

ARTICLE XX Surface Water Supply Protection By-law

Section 1. Purpose

The purpose of this By-law is to protect the drinking water supply in the Town of Lincoln by restricting and controlling activities which are likely to have a significant adverse impact, immediate or cumulative, upon the water quality of surface waters used as sources of drinking water supply.

Section 2. Definitions

Commission: The Conservation Commission of the Town of Lincoln.

Flint's Pond: The area containing the surface water drinking water supply for the Town of Lincoln (the boundaries of which are shown on Assessor's Map/Parcel 27-8).

Department: the Department of Environmental Protection of the Commonwealth of Massachusetts.

Person: Any individual, group of individuals, association, partnership, corporation, company, business organization, trust or estate, any federal, state, regional, county or municipal government body administrative agency or public or quasi-public corporation or body, including the Town of Lincoln, and any other legal entity.

Significant Adverse Impact: That which causes or potentially causes a deterioration in the quality of the drinking water supply.

Toxic or Hazardous Material: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Lincoln. Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under MGL Chapter 21C and 21E and 310 CMR 30.00 and also include such products as solvents and thinners in quantities greater than normal household use.

Tributary: any body of running, or intermittently running, water which moves in a definite channel, naturally or artificially created, in the ground due to a hydraulic gradient, and which ultimately flows into a Class A surface water source, as defined in 314 CMR 4.05(3)(a).

Zone A: (a) the land area between the surface water sources and the upper boundary of the bank; (b) the land area within a 400 foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a); and (c) the land area within a 200 foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body.

Section 3. Jurisdiction; Presumption, Regulations

A. Except as allowed in this By-Law, no person shall undertake any activity within the Zone A of Flint's Pond that causes a significant adverse impact on the water quality of this surface water body.

B. The following regulations applied to the Zone A of Flint's Pond or to a smaller area if specified in the regulation:

1. No stabling, hitching, standing, feeding or grazing of livestock or other domestic animals shall be located, constructed, or maintained within 100 feet of the bank of Flint's Pond or of any tributary to Flint's Pond.
 2. No burial shall be made, except by permission in writing by the Board of Water Commissioners or like body having jurisdiction over the source of supply, in any cemetery or other place within 100 feet of the high water mark of Flint's or of any tributary to Flint's Pond. No lands not under the control of cemetery authorities and used for cemetery purposes, from which lands the natural drainage flows into said source of water supply or tributary thereto, shall be taken or used for cemetery purposes until a plan and sufficient description of the lands is presented to the Department and until such taking or use is expressly approved in writing by the Department.
 3. No person shall swim, wade or bathe in Flint's Pond, and no person shall, unless permitted by written permit by the Board of Water Commissioners or like body having jurisdiction over these surface water sources, fish in; enter or go in any boat, seaplane, or other vehicle; enter upon the ice for any purpose, including the cutting or taking of ice; or cause or allow any animal to go into, or upon, Flint's Pond or any tributary to Flint's Pond.
 4. No person shall apply herbicides to Flint's Pond or its tributaries without a permit issued by the Department pursuant to M.G.L. c. 111, § 5E. This requirement does not apply to the application of algaecides containing copper by the public water system. However, the public water system shall notify the Department in writing prior to the application of such algaecides.
 5. No person shall throw any dirt, rubbish or foreign materials into the waters of Flint's Pond;
 6. No person shall engage in active or passive recreational activities on public lands within two-hundred (200) feet of Flint's Pond unless these activities are allowed by a Recreational Management Plan adopted by the Conservation Commission for public lands within the vicinity of Flint's Pond. The Plan may allow recreational activities which are deemed not to adversely impact water quality;
- C. The following new or expanded land uses introduced or expanded after August 1, 2012 are hereby found to have a significant adverse impact on water quality and are accordingly prohibited in the Zone A of Flint's Pond:
1. all underground storage tanks,
 2. above-ground storage of liquid hazardous material as defined in M.G.L. c. 21E, or liquid propane or liquid petroleum products, except as follows:
 - (a) The storage is incidental to:
 1. normal household use, outdoor maintenance, or the heating of a structure;
 2. use of emergency generators;
 3. a response action conducted or performed in accordance with M.G.L. c. 21E and 310 CMR 40.000 and which is exempt from a ground water discharge permit pursuant to 314 CMR 5.05(14); or
 - (b) The storage is either in container(s) or above-ground tank(s) within a building, or outdoors in covered container(s) or above-ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage

capacity, whichever is greater. However, these storage requirements do not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in accordance with applicable state and local requirements;

3. treatment or disposal works subject to 314 CMR 3.00 or 5.00, except the following:
 - (a) the replacement or repair of an existing treatment or disposal works that will not result in a design capacity greater than the design capacity of the existing treatment or disposal works;
 - (b) treatment or disposal works for sanitary sewage if necessary to treat existing sanitary sewage discharges in non-compliance with 310 CMR 15.000: The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage, provided the facility owner demonstrates to the Department's satisfaction that there are no feasible siting locations outside of the Zone A. Any such facility shall be permitted in accordance with 314 CMR 5.00 and shall be required to disinfect the effluent. The Department may also require the facility to provide a higher level of treatment prior to discharge;
 - (c) treatment works approved by the Department designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or 5.05(13).
 - (d) discharge by public water system of waters incidental to water treatment processes.
4. facilities that, through their acts or processes, generate, treat, store or dispose of hazardous waste that are subject to M.G.L. c. 21C and 310 CMR 30.000, except for the following:
 - (a) very small quantity generators, as defined by 310 CMR 30.000;
 - (b) treatment works approved by the Department designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters;
5. sand and gravel excavation operations;
6. uncovered or uncontained storage of fertilizers;
7. uncovered or uncontained storage of road or parking lot de-icing and sanding materials;
8. storage or disposal of snow or ice, removed from highways and streets outside the Zone A, that contains deicing chemicals;
9. uncovered or uncontained storage of manure;
10. junk and salvage operations;
11. commercial motor vehicle repair operations;
12. cemeteries (human and animal) and mausoleums;
13. solid waste combustion facilities or handling facilities as defined at 310 CMR 16.00;
14. land uses that result in the rendering impervious of more than 15%, or more than 20% with artificial recharge, or 2500 square feet of any lot, whichever is greater; and
15. commercial outdoor washing of vehicles, commercial car washes.

Section 4. Regulations

After public notice and public hearing, the Commission may issue rules and regulations to effectuate the purposes of this bylaw, effective when voted and filed with the Town Clerk. Failure by the Commission to issue such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw. At a minimum these regulations may define key terms contained in this bylaw, as well as additional terms not inconsistent with this bylaw.

Section 5. Enforcement

- A. The Commission, its agents, officers, and employees shall have authority to enter upon public or private land for the purpose of performing their duties under this By-law and may make or cause to be made examinations, surveys or sampling as necessary, subject to the limitations imposed by applicable Federal or State law.
- B. The Commission shall have authority to enforce this By-law and by violation notices, administrative orders and civil and criminal court actions.
- C. Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.
- D. Any person who violates any provision of this By-law shall be punished by a fine of up to one-hundred dollars (\$100.00). Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the By-law or permit violated shall constitute a separate offense.

Section 6. Severability

The invalidity of any Section or provision or phrase of this By-law, or disapproval of any Section or provision or phrase of this By-law by the Attorney General, shall not invalidate any other Section or provision or phrase thereof, nor shall it invalidate any permit or decision which previously had been issued.

Appendix 1. Map of Flint's Pond Area