

Northern Middlesex Stormwater Collaborative

Model Stormwater Bylaw August 2020

The Northern Middlesex Stormwater Collaborative (NMSC) has developed a model stormwater bylaw and regulations to assist communities within the watershed to effectively manage stormwater pollution and comply with the most recent Small MS4 General Permit (MS4) and 2020 permit revisions.¹ The model bylaw and regulations are based on those developed by the Neponset River Watershed Association (NepRWA) in 2019² and updated to meet the needs of the NMSC region.

This model is intended to serve as an example and be adaptable and should be modified to fit with existing local bylaws and other relevant law. Each community is different, and the models are not intended to be a one-size-fits-all approach, but rather a template on which to build so municipalities do not have to begin from scratch. Nearly all of the NMSC communities have adopted stormwater bylaws or ordinances to address the General Permit Requirements. This model is annotated to highlight decision points for communities to consider as they tailor this model to suit their unique needs and goals or as they make necessary or desired updates to local code.

Any municipality considering implementing the model stormwater bylaw should consult with its legal counsel for consistency with applicable laws and regulations of the Commonwealth of Massachusetts.

¹<https://www3.epa.gov/region1/npdes/stormwater/ma/ma-small-ms4-2020-mods.pdf>.

²<https://yourcleanwater.org/wp-content/uploads/2019/06/NSP-Model-Stormwater-Bylaw-May-2019.docx> .

Town of XXXXXXXXX

Stormwater Management Bylaw

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ARTICLE I – GENERAL PROVISIONS

Section 1. Purpose and Objective

- A. The purpose of this bylaw is to protect public health, safety, general welfare, and the environment by regulating illicit connections and discharges to the storm drain system, as well as to control the adverse effects of construction site stormwater runoff and post-construction runoff. Stormwater runoff can be a major cause of:
- (1) Impairment of water quality and flow in lakes, ponds, streams, rivers, coastal waters, wetlands, groundwater and drinking water supplies;
 - (2) Contamination of drinking water supplies;
 - (3) Contamination of downstream coastal areas;
 - (4) Alteration or destruction of aquatic and wildlife habitat;
 - (5) Overloading or clogging of municipal stormwater management systems; and
 - (6) Flooding.
- B. The objectives of this bylaw are to:
- (1) Protect water resources;
 - (2) Comply with state and federal statutes and regulations relating to stormwater discharges including total maximum daily load requirements and with the General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts, issued by the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Protection (“MS4 Permit”);
 - (3) Prevent and reduce pollutants from entering the [Town's] municipal separate storm sewer system (MS4);
 - (4) Prohibit illicit connections and unauthorized discharges to the MS4 and require their removal;
 - (5) Establish minimum construction and post construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
 - (6) Establish provisions for the long-term responsibility for, and maintenance of, structural stormwater control facilities and nonstructural stormwater best management practices to ensure that they continue to function as designed, and pose no threat to public safety; and
 - (7) Recognize the [Town's] legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

Section 2. Definitions

Unless a different definition is indicated in other sections of this bylaw, the following definitions and provisions shall apply throughout this bylaw:

ADMINISTRATIVE LAND DISTURBANCE APPROVAL: Review and approval by the Stormwater Authority of a land disturbance activity that does not require a Land Disturbance Permit because of its size and/or scope.

Note: The *Administrative Land Disturbance Approval* review process is intended to be a streamlined process for smaller or reduced scope projects. This option does not need to be included in the bylaw. It should only be used for projects under an acre (i.e., projects for which the MS4 Permit does not require regulation).

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 or 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: Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government, to the extent permitted by law, requesting a Land Disturbance Permit or Administrative Land Disturbance Approval.

AS-BUILT DRAWING: Drawings that completely record and document applicable aspects and features of conditions of a project following construction using Stormwater Management Plans derived from a Land Disturbance Permit.

BEST MANAGEMENT PRACTICE (BMP): schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to Waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL (CPESC): A certified specialist in soil erosion and sediment control. This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.

CLEAN WATER ACT: The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

CLEARING: Any activity that removes the vegetative surface cover.

COMMON PLAN OF DEVELOPMENT: - A "larger common plan of development or sale" is a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

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.

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 Certified Professional in Erosion and Sedimentation Control (CPESC), which includes best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbing activities.

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

GROUNDWATER: Water beneath the surface of the ground.

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

HAZARDOUS MATERIAL: 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 MGL c. 21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

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 bylaw.

ILLICIT DISCHARGE: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Article II, §2D. The term does not include a discharge in compliance with an NPDES stormwater discharge permit or resulting from fire-fighting activities and other activities exempted pursuant to Article II, §2D(1) of this bylaw.

IMPERVIOUS SURFACE: Any surface that prevents or significantly impedes the infiltration of water into the underlying soil. This can include but is not limited to: roads, driveways, parking areas and other areas created using nonporous material; buildings, rooftops, structures, artificial turf and compacted gravel or soil.

INFILTRATION: The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a project site.

LAND DISTURBANCE PERMIT: A permit issued by the Stormwater Authority pursuant to this bylaw prior to commencement of Land Disturbing Activity.

LAND DISTURBING ACTIVITY: Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material; results in an increased amount of runoff or pollutants; measurably changes the ability of a ground surface to absorb waters; involves clearing, grading, or excavating, including grubbing; or results in an alteration of drainage characteristics.

LOW IMPACT DEVELOPMENT or LID: site planning and design strategies that use or mimic natural processes that result in the infiltration, evapotranspiration or use of stormwater in order to protect water quality and associated aquatic habitat. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product. LID practices include but are not limited to bioretention facilities, rain gardens, vegetated rooftops, rain barrels and permeable pavements.

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 **[Town]**.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT: A permit issued by the EPA that authorizes the discharge of pollutants to Waters of the United States.

NEW DEVELOPMENT: any construction activities or land alteration on an area that has not previously been developed to include impervious cover.

NONPOINT SOURCE POLLUTION: Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and man-made pollutants finally depositing them into a water resource area.

NON-STORMWATER DISCHARGE: Discharge to the municipal storm drain system not composed entirely of stormwater.

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 ensure that it continues to function as designed.

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 any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged.

PRE-CONSTRUCTION: All activity in preparation for construction.

POLLUTANT: dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, construction wastes and residues including discarded building materials, concrete truck wash out, chemicals, litter, and sanitary wastes and industrial, municipal and agricultural waste discharged into water.

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

REDEVELOPMENT: Development, rehabilitation, expansion, demolition, construction, land alteration, or phased projects that disturb the ground surface, including impervious surfaces, on previously developed sites.

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: The areal extent of construction activities, including but not limited to the creation of new impervious cover and improvement of existing impervious cover.

SOIL: Any earth, sand, rock, gravel, or similar material.

STORMWATER AUTHORITY: [Town] Conservation Commission or its authorized agent(s).

Note: Which entity serves as the Stormwater Authority is up to the municipality. The Conservation Commission or the Planning Board are the most common choices, but there are a number of other options.

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

STORMWATER MANAGEMENT PLAN: A document containing narrative, drawings, details and reporting requirements developed by a qualified professional engineer (PE), which describes structural and non-structural best management practices designed to control the discharge of pollutants from impervious surfaces and onsite activities as well as the volume and peak rate of surface runoff from a site on an ongoing basis after construction has been completed.

TOTAL MAXIMUM DAILY LOAD or TMDL: Section 303(d) of the Clean Water Act authorizes the EPA to assist states, territories and authorized tribes in listing impaired waters and developing Total Maximum Daily Loads (TMDLs) for these waterbodies. A TMDL establishes the maximum amount of a pollutant that a waterbody can accept and still meet water quality standards for protecting public health and maintaining the designated beneficial uses of those waters for drinking, swimming, recreation, and fishing. A TMDL includes Waste Load Allocations for point source discharges, Load Allocations for nonpoint sources and/or natural background, and must include a margin of safety and account for seasonal variations.

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

WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, groundwater, and Waters of the United States as defined under the Federal Clean Water Act as hereafter amended.

Section 3. Authority

This bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Massachusetts home rule statute.

Section 4. Responsibility for Administration

- A. The Stormwater Authority shall administer, implement and enforce this bylaw. Any powers granted to or duties imposed upon the Stormwater Authority may be delegated in writing by the Stormwater Authority to its employees or agents.

Section 5. Waivers

- A. The Stormwater Authority, or its authorized agent, may waive strict compliance with any requirement of this bylaw or the rules and regulations promulgated hereunder, where such action is:
 - (1) allowed by federal, state and local statutes and/or regulations and the MS4 Permit; and
 - (2) in the public interest; and
 - (3) not inconsistent with the purpose and intent of this bylaw.
- B. Any person seeking a waiver must submit a written waiver request. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the bylaw does not further the purposes or objectives of this bylaw.
- C. All waiver requests shall require a public hearing.

Note: The Town may wish to leave the requirement for all waiver requests to have a public hearing out of the bylaw and leave it to the Regulations to specify whether or not a public hearing is required.

- D. If in the opinion of the Stormwater Authority or its authorized agent, additional time or information is required for review of a waiver request, the Stormwater Authority may continue a hearing to a date certain announced at the meeting. In the event the applicant objects to a continuance, or fails to provide requested information, the waiver request shall be denied.

Section 6. Regulations

- A. The Stormwater Authority shall adopt, and may periodically amend, regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of this Stormwater Management bylaw by majority vote after conducting a public hearing to receive comments. Such hearing shall be advertised in a newspaper of general local circulation, at least fourteen (14) days prior to the hearing date. Failure of the Stormwater Authority to issue such rules, or regulations, or a legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of this bylaw.

Note: Holding a public hearing with public notice before adopting or amending regulations, rules, and/or written guidance related to the Stormwater Management Bylaw is strongly recommended but not strictly required. The length of the notice period is up to the Town.

Stormwater Management regulations, rules or guidance shall identify requirements for Administrative Land Disturbance Approval and Land Disturbance Permits required by this bylaw and consistent with or more stringent than the relevant requirements of the most recent MS4 Permit.

- B. Stormwater Management regulations may identify one or more categories of projects requiring an Administrative Land Disturbance Approval that, because of their size, scope and common features or characteristics, may be approved by one or more agents of the Stormwater Authority rather than by a majority of Stormwater Authority members pursuant to Article III of this bylaw. For such projects, the Stormwater Authority will identify minimum stormwater management standards pursuant to this bylaw, compliance with which is required before the project is approved.

Section 7. Enforcement

The Stormwater Authority or its authorized agent shall enforce this bylaw, and any associated regulations, orders, violation notices, and enforcement orders and may pursue all civil and criminal remedies for such violations.

Note: Cities and Towns should discuss and decide how to escalate enforcement actions, including fines.

- A. Criminal and Civil Relief.
- (1) Any person who violates the provisions of this bylaw, or any associated regulations, permit, or order issued thereunder, may be subject to criminal penalties and prosecution in a court of competent jurisdiction and/or a fine of not more than \$300 per violation. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
 - (2) The Stormwater Authority 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.
- (1) The Stormwater Authority or its authorized agent may issue a written order to enforce the provisions of Article II of this bylaw or any associated regulations, which may include:
 - (a) Elimination of illicit connections or discharges to the MS4;
 - (b) Performance of monitoring, analyses, and reporting;

- (c) Cessation of unlawful discharges, practices, or operations;
 - (d) Implementation of measures to minimize the discharge of pollutants until such time as the illicit connection or discharge shall be eliminated; and
 - (e) Remediation of any adverse impacts of an illicit discharge or connection.
- (2) The Stormwater Authority or its authorized agent may issue a written order to enforce the provisions of Article III of this bylaw or any associated regulations or permit. Violations include, without limitation, failure to obtain a Land Disturbance Permit or Administrative Review for an activity subject to this bylaw, or failure to follow the requirements of a Land Disturbance Permit and the related Erosion and Sedimentation Control Plan, or Operations and Maintenance Plan or any other authorization issued pursuant to this bylaw or regulations issued hereunder. The written order may require the violator to remediate the non-compliance and/or any adverse impact caused by it, including without limitation:
- (a) A requirement to cease and desist from the land-disturbing activity until there is compliance with the bylaw and provisions of the Land Disturbance Permit or other authorization;
 - (b) Maintenance, installation or performance of additional erosion and sediment control measures;
 - (c) Monitoring, analyses, and reporting;
 - (d) Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity;
 - (e) Construction, reconstruction, repair or maintenance of stormwater BMPs or any other aspect of the post-construction stormwater management system;
 - (f) Remediation of adverse impacts resulting from improper construction or operation of the post-construction stormwater management system; and/or
 - (g) A requirement to eliminate discharges, directly or indirectly, into the MS4, a watercourse or into the Waters of the Commonwealth.
- (3) If the Stormwater Authority or its authorized agent 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 provide that, should the violator or property owner fail to abate or perform remediation within the specified deadline, **[Town]** may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

- (4) Within 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 [Town], including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Stormwater Authority within 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 30 days following a decision of the Stormwater Authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction affirming or reducing the costs, the costs shall constitute a municipal charge for purposes of G.L. c.40, §58, and a lien may be imposed on the property for the amount of the unpaid charge, pursuant to G.L. c.40, §58. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in M.G.L. c. 59 § 57 on the 31st day after the costs first become due.
- C. Noncriminal disposition. As an alternative to criminal prosecution or civil action, [Town] may elect to utilize the noncriminal disposition procedure set forth in M.G.L. c. 40, § 21D [and relevant local bylaw, if applicable], in which case designated agents of the Stormwater Authority shall be the enforcing persons. The penalty for the first violation shall be a warning. The penalty for the second violation shall be \$100. The penalty for the third and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

Note: The Town may name any desired enforcing agents here; it may want to include police officers, the Building Inspector, etc.

- D. Entry to perform duties under this bylaw. To the extent permitted by local, state or federal law, or if authorized by the owner or other party in control of the property, the Stormwater Authority, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Stormwater Authority deems reasonably necessary.
- E. Appeals. The decisions or orders of the Stormwater Authority shall be final. Further relief shall be appealed to a court of competent jurisdiction.
- F. 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 8. Severability

The provisions of this bylaw are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this bylaw.

ARTICLE II – DISCHARGES TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM

Section 1. Applicability

Article II of this bylaw shall apply to all direct or indirect discharges to the municipal storm drain system and to any activities that might obstruct the municipal storm drain system.

Section 2. Prohibited activities; exemptions.

- A. Illicit discharges. No person shall commence, allow, conduct or continue any illicit discharge to the municipal storm drain system.
- 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 Stormwater Authority.

Note: Prohibiting Obstructions here allows for additional enforcement of erosion & sediment control for projects outside the jurisdiction of local permitting as well as grass clippings, mulch, and other bulk materials that can increase water pollution and block the drain.

- D. Exemptions.
 - (1) Discharge or flow resulting from fire-fighting activities, unless the Stormwater Authority determines that such discharge or flow is a significant source of pollutants to Waters of the United States;
 - (2) The following categories of non-stormwater discharges are allowed unless the Stormwater Authority, EPA, or the MassDEP identifies any category or individual discharge of non-stormwater discharge below as a significant contributor of pollutants to the MS4; then that category or individual discharge is not allowed, but rather constitutes an “illicit discharge”:
 - (a) Water line flushing
 - (b) Landscape irrigation
 - (c) Diverted stream flows
 - (d) Rising groundwater
 - (e) Uncontaminated groundwater infiltration (as defined at 40 CFR § 35.2005(20))
 - (f) Uncontaminated pumped groundwater
 - (g) Discharge from potable water sources
 - (h) Foundation drains

- (i) Air conditioning condensation
- (j) Irrigation water, springs
- (k) Water from crawl space pumps
- (l) Footing drains
- (m) Lawn watering
- (n) Individual resident car washing
- (o) Flows from riparian habitats and wetlands
- (p) De-chlorinated swimming pool discharges (less than one ppm chlorine) provided the pool is drained in such a way as not to cause a nuisance
- (q) Street wash waters
- (r) Residential building wash waters without detergents

Section 3. Additional Prohibited Pollutants

Note: These are optional additional provisions that may be added to this Bylaw or Ordinance. Section 3.A may not be necessary if a “pooper scooper” law is already in effect under the Health Department. Section 3.B addresses an emerging concern that would require education to homeowners, businesses, and sealcoating companies, and may be difficult to enforce at the local level.

- A. Pet Waste: **[Town]** is subject to a Pathogen TMDL, and because dog feces are a major component of stormwater pollution, it shall be the duty of each person who owns, possesses, or controls a dog to remove and properly dispose of any feces left by the dog on any public or private property neither owned nor occupied by said person. It is prohibited to dispose of dog feces in any public or private storm drain, catch basin, wetland or water body or on any paved or impervious surface. However, this provision shall not be applicable to a person using a helping dog or other helping animal registered as such. Persons walking dogs must carry with them a device designed to properly dispose of dog feces including, but not limited to, a bag or “pooper scooper.” For specific requirements and penalties for violations see **[applicable local law]**.
- B. Pavement Sealers: Coal tar based driveway and pavement sealers have been identified as a primary source of poly-aromatic hydrocarbons affecting streams in developed areas. Poly-aromatic hydrocarbons are classified by the United States Environmental Protection Agency as a probable human carcinogen and are highly toxic to aquatic life. Asphalt-based driveway and pavement sealers contain low concentrations of poly-aromatic hydrocarbons. Therefore, application of coal tar based driveway and pavement sealers is prohibited for all paved areas directly connected to the MS4, a watercourse, or Waters of the Commonwealth.

Section 4. Emergency suspension of storm drainage system access

The Stormwater Authority or its authorized agent 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 Stormwater Authority may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

Section 5. 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, the person shall take all necessary steps to ensure containment and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal fire and police departments and MassDEP if necessary. In the event of a release of nonhazardous material, the reporting person shall notify the authorized enforcement agency no later than the next business day. The reporting person shall provide to the Stormwater Authority 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 address it and prevent its recurrence. Such records shall be retained for at least three years.

ARTICLE III – STORMWATER MANAGEMENT AND LAND DISTURBANCE

Section 1. Applicability

- A. These regulations shall apply to all construction activity or land disturbance that individually or as part of a Common Plan of Development resulting in disturbance of land in excess of the thresholds below.
- (1) **Administrative Land Disturbance Approval** is required for projects disturbing between 5,000 square feet and one-half acre (21,780 square feet) of land.
 - (2) **A Land Disturbance Permit** is required for disturbance of one-half (1/2) acre (21,780 square feet) or more of land, or for the disturbance of more than 5,000 square feet of land where the proposed use is a land use of higher potential pollutant loads pursuant to the Massachusetts Stormwater Management Standards or the Stormwater Authority determines that an Administrative Land Disturbance Approval is not sufficient.

Note: This model creates a two-tiered permitting process intended for an overall threshold lower than EPA's requirement (land disturbance of 1 acre or more).

- B. The following activities are exempt from the provisions of Section 5(A):
- (1) Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling conducted in such a way as not to cause a nuisance;
 - (2) Construction of fencing that will not substantially alter existing terrain or drainage patterns;
 - (3) Construction of utilities other than drainage (gas, water, electric, telephone, etc.) which will not alter terrain or drainage patterns or result in discharge of sediment or other pollutants to the MS4 or, directly or indirectly, to a Watercourse or Waters of the Commonwealth;
 - (4) Normal maintenance and improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act regulation 310 CMR 10.04.

Any person that fails to follow the requirements of a Land Disturbance Permit and the related Erosion and Sedimentation Control Plan, and Operations and Maintenance Plan, shall be in violation of this bylaw.

Section 2. Review or Permit

- A. An **Administrative Land Disturbance Approval or Land Disturbance Permit** must be obtained prior to the commencement of any construction activity or land disturbance for which such a review or permit is required. An applicant seeking a review or permit shall file an appropriate application with the Stormwater

Authority in a form and containing information as specified in this bylaw and in regulations adopted by the Stormwater Authority.

- B. Each application must be accompanied by the appropriate application fee as established by the Stormwater Authority. Applicants shall pay the application fee before the review process commences. The Stormwater Authority is authorized to retain a Registered Professional Engineer (PE) or other professional consultant to advise the Stormwater Authority on any or all aspects of the application and/or the project's compliance with conditions of a Review or Permit. The Stormwater Authority may require the applicant to pay reasonable costs to be incurred by the Stormwater Authority for the employment of outside consultants pursuant to Stormwater Authority regulations as authorized by G.L. c. 44, § 53G.

Note: Many of the older Bylaws / Ordinances should be updated to include the authority to utilize the c. 44, §53G process to impose consultant fees, as it was not allowed under M.G.L. when some of the earlier Bylaws were written. Authorizing the use of the c. 44, §53G process for imposing consultant fees is not required by the MS4 Permit, but is strongly recommended as a valuable resource for the Stormwater Authority to make use of.

- C. Required submittals to obtain a Land Disturbance Permit shall include (without limitation) an Erosion and Sedimentation Control Plan, a Stormwater Management Plan, and an Operation and Maintenance Plan. To obtain a Land Disturbance Permit, the applicant must show that site design, construction site stormwater runoff control and post-construction stormwater management will meet the standards set by the Stormwater Authority in its regulations, rules and/or guidance, which shall be at least as stringent as the relevant requirements of the MS4 Permit and may also address relevant environmental considerations including (without limitation) protection of aquifers and sensitive water bodies, climate resilience, and prevention of flooding.
- D. The Land Disturbance Permit shall include measures to ensure adequate long-term operation and maintenance of stormwater management design features and BMPs. The Stormwater Authority may impose requirements including (without limitation) the following:
- (1) A requirement that funds for future operation and maintenance be set aside in a dedicated fund or escrow account;
 - (2) A permanent permit condition requiring compliance with an Operation and Maintenance Plan;
 - (3) A permanent permit condition requiring that the property owner submit an annual report or certification regarding operation and maintenance;
 - (4) A requirement to record the Operation and Maintenance Plan (or notice thereof);
 - (5) A requirement that a legal instrument be put in place establishing responsibility for operation and maintenance of a stormwater BMP serving more than one lot; and

- (6) A requirement that an easement be recorded allowing the Town to access a stormwater BMP to remedy any operational failure or maintenance problem.

Section 3. Consent to Entry onto Property

By signing the permit application, an applicant consents to the entry of members of the Stormwater Authority or its authorized agents in or on the site while the application is under review to verify the information in the application, and at any time after a Review or Permit is issued to inspect for compliance with Review or Permit conditions.

Section 4. Inspection and Site Supervision

The Stormwater Authority or its designated agent shall make inspections to verify and document compliance with the Administrative Land Disturbance Approval or Land Disturbance Permit.

Section 5. Surety

The Stormwater Authority may require the applicant 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 the Stormwater Authority and be in an amount deemed sufficient by the Stormwater Authority to ensure that the work will be completed in accordance with the permit. If the project is phased, the Stormwater Authority may release part of the bond as each phase is completed in compliance with the permit. If the permittee defaults on any obligations imposed by the Land Disturbance Permit, the Stormwater Authority may (after notification of the permittee) inform the holder of the security (and the municipal treasurer if the treasurer is not holding the funds) of the default, in which event the Town shall be entitled to the security funds.

Note: In the event of a default, the security funds go into the Town's general fund, to be appropriated by Town Meeting. If the Town wants to have the security funds go to a special account from which the Stormwater Authority can make expenditures to fix problems created by default, it may use the provisions of M.G.L. c. 44, §53G½. If the Town wishes to do so, it should have town counsel draft this section of the bylaw to incorporate the requirements of that statute.

Section 6. Final Reports

Upon completion of the work and no later than two (2) years after completion of construction, the holder of a Land Disturbance Permit shall submit a report (including certified as-built construction plans) from a Professional Engineer (PE), surveyor, or Certified Professional in Erosion and Sedimentation Control (CPESC), certifying that the project has been completed in accordance with the conditions of the Land Disturbance Permit. The as-built drawings must depict all on site controls, both structural and non-structural, designed to manage the stormwater associated with the completed site (post construction stormwater management). Any discrepancies with the approved permit plans shall be noted in the cover letter submitting the report and as-built plans.