

## Part II – General Legislation: Chapter 100 - STORMWATER MANAGEMENT

### Body:

#### Part 1

**Stormwater Management, Erosion and Sediment Control [Adopted \_\_\_\_\_ by L.L. No. \_\_\_\_\_ ]**

#### **ARTICLE I General Provisions**

##### **§ 100-1. Findings of fact.**

It is hereby determined that:

- A. Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
- B. This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- C. Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
- D. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing streambank erosion and sedimentation;
- E. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- F. Substantial economic losses can result from these adverse impacts on the waters of the municipality;
- G. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- H. The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety;
- I. Regulation of land development activities by means of performance standards governing stormwater 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.

##### **§ 100-2. Purpose.**

This Part 1 is enacted to establish minimum stormwater management requirements that will protect and safeguard the general health, safety, and welfare of the public residing within the Town of New Hartford and to address the findings of fact in § 100-1 hereof. The regulations seek to meet those purposes by achieving the following objectives:

- A. Meet the requirements of Minimum Measures 4 and 5 of the New York State Current General Permit for Construction Activities, and the Current General Permit for MS4's;
- B. Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;
- C. Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- D. Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
- E. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

##### **§ 100-3. Statutory authority.**

In accordance with § 10 of the Municipal Home Rule Law of the State of New York, the Town Board of the Town of New Hartford has the authority to enact local laws and amend local laws for the purpose of promoting the health, safety or general welfare of the Town of New Hartford and for the protection and enhancement of its physical environment. The Town Board of the Town of New Hartford may include in any such local law provisions for the appointment of any municipal officer, employees, or independent contractor to effectuate, administer and enforce such local law.

#### **ARTICLE II Scope**

##### **§ 100-4. Applicability.**

- A. The stormwater management requirements of this Part 1 shall be applicable to all land development activities as defined in this Part 1.
- B. The municipality designates the Codes Enforcement Officer to accept all stormwater pollution prevention plans who shall forward such plans to the Town Engineer and such other municipal boards as may be necessary. The Codes Enforcement Officer may:
  - (1) Review the plans;
  - (2) Upon approval by the Town Board of the Town of New Hartford, and subject to an agreement by the Developer to pay the cost thereof engage the services of a registered professional engineer to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board;
  - (3) Accept the certification of a licensed professional that the plans conform to the requirements of the New York current General Permit for Construction Activities, and the current General Permit for MS4's; or
- C. All land development activities subject to review and approval by the applicable board of the Town of New Hartford under subdivision, site plan, and/or special permit regulations shall be reviewed subject to the standards contained in those chapters.'

**§ 100-5. Exemptions.**

The following activities are exempt from the stormwater management requirements of this Part 1.

- A. Agricultural activity as defined in this Part 1.
- B. Logging activity undertaken pursuant to an approved timber management plan prepared or approved by the County Soil and Water Conservation District or the New York State Department of Environmental Conservation, except that landing areas and log haul roads are subject to this Part 1.
- C. Routine maintenance activities that disturb less than five acres or are performed to maintain the original line and grade, hydraulic capacity or original purpose of a stormwater management facility.
- D. Repairs to any stormwater management practice or facility deemed necessary by the municipality or its designee.
- E. Any part of a subdivision if a plat for the subdivision has been approved by the Town of New Hartford on or before the effective date of this Part 1.
- F. Land development activity(ies) for which a building permit has been approved on or before the effective date of this Part 1.
- G. Creation of graves at cemeteries.
- H. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- I. Emergency activity immediately necessary to protect life, property or natural resources.
- J. 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.
- K. Landscaping and horticultural activities in connection with an existing structure.
- L. Cutting trees for firewood or personal uses.

**§ 100-6. Definitions.**

As used in this Part 1, the following terms shall have the meanings indicated:

AGRICULTURE - The raising for profit/gain of fruits, grains, vegetables and the like and structures incident thereto but not including the raising or keeping 'of animals. "Agriculture," as defined in this Part 1, does not include all of the uses defined as agricultural uses in New York's Agriculture and Markets Law.

APPLICANT - A property owner or agent of a property owner who has filed an application for a land development activity.

BUILDING - Any roofed structure intended for the shelter, housing or enclosure of persons, animals or chattels. When a building is divided into separate parts extending from the ground up, each part so divided is deemed a separate building.

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.

COMMERCIAL RECREATION - Outdoor facilities, operated as a business and open to the public with facilities for uses such as horseback riding, swimming, golf courses, driving ranges, miniature golf and outdoor and open air live theater.

DEDICATION - The deliberate appropriation of property from its owner by a municipality for general public use.

DESIGN MANUAL - The New York State Stormwater Design Manual, most recent version including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

DEVELOPER - A person or entity which undertakes land development activities.

EROSION CONTROL MANUAL - The most recent version of the "New York Standards and Specifications for Erosion and Sediment Control" manual, commonly known as the "Blue Book."

FAMILY - A single person; two or more persons related by blood or marriage; persons who are formally parties in a domestic partnership entered into pursuant to the laws of the United States or any state; or one or more persons acting as parental guardians for other household occupants.

GRADING - Excavation or fill of material, including the resulting conditions thereof.

IMPERVIOUS COVER - Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snowmelt 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 stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION - The process of percolating stormwater into the subsoil.

LAND DEVELOPMENT ACTIVITY - Construction activity, including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of at least one acre, or activities 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.

LOGGING ACTIVITY - Clearing and removal of trees as part of a business enterprise on land in excess of one acre in size except for personal use or property maintenance.

MAINTENANCE AGREEMENT - A legally recorded document which places restrictions on the use or enjoyment of real property (e.g., deed restrictions), and which provides for long-term maintenance of stormwater management practices.

NONPOINT 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 siltation) 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 - Land development activity or proposed land development activity. RECHARGE - The addition of water to an aquifer or to a pumping well; the replenishment of underground water reserves; also, the amount of water added to an aquifer or a pumping well. Recharge is typically expressed as a rate, e.g., inches per year or gallons per day.

SEDIMENT CONTROL - Measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS - Cold-water fisheries, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES - A permit under the New York State Pollutant Discharge Elimination System (SPDES) 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 - A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards.

STABILIZATION - The use of practices that prevent exposed soil from eroding.

STOP-WORK ORDER - An order issued by the Codes Enforcement Officer or agency with jurisdiction over a particular activity which requires that all construction activity on a site be stopped.

STORMWATER - Rainwater, surface runoff, snowmelt and drainage.

STORMWATER HOTSPOT - A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on recognized or generally accepted monitoring studies.

STORMWATER MANAGEMENT - The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORMWATER MANAGEMENT FACILITY One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT PRACTICES (SMPs) - Measures, either structural or non structural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

**STORMWATER POLLUTION PREVENTION PLAN (SWPPP)** - A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

**STORMWATER 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 man-made 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.

**WATERCOURSE** - A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

**WATERWAY** - A channel that directs surface runoff to a watercourse or to the public storm drain.

**WETLAND** - Any area where water is at or near the surface of the ground each year to promote the formation of hydric soils or hydrophytes (water-loving plants).

### **ARTICLE III Requirements and Design Criteria**

#### **§ 100-7. Stormwater pollution prevention plans.**

A. Stormwater pollution prevention plan requirement. No application for approval of a land development activity shall be considered until the Planning Board has received a stormwater pollution prevention plan (SWPPP) prepared in accordance with the NYS current General Permit for Construction Activities, and the current General Permit for MS4's. B. Contents of stormwater pollution prevention plans.

- (1) In accordance with NYS current General Permit for Construction Activities, and the current General Permit for MS4's, all SWPPPs shall provide the following background information and erosion and sediment controls:
  - (a) Background information about the scope of the project, including location, type and size of project;
  - (b) Site map/construction drawing(s) for the project, including a general location map at a scale no smaller than one inch equals 100 feet. 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 off-site 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 stormwater discharge( s);
  - (c) Description of the soil(s) present at the site;
  - (d) 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 acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
  - (e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
  - (f) 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 stormwater, and spill prevention and response;
  - (g) 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;
  - (h) A site map/construction drawing(s) specifying the location(s), size(s) and length( s) of each erosion and sediment control practice;
  - (i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
  - (j) Temporary practices that will be converted to permanent control measures;
  - (k) 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;
  - (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;

- (m) Name(s) of the receiving water(s);
  - (n) Delineation of SWPPP implementation responsibilities for each part of the site;
  - (o) 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; and
  - (p) Any existing data that describes the stormwater runoff at the site.
- (2) Land development activities meeting Condition A, B or C below shall also include water quantity and water quality controls (postconstruction stormwater runoff controls) as set forth in § 100-7B(3) below as applicable:
- (a) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on New York State Department of Environmental Conservation list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
  - (b) Condition B: stormwater runoff from land development activities disturbing five or more acres.
  - (c) Condition C: stormwater runoff from construction activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.
- (3) SWPPP content requirements for Condition A, Band C:
- (a) All information in § 100-7B(1) of this Part 1;
  - (b) Description of each postconstruction stormwater management practice;
  - (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice;
  - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
  - (e) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions;
  - (f) Dimensions, material specifications and installation details for each postconstruction stormwater management practice;
  - (g) Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice;
  - (h) Maintenance easements to ensure access to all stormwater 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;
  - (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with Part 1.
  - (j) For Condition A, the SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this local law.
- C. Plan certification. The SWPPP shall be prepared by a landscape architect, (CPESC) certified professional in erosion and sediment control or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in the NYS current General Permit for Construction Activities, and the current General Permit for MS4's . Construction Activities GP-02-0 1 and this Part 1.
- D. Other environmental permits. The applicant shall certify that all other applicable environmental permits have been acquired for the land development activity prior to making application to the Town of New Hartford.
- E. Contractor certification.
- (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater 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 stormwater pollution prevention plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."
  - (2) 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.
  - (3) The certification statement(s) shall become part of the SWPPP for the land development activity.
- F. 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.

**§ 100-8. Performance and design criteria.**

All land development activities shall be subject to the following performance and design\_ criteria:

- A. Technical standards. For the purpose of this Part 1, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this Part 1:
  - (1) 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").
  - (2) 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").
- B. Equivalence to Technical Standards. Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth and the SWPPP shall be prepared by a licensed professional.
- C. 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.

**§ 100-9. Maintenance, Inspection and repair of stormwater facilities.**

- A. Maintenance and Inspection during construction.
  - (1) The applicant or developer of the land development activity 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 Part 1. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
  - (2) The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. The reports shall be delivered to the Codes Enforcement Officer and also copied to the site logbook.
- B. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater 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 stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the NYS Department of Environmental Conservation and/or a designated representative of the Town of New Hartford to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this Part 1. The easement shall be recorded by the grantor in the office of the County Clerk after review by the Counsel for the Town of New Hartford and acceptance by the Town Board of the Town of New Hartford.
- C. Maintenance after construction. Permanent stormwater management practices installed in accordance with this Part 1 shall be operated and maintained to achieve the goals of this Part 1. Proper operation and maintenance also includes, as a minimum, the following:
  - (1) 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 Part 1.
  - (2) Written procedures for operation and maintenance and training new maintenance personnel.
  - (3) Actions to insure discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 100-8
- D. Maintenance agreements. Prior to final plan approval, the Town of New Hartford shall approve a formal maintenance agreement for stormwater management facilities that shall be binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property. The maintenance agreement shall be consistent with the terms and conditions of Appendix B2 of this Part 1 entitled "Sample Stormwater Control Facility Maintenance Agreement." In lieu of a maintenance agreement, the Town of New Hartford may, at its sole discretion, accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this Part 1 and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

**ARTICLE IV**

**Enforcement and Administration**

**§ 100-10. Stormwater management inspections.**

A. Inspection during construction.

(1) The Town Board, or its designee, Planning Board, Town Engineer, and/or Codes Enforcement Officer of the Town of New Hartford may choose to require or conduct inspections during construction as necessary to determine compliance with the stormwater management provisions of this Part 1. Following any such inspection, the Codes Enforcement Officer may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this Part 1 and/or the stormwater pollution prevention plan (SWPPP). So that the municipality may determine the need for an inspection, the applicant shall notify the Town of New Hartford enforcement official at least 48 hours before any of the following:

- (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.

(2) If any violations of this Part 1 or other applicable codes, laws or rules 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 except for site stabilization until any violations are corrected and all work previously completed has received approval by the Codes Enforcement Officer.

B. As-built filing requirements. All applicants are required to submit to the Town Clerk as-built plans for any stormwater management practices located on site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer located on site and within 45 days of the completion of final construction.

C. Inspection of stormwater facilities after project completion.

(1) Inspection programs may be established on a reasonable basis after construction.

(2) The Town of New Hartford may choose to conduct 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 stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws.

(3) 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 stormwater management practices.

(4) Such inspections may be performed by officials of the Town of New Hartford or the Town Board may designate an inspector required to have a professional engineer's (PE) license or certified professional in erosion and sediment control (CPESC) certificate, as long as the designated inspector is required to submit a report.

D. Submission of monitoring reports. The Town Board, Planning Board, and/or Codes Enforcement Officer of the Town of New Hartford may require monitoring and reporting from entities or applicants subject to this Part 1 as are necessary to determine compliance with this Part 1.

E. Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Town of New Hartford the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in § 100-1 OC.

**§ 100-11. Stormwater management performance guarantee.**

A. Construction completion and performance guarantee.

(1) 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 New Hartford in its approval of stormwater management activities, the Town of New Hartford 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 New Hartford as the beneficiary.

(2) The security shall be in an amount to be determined by the Town of New Hartford, or its consultant based on submission of final design plans, with reference to actual construction and landscaping costs.

(3) The performance guarantee shall remain in force until the surety is released from liability by the Town of New Hartford, provided that such period shall not be less than five years 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 five-year inspection has been conducted and the facilities have been found to be acceptable to the Town of New Hartford Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

B. Stormwater maintenance guarantee

- (1) Where stormwater 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, shall be required to provide the Town of New Hartford with a Performance Bond or an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction and until the facilities are transferred to the Town of New Hartford after completion of the period of the Performance Bond.
- (2) If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities during the period of the Performance Bond, the Town of New Hartford may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.
- (3) A new Performance Bond is required during and after construction of each phase of Phase 2 development.

C. Recordkeeping. The Town of New Hartford may require entities and applicants subject to this Part 1 to maintain records demonstrating compliance with this Part 1.

D. The owner or developer is responsible of all violations and penalties.

**§ 100-12. Enforcement; penalties for offenses. A. Notice of violation.**

A. When the Town of New Hartford determines that stormwater, erosion and/or sediment control activities associated with a land development activity are not being carried out in accordance with the stormwater management, erosion and sediment control requirements of this Part 1, it may issue a written notice of violation to the landowner. 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 land development activity into compliance with this Part 1 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 municipality by filing a written notice of appeal within 15 days of service of notice of violation.

B. Stop-work orders. The Town of New Hartford may issue a stop-work order for violations of this Part 1. Persons receiving a stop-work order shall be required to halt all land development activities, 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 New Hartford confirms that the land development activity 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 Part 1.

C. Violations. Any land development activity that is commenced or is conducted contrary to this Part 1, may be restrained by injunction or otherwise abated in a manner provided by law.

D. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Part 1 shall be guilty of a violation punishable by a fine of 2% of security amount (§100-11.A(2)) not exceeding \$1,500 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 2% of security amount (§100-11.A(2)) not less than \$1,500 nor more than \$3,000 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 5% of security amount (§100-11.A(2)) not less than \$3,000 nor more than \$10,000 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 Part 1 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.

E. Withholding of certificate of occupancy. If any building, stormwater management, erosion and sediment control, or land development activity is installed or conducted in violation of this Part 1, the Codes Enforcement Officer may prevent the occupancy of said building or land.

F. Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of New Hartford may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

**§ 100-13. Fees for services.**

(1) The Town of New Hartford may require any person undertaking land development activities regulated by this Part 1 to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or stormwater management maintenance performed by the Town of New Hartford or performed by a third party (P.E. Consultant) for the Town of New Hartford.

(2) All parties involved with the preparation of SWPPP, construction of SMP's inspector and consultant engineering for the developer, or the Town of New Hartford, are advised to undertake the assignment under contract with adequate liability insurance.

**§ 100-14. Severability.**

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this Part 1 shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this Part 1.

**§ 100-15. through § 100-19. (Reserved)**

**Part 2**

**Storm Sewers**

**ARTICLE V**

**Illicit Discharges, Activities and Connections [Adopted 10-10-2007 by L.L. No. 2-2007]**

**§ 100-20. Purpose/intent.**

The purpose of this Part 2 is to provide for the health, safety, and general welfare of the citizens of the Town of New Hartford through the regulation of nonstormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This Part 2 establishes methods for controlling 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 Part 2 are:

- A. To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02 or as amended or revised;
- B. To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process or discharge nonstormwater wastes;
- C. To prohibit illicit connections, activities and discharges to the MS4;
- D. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Part 2; and
- E. 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.

**§ 100-21. Definitions.**

Whenever used in this Part 2, unless a different meaning is stated in a definition applicable to only a portion of this Part 2, the following terms will have meanings set forth below:

**BEST MANAGEMENT PRACTICES (BMPs)** - Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater 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.

**CLEAN WATER ACT** - The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

**CONSTRUCTION ACTIVITY** - Activities requiring authorization under the SPDES Permit for Stormwater 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.

**DEPARTMENT** - The New York State Department of Environmental Conservation.

**DESIGN PROFESSIONAL** - New York State licensed professional engineer or licensed architect.

**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.

**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 nonstormwater 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.

**ILLICIT DISCHARGE** - Any direct or indirect nonstormwater discharge to the MS4, except as exempted in § 100-25 of this Part 2.

**INDIVIDUAL SEWAGE TREATMENT SYSTEM** - A facility serving one or more parcels of land or residential households, or a private, commercial or institutional facility, that treats sewage or other liquid wastes for discharge into the groundwaters of New York State, except where a permit for such a facility is required under the applicable provisions of Article 17 of the Environmental Conservation Law.

**INDUSTRIAL ACTIVITY** - Activities requiring the SPDES Permit for Discharges from Industrial Activities Except Construction, GP-98-03, as amended or revised.

**MS4** - Municipal separate storm sewer system.

**MUNICIPALITY** - The Town of New Hartford.

**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):

A. Owned or operated by the Town of New Hartford;

B. Designed or used for collecting or conveying stormwater;

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.

**NONSTORMWATER DISCHARGE** - Any discharge to the MS4 that is not composed entirely of stormwater.

**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.

**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.

**PREMISES** - Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

**SPECIAL CONDITIONS** -

A. Discharge compliance with water quality standards. The condition that applies where a municipality has been notified that the discharge of stormwater authorized under their MS4 permit may have been 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 stormwater 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 stormwater 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 stormwater allocations prior to September 10, 2003, the municipality was required to modify its stormwater 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 stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the municipality must, within six months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

**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.

**STORMWATER** - Rainwater, surface runoff, snowmelt and drainage.

**STORMWATER MANAGEMENT OFFICER (SMO)** - An employee, the Municipal Engineer or other public official(s) designated by the Town of New Hartford to enforce this Part 2. The SMO may also be designated by the municipality

to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

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 Department 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.

TMDL - Total maximum daily load.

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.

WASTEWATER - Water that is not stormwater, is contaminated with pollutants and is or will be discarded.

**§ 100-22. Applicability.**

This Part 2 shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

**§ 100-23. Responsibility for administration.**

The Stormwater Management Officer(s) [SMO(s)] shall administer, implement, and enforce the provisions of this Part 2. 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.

**§ 100-24. Severability.**

The provisions of this Part 2 are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Part 2 or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Part 2.

**§ 100-25. Discharge and connection prohibitions.**

A. Prohibition of illegal discharges. No person shall discharge or cause to be discharged into the MS4 any materials other than stormwater except as provided herein. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this Part 2, unless the Department 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 groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, 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.
- (2) Discharges approved, in writing, by the SMO to protect life or property from imminent 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 Part 2.
- (3) 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.
- (4) The prohibition shall not apply to any discharge permitted under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, 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.

B. Prohibition of illicit connections.

(1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.

(2) 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.

(3) A person is considered to be in violation of this Part 2 if the person connects to a line conveying sewage to the municipality's MS4 or allows such a connection to continue.

**§ 100-26. Prohibition against failing individual sewage treatment systems.**

No persons shall operate a failing individual sewage treatment system in areas tributary to the municipality's MS4. A failing individual sewage treatment system is one which has one or more of the following conditions:

- A. The backup of sewage into a structure.
- B. Discharges of treated or untreated sewage onto the ground surface.
- C. A connection or connections to a separate stormwater sewer system.
- D. Liquid level in the septic tank above the outlet invert.
- E. Structural failure of any component of the individual sewage treatment system that could lead to any of the other failure conditions as noted in this section.
- F. Contamination of off-site groundwater.

**§ 100-27. Prohibition against activities contaminating stormwater.**

- A. Activities that are subject to the requirements of this section are those types of activities that:
  - (1) Cause or contribute to a violation of the municipality's MS4 SPDES permit.
  - (2) Cause or contribute to the municipality being subject to the special conditions as defined in § 100-21 (Definitions) of this Part 2.
- B. Such activities include failing individual sewage treatment systems as defined III § 100-26, improper management of pet waste or any other activity that causes or contributes to violations of the municipality's MS4 SPDES permit authorization.
- C. Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the municipality'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 municipality's MS4 SPDES permit authorization.

**§ 100-28. Prevention, control, and reduction of stormwater pollutants by use of best management practices.**

- A. Best management practices. Where the SMO has identified illicit discharges as defined in § 100-21 or activities contaminating stormwater as defined in § 100-27, the municipality may require implementation of best management practices (BMPs) to control those illicit discharges and activities.
  - (1) 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 nonstructural BMPs.
  - (2) Any person responsible for a property or premises, which is or may be the source of an illicit discharge as defined in § 100-21 or an activity contaminating stormwater as defined in § 100-27, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.
  - (3) Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.
- B. Individual sewage treatment systems. Response to special conditions requiring no increase of pollutants or requiring a reduction of pollutants where individual sewage treatment systems are contributing to the municipality's being subject to the special conditions as defined in § 100-21 of this Part 2, the owner or operator of such individual sewage treatment systems shall be required to:
  - (1) Maintain and operate individual sewage treatment systems as follows:
    - (a) Inspect the septic tank annually to determine scum and sludge accumulation.
      - [1] Septic tanks must be pumped out whenever the bottom of the scum layer is within three inches of the bottom of the outlet baffle or sanitary tee or the top of the sludge is within 10 inches of the bottom of the outlet baffle or sanitary tee.
    - (b) Avoid the use of septic tank additives.
    - (c) Avoid the disposal of excessive quantities of detergents, kitchen wastes, laundry wastes, and household chemicals; and
    - (d) Avoid the disposal of cigarette butts, disposable diapers, sanitary napkins, trash and other such items .
    - (e) . (e) Most tanks should be pumped out every two to three years. However, pumping may be more or less frequent depending on use. Inspection of the tank for cracks, leaks and blockages should be done by the septage hauler at the time of pumping of the tank contents.
  - (2) Repair or replace individual sewage treatment systems as follows:
    - (a) In accordance with 10 NYCRR Appendix 75A to the maximum extent practicable.
    - (b) A design professional licensed to practice in New York State shall prepare design plans for any type of

absorption field that involves:

- [1] Relocating or extending an absorption area to a location not previously approved for such.
- [2] Installation of a new subsurface treatment system at the same location.
- [3] Use of alternate system or innovative system design or technology.

(c) A written certificate of compliance shall be submitted by the design professional to the municipality at the completion of construction of the repair or replacement system.

**§ 100-29. Suspension of access to MS4.**

- A. Illicit discharges in emergency situations. 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.
- B. Suspension due to the detection of illicit discharge. Any person discharging to the municipality's MS4 in violation of this Part 2 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.

**§ 100-30. Industrial or construction activity discharges.**

Any person subject to an industrial or construction activity SPDES stormwater 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 municipality prior to the allowing of discharges to the MS4.

**§ 100-31. Access and monitoring of discharges.**

- A. Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this Part 2, 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 Part 2.
- B. Access to facilities.
  - (1) The SMO shall be permitted to enter and inspect facilities subject to regulation under this Part 2 as often as may be necessary to determine compliance with this Part 2. 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.
  - (2) Facility operators shall allow the SMO ready access to all parts of the premises for the purpose of inspection, sampling, examination and copying of records as may be required to implement this Part 2.
  - (3) The municipality shall have the right to set up on any facility subject to this Part 2 such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.
  - (4) The municipality has the right to require the facilities subject to this Part 2 to install monitoring equipment as is reasonably necessary to determine compliance with this Part 2. 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 stormwater flow and quality shall be calibrated to ensure their accuracy.
  - (5) Unreasonable delays in allowing the municipality access to a facility subject to this Part 2 is a violation of this Part 2. A person who is the operator of a facility subject to this Part 2 commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this Part 2.
  - (6) If the SMO has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Part 2, 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 Part 2 or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

**§ 100-32. 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 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 nonhazardous materials, said person shall notify the municipality 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 municipality 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.

**§ 100-33. Enforcement.**

- A. Violation. It shall be unlawful for any person to violate any provision or to fail to comply with any requirements of this Part 2.
- B. Notice of violation. When the municipality's SMO finds that a person has violated a prohibition or failed to meet a requirement of this Part 2, he/she may order compliance by written notice of violation to the responsible person or may issue an appearance ticket charging that person with a violation of this Part 2. Such notice may require without limitation:
  - (1) The elimination of illicit connections or discharges;
  - (2) That violating discharges, practices, or operations shall cease and desist;
  - (3) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
  - (4) The performance of monitoring, analyses, and reporting;
  - (5) Payment of a fine; and
  - (6) 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 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.
- C. Appeal of notice violation. Any person receiving a notice of violation may appeal the determination of the SMO to the Town Board of the Town of New Hartford 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 Municipal Clerk and mail a copy of its decision by certified mail to the discharger.
- D. 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 five 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.

**§ 100-34. Penalties for offenses; remedies.**

- A. Penalties.
  - (1) In addition to or as an alternative to any penalty provided herein or by law, any person who violated the provisions of this Part 2 shall be guilty of a violation punishable by a fine not exceeding \$500 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 \$500 nor more than \$1,000 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 \$1,000 nor more than \$2,000 or imprisonment for a period not, to exceed six months, or both.
  - (2) However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this Part 2 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.

B. Alternative remedies.

(1) Where a person has violated a provision of this Part 2, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Municipal Attorney and concurrence of the Municipal Code Enforcement Officer, where:

- (a) The violation was unintentional.
- (b) The violator has no history of previous violations of this Part 2.
- (c) Environmental damage was minimal.
- (d) The violator acted quickly to remedy violation.
- (e) The violator cooperated in investigation and resolution.

C. 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 Part 2 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.

D. Injunctive relief. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Part 2. If a person has violated or continues to violate the provisions of this Part 2, 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.

E. Remedies not exclusive. The remedies listed in this Part 2 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.

## **STORMWATER MANAGEMENT 100**

### **Attachment 1**

### **Town of New Hartford**

### **Appendix B**

#### **Sample Stormwater Control Facility Maintenance Agreement**

Whereas, the Town of New Hartford ("Municipality") and the ("facility owner") want to enter into an agreement to provide for the long term maintenance and continuation of stormwater control measures approved by the Municipality for the below named project, and

Whereas, the Municipality and the facility owner desire that the stormwater control measures be built in accordance with the approved project plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the components. Therefore, the Municipality and the facility owner agree as follows:

1. This agreement binds the Municipality and the facility owner, its successors and assigns, to the maintenance provisions depicted in the approved project plans which are attached as Schedule A of this agreement. '
2. The facility owner shall maintain, clean, repair, replace and continue the stormwater control measures depicted in Schedule A as necessary to ensure optimum performance of the measures to design specifications. The stormwater control measures shall include, but shall not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.
3. The facility owner shall be responsible for all expenses related to the maintenance of the stormwater control measures and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities.
4. The facility owner shall provide for the periodic inspection of the stormwater control measures, not less than once in every five-year period, to determine the condition and integrity of the measures. Such inspection shall be performed by a professional engineer licensed by the State of New York. The inspecting engineer shall prepare and submit to the Municipality within 30 days of the inspection, a written report of the findings, including recommendations for those actions necessary for the continuation of the stormwater control measures.
5. The facility owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the stormwater control measures except in accordance with written approval of the Municipality.
6. The facility owner shall undertake necessary repairs and replacement of the stormwater control measures at the direction of the Municipality or in accordance with the recommendations of the inspecting engineer.
7. The facility owner shall provide to the Municipality within 30 days of the date of this agreement, a security for the maintenance and continuation of the stormwater control measures in the form of (a bond, letter of credit or escrow account).

8. This agreement shall be recorded in the Office of the County Clerk, County of Oneida together with the deed for the common property and shall be included in the offering plan and/or prospectus approved pursuant to \_\_\_ .
9. If the Municipality ever determines that the facility owner has failed to construct or maintain the stormwater control measures in accordance with the project plan or has failed to undertake corrective action specified by the Municipality or by the inspecting engineer, the Municipality is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the stormwater control measures and to affix the expenses thereof as a lien against the property.
10. This agreement is effective \_\_\_\_\_.