

To Whom It May Concern:

The Moderator Dennis J. McHugh called the April 27, 2000, Adjourned Annual Town Meeting to order at 7:35 PM. He recognized the presence of a quorum. There were 140 Town Meeting Representatives present at the Senior Citizen Center on Groton Road. The following action took place:

**Under Article 13.** Town Manager Bernard Lynch moved that the Town accept the provisions of General Laws Chapter 59, Section 5K which authorizes the Town to establish a senior citizen's property tax work-off abatement program, to be effective beginning in fiscal year 2001 and to authorize the Council on Aging to promulgate rules and regulations to implement said program subject to the approval of the Town Manager, provided that the total amount of abatements granted under this program shall not exceed \$20,000 in any given year.

The Town Manager explained that this to is a yearly article. This program was started about nine years ago. Other Towns have followed Chelmsford's example. Legislation has now made this a law, which means that once accepted it would not come before the Town Meeting Body again for yearly approval. The Finance Committee recommended the article. The Board of Selectmen recommended the article. The Moderator asked if there was any need for any further discussion, hearing none, he asked for a vote by way of a show of hands. **Motion carried, unanimously.**

Sincerely,

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Mary E. St.Hilaire,  
Town Clerk

A True Copy Attest:

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Mary E. St.Hilaire, Town Clerk



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION  
1350 MAIN STREET  
SPRINGFIELD, MASSACHUSETTS 01103-1629

MARTHA COAKLEY  
ATTORNEY GENERAL  
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TEL: (413) 784-1240  
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August 11, 2010

Elizabeth L. Delaney, Town Clerk  
50 Billerica Road  
Chelmsford, MA 01824-3190

RE: Chelmsford Annual Town Meeting of April 26, 2010 – Case # 5505  
Warrant Articles # 13, 16, and 25 (General)  
Warrant Article # 14 (Zoning)

10 AUG 13 AM 10:48  
RECEIVED

Dear Ms. Delaney:

Articles 13, 14, 16, and 25 - We return with the approval of this Office the amendments to the Town by-laws adopted under these Articles on the warrant for the Chelmsford Annual Town Meeting that convened on April 26, 2010, and the maps pertaining to Article 14. Our comments on Articles 13, 14, and 16 are provided in more detail below.

Article 13 - We return with the approval of this Office, except as indicated below, the amendment to the Town's general by-laws adopted under this Article. [See page 4 for disapproval # 1 of 1]

The amendment proposed under Article 13 seeks to add a new paragraph "B" to Section 142-6 ("Discharge of water") of the Town's general by-laws.<sup>1</sup> Both the federal government and the Commonwealth of Massachusetts have enacted certain regulations relative to stormwater management by municipalities. For instance, the federal Environmental Protection Agency has enacted requirements pertaining to operators of municipal separate storm sewers. See 40 C.F.R. § 122.34. The Massachusetts Department of Environmental Protection (the Department) has promulgated regulations at 310 C.M.R. § 10.05(6)(k)-(q) ("Stormwater Management Standards"), pursuant to G.L. c. 131, § 40. Furthermore, the Department has promulgated stormwater regulations at 314 C.M.R. §§ 3.04 and 5.04, pursuant to G.L. c. 21, §§ 26-53 (the Massachusetts Clean Waters Act). The Department has proposed further regulations for stormwater management, which may be found at 314 C.M.R. § 21.00. We remind the Town that any local regulation of stormwater management must be supplementary to and consistent with the regulation of such matters by the federal government and the Commonwealth of Massachusetts.

Operators of municipal separate storm sewers are required to develop and implement a stormwater management plan that meets certain minimum measures. See 40 C.F.R. § 122.34. The federal regulations suggest that municipalities adopt ordinances or regulations as part of an effective

<sup>1</sup> The amendment also seeks to designate the existing text of Section 142-6 as paragraph "A."



stormwater management plan. See, e.g., 40 C.F.R. § 122.34(b)(3)(ii)(B); 40 C.F.R. § 122.34(b)(4)(ii)(A); 40 C.F.R. § 122.34(b)(5)(ii)(B). We understand the by-law proposed under Article 13 to be a part of Chelmsford's efforts to effectively manage stormwater.

The proposed by-law uses the definition of "Municipal Separate Storm Sewer" that appears at 40 C.F.R. § 122.26(b)(8), which broadly refers to conveyances owned or operated by states, counties, districts, and Indian tribes or tribal organizations. We remind the Town that it may enforce its by-laws only within its geographical boundaries. See Beard v. Town of Salisbury, 378 Mass. 435, 441 (1979) (by-laws may not "regulate areas outside a municipality's geographical limits.").

The proposed by-law also provides the following definition of "Person" (with emphasis added):

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.

Although we note that the above definition includes the qualifier "to the extent permitted by law," we caution the Town that its authority to regulate state and federal entities is limited. "The doctrine of essential governmental functions prohibits municipalities from regulating entities or agencies created by the Legislature in a manner that interferes with their legislatively mandated purpose, absent statutory provisions to the contrary." Greater Lawrence Sanitary Dist. v. Town of North Andover, 439 Mass. 16 (2003). See also Teasdale v. Newell & Snowling Const. Co., 192 Mass. 440 (1906) (holding local board of health could not require state park commissioners to obtain license to maintain stable on park land). Similarly, municipalities may not regulate federal governmental entities in a manner that interferes with their purpose. Cf. First Nat'l Bank v. Missouri, 263 U.S. 640, 656 (1926) (state laws may not regulate federal entities if "such laws interfere with the purposes of their creation [or] tend to impair or destroy their efficiency as federal agencies"); Palfrey v. City of Boston, 101 Mass. 329 (1869) (federal internal revenue stamps not subject to state or local property tax). We recommend the Town consult with Town Counsel to ensure that its enforcement of the proposed by-law does not impermissibly interfere with the operation of state or federal entities.

Section 1 ("Applicability") of the proposed by-law provides that the by-law "shall apply to flows entering the municipal separate storm sewer system." Again, we remind the Town that its by-law authority extends only to its geographical limits. See Beard, 378 Mass. at 441.

Section 3 ("Regulations") of the proposed by-law provides that the Chelmsford Department of Public Works (DPW) "may promulgate rules and regulations to effectuate the purposes of this By-law." We remind the Town that it has no power to adopt rules or regulations that are inconsistent with state law. "A town may not promulgate a regulation that is inconsistent with State law." American Lithuanian Naturalization Club v. Board of Health of Athol, 446 Mass. 310, 321 (2006). We suggest that the Town discuss with Town Counsel any proposed rules or regulations to ensure that they comply with state law.

Section 4.1 (“Illicit Discharges”) of the proposed by-law provides as follows (with emphasis added):

No person shall dump, discharge, cause or allow to be discharged *any pollutant or non-stormwater discharge* into the municipal separate storm sewer system (MS4), into a stormwater BMP on public or private property, into a watercourse or into the waters of the Commonwealth.

Although the above text broadly prohibits the discharge of “any pollutant or non-stormwater discharge” into the MS4, we understand that this prohibition does not apply to certain allowable non-stormwater discharges. The proposed by-law defines “Illicit Discharge” to exclude “a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Discharge Permit.” Similarly, Section 5.2(n) of the proposed by-law specifically exempts a “[n]on-stormwater discharge permitted under a NPDES permit or a Surface Water Discharge Permit.” The Town may wish to consider amending the proposed by-law at a future Town Meeting to clarify the limits of the prohibition appearing in Section 4.1.

Section 5.2 of the proposed by-law lists a number of non-stormwater discharges that “are exempt from the prohibition of non-stormwaters provided that the source is not a *significant contributor* of a pollutant to the municipal storm sewer system.” (Emphasis added.) The proposed by-law does not define what constitutes a “significant contributor” of a pollutant to the municipal storm sewer system. We remind the Town that a by-law – particularly one that contains criminal penalties – must “define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” Kolender v. Lawson, 461 U.S. 352, 357 (1983), *quoted in Commonwealth v. Williams*, 395 Mass. 302, 304 (1985). We recommend the Town consult with Town Counsel and consider amending the proposed by-law at a future Town Meeting to specify what will constitute a “significant contributor” of a pollutant to the municipal storm sewer system.

Section 5.2(n) of the proposed by-law provides as follows (with emphasis added):

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 Massachusetts Department of Environmental Protection, *provided that the discharge for which advanced written approval is received from the DPW as necessary to protect public health, safety, and welfare, or the environment*

The above-italicized text appears to be incomplete; as written, it does not convey any meaning. The Town may wish to revise the italicized text at a future Town Meeting to better convey the intended meaning.

Section 7 (“Notification of Spills”) of the proposed by-law provides in part as follows (with emphasis added):

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 storm sewer

system or waters of the Commonwealth, the person shall take all necessary steps to ensure containment and cleanup of the release.

Municipal enactments may not be inconsistent with the requirements of state or federal law. American Lithuanian Naturalization Club, 446 Mass. at 321; Bloom v. City of Worcester, 363 Mass. 136, 151-55 (1973). Accordingly, by-laws may not state that their provisions apply “[n]otwithstanding other requirements of . . . state, or federal law.” Therefore, we disapprove and delete the above underlined text (“state, or federal”). [Disapproval # 1 of 1]

Section 8.2 (“Orders”) of the proposed by-law provides in pertinent part as follows:

A. The DPW or its authorized agent may issue a written order to enforce the provisions of this By-law or the regulations hereunder, at the expense of the violator or property owner 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.

B. If the enforcing agent determines that abatement or remediation of contamination if [sic] 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 deadlines, the Town of Chelmsford may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

Massachusetts General Laws Chapter 40, Section 31, provides as follows (with emphasis added):

If a town by-law imposes a duty and affixes a penalty for the neglect or violation thereof, it may also provide that upon such neglect or violation the duty may be performed by officers therein named, at the expense of the person liable to perform the same; and such expense, *to an amount not exceeding the penalty*, may be recovered in contract by the town.

Sections 8.2(A) and (B) impose the duty of abating or remediating contamination, and Sections 8.3 and 8.4 impose penalties for the neglect of these duties and violation of the by-law. Section 8.2(B) provides that “the Town of Chelmsford may, at its option, undertake such work, and expenses thereof shall be charged to the violator.” Therefore, we caution the Town that G.L. c. 40, § 31, limits the liability of the violator to “an amount not exceeding the penalty” provided by the proposed by-law. We urge the Town to consult with Town Counsel to ensure that any expenses charged to by-law violators comply with G.L. c. 40, § 31.

Section 8.2(C) of the proposed by-law provides in part as follows (with emphasis added):

If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the DPW affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a *special assessment against the property owner and shall constitute a lien on the owner's property* for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, 57 after the thirty-first day at which the costs first become due.

We caution the Town that its enforcement of Section 8.2(C) must be consistent with applicable state law, including G.L. c. 40, § 58, which pertains to municipal charges liens. We urge the Town to consult with Town Counsel to ensure that its enforcement is consistent with state law.

Section 8.5 ("Entry to Perform Duties under this By-law") provides as follows:

To the extent permitted by State law, or if authorized by the owner or other party in control of the property, the DPW, its agents, officers, and employees may enter upon privately-owned property for the purpose of performing their duties under this By-law and regulations and may make or cause to be made such examinations, surveys or sampling as the DPW deems reasonably necessary.

Although Section 8.5 includes the qualifier, "[t]o the extent permitted by State law," we caution the Town that "the Fourth Amendment requires warrants for non-emergency administrative inspections." Commonwealth v. Cote, 15 Mass. App. Ct. 229, 233 (1983). The U.S. Supreme Court has also held that warrants are required for non-emergency administrative inspections. Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1966) (requiring warrant for health inspector non-emergency entry); See v. City of Seattle, 387 U.S. 541 (1966) (requiring warrant for non-emergency inspection by fire chief). Massachusetts courts have similarly recognized that "statutes can no longer convey blanket powers of warrantless entries." Commonwealth v. Hurd, 51 Mass. App. Ct. 12, 17 (2001) (holding that G.L. c. 129, § 7, does not authorize warrantless searches for animal inspection). See also Commonwealth v. John G. Grant & Sons Co., 403 Mass. 151 (1988) (holding that G.L. c. 131, § 40, does not authorize conservation commission members to conduct warrantless searches on private land); G.L. c. 111, § 131 (requiring warrant for board of health's compulsory examination of premises). We urge the Town to consider including language in its permit application that will put applicants on notice that they are being asked to consent to inspections. We also urge the Town to consult with Town Counsel to ensure that Section 8.5 is applied in a manner that is consistent with state law and applicable constitutional requirements.

Section 9 ("Transitional Provisions") of the proposed by-law provides that "[r]esidential property owners shall have 180 days from the *effective date of this By-law* to comply with its provisions." (Emphasis added.) General Laws Chapter 40, Section 32, establishes the effective date of town by-laws. A general by-law takes effect following the Attorney General's approval and the town's compliance with the posting and publishing requirements specified in c. 40, § 32. We understand Section 9 to establish a 180-day "grace period" for persons and property owners, which begins to run once the by-law becomes effective in accordance with c. 40, § 32.

**Article 16** - We return with the approval of this Office the amendment to the Town's general by-laws adopted under this Article. The proposed amendment, which increases the fine from \$100 to \$200 for unauthorized parking of a motor vehicle in a space reserved and designated for use by vehicles of handicapped persons, is consistent with G.L. c. 40, § 21(24), which provides that "[t]he penalty for a violation of an ordinance or by-law made under this section shall be not less than \$100 nor more than \$300."

**Article 14** - We return with the approval of this Office the amendments to the Town's zoning by-law adopted under this Article. The amendments proposed under Article 14 seek to amend Article XV of the Town's zoning by-law ("Floodplain District"), revising the definition of the Town's Floodplain District and Floodway District. Amendment "A" proposes to replace the existing Section 195-77 ("Overlay District; boundaries") with a new paragraph, which defines the Floodplain

District and Floodway District by referring to special flood hazard areas on the Middlesex County Flood Insurance Rate Map, issued by the Federal Emergency Management Agency.

**Note:** Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

Very truly yours,

MARTHA COAKLEY  
ATTORNEY GENERAL

*Margaret J. Hurley*

by: Margaret J. Hurley, Assistant Attorney General  
Chief, Central Massachusetts Division  
Director, Municipal Law Unit  
One Exchange Place  
Worcester, MA 01608  
(508) 792-7600 x 4402

enc.

cc: Town Counsel (via email)

10 AUG 13 09:10:19



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10 AUG 13 AM 10:49

**Office of the Town Clerk**

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Elizabeth L. Delaney  
Town Clerk

Raymonde R. Legrand  
Assistant Town Clerk

MAY 12 2010

To Whom It May Concern:

The Annual Town Meeting of April 26, 2010, was called to order at 7:35 PM at the Senior Center at 75 Groton Rd. The Moderator Dennis E. McHugh recognized the presence of a quorum. There were 150 Town Meeting Representatives present. The following action took place:

**UNDER ARTICLE 13.** Dwight Hayward moved that the reading of the article be waived. The Moderator asked for a show of hands on the motion to waive the reading. **Motion carried.**

James Pearson DPW Director explained this article is to prevent discharge of non storm water discharge by way of illegal connections into the Town's drainage system. There are permits that allow certain discharges and it cites what is allowable and what is considered pollutants. This is the second phase of a five year permit and it is a requirement of the EPA. The Moderator asked for questions, hearing none he asked for recommendations. The Finance Committee had no recommendation for the article; the Board of Selectmen recommended the article. He asked if there was any debate, hearing none he asked for a vote by way of a show of hands. **The motion carried, unanimously.** The article reads as follows:

Town Manager Paul E. Cohen moved that the Town vote to amend Section 142-6 "Discharge of water" of the Code of Chelmsford by identifying the existing text of Section 146-6 as paragraph "A" and adding the following language as paragraph "B":

**B. DISCHARGES TO THE MUNICIPAL STORM SEWER SYSTEM**

**DEFINITIONS**

Authorized Enforcement Agency	The Chelmsford Department of Public Works (DPW), its employees, or agents designated to enforce this By-law.
Best Management Practice (BMP)	An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.
Clean Water Act	The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as may be amended from time to time.
Discharge of Pollutants	The addition, from any source of any pollutant, or combination of pollutants, into the municipal storm sewer system or into the waters of the United States or Commonwealth.
Groundwater	Water beneath the surface of the ground.
Illicit Connection	A surface or subsurface drain or conveyance which allows an





10 AUG 13 AM 10:49

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	<p>illicit discharge into the municipal storm sewer system, including without limitation, sewage, process wastewater, or wash water, and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this By-law.</p>
<b>Illicit Discharge</b>	<p>Direct or indirect discharge to the municipal storm sewer system that is not composed entirely of stormwater, except as exempted in Section 5. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from fire fighting activities exempted pursuant to Section 5.1 of this By-law.</p>
<b>Impervious Surface</b>	<p>Any material or structure on or above the ground that prevents water from infiltrating into the underlying soil. Impervious surface includes without limitation, roads, paved parking lots, sidewalks, and rooftops.</p>
<b>Municipal Separate Storm Sewer System (MS4) or Municipal Storm Drain System or Municipal Storm Sewer System</b>	<p>A conveyance or system of conveyances (including roads with drainage system, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): a) Owned or operated by a State, city, town, borough, county, parish, district, association or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district, or drainage district, or similar entity or an Indian tribe or an authorized tribal organization of a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; b) designated or used for collecting or conveying storm water; c) which is not a combined sewer; d) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.</p>
<b>National Pollutant Discharge Elimination System (NPDES) Storm Water discharge Permit Non-Stormwater Discharge</b>	<p>A permit issued by the United States Environmental Protection Agency or jointly with the Commonwealth that authorizes the discharge of pollutants to waters of the United States.</p> <p>Discharge to the municipal storm sewer system not composed entirely of stormwater.</p>
<b>Person</b>	<p>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.</p>
<b>Pollutant</b>	<p>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. Pollutants shall include without</p>



10 AUG 13 AM 10:49

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	<p>limitation: a) paints, varnishes, and solvents; b) oil and other automotive fluids; c) non-hazardous liquid and solid wastes and yard wastes; d) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, 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, and soils with the exception of winter salting and sanding; j) construction wastes and residues, and k) noxious or offensive matter of any kind.</p>
Process Wastewater	<p>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.</p>
Recharge	<p>The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.</p>
Stormwater	<p>Rainfall runoff, snow melt runoff, and surface water runoff and drainage. Runoff shall mean rainfall or snow melt water flowing over the ground surface.</p>
Surface Water Discharge Permit	<p>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 of Massachusetts.</p>
Toxic or Hazardous Material or Waste	<p>Any material which because of its quantity, concentration, or chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste; acid and alkali, and any substance defined as Toxic or Hazardous under G.L. Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.</p>
Watercourse	<p>A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream</p>
Waters of the Commonwealth	<p>All waters within the jurisdiction of the Commonwealth, including, without limitations, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.</p>
Wastewater	<p>Any sanitary waste, sludge, or septic tank or cesspool overflow and process wastewater.</p>



10 AUG 13 AM 10:49

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Town Clerk

Raymonde R. Legrand  
Assistant Town Clerk

1. **APPLICABILITY:** This By-law shall apply to flows entering the municipal separate storm sewer system.
2. **RESPONSIBILITY FOR ADMINISTRATION:** The DPW shall administer, implement and enforce this By-law. Any powers granted to or duties imposed upon the DPW may be delegated in writing by the DPW to employees or agents of the DPW.
3. **REGULATIONS:** The DPW may promulgate rules and regulations to effectuate the purposes of this By-law. Failure by the DPW to promulgate such rules and regulations shall not have the effect of suspending or invalidating this By-law.

#### 4. PROHIBITED ACTIVITIES:

**4.1: Illicit Discharges.** No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal separate storm sewer system (MS4), into a stormwater BMP on public or private property, into a watercourse or into the waters of the Commonwealth.

**4.2: Illicit Connections.** No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm sewer system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

**4.3: Obstruction of Municipal Storm Sewer System.** No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm sewer system without prior written approval from the DPW.

#### 5. EXEMPTIONS

**5.1:** Discharge or flow resulting from fire fighting activities

**5.2:** The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwaters provided that the source is not a significant contributor of a pollutant to the municipal storm sewer system.

- a. Waterline flushing
- b. Flow from potable water sources
- c. Springs
- d. Natural flow from riparian habitats and wetlands
- e. Diverted stream flow
- f. Rising groundwater
- g. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater
- h. Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation



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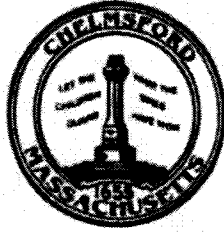
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Town Clerk

Raymonde R. Legrand  
Assistant Town Clerk

- i. Discharge from landscape irrigation or lawn watering
  - j. Water from individual residential car washing
  - k. Discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance or erosion
  - l. Discharge from sweet sweeping
  - m. Dye testing, provided verbal notification is given to the DPW prior to the time of the test
  - n. 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 Massachusetts Department of Environmental Protection, provided that the discharge for which advanced written approval is received from the DPW as necessary to protect public health, safety, and welfare, or the environment
  - o. Discharge for which advanced written approval is received from the DPW as necessary to protect public health, safety, and welfare, or the environment.
6. **EMERGENCY SUSPENSION OF STORM SEWER SYSTEM ACCESS:** The DPW may suspend municipal storm sewer 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 public health, safety, or welfare, or the environment. In the event any person fails to comply with an emergency suspension order, the DPW may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.
7. **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 storm sewer system or waters of the Commonwealth, the person shall take all necessary steps to ensure containment and cleanup of the release. In the event of a release of non-hazardous materials, the reporting person shall notify the DPW no later than the next business day. The reporting person shall provide to the DPW 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 reports shall be retained for at least three years from the date of the spill.
8. **ENFORCEMENT:** The DPW, or its authorized agent, shall enforce this By-law, resultant regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

*\*This wording is disapproved + is to be removed per AG Ltr 8-11-10 pg 3-4 Sherrill Delaney Town Clerk 8/20/10*

**8.1: Civil Relief.** If a person violates the provisions of this By-law, regulation, permit, notice, or order issued there under, the DPW may seek injunctive relief in a court of competent jurisdiction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.



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50 Billerica Road  
Chelmsford, MA 01824-3190  
978-250-5205  
FAX 978-250-5208

Elizabeth L. Delaney  
Town Clerk

Raymonde R. Legrand  
Assistant Town Clerk

### 8.2: Orders.

A. The DPW or its authorized agent may issue a written order to enforce the provisions of this By-law or the regulations hereunder, at the expense of the violator or property owner 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.

B. If the enforcing agent determines that abatement or remediation of contamination if 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 deadlines, the Town of Chelmsford may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

C. Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of Chelmsford, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the DPW within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the DPW affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, 57 after the thirty-first day at which the costs first become due.

**8.3: Criminal Penalty.** Any person who violates any provision of this By-law, regulation, order or permit issued hereunder, shall be punished by a fine of not more than \$300 per offense. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

**8.4: Non-Criminal Disposition.** As an alternative to criminal prosecution or civil action, the Town of Chelmsford may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, 21D, in which case the DPW or authorized agent of the town shall be the enforcing person. The penalty for the first violation shall be a written warning and/or a \$100 fine. The penalty for the second violation shall be a \$200 fine. The penalty for the third and subsequent violations shall be a \$300 fine. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

**8.5: Entry to Perform Duties under this By-law.** To the extent permitted by State law, or if authorized by the owner or other party in control of the property, the DPW, its agents, officers, and employees may enter upon privately-owned property for the purpose of performing their duties under this By-law and regulations and may make or cause to be made such examinations, surveys or sampling as the DPW deems reasonably necessary.



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**Office of the Town Clerk**

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**8.6: Appeals.** The decisions or orders of the DPW shall be final. Further relief shall be to a court of competent jurisdiction.

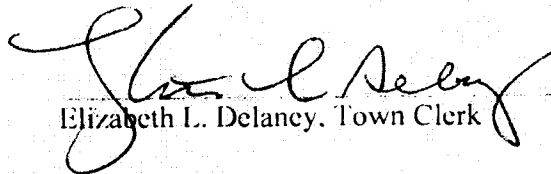
**8.7: Remedies Not Exclusive.** The remedies listed in this By-law are not exclusive of any other remedies available under any applicable Federal, State or Local law.

**9. TRANSITIONAL PROVISIONS:** Residential property owners shall have 180 days from the effective date of this By-law to comply with its provisions.

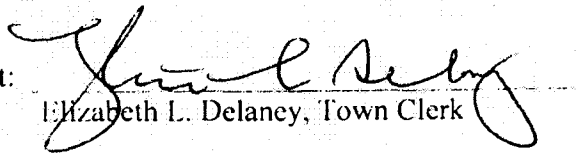
**SEVERABILITY**

It is hereby declared that sections, paragraphs, sentences, clauses and phrases of these By-laws are severable and if any phrase, clause, sentence, paragraph or section of these By-laws shall be declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction such unconstitutionality or invalidity shall not effect any of the remaining phrases, clauses, sentences, paragraphs and sections of these By-laws.

Sincerely,

  
Elizabeth L. Delaney, Town Clerk

A True Copy Attest:

  
Elizabeth L. Delaney, Town Clerk