

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 and surrounding communities, and that of the city of Cambridge, 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. Jurisdiction; Presumption

- A. Except as permitted by the *Commission* (see the **Definitions** section) pursuant to this By-law, or as otherwise allowed in this By-law, no person shall undertake any activity within the *Flint's Pond protected area* (see the **Definitions** section) or within 400 feet of the portions of the Cambridge Reservoir which exist in Lincoln, that causes a significant adverse impact (see the **Definitions** section), on the water quality of either of those two surface water bodies.
- B. The following activities are hereby found to have a significant adverse impact on water quality and are accordingly prohibited in the areas specified in section A above, or in a more limited area where specified:
1. Fishing, swimming, boating (except as authorized by the appropriate Water Department for official business) or bathing in or otherwise being on or within the waters of Flint's Pond or the Cambridge Reservoir;
 2. Allowing any domestic animal to swim or enter the waters of Flint's Pond or the Cambridge Reservoir;
 3. Throwing any dirt, rubbish or foreign materials into the waters of Flint's Pond or the Cambridge Reservoir;
 4. Active or passive recreational activities on public lands within two-hundred (200) feet of Flint's Pond unless 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;
 5. Any activity inconsistent with the Massachusetts Department of Environmental Protection (MaDEP) Title 5 (310 CMR 15.000) requirements regulating construction of new subsurface sewage disposal systems (septic systems) in the restricted area. This shall not apply to repairs or replacement of existing systems as long as all relevant Board of Health and Title 5 requirements are satisfied;
 6. Pasturing, stabling, hitching, standing, feeding, or grazing of livestock or other domestic animals within 100 feet of the banks of Flint's Pond or the Cambridge Reservoir;
 7. Any burial (human or animal) in any cemetery or other place within the restricted area, except by permission in writing by the Conservation Commission;
 8. All underground storage tanks;
 9. Sand and gravel excavation;
 10. Storage of fertilizers, unless such storage is within a structure approved by the Conservation Commission that is designed to prevent the generation and escape of contaminated runoff or leachate;

11. Storage of sodium chloride, chemically treated abrasives, other chemicals or sanding materials used for the removal of ice and snow on roads, unless such storage is within a structure approved by the Conservation Commission that is designed to prevent the generation and escape of contaminated runoff or leachate;
12. Stockpiling or disposal of snow or ice, removed from highways and streets outside the restricted area, that contains deicing chemicals;
13. Storage of animal manures within 100 feet of the banks of Flint's Pond or the Cambridge Reservoir
14. Automotive graveyards, junk and salvage operations;
15. Motor vehicle repair operations;
16. Solid waste combustion facilities or handling facilities as defined at 310 CMR 16.00;
17. Land uses that render impervious any lot or parcel more than 15%, or 2500 square feet of any lot, whichever is greater, unless a system for artificial recharge, that will not degrade groundwater quality is provided. However, no more than 20% of any lot or parcel shall be rendered impervious;
18. Commercial outdoor washing of vehicles, commercial car washes;
19. Application of any herbicides to any surface water body in the restricted area;
20. 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:
 - i. normal household use, outdoor maintenance, or the heating of a structure;
 - ii. use of emergency generators;
 - iii. 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);
 - 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;
21. Treatment or disposal works subject to 314 CMR 3.00 (Surface Water Discharge Permit Program) or 314 CMR 5.00 (Ground Water Discharge Permit Program), 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 MaDEP'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 MaDEP may also require the facility to provide a higher level of treatment prior to discharge;

- c. treatment works approved by the MaDEP 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;
22. Landfills or open dumps;
 23. Landfills receiving only wastewater and/or septage residuals, including those approved by the MaDEP pursuant to M.G.L.c. 21 s.26 through s.53; M.G.L.c. 111 s.17; M.G.L. c.83, s.6 and s.7, and regulations promulgated thereunder;
 24. Discharge to the ground of non-sanitary wastewater including industrial and commercial process waste water, except:
 - a. the replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
 - b. treatment works approved by the MaDEP designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13);and
 - c. publicly owned treatment works;
 25. Any floor drainage systems in existing facilities, in industrial or commercial hazardous material and/or hazardous waste process areas or storage areas, which discharge to the ground without a DEP permit or authorization;
 26. Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
 27. The removal of soil, loam, sand, gravel or any other mineral substances within four feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), unless the substances removed are re-deposited within 45 days of removal on site to achieve a final grading greater than four feet above the historical high water mark, and except for excavations for the construction of building foundations or the installation of utility works;
- C. It shall be presumed that the following activities, within the Flint's Pond protected area or within 400 feet of the portions of the Cambridge Reservoir which exist in Lincoln, will have a significant adverse impact on the water quality of Flint's Pond and the Cambridge Reservoir as protected under this By-law and shall accordingly be subject to the permitting requirements set forth herein:
1. Pasturing, stabling, hitching, standing, feeding, or grazing of livestock or other domestic animals (Note: the area within 100 feet of these water bodies is more strongly protected in section B #6 above);
 2. Storage of animal manure. Manure storage can be permitted only if done in such a way as to prevent the generation and escape of contaminated runoff or leachate (Note: the area within 100 feet of these water bodies is more strongly protected in section B #13 above);

3. The use of any fill material. The fill material to be used must be approved as “clean fill” by the Commission (see the **Definitions** section);
4. Any surface or subsurface discharge, including but not limited to stormwater and hazardous materials, but excluding normal downgradient rain or storm-related surface runoff from residential properties and public roadway discharges which utilize best management practices (BMPs);
5. The application of outdoor pesticides, including herbicides, insecticides, fungicides and rodenticides;
6. The application of outdoor chemical or organic fertilizers, animal manure, or chemically treated bark mulch;
7. Earth moving/clearing activities which cause a single disturbance or cumulative disturbance over 3 years of more than five-thousand (5000) square feet;
8. The removal of earth, including soil, loam, sand, gravel, clay, quarried rock or any other earth products except where such removal is entirely incidental to or in connection with the construction at the site or removal of an approved structure or street;
9. Those activities that generate, treat, store or dispose of toxic or hazardous materials, or liquid propane products in quantities greater than those associated with very small quantity generators, as defined by 310 CMR 30.000;

Section 3. Exceptions

- A. The permit and application required by this By-law shall not apply to emergency projects necessary for the protection of public health or safety; provided the activity is to be performed by or has been ordered performed by an agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to the commencement of the activity or within twenty-four (24) hours after commencement, provided that the Commission or its agent certifies that the activity is an emergency and provided that within twenty-one (21) days of commencement of an emergency project, a permit application shall be filed with the Commission for review as provided by this By-law. Upon failure to meet these and other requirements of the Commission, the Commission, after notice and a public meeting, revoke or modify an emergency project approval and order immediate restoration and mitigation measures to protect the water quality of Flint’s Pond or the Cambridge Reservoir.
- B. No permit shall be required under this By-law for any activity other than those listed in **Section 2C** above.
- C. No permit shall be required for any activity undertaken by the Lincoln Water Commission, acting within its lawful authority to protect the water supply of Flint’s Pond or the Cambridge Reservoir.

Section 4. Application for Permit

A written application shall be filed by any person who proposes to conduct activities (as defined in **Section 2**) that are presumed to cause a significant adverse impact on the water quality of Flint’s Pond and the Cambridge Reservoir. The application shall include such information and plans as are deemed necessary by the Conservation Commission to describe:

1. the proposed activities; and

2. their potential effects on the water quality as protected under this By-law, and any feasible alternatives to such activities. No such activities shall commence without receiving and complying with a written permit issued by the Conservation Commission.

Section 5. Notice and Meetings

A. The Conservation Commission shall conduct a public meeting within twenty-one (21) days from receipt of an application to conduct any activity (as defined in **Section 2C**) which is presumed to cause a significant adverse impact on the water quality of Flint's Pond or the Cambridge Reservoir. The Commission shall give to each applicant at least seven (7) days prior written notice, by certified mail or hand delivery, of the meeting date at which such application will be considered. In addition, the notice posted by the Commission pursuant to the requirements of the Open Meeting Law (MGL, Chapter 39, §23A-C) shall include a reference to such application as an agenda item for such meeting.

B. The Commission shall have authority to continue its consideration of the application to the date of a subsequent public meeting, for reasons stated at the meeting, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant which are deemed necessary by the Commission in its discretion, or comments and recommendations of boards or officials listed in **Section 6**.

Section 6. Coordination with Other Boards

Any person filing a permit application with the Conservation Commission shall provide a copy thereof, together with any accompanying plans, within five (5) days after filing with the Conservation Commission, to the Water Commission, Board of Health, and to such other boards and officials as the Commission may request. Town boards and officials shall be entitled to file written comments and recommendations with the Conservation Commission at or before the public meeting. The Commission shall consider any such comments in their final decision. The applicant shall have the right to receive copies of any such comments and recommendations at or before the public meeting.

Section 7. Permits, Conditions and Appeals

- A. The Commission, within twenty-one (21) days of the last meeting at which the application is considered, shall issue or deny a permit for the activities requested. If the Commission determines that the activities which are the subject of the application are likely to have a significant adverse impact, immediate or cumulative, upon the water quality of Flint's Pond or the Cambridge Reservoir then the Commission shall deny a permit for the activities requested. If the Commission issues a permit, it shall impose conditions which the Commission deems necessary to protect the water quality of those two water bodies.
- B. The Commission is empowered to deny a permit for failure to meet the requirements of this By-law; for failure to submit necessary information and plans requested by the Commission; if the activity as proposed is likely to have significant adverse impact, immediate or cumulative, upon the water quality of Flint's Pond or the Cambridge Reservoir; or where no permit conditions are adequate to protect the water quality. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public meeting.
- C. A permit shall expire three (3) years from the date of issuance. Permits issued under this By-law may be extended for one or more periods of up to three (3) years each, if requested in writing at least 30 days before the expiration of the permit, provided that the Commission finds that:
 1. good cause has been shown for such extension; and
 2. such extension will not have a significant adverse impact, immediate or cumulative, upon the water quality of Flint's Pond or the Cambridge Reservoir. The Commission

shall grant such extension at a public meeting for which the applicant for an extension and the general public have received the same prior notice as is required in **Section 5** hereof. If such an extension is not obtained and a permit expires before all activities authorized by such permit have been completed, then all such activities shall cease until a new permit has been issued pursuant to the procedures set forth in this By-law.

- D. For good cause the Commission may revoke or modify a permit issued under this By-law upon notice to the holder of the permit and public notice and public meeting, all in the same manner as required in Section 5 hereof.
- E. If the Commission has failed to hold a meeting within the twenty-one (21) day period provided in this By-law, or if the Commission, after completing such a meeting has failed to issue a permit within twenty-one (21) days of the close of the public meeting, or where the Commission has issued or denied a permit, the applicant or any other person authorized by law may seek judicial relief as provided by law.

Section 8. Definitions

- A. **Commission:** The Conservation Commission of the Town of Lincoln.
- B. **Significant Adverse Impact:** That which causes or potentially causes a deterioration in the quality of the drinking water supply for Flint's Pond.
- C. **Clean Fill:** Inert fill that is non-polluting such as brick, cured concrete, or stone; or wood chips, soil, or yard waste containing no pesticides, herbicides, fertilizers, dyes, or other chemicals. The Commission must approve the fill before it is used.
- D. **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).
- E. **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.
- F. **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.
- G. **Tributary:** Any stream or other water body which flows into Flint's Pond.
- H. **Watershed:** The area of land that creates the catchment or drainage area of the surface water supply.
- I. **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 [by] 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.

- J. **Flint's Pond protected area:** the area bounded at any particular point by either the Flint's Pond Zone A boundary or the Flint's Pond watershed boundary, whichever is farther from the upper boundary of the bank of Flint's Pond at that particular point (see the map in Appendix 1).

Section 9. 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 the applicable Federal or State law.
- B. The Commission and the Board of Selectmen shall have authority to enforce this By-law and permits issued thereunder 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 or any permit issued thereunder 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 10. Burden of Proof

The applicant for a permit shall have the burden of providing credible evidence that the activity (as specified in **Section 2**) proposed in the application will not have significant adverse impacts on the water quality of Flint's Pond or the Cambridge Reservoir. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit, or to impose conditions sufficient to prevent any adverse impact on the water quality of Flint's Pond or the Cambridge Reservoir.

Section 11. 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

Appendix 2. Map of Cambridge Reservoir Area