Chapter 25

STORMWATER MANAGEMENT
(2013 ATM, Art. 38, Amended April 2014–Art. 37)

Article 1. Purpose
25.1.1. 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, through this By-Law, of illicit connections/discharges to the municipal storm drain system and discharges associated with construction or redevelopment projects that disturb one or more acres of land is necessary for the protection of the Town of Kingston’s water bodies and groundwater, to safeguard the public health, safety, welfare and the environment; and is required by federal law.

25.1.2. The objectives of this By-Law are:

1. to prevent Pollutants, as defined herein, from entering the Town of Kingston’s municipal separate storm sewer system (hereinafter, the “MS4”);
2. to eliminate or reduce pollutants in any stormwater that discharges to the Town of Kingston’s MS4 from construction or redevelopment activities that result in a disturbance of one or more acres of land;
3. to ensure the long term operation and maintenance of stormwater systems that discharge to the Town of Kingston’s MS4 from new or redevelopment projects that disturb greater than one acre of land;
4. to prohibit illicit connections and unauthorized discharges to the MS4;
5. to require the removal of all such illicit connections;
6. to comply with state and federal statutes and regulations relating to stormwater discharges;
7. to establish the legal authority to ensure compliance with the provisions of this By-Law through inspection, monitoring, and enforcement; and
8. to establish the legal authority for the Planning Board and Conservation Commission to promulgate rules and regulations to aid in the implementation and enforcement of this By-Law.

Article 2. Definitions

25.2.1. For the purposes of this By-Law, the following shall mean:

AUTHORIZED ENFORCEMENT AGENCIES: The Town of Kingston Planning Board [the Board] and Conservation Commission [the 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 improve the quality of Stormwater runoff.

CONSTRUCTION ACTIVITY: Any activity that causes a change in the position or location of soil, sand, rock, gravel or similar earth material.


DISTURBANCE: Construction Activity including clearing, grubbing, or grading.

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.

EROSION: The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, Construction Activity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

GROUNDWATER: Water beneath the surface of the ground.
ILLICIT CONNECTION: A surface or subsurface drain or conveyance, which allows an unauthorized 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 By-Law.

ILLICIT DISCHARGE: Direct or indirect discharge to the Municipal Storm Drain System that is not composed entirely of Stormwater, except as exempted in Article 8. The term does not include a discharge in compliance with a NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from firefighting activities exempted pursuant to Article 8 of this By-Law.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious Surface includes, without limitation, roads, paved parking lots, sidewalks, tennis/sports courts and rooftops.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (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 Town of Kingston.

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 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, unincorporated entity, business enterprise, 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, 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:

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, ordinances, 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 unless applied for the purpose of public safety during winter conditions;
10. construction Wastes and residues; and
(11) 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.

REDEVELOPMENT: The modification of developed land to accommodate a new use or modification/expansion of use, usually involving construction or reconstruction.

SEDIMENT: Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of Erosion processes.

SEDIMENTATION: The process or act of deposition of Sediment.

STORMWATER: Stormwater 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 M.G.L. Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000.

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.

**Article 3. Applicability**

25.3.1. This By-Law shall apply to flows entering the municipally owned storm drainage system. This By-Law shall also apply to all Construction or Redevelopment Activities that result in a Disturbance of one or more acres of land that could introduce Pollutants to Kingston’s MS4 and all Stormwater discharges to Kingston’s MS4 from new or Redevelopment projects that disturb greater than one acre of land.

**Article 4. Authority**

25.4.1. This By-Law is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

**Article 5. Responsibility for Administration**
25.5.1. The Board and Commission shall administer, implement and enforce this By-Law. Any powers granted to or duties imposed upon the Board and Commission may be delegated in writing by the Board and Commission to employees or agents of the Board and Commission.

**Article 6. Regulations**

25.6.1. The Board and Commission may promulgate rules and regulations to implement and enforce the purposes of this By-Law. Failure by the Board or Commission to promulgate such rules and regulations shall not have the effect of suspending or invalidating this By-Law.

**Article 7. Prohibited Activities**

25.7.1. **Illicit Discharges.** No Person shall dump, discharge, cause or allow to be discharged any Illicit Discharge into the Municipal Separate Storm Sewer System (MS4), into a Watercourse, or into the Waters of the Commonwealth.

25.7.2. **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 connection.

25.7.3. **Obstruction of Municipal 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 Board or Commission.

25.7.4. **Construction or Redevelopment.** No Person shall perform any activity that results in the Disturbance of an acre or more of land that would result in any discharge to the Town of Kingston MS4, except as specifically exempted under Article 8 of this By-Law or as authorized by: (1) the Board, in the case of a project already under the sole jurisdiction of the Board; or (2) the Commission, in the case of a project: (i) already under the jurisdiction of the Commission; (ii) already under the jurisdiction of both the Board and the Commission; or (iii) not under the original jurisdiction of either the Board or the Commission.

**Article 8. Exemptions**

25.8.1.

Discharge or flow resulting from firefighting activities.

Activities involving the Disturbance of one or more acres of land associated with normal maintenance and improvement of land in agricultural or aquacultural use, as defined by the Wetlands Protection Act regulation 310 CMR 10.00, do not require authorization by the Board or Commission.

Disturbance of an acre or more of land that would result in any discharge to the Town of Kingston MS4 provided that Disturbance is allowed under a Board-issued special permit/subdivision approval or under a Conservation Commission-issued Order of Conditions.

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 Drain System, to Watercourses or to Waters of the Commonwealth:

1. Waterline flushing;
2. Flow from potable water sources;
3. Springs;
(4) Natural flow from riparian habitats and wetlands;
(5) Diverted stream flow;
(6) Rising groundwater;
(7) Discharge from landscape irrigation or lawn watering;
(8) Discharge from street sweeping;
(9) Dye testing, provided verbal notification is given to the Board and Commission prior to the time of the test;
(10) 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 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
(11) Discharge for which advanced written approval is received from the Board and Commission as necessary to protect public health, safety, welfare, or the environment. Requests for approval of a Non-Stormwater discharge to the MS4, other than those defined herein, shall be made in writing to the Commission and Board with sufficient information to demonstrate that the discharge: 1) will not result in a violation of Kingston’s NPDES discharge permit; and 2) is necessary to protect public health, safety, welfare, or the environment.

Article 9. Emergency Suspension of Storm Drainage Access

25.9.1. The Board or the Commission may suspend MS4 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 the public health, safety, welfare or the environment. In the event any Person fails to comply with an emergency suspension order, the Board or the Commission may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

Article 10. Notification of Spills

25.10.1. 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 Drainage 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 Kingston Fire and Police Departments. In the event of a release of non-Hazardous Material, the reporting Person shall notify the Authorized Enforcement Agency no later than the next business day. The reporting Person shall provide to 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 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.

Article 11. Enforcement

25.11.1. The Board and Commission or an authorized agent of the Board or Commission shall enforce this By-Law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. This includes all costs and expenses borne by the Town of Kingston incurred as a direct result of any and all violations.

25.11.2. Civil Relief. If a Person violates the provisions of this By-Law, regulations, permit, notice, or order issued thereunder, the Board or Commission 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.

25.11.3. Orders. The Board and Commission or an authorized agent of the Board or the Commission may issue a written order to enforce the provisions of this By-Law or the regulations thereunder, 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; (d) remediation of contamination in connection therewith; (e) a requirement to cease and desist from any land Disturbance activity until there is compliance with the By-Law or the regulations thereunder; (f) maintenance, installation or performance of additional Erosion and Sediment control measures; (g) remediation of Erosion and Sedimentation resulting directly or indirectly from any land Disturbance activity subject to this By-Law.

If the enforcing Person 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.

Any Person that violates any provision of these regulations may be punished, under MGL c. 40, § 21D as a noncriminal offense, by a fine of $300. Each day or portion thereof during which a violation continues shall constitute a separate offense. The Board and Commission or its duly authorized agent is an authorized officer to impose such fines.

25.11.4. Remedies Not Exclusive. The remedies listed in these regulations are not exclusive of any other remedies available under any applicable federal, state or local law.

If the property owner violates more than one provision of this By-Law or any condition of an approval issued hereunder, each provision, or condition, so violated shall constitute a separate offense.

25.11.5. 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 Board or 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 Board or Commission deems reasonably necessary.

In the event that an Order under this section is issued by an authorized agent of the Board or Commission, then the Board or Commission shall meet to ratify such Order (or decline to do so) within thirty (30) days from the issuance of the Order.

Article 12. Severability

25.12.1. The provisions of this By-Law are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this By-Law 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 By-Law.


25.13.1. Property owners shall have 30 days from the effective date of the By-Law to comply with its provisions provided good cause is shown for the failure to comply with the By-Law during that period.