

POST-CONSTRUCTION STORMWATER ORDINANCE

Chapter 144

From the

CODE

of the

TOWN OF WINDHAM

Adopted June 9, 2009

COUNTY OF CUMBERLAND

STATE OF MAINE

Amendments:

Town of Windham
Draft Post-Construction Stormwater Management Ordinance

Section 1. Purpose.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of Windham, through monitoring and enforcement of compliance with post-construction stormwater management plans 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 ensure that post-construction stormwater management plans are followed and stormwater management facilities 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. 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"). 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. 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 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. Discharge. 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.

F. Disturbed Area. 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

G. Enforcement Authority. The Code Enforcement Officer(s) authorized by the municipality to administer and enforce this ordinance

H. Municipality. The Town of Windham.

I. Municipal Permitting Authority. The municipal official or body that has jurisdiction over the land use approval or permit required for a new development or redevelopment

J. Municipal Separate Storm Sewer System, or MS4. 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

K. National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. 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.

L. New Development. Any construction activity on unimproved premises

M. Person. Any individual, firm, corporation, municipality, quasi-municipal corporation, State agency or Federal agency or other legal entity.

N. Pollutant. 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.

O. Post-Construction Stormwater Management Plan. BMPs and stormwater management facilities employed by a new development or redevelopment to meet the stormwater standards of the municipality's subdivision, site plan, or other zoning, planning or other land use ordinances and approved by the municipal permitting authority.

P. Premises. Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the urbanized area of the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained

Q. Qualified Third-Party Inspector. A person who conducts post-construction stormwater management facilities inspections for compensation and who has received the appropriate training for such inspections from DEP

R. Redevelopment. Construction activity on premises already improved with buildings, structures, or activities or uses, but does not include such activities as exterior remodeling

S. Regulated Small MS4. Any small MS4 regulated by the State of Maine General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems (General Permit), effective July 1, 2008, 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.

T. Small Municipal Separate Storm Sewer System, or Small MS4. 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

U. Storm Drainage System. The municipality's regulated small MS4

V. Stormwater. Any stormwater runoff, snowmelt runoff, and surface runoff and drainage; "stormwater" has the same meaning as "storm water "

W. Stormwater Management Facilities. 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

X. Urbanized Area (“UA”). The areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of the Census

Section 4. Applicability.

A. In General. This ordinance applies to all new development and redevelopment within the urbanized area that discharges stormwater to the municipality’s MS4 and to associated stormwater management facilities.

B. 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 has received approval of its post-construction stormwater management plan and stormwater management facilities under the municipality’s subdivision or other zoning, planning or other land use ordinances; said lot, tract or parcel shall not require additional review under this ordinance, but shall comply with the post-construction stormwater management plan requirements for that approved subdivision

Section 5. Post-Construction Stormwater Management Plan Approval

A. General Requirement. Notwithstanding any ordinance provision to the contrary, and 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 applicant also receives approval under the municipality’s subdivision, site plan or other zoning, planning or other land use ordinances for its post-construction stormwater management plan and stormwater management facilities for that new development or redevelopment, even if the municipality’s subdivision, site plan or other zoning, planning or other land use ordinances would not otherwise apply to that new development or redevelopment

B. Notice of BMP Discharge to Municipality’s MS4. At the time of application 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, 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 management facilities required by a post-construction stormwater management plan approved under the municipality’s subdivision, site plan or other zoning, planning or other land use ordinances shall demonstrate compliance with that plan as follows.

- 1 A qualified third-party 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 If the 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 A qualified third-party inspector hired by that person, shall, on or by May 1 of each year, 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 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 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 § 6 shall include with the annual certification payment in the amount of _____ Dollars (\$_____) to pay the administrative and technical costs of review or 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. Annual Report. Beginning July 1, 2009 and each year thereafter, the municipality shall include the following in its annual report to the Maine Department of Environmental Protection:

- 1 The cumulative number of sites that have stormwater management facilities discharging into their MS4;
- 2 A summary of the number of sites that have stormwater management facilities discharging into their MS4 that were reported to the municipality;
- 3 The number of sites with documented functioning stormwater management facilities; and
- 4 The number of sites that required routine maintenance or remedial action to ensure that stormwater management facilities are functioning as intended

D. Inspections. The municipality shall annually inspect a percentage of stormwater management facilities located in the direct watershed of a lake most at risk from new development or in watersheds of an urban impaired stream. If the owner or operator of a stormwater management facility hires a qualified third-party inspector, the permittee will have no inspection requirements. If the owner or operator of a stormwater management facility does a "self" inspection, the municipality is required to conduct the following inspection schedule:

- 1-10 post construction sites: inspect at least one site, or 40% (whichever is greater)
- 11-30 post construction sites: inspect at least four sites, or 30% (whichever is greater)
- 31-60 post construction sites: inspect at least nine sites, or 25% (whichever is greater)
- 61-100 post construction sites: inspect at least fifteen sites, or 20% (whichever is greater)
- 101-160 post construction sites: inspect at least twenty sites, or 17% (whichever is greater)
- Over 160 post construction sites: inspect at least twenty seven sites, or 11% (whichever is greater)

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 Zoning Board of Appeals. 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 to be 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 Windham 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 Windham 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 9th day of June, 2009

Effective Date: July 9, 2009

APPENDIX 1

**Annual Stormwater Management Facilities Certification
(to be sent to Municipal Enforcement Authority)**

I, _____ (print or type name), certify the following:

1. I am making this annual stormwater management facilities certification for the following property: _____ (print or type name of subdivision, condominium or other development) located at _____ (print or type address), (the "property");

2. The owner, operator, tenant, lessee or homeowners' association of the property is: _____ (name(s) of owner, operator, tenant, lessee, homeowners' association or other party having control over the property);

3. I am the owner, operator, tenant, lessee or president of the homeowners' association, or am a qualified third party inspector hired by the same (circle one);

4. I have knowledge of erosion and stormwater control and have reviewed the approved post-construction stormwater management plan for the property;

5. On _____, 20__, I inspected or had inspected by _____, a qualified third-party inspector, the stormwater management facilities, including but not limited to parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures required by the approved post-construction stormwater management plan for the property;

6. At the time of my inspection of the stormwater management facilities on the property, I or the qualified third-party inspector identified the following need(s) for routine maintenance or deficiencies in the stormwater management facilities:

7. On _____, 20__, I took or had taken the following routine maintenance or the following corrective action(s) to address the deficiencies in the stormwater management facilities stated in 6 above:

8. As of the date of this certification, the stormwater management facilities are functioning as intended by the approved post-construction stormwater management plan for the property

Date: _____, 20__

By: _____
Signature

Print Name

STATE OF MAINE

_____, ss _____, 20__

Personally appeared the above-named _____, the
_____ of _____, and acknowledged the foregoing annual
certification to be said person's free act and deed in said capacity.

Before me,

Notary Public/Attorney at Law

Print Name: _____

Mail this certification to the Town of Windham at the following address:

**Office of Code Enforcement
Town of Windham
8 School Road
Windham, ME 04062**