

To see if the Town will vote to amend its General By-Laws by adding a new Article ____, entitled “Stormwater Discharges Generated By Construction Activity By-Law,” for the purpose of complying with the Town’s obligations under the Federal Clean Water Act and under the Town’s National Pollutant Discharge Elimination System General Permit, which shall read as follows:

I. AUTHORITY

This By-Law is adopted in accordance with the authority granted, inter alia, by Amendment Article 89 to Article II of the Massachusetts Constitution and M.G.L. Chapter 43B section 13. The Board of Selectmen is delegated hereby the responsibility and authority to enforce and administer this By-Law. The Board of Selectmen may appoint the Stormwater Manager or such other municipal employees as the Board of Selectmen may from time-to-time determine and designate in a writing, to aid the Board of Selectmen in the enforcement and administration of this By-Law.

II. PREAMBLE

In partial fulfillment of the obligations of the Town under the Clean Water Act (33 U.S.C. 1251 & seq.) (the “CWA”) and under the Town’s National Pollutant Discharge Elimination System General Permit, the Town hereby establishes a comprehensive and fair system of regulation of Storm Water Discharges generated as a result of Construction Activity.

III. PURPOSE

The purpose and intent of this By-Law is to:

- A. Prevent Pollutants caused by Storm Water Discharges from a Construction Site from entering Waters of the U.S.
- B. Minimize Erosion and Sedimentation generated by Construction Activity with the goal of removing 80% of the average annual load of total suspended solids in Storm Water discharged from a Construction Site.
- C. Minimize the volume of Storm Water discharged from a Construction Site with the goal that the post-development peak discharge rate of Storm Water does not exceed the pre-development peak discharge rate.
- D. Ensure that Storm Water Management Measures are built as outlined in the Storm Water Pollution Prevention Plan.
- E. Ensure that Storm Water Management Measures are continually maintained as

outlined in the Storm Water Pollution Prevention Plan.

IV. DEFINITIONS

AGRICULTURE: The normal maintenance or improvement of land in agricultural or aquacultural use as defined by the Massachusetts Wetlands Protect Act (M.G.L. C. 131 s. 40) and its implementing regulations (310 C.M.R. 10).

APPLICANT: That Person who owns the land at the time of the application for a Storm Water Permit and his successors and assigns. An Operator may apply on behalf of the owner if such authorization is in writing and is submitted with the application.

AWARDING AUTHORITY: The Board of Selectmen of the Town of Sharon has authority to exercise the powers granted by this By-Law.

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

CERTIFICATE OF COMPLETION: A certificate issued by the Awarding Authority indicating that Final Site Stabilization has occurred, been inspected and approved by a representative of the Awarding Authority, and as-built plans have been filed with the Awarding Authority.

CONSTRUCTION ACTIVITY: Any activity that causes a change in the position or location of soil, sand, rock, gravel or similar earth material for the purpose of building roads, parking lots, residences, commercial buildings, office buildings, industrial buildings or demolitions.

CONSTRUCTION SITE: The plot of land located within the Town on which the Construction Activity will occur.

DISTURB: Any activity such as clearing, grading and excavating that exposes soil, sand, rock, gravel or similar earth material.

EROSION: The wearing of the land surface by natural or artificial forces such as: wind, water, ice, gravity or vehicular traffic and the subsequent detachment and transportation of soil particles from their origin to another location.

FINAL SITE STABILIZATION: Means that all Construction Activity at the site has been completed and a uniform perennial vegetative cover percentage as required by zoning regulations and native background vegetative cover for the area have been established on all unpaved areas and areas not covered by permanent structures or equivalent permanent stabilization measures.

LARGER COMMON PLAN OF DEVELOPMENT OR SALE: Means a contiguous

land area under one ownership on which multiple separate and distinct Construction Activities are occurring under one development plan.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): Means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains) owned or operated by the Town designed and used for collecting or conveying Storm Water to an Outfall.

NPDES PERMIT: National Pollution Discharge Elimination System Construction General Permit issued by the Environment Protection Agency to the Applicant.

OPERATOR: The party associated with the Construction Activity that meets either of the following two criteria:

- a. The party who has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications or
- b. The party who has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a Storm Water Pollution Prevention Plan for the site or other permit conditions.

OUTFALL: A point source at which a Municipal Separate Storm Sewer System discharges to Waters of the U.S.

PERMITTEE: The owner of the land on which Construction Activity is proposed who has applied for and received a Storm Water Permit from the Awarding Authority.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority department or political subdivision of the Commonwealth of Massachusetts or the federal government, to the extent permitted by law, and any officer, employee, or agent of such Person.

POLLUTANTS: Include without limitation the following: Dredged spoil, solid waste, incinerator residue, filter back-wash, sewage, garbage, sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rocks, sand, animal or agricultural waste, oil, grease, gasoline or diesel fuel.

SEDIMENTATION: The process or act of depositing mineral or organic soil material in Storm Water as a result of Erosion.

STORM WATER: Rainfall and snow melt that exceeds the soil's capacity contemporaneously to absorb it and which, instead, runs across the surface of the ground as run-off.

STORM WATER DISCHARGES: Storm Water that runs off from the Construction Site into the MS4 or otherwise into Waters of the U.S.

STORM WATER MANAGEMENT MEASURES: Infrastructure improvements that are constructed or installed during Construction Activity to prevent Pollutants from entering Storm Water Discharges or to reduce the quantity of Storm Water Discharges that will occur after Construction Activity has been completed. Examples include but are not limited to: on-site filtration, flow attenuation by vegetation or natural depressions, outfall velocity dissipation devices, retention structures and artificial wetlands, and water quality detention structures.

STORM WATER MANAGER: The Town Engineer or Assistant Town Engineer will serve in this capacity.

STORM WATER PERMIT: The permit issued by the Awarding Authority to the Applicant which allows Construction Activity to occur as outlined by the Applicant in its application and Storm Water Pollution Prevention Plan.

STORM WATER POLLUTION PREVENTION PLAN (SWPPP): That plan required of all Applicants in which they outline the Erosion and Sedimentation BMPs they will use, the BMPs they will use to control wastes generated on the Construction Site, the Storm Water Management Measures they will construct and their plan for long-term maintenance of these measures.

WATERS OF THE US.: These include:

- a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide:
- b. All interstate waters including interstate wetlands;
- c. All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 1. That are or could be used by interstate or foreign travelers for recreational or other purposes;
 2. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 3. That are used or could be used for industrial purposes by industries in interstate Commerce;
- d. All impoundments of waters otherwise defined as waters of the United States under this definition;

- e. Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- f. The territorial sea; and
- g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

V. PROHIBITIONS

A. No Construction Activity which Disturbs one acre or more of total land area including smaller areas that are part of a Larger Common Plan of Development or Sale shall take place until a Storm Water Permit has been obtained from the Awarding Authority. Normal maintenance and improvement of land in agricultural or aquacultural use as defined by the Massachusetts Wetlands Protection Act and its implementing regulations are exempt from this prohibition. **The Stormwater Permit does not exclude the requirement of filing a Construction General Permit with the Environmental Protection Agency.**

B. No Storm Water Discharges containing Pollutants are permitted.

C. Sources of non-Storm Water may be combined with Storm Water Discharges as long as they do not contain Pollutants.

VI. APPLICATION PROCEDURE

Applicant must sign and file an Application for a Storm Water Permit on the form provided by the Town. The Application should be submitted to the Storm Water Manager and to be deemed complete must be accompanied by:

- A. An application fee of two hundred dollars (\$200.00).
- B. Identification of the Construction Site by book, page, and plot number in the records of the Assessor's Office.
- C. A narrative description of the Construction Activity intended, the proposed use of any improvements to be constructed and the construction timetable.
- D. A site plan.
- E. A list of abutters certified by the Assessor's Office including addresses.
- F. A Storm Water Pollution Prevention Plan.

VII. SITE PLAN REQUIREMENTS FOR PLANNING BOARD AND ZONING

BOARD APPLICATIONS FOR LOTS OVER 1 ACRE IN AREA

The site plan that is submitted must contain AT LEAST the following information. Planning Board plan regulations must also be met for subdivision applications and Zoning Board regulations must also be met for site plan reviews:

- A. Names, addresses and telephone numbers of the person(s) or firm(s) preparing the plan.
- B. Title, date, north arrow, scale, legend and locus map.
- C. Location and description of natural features including watercourses and water bodies, wetland resource areas and all floodplain information including the 100-year flood elevation based upon the most recent Flood Insurance Rate Map (or as calculated by a professional engineer for areas not assessed on those maps) located on or adjacent to the Construction Site.
- D. A description and delineation of existing Storm Water conveyances and impoundments located on the Construction Site with their point of discharge noted.
- E. Location and description of existing soils and vegetation including tree lines, shrub layer, ground cover and herbaceous vegetation and trees with a caliper twelve (12) inches or larger with run-off coefficient for each.
- F. Habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Endangered, Threatened or of Special Concern, Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species located on or adjacent to the Construction Site.
- G. Lines of existing abutting streets showing drainage and driveway locations and curb cuts.
- H. Surveyed property lines of the Construction Site showing distances and monument locations, all existing and proposed easements, rights-of-way, and other encumbrances, the size of the entire Construction Site and the delineation and number of square feet of the land area that is to be Disturbed.
- I. Proposed improvements including location of buildings or other structures and impervious surfaces (such as parking lots).
- J. Topographical features including existing and proposed contours at intervals of no greater than two (2) feet with spot elevations provided when needed.
- K. The existing site hydrology including drainage patterns and approximate slopes anticipated after major grading activities.

- L. Location of the MS4 with relation to the Construction Site.
- M. Identification of Outfalls which are located on the Construction Site.
- N. Storm Water Discharge calculations prepared and certified by a Registered Professional Engineer describing the volume of Storm Water that presently Discharges from the Construction Site and the estimated volume post-development.
- O. Identification of any existing Storm Water Discharges emanating from the Construction Site and discharging into the MS4 for which a NPDES Permit has been issued (include Permit number).
- P. A list of water bodies that will receive Storm Water Discharges from the Construction Site with the location of drains noted on the map. A brief description of known water quality impacts and whether the water bodies receiving such Storm Water Discharges have:
 - 1) Been assessed and reported in reports submitted by the Massachusetts Department of Environmental Protection to EPA pursuant to Section 305 (b) of CWA and
 - 2) Been listed as a Category 5 Water (Waters Requiring a Total Maximum Daily Load (TMDL)) by DEP under 303(d) of the CWA.

VIII. STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

Applicant must submit a Storm Water Pollution Prevention Plan (SWPPP) with its Application for a Storm Water Permit. The SWPPP must include all of the following:

- A. A plan to control wastes generated by the Construction Activity on the Construction Site and
- B. An Erosion and Sedimentation control plan and
- C. A plan to construct Storm Water Management Measures and
- D. A plan for Operation and Maintenance of Storm Water Management Measures

A. PLAN TO CONTROL WASTES

Applicant must list the construction and waste materials expected to be generated or stored on the Construction Site. These wastes include but are not limited to: discarded building materials, concrete truck washout, chemicals, litter, sanitary waste and material stockpiles. Applicant must also describe in narrative form the Best Management Practices it will utilize to reduce pollutants from these materials including storage practices to minimize exposure of the materials to Storm Water and spill

prevention and response plans. If any structural BMPs are proposed, they must be identified and located on the site plan. At a minimum Applicant's plan should provide for the following:

1. Areas designated and controlled for equipment storage, maintenance and repair.
2. Convenient locations for waste receptacles and a schedule for regular removal.
3. Wash down areas for vehicles selected to prevent contamination of Storm Water.
4. Covered storage areas for chemicals, paints, solvents, fertilizers and other toxic materials.
5. Adequately maintained sanitary facilities.

B. EROSION AND SEDIMENTATION CONTROL PLAN

Applicant must describe in narrative form its plan for properly stabilizing the site before construction begins and the BMPs that it will use during construction to minimize erosion of the soil and sedimentation of the Storm Water. These BMPs should include both stabilization practices such as: seeding, mulching, preserving trees and vegetative buffer strips, and contouring and structural practices such as: earth dikes, silt fences, drainage swales, sediment traps, check dams, and subsurface or pipe slope drains. Applicant must locate structural BMPs on the site plan. Applicant must also provide details of construction including the timing, scheduling and sequencing of development including clearing, stripping, rough grading, construction, final grading and Final Site Stabilization.

C. PLAN TO CONSTRUCT STORM WATER MANAGEMENT MEASURES

Applicant must describe its proposed drainage system and identify the Storm Water Management Measures it plans to construct on the Construction Site in order to retain Storm Water recharge on-site and prevent Pollutants from entering Storm Water Discharges. These measures include but are not limited to: on-site filtration, flow attenuation by vegetation or natural depressions, outfall velocity dissipation devices, retention structures and artificial wetlands and water quality detention structures.

Applicant is required to show the following on its site plan:

1. The estimated seasonal high groundwater elevation in areas to be used for Storm Water Management Measures.
2. Detailed plans and descriptions of all components of the proposed drainage system including:
 - a. locations, cross-sections and profiles of all brooks, streams, drainage swales and their method of stabilization,

- b. all Storm Water Management Measures to be used for the detention, retention or infiltration of water, their size and location on the Construction Site, and the volume of Storm Water that each will hold.
- c. all Storm Water Management Measures for the protection of water quality if so-called Category 5 waters are located on or adjacent to the Construction Site.
- d. the structural details for all components of the proposed drainage system and Storm Water Management Measures, including cross-sections.
- e. notes on drawings specifying materials to be used, construction specifications and typicals and
- f. expected hydrology with supporting calculations of post-development Storm Water Discharges.

D. PLAN FOR OPERATION AND MAINTENANCE OF STORM WATER MANAGEMENT MEASURES

Applicant must outline its plan for the long-term operation and maintenance of the Storm Water Management Measures that have been built on the Construction Site. This plan must include the following:

- 1. A description of the annual maintenance activities that will be performed and identification of the individual who will perform them and
- 2. An estimate of the annual cost of these maintenance activities and a description of the operation and maintenance fund that the Applicant will establish and
- 3. The language of a covenant and restriction which Applicant will record in the appropriate Registry of Deeds, binding and enforceable against the Construction Site and the Owner from time to time thereof to maintain the Storm Water Management Measures.

IX. PROCEDURE FOR SITE PLAN REVIEW

- A. Following receipt of a complete Application for a Storm Water Permit, the Storm Water Manager will refer it to either the Planning Board (if the proposed construction project requires sub-division approval under c. 41 of the M.G.L.) the Zoning Board of Appeals, or the Conservation Commission for review and comment, when applicable.
- B In the event that the plan does not require the approval of the Planning Board, the Zoning Board of Appeals, or the Conservation Commission, the Stormwater Manager will review the plan and approve or deny it, as required. The approval or denial will be forwarded to the Building Inspector when required. The applicant will be notified in

writing of the Stormwater Permit approval or denial within 30 days of the submission of the application. The Stormwater Manager will make the Application available for inspection by the public during normal business hours at the Department of Public Works.

- C. After receipt of the recommendation of the Planning Board or the Zoning Board of Appeals and public comment at the public hearing, the Storm Water Manager may approve or deny the Application, require changes to any part of the SWPPP, revise the amount of the required annual maintenance deposit or may impose additional conditions in the Storm Water Permit that he issues.
- D. The Storm Water Manager may not issue the Storm Water Permit until final plans of the development approved by either the Planning Board or Zoning Board of Appeals have been filed with the Storm Water Manager and twenty-one (21) days have elapsed. If there are changes on the final plans which affect the Storm Water Permit, the Storm Water Manager (after written notice to the Applicant) shall review these changes and may impose additional conditions in the Storm Water Permit.

X. CONDITIONS OF THE STORM WATER PERMIT

The following standard conditions shall apply to each Storm Water Permit issued in accordance with this by-law.

- A. The Permittee shall comply with all conditions of the Storm Water Permit and its Storm Water Pollution Prevention Plan.
- B. Permittee shall comply with all other local permits related to the Construction Site.
- C. Permittee shall make an annual deposit of funds in a specially segregated bank account in the amount equal to the estimated annual cost to operate and maintain the StormWater Management Measures. The segregated account will be opened by the Stormwater Permit Applicant and the bank book will be held by the Town Treasurer's office. When withdrawals from the account are required, the Applicant will contact the Stormwater Manager, in writing, and the Stormwater Manager will forward the request to the Town Treasurer if the request is deemed appropriate by the Stormwater Manager.
- D. Permittee shall maintain on-going records of the aforesaid operation and maintenance fund which shall show:
 - 1. The maintenance activities performed on the Storm Water Management Measures located on the Construction Site, the dates on which they were performed and the names of the individuals who performed them, and
 - 2. The costs of such maintenance activities shown deducted from the fund, and

3. The current balance in the fund.
- E. Permittee shall record within ten (10) days of receipt of the Storm Water Permit in the appropriate Registry of Deeds a covenant and restriction in form and substance identical to that submitted with his Application and approved by the Storm Water Manager, and shall submit evidence of such recording to the Storm Water Manager.
 - F. The Permittee shall furnish the Storm Water Manager any information which is requested to determine compliance with the Storm Water Permit.
 - G. The Permittee shall allow authorized representatives of the Awarding Authority to:
 1. enter upon the Permittee's Construction Site and
 2. have access to and the right to copy at reasonable times any records required to be kept under the conditions of this By-Law and
 - H. Permittee shall allow representatives of the Awarding Authority to make regular, unannounced inspections of the Construction Site. These typically will occur at the following times:
 1. Initial Site Inspection prior to Construction Activity starting but after a complete Application has been filed.
 2. After Erosion and Sedimentation controls are in place.
 3. After Construction Site clearing has been substantially completed.
 4. After rough grading has been substantially completed.
 5. Prior to backfilling of any underground drainage and/or after Storm Water Management Measures have been installed.
 6. After final grading has been substantially completed.
 7. At the end of the construction season if Construction Activity has not yet been completed.
 8. After Final Site Stabilization.
 - I. The Permittee shall report the release of any reportable quantity of hazardous substances oil which occurs on the Construction Site during Construction Activity. This report must be made within fourteen days of knowledge of the release and must include the date and description of the release, the circumstances leading to the

release, responses to be employed for such release and measures to prevent re-occurrence of such release.

- J. The issuance of the Storm Water Permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights nor any infringement of Federal, State or local laws or regulations.
- K. The provisions of the Storm Water Permit are severable and if any provision of the Permit or the application of any provision of the Permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of the Permit shall not be affected thereby.
- L. The Storm Water Permit is not transferable.
- M. The Storm Water Manager reserves the right during the Permit Term to modify the Permit and impose additional conditions.
- N. Conditions contained in Permittee's NPDES Comprehensive General Permit will be incorporated by reference in the Storm Water Permit.

XI. PERMIT TERM

The Storm Water Permit shall be effective upon the date of issuance and remain in effect until the earlier to occur of: 1) a Certificate of Completion is issued by the Awarding Authority indicating that all Construction Activity has ceased and Final Site Stabilization construction, inspection and approval by a representative of the Awarding Authority has occurred, or 2) the date three years from the date of issuance of the Storm Water Permit has occurred without Applicant starting Construction Activity on the Construction Site.

XII. DEFAULT OF THE PERMITTEE

The Storm Water Manager may during the Permit Term find a Permittee is in default after notice and hearing if he shall reasonably determine that:

- A. Permittee knowingly made a false material statement, representation or certification in his Application or SWPPP, or
- B. Permittee is no longer the owner or Operator of the Construction Site and thus not authorized to sign the Application for a Storm Water Permit, or
- C. Permittee is not in compliance with the terms of its Storm Water Permit or SWPPP.

Permittee shall be given not less than ten days prior written notice of the time and place of the hearing and shall have the opportunity at the public hearing to present evidence.

XIII. ENFORCEMENT

The Storm Water Manager will report any Permittee that he has found to be in default as described in the preceding section to the Awarding Authority. The Awarding Authority may take any of the following actions:

- A. Issue a written order requiring the Permittee to cease and desist from Construction Activity until there is compliance with this By-Law and the Storm Water Permit,
- B. Issue a written order requiring maintenance, installation or performance of additional Erosion and Sedimentation control measures by a certain deadline,
- C. Issue a written order requiring the repair, maintenance or replacement of Storm Water Management Measures by a certain deadline,
- D. Issue a written order requiring remediation of any Pollutants that are entering Storm Water Discharges as a result of the Construction Activity by a certain deadline,
- E. Suspend or revoke the Storm Water Permit,
- F. Enforce the covenant and restriction against any or all of the following: the operation and maintenance fund, the Construction Site, or the owner from time to time thereof as the Town may elect in its discretion.
- G. Take any other enforcement action available under applicable federal, state or local law.

XIV. APPEALS

An Applicant or Permittee aggrieved by a decision of the Storm Water Manager under this By-Law may within thirty days of such action request a hearing before the Board of Selectmen at which the Applicant or Permittee shall be afforded the opportunity to present evidence and argument concerning final action by the Board of Selectmen. The Board of Selectmen shall hold such hearing within thirty days following the filing of the request and within thirty days after the closing of the hearing shall either confirm the Storm Water Manager's previous action or order such other final action as it may determine. Appeals from a decision of the Board of Selectmen may be taken to a court of competent jurisdiction.

XV. WAIVERS

The Awarding Authority may, where such action is allowed by law, in the public interest and not inconsistent with the purpose and intent of this By-Law, waive strict compliance with any requirement of this By-Law provided:

- A. Applicant has submitted a written request to be granted a waiver, has explained and/or documented the facts supporting his waiver request, and has demonstrated that the strict application of the By-Law to his case will not further the purpose or objective of the By-Law, and
- B. Applicant's waiver request was discussed and voted on at a public hearing following public notice and notice to abutters.

XVI. SEVERABILITY

If any clause, section or part of this By-Law shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this By-Law shall not be affected thereby but shall remain in full force and effect.

XVII. EFFECTIVE DATE

This By-Law shall take effect upon approval by the Office of the Attorney General and as otherwise required by M.G.L. c. 40, §32.

or to take any other action relative thereto.