

Chapter 213
STORMWATER MANAGEMENT

GENERAL REFERENCES

Wetlands protection — See Ch. 240.

Zoning — See Ch. 260.

Conservation Commission regulations — See Ch. 320.

Subdivision regulations — See Ch. 375.

ARTICLE I

Non-Stormwater Discharges**§ 213-1. Findings and purpose.**

- A. Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding.
- B. Regulation of illicit connections and discharges to the municipal storm drainage system is necessary for the protection of the Town's water bodies and groundwater, and to safeguard the public health, safety and welfare and the environment.
- C. The objectives of Article I are:
 - (1) To prevent pollutants from entering the Town's municipal storm drainage system (sometimes hereinafter referred to as the "MS4," an abbreviation for "municipal separate storm sewer system");
 - (2) To prohibit illicit connections and unauthorized discharges to the MS4;
 - (3) To require the removal of all such illicit connections;
 - (4) To comply with state and federal statutes and regulations relating to stormwater discharges; and
 - (5) To establish the legal authority to ensure compliance with the provisions of Article I through inspection, monitoring, and enforcement.

§ 213-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

AUTHORIZED ENFORCEMENT AUTHORITY — The Department of Public Works, its employees, officers, or agents are designated to enforce Article I, Non-Stormwater Discharges.

BYLAW — Refers to Chapter 213, Stormwater Management, of the Town of Lynnfield Charter and Bylaws.

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

COMMONWEALTH — The Commonwealth of Massachusetts.

DISCHARGE OF POLLUTANTS — The addition from any source of any pollutant or combination of pollutants into the municipal storm drainage system or into the waters of the United States, the Commonwealth, or the Town of Lynnfield.

GROUNDWATER — Water beneath the surface of the ground.

ILLICIT CONNECTION — A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drainage 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 drainage system that is not composed entirely of stormwater, except as exempted in § 213-8. The term does not include a discharge in compliance with a NPDES stormwater discharge permit or a surface water discharge permit, or resulting from fire-fighting activities exempted pursuant to § 213-8.

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

MS4 — Municipal storm drainage system or municipal separate storm sewer system.

MUNICIPAL STORM DRAINAGE 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 man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT — A permit issued by United States Environmental Protection Agency (EPA) or jointly with the commonwealth that authorizes the discharge of pollutants to waters of the United States.

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

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, the federal government, or the Town of Lynnfield to the extent permitted by law, and any officer, employee, or agent of such person.

POLLUTANT — Any element or property of sewage; agricultural, industrial or commercial waste; runoff; leachate; heated effluent; or other matter, whether originating at a point or nonpoint source, that is or may be introduced into any waters of the commonwealth, or the Town of Lynnfield. Pollutants shall include, without limitation:

A. Paints, varnishes, and solvents;

- B. Oil and other automotive fluids;
- C. Nonhazardous liquid and solid wastes and yard wastes;
- D. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, accumulations and floatables;
- E. Pesticides, herbicides, and fertilizers;
- F. Hazardous materials and wastes; sewage, fecal coliform and pathogens;
- G. Dissolved and particulate metals;
- H. Animal wastes;
- I. Rock, sand, salt, soils;
- J. Construction wastes and residues; and
- K. Noxious or offensive matter of any kind.

PROCESS WASTEWATER — Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

STORMWATER — Stormwater runoff, snowmelt runoff, and surface water runoff and drainage.

SURFACE WATER DISCHARGE PERMIT — A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the commonwealth.

TOXIC OR HAZARDOUS MATERIAL OR WASTE — Any material which, because of its quantity, its concentration, or its 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 or 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.

WASTEWATER — Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that, during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product or waste product.

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, and groundwater.

WATERS OF THE TOWN OF LYNNFIELD — All waters within the jurisdiction of the Town of Lynnfield, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, and groundwater.

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

§ 213-3. Applicability.

This Article I shall apply to flows entering the municipal storm drainage system.

§ 213-4. Authority.

This Article I is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act, and pursuant to MGL c. 83, §§ 1, 10, and 16, and the regulations of the federal Clean Water Act found at 40 CFR 122.34

§ 213-5. Administration.

The authorized enforcement authority shall administer, implement and enforce this Article I, and any rules and regulations adopted thereunder. Any powers granted to or duties imposed upon the authorized enforcement authority may be delegated in writing by the authorized enforcement authority to employees or agents of the authorized enforcement authority.

§ 213-6. Regulations.

The authorized enforcement authority may promulgate rules and regulations to effectuate the purposes of this Article I. Failure by the authorized enforcement authority to promulgate such rules and regulations shall not have the effect of suspending or invalidating this Article I.

§ 213-7. Prohibited activities.

- A. Illicit discharges. No person shall dump, discharge, or cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal storm drainage system (MS4), into a watercourse, or into the waters of the commonwealth or the Town of Lynnfield.
- B. Illicit connections. No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drainage system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

- C. Obstruction of municipal storm drainage system. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drainage system without prior written approval from the authorized enforcement authority.

§ 213-8. Exemptions.

- A. Any discharge or flow resulting from fire-fighting activities is exempt from the prohibitions set forth herein.
- B. The following non-stormwater discharges or flows are exempt from the prohibitions set forth herein, provided that the source is not a significant contributor of a pollutant to the municipal storm drainage system:
- (1) Water line flushing;
 - (2) Flow from potable water sources;
 - (3) Springs;
 - (4) Natural flow from riparian habitats and wetlands;
 - (5) Diverted stream flow;
 - (6) Rising groundwater;
 - (7) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
 - (8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
 - (9) Discharge from landscape irrigation or lawn watering;
 - (10) Water from individual residential car washing;
 - (11) Discharge from dechlorinated swimming pool water (less than one ppm chlorine), provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
 - (12) Discharge from street sweeping;
 - (13) Dye testing, provided verbal notification is given to the authorized enforcement authority prior to the time of the test;
 - (14) Non-stormwater discharge permitted under a 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

- (15) Discharge for which advanced written approval is received from the authorized enforcement authority as necessary to protect the public health, safety or welfare or the environment.

§ 213-9. Emergency suspension of municipal storm drainage system access.

The authorized enforcement authority may suspend municipal storm drainage 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 or welfare or the environment. In the event any person fails to comply with an emergency suspension order, the authorized enforcement authority may take all reasonable steps to prevent or minimize harm to the public health, safety or welfare or the environment.

§ 213-10. 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, waters of the commonwealth or the waters of the Town of Lynnfield, 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 Fire and Police Departments, Board of Health, and the Department of Public Works. In the event of a release of nonhazardous material, the reporting person shall notify the authorized enforcement authority no later than the next business day. The reporting person shall provide to the authorized enforcement 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 shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§ 213-11. Enforcement.

The Director of the Department of Public Works or his or her appointed designee shall enforce this Article I and all regulations, orders, violation notices, and enforcement orders issued thereunder and may pursue all civil and criminal remedies for such violations.

- A. Civil relief. If a person violates the provisions of this Article I, or any regulation, permit, notice, or order issued thereunder, the authorized enforcement 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 authorized enforcement authority may issue a written order to enforce the provisions of this Article I or the regulations thereunder, which may include:

- (a) Elimination of illicit connections or discharges to the MS4;
- (b) Performance of monitoring, analyses, and reporting;
- (c) That unlawful discharges, practices, or operations shall cease and desist; and
- (d) Remediation of contamination in connection therewith.

(2) If the authorized enforcement authority determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

(3) Within 30 days after completion by the Town of all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the authorized enforcement 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 authorized enforcement authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in MGL c. 59, § 57, after the 31st day at which the costs first become due.

C. Criminal penalty. Any person who violates any provision of this Article I, regulation, order or permit issued thereunder shall be punished as set forth in Chapter 58, Penalties and Enforcement. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

D. Noncriminal disposition. As an alternative to criminal prosecution or civil action, the Town may elect to utilize the noncriminal disposition

procedure set forth in MGL c. 40, § 21D, and adopted by the Town as Chapter 58, § 58-3, of the General Bylaws, in which case the authorized enforcement authority of the Town shall be the enforcing person. The penalty for the first violation shall be a written warning. The penalty for the second violation shall be \$50. The penalty for the third violation shall be shall be \$100. The penalty for the fourth and subsequent offenses shall be \$200. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

- E. Entry to perform duties under this Article I. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the authorized enforcement authority and its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations thereunder and may make or cause to be made such examinations, surveys or samplings as the authorized enforcement authority deems reasonably necessary.
- F. Appeals. The decisions or orders of the authorized enforcement authority shall be final. Further relief shall be to a court of competent jurisdiction.
- G. Remedies not exclusive. The remedies listed in this Article I are not exclusive of any other remedies available under any applicable federal, state or local law.

§ 213-12. 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

**Construction and Post-Construction Stormwater Management for
New Developments and Redevelopments****§ 213-13. Findings and purpose.**

- A. Regulation of discharges to the municipal storm drainage system (MS4) is necessary for the protection of the Town's water bodies and groundwater, and to safeguard the public health, safety and welfare and the environment. Increased and contaminated stormwater runoff associated with developed land uses and the accompanying increase in impervious surface are major causes of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater. In addition, land disturbances can cause harmful impacts due to:
- (1) Soil erosion and sedimentation.
 - (2) Impairment of water quality and 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 municipal storm drainage systems.
- B. Therefore, this Article II establishes stormwater management standards for the final conditions that result from development and redevelopment projects to minimize adverse impacts off site and downstream which would be borne by abutters, townspeople, and the general public. In addition, this Article II establishes stormwater management standards for land disturbances that have harmful impacts, including soil erosion and sedimentation.
- C. The objectives of this Article II are:
- (1) To require practices to control the flow of stormwater from new and redeveloped sites in order to prevent flooding and erosion;
 - (2) To protect groundwater and surface water from degradation;
 - (3) To promote groundwater recharge and infiltration;
 - (4) To prevent pollutants from entering the Town's municipal storm drainage system (MS4) and to minimize discharge of pollutants from the MS4;
 - (5) To ensure adequate long-term operation and maintenance of stormwater-related structures so that they work as designed;

- (6) To require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbances;
- (7) To ensure that soil erosion and sediment control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained;
- (8) To require practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
- (9) To comply with state and federal statutes and regulations relating to stormwater discharges; and
- (10) To establish the Town's legal authority to ensure compliance with the provisions of this article.

§ 213-14. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ABUTTER — The owner(s) of land abutting the activity.

ALTERATION OF DRAINAGE CHARACTERISTICS — Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater in 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 stormwater management permit for proposed land disturbances.

APPLICANT'S TECHNICAL REPRESENTATIVE — A registered professional engineer (P.E.) hired by the applicant to certify that design and construction are completed in accordance with the applicable local, state, and federal stormwater requirements.

AUTHORIZED ENFORCEMENT AUTHORITY — The Town's authorized agent to enforce construction and post-construction runoff controls as specified in this Article II and the stormwater management rules and regulations. The Conservation Commission is designated as the authorized enforcement authority.

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

BYLAW — Refers to Chapter 213, Stormwater Management, of the Town of Lynnfield Charter and Bylaws.

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.

COMMONWEALTH — The Commonwealth of Massachusetts.

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

DISCHARGE OF POLLUTANTS — The addition from any source of any pollutant or combination of pollutants into the municipal storm drainage system or into the waters of the United States, the commonwealth, or the Town of Lynnfield.

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 SEDIMENT CONTROL PLAN — A document containing narrative, drawings, and details developed by a registered professional engineer (P.E.) or a certified professional in erosion and sediment control (CPESC), which includes BMPs or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction-related land disturbances. The plan is required as part of the application for a stormwater management permit.

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

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

LAND DISTURBANCE — Any action that causes a change in the position, location, or arrangement of soil, sand, rock, gravel, or similar earth material.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY — The policy issued by the Department of Environmental Protection (DEP), and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, and Massachusetts Clean Waters Act, MGL c. 21, §§ 23 through 56. The policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

MS4 — Municipal storm drainage system or municipal separate storm sewer system.

MUNICIPAL STORM DRAINAGE 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 man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town.

OPERATION AND MAINTENANCE PLAN — A plan setting up the functional, financial, and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to insure that it continues to function as designed.

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, the federal government, or the Town of Lynnfield, 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.

POLLUTANT — Any element or property of sewage; agricultural, industrial or commercial waste; runoff; leachate; heated effluent; or other matter whether originating at a point or non-point source, that is or may be introduced into any sewage treatment works or waters of the commonwealth or the Town of Lynnfield. Pollutants shall include, without limitation:

- A. Paints, varnishes, and solvents;
- B. Oil and other automotive fluids;
- C. Nonhazardous liquid and solid wastes and yard wastes;
- D. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, accumulations and floatables;
- E. Pesticides, herbicides, and fertilizers;
- F. Hazardous materials and wastes; sewage, fecal coliform and pathogens;
- G. Dissolved and particulate metals;
- H. Animal wastes;
- I. Rock, sand, salt, soils;
- J. Construction wastes and residues; and

K. Noxious or offensive matter of any kind.

PRE-CONSTRUCTION — All activity in preparation for construction.

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, or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.

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

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 disturbances are, were, or will be performed.

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

STORMWATER — Stormwater runoff, snowmelt runoff, and surface water runoff and drainage.

STORMWATER MANAGEMENT PLAN — A plan required as part of the application for a stormwater management permit.

STREAM — A body of running water, including brooks, creeks, and other watercourses, which moves in a definite channel in the ground due to a hydraulic gradient. A portion of a stream may flow through a culvert, be naturally obscured, or run beneath a bridge. A stream's flow may be intermittent (i.e., does not flow throughout the year) or perennial.

WATERS OF THE COMMONWEALTH — All waters within the jurisdiction of the commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, costal waters, and groundwater.

WATERS OF THE TOWN OF LYNNFIELD — All waters within the jurisdiction of the Town of Lynnfield, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, costal waters, and groundwater.

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

§ 213-15. Authority.

This bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and

pursuant to MGL c. 83, §§ 1, 10, and 16, and the regulations of the federal Clean Water Act found at 40 CFR 122.34.

§ 213-16. Applicability.

- A. No person may undertake a construction activity, including clearing, grading, and excavation, that results in a land disturbance that will disturb an acre of land or more or will disturb less than one acre of land but is part of a larger common plan of development or sale that will ultimately disturb an acre of land or more draining to the Town's MS4 without a stormwater management permit from the authorized enforcement authority. After the initial common plan construction activity is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development. For example, after a house is built and occupied, any future construction on that lot (e.g., reconstructing after fire, adding a pool or parking area, etc.) would stand alone as a new common plan for purposes of calculating acreage disturbed to determine if a stormwater management permit is required. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or purpose of the site.
- B. Exemptions. The following are exempt from the provisions of this Article II:
- (1) Construction activities waived from permit coverage under the NPDES General Permit for Stormwater Discharges from Construction Activities;
 - (2) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulations, 310 CMR 10.04;
 - (3) Maintenance of existing landscaping, gardens or lawn areas associated with a single-family dwelling;
 - (4) The construction of fencing that will not substantially alter existing terrain or drainage patterns;
 - (5) Construction of utilities other than drainage (e.g., gas, water, electric, telephone, etc.) which will not alter terrain or drainage patterns;
 - (6) As authorized in the Phase II Small MS4 General Permit for Massachusetts, stormwater discharges resulting from the activities identified in this Article II that are wholly subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Stormwater Management Policy as reflected in an order of conditions issued by the Conservation Commission; and

- (7) Stormwater discharges resulting from the development or construction relating to any project, or portion thereof, that has received any of the following:
 - (a) Site plan approval or subdivision approval or a special permit from the Planning Board, or a Green Belt special permit from the Zoning Board of Appeals under § 260-8.4 of the Zoning Bylaws; and
 - (b) Emergency work to protect life, limb, or property.

§ 213-17. Administration.

- A. The authorized enforcement authority shall administer, implement, and enforce this Article II. Any powers granted to or duties imposed upon the authorized enforcement authority may be delegated in writing by the authorized enforcement authority to its employees and agents.
- B. Rules and regulations. The authorized enforcement authority may adopt, and periodically amend, rules and regulations relating to the procedures and administration of this Article II after public notice and public hearing. Failure by the authorized enforcement authority to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Article II.

§ 213-18. Permits and procedures.

Permits and procedures shall be defined and included as part of any rules and regulations promulgated as permitted in this Article II.

§ 213-19. Fees.

- A. Application and review fee.
 - (1) The authorized enforcement authority shall collect with each submission an application and review fee to cover expenses connected with the review of the application for stormwater management permit. The fee shall be as set from time to time by the authorized enforcement authority.
 - (2) The applicant must hire a registered professional engineer (P.E.) to certify that the plans are in accordance with the Town's standards. The authorized enforcement authority is authorized to retain professional outside consultants to review the plans and to advise the authorized enforcement authority concerning them, and to apply funds paid by the applicant for the application and review fee to defray the cost of hiring such consultants. All unused funds remaining from this fee after approval or denial of the application shall be returned to the applicant.
- B. Inspection fee.

- (1) The authorized enforcement authority shall collect an inspection review fee to cover expenses connected with the inspection of the applicant's compliance with the Stormwater management permit. The fee shall be in an amount as set from time to time by the authorized enforcement authority.
 - (2) The purpose of this fee is to cover all professional inspection costs from the time of the beginning of construction until the certificate of completion has been issued. The authorized enforcement authority is authorized to retain professional outside consultants to inspect the work and to advise the authorized enforcement authority concerning the same, and to apply funds paid by the applicant for the inspection fee to defray the cost of hiring such consultants.
 - (3) The inspection fee shall be paid by the applicant prior to any construction activity. All unused funds remaining from this fee after completion of the project shall be returned to the applicant.
- C. Provisions applicable to fees. The following provisions shall apply to funds collected by the authorized enforcement authority as application and review fees and inspection fees:
- (1) If the applicant contests the authorized enforcement authority's selection of an outside consultant on the ground that such consultant has a conflict of interest and/or lacks the minimum required qualifications (consisting of either an educational degree in, or related to, the field at issue, or three or more years of practice in the field at issue or a related field), then the applicant may, within five days after notice by the authorized enforcement authority to the applicant of its selection of such consultant, file a written appeal with the Board of Selectmen, which shall schedule and conduct a hearing on such appeal with reasonable promptness. If the Selectmen vote to overturn the authorized enforcement authority's selection, then the authorized enforcement authority shall select an alternative consultant and give notice thereof to the applicant, who shall have a right to contest such selection on the same grounds and by means of the same procedure set forth above. Any time limits for action by the authorized enforcement authority hereunder or under any other applicable law shall be extended by the duration of said administrative appeal (i.e., from the time the applicant files a written appeal with the Board of Selectmen to the time when the Selectmen vote thereon).
 - (2) All such fees shall be maintained in an interest-bearing account established by the Town Treasurer and shall be kept separate and apart from other monies. The funds in such account shall be expended at the direction of the authorized enforcement authority without further appropriation, provided that such funds are to be expended by it only in connection with carrying out its responsibilities hereunder.

- (3) Any excess amount in the account attributable to an applicant's application and review fees or inspection fees, including accrued interest, shall be repaid to the applicant or the applicant's successor in interest, as the case may be, after approval or denial of the application (with respect to the application and review fees) or issuance of a certificate of completion (with respect to the inspection fees).
- (4) A final report of said account shall be made available to the applicant or the applicant's successor in interest, as the case may be, after project completion. The Town Accountant shall annually submit a report of the special account created hereunder to the Board of Selectmen and Town Administrator for their review, and such report shall be published in the Town's Annual Report. The Town Accountant shall also annually submit a copy of such report to the Director of the Commonwealth's Bureau of Accounts.

§ 213-20. Waivers.

- A. The authorized enforcement authority may waive strict compliance with any requirement of this Article II or the rules and regulations promulgated hereunder, where:
 - (1) Such action is not prohibited by federal, state and/or local statutes and/or regulations;
 - (2) Such action is in the public interest; and
 - (3) Such action is not inconsistent with the purpose and intent of this Article II.
- B. Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of this Article II does not further the purposes or objectives of this Article II.
- C. All waiver requests shall be reviewed by the authorized enforcement authority and, if necessary, discussed with other Town departments.
- D. If, in the authorized enforcement authority's opinion, additional time or information is required for review of a waiver request, the authorized enforcement 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.

§ 213-21. Enforcement.

- A. The authorized enforcement authority or an authorized agent of the authorized enforcement authority shall enforce this Article II, and all regulations, orders, violation notices, and enforcement orders issued

thereunder, and may pursue all civil and criminal remedies for such violation.

B. Orders.

- (1) The authorized enforcement authority or an authorized agent of the authorized enforcement authority may issue a written order to enforce the provisions of this Article II or the regulations thereunder, which may include requirements to:
 - (a) Cease and desist from construction or land disturbance until there is compliance with this Article II, and an approved stormwater management permit, including the stormwater management plan and the erosion and sediment control plan;
 - (b) Repair, maintain, or replace the stormwater management system or portions thereof in accordance with the operation and maintenance plan;
 - (c) Perform monitoring, analyses, and reporting; and
 - (d) Remediate adverse impacts resulting directly or indirectly from malfunction of the stormwater management system.
- (2) If the enforcing person determines that abatement or remediation of adverse impacts is required, the order shall set forth a deadline by which such abatement or remediation must be completed by the violator or property owner. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town may, at its option, undertake such work, and the property owner shall reimburse the Town's expenses.
- (3) Within 30 days after completion by the Town of all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the Town, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the authorized enforcement 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 authorized enforcement authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in MGL c. 59, § 57, after the 31st day at which the costs first become due.

C. Criminal penalty. Any person who violates any provision of this Article II, or any regulation, order or permit issued thereunder, shall be

punished as set forth in Chapter 58, Penalties and Enforcement. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

- D. Noncriminal disposition. As an alternative to criminal prosecution or civil action, the Town may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D, and adopted by the Town as Chapter 58, § 58-3, of the General Bylaws, in which case the authorized enforcement authority of the Town shall be the enforcing person. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- E. Appeals. The decisions or orders of the authorized enforcement authority shall be final. Further relief shall be to a court of competent jurisdiction.
- F. Remedies not exclusive. The remedies listed in this Article II are not exclusive of any other remedies available under any applicable federal, state, or local law.

§ 213-22. Severability.

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