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Town of Colonie

Local Law No 8 of the year 2007

A local law entitled "Storm Water Management and Erosion & Sediment Control"

Be it enacted by the Town Board of the Town of Colonie as follows:

ARTICLE XIV – Chapter 190-14

Storm Water Management and Erosion & Sediment Control

A. Findings of Fact

It is hereby determined that:

- (1) Development of real property and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase storm water runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
- (2) This storm water runoff contributes to increased quantities of water-borne pollutants, including more silt in aquatic habitat for fish and other desirable species;
- (3) Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat. Improper clearing of vegetation, and burial of vegetative and other wastes, can result in unstable soil conditions and the production of noxious gases through decomposition of said wastes;
- (4) Improper design and construction of storm water management practices can

increase the velocity of storm water runoff thereby increasing stream bank erosion and sedimentation;

(5) Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream base flow;

(6) Substantial economic losses can result from these adverse impacts on the waters of the municipality;

(7) Storm water runoff, soil erosion and non-point source pollution can be controlled and minimized through the regulation of storm water runoff from development activities;

(8) The regulation of storm water runoff discharges from real property activities in order to control and minimize increases in storm water runoff rates and volumes, soil erosion, stream channel erosion, and non-point source pollution associated with storm water runoff is in the public interest and will minimize threats to public health and safety;

(9) Regulation of development activities by means of performance standards governing storm water management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

B. Purpose

The purpose of this Article is to establish minimum storm water management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact above. This Article seeks to meet those purposes by achieving the following objectives:

(1) Meet the requirements of minimum measures 4 (construction runoff) and 5 (post-construction maintenance) of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit no. GP-02-02 or as amended or revised;

(2) Require work on real property to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01 or as amended or revised;

(3) Minimize increases in storm water runoff from activities on real property in order to reduce flooding, silt, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels;

(4) Minimize or decrease pollution caused by storm water runoff from activities on real

property which would otherwise degrade local water quality;

(5) Minimize or decrease the total annual volume of storm water runoff which flows from any specific site during and following development to the maximum extent practicable;

(6) Reduce or decrease storm water runoff rates and volumes, soil erosion and non-point source pollution, wherever possible, through storm water management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety. Specific consideration of storm water runoff shall be provided to critical watersheds; and

(7) Eliminate unstable soil conditions and the production of noxious gases which result from improper storm water practices, improper grading practices, improper clearing of vegetation and the burial of vegetative and other wastes.

C. Definitions

The terms used in this Article or in documents prepared or reviewed under this Article shall have the meaning as set forth in this section. If a term is not defined in this section, then the definition provided in Article II (190-2) shall apply. Any conflict between a definition provided in Article II (190-2) and this Article shall be resolved in favor of the definition provided below.

Agricultural Activity - the activity of an active farm including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

Building - any structure, either temporary or permanent, having walls and a roof, designed for the sheltering of any person, animal, or property, and occupying more than 100 square feet of area.

Channel - a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

Clearing - any activity that removes the vegetative surface cover.

D.E.C - the New York State Department of Environmental Conservation

Design Manual - the *New York State Stormwater Management Design Manual*, as amended. This manual serves as the official guide for storm water management principles, methods and practices.

Erosion Control Manual - the *New York Standards and Specifications for Erosion and Sediment Control* manual, as amended. This is commonly known as the "Blue Book".

Impervious Cover - surfaces, improvements and structures that cannot effectively be infiltrated by rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc).

Industrial Stormwater Permit - a State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial storm water discharges or specifies on-site pollution control strategies.

Infiltration - the process of percolating storm water into the subsoil.

Jurisdictional Wetland - an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

Land Development Activity - an activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or an activity disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

Landowner - the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

Maintenance Agreement - a document which provides for long-term maintenance of storm water management practices. It is anticipated this document will be recorded in the Albany County Clerk's Office and will act as a property deed restriction or encumbrance.

Non-point Source Pollution - pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

Phasing - clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

Pollutant of Concern - sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or silt) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

Project - any construction or development activity upon real property.

Recharge - the replenishment of underground water reserves.

Sediment Control - measures that prevent sediment from leaving the site.

Sensitive Areas - cold water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, or, habitats for threatened, endangered or special concern species.

SMP - see Storm water Management Practices

SPDES - the New York State Pollutant Discharge Elimination System

SPDES General Permit for Construction Activities GP-02-01 - A SPDES permit issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems GP-02-02 - A SPDES permit issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify storm water control standards

Stabilization - the use of practices that prevent exposed soil from eroding.

Stop Work Order - an order issued which requires that all construction activity on a site be stopped.

Storm Water or Stormwater- rainwater, surface runoff, snowmelt and drainage

Storm Water Hotspot - a land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical storm water runoff, based on monitoring studies.

Storm Water Management - the use of structural or non-structural practices that are designed to reduce storm water runoff and mitigate its adverse impacts on property, natural resources and the environment.

Storm Water Management Facility - one or a series of storm water management practices installed, stabilized and operating for the purpose of controlling storm water runoff.

Storm Water Management Officer - an employee or officer designated by the Commissioner of the Department of Public Works or the Town Board to accept and review storm water pollution prevention plans, forward the plans to the applicable town board or department, inspect storm water management practices, and enforce this Article.

Storm Water Management Practices (SMPs) - measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or non-point source pollution inputs to storm water runoff and water bodies.

Storm Water Pollution Prevention Plan (SWPPP) - a plan for controlling storm water runoff and pollutants from a site during and after construction activities.

Storm Water Runoff - flow on the surface of the ground, resulting from precipitation.

Surface Waters of the State of New York - lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial seas of the state of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition are not waters of the state. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

SWPPP (aka "Swipp") - see Storm Water Pollution Prevention Plan

Waterway - a channel that directs surface runoff to a watercourse or to the public storm drain.

D. Applicability

(1) This Article shall be applicable to all real property within the Town of Colonie.

(2) All Land Development Activities subject to subdivision and/or site plan review and approval under the Colonie Land Use Law regulations shall be reviewed subject to the standards contained in this Article. In this instance, the SWPPP shall be submitted along

with the subdivision and/or site plan application.

(3) All Land Development Activities not subject to subdivision and/or site plan review shall be required to submit a SWPPP to the Storm Water Management Officer who shall review the SWPPP for compliance with the requirements of this Article.

E. Exemptions

The following activities are exempt from the permit requirements under this Article. However, even those Projects which are exempt from the permit requirements must meet the standards set forth in this Article.

(1) Agricultural activity as defined in this Article.

(2) Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a Storm Water Management Facility.

(3) Repairs to any Storm Water Management Practice or Facility deemed necessary by the Storm Water Management Officer.

(4) Cemetery graves.

(5) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

(6) Emergency activities immediately necessary to protect life, property or natural resources.

(7) Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family.

(8) Landscaping and horticultural activities in connection with an existing structure that does not change the drainage patterns.

(9) Creation or restoration of wetlands pursuant to a state or federal wetlands permit.

(10) Creation, restoration, or preservation of pine bush habitat by the Albany Pine Bush Preserve Commission.

F. Storm Water Pollution Prevention Plans

(1) Storm Water Pollution Prevention Plan Requirement

No approval of a Land Development Activity shall be issued until a Storm Water Pollution Prevention Plan (SWPPP) has been accepted in accordance with the specifications in this Article. A Grading Permit shall be issued along with the approved SWPPP.

(2) Contents of Storm Water Pollution Prevention Plans

(a) All SWPPPs shall, at a minimum, have a Sediment and Erosion Control Plan which shall provide the following background information and erosion and sediment controls. Development within impaired watersheds or where a 5 acre variance request is submitted to DEC may require additional data.

1. Background information about the scope of the project, including location, type and size of project, and pre-construction photographs of the site and immediate downstream conditions (digital preferred);
2. Site map/construction drawing(s) for the project, including a general location map. The site map should be at a scale no smaller than 1" = 100' (e.g. 1" = 500' is smaller than 1" = 100'). At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent offsite surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the storm water discharges(s);
3. Description of the soil(s) present at the site;
4. Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five (5) acres shall be disturbed at any one time unless pursuant to an approved SWPPP and DEC variance approval;
5. Description of the pollution prevention measures that will be used to control litter,
construction chemicals and construction debris from becoming a pollutant source in
storm water runoff;
6. Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants

from these materials including storage practices to minimize exposure of the materials to storm water, and spill prevention and response;

7. Information regarding the location of disposal of any material to be removed from the site. Off-site disposal areas may not be within regulated wetlands, buffer zones, protected watercourse areas, or other environmentally sensitive areas unless applicable permits are obtained. The proposed method of any on-site processing and reuse of organic materials shall be specified and may require certification by a New York state registered professional engineer or landscape architect as a safe and effective means of disposal.

8. Temporary and permanent structural and vegetative measures to be used for soil stabilization,

runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;

9. A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;

10. Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;

11. Temporary practices that will be converted to permanent control measures;

12. Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;

13. Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;

14. Name(s) of the receiving water(s);

15. Delineation of SWPPP implementation responsibilities for each part of the site;

16. Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable;

17. Any existing data that describes the storm water runoff at the site; and
18. A slope stability analysis, if requested by the Bureau of Engineering of the Department of Public Works, where grading is proposed on steep or slippage-prone slopes;
19. A Storm Water Management Report in accordance with the "Standard Format For Storm Water Management Plans and Reports" which is available at the Town of Colonie Planning and Economic Development Department and the Engineering Bureau of the Department of Public Works.
20. A "Storm Water Maintenance Escrow Agreement" if the storm water facilities are being conveyed to the Town once they are installed and approved, or, a "Storm Water Control Facility Maintenance Agreement" if the storm water facilities will remain privately owned. Either of these agreements can be obtained from the Town of Colonie Planning and Economic Development Department or the Engineering Bureau of the Department of Public Works.

(3) Post-Construction Storm Water Runoff Control

(a) In addition to the SWPPP described above, Land Development Activities meeting any of the three conditions below shall also be required to provide a report as to water quantity and water quality controls (post-construction storm water runoff controls):

- 1) Storm water runoff from Project activity disturbing between one (1) and five (5) acres of land during the course of the Project, exclusive of the construction of single family residences and construction activities at agricultural properties, or
- 2) Storm water runoff from Land Development Activities disturbing five (5) or more acres, or
- 3) Storm water runoff from Land Development Activities discharging a pollutant of concern to either an impaired water identified on the New York State Department of Environmental Conservation's 303(d) list of impaired waters or a Total Maximum Daily Load (TMDL) designated watershed for which pollutants in storm water have been identified as a source of the impairment.

(b) The additional report to be provided for post-construction storm water controls shall be provided with the SWPPP application and shall include:

1. Description of each post-construction storm water management practice;
2. Site map/construction drawing(s) showing the specific location(s) and size(s) of

each post-construction storm water management practice;

3. Hydrologic and hydraulic analysis for all structural components of the storm water

management system for the applicable design storms;

4. Comparison of post-development storm water runoff conditions with pre-development conditions;

5. Dimensions, material specifications and installation details for each post-construction storm water management practice;

6. Maintenance schedule to ensure continuous and effective operation of each post-construction storm water management practice;

7. Maintenance easements to ensure access to all storm water management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;

8. Inspection and maintenance agreement binding on all subsequent landowners served by the on-site storm water management measures in accordance with Section "H" of this Article.

9. If the Land Development Activity meets either of the conditions described in 190-14(F)(3)(a)(2) or 190-14(F)(3)(a)(3) above (activity disturbs 5 acres or more, or runoff discharges a pollutant of concern to either an impaired water or a TMDL designated watershed) then the SWPPP shall be prepared by a landscape architect, Certified Professional in Erosion and Sediment Control (CPESC), soil scientist or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all Storm Water Management Practices meet the requirements in this Article.

(4) Other Environmental Permits

The applicant shall assure that all other applicable environmental permits have been or will be acquired for the Land Development Activity prior to approval of the final storm water design plan.

(5) Contractor Certification

(a) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or storm water management practice installation shall sign and date a copy of the following certification statement before undertaking any Land Development Activity : "I certify under penalty of law that I understand and agree to

comply with the terms and conditions of the Storm Water Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards.”

(b) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

(c) The certification statement(s) shall become part of the SWPPP for the Land Development Activity.

(d) A copy of the SWPPP shall be retained at the site of the Land Development Activity during construction from the date of initiation of construction activities to the date of final stabilization.

G. Performance and Design Criteria for Storm Water Management and Erosion and Sediment Control

Every soil disturbance shall meet the criteria set forth in the *New York Standards for Erosion and Sediment Control* (aka “The Blue Book”; see sub-section 1(a) below) Also, all Land Development Activities shall be subject to all of the following performance and design criteria:

(1) Technical Standards

For the purpose of this local law, the following documents shall serve as the official guides and specifications for storm water management. Storm water management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this law:

(a) *New York Standards and Specifications for Erosion and Sediment Control*, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the Erosion Control Manual or the Blue Book)

(b) The *New York State Stormwater Management Design Manual* (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the Design Manual)

(c) The Town of Colonie *Standard Format For Storm Water Management Plans and Reports*.

Note: The New York State technical guidance documents may be ordered from

DEC. An order form as well as downloadable versions of the Manuals are available on the Internet at:

<http://www.dec.state.ny.us/website/dow/toolbox/escstandards/index.html>

<http://www.dec.state.ny.us/website/dow/toolbox/swmanual/>

(2) Equivalence to Technical Standards

Where storm water management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in the *Design Manual* (see subsection (1)(a) above) and the SWPPP shall be prepared by a landscape architect, Certified Professional in Erosion and Sediment Control (CPESC), soil scientist or professional engineer.

(3) Water Quality Standards

Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the state of New York.

(4) Permitting Process; Additional Standards

(a) Applications shall be made on forms prescribed by the Town therefore, which shall be accompanied by the required fee, if any, established by the Town Board.

(b) The Storm Water Management Officer shall review the application and act to approve, approve with modification, or deny the requested SWPPP.

(c) In the event that the submittal is denied, the applicant may have the decision reviewed by the Planning Board.

(d) The smallest practical area of land shall be exposed at any one time during the Project.

(e) When land is exposed during development, the exposure shall be kept to the shortest practical period of time;

(f) To protect areas in excess of one acre exposed for a period over two weeks during development, the following controls shall be applied:

(1) Temporary vegetation, mulch, geo-textiles, and/or emulsion shall be provided as needed to prevent soil erosion. Application of these materials shall be by approved equipment.

(2) On areas that will be exposed for short periods of time (daily) where weather conditions are conducive to airborne soil particles, a construction fence shall be installed, as directed by the SMO.

(3) On areas such as temporary roadways, when dry conditions prevail, the contractor shall be required to apply water or take other measures as required to prevent dust during daily construction activities.

(g) Sediment basins, debris basins, silting basins, silt fencing, or silt traps shall be installed and maintained to remove sediment from runoff waters on lands undergoing development.

(h) Permanent final vegetation and structures shall be installed as soon as practical in the development.

(i) The development plan should be fitted to the type of topography and soils so as to create the least erosion potentials.

(j) Wherever feasible, natural vegetation should be retained and protected.

(k) In areas of proposed fill, all existing vegetation and other organic material, including the root mat, shall be removed prior to placement of fill. The material shall be disposed of in an appropriate off-site facility, or processed for reuse on-site in a manner that will not be conducive to adverse effects of decomposition, such as the production of odors or of concentrations of noxious or explosive gases, or the creation of unstable subsurface conditions. The proposed method of on-site processing and reuse shall be specified in the permit application and may require certification by a licensed professional engineer as a safe and effective means of disposal.

(l) No vegetation or other waste materials shall be buried on the site.

(m) All fill placed on the site shall be as free of organic material as is practicable.

(5) Deposit, performance of site work; inspection

(a) To ensure that the site work is performed in accordance with the controls of this Article, before obtaining approval the applicant shall deposit with the Comptroller of the Town of Colonie a cash escrow as set forth in the fee schedule adopted by the Town Board by separate resolution.

(b) Said site work shall be performed and completed in accordance with the approved plan and schedule of vegetation removal and disposal, grading, construction operation and erosion control methods on file with the Department of Public Works Bureau of

Engineering at the time of issuance of the approval.

(c) Upon completion of the site work set forth in the plan, the applicant will request the Bureau of Engineering to inspect the work; upon approval of the site work, the Bureau will direct the Town Comptroller to release all of the applicant's money deposited pursuant to sub-section (a) above.

(d) Upon the failure of the applicant to perform the site work in accordance with the site plan submitted as aforesaid, the Town of Colonie and/or its agents shall be permitted to enter upon the premises and complete the necessary site work and charge the cost of the site work to the funds on deposit with the Town Comptroller pursuant to sub-section (a) above, and the Town Comptroller shall be authorized to pay any charge or charges approved by the Bureau of Engineering without further approval of the applicant. If the Town should undertake completion of any site work upon the applicant's failure to do so, any sums remaining on deposit with the Town Comptroller after completion of said site work shall be returned to the applicant.

H. Maintenance, Inspection and Repair of Storm Water Facilities

(1) Maintenance and Inspection During Construction

(a) The Bureau of Engineering or its designee shall have the power to make necessary inspections. The Bureau may employ, at its discretion, a Construction Inspector to act as its agent for the purpose of assuring satisfactory completion of permit requirements. The inspection provided may include, but not necessarily be limited to, all grading, drainage, storm water management systems and erosion control measures, and may include soil testing as necessary to determine compliance with the provisions of this Article and the conditions of the approval.

(b) The Bureau of Engineering will determine an amount sufficient to defray the costs of such inspection. The applicant shall deposit said amount of moneys with the Town Comptroller in an escrow account prior to the issuance of the approval. The Bureau of Engineering shall be authorized to pay the costs of inspection by its Construction Inspector from the moneys on deposit in said account and shall return to the applicant any such moneys, including interest, on balance in the account at the time of completion of the permitted site work, provided that all inspection costs have been paid. If the moneys on deposit prove to be insufficient for the costs of required inspections, the Bureau of Engineering shall require that the applicant deposit additional moneys in an amount sufficient to satisfy the costs of such additional inspections as may be required.

(c) The applicant or developer of the land development activity or their representative

shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this Article. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by fifty (50 percent).

(d) For Land Development Activities meeting any of the conditions set forth in 190-14(F)(3)(a), (Project activity of between 1 and 5 acres of land during course of job, exclusive of one family residences and construction activities at agricultural properties, or, storm water runoff from Land Development Activities disturbing 5 or more acres, or, storm water runoff from Land Development Activities discharging a pollutant of concern to either an impaired water or a TMDL designated watershed) the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. Inspection reports shall be maintained in a site log book.

(2) Maintenance Easement(s)

Prior to the issuance of any approval that has a Storm Water Management Facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the Storm Water Management Facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Town of Colonie to ensure that the Facility is maintained in proper working condition to meet design standards and any other provisions established by this Article. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the Colonie Town Attorney.

(3) Maintenance after Construction

The owner or operator of permanent Storm Water Management Practices installed in accordance with this Article shall ensure they are operated and maintained to achieve the goals of this legislation. Proper operation and maintenance also includes as a minimum, the following:

(a) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this Article.

(b) Written procedures for operation and maintenance and training new maintenance personnel.

(c) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with 190-14(G)(3) (Water Quality Standards).

(4) Maintenance Agreements

The Town of Colonie shall approve a formal maintenance agreement for Storm Water Management Facilities which are going to be privately owned after construction. The agreement shall be binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of a sample Storm Water Control Facility Maintenance Agreement on file in the Planning and Economic Development Department and Department of Public Works Bureau of Engineering. The Town of Colonie, in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future Storm Water Management Facility, provided such Facility meets all the requirements of this Article and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

I. Administration and Enforcement

(1) Inspection

In addition to the DEC inspections required to be performed by the Applicant, the Town of Colonie Storm Water Management Officer, or his designee, may require such inspections as necessary to determine compliance with this Article and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this Article and the Storm Water Pollution Prevention Plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Town of Colonie enforcement official at least 48 hours before any of the following as required by the Storm Water Management Officer:

- (a) Start of construction
- (b) Installation of sediment and erosion control measures
- (c) Completion of site clearing
- (d) Completion of rough grading

- (e) Completion of final grading
- (f) Close of the construction season
- (g) Completion of final landscaping
- (h) Successful establishment of landscaping in public areas.

If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted on the site, including on structures located thereon, except for site stabilization until any violations are corrected and all work previously completed has received approval by the Storm Water Management Officer.

(2) Inspection of Storm Water Facilities After Project Completion

Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES storm water permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other Storm Water Management Practices.

(3) Submission of Reports and Record Plans

The Town of Colonie Storm Water Management Officer may require monitoring and reporting from entities subject to this Article as are necessary to determine compliance with this Article. All applicants are required to submit "record plans" for any Storm Water Management Practices located on-site after final construction is completed. The plan must show the final design specifications for all Storm Water Management Facilities and must be certified by a licensed professional.

(4) Right-of-Entry for Inspection

When any new Storm Water Management Facility is installed on private property or when any new connection is made between private property and the public storm

water system, the landowner shall

grant to the Town of Colonie the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection.

(5) Construction Completion Guarantee

In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town of Colonie in its approval of the Storm Water Pollution Prevention Plan, the Town may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Colonie as the beneficiary. The security shall be in an amount to be determined by the Town based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town of Colonie, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the Town. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

(6) Maintenance Guarantee

Where storm water management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town of Colonie with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all storm water management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain storm water management and erosion and sediment control facilities, the Town of Colonie may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

(7) Recordkeeping

The Town of Colonie may require entities subject to this Article to maintain records demonstrating compliance with this portion of the Town of Colonie Land Use Law.

(8) Notice of Violation.

When the Town of Colonie determines that a Project is not being carried out in accordance with the requirements of this Article, it may issue a written notice of violation to the landowner, and also, if

necessary to the developer, the builder, the sub-contractor or anyone else responsible for the work being performed. The notice of violation shall contain:

- (a) the name and address of the landowner, developer or applicant;
- (b) the address when available or a description of the building, structure or land upon which the violation is occurring;
- (c) a statement specifying the nature of the violation;
- (d) a description of the remedial measures necessary to bring the Project into compliance with this Article and a time schedule for the completion of such remedial action;
- (e) a statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (f) a statement that the determination of violation may be appealed to the Town by filing a written notice of appeal within 15 days of service of notice of violation.

(9) Stop Work Orders

The Town of Colonie may issue a Stop Work Order for violations of this Article. Persons receiving a stop work order shall be required to halt all work of any nature on the site, including on any structures located thereon, except those activities that address the violations leading to the Stop Work Order. The Stop Work Order shall be in effect until the Town of Colonie confirms that the Project is in compliance and the violation has been satisfactorily addressed. Failure to address a Stop Work Order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this Article.

(10) Violations

Any Land Development Activity that is commenced or is conducted contrary to this Article, may be restrained by injunction or otherwise abated in a manner provided by law.

(11) Penalties

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Article law shall be guilty of a violation punishable by a fine not exceeding five thousand dollars (\$5000) or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars nor more than ten thousand dollars (\$10,000) or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars nor more than fifteen thousand dollars (\$15,000) or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this Article shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

(12) Withholding of Certificate of Occupancy

If any building or Land Development Activity is installed or conducted in violation of this Article the Storm Water Management Officer may prevent the occupancy of said building or land.

(13) Restoration of lands

Any violator may be required to restore and repair any damage resulting from noncompliance with the regulations herein. In the event that restoration or repair is not undertaken within a reasonable time after notice, the Town of Colonie may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

J. Fees for Services

The Town of Colonie may require any person undertaking activities regulated by this Article to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by Town personnel or performed by a third party for the Town of Colonie.

CHAPTER 120

Illicit Discharges, Activities and Connections to the Storm Sewer System

A. Purpose/ Intent

The purpose of this Chapter of the Town of Colonie Code is to provide for the health, safety, and general welfare of the citizens of the Town of Colonie through the regulation of non-storm water discharges to the municipal separate storm sewer system (aka "MS4") to the maximum extent practicable as required by federal and state law. This Chapter establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the SPDES General Permit for Municipal Separate Storm Sewer Systems. The objectives of this Chapter are:

- (1) To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit no. GP-02-02 or as amended or revised;
- (2) To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process or discharge non-storm water wastes;
- (3) To prohibit Illicit Connections, Activities and Discharges to the MS4;
- (4) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Chapter; and
- (5) To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning

products, paint products, hazardous waste, sediment and other pollutants into the MS4.

B. Definitions

Whenever used in this Chapter, unless a different meaning is stated in a definition applicable to only a portion of this law, the following terms will have meanings set forth below:

- (1) Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- (2) Clean Water Act. The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- (3) Construction Activity. Activities requiring authorization under the SPDES permit for storm water discharges from construction activity, GP-02-01, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.
- (4) DEC. The New York State Department of Environmental Conservation.
- (5) Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (6) Illicit Connections. Any drain or conveyance, whether on the surface or subsurface, which allows

an illegal discharge to enter the MS4, including but not limited to:
 - (a). Any conveyances which allow any non-storm water discharge including treated or untreated sewage, process wastewater, and wash water to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or

- approved by an authorized enforcement agency; or
- (b). Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
- (7) Illicit Discharge. Any direct or indirect non-storm water discharge to the MS4, except as exempted in Section E of this Chapter.
- (8) Industrial Activity. Activities requiring the SPDES permit for discharges from industrial activities except construction, GP-98-03, as amended or revised.
- (9) MS4. Municipal Separate Storm Sewer System.
- (10) Municipal Separate Storm Sewer System. A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
- (11) (a) Owned or operated by the Town of Colonie;
(b) Designed or used for collecting or conveying storm water;
(c) Which is not a combined sewer; and
(d) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at
40 CFR 122.2
- (12) Municipality. The Town of Colonie
- (13) Non-Storm Water Discharge. Any discharge to the MS4 that is not composed entirely of storm water.
- (14) Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.
- (15) Pollutant. Dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, agricultural waste and ballast discharged into water which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards.
- (16) Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(17) Special Conditions.

(a). Discharge Compliance with Water Quality Standards. The condition that applies where a municipality has been notified that the discharge of storm water authorized under their MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition the municipality must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.

(b). 303(d) Listed Waters. The condition in the municipality's MS4 permit that applies

where the MS4 discharges to a 303(d) listed water. Under this condition the storm water management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.

(c). Total Maximum Daily Load (TMDL) Strategy. The condition in the municipality's MS4 permit where a TMDL including requirements for control of storm water discharges has been approved by EPA for a water body or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL storm water allocations prior to September 10, 2003, the municipality was required to modify its storm water management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

(d). The condition in the municipality's MS4 permit that applies if a TMDL is approved in the future by EPA for any water body or watershed into which an MS4 discharges. Under this condition the municipality must review the applicable TMDL to see if it includes requirements for control of storm water discharges. If an MS4 is not meeting the TMDL storm water allocations, the municipality must, within six (6) months of the TMDL's approval, modify its storm water management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

(18) State Pollutant Discharge Elimination System (SPDES) Stormwater Discharge Permit. A permit issued by the Department that authorizes the discharge of pollutants to waters of the state.

(19) Stormwater or Storm Water. Rainwater, surface runoff, snowmelt and drainage.

(20) Storm Water Management Officer (SMO). An employee, the municipal engineer or other public official(s) designated by the Town of Colonie to

enforce this Chapter. The SMO may also be designated by the municipality to accept and review storm water pollution prevention plans, forward the plans to the applicable municipal board and inspect storm water management practices.

- (21) 303(d) List. A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the DEC as required by Section 303(d) of the Clean Water Act. 303(d) listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next two years.
- (22) TMDL. Total Maximum Daily Load.
- (23) Total Maximum Daily Load. The maximum amount of a pollutant to be allowed to be released into a water body so as not to impair uses of the water, allocated among the sources of that pollutant.
- (24) Town. The Town of Colonie.
- (25) Wastewater or Waste Water. Water that is not Storm Water and which is contaminated with pollutants and is or will be discarded.

C. Applicability.

This Chapter shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

D. Responsibility for Administration.

The Storm Water Management Officer(s) (SMO(s)) shall administer, implement, and enforce the provisions of this Chapter. Such powers granted or duties imposed upon the authorized enforcement official may be delegated in writing by the SMO as may be authorized by the municipality.

E. Discharge Prohibitions.

- (1) Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the MS4 any materials other than storm water except as provided in sub-section (a) below. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:

- (a) The following discharges are exempt from discharge prohibitions established by this Chapter, unless the DEC or the municipality has determined them to be substantial contributors of pollutants: water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising ground water, uncontaminated ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains, crawl space or basement sump pumps, air conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire fighting activities, and any other water source not containing pollutants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants.
 - (b) Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that, such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this local law.
 - (c) Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a verbal notification to the SMO prior to the time of the test.
 - (d) The prohibition shall not apply to any discharge permitted under an SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the DEC, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.
- (2) Prohibition of Illicit Connections.
- (a) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
 - (b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the

connection was permissible under law or practices applicable or prevailing at the time of connection.

- (c) A person is considered to be in violation of this Chapter if the person connects a line conveying sewage to the municipality's MS4, or allows such a connection to continue.

F. Prohibition Against Activities Contaminating Storm Water

- (1) Activities that are subject to the requirements of this section are those types of activities that:
 - (a) Cause or contribute to a violation of the Town's MS4 SPDES permit.
 - (b) Cause or contribute to the Town being subject to the Special Conditions as defined in Section B (Definitions) of this Chapter.
- (2) Such activities include improper management of pet waste or any other activity that causes or contributes to violations of the Town's MS4 SPDES permit authorization.
- (3) Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the Town's MS4 SPDES permit authorization, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the Town's MS4 SPDES permit authorization.

G. Requirement to Prevent, Control and Reduce Storm water Pollutants By The Use Of

Best Management Practices.

- (1) Best Management Practices

Where the SMO has identified illicit discharges as defined in Section B or activities contaminating storm water as defined in Section G the Town may require implementation of Best Management Practices (BMPs) to control those illicit discharges and activities.

- (a) The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and non-structural BMPs.

- (b) Any person responsible for a property or premise, which is, or may be, the source of an illicit discharge as defined in Section B or an activity contaminating storm water as defined in Section G, may be required to implement, at said person's expense, additional structural and non-structural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.
- (c) Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

H. Suspension of Access to MS4. Illicit Discharges in Emergency Situations.

- (1) The SMO may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4. The SMO shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.
- (2) Suspension due to the detection of illicit discharge. Any person discharging to the Town's MS4 in violation of this law may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO determines in writing that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the SMO.

I. Industrial or Construction Activity Discharges.

Any person subject to an industrial or construction activity SPDES storm water discharge permit shall comply with all provisions of such permit. Proof of

compliance with said permit may be required in a form acceptable to the Town prior to the allowing of discharges to the MS4.

J. Access and Monitoring of Discharges.

- (1) **Applicability.** This section applies to all facilities that the SMO must inspect to enforce any provision of this Chapter, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Chapter.
- (2) **Access to Facilities.**
 - (a) The SMO shall be permitted to enter and inspect facilities subject to regulation under this Chapter as often as may be necessary to determine compliance with this Chapter. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.
 - (b) Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this Chapter.
 - (c) The Town shall have the right to set up on any facility subject to this Chapter such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's storm water discharge.
 - (d) The Town has the right to require the facilities subject to this Chapter to install monitoring equipment as is reasonably necessary to determine compliance with this Chapter. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.
 - (e) Unreasonable delays in allowing the Town access to a facility subject to this Chapter is a violation of this Chapter. A person who is the operator of a facility subject to this Chapter commits an offense if the person denies the Town reasonable access to the

facility for the purpose of conducting any activity authorized or required by this Chapter.

- (f) If the SMO has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Chapter or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

K. Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the MS4, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Town in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Town within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

L. Enforcement.

- (1) Notice of Violation.

When the Town's SMO finds that a person has violated a prohibition or failed to meet a requirement of this Chapter, he/she may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The elimination of illicit connections or discharges;
- (b) That violating discharges, practices, or operations shall cease and desist;

- (c) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (d) The performance of monitoring, analyses, and reporting;
- (e) Payment of a fine; and
- (f) The implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

(2) Penalties

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Chapter shall be guilty of a violation punishable by a fine not exceeding five thousand dollars (\$5000) or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars nor more than ten thousand dollars (\$10,000) or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars nor more than fifteen thousand dollars (\$15,000) or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this Chapter shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

M. Appeal of Notice of Violation.

Any person receiving a Notice of Violation may appeal the determination of the SMO to the Town Board within 15 days of its issuance, which shall hear the appeal within 30 days after the filing of the appeal, and within five days of making its decision, file its decision in the office of the Town Clerk and mail a copy of its decision by certified mail to the discharger.

N. Corrective Measures After Appeal.

- (1) If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 5 business days of the decision of the municipal authority upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.
- (2) If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.

O. Injunctive Relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Chapter. If a person has violated or continues to violate the provisions of this Chapter, the SMO may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

P. Alternative Remedies.

- (1) Where a person has violated a provision of this Chapter, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Town Attorney and concurrence of the Storm Water Management Officer, where:
 - (a) The violation was unintentional
 - (b) The violator has no history of previous violations of this Chapter.
 - (c) Environmental damage was minimal.

- (d) Violator acted quickly to remedy violation.
- (e) Violator cooperated in investigation and resolution.

(2) Alternative remedies may consist of one or more of the following:

- (a) Attendance at compliance workshops
- (b) Storm drain stenciling or storm drain marking
- (c) River, stream or creek cleanup activities

Q. Violations Deemed a Public Nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

R. Remedies not Exclusive.

The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

This local law shall become effective upon its proper filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 8 of 2007 of the Town of Colonie was duly passed by the Town Board on, April 26, 2007, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19__ of the _____ (Town) of _____ was duly passed by the _____ on _____ 19__, and was (approved)(not disapproved)(repassed (Name of Legislative Body) after disapproval) by the _____ and was deemed duly adopted on _____ 19__ in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19__ of the _____

(_____) (Town) (_____) of _____ was duly passed by the _____ on _____ 19__, and was (approved)(not disapproved)(repassed after (Name of Legislative Body) disapproval) by _____ on _____ 19__. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 19__ in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19__

of the _____ (Town) (_____) of _____ was duly passed by the (Name of Legislative Body) on _____ 19__ and was (approved)(not disapproved)(repassed after (disapproval) by the _____ on _____ 19__. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of 19__ in accordance with the applicable provisions of law.

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a TOWN where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the City of having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on 19_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the County of State of New York, having been submitted to the electors at the General Election of November , 19_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph one , above.

Clerk of the Town or officer designated by local legislative body

(Seal)

Date:

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK

COUNTY OF ALBANY

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Town of Colonie Town Attorney

Date: