



**Town of Framingham
Board of Health**

**RULES AND REGULATIONS
RELATIVE TO
ILLICIT DISCHARGES
INTO
MUNICIPAL STORM DRAIN
SYSTEM**

**These regulations are adopted in accordance
with the authority granted by the General Laws
of the Commonwealth of Massachusetts,
Chapter 111, Section 31**

**TOWN OF FRAMINGHAM
REGULATIONS FOR ILLICIT DISCHARGES TO MUNICIPAL
SEPARATE STORM SEWER SYSTEM**

SECTION I - GENERAL PROVISIONS

A. Authority

These Regulations are promulgated by the Town of Framingham Department of Public Works, Conservation Commission, Department of Building Inspection, and Board of Health ("the Applicable Authority") pursuant to the authority granted under Article V, Section 26 "Illicit Discharges to Municipal Separate Storm Sewer System" of the Town of Framingham General Bylaws ("the Bylaw"). These Regulations shall complement and apply the Bylaw to particular circumstances, and will have the force and effect of law upon their effective date.

The failure of these Regulations to address all aspects of the Bylaw, or a legal declaration of their invalidity by a court of law, shall not act to suspend or invalidate the effect of the Bylaw. Moreover, to the extent that any provision or section of these Regulations are deemed invalid by a court of competent jurisdiction, the remaining provisions of said Regulations shall remain in full force and effect to the extent permitted by law.

B. Purpose

The purpose of these Regulations is to define and clarify the process and standards applied under the Bylaw to Town of Framingham's municipal separate storm sewer system (MS4) by establishing definitions and uniform procedures by which the Applicable Authority may carry out its responsibilities under the Bylaw. Terms and definitions used herein are consistent with usage in the Bylaw, unless otherwise provided herein.

C. Jurisdiction

The Bylaw protects the MS4, which includes 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 Framingham.

In addition, the Bylaw protects watercourses and wetlands, which are natural or man-made channels through which water flows, including streams, rivers, brooks or underground streams, and all wetlands and waters as defined in the Framingham Wetlands Protection Bylaw, Article V, Section 18.2.

D. Definitions

Definitions are as set forth in the Bylaw except as follows.

Applicable Authority: The employees and/or agents of the Department of Public Works, Conservation Commission, Department of Building Inspection, and Board of Health designated to enforce these regulations. The Applicable Authority may designate employees or agents to enforce these Regulations.

SECTION II - PROCEDURES

A. Notification of Spills

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, the person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a discharge of prohibited materials, the reporting person shall notify the Applicable Authority no later than the next business day. The reporting person shall provide to the Applicable Authority written confirmation of all telephone, facsimile or in-person notifications within five business days thereafter.

As soon as a person who is not responsible for a facility or residence or operation has information about or suspects a release of materials at a facility or residence, the release should be reported to the Applicable Authority. The report should include the date, time, and location of the release; a description of the release; any information that may identify the responsible person(s); and the name and telephone of the person reporting the information for follow-up confirmation.

In addition, existing notification practices will continue to be used. The Fire Department responds to notifications of spills with follow-up notification to the appropriate federal agencies, state agencies, and to the Applicable Authority; and with coordination of cleanup as appropriate. The Police Department responds to notifications of spills using the M.G.L Chapter 270, Section 16 process. If the spill is hazardous, it is reported to the Fire Department. If it is non-hazardous, it is reported to the Applicable Authority.

B. Notification of Illicit Connections

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 an illicit connection resulting in or which may result in discharge of pollutants to the municipal drainage system, the person shall take all necessary steps to ensure removal of the connection. The reporting person shall notify the Applicable Authority no later than the next business day following detection of the connection. The reporting person shall provide to the Applicable Authority written confirmation of all telephone, facsimile or in-person notifications within five business days thereafter.

As soon as a person who is not responsible for a facility or residence or operation has information about or suspects an illicit connection resulting in or which may result in discharge of pollutants to the municipal drainage system, the release should be reported to the Applicable Authority. The report should include the date, time, and location of the release; a description of the connection; any information that may identify the responsible person(s); and the name and telephone of the person reporting the information for follow-up confirmation.

SECTION III - ENFORCEMENT

The Applicable Authority shall enforce these regulations and violation notices, and may pursue all civil and criminal remedies for such violations according to the rules and regulations established within his/her governing Department, Board, or Commission.

A. Response to Reports of Illicit Discharges

1. The Applicable Authority will review records and available resources/tools and conduct a site visit. If the responsible party does not grant permission for the Applicable Authority to observe the alleged violation from the premises, the Applicable Authority will make observations from a public location (street or town property) and/or from an adjacent property with that landowner's permission. The Applicable Authority will take photographs and detailed notes, and determine whether or not there is an illicit discharge violation and, if so, what type of violation it is.
2. These Regulations do not constitute an obligation that the Applicable Authority performs removal and disposal of the discharged material, even if no responsible party is determined.

B. Monitoring of Industrial or Construction Activity Discharges.

This Section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity as regulated under NPDES permits.

1. Access to Premises – The Applicable Authority shall be permitted to enter and inspect premises subject to regulation under this Bylaw as often as may be necessary to determine compliance with this Bylaw. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the Applicable Authority.
2. Facility operators shall allow the Applicable Authority ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal laws.
3. The Applicable Authority shall have the right to set up on any premises such devices as are necessary in the opinion of the Applicable Authority to conduct monitoring and/or sampling of the premises' storm water discharge.
4. The Applicable Authority shall have the right to require the discharger to install monitoring equipment as necessary. The discharger's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure they are accurate.
5. Any temporary or permanent obstruction to safe and easy access to the premises to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Applicable Authority and shall not be replaced. The costs of clearing such access shall be borne by the operator.
6. Delays in allowing the Applicable Authority access to premises is a violation of a written storm water discharge approval and of the Bylaw. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the Applicable Authority ready access to the premises for the purpose of conducting any activity authorized or required by this Bylaw.

7. If the Applicable Authority has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of the Bylaw, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with the Bylaw or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Applicable Authority may seek issuance of a search warrant from any court of competent jurisdiction.

C. Types of Violations

1. Violations

- a. Discharge of any prohibited material to the MS4.
 - b. Repeat violations.
 - c. Illicit connections to the MS4.
2. Violations Deemed a Public Nuisance - Any condition caused or permitted to exist in violation of any of the provisions of these regulations is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

D. Addressing Violations

1. Actions taken to resolve violations under the Bylaw may include, but are not limited to:
 - a. Notice of Violation signed and issued by the Applicable Authority.
 - b. As an alternative to initiating criminal proceedings, violations of this regulation may be enforced in a manner provided in M.G.L. c. 40, Sect. 21D, by the Applicable Authority. Any penalty imposed under the provisions of the Bylaw shall enure to the Town of Framingham for such uses as the Town may direct. Penalties do not include costs for abatement of violations.
 - c. Suspension of storm drainage system access due to illicit discharge in emergency situations. Under the Bylaw, the Applicable Authority may suspend municipal storm drain 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 the public health, safety, welfare or the environment. The Applicable Authority will notify a violator of the termination of its MS4 access as part of the Notice of Violation following the suspension of access.

A person commits a violation of the Bylaw if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior written approval of the Applicable Authority. The Town will not reinstate suspended services or MS4 access to the violator until the violator presents proof, satisfactory to the Applicable Authority, that the non-complying discharge has been eliminated and its cause determined and corrected.

- d. Requirements for Remediation of Illicit Actions, including:
 - (i) elimination of illicit connections or discharges to the MS4;
 - (ii) performance of monitoring, analyses, and reporting;
 - (iii) cessation of unlawful discharges, practices, or operations;
 - (iv) remediation of contamination in the illicit connection or discharge;
 - (v) payment to cover administrative and remediation costs; and
 - (vi) implementation of source control or treatment Best Management Practices (BMPs).

2. Defenses

- a. It is an affirmative defense to any enforcement action for a violation that the discharge was composed entirely of one or more of the exemptions stated in the Bylaw.
- b. No affirmative defense shall be available under subsection (a) if:
 - (i) The discharge or flow in question has been determined by the Applicable Authority to be a source of a pollutant or pollutants to the waters of the United States or to the MS4;
 - (ii) Written notice of such determination has been provided to the discharger; and
 - (iii) The discharge has continued after the expiration of the time given in the notice to cease the discharge.

3. Entry to Perform Duties. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Applicable Authority may enter upon privately owned property for the purpose of performing their duties under these regulations and may make or cause to be made such examinations, surveys or sampling as the Applicable Authority deems reasonably necessary.

E. Procedures for Abatement of Violations

The Applicable Authority will take steps to bring Violations into compliance according to the rules and regulations established within his/her governing Department, Board, or Commission.

Any Person determined by the Applicable Authority to be responsible for an illicit discharge may be held responsible for cleaning the impacted portions of the storm water system according to Town standards and requirements or paying the cost for such cleaning.

F. Factors in Determining the Issuance of Penalties

The Applicable Authority shall consider the following factors in imposing penalties.

- 1. Whether the violation was willful or negligent;

2. Actual and potential harm to the public interests (as described in the Bylaw and regulations), safety, or the environment resulting from the violation;
3. Actual and potential cost to the Town of Framingham resulting from the violation, including its enforcement costs and attorneys fees;
4. Actual and potential damages suffered by the Town of Framingham or any person(s), resulting from the violation, including its enforcement costs and attorneys fees;
5. Whether the violator took steps to prevent the violation(s);
6. Whether the violator promptly took steps to come into compliance after the occurrence of the violation(s);
7. Whether the violator took steps to remedy and mitigate whatever harm occurred as a result of the violation(s); and
8. Any history of noncompliance by the violator.

G. Approvals

These Regulations were approved by the applicable governing bodies (Conservation Commission, Board of Health, Building and Wire, and Pubic Works).

