

## **Draft Revisions Proposed for Article 47 – NPDES Phase II Stormwater Bylaw**

### **IT IS HEREBY DETERMINED THAT:**

- Construction Site stormwater runoff and post-construction stormwater discharges may permanently alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, which in turn may increase flooding, stream channel erosion, non-point source pollution, and sediment transport and deposition, and decrease groundwater recharge;
- Construction Site stormwater runoff and post-construction stormwater discharges can adversely affect public safety, public and private property, surface water, groundwater resources, drinking water supplies, recreation, aquatic habitats, fish and other aquatic life, property values and other uses of land and water;
- It is in the public interest to regulate Construction Site stormwater runoff and post-construction stormwater discharges in order to minimize the impacts identified above.

### **§ 1.0 PURPOSE**

- A. The purpose of this Stormwater Bylaw is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of Construction Site stormwater runoff and post-construction stormwater discharges. In addition, this Stormwater Bylaw is intended to ensure and promote compliance with US Environmental Protection Agency (EPA) stormwater management regulations pertaining to municipal separate storm sewer systems (MS4) and the National Pollutant Discharge Elimination System (NPDES), as amended. This Stormwater Bylaw seeks to meet these purposes through the following objectives:
1. Establish decision-making processes surrounding Construction Site activities that protect the integrity of the watershed and preserve the health of water resources;
  2. Require that Construction Site activities maintain the post-construction runoff characteristics as equal to or less than the pre-construction runoff characteristics in order to minimize flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats;
  3. Establish minimum Construction Site and post-construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
  4. Require the use of nonstructural stormwater management practices or “low-impact development practices”, wherever practicable.
  5. Establish provisions for the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety;

6. Establish provisions to ensure there is an adequate funding mechanism, including surety, for the proper review, inspection and long-term maintenance of stormwater facilities implemented as part of this Stormwater Bylaw; and,
  7. Establish a procedure for the adoption of regulations that will provide administrative procedures and fees for the submission, review, approval or disapproval of stormwater management plans, and for the inspection of approved active projects, and long-term follow up.
- B. Nothing in this Stormwater Bylaw is intended to replace the requirements of the Town of Ayer Wetlands Protection Bylaw or any other Bylaw that may be adopted by the Town of Ayer, or any State or Federal requirement, law, regulation, or policy. Any activity subject to the provisions of this Stormwater Bylaw must comply with any other applicable Town, State or Federal requirements.

## **§ 2.0 AUTHORITY**

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34, and as authorized by the residents of the Town of Ayer at Town Meeting.

## **§ 3.0 DEFINITIONS**

The following definitions shall apply in the interpretation and implementation of this Stormwater Bylaw. Additional definitions may be adopted by separate regulation.

**ALTER:** Any activity that will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Alter may similarly represent “alteration of drainage characteristics,” and “conducting land disturbance activities”. 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 on the area.

**BEST MANAGEMENT PRACTICE (BMP):** Structural, non-structural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce adverse stormwater volumes and flows, reduce point source and nonpoint source pollution, and promote stormwater quality and protection of the environment.

**“Structural” BMPs:** Devices that are engineered and constructed to provide temporary storage and treatment of stormwater runoff.

**“Nonstructural” BMPs:** Natural measures to reduce pollution levels, do not require extensive engineering and construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

**CONSTRUCTION SITE:** Any site where activity is proposed or occurs which results in soil disturbance by clearing, grading, excavation, stockpiling earth materials or placement/removal of earth materials.

**CRITICAL AREAS:** [The surface water supply protection area \(i.e., Zone II\) of any of the Town’s drinking water supplies. Areas where stormwater discharge is directly or indirectly to impaired waterbody.](#)

**IMPAIRED WATERBODY:** [A waterbody subject to one or more pollutant-specific Total Maximum Daily Loads \(TMDLs\) or identified as impaired by 303\(d\) Categories 4 and 5 in the latest version of the Massachusetts Integrated List of Waters pursuant to Sections 305\(b\), 314 and 303\(d\) of the Clean Water Act. Additionally, a waterbody impaired for phosphorus as identified in the Biological Survey, Assessment and Management Recommendations for Ayer's Ponds, by Geosyntec Consultants, dated May 2016. These documents are incorporated herein by reference. The Biological Survey, Assessment and Management Recommendations for Ayer's Ponds is also on file at the office of Conservation Commission and Department of Public Works.](#)

**IMPERVIOUS SURFACE:** Any material or structure on or above the ground that prevents water infiltration to the underlying soil. Impervious surface includes, without limitation, roads, paved parking lots, sidewalks, and rooftops, compacted soils, hard-packed gravel driveways, and similar surfaces.

**LAND-DISTURBING ACTIVITY or LAND DISTURBANCE:** Any activity, including clearing, grubbing, grading and stockpiling that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material, [or results in the removal or covering up of natural vegetation.](#)

**LOW IMPACT DEVELOPMENT (LID):** An approach to environmentally friendly land use planning. It includes a suite of landscaping and design techniques designed to maintain the natural, pre-developed ability of a site to manage rainfall. LID techniques capture water on site, filter it through vegetation, and allow seeping into the ground rather than being lost as surface runoff so that the local water table can recharge. An important LID principle embodies the concept that rainwater is a resource and not merely a superfluous waste product.

**MASSACHUSETTS STORMWATER MANAGEMENT POLICY:** The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 § 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 23-56.

**MUNICIPAL STORM DRAIN SYSTEM or MUNICIPAL SEPARATE STORM SEWER 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 manmade or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Ayer.

**NONPOINT SOURCE POLLUTION:** Pollution from many dispersed sources caused by rainfall or snowmelt moving over and through the ground. Movement of runoff collects and carries away natural and human-source pollutants, finally depositing them into water resource areas.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM ("NPDES"):** A federal environmental program addressing water pollution under the Clean Water Act. NPDES Phase I addresses stormwater discharges from towns and cities with medium to large storm sewer systems and industrial activities. NPDES Phase II addresses towns and cities with small storm sewer systems serving a population of less than 100,000. Phase II also regulates construction activities disturbing greater than one acre. Ayer is subject to NPDES Phase II.

**OPERATION AND MAINTENANCE PLAN:** A plan describing the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

**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.

**POST-DEVELOPMENT:** Conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land. Post-development refers to conditions after culmination of a new development or redevelopment project and does not depict conditions during the construction phases of a project.

**PRE-DEVELOPMENT:** The conditions that exist at the time that plans for the land development of a tract of land are submitted to the Stormwater Authority. Where phased development or phased plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

**STORMWATER:** [Any surface flow, runoff, and drainage consisting entirely of water from rainstorm events.](#)

**STORMWATER AUTHORITY:** The Ayer Planning Board shall act as the Stormwater Authority in implementing the provisions of this Stormwater Bylaw. The Stormwater Authority may designate a Stormwater Agent to assist with plan review, implementation and enforcement of the provisions of this Stormwater Bylaw and accompanying regulations. The Stormwater Authority is responsible for coordinating the review, approval and permit process as defined in this Chapter. Boards and/or departments may participate in the review process as defined in this Stormwater Bylaw or the Stormwater Regulations adopted by the Stormwater Authority.

**STORMWATER MANAGEMENT PERMIT (SMP):** A permit issued by the Stormwater Authority, after review of an application, plans, calculations, and other supporting documents, that is designed to protect the Town from deleterious effects of uncontrolled or untreated stormwater runoff.

**STORMWATER MANAGEMENT, EROSION AND SEDIMENTATION CONTROL PLAN:** A document containing narrative, drawings and details prepared by a qualified professional engineer (PE), a professional public land surveyor (PLS), or a certified professional in erosion and sedimentation control (CPESC), that includes structural and non-structural best management practices (BMPs) to manage and treat stormwater runoff generated from regulated development activity.

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

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

**WETLAND RESOURCE AREA:** Areas specified in the Massachusetts Wetlands Protection Act M.G.L. c. 131, s.40 and in Article XXVI of the Town Bylaws, "Wetland Protection".

#### § 4.0 ADMINISTRATION

- A. The Stormwater Authority shall administer, implement and enforce this Stormwater Bylaw. Any powers granted to or duties imposed upon the Stormwater Authority may be delegated in writing by the Stormwater Authority to its employees or agents.
- B. The Stormwater Authority may adopt and periodically amend Regulations relating to receipt and content of Stormwater Management Permit applications; review time periods, permit terms, conditions, additional definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures, administration and enforcement of this Stormwater Bylaw subsequent to a majority vote of the Planning Board and after conducting a public hearing to receive comments on the proposed regulations and/or any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation at least seven (7) calendar days before a hearing date. After public notice and hearing, the Stormwater Authority may promulgate rules and regulations to effectuate the purposes of this Stormwater Bylaw. Failure by the Stormwater Authority to promulgate such rules and regulations shall not have the effect of suspending or invalidating this Stormwater Bylaw.
- C. The Stormwater Authority may take any of the following actions as a result of an application for a Stormwater Management Permit: Approval, Approval with Conditions, or Disapproval.  
[Determination of the action shall be in accordance with the Ayer Stormwater Regulations.](#)
- D. The overall Stormwater Management Plan consists of two parts: a Stormwater Management Erosion and Sedimentation Control Plan ("Stormwater Plan") and an Operation and Maintenance Plan ("O&M Plan"). The Stormwater Plan addresses stormwater impacts during construction and prior to site stabilization, as well as best management practices for the permanent management and treatment of groundwater. The O & M Plan addresses the long term monitoring and care of the stormwater management controls on the site.

#### § 5.0 APPLICABILITY

This Stormwater Bylaw shall apply to all land-disturbing activities within the jurisdiction of the Town of Ayer, whether new development or redevelopment. Except as permitted by the Stormwater Authority in a Stormwater Management Permit (SMP) or as otherwise provided in this Stormwater Bylaw, no person shall perform any activity that results in land disturbance ~~of 40,000 square feet or greater~~ [in accordance with the requirements set forth below](#) without first obtaining an SMP according to the provisions of this Stormwater Bylaw.

- A. Regulated Activities. Regulated activities shall include, but not be limited to:
  - 1. Land disturbance of greater than 240,000 square feet, associated with construction or reconstruction of structures;

2. Development or redevelopment involving multiple, separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that together disturbs 240,000 square feet or more.
3. Paving or other change in surface material over an area of 240,000 square feet or more causing a significant reduction of permeability or increase in runoff,
4. Construction of a new drainage system or alteration of an existing drainage system or conveyance serving a drainage area of more than 240,000 square feet,
5. Land disturbance where there is a 15% or greater slope and where the land disturbance is greater than or equal to 1,000 square feet within the sloped area.
6. Land disturbance greater than or equal to 1,000 square feet where the soil cut or filled exceeds four feet in vertical depth at its deepest point as measured from the natural ground level.
7. Disturbance of a volume of earth greater than 1,500 cubic yards.

8. Any other activity altering the surface of an area exceeding 240,000 square feet that will, or may, result in increased stormwater runoff flowing from the property into a public way, the municipal storm drain system or to a watercourse or wetland.

9. Land disturbance on a parcel of land having more than 5,000 square feet of existing impervious area and ultimately resulting in a net increase of 30% or more of impervious area.

10. Land disturbance of 2,000 square feet or greater within a Critical Area as defined in Section 3.0 of this document.

11. Land disturbance of 2,000 square feet or greater where stormwater discharge is directly or indirectly to an Impaired Waterbody or its tributaries as defined in Section 3.0 of this document.

12. Any activity subject to Site Plan Review or Subdivision Control Law.

Note: Where filing a Notice of Intent pursuant to the Wetlands Protection Act or Ayer's Wetland Protection Bylaw and one or more of the criteria in this Section are met, a Stormwater Management Permit will be required in addition to the Notice of Intent.

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B. Minor and Major Projects. For the purpose of this Bylaw and any Regulations pertaining thereto, applications shall be divided into Minor and Major categories. The application procedures and submittal requirements for Minor and Major applications shall be described in the Ayer Stormwater Regulations.

1. A Minor project is any activity subject to the Stormwater Bylaw which involves:

**Commented [DVS1]:** Delete Major and Minor Project categories from Bylaw and move to Regulations.

- a. Land disturbance of an area greater than 40,000 square feet but less than 60,000 square feet for a single family lot which has not been included in an ANR or subdivision within the prior five (5) years; or
- b. Land disturbance of a volume of earth greater than 1,500 cubic yards but less than 2,200 cubic yards where not related to a subdivision or ANR; or
- c. Land disturbance of an area of land 1,000 square feet to 10,000 square feet:
  - If the slope is 15% or greater; or
  - If the soil cut or filled exceeds four (4) feet in vertical depth at its deepest point as measured from the natural ground level. This requirement may be waived for septic system installation.

2. A Major project is any project subject to the Stormwater Bylaw which involves:

- a. Land disturbance of an area of 40,000 or more square feet for a subdivision or ANR;
- b. Land disturbance of an area of greater than 60,000 square feet; or
- c. Land disturbance of a volume of earth resulting in a total quantity greater than 2200 cubic yards; or
- d. Land disturbance of an area of land greater than 10,000 square feet:
  - If the slope is 15% or greater or
  - If the soil cut or filled exceeds four (4) feet in vertical depth at its deepest point as measured from the natural ground level.

C-B. Exempt Activities. The following activities are exempt from the requirements of this Stormwater Bylaw:

1. Normal maintenance and improvement of Town owned public ways and appurtenances. New road and building construction, however, are subject to a requirement for a stormwater permit.
2. Normal maintenance and improvement of land in agricultural or forestry use as defined by the Massachusetts Wetlands Protection Act and its Regulations.
- 2-3. Normal maintenance and improvement of agriculture uses under Massachusetts General Laws, Chapter 40A, Section 3, and consistent with Massachusetts General Laws, Chapter 128, Section 1A, subject to reasonable regulation of site conditions.
- 3-4. Infrastructure repairs when required by the Department of Public Works for the protection of public health and safety.
- 4-5. Repair of septic systems when required by the Board of Health for the protection of public health.

~~5-6.~~ Normal maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling provided such maintenance does not include the addition of more than 300 cubic yards of soil material, ~~the~~ construction of walls, ~~alteration of existing grades by more than one foot in elevation~~, or ~~the~~ alteration of drainage patterns, ~~including alteration of grades by more than one foot in elevation~~.

~~6-7.~~ The construction of fencing irrespective of materials used that will not alter existing terrain or drainage patterns.

~~7-8.~~ Construction of utilities (gas, water, sewer, electric, telephone, etc.) other than drainage that will not alter terrain or drainage patterns.

9. As authorized in the Phase II small MS4 General Permit for Massachusetts, storm water discharges resulting from the activities identified in Section 5-A that are wholly subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Policy, as reflected in an Order of Conditions issued by the Conservation Commission, are exempt from compliance with this Bylaw.

10. Regular and approved maintenance of stormwater management structures.

~~8-11.~~ Emergency work to protect life, limb, and property.

#### § 6.0 ENFORCEMENT

- A. The Stormwater Authority or an authorized agent of the Stormwater Authority shall enforce this Bylaw, Regulations, permits, violation notices, and enforcement orders, and may pursue all civil, criminal and non-criminal remedies for such violations.
- B. Notices of Violation and Enforcement Orders.
  - 1. The Stormwater Authority or an authorized agent of the Stormwater Authority may issue a written notice of violation or enforcement order to enforce the provisions of this Bylaw or the Regulations thereunder, which may include requirements to:
    - a. Cease and desist from construction or land disturbing activity until there is compliance with the Bylaw and the Stormwater Management Permit.
    - b. Repair, maintain, or replace the stormwater management system or portions thereof in accordance with the O&M Plan.
    - c. Perform monitoring, analyses, and reporting.
    - d. Fix adverse impact 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 may set forth a deadline by which such abatement or remediation must be completed.
- C. Any person who violates any provision of the Stormwater Bylaw, Regulations or permit issued thereunder, Maintenance Agreement, or enforcement order may be ordered to correct the



violation and/or pay a fine up to \$300 and/or a civil penalty not exceeding \$5,000.00 for each day of violation of any rule or regulation, pursuant to the provisions of G.L. c. 83, sec. 10, as specified in the Regulations. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

D. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Town of Ayer may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D and in which case the Stormwater Agent of the Town of Ayer shall be the enforcing person. The penalty for the 1st violation shall be \$100. The penalty for the 2nd violation shall be \$200. The penalty for the 3rd and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

E. Entry to Perform Duties Under this Bylaw:

1. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Stormwater Authority, his/her agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Stormwater Authority deems reasonably necessary.

~~1-2.~~ The Stormwater Authority may require the immediate abatement of any violation of this bylaw and/or regulations that constitutes an immediate threat to the health, safety or welfare of the public. If any such violation is not abated immediately as directed by the Stormwater Authority, to the extent permitted by law, or if authorized by the owner or other party in control of the property, the Town may enter the property and take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the municipality shall be at the expense of the property owner and/or violator, pursuant to this Section. Any relief obtained under this Section shall not prevent the municipality from seeking other and further relief authorized under the bylaw and/or regulations.

~~D-F.~~ Appeals. The decisions or orders of the Stormwater Authority shall be final. Further relief shall be to a court of competent jurisdiction.

~~E-G.~~ Remedies Not Exclusive. The remedies listed in this Bylaw are not exclusive of any other remedies available under any applicable federal, state or local law.

## **§ 7.0 SEVERABILITY**

The invalidity of any section, provision, paragraph, sentence, or clause of this Stormwater Bylaw shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

## **§ 8.0 EFFECTIVE DATE**

This Stormwater Bylaw shall take effect upon approval of the Attorney General and upon compliance with requirements of Massachusetts General Law Chapter 40, Section 32.

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