

Stormwater Revisions to the Regulations for 401 Water Quality Certification For Discharge of Dredge or Fill Material, Dredging and Dredged Material in the Waters of the United States within the Commonwealth, 314 CMR 9.00. Please see the following [disclaimer](#).

Amend 314 CMR 9.02 by adding the following definitions:

Cold-water fisheries -Waters in which the mean of the maximum daily temperature over a seven day period generally does not exceed 68°F (20° C) and, when other ecological factors are favorable (such as habitat), are capable of supporting a year round population of cold-water stenothermal aquatic life. Waters designated as cold-water fisheries by the Department in 314 CMR 4.00 and water designated as cold-water fishery resources by the Division of Fisheries and Wildlife are cold-water fisheries. Waters where there is evidence based on a fish survey that a cold-water fishery and habitat exist are also cold-water fisheries. Cold-water fish include but are not limited to brook trout (*Salvelinus fontinalis*), rainbow trout (*Oncorhynchus mykiss*), brown trout (*Salmo trutta*), creek chubsucker (*Erimyzon oblongus*), and fallfish (*Semotilus corporalis*).

Critical Area- Outstanding Resource Waters as designated in 314 CMR 4.00, Special Resource Waters as designated in 314 CMR 4.00, recharge areas for public water supplies as defined in 310 CMR 22.02 (Zone Is, Zone IIs, and Interim Wellhead Protection Areas for ground water sources and Zone As for surface water sources), bathing beaches as defined in 105 CMR 445.000, cold-water fisheries, and shellfish growing areas.

Disposal site- A structure, well, pit, pond, lagoon, impoundment, ditch, landfill or other place or area, excluding ambient air or surface water, where uncontrolled oil or hazardous material has come to be located as a result of any spilling, leaking, pouring, ponding, emitting, emptying, discharging, injecting, escaping, leaching, dumping, discarding, or otherwise disposing of such oil or hazardous material and is a “disposal site” as defined in M.G.L .c. 21E.

Environmentally sensitive site design - Design that incorporates low impact development techniques to prevent the generation of stormwater and non-point source pollution by reducing impervious surfaces, disconnecting stormwater sheet flow paths, and treating stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat.

Ground water- Water below the land surface in a saturated zone including perched ground water.

Illicit discharge- Discharge that is not entirely comprised of stormwater. Notwithstanding the foregoing, an illicit discharge does not include water from the following activities or facilities: firefighting, water line flushing, landscape irrigation, uncontaminated ground water, potable water sources, foundation drains, air conditioning condensation, footing drains, individual resident car washing, flows from riparian habitats, and wetlands, dechlorinated water from swimming pools, water used for street washing, and water used to clean residential buildings without detergents.

Land uses with higher potential pollutant loads- Land uses identified in 310 CMR 22.20B(2), 310 CMR 22.20C(2)(a) - (k) and (m), 310 CMR 22.21(2)(a)(1) - (8), and 310 CMR 22.21(2)(b)(1) - (6); areas within a site that are the location of activities that are subject to an individual National Pollutant Discharge Elimination System (NPDES) Permit or the NPDES Multi-Sector General Permit; auto fueling facilities

(gas stations); exterior fleet storage areas; exterior vehicle service and equipment cleaning areas; marinas and boatyards; parking lots with high intensity use; confined disposal facilities, and disposal sites.

Low impact development techniques- Innovative stormwater management systems that are modeled after natural hydrologic features. Low impact development techniques manage rainfall at the source using uniformly distributed decentralized micro-scale controls. Low impact development techniques use small cost-effective landscape features located at the lot level.

Redevelopment- For purposes of the Stormwater Management Standards as provided in 314 CMR 9.06(6)(a) through (e), redevelopment is defined to include the following projects: (1) maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving; (2) development, rehabilitation, expansion and phased projects on previously developed sites provided the redevelopment results in no net increase in impervious area; and (3) remedial projects specifically designed to provide improved stormwater management such as projects to separate storm drains and sanitary sewers and stormwater retrofit projects.

Shellfish growing area-Land under the ocean, tidal flats, rocky intertidal shores and marshes and land under salt ponds when any such land contains shellfish. Shellfish growing areas include land that has been identified and shown on a map published by the Division of Marine Fisheries as a shellfish growing area including any area identified on such map as an area where shellfish harvesting is prohibited. Shellfish growing areas shall also include land designated by the Department in 314 CMR 4.00 as suitable for shellfish harvesting with or without depuration. In addition, shellfish growing areas shall include shellfish growing areas designated by the local shellfish constable as suitable for shellfishing based on the density of shellfish, the size of the area, and the historical and current importance of the area for recreational and commercial shellfishing.

Stormwater best management practice-Structural or nonstructural technique for managing stormwater to prevent or reduce non-point source pollutants from entering surface waters or ground waters. A structural stormwater best management practice includes a basin, discharge outlet, swale, rain garden, filter or other stormwater treatment practice or measure either alone or in combination including without limitation any overflow pipe, conduit or weir control structure that: (a) is not naturally occurring; (b) is not designated as a wetland replication area; and (c) has been designed, constructed and installed for the purpose of conveying, collecting, storing, discharging, recharging, or treating stormwater. Nonstructural stormwater best management practices include source control and pollution prevention measures.

Stormwater management system-A system for conveying, collecting, storing, discharging, recharging or treating stormwater on-site including stormwater best management practices and any pipes and outlets intended to transport and discharge stormwater to the ground water, a surface water or a municipal separate storm sewer system.

Waters of the Commonwealth- All waters within the Commonwealth, including without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters and ground waters.

Amend 314 CMR 9.06(6) as follows:

(a) Except as otherwise provided in 314 CMR 9.06(6), stormwater discharges shall be provided with stormwater best management practices to attenuate pollutants and to provide a setback from the receiving water or wetland in accordance with the following Stormwater Management Standards as further defined and specified in the Massachusetts Stormwater Handbook:

(1) No new stormwater conveyances (e.g. outfalls) may discharge untreated stormwater directly to or cause erosion in wetlands or waters of the Commonwealth.

(2) Stormwater management systems shall be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates. This Standard may be waived for land subject to coastal storm flowage as defined in 310 CMR 10.04.

(3) Loss of annual recharge to ground water shall be eliminated or minimized through the use of infiltration measures including environmentally sensitive site design, low impact development techniques, stormwater best management practices and good operation and maintenance. At a minimum, the annual recharge from the post-development site shall approximate the annual recharge from pre-development conditions based on soil type. This Standard is met when the stormwater management system is designed to infiltrate the required recharge volume as determined in accordance with the Massachusetts Stormwater Handbook.

(4) Stormwater management systems shall be designed to remove 80% of the average annual post-construction load of Total Suspended Solids (TSS). This Standard is met when:

(a) Suitable practices for source control and pollution prevention are identified in a long-term pollution prevention plan and thereafter are implemented and maintained;

(b) Stormwater best management practices are sized to capture the required water quality volume determined in accordance with the Massachusetts Stormwater Handbook; and

(c) Pretreatment is provided in accordance with the Massachusetts Stormwater Handbook.

(5) For land uses with higher potential pollutant loads, source control and pollution prevention shall be implemented in accordance with the Massachusetts Stormwater Handbook to eliminate or reduce the discharge of stormwater runoff from such land uses to the maximum extent practicable. If through source control and/or pollution prevention all land uses with higher potential pollutant loads cannot be completely protected from exposure to rain, snow, snow melt and stormwater runoff, the proponent shall use the specific structural stormwater BMPs determined by the Department to be suitable for such use as provided in the Massachusetts Stormwater Handbook. Stormwater discharges from land uses with higher potential pollutant loads shall also comply with the requirements of the Massachusetts Clean Waters Act, M.G.L. c.21, §§ 26-53, and the regulations promulgated thereunder at 314 CMR 3.00, 314 CMR 4.00 and 314 CMR 5.00.

(6) Stormwater discharges within the Zone II or Interim Wellhead Protection Area of a public water supply and stormwater discharges near or to any other critical area require the use of the specific source control and pollution prevention measures and the specific structural stormwater best management practices determined by the Department to be suitable for managing discharges to such area as provided in the Massachusetts Stormwater Handbook. A discharge is near a critical area, if there is a strong likelihood of a significant impact occurring to said area, taking into account site-specific factors. Stormwater discharges to Outstanding Resource Waters and Special Resource Waters shall be removed and set back from the receiving water or wetland and receive the highest and best practical method of treatment. A “storm water discharge” as defined in 314 CMR 3.04(2)(a)1. or (b) to an Outstanding Resource Water or Special Resource Water shall comply with 314 CMR 3.00 and 314 CMR 4.00. Stormwater discharges to a Zone I or Zone A are prohibited, unless essential to the operation of the public water supply.

(7) A redevelopment project is required to meet the following Stormwater Management Standards only to the maximum extent practicable: Standard 2, Standard 3, and the pretreatment and structural stormwater best management practice requirements of Standards 4, 5, and 6. Existing stormwater discharges shall comply with Standard 1 only to the maximum extent practicable. A redevelopment project shall also comply with all other requirements of the Stormwater Management Standards and improve existing conditions.

(8) A plan to control construction related impacts including erosion, sedimentation and other pollutant sources during construction and land disturbance activities (construction period erosion, sedimentation and pollution prevention plan) shall be developed and implemented.

(9) A long-term operation and maintenance plan shall be developed and implemented to ensure that the stormwater management system function as designed.

(10) All illicit discharges to the stormwater management system are prohibited.

(b) The Stormwater Management Standards set forth above shall not apply to:

(1) A single-family house;

(2) Housing developments and redevelopment projects comprised of detached single-family dwellings with four or fewer lots provided that there are no stormwater discharges that may potentially affect a critical area;

(3) Multi-family housing development and redevelopment projects, with four or fewer units, including condominiums, cooperatives, apartment buildings, and townhouses, provided that there are no stormwater discharges that may potentially affect a critical area; and

(4) Emergency repairs to roads or drainage systems.

(c) The Stormwater Management Standards shall apply to the maximum extent practicable to the following:

- (1) Housing developments and redevelopment projects comprised of detached single-family dwellings with four or fewer lots that have a stormwater discharge that may potentially affect a critical area;
- (2) Multi-family housing development and redevelopment projects with four or fewer units, including condominiums, cooperatives, apartment buildings and townhouses, that have a stormwater discharge that may potentially affect a critical area;
- (3) Housing developments and redevelopment projects composed of detached single-family dwellings, with five to nine lots, provided there is no stormwater discharge that may potentially affect a critical area;
- (4) Multi-family housing development and redevelopment projects of five to nine units, including condominiums, cooperatives, apartment buildings, and townhouses, provided there is no stormwater discharge that may potentially affect a critical area;
- (5) Marinas and boatyards provided that the hull maintenance, painting, and service areas are protected from exposure to rain, snow, snow melt, and stormwater runoff; and
- (6) Footpaths, bikepaths and other paths for pedestrian and/or nonmotorized access.

(d) For phased projects the determination of whether the Stormwater Management Standards apply is made on the single and complete project including all phases. When proposing a development or redevelopment project subject to the Stormwater Management Standards, proponents shall consider environmentally sensitive site design that incorporates low impact development techniques in addition to stormwater best management practices.

(e) Project proponents seeking to demonstrate compliance with some or all of the Stormwater Management Standards to the maximum extent practicable shall demonstrate that:

- (1) They have made all reasonable efforts to meet each of the Standards;
- (2) They have made a complete evaluation of possible stormwater management measures including environmentally sensitive site design and low impact development techniques that minimize land disturbance and impervious surfaces, structural stormwater best management practices, pollution prevention, erosion and sedimentation control and proper operation and maintenance of stormwater best management practices; and
- (3) If full compliance with the Standards cannot be achieved, they are implementing the highest practicable level of treatment.

(f) Compliance with the Stormwater Management Standards set forth in 314 CMR 9.06 (6)(a) to the extent that they are applicable in accordance with 314 CMR 9.06 (a), (b), (c), and (d), does not relieve a discharger of the obligation to comply with all applicable Federal, State and local laws, regulations, and permits including without limitation all applicable provisions of 310 CMR 10.00, 314 CMR 3.00, 314 CMR 4.00, 314 CMR 9.00, local land use controls adopted to comply with 310 CMR 22.20B, 310 CMR 22.20C, and/or 310 CMR 22.21 or the NPDES General Permit for Small Municipal Separate Storm Sewer

Systems, and the terms and conditions of NPDES General Stormwater Permits such as the Construction General Permit and the Multi-Sector General Permit.

Amend 314 CMR 9.13 as follows:

- (1) 314 CMR 9.00 shall take effect on January 2, 2008. Any application submitted to the Department prior to January 2, 2008 shall be considered under the standards and criteria in effect prior to January 2, 2008, including the Stormwater Management Standards as set forth in the Stormwater Policy issued by the Department on November 18, 1996.