

Town of Upton
Chapter 242 Stormwater Management
5/2/24 (Approved Town Meeting)

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ARTICLE I – GENERAL PROVISIONS

SECTION 1. Purpose

A. The purpose of this bylaw is to protect the health, safety, general welfare, and environment by regulating illicit connections and discharges to the storm drain system and controlling the adverse effects of construction site stormwater runoff and post-construction runoff. Stormwater runoff is potentially a major cause of:

- 1) Impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, groundwater and drinking water supplies;
- 2) Contamination of drinking water supplies;
- 3) Contamination of downstream coastal areas;
- 4) Alteration or destruction of aquatic and wildlife habitat;
- 5) Overloading or clogging of municipal stormwater management systems; and
- 6) Flooding.

B. The objectives of this bylaw are:

- 1) Protect water resources;
- 2) Comply with state and federal statutes and regulations relating to stormwater discharges including total maximum daily load requirements;
- 3) To prevent pollutants from entering the Town's municipal separate storm sewer system (MS4) and reduce or eliminate pollutants entering the Town's MS4 from existing uses;
- 4) To prohibit illicit connections and unauthorized discharges to the MS4 and require their removal;
- 5) To establish minimum construction and post construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
- 6) To 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; and
- 7) To ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

SECTION 2. Definitions

APPLICANT: Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government to the extent permitted by law requesting a Land Disturbance Permit for proposed land-disturbance activity.

CLEAN WATER ACT: The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

DEVELOPMENT: The modification of land to accommodate a new use or expansion of use, usually involving construction.

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.

DISTURBANCE: Action to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavation, cutting, and filling), soil compaction, and movement and stockpiling of top soils.

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

EROSION AND SEDIMENTATION CONTROL PLAN: A document containing a narrative, drawings and details developed by a qualified professional engineer (PE) or a Certified Professional in Erosion and Sedimentation Control (CPESC), which includes best management practices, or equivalent measures designed to control surface runoff and erosion and sedimentation during pre-construction and construction related land disturbance activities.

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 the Stormwater Management Bylaw.

ILLICIT DISCHARGE : Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Article II §D(2). The term does not include a discharge in compliance with an NPDES stormwater discharge permit or resulting from fire-fighting activities exempted pursuant to Article II §D(1) of the Stormwater Management Bylaw.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water from infiltrating the underlying soil. "Impervious surface" includes without limitation roads, driveways, parking areas and other areas created using non porous material; buildings, sidewalks, rooftops, structures, artificial turf and compacted gravel or soil.

IMPOUNDMENT: A stormwater pond created by either constructing an embankment or excavating a pit which retains a temporary or permanent pool of water.

INFEASIBLE: Not technologically possible, or not economically practicable and achievable in light of best industry practices.

INFILTRATION: The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a project site.

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

LAND USE OF HIGHER POTENTIAL POLLUTANT LOAD (LUHPPL): Land uses or activities with higher potential pollutant loadings, as defined in the Massachusetts Stormwater Management Standards such as auto salvage yards, auto fueling facilities, fleet storage yards, commercial parking lots with high intensity use, road salt storage areas, commercial nurseries and landscaping, outdoor storage and loading areas of hazardous substances or marinas.

MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS: The Standards 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. The Standards address stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity and quality of runoff from a site.

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 Upton.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

STORMWATER DISCHARGE PERMIT: A permit issued by United States Environmental Protection Agency or jointly with the Commonwealth of Massachusetts that authorizes the discharge of pollutants to waters of the United States.

NEW DEVELOPMENT: any construction activities or land alteration resulting in disturbance on an area that has not previously been developed to include impervious cover.

NONSTORMWATER DISCHARGE: Discharge to the municipal storm drain system not composed entirely of stormwater.

OFF-SITE COMPLIANCE: an approach whereby pollutant removal practices are implemented at redevelopment or retrofit sites at another location in the same HUC12 watershed, as the original project, as approved by the Stormwater Authority.

OPERATION AND MAINTENANCE PLAN: A plan setting up 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.

OUTFALL: The point at which stormwater flows out from a point source into waters of the Commonwealth.

OWNER: A person with a legal or equitable interest in property.

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.

POINT SOURCE: Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

PRE-CONSTRUCTION: All activity in preparation for construction.

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, water works or waters of the commonwealth. Pollutants shall include but are not limited to:

- a) Paints, varnishes, and solvents;
- b) Oil and other automotive fluids;
- c) Nonhazardous liquid and solid wastes and yard wastes;
- d) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnance, accumulations and floatables;
- e) Pesticides, herbicides, and fertilizers;
- f) Hazardous materials and wastes; sewage, fecal coliform and pathogens;
- g) Dissolved and particulate metals;
- h) Animal wastes;
- i) Rock; sand; salt; soils;
- j) Construction wastes and residues; and
- k) Noxious or offensive matter of any kind.

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

REDEVELOPMENT: Any construction, land alteration or improvement of impervious surfaces resulting in earth disturbance that does not meet the definition of new development.

RUNOFF: Rainfall, snowmelt, or irrigation water flowing over the ground surface.

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.

SITE: Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

SLOPE: The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

SOIL: Any earth, sand, rock, gravel, or similar material.

STABILIZATION: The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or retard erosion.

STORMWATER: Runoff from precipitation or snow melt and surface water runoff and drainage.

STORMWATER AUTHORITY: Town of Upton Conservation Commission or its authorized agent(s).

STORMWATER MANAGEMENT PLAN (SWMP): A plan required as part of the application for a Land Disturbance Permit.

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 MGL c. 21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

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, by-product or waste product.

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, vernal pools, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

WETLANDS: As specifically defined in the Massachusetts Wetlands Protection Act but generally include tidal and non-tidal areas characterized by saturated or nearly saturated soils most of the year that are located between terrestrial (land-based) and aquatic (water) environments, including freshwater marshes around ponds and channels (rivers and streams), brackish and salt marshes; common names include marshes, swamps & bogs.

SECTION 3. Authority

This bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the home rule statutes, and the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

SECTION 4. Responsibility for administration

- A. The Stormwater Authority shall administer, implement and enforce this bylaw. Any powers granted to or duties imposed upon the Stormwater Authority may be delegated in writing by Stormwater Authority to any employees or agents of the Town.

SECTION 5. Waivers

- A. Following a public hearing in accordance with the Stormwater Regulations on a waiver request, the Stormwater Authority may waive strict compliance with any requirement of this bylaw or the rules and regulations promulgated hereunder, where:
 - 1) such action is allowed by federal, state and local statutes and/or regulations; and
 - 2) is in the public interest; and

- 3) is not inconsistent with the purpose and intent of this bylaw.
- B. Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the bylaw does not further the purposes or objective of this bylaw.
- C. If in the Stormwater Authority's opinion, additional time or information is required for review of a waiver request, the Stormwater Authority may continue a hearing to a certain date announced at the meeting. In the event the applicant objects to a continuance, or fails to provide requested information, the waiver request shall be denied.

SECTION 6. Compliance with EPAs General Permit for MS4s in Massachusetts

This bylaw is intended to further the objectives of and to act in concert with any existing federal, state or local laws concerning storm water discharges in the Town of Upton, including but not limited to the requirements of the United States Environmental Protection Agency's most recent General Permit for MS4s, and nothing in this bylaw is intended to limit or restrict the authority of any board, commission or officer of the Town to act in accordance with any federal, state and local laws within their jurisdiction, and in the event of a conflict, the more stringent requirements will control.

SECTION 7. Regulations

The Stormwater Authority may adopt, and periodically amend, regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of this Stormwater Bylaw by majority vote after conducting a public hearing to receive comments. Such hearing shall be advertised in a newspaper of general local circulation, once in each of two successive weeks, the first publication being at least fourteen (14) days prior to the hearing date. Failure of the Stormwater Authority to issue such rules, or regulations, or a legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of this Bylaw.

Such regulations, rules or guidance may include without limitation, provisions for the establishment of one or more categories of administrative review approvals for specific types or sizes of projects. Administrative review applications that meet all the standard requirements may be issued by one or more agents designated in writing by the Stormwater Authority, without the requirement for a public hearing as detailed in Article III of this bylaw. Administrative review approval shall comply with all other provisions of this Bylaw.

SECTION 8. Severability

The provisions of this bylaw are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this bylaw 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 bylaw.

ARTICLE II – DISCHARGES TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)

SECTION 1. Applicability

Article II of this bylaw shall apply to all discharges of water entering the municipally owned storm drainage system or going, directly or indirectly, into a watercourse, or into the waters of the Commonwealth, that is generated on any developed or undeveloped lands except as explicitly exempted in this bylaw or where the Stormwater Authority has issued a waiver in accordance with Article I Section 5.

SECTION 2. Prohibited Activities; Exemptions.

- A. Illicit discharges. No person shall dump, discharge, spill, cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal separate storm sewer system (MS4), onto an impervious surface directly connected to the MS4, or, directly or indirectly, 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 connection.
- C. 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 consent from the Stormwater Authority.
- D. Exemptions.
 - 1) Discharge or flow resulting from fire-fighting activities.
 - 2) 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 or, directly or indirectly, into a watercourse, or into the waters of the Commonwealth:
 - (a) Waterline flushing;
 - (b) Flow from potable water sources, with the exception of landscape irrigation and lawn watering;
 - (c) Springs;
 - (d) Natural flow from riparian habitats and wetlands;
 - (e) Diverted stream flow;
 - (f) Rising groundwater;
 - (g) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater (e.g. sump pump), provided that where a pump intake exists inside a structure, the operator seeks a permit from the Stormwater Authority prior to discharge and thereafter discharges in accordance

with the requirements of the permit and applicable laws and regulations to be issued by the Stormwater Authority;

- (h) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air-conditioning condensation;
- (i) 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;
- (j) Discharge from street sweeping;
- (k) Dye testing, provided verbal notification is given to the Stormwater Authority prior to the time of the test;
- (l) Non-stormwater discharge 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; and
- (m) Discharge for which advanced written approval has been received from the Stormwater Authority as necessary to protect public health, safety, welfare or the environment.

SECTION 3. Additional Prohibited Pollutants

Pet Waste: Dog feces is a major component of stormwater pollution; it shall be the duty of each person who owns, possesses, or controls a dog to remove and properly dispose of any feces left by the dog on any public or private property neither owned nor occupied by said person. It is prohibited to dispose of dog feces in any public or private storm drain, catch basin, wetland, or water body or on any paved or impervious surface. Persons walking dogs must carry with them a device designed to dispose of dog feces including, but not limited to, a plastic bag or "pooper scooper." For specific requirements and penalties for violations see General Bylaw Article 5 Section 3 Animal Control Regulations.

SECTION 4. Emergency Suspension of Storm Drainage System Access

The Stormwater 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 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 Stormwater Authority may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

SECTION 5. 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 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 Municipal Fire and Police Departments. In the event of a release of nonhazardous material, the reporting person shall notify the authorized enforcement agency no later than the next business day. The reporting person shall provide to the Stormwater Authority 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.

SECTION 6. Enforcement

The Stormwater Authority or its authorized agent shall enforce this bylaw, and any associated regulations, orders, violation notices, and enforcement orders and may pursue all civil and criminal remedies for such violations. The Town may enforce this Bylaw or enjoin violations thereof through any lawful process, and the election of one remedy by the Town shall not preclude enforcement through any other lawful means.

- A. Civil relief. If a person violates the provisions of this bylaw, or any associated regulations, permit, notice, or order issued thereunder, the Stormwater Authority 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.
- B. Orders.
 - 1) The Stormwater Authority or its authorized agent may issue a written order to enforce the provisions of this bylaw or any 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) That measures shall be taken to minimize the discharge of pollutants until such time as the illicit connection shall be eliminated; and
 - (e) Remediation of contamination in connection therewith.
 - 2) Said orders shall specify a deadline by which the required action shall be completed and the Stormwater Authority or its designee may further advise that, should the violator or property owner fail to perform the required action or remediation within the specified deadline, the Town may, at its option, undertake such work, at the owner and/or violator's sole costs and expense, that it deems necessary to protect public health, safety and welfare.
 - 3) Within 60 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

Stormwater Authority within 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 30 days following a decision of the Stormwater Authority 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 c. 59, § 57 after the 31st day at which the costs first become due.

C. **Criminal Penalty.** Any person who violates any provision of this bylaw, regulation, order or permit issued thereunder may be penalized by indictment or on complaint brought in a court of competent jurisdiction. Except as may be otherwise provided by law and as the court may see fit to impose, the maximum penalty for each violation or offense shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

D. **Non-Criminal Disposition.** Any person who violates any provision of this bylaw, regulation, order or permit issued thereunder may be penalized by non-criminal disposition as set forth in MGL c. 40, § 21D. Each day or part thereof that such violation occurs or continues shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

E. **Entry to perform duties under this bylaw.** To the extent permitted by law, or if authorized by the owner or other party in control of the property, the Stormwater Authority, its 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.

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

SECTION 7. Transitional Provisions

Residential property owners with illicit discharges, connections and/or obstructions to the MS4 shall have a period of 60 days from the effective date of this bylaw to remove such discharges, connections and/or obstructions, unless immediate removal is required for the protection of public health, safety, welfare or the environment. The Stormwater Authority may extend the time for compliance by regulation or by waiver in accordance with Section 6 of this Bylaw.

ARTICLE III – STORMWATER MANAGEMENT AND LAND DISTURBANCE

SECTION 1. Applicability

A. Article III of this Bylaw shall apply to all activities that result in disturbance of 1,500 square feet of land or more that drains to the municipal separate storm sewer system (MS4). Except as authorized by the Stormwater Authority or as otherwise provided in this Bylaw, no person shall perform any activity that results in disturbance of 1,500 square feet of land or more. There are two levels of reviews based on the amount of proposed land to be disturbed as part of a single project and they are as follows:

- 1) Administrative Land Disturbance Review is required for projects disturbing between 1,500 square feet and 20,000 square feet of land.
- 2) A Land Disturbance Permit is required for disturbance of greater than (20,000 square feet of land or for a proposed use that is listed as a land use of higher potential pollutant loads as defined in the Massachusetts Stormwater Management Standards.

B. Exemptions:

- 1) Maintenance of existing landscaping, gardens or lawn areas associated with a single-family dwelling conducted in such a way as not to cause a nuisance;
- 2) Construction of fencing that will not substantially alter existing terrain or drainage patterns;
- 3) Construction of utilities other than drainage (gas, water, sewer, electric, telephone, etc.) which will not alter terrain or drainage patterns or result in discharge of sediment to the MS4;
- 4) Normal maintenance and improvement of land in agricultural or aquacultural use; and
- 5) Disturbance or redevelopment of land that is subject to jurisdiction under the Wetlands Protection Act that demonstrate compliance with the Massachusetts Stormwater Management Standards and the Town of Upton Stormwater Management Regulations as reflected in a valid Order of Conditions issued by the Conservation Commission.
- 6) Disturbance of land or redevelopment that are subject to jurisdiction under a special permit or approval of a subdivision plan through the Town Zoning Bylaw and demonstrate compliance with the Massachusetts Stormwater Management Standards and Stormwater Handbook and the Town of Upton Stormwater Management Regulations as reflected in a valid decision issued by the Planning Board.

The Stormwater Authority is authorized to enact regulations to effectuate the purposes of this bylaw, including but not limited to regulations outlining the application requirements for the different levels of review specified in Section A hereof. Any person that fails to follow the requirements of a Land Disturbance Permit and the related Erosion and Sedimentation Control Plan, and Operations and Maintenance Plan issued under the Stormwater Management Regulations shall be in violation of the Town of Upton Bylaws.

SECTION 2. Approval and/or Permit

An applicant seeking an approval and/or permit shall file an appropriate application with the Stormwater Authority in a form and containing information as specified in this bylaw and in regulations adopted by the Stormwater Authority. Approval or permit must be obtained prior to the commencement of land disturbing or redevelopment activity based on thresholds described in the Stormwater Management Regulations.

SECTION 3. Entry

Entry to perform duties under this bylaw. To the extent permitted by law, or if authorized by the owner or other party in control of the property, the Stormwater Authority, its 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.

SECTION 4. Inspection and Site Supervision

The Stormwater Authority or its designated agent shall make inspections of the work subject to this Bylaw to determine compliance with the Bylaw and regulations and orders of the Stormwater Authority.

SECTION 5. Surety

The Stormwater Authority may require the applicant to post before the start of land disturbance or construction activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by the Stormwater Authority and be in an amount deemed sufficient by the Stormwater Authority to ensure that the work will be completed in accordance with the permit. If the project is phased, the Stormwater Authority may release part of the bond as each phase is completed in compliance with the permit. If the project is phased, the Stormwater Authority may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the Stormwater Authority has received the final report as required by Section 6 and issued a certificate of completion.

SECTION 6. Final Reports

Administrative Land Disturbance Review: Upon completion of work, the applicant shall submit a written notice to the Stormwater Authority with photographic evidence that the work has been completed in accordance with the approved plan.

Land Disturbance Permit: No later than two (2) years upon completion of work, the applicant shall submit a Final Report, including a topographical as-built plan stamped by a MA Professional Land Surveyor (PLS) and a MA Registered Professional Engineer (P.E.) as applicable, certifying that the site has been developed in substantial compliance with the approved plan including all permanent erosion control devices, stormwater management facilities and, and any approved changes and modifications. Any discrepancies from the approved plan should be noted in the cover letter. The as-built drawings must depict all on site

controls, both structural and non-structural, designed to manage the stormwater associated with the completed site (post construction stormwater management). The final report shall also include documentation to verify the stormwater management system has been properly operated and maintained in accordance with the approved O&M Plan.

SECTION 7. Enforcement

The Stormwater Authority or its authorized agent shall enforce this bylaw, and any associated regulations, orders, violation notices, and enforcement orders and may pursue all civil and criminal remedies for such violations. The Town may enforce this Bylaw or enjoin violations thereof through any lawful process, and the election of one remedy by the Town shall not preclude enforcement through any other lawful means.

- A. Civil relief. If a person violates the provisions of this bylaw, or any associated regulations, permit, notice, or order issued thereunder, the Stormwater Authority 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.
- B. Orders. The Stormwater Authority or its authorized agent may issue a written order to enforce the provisions of this bylaw or any regulations thereunder, which may include:
 - 1) A requirement to cease and desist from the land-disturbing activity until there is compliance with the bylaw and provisions of the Land Disturbance Permit
 - 2) Maintenance, installation or performance of additional erosion and sediment control measures
 - 3) Monitoring, analyses, and reporting
 - 4) Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity.
- C. Said orders shall specify a deadline by which the required action shall be completed and the Stormwater Authority or its designee may further advise that, should the violator or property owner fail to perform the required action or remediation within the specified deadline, the Town may, at its option, undertake such work, at the owner and/or violator's sole cost and expense, that it deems necessary to protect public health, safety and welfare.
- C. 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 Town, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Stormwater Authority 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 Stormwater Authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the cost shall become a special assessment against the property owner of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Chapter 59, s 57 after the thirtieth (30) day at which the costs first become due.

- D. **Criminal Penalty.** Any person who violates any provision of this bylaw, regulation, permit, approval or order issued there under, may be penalized by indictment or on complaint brought in a court of competent jurisdiction. Except as may be otherwise provided by law and as the court may see fit to impose, the maximum penalty for each violation or offense shall be three hundred dollars (\$300). Each day such violation occurs or continues shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
- E. **Non-Criminal Disposition.** Any person who violates any provision of this bylaw, regulation, order or permit issued thereunder may be penalized by non-criminal disposition as an alternative to criminal prosecution or civil action, the Town of Upton may elect to utilize the non-criminal disposition procedure set forth in MGL c. 40, § 21D. Each day or part thereof that such violation occurs or continues shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
- F. **Appeals.** The decisions or orders of the Stormwater Authority shall be final. Further relief shall be to a court of competent jurisdiction.