

4.4.) Waste haulers may not accept a load of refuse with greater than 5%, by volume, recyclables or compostable yard waste. In addition, every waste hauler shall report, in writing, violations of this provision to the Board or its agent(s).

4.5) Waste haulers may not accept compostable yard waste, except on designated dates established by the Board.

4.6) Waste haulers shall allow for unannounced inspections of collected refuse or recyclables by the Board or its designated agent(s) where the Waste Hauler is required to demonstrate satisfactory collection procedures.

#### Section 5: OWNERSHIP OF RECYCLABLES

5.1) Once recyclable materials or compostable yard waste are placed at the curbside or designated collection area these materials shall become property of the Town. No person, business, or other legal entity other than licensed waste hauler and/or authorized agent(s) of the Town, acting in the course of their employment, may collect or pick up any recyclable materials so placed.

#### Section 6: SEVERABILITY

6.1) If any section of this By-Law is declared invalid or unenforceable for any reason, said decision shall not affect any other section of this By-Law, which shall remain in full force and effect.

### ***ARTICLE XLIII STORMWATER MANAGEMENT BY-LAW***

#### **BY-LAW FOR THE MANAGEMENT OF STORMWATER AND ILLICIT CONNECTIONS, OBSTRUCTIONS AND ILLEGAL DISCHARGES TO THE STORM SEWER SYSTEM**

##### **1.0. BACKGROUND**

1.1. Land uses, developments and conversions in the Town of Tyngsborough (the "Town") affect its streams, ponds, lakes, and drinking water supplies. These land use changes can also alter the hydrological response of local watersheds and increase stormwater runoff rates and volumes which in turn increase flooding, erosion, sediment transport and deposition, nonpoint source pollution and ground water recharge. This in turn affects public safety, public and private property, surface water, drinking water supplies, groundwater resources, aquatic life, and property values.

1.2. These adverse affects can be controlled and minimized through the regulation of stormwater runoff quantity and quality from construction, site alteration, new development, and redevelopment and by the use of both structural and nonstructural best management practices (BMP's).

1.3. Municipalities in the Commonwealth of Massachusetts ("Commonwealth") are required to comply with a number of state and federal laws, regulations and permits which require the municipality to address the impacts of illegal discharges and illicit connections and post development stormwater runoff quality, quantity and nonpoint source pollution.

1.4. Therefore, the Town has determined that it is in the public interest to regulate construction site alteration and post development/redevelopment stormwater and illegal discharges in order to control and minimize increases in stormwater discharge rates and volumes, soil erosion and sedimentation, nonpoint source pollution, illicit connections and illegal discharges into the storm sewer system by the adoption of a By-law for the management of stormwater and illicit connections, obstructions and illegal discharges to the storm sewer system (the "By-law").

## **2.0. PURPOSE AND AUTHORITY**

### **2.1. Purpose**

2.1.1. The purpose of this By-law is to regulate stormwater runoff, non-point source pollution, illicit connections, illegal discharges and obstructions to the storm sewer system, as this is necessary for the protection of the Town's water bodies and groundwater, for safeguarding the public health, safety, welfare and the environment, including drinking water supplies, aquatic life and habitats, property values, and for decreasing the risk of flooding, erosion and pollution.

2.1.2. This By-law shall apply to all development and redevelopment, to obstructions to flows and to flows entering the storm sewer system on public or private ways within the Town and to any direct discharge into the surface and ground waters and watercourses within the Town.

### **2.2. The objectives of this By-law are:**

2.2.1. To prevent pollutants from entering the Town's municipal separate storm sewer system (MS4);

2.2.2. To prohibit illicit connections and illegal discharges to the MS4;

2.2.3. To require the removal of all such illicit connections;

2.2.4. To comply with state and federal statutes and regulations relating to stormwater illegal discharges;

2.2.5. To establish the legal authority to ensure compliance with the provisions of this By-law through inspection, monitoring and enforcement.

2.2.6. To prevent contamination of drinking water supplies.

2.2.7. To establish the minimum requirements and procedures to control the adverse effects of increased post development stormwater runoff and nonpoint source pollution associated with new development and redevelopment.

2.2.8. To establish minimum post development stormwater management standards and design criteria for the regulation and control of stormwater runoff quality and quantity.

2.2.9. To require that new development and redevelopment maintain the predevelopment hydrologic characteristics in their post development state as nearly as practicable to insure that the purposes outlined above are met.

### **2.3. Authority**

2.3.1. This By-law is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution, and pursuant to the regulations of the Federal Clean Water Act and as authorized by the citizens of the Town at the Special Town Meeting of October 9, 2007.

2.3.2. The Conservation Commission (the "Commission") shall administer, implement and enforce this By-law. Any powers granted to or duties imposed upon the Commission may be delegated to employees or agents of the Commission.

2.3.3. Nothing in this By-law, or regulations adopted pursuant to, is intended to replace the requirements of any other By-law, regulation or code (e.g. building,

plumbing, sewer) that may have been or may be adopted by the Town or the Commonwealth.

### **3.0. DEFINITIONS**

For the purposes of this By-law, the following definitions shall apply:

Alter: refers to any activity which will change the ability of a ground surface area to absorb water or will change the surface drainage patterns.

Authorized Enforcement Agency: The Conservation Commission, 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 improved the quality of stormwater runoff.

Clean Water Act: The Federal Water Pollution Control Act (33 U.S.C. § 1241 et seq.) as hereafter amended.

Commission: the Tyngsborough Conservation Commission.

Development: The modification of land to accommodate a new use, expansion of an existing use and usually involving construction and/or land disturbance.

Discharge Of Pollutants: The addition from any source of any pollutant or combination of pollutants into storm sewer systems or into the surface and ground waters and watercourses within the Town from any source.

Groundwater: All water beneath the surface of the ground.

Illegal Discharge: Any direct or indirect non-stormwater discharge to storm sewer systems, and any direct discharge into the surface and ground waters and watercourses within the Town, except as specifically exempted in Section Six. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from the activities exempted pursuant to Section Six of this By-law.

Illicit Connection: Any surface or subsurface drain or conveyance, which allows an illegal discharge into storm sewer systems. Illicit connections include conveyances which allow a non-stormwater discharge to storm sewer systems including 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.

Impervious Surface: Any material or structure on or above the ground that prevents water from infiltrating the underlying soil.

Municipal separate storm sewer system (MS4) or municipal storm sewer 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 sewer, pumping facility, retention or detention basin, natural or manmade or altered drainage channel, reservoir, and other drainage structure that together comprise the storm sewerage system owned or operated by the Town.

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

Non-Stormwater Discharge: Any discharge to the storm sewer systems not composed entirely of stormwater.

Obstruction: Anything that impedes or hinders the free flow of stormwater and is not part of the storm sewer system.

Person: Any individual, partnership, association, firm, company, trust, corporation, and, any 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.

Permitting Authority: The Conservation Commission of the Town.

Pollutant: Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any storm sewer system, sewage treatment works or the surface and ground waters and watercourses within the Town. Pollutants shall include, but are not limited to:

- (1) paints, varnishes, and solvents;
- (2) oil and other automotive fluids;
- (3) non-hazardous liquid and solid wastes and yard wastes;
- (4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, accumulations and floatables;
- (5) pesticides, herbicides, and fertilizers;
- (6) hazardous materials and wastes; sewage, fecal coliform and pathogens;
- (7) dissolved and particulate metals;
- (8) animal wastes;
- (9) rock; sand; salt; soils;
- (10) construction wastes and residues;
- (11) noxious or offensive matter of any kind.

Process wastewater: means any 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.

Redevelopment: Development, rehabilitation, expansion, demolition or phase projects that disturb the ground surface or increase the impervious area.

Regulations: Unless otherwise stated, those rules and regulations promulgated by the Conservation Commission under Section Four of the By-law.

Stormwater: Stormwater runoff, surface water runoff and drainage, and snow and ice melt.

Storm Sewer 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 sewer, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm sewer system on public or private ways within the Town.

Terms Not Defined: Should any term be used and not defined, the definition found in the Town Zoning By-law shall apply.

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 M.G.L. c.21C and c.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000.

Uncontaminated: Water containing no pollutants.

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.

#### **4.0 REGULATIONS**

4.1. The Commission shall promulgate rules, regulations, a permitting process, application forms and a fee structure to effectuate the purposes of this By-law. Failure by the Commission to promulgate such rules and regulations shall not have the effect of suspending or invalidating this By-law.

4.1.1. Said rules, regulations and process shall be adopted after a public hearing on the regulations, rules and process and said hearing shall comply with all aspects of the Massachusetts Open Meeting Law.

4.1.2. Said rules, regulations and process will, at a minimum, follow and utilize the specifications and standards of the latest edition of the Massachusetts Stormwater Management Policy as amended and issued by Massachusetts Department of Environmental Protection.

4.1.3. The adopted rules, regulations and process, shall be periodically reviewed and updated as necessary by the Commission.

#### **5.0. PROHIBITED ACTIVITIES**

5.1. Illegal discharges: No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into storm sewer systems or the surface and ground waters and watercourses within the Town.

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

5.3. Obstruction - Storm Sewer Systems: No person shall obstruct or interfere with the normal flow of stormwater in or out of storm sewer systems without prior approval from the Commission or its designated agent.

#### **6.0. EXEMPTIONS**

6.1. The following land disturbing activities may be performed without a permit.

6.1.1. Normal maintenance and improvement of land in agricultural use as defined in the Massachusetts Wetlands Protection Act regulations 310 CMR 10.04.

6.1.2. Maintenance of existing landscaping, stone walls, retaining walls, gardens or lawns associated with a single family residence.

6.1.3. Construction of utilities other than drainage systems that will not alter terrain, ground cover or drainage patterns.

6.1.4. Emergency repairs to any stormwater management facility or practice that poses a threat to public health, safety, welfare or the environment.

6.1.5. Any work or projects for which all necessary local approvals and permits have been issued prior to the effective date of this By-law.

6.1.6. Any land disturbance that results in a cumulative land disturbance of less than 5,000 s.f. providing appropriate erosion and sedimentation controls are in place and properly maintained.

6.1.7. Illegal discharges or flows resulting from fire fighting activities.

6.2. The following non-stormwater discharges or flows are exempt from regulation provided that the source is not a significant contributor of a pollutant to storm sewer systems or watercourses or waters of the United States, the Commonwealth, or the Town.

6.2.1. Municipal waterline flushing;

6.2.2. Illegal discharges from landscape irrigation or lawn watering;

6.2.3. Water from individual residential car washing and temporary fund-raising car wash events;

6.2.4. Illegal discharges from dechlorinated swimming pool water provided it is allowed to stand for one week prior to draining, or tested for chlorine levels with a pool test kit prior to draining (less than one part per million chlorine), and the pool is drained in such a way as not to cause a nuisance;

6.2.5. Illegal discharges from street sweepers of minor amounts of water during operations;

6.2.6. Non-stormwater illegal discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations;

6.2.7. Flows from potable water sources;

6.2.8. Diverted stream flows;

6.2.9. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;

6.2.10. Uncontaminated groundwater discharge from a sump pump;

6.2.11. Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems, such as dewatering excavations for foundation or pipelines), crawl space pumps, or air conditioning condensation;

6.2.12. Dye testing, provided verbal notification is given to the Commission prior to the time of the test.

6.3. When there is any question as to whether an activity is exempt from the By-law and the regulations promulgated under Section Four above, the Commission shall make a definitive ruling as to the applicability of the By-law and regulations to the activity in question.

## **7.0. SUSPENSION OF STORM SEWER SYSTEM ACCESS**

7.1. The Commission may suspend storm sewer system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened illegal discharge, illicit connection or obstruction that presents or may present imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the authorized enforcement agent may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

7.2. Any storm sewer system within the Town in violation of this By-law may have its storm sewer system access terminated if such termination would abate or reduce an illegal discharge. The Commission will notify, in writing, a violator of the proposed termination of storm sewer system access. The violator may petition, in writing, the Commission for reconsideration and a hearing. A person commits a separate offense if the section, without prior written approval from the Commission.

## **8.0. NOTIFICATION OF SPILLS**

8.1. Notwithstanding any other requirements of local, state, or federal law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials at that facility operation which is resulting or may result in illegal discharge of pollutants that 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 municipal Fire and Police Departments, Highway Department, Commission and Board of Health. This notification shall be followed by written notification to said departments within twenty four hours. In the event of a release of non-hazardous material, said person shall notify the Commission no later than the next business day. Written confirmation of all telephone, facsimile or in person notifications shall be provided to the authorized enforcement agent 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 on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

## **9.0. ENFORCEMENT**

9.1. The Commission or its authorized agent shall enforce this By-law, and the regulations promulgated thereunder, as well as the terms and conditions of all permits, notices, and orders, and may pursue all civil and criminal remedies for such violations.

9.2. Civil Relief: If anyone violates the provisions of this By-law, regulations, permit, notice, or order issued thereunder, the Commission may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or compel the person to abate or remediate the violation.

9.3. Orders:

9.3.1. The Commission may issue a written order to enforce the provisions of this By-law or the regulations thereunder, which may include but is not limited to: (a) elimination of illicit connections or illegal discharges to the storm sewerage system; (b) termination of access to the storm sewerage system; (c) performance of monitoring, analyses, and reporting; (d) a cease and desist order to the violator or property owner.

9.3.2. Within thirty 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, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Commission within thirty days following the 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 days following a decision of the Commission 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 M.G.L. c.59, § 57 after the thirty-first day at which the costs first become due.

9.4. Criminal and Civil Penalties: Any person who violates any provision of this By-law, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine of three hundred dollars for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.

9.5. Non-Criminal Disposition: As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in M.G.L. c.40, § 21D. The Commission shall be the enforcing entity. The penalty for the first violation shall be one hundred dollars. The penalty for the second violation shall be two hundred dollars. The penalty for the third and subsequent violations shall be three hundred dollars. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

9.6. 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 Commission, 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 Commission deems reasonably necessary.

9.7. Appeals: The decisions or orders of the Commission shall be final. Further relief shall be to a court of competent jurisdiction.

9.8. 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.

## **10.0. VARIANCES**

10.1. A variance from the provisions of this By-law may be granted by the Commission, if the variance will not adversely affect public health, safety, welfare, the environment, public and private property, drinking water supplies, recreation, aquatic habitats and life, property values and other uses of land and waters.

10.2. No variance shall be granted unless the applicant demonstrates that the enforcement of this By-law would be manifestly unjust and the applicant has established that a level of protection for public health, safety, welfare or the environment at least equivalent to that provided under this By-law can be achieved without strict application of the By-law or subsequent regulations.

## **11.0. SEVERABILITY**

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

## 12.0. TRANSITIONAL PROVISIONS

12.1. Property owners shall comply with this By-law on a schedule set forth in the Commission order, but such property owners shall in no case have more than six months from the effective date of the By-law to comply with its provisions, unless good cause is shown for the failure to comply with the By-law during that period.

<b><i>ARTICLE XLIV not used</i></b>
-------------------------------------

<b><i>ARTICLE XLV AGRICULTURAL COMMISSION</i></b>
---

A Tyngsborough Agricultural Commission is hereby established. The Commission shall encourage the pursuit of agriculture in the Town of Tyngsborough, promote agriculture-based economic opportunities, facilitate the preservation of agricultural land, and act as facilitators, advocates, educators, and negotiators on agriculture-related issues. The Commission will consist of five members appointed by the Board of Selectmen for three year terms, with two initial appointments to be for three years, two initial appointments to be for two years, and one initial appointment to be for one year in order to have staggered terms. The Board of Selectmen may also appoint up to five alternate members, and shall appoint persons to fill vacancies.

<b><i>ARTICLE XLVI RIGHT TO FARM BYLAW</i></b>
--

### **Section 1: Legislative Purpose and Intent**

1. The purpose and intent of this By-law is to state the Right to Farm accorded to all citizens of the Commonwealth under Article 97, of the Constitution, and all state statutes and regulations thereunder including but not limited to Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9, Chapter 111, Section 125A and Chapter 128 Section 1A. The Town of Tyngsborough restates and republishes these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution, known as the Home Rule Amendment.

2. This General By-law encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town of Tyngsborough by allowing reasonable and beneficial agricultural uses and related activities to function with minimal conflict with abutters and Town agencies.

### **Section 2: Definitions**

1. The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, or accessory thereto.

2. The words "farming" or "agriculture" or their derivatives shall include, but not be limited to the following:

- a. dairying;
- b. farming in all its branches and the cultivation and tillage of the soil beneficial to the Town;
- c. production, cultivation, growing, and harvesting of any agricultural, apicultural, aquacultural, floricultural, viticultural, or horticultural commodities;
- d. growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations;