

Post-Construction Stormwater Management Ordinance

Town of Sabattus

Section 1. Purpose.

The purpose of this "Post-Construction Stormwater Management Ordinance" (the "Ordinance") is to provide for the health, safety, and general welfare of the citizens of the Town of Sabattus through review and approval of post-construction stormwater management plans and monitoring and enforcement of compliance with such plans as required by federal and State law. This Ordinance establishes methods for post-construction stormwater management in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit

Section 2. Objectives.

This Ordinance seeks to meet the above purpose through the following objectives:

- A. Reduce the impact of post-construction discharge of stormwater on receiving waters; and
- B. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through use of Best Management Practices as promulgated by the Maine Department of Environmental Protection pursuant to its Chapters 500 and 502 Rules, and ensure that these management controls are properly maintained and pose no threat to public safety.

Section 3. Definitions.

For the purposes of this Ordinance, the terms listed below are defined as follows:

- A. **Applicant.** "Applicant" means a Person with requisite right, title or interest or an agent for such Person who has filed an application for New Development or Redevelopment that requires a Post-Construction Stormwater Management Plan under this Ordinance.
- B. **Best Management Practices ("BMP").** "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- C. **Clean Water Act.** "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

D. Construction Activity. "Construction Activity" means Construction Activity including one acre or more of Disturbed Area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb equal to or greater than one acre.

E. Detention. The management of stormwater to provide temporary storage of runoff to control stormwater outflow from the site and peak flow in receiving waters, and to provide gravity settling of pollutants.

F. Discharge. "Discharge means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to "waters of the State." "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged.

G. Disturbed Area. "Disturbed Area" is clearing, grading and excavation. Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "disturbed area." "Disturbed area" does not include routine maintenance but does include redevelopment. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

H. Enforcement Authority. "Enforcement Authority" means the Sabattus Code Enforcement officer, the person authorized by the Municipality to administer and enforce this Ordinance.

I. Municipality. "Municipality" means the Town of Sabattus.

J. Municipal Permitting Authority. "Municipal Permitting Authority" means the municipal official or body that has jurisdiction over the land use approval or permit required for a New Development or Redevelopment

K. Municipal Separate Storm Sewer System, or MS4. "Municipal Separate Storm Sewer System or "MS4," means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State agency or Federal agency or other public entity that discharges directly to surface waters of the State.

L. National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit. "National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit" means a permit issued by the U.S. Environmental Protection Agency (EPA) or by the Maine Department of Environmental Protection (DEP) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

M. New Development. "New Development" means any Construction Activity on unimproved Premises.

N. Person. "Person" means any individual, firm, corporation, municipality, Quasi-municipal Corporation, State agency or Federal agency or other legal entity.

O. Pollutant. "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

P. Post-Construction Stormwater Management Plan. "Post-Construction Stormwater Management Plan" means BMPs and Stormwater Management Facilities employed by a New Development or Redevelopment to meet the standards of this Ordinance and approved by the Municipal Permitting Authority.

Q Premises. "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Municipality from which Discharges into the Storm Drainage System are or may be created, initiated, originated or maintained.

R. Qualified Post-Construction Stormwater Inspector. "Qualified Post-Construction Stormwater Inspector" means a person who conducts post-construction Stormwater Management Facilities, Best Management Practice ("BMP") inspections and meets the following qualifications;

1. The inspector shall have a working knowledge of Chapter 500, Stormwater Management Rules, and Maine's Stormwater BMP Manual, and

2. A Qualified Post-Construction Stormwater Inspector shall meet at least one the following criteria outlined in a-c below; or the inspector must be on the DEP's list of approved post construction stormwater BMP inspectors.

Non- Proprietary Stormwater Management Facilities

- a. Has a college degree in environmental or civil engineering and is a professional engineer with at least three years of experience designing, evaluating or inspecting stormwater management facilities; or
- b. Has a college degree in an environmental science or civil engineering, or comparable expertise, and has demonstrated a practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for Stormwater Management Facilities, and has the ability to determine if stormwater facilities are performing as intended. This qualification must be accompanied by two professional references to be valid; or
- c. Has successfully completed the requirements of a DEP training course on inspecting post-construction stormwater management facilities. Note: successful completion may require receiving a passing grade in an examination at the conclusion of the course.

Proprietary Stormwater Management Facilities

- a. Proprietary stormwater management facilities must be inspected by a person approved by the manufacturer.

S. Redevelopment. "Redevelopment" means Construction Activity on Premises already improved with buildings, structures or activities or uses, but does not include such activities as exterior remodeling.

T. Regulated Small MS4. "Regulated Small MS4" means any Small MS4 regulated by the State of Maine "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems" effective July 1st, 2013 ("General Permit"), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4s.

U. Small Municipal Separate Storm Sewer System, or Small MS4. "Small Municipal Separate Storm Sewer System", or "Small MS4," means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

V. Storm Drainage System. "Storm Drainage System" means the Municipality's Regulated Small MS4.

W. Stormwater. "Stormwater" means any Storm water runoff, snowmelt runoff: and surface runoff and drainage; "Stormwater" has the same meaning as "Storm Water."

X. Stormwater Management Facilities. "Stormwater Management Facilities" means any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the Post-Construction Stormwater Management Plan for a New Development or Redevelopment.

Y. Urbanized Area ("UA"). "Urbanized Area" or "UA" means the areas of the State of Maine so defined by the latest decennial (2010) census by the U.S. Bureau of the Census.

Section 4. Applicability.

A. In General. This Ordinance applies to all New Development and Redevelopment (Subject to the thresholds established by MDEP Chapter 500 and 502) within the Municipality and to associated Stormwater Management Facilities.

B. Stormwater Management. Adequate provisions shall be made for the disposal of all stormwater collected on streets, parking areas, roofs or other impervious surfaces through a stormwater drainage system which will not have adverse impacts on abutting or downstream properties. All projects including less than one (1) acre of disturbed shall be designed to meet the requirements of this section 4(b). All projects including one (1) acre or more of disturbed land shall meet the requirements of the Maine Stormwater Management Law, 38 M.R.S.A. Section 420-D, or its successor, and regulations promulgated there under, as amended.

C. Exception. This Ordinance does not apply to New Development or Redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that is approved under this Ordinance; said lot, tract or parcel shall not require separate review under this Ordinance, but shall comply with the Post-Construction Stormwater Management Plan requirements.

Section 5. Post-Construction Stormwater Management Plan Approval

A. General Requirement. Except as provided in Section 4.B above, no Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit or approval for that New Development or Redevelopment unless the Municipal Permitting Authority for that New Development or Redevelopment also determines that the Applicant's Post-Construction Stormwater Management Plan for that New Development or Redevelopment meets the requirements of this Ordinance.

B. Performance Standards

1. The Applicant shall make adequate provision for the management of the quantity and quality of all stormwater generated by the New Development or Redevelopment through a Post-Construction Stormwater Management Plan. This Post-Construction Stormwater Management Plan shall be designed to meet the standards contained in the Maine Department of Environmental Protection's Chapters 500 and 502 Rules and shall comply with the practices described in the manual *Stormwater Management for Maine*, published by the Maine Department of Environmental Protection, January 2006, which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003
2. The Applicant may meet the quantity and quality standards above either on-site or off-site, but where off-site facilities are used, the applicant must submit to the Municipality documentation approved as to legal sufficiency by the Municipality's attorney that the Applicant has a sufficient property interest in the property where the off-site facilities are located by easement, covenant or other appropriate legal instrument to ensure that the facilities will be able to provide post-construction stormwater management for the New Development or Redevelopment and that the property will not be altered in a way that interferes with the off-site facilities.
3. Where the Applicant proposes to retain ownership of the Stormwater Management Facilities shown in its Post-Construction Stormwater Management Plan, the Applicant shall submit to the Municipality documentation, approved as to legal sufficiency by the Municipality's attorney that the Applicant, its successors, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the stormwater management facilities. Applications for New Development or Redevelopment requiring Stormwater Management Facilities that will not be dedicated to the Municipality shall enter into a Maintenance Agreement with the Municipality. A sample of this Maintenance Agreement is attached as Appendix 1 to this Ordinance.
4. Whenever elements of the Stormwater Management Facilities are not within the right-of-way of a public street and the facilities will not be offered to the Municipality for acceptance as public facilities, the Municipal Permitting Authority may require that perpetual easements not less than thirty (30) feet in width, conforming substantially with the lines of existing natural drainage and in a form acceptable to the Municipality's attorney, shall be provided to the Municipality allowing access for maintenance, repair, replacement and improvement of the Stormwater Management Facilities. When an offer of dedication is required by the Municipal Permitting Authority, the Applicant shall be responsible for the maintenance of

these Stormwater Management Facilities under this Ordinance until such time (if ever) as they are accepted by the Municipality.

5. In addition to any other applicable requirements of this Ordinance and the Municipality's land use ordinances, any New Development or Redevelopment which also requires a stormwater management permit from the Maine Department of Environmental Protection (DEP) under 38 M.R.S.A. 420-D shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the same may be amended from time to time, and the applicant shall document such compliance to the Municipal Permitting Authority. Where the standards or other provisions of such stormwater rules conflict with municipal ordinances, the stricter (more protective) standard shall apply.

6. **Engineering and administrative fees.** At the time of application, the Applicant shall pay an amount to the Municipal Permitting Authority estimated by the Municipal Reviewing Authority to be sufficient to pay the engineering and legal review costs and administrative costs incurred by the Municipality in review of the Post-Construction Stormwater Management Plan. The Municipality shall deduct from this amount the engineering, legal and administrative costs actually incurred by the Municipality, based upon the hours of engineering and legal review time and prevailing hourly rate for reimbursement of the Municipality's administrative costs. Any remaining engineering, legal and administrative review costs owed by the Applicant shall be paid in full by the Applicant prior to the issuance of any temporary or permanent certificate of occupancy for the New Development or Redevelopment, and any unused balance remaining at that time shall be refunded to the Applicant. In addition, any persons required to file an annual certification under Section 6 of this Ordinance shall pay, prior to the issuance of any temporary or permanent certificate of occupancy for the New Development or Redevelopment, an amount estimated to equal the Municipality's administrative and technical costs of review of the annual certification for a period of twenty (20) years.

7. **Notice of BMP Discharge to Municipality's MS4.** At the time of application, the Applicant shall notify the Municipal Permitting Authority if its Post-Construction Stormwater Management Plan includes any BMP(s) that will discharge to the Municipality's MS4 and shall include in this notification a listing of which BMP(s) will so discharge.

Section 6. Post-Construction Stormwater Management Plan Compliance

A. General Requirements. Any Person owning, operating, leasing or having control over Stormwater Facilities required by a Post Construction Stormwater Management Plan approved under this Ordinance shall demonstrate with that plan as follows:

1. A Qualified Post-Construction Stormwater Inspector hired by that Person, shall, at least annually, inspect the Stormwater Management Facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved Post-Construction Stormwater Management Plan.

2. Stormwater Management Facilities require maintenance to function as intended by the approved Post-Construction Stormwater Management Plan, that Person shall take corrective action(s) to address the deficiency or deficiencies.

3. On January 1 of each year, A Qualified Post-Construction Stormwater Inspector hired by that Person, shall provide a completed and signed certification to the Enforcement Authority in a form identical to that attached as Appendix 1 to this Ordinance, certifying that the Person has inspected the Stormwater Management facilities and that they are adequately maintained and functioning as intended by the approved Post-Construction Stormwater Management Plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the Stormwater Management Facilities and, if the Stormwater Management Facilities require maintenance or repair of deficiencies in order to function as intended by the approved Post-Construction Stormwater Management Plan, the Person shall provide a record of the required maintenance or deficiency and corrective action(s) taken. In addition, any persons required to file an annual certification under this Section 6 of this Ordinance shall include with the annual certification payment in the amount of one hundred dollars (\$100.00) to pay the administrative and technical costs of review of the annual certification.

B. Right of Entry. In order to determine compliance with this Ordinance and with the Post-Construction Stormwater Management Plan, the Enforcement Authority may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the Stormwater Management Facilities.

C. Inspections. The owner or operator of a Stormwater Management Facility must hire a Qualified Post-Construction Stormwater Inspector who must provide a completed and signed certification to the Enforcement Authority by January 1 of each year.

Section 7. Enforcement

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance or of the Post-Construction Stormwater Management Plan. Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Enforcement Authority may enforce this Ordinance in accordance with 30-A M.R.S.A. § 4452.

A. Notice of Violation. Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Enforcement Authority may order compliance with this Ordinance or with the Post Construction Stormwater Management Plan by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

1. The abatement of violations, and the cessation of practices, or operations in violation of this Ordinance or of the Post-Construction Stormwater Management Plan;
2. At the Person's expense, compliance with BMPs required as a condition of approval of the New Development or Redevelopment, the repair of Stormwater Management Facilities

and/or the restoration of any affected property; and/or

3. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation, compliance with BMPs, repair of Stormwater Management Facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

B. Penalties/Fines/Injunctive Relief. Any Person who violates this Ordinance or the Post-Construction Stormwater Management Plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any Person who violates this Ordinance or the Post-Construction Stormwater Management Plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the Municipality for violation of federal and State environmental laws and regulations caused by or related to that Person's violation of this Ordinance or of the Post-Construction Stormwater Management Plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this Section.

C. Consent Agreement. The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance or of the Post-Construction Stormwater Management Plan for the purposes of eliminating violations of this Ordinance or of the Post Construction Stormwater Management Plan and of recovering fines, costs and fees without court action.

D. Appeal of Notice of Violation. Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Enforcement Authority to the Sabattus Board of Appeals in accordance with the Board of Appeals Ordinance. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the Enforcement Authority. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

E. Enforcement Measures. 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 to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Enforcement Authority's decision, then the Enforcement Authority may recommend to the municipal officers that the municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

Section 8. Severability.

The provisions of this Ordinance are hereby declared severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Ordinance.

Section 9. Basis.

The Town of Sabattus enacts this "Post-Construction Stormwater Management Control Ordinance" (the "Ordinance") pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 *et seq.* (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems," has listed the Town of Sabattus as having a Regulated Small Municipal Separate Storm Sewer System ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Ordinance as part of the Municipality's Storm Water Management Program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in new development and redevelopment").

Enacted this 14th day of May, 2015

Effective Date: May 15, 2015

