Water Supply Protection Bylaw

(Adopted 5-12-2008 ATM Article 20; Approved by Attorney General 9-29-08;

Effective date of Bylaw October 29, 2008)

1. PURPOSE OF BYLAW

The purpose of this Water Supply Protection Bylaw is to:

a. promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Dunstable;

b. preserve and protect existing and potential sources of drinking water supplies;

c. conserve the natural resources of the Town of Dunstable; and

d. prevent temporary and permanent contamination of the environment.

2. JURISDICTION

No person shall perform any action or carry on any activity in or on any land within the Dunstable Water Supply Protection Area that is prohibited hereunder.

3. DEFINITIONS

Aquifer: Geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water by means of wells of any appropriated type or design.

Water Supply Protection Area: Those land area(s) designated on a map adopted pursuant to this Bylaw that provide direct recharge to an existing or planned public drinking water supply well. The Water Supply Protection Area includes the area designated as a Zone II previously approved by the Massachusetts DEP, or its successor.

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. Hazardous materials include, without limitation: synthetic organic chemicals; petroleum products; heavy metals; radioactive or infectious wastes; acids and alkalis; solvents and thinners in quantities greater than normal household use; and all substances defined as hazardous or toxic under M.G.L. c. 21C and 21E and 310 CMR 30.00.

Hazardous Waste: Any waste defined in the Massachusetts Hazardous Waste Regulations, 310 CMR Section 30.010. This includes, but is not limited to, waste oil, waste solvents, waste oil-based paint and waste pesticides.

Impervious Surface: Material layer or structure on or above the ground that does not allow precipitation or surface water to penetrate directly into the soil.

Landfill: A facility established in accordance with a valid site assignment for the purposes of disposing solid waste into or on the land, pursuant to 310 CMR 19.006, or any subsequent regulation substantially similar thereto.

Petroleum Product: Petroleum or petroleum by-product including, but not limited to: fuel oil; gasoline; diesel; kerosene; aviation jet fuel; aviation gasoline; lubricating oils; oily sludge; oil refuse; oil mixed with other wastes; crude oils; or other liquid hydrocarbons regardless of specific gravity. Petroleum product shall not include liquefied petroleum gas including, but not limited to, liquefied natural gas, propane or butane.

Non-sanitary wastewater: Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage including, but not limited to, activities specified in the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6).

Open Dump: A facility operated or maintained in violation of the Resource Conservation and Recovery Act (42 U.S.C. 4004(a)(b)), or state regulations and criteria for solid waste disposal.

Potential Drinking Water Sources: Areas that could provide significant potable water in the future.

Recharge Areas: Areas that collect precipitation or surface water and carry it to aquifers by means including direct surface runoff, infiltration, seepage and groundwater flow. Recharge areas include DEP approved Zone I, Zone II, or Zone III areas.

Septage: The liquid, solid, and semi-solid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles. Septage does not include any material that is a hazardous waste as defined by 310 CMR 30.000.

Sludge: The solid, semi-solid, and liquid residue that results from a process of wastewater treatment or drinking water treatment. Sludge does not include grit, screening, or grease and oil which are removed at the head-works of a facility

Treatment Works: Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

Very Small Quantity Generator: Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.

Waste Oil Retention Facility: A waste oil collection facility for automobile service stations, retail outlets, and marinas or any other source that generates or collects used oil and related petroleum products which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products in accordance with M.G.L. c.21. §52A.

DEP Protection Designation Zones

Zone I: Four hundred (400') feet, the designated protective radius around a public water system well or well-field.

Zone II: The approved area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated as defined in 310 CMR 22.00.

Zone III: The land area beyond the area of Zone II from which surface water and groundwater drain into Zone II.

4. ESTABLISHMENT AND DELINEATION OF WATER SUPPLY PROTECTION AREAS

4.1 For the purposes of this Bylaw, there are hereby established within the Town of Dunstable certain groundwater protection areas, consisting of aquifers or recharge areas which are denominated, respectively, as follows: "DEP Zone Two Protective Area" (hereinafter, WSPA 1); "South Salmon Brook Protective Zone" (WSPA 2); "North Salmon Brook Protective Zone" (WSPA 3); and "Unkety Brook Protective Zone" (WSPA 4). The areas are delineated on a map entitled, "Dunstable Water Protection Zones." It is dated March 6, 2008. This map is hereby made a part of this Bylaw and is on file in the Office of the Town Clerk. Each such area, as well as all of them collectively, shall be deemed "the Dunstable Water Supply Protection Area.

5. DISPUTES RELATIVE TO WATER SUPPLY PROTECTION AREA

5.1. If the location of any land relative to the Water Supply Protection Area is in doubt, resolution of the boundary dispute shall be through an application to the Planning Board in the nature of an application for a special permit. Planning Board Rules and Regulations relative to Special Permits as well as notice and hearing provisions under Massachusetts zoning law shall govern such applications. Notwithstanding the foregoing, neither the proceeding nor this Bylaw shall be deemed to be governed under Chapter 40A of the Massachusetts General Laws, the Zoning Act. Any such application for this purpose shall be accompanied by documentation sufficient at a minimum to identify the parcel, the specific dispute, and the location of the Water Supply Protection Area boundary as contended by the petitioner. Following a hearing at which all interested parties shall be entitled to present their arguments and positions, the Planning Board shall make the final decision as to the location of the disputed property relative to the Water Supply Protection Area.

5.2. Proposed Water Supply Protection Areas 1, 2 and 3 have been determined on the basis of U. S. Government Soil Conservation Service designations of the soil types which are characterized as permeable soils which overlie contiguously the Salmon Brook aquifer system; and includes within its limits at a minimum, the Zone II protection area for the Town of Dunstable as approved by the Department of Environmental Protection. Proposed Water Supply Protection Area 4 has been determined in the same manner relative to the Unkety Brook aquifer system. Any application submitted pursuant to the preceding subsection shall be heard and processed with reference to these criteria. In the event any land the subject of such an application appears to fall within the boundary limits of any area identified in this

enactment, the burden of proof shall be upon the owner or applicant to demonstrate by clear and convincing evidence that such land does not fall within the Water Supply Protection Area. Any such proof shall at a minimum establish the fact that the land in question does not overlie the permeable soils that are contiguous to the aquifer system that provides the public water supply.

5.3. Where the boundary line or limits of the Water Supply Protection Area divide a lot or parcel, the requirements established by this Bylaw shall apply only to the portion of the lot or parcel located within the Water Supply Protection Area.

6. PROHIBITED ACTIVITIES

6.1 The following uses are prohibited within the Water Supply Protection Area:

a. landfills and open dumps as defined in 310 CMR 19.006;

b. automobile graveyards and junkyards, as defined in M.G.L. c. 140B, §1, or as limited under Dunstable's Junk and Unregistered Motor Vehicle Bylaw;

c. landfills receiving wastewater and/or septage residuals including those approved by the Department pursuant to M.G.L. c. 21 §§26 through 53; M.G.L. c. 111 §17; M.G.L. c. 83, §6 and 7, and regulations promulgated thereunder;

d. facilities that generate, treat, store, or dispose of hazardous waste that are subject to M.G.L. c. 21C and 310 CMR 30.00, except for:

1. very small quantity generators as defined under 310 CMR 30.000;
2. household hazardous waste centers and events under 310 CMR 30.390;
3. waste oil retention facilities required by M.G.L. c. 21, §52A;
4. water remediation treatment works approved by DEP for the treatment of contaminated waters.

e. petroleum, fuel oil, and heating oil bulk stations and terminals including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5983 and 5171, not including liquefied petroleum gas.

f. storage of liquid hazardous materials, as defined in M.G.L. c. 21E, and/or liquid petroleum products unless such storage is in full compliance with Massachusetts Laws, Rules and Regulations;

g. storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;

h. storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;

i. storage of animal manure unless covered or contained within a structure designed to prevent the generation and escape of contaminated runoff or leachate;

j. earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material to within 10 feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works;

k. discharge to the ground of non-sanitary wastewater including industrial and commercial process waste water, except;

1. 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;
2. treatment works approved by the Department of Environmental Protection 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
3. publicly owned treatment works.

l. stockpiling and disposal of snow and ice containing deicing chemicals brought in from outside the Town;

m. storage of commercial fertilizers, as defined in M.G.L. c. 128, §64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

7. ACTIVITIES REQUIRING SPECIAL AUTHORIZATION

7.1 The following uses and activities are permitted only upon the issuance of a permit or special authorization by the Planning Board under such conditions as the board may reasonably require:

a. Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use or ordinary and usual agricultural practice (except as prohibited under Section 6). Such activities shall be reviewed and limited sufficiently to prevent contamination of groundwater;

b. The rendering impervious of any lot or parcel more than 15% or 2,500 square feet, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are unfeasible.
For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

8. PROCEDURES REGARDING SPECIAL AUTHORIZATION APPLICATIONS

8.1. Authorization for activities described in the preceding section shall be granted if the Planning Board determines, after having solicited and received comment from the Board of Health, Conservation Commission, Board of Road Commissioners and Board of Water Commissioners that the Authorization may be granted without derogating from the intent and purposes of this enactment, in light of the specific criteria set forth herein, including Subsection 8.3., hereinbelow. If thirty-five (35) days have elapsed without response following referral to any of the aforementioned boards soliciting comment, it shall be noted in the Planning Board's decision that "Board/Commission X did not object to the proposal," or words of similar import. Nothing herein shall preclude any other Town officer, board or department from submitting advice or comment in regard to any application hereunder. The Planning Board shall not grant any such authorization under this section unless the petitioner's application materials include, in the Planning Board's opinion, sufficiently detailed, definite, and credible information to support affirmative findings in relation to the standards given in this enactment. The Planning Board shall document the basis for any departures from the recommendations of any responding Town boards, departments or commissions in its decision.

8.2. Special Applications hereunder shall be subject to the site plan provisions of Section 14 of the Town of Dunstable Zoning Bylaw, provided that such requirements may be modified or waived by the Planning Board in a specific instance upon application for good cause shown.

8.3 Any grant of an authorization hereunder shall include findings that the proposed use meets the standards specified in Section 6 of this Bylaw, and activity will:

a. in no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Water Supply Protection Area;

b. be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed or altered, in light of the purposes of the Water Supply Protection Area;

c. include a complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;

1. for those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Fire Chief and Board of Health. The plan shall include:

i. provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;

ii. provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;

iii. evidence of compliance with the Massachusetts Hazardous Waste Regulations 310 CMR 30.00; and

iv. proposed down-gradient location(s)for groundwater monitoring well(s), should the Planning Board deem the activity a potential groundwater threat.

9. ENFORCEMENT AND PENALTIES

9.1 Written notice of any violations of this Bylaw shall be given by the Board of Water Commissioners Inspector to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions necessary to remove, remedy or abate the violations and may specify preventive measures required for avoiding future violations as well as a schedule of compliance.

9.2 A copy of such notice shall be submitted to the Planning Board, Board of Health, Conservation Commission, Board of Road Commissioners, and the Dunstable

Police Department. The cost of any abatement, containment, clean-up, or other action of compliance shall be borne by the owner and operator of the premises.

9.3 The Board of Water Commissioners, its agents, officers, and employees, including without limiting the generality hereof, the Dunstable Police Department, shall have authority to enter upon privately owned land for the purpose of performing their duties under this Bylaw and may make such examinations, surveys or sampling as the commissioners deem necessary.

9.4 The Commissioners shall have authority to enforce this Bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and/or criminal court actions.

9.5 a. Whosoever violates any provision of this Bylaw shall be penalized by a criminal complaint brought in the district court or by a non-criminal disposition pursuant to Chapter 40, Section 21D of the General Laws.

b. Any person who upon application of criminal complaint brought in the district court and found guilty of a misdemeanor shall be fined in an amount not to exceed three hundred dollars ($300.00). Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

c. Any person who is penalized by a non-criminal disposition brought pursuant to the provisions of Chapter 40, Section 21D of the General Laws, shall be subject to a specific penalty of one hundred dollars ($100.00). Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

9.6 The Board of Water Commissioners is hereby empowered to notify the owner of any property in the Water Supply Protection Area of any violation hereof, and to order the cessation or abatement thereof. Such notice shall be by registered mail or certified mail, addressed to said owner at his last known address or such notice may be served upon such owner or agent by a constable or other legal officer as provided by law, and authorized to serve such process.

9.7 Upon the failure, neglect or refusal of any owner or agent so notified properly to abate such violations within such time as the Board of Water Commissioners deems reasonable, after receipt of such written notice provided for in the preceding sub-section, the Board of Water Commissioners is hereby authorized and empowered to pay for and carry out the abatement of such violation.

9.8 When the town has effected the abatement of such violation, the actual cost thereof, plus accrued interest at the rate of fourteen percent (14%) per annum from

the date of the completion of the work, if not paid by such owner prior thereto, shall be charged to the owner of such property on the next regular tax bill forwarded to such owner by the town and said charge shall be due and payable by said owner at the time of payment of such bill. And such claim for the expense by said Board of town in so doing shall constitute a debt due the town upon the completion of the work and the rendering of an account thereof to the owner, and is recoverable from such owner in an action of contract, together with interest thereon at the rate of fourteen per cent (14%) per annum from the date said debt becomes due and payable.

9.9 Where the full amount due the town is not paid by such owner within thirty (30) days after the abatement of such violation, as provided for in subsections 10.6 and 10.7 of this Bylaw, then, and in that case, the Board of Water Commissioners or the town may cause to be recorded, in the registry of deeds, a sworn statement showing the cost and expense incurred for the work, the date the work was done and the location of the property on which said work was done. The recording of such sworn statement shall constitute a lien on the property, and shall remain in full force and effect for the amount due in principal and interest, plus costs of court, if any, for collection until final payment has been made. Said costs and expenses shall be collected in the manner fixed by law for the collection of taxes, Sworn statements recorded in accordance with the provisions hereof shall be prima facie evidence that all legal formalities have been complied with and that the work has been done properly and satisfactorily and shall be full notice to every person concerned that the amount of the statement, plus interest, constitutes a charge against the property designated or described in the statement and that the same is due and collectible as provided by law. Such lien may be dissolved by filing with the register of deeds for record or registration, as the case may be, in the county or district, if the county is divided into districts, where the land lies, a certificate from the collector of taxes of the town that the debt for which the lien attached, together with interest and costs thereon, has been paid or abated. Such collector shall have the same powers and be subject to the same duties with respect to such claim as in the case of the annual taxes upon real estate; and the provisions of law relative to the collection of such annual taxes, the sale or taking of land for the non-payment thereof, and the redemption of land so sold or taken shall apply to such claim.

10. SEVERABILITY

10.1 A determination that any portion or provision of this Bylaw is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any Special Authorization previously issued thereunder."

or take any action in relation thereto.