

8.10 Severability Discharges to the Public Storm Drain System.
If any provision of 974CMR 8.00 is held unconstitutional, invalid or void, it shall not effect any other provision of 974 CMR 8.00 or the administration thereof. 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. Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of waterbodies and groundwater within the Devens Enterprise Zone, and to safeguard public health, safety, welfare and the environment.

(1) Purpose:

- a. To prevent pollutants from entering the public or municipal separate storm sewer system (MS4) within the Devens Enterprise Zone;
- b. To prohibit illicit connections and unauthorized discharges to the MS4;
- c. To require the removal of all such illicit connections;
- d. To comply with state and federal statutes and regulations relating to stormwater discharges; and
- e. To establish the legal authority to ensure compliance with the provisions of this section through inspection, monitoring, and enforcement in accordance with 974 CMR 1.14.

(2) Definitions:

Authorized Enforcement Agency: The Devens Enterprise Commission (hereafter the DEC), the Massachusetts Development Finance Agency (MassDevelopment), or their staff or consultants designated to enforce these regulations in accordance with §1.14.

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 hereafter amended.

Discharge of Pollutants: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

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 drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this regulation.

Illicit Discharge: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 6. 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 6, subsection 4, of this regulation.

Impervious Surface: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surfaces include without limitation roads, paved parking lots, sidewalks, and rooftops.

Municipal Separate Storm Sewer (MS4) or Municipal Storm Drain System: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the DEC.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

Non-Stormwater Discharge: Discharge to the municipal storm drain system not composed entirely of stormwater.

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

Pollutant: Any element or property of sewage, residential, 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 sewage treatment

works or waters of the Commonwealth. Pollutants shall include without limitation:

- paints, varnishes, and solvents;
- oil and other automotive fluids;
- non-hazardous liquid and solid wastes and yard wastes;
- refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- pesticides, herbicides, and fertilizers;
- hazardous materials and wastes; sewage, fecal coliform and pathogens;
- dissolved and particulate metals;
- animal wastes;
- rock, sand, salt, soils;
- construction wastes and residues; and
- and 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.

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

Stormwater: Storm water runoff, snow melt 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 of Massachusetts.

Toxic or Hazardous Material or Waste: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include 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.

Uncontaminated Pumped Groundwater: Discharges of pumped groundwater which has not come into contact with any Pollutants as

described above. Such discharges must originate outside of a structure (residence, commercial building, etc.) to meet the exemption criteria outlined in Section 6.

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

Waters of the Commonwealth: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

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, byproduct or waste product.

- (3) Applicability. This regulation shall apply to flows entering the public storm drain system.
- (4) Responsibility for Administration. The DEC and MassDevelopment shall administer, implement, and enforce this regulation. Any powers granted to or duties imposed upon the DEC or MassDevelopment may be delegated in writing by the DEC or MassDevelopment to its employees or agents.
- (5) Prohibited Activities.

 - a. Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the public storm drain system, into a watercourse, or into the waters of the commonwealth.
 - b. Illicit Connections. No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation, or custom at the time of construction.
 - c. Obstruction of the Public Storm Drain System. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the DEC.
 - d. Sump Pump Discharges. Discharges of a sump pump to the storm drain system are prohibited unless a permit has been obtained from MassDevelopment's Public Works Department.

- (6) Exceptions. The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwater discharges provided that the source is not a significant contributor of a pollutant to the public storm drain system:
- a. Discharge or flow from fire-fighting activities;
 - b. Waterline flushing;
 - c. Flow from potable water sources;
 - d. Springs;
 - e. Natural flow from riparian habitats and wetlands;
 - f. Diverted stream flow;
 - g. Rising groundwater;
 - h. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
 - i. Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
 - j. Discharge from landscape irrigation or lawn watering;
 - k. Water from individual residential car washing;
 - l. 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;
 - m. Street wash waters;
 - n. Residential building wash waters without detergents;
 - o. Non-stormwater discharges permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
 - p. Discharge for which advanced written approval is received from the DEC or MassDevelopment as necessary to protect public health, safety, welfare or the environment.
- (7) Emergency Suspension of Storm Drain System Access. The DEC or MassDevelopment, or their employee, agent, or other authorized party may suspend access to the public storm drain system to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. If any person fails to comply with an emergency suspension order, the Authorized Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

- (8) 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 or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the public storm drain system or waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the Devens Fire and Police Departments, the DEC, and MassDevelopment. In the event of a release of non-hazardous material, the reporting person shall provide the Authorized Enforcement Agency written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain a written record of the discharge and the actions taken to prevent its recurrence onsite. Such records shall be retained for at least three years.
- (9) Enforcement.
- a. The DEC, its staff, and consultants, shall enforce this regulation, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.
 - b. Civil Relief. If a person violates the provisions of this regulation, notice, or order issued thereunder, the DEC 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.
 - c. Orders. The DEC, its staff, and consultants may issue a written order to enforce the provisions of this regulation, which may include:
 - i. Elimination of illicit connections or discharges to the public storm drain system;
 - ii. Performance of monitoring, analyses, and reporting;
 - iii. That unlawful discharges, practices, or operations shall cease and desist; and
 - iv. Remediation of contamination in connection therewith.

If the enforcing person or entity 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 DEC may, at its option, undertake such work at the expense of the violator. In the case where a violation poses an immediate threat to public health and the environment

and requires emergency repair, the DEC may, at its discretion, perform the necessary repair without administering a written order. Such emergency work will also be conducted at the expense of the violator.

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 DEC, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the DEC 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 DEC 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 Ch. 59, §57 after the thirty-first day at which the costs first become due.

- d. Criminal Penalty. Any person who violates any provision of this regulation, order, or permit issued thereunder shall be punished by a fine assessed by the DEC but not more than \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- e. Entry to Perform Duties Under this Regulation. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the DEC, its staff and consultants may enter upon privately owned property for the purpose of performing their duties under this regulation and may make or cause to be made such examinations, surveys, or sampling as the DEC deems reasonably necessary.
- f. Appeals. The decisions or orders of the DEC shall be final. Further relief shall be to a court of competent jurisdiction.
- g. Remedies Not Exclusive. The remedies listed in this regulation are not exclusive of any other remedies under any applicable federal, state, or local law.

(10) Severability. The provisions of this regulation are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this regulation 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 regulation.

(11) Transitional Provisions. Residential property owners shall have 60 days from the effective date of this regulation to comply with its

provisions provided good cause is shown for the failure to comply with the regulation during that period.

8.11 Severability

If any provision of 974CMR 8.00 is held unconstitutional, invalid or void, it shall not effect any other provision of 974 CMR 8.00 or the administration thereof.

REGULATORY AUTHORITY

974 CMR 4.00: St. 1993, c. 498.