED SOLIDS (TSS):

Material, including but not limited to, trash, debris, soils, silts, sediment, particulates and sand suspended in stormwater

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 without limitation 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 40.000.

VIOLATOR:

Any person that does not comply with this bylaw.

WARNING NOTICE:

A written warning document from the Town to the person violating this bylaw as detailed in Section 20.120.2.

WATERCOURSE:

A natural or manmade channel or other water body 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 water or other liquid, other than a uncontaminated stormwater, discharged from a facility, including but not limited to, 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 use of any raw material, intermediate product, finished product, byproduct or waste product.

WETLANDS:

Coastal and freshwater wetlands, including wet meadows, marshes, swamps, and bogs, as defined and determined pursuant to G.L.c.131, § 40 and 310 CMR 10.00 et seq.

20.030 Applicability.

This bylaw shall apply to all water entering directly or indirectly into the municipal storm drainage system generated on any developed and undeveloped lands unless explicitly exempted by the DPW Superintendent.

20.040 Authority.

This bylaw is adopted under the authority granted by provisions of the Clean Water Act (1987) requiring National Pollutant Discharge Elimination System (NPDES) permits for storm water discharges. Under 40 CFR 122.34 (b)(3), The Clean Water Act, section 402 (p)(3)(B)(ii) requires that permits for municipal separate storm sewer systems (MS4) include a requirement to effectively regulate problematic non-storm water discharges into storm sewers. This bylaw in no way supersedes or diminishes the authority or jurisdiction of any state or federal regulations governing discharges to Waters of the Commonwealth or the United States or any other applicable regulation governing illicit discharges. Enforcement of said state and federal regulations are governed by those applicable government agencies.

20.050 Responsibilities for Administration.

The DPW Superintendent shall administer, implement and enforce this bylaw. Any powers granted to or duties imposed upon the DPW Superintendent may be delegated in writing by the DPW Superintendent to his or her designee.

20.060 Regulations.

The Town Manager shall promulgate Regulations to implement and establish fees and penalties to effectuate the purpose of this bylaw. Failure by the Town Manager to promulgate such Regulations or fee and penalty structures shall not have the effect of suspending or invalidating this bylaw.

20.070 Prohibited Activities.

20.070.1 Illicit discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or non-storm water discharge into the MS4, watercourse, or waters of the Commonwealth or the United States.

20.070.2 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, regulations or custom at the time of connection.

20.070.3 Obstruction of Municipal Storm Drain System. No person shall obstruct or interfere with the normal flow of storm water into or out of the municipal storm drain system without prior written approval from the DPW Superintendent.

20.080 Exemptions

The commencement, conduct or continuance of any illegal or illicit discharge to the storm drain system is prohibited except for non-storm waters provided that the source is not a significant contributor of a pollutant to the municipal storm drain system as described as follows:

20.080.1 Waterline flushing;

20.080.2 Flow from potable water sources;

20.080.3 Springs;

20.080.4 Natural flow from riparian habitats and wetlands;

20.080.5 Diverted stream flow;

20.080.6 Rising groundwater;

20.080.7 Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005 (20), or uncontaminated pumped groundwater;

20.080.8 Water from the exterior foundation drains, roof drains, footing drains (not including active ground water dewatering systems), or air conditioning condensation;

20.080.9 Discharge from landscape irrigation or lawn watering.

20.080.10 Water from residential activities, including, but not limited to, car washing, washing walkways, patios, house siding, windows, or similar exterior structure related washing activities;

20.080.11 Discharge from de-chlorinated swimming pool water (less than one ppm total 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.

20.080.12 Discharge from street sweeping;

20.080.13 Dye testing, provided verbal notification is given to the DPW or its agent prior to the time of the test and providing resulting concentrations are not at levels detrimental to resident aquatic organisms;

20.080.14 Non-storm water discharge permitted under an 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 order and applicable laws and regulations; and

20.080.15 Discharge for which advanced written approval is received from the DPW Superintendent or its agent as necessary to protect public health, safety, welfare or the environment.

20.090 Watercourse Protection.

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

20.100 Compliance Monitoring.

20.100.1 Right of Entry: Inspection and Sampling After notification to the property owner.

20.100.1.1 The DPW Superintendent or his or her designee shall be permitted to enter and inspect facilities subject to regulation under this bylaw as often as may be necessary to determine compliance with this bylaw.

20.100.1.2 If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the DPW Superintendent or his or her designee.

20.100.1.3 Facility operators and/or owners shall allow the DPW Superintendent or his or her designee the ready access to all parts of the premises where water may be discharged from into a municipal utility for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

20.100.1.4 The DPW Superintendent or his or her designee shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the DPW Superintendent to conduct monitoring and/or sampling of the facility's storm water discharge.

20.100.1.5 The DPW Superintendent or his or her designee shall have the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

20.100.1.6 Unreasonable delays in allowing the DPW Superintendent or his or her designee access to a facility is a violation of a storm water discharge permit and of this bylaw. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the DPW Superintendent or his or her designee reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this bylaw.

20.100.2 Search Warrants

If the DPW Superintendent or his or her designee has been refused access to any part of the premises from which storm water is discharged, and the DPW Superintendent or his or her designee is able to demonstrate probable cause to believe that there may be a violation of this bylaw, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this bylaw or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the DPW Superintendent or his or her designee may seek issuance of a search warrant from any court of competent jurisdiction.

20.110 Notification of Spills

20.111 Notwithstanding other requirements of local, state, or federal law, as soon as any person responsible for a facility, or responsible for emergency response for a facility or operation resulting in or which may result in discharge or 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 or toxic materials, the person shall immediately notify the municipal fire department. In the event of a release of nonhazardous material, the reporting person shall as soon as practical notify the DPW Superintendent and provide a written notification within three (3) business days thereafter of the spill occurrence. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain onsite a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years. Failure to provide notification of a release as provided above is a violation of this bylaw.

20.120. Violation, Enforcement, and Penalties

20.120.1 Violations

20.120.1.1 It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this bylaw or any regulations promulgated there under. Any person who violates this bylaw or its regulations may be subject to enforcement action, request for injunctive relief by a court of competent jurisdiction, or any other legal action as provided by law.

20.120.1.2 In the event the violation constitutes an immediate potential danger to public health welfare or safety, the DPW Superintendent or his or her designee may enter upon the subject private property, without prior notice, and to take any and all measures necessary to abate the danger, eliminate the violation and/or restore the property to a safe condition, the cost of which will be the obligation and responsibility of the violating party.

20.120.2 Warning Notice

When the DPW Superintendent or his or her designee finds that any person has violated, or continues to violate, any provision of this bylaw or its regulations, or any order issued hereunder, the DPW Superintendent or his or her designee may serve upon said person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a timely resolution whereby any offending discharge will cease within a time frame stipulated within the Warning Notice. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the DPW Superintendent or his or her designee to take action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

20.120.3 Notice of Violation

20.120.3.1 Whenever the DPW Superintendent or his or her designee finds that a person has violated a prohibition or failed to meet a requirement of this bylaw, the DPW Superintendent or his or her designee may order compliance by written Notice of Violation to the responsible person and the owner of the property, if different.

20.120.3.2 The Notice of Violation shall contain:

- (1) The name and address of the alleged violator and the owner of the property, if different;
- (2) The address when available or description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to restore compliance with this bylaw and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (6) A statement that the determination of violation may be appealed to the Town Manager with a copy to DPW Superintendent by filing a written notice of appeal within 14 days of service of notice of violation; and
- (7) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by the Tewksbury DPW or a contractor and the expense therefore shall be charged to the violator.

20.120.3.3 Such notice may require without limitation:

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

(6) The implementation of source control or treatment BMPs.

20.120.4 Compensatory Action

In lieu of enforcement proceedings, penalties, and remedies authorized and impose upon a violator through this bylaw, the DPW Superintendent or his or her designee may grant an alternative compensatory actions by said violator, such as storm drain stenciling, attendance at compliance workshops, stream clean up, or the like as approved by the DPW Superintendent.

20.120.5 Suspension of MS4 Access

20.120.5.1 When the DPW Superintendent or his or her designee finds that any person has violated, or continues to violate, any provision of this bylaw, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the DPW Superintendent or his or her designee may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- (1) Immediately comply with all bylaw requirements; and
- (2) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

20.120.5.2 Any person notified of a warning or notification of violation is directed to under this subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the Notice of Violation, the DPW Superintendent or his or her designee may or without obligation take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States or the Commonwealth and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The DPW Superintendent or his or her designee may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the DPW Superintendent or his or her designee that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this bylaw. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the DPW Superintendent within 30 days of receipt of the Notice of Violation. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite site for, taking any other action against the violator.

20.120.5.3 In cases of emergency situations, the DPW Superintendent or his or her designee may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States or the Commonwealth. If the violator fails to comply with a Notice of Violation issued in an emergency, the DPW Superintendent or his or her designee may take such steps as deemed necessary and without obligation to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

20.120.5.4 Any person discharging to the MS4 in violation of this bylaw may have its MS4 access terminated if such termination would abate or reduce an illicit discharge. The DPW Superintendent will notify a violator of the proposed termination of its MS4 access. The violator may first petition the DPW Superintendent with a Notice of Appeal and secondly, to the Town Manager for a reconsideration and hearing with a Notice of Administrative Appeal.

20.120.5.5 A person commits an offence if the person reinstates a previously terminated MS4 access to premises pursuant to this section, without the prior approval of the DPW Superintendent.

20.120.6 Civil Penalties, Criminal Prosecution, Appeals and Enforcement

20.120.6.1 In the event the alleged violator fails to take the remedial measures set forth in the Notice of Violation or otherwise fails to resolve the violations described therein within 30 days, or such greater period as the DPW Superintendent shall deem appropriate, after the DPW Superintendent has taken one or more of the actions described above, the DPW Superintendent may impose a penalty not to exceed \$5000 (depending on the severity of the violation) per violation for each day the violation remains unremedied after the receipt of the Notice of Violation.

20.120.6.2 Any person that has violated or continues to violate this bylaw shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty per violation per day. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

20.120.6.3 Any person receiving a Notice of Violation may appeal the determination of the DPW Superintendent. The Notice of Appeal must be received within 14 days from the date of the Notice of Violation with all supplemental evidence of the violating party to be entered into record as the basis of the appeal. If the appeal is denied by the DPW Superintendent, the violating party may within five (5) days submit a Notice of Administrative Appeal to the Town Manager. No supplemental evidence will be allowed with this second appeal. Hearing on the appeal before the Town Manager or his or her designee shall take place within 30 days from the date of receipt of the Notice of Administrative Appeal. The decision of the Town Manager shall be final.

20.120.6.4 If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 30 days of the decision of the DPW Superintendent and/or the Town Manager upholding the Notice of Violation, then representatives of the DPW Superintendent or his or her designee may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property to a safe condition, the cost of which will be the obligation and responsibility of the violating party. At the discretion of the DPW Superintendent, violations will be forwarded to the Massachusetts Department of Environmental Protection for corrective action. It shall be unlawful for any person in possession of any premises to refuse to allow the governmental agency or designated contractor to enter upon the premises for the purposes set forth above.

20.130 Cost of Abatement of the Violation

Within 30 days after cessation of the violation, the violator and the owner of the property, if different, will be notified of the cost of the abatement, including administrative costs. The violator or the property owner may file a written protest to the DPW Superintendent objecting to the amount of the assessment with 14 days.

20.140 Violations deemed a Public Nuisance

In addition to the enforcement process and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this bylaw that is deemed a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken. State and/or federal regulation enforcement authorities may also be solicited to aid in enforcement actions.

20.150 Severability

The provisions of this bylaw are hereby declared to be severable. If any provisions, 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.

20.160 Transitional Provisions

Property owners shall have 30 days from the effective date of the bylaw to comply with its provisions. (Art. 27, ATM 2010)