

**Post-Construction
Stormwater Management Ordinance**



Town of York, Maine

Date of Original Enactment: November 4, 2014

ENACTMENT BY THE LEGISLATIVE BODY

Date of the vote to enact/amend this Ordinance: November 4, 2014.

Certified by the Town Clerk: May Anne Agnewowski on 11/5/14
(signature) (date)

Post-Construction Stormwater Management Ordinance

- 1. Purpose.** The purpose of this Ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of York through monitoring and enforcement of compliance with post-construction stormwater management plans in order to comply with requirements of the federal Clean Water Act, of federal regulations, and of the General Permit. Monitoring and enforcement of post-construction stormwater management plans will ensure to the maximum extent practicable that stormwater management facilities, including but not limited to parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of a storm drainage system, are properly maintained and pose no threat to public safety.
- 2. Authority.** The Town of York enacts this Ordinance pursuant to 30-A M.S.R.A. §3001 (municipal home rule ordinance authority), 38 M.S.R.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 Pollution 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 System (“Small MS4”); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Ordinance as part of the Town’s Stormwater 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”).
- 3. Definitions.** For the purpose of this Ordinance, the terms listed below are defined as follows:

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.

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.

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.

CODE ENFORCEMENT OFFICER (CEO): Any of the individuals appointed by the York Board of Selectmen to fulfill duties of code enforcement for shoreland zoning and/or land use within the Town.

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 equipment or vessel or other floating craft, from which pollutants are or may be discharged.

DISTURBED AREA: Any clearing, grading, and/or 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 design, line and grad, hydraulic capacity, and purpose of land or improvements thereon.

MUNICIPALITY: The Town of York.

MUNICIPAL PERMITTING AUTHORITY: The municipal official or body that has jurisdiction over land use approvals or permit requirements for a new development or redevelopment.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (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 the Town of York, Maine.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

STORMWATER 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 to an individual, group, or general area.

NEW DEVELOPMENT: Any construction activity on an unimproved premise.

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

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.

POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN:

- A. An Inspection and Maintenance Plan as required by rule for projects that require approval by the Maine Department of Environmental Protection under Chapter 500, Stormwater Management in Maine; or
- B. For projects that do not require approval by the Maine Department of Environmental Protection under Chapter 500 Stormwater Management in Maine, a plan to inspect and maintain BMPs and Stormwater Management Facilities employed by a new development or redevelopment to meet stormwater standards of the Town’s Site Plan and Subdivision Regulations and Zoning Ordinances.

PREMISES: Any site, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Town from which a discharge into the storm drainage system is or may be created, initiated, originated or maintained.

QUALIFIED THIRD-PARTY INSPECTOR: A person who conducts post-construction stormwater management facility inspections for compensation and who has received the appropriate training for the same from the DEP.

REDEVELOPMENT: Any construction activity on premises already improved. Does not include changes to buildings unless they alter stormwater drainage patterns.

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,” including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4’s located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4’s.

REPORTING YEAR: A 12-month period beginning on July 1st and ending on the following June 30th.

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.

STORM SEWER SYSTEM: The entire storm sewer system owned and/or operated by the Town of York.

STORMWATER: Any stormwater runoff, snowmelt runoff, or surface runoff and drainage. “Stormwater” has the same meaning as “Storm Water.”

STORMWATER MANAGEMENT FACILITIES: Any catch basins, drainage swales, detention basins and ponds, pipes, or other such structures or features that are intended to control stormwater runoff quantity and quality.

STORMWATER MANAGER: The CEO designated by the Town Manager to be responsible for oversight of the Town’s MS4 program and compliance with the State General Permit.

URBANIZED AREA (UA): Areas of the State of Maine so defined by the latest decennial (2010, as amended) census by the U.S. Bureau of Census.

- 4. Applicability.** This Ordinance shall apply to all properties on which there will be one or more acres of disturbed area and which discharge stormwater off the property. The measure of disturbed area is determined at the buildout of all project phases.
- 5. Effective Date.** This Ordinance shall take effect on the date of passage by the voters. Future amendments shall take effect on the date of passage by the voters unless otherwise specified in the amendment.

6. Approval and Notice.

- A. General Requirements.** If subject to this Ordinance as identified in Section 4, an applicant must receive approval pursuant to this Ordinance before any other Town official or board may grant a permit or approval for any building permit, subdivision, site plan or other such activity.
- B. Stormwater Management Review and Approval.** If subject to this Ordinance as identified in Section 4, where no other stormwater management requirements are applicable to the proposal, an applicant must demonstrate compliance to the CEO with the stormwater management, storm drainage construction, and erosion and sedimentation control standards of the Site Plan & Subdivision Regulations.
- C. Notice of BMP Discharge to Municipality's MS4.** At the time of application for a building permit, subdivision approval, site plan approval or other land use approval for new development or redevelopment within the scope of this Ordinance, the applicant shall notify the municipal permitting authority of its Post-Construction Stormwater Management Plan including any BMP(s) that will discharge to the Town's MS4 and shall include in this notification a listing of which BMP(s) will so discharge.
- D. Notice of BMP Discharge to MDOT and MTA.** At the time of application for a building permit, subdivision approval, site plan approval or other land use approval for new development or redevelopment within the scope of this Ordinance, the applicant shall notify the MDOT or MTA of its Post-Construction Stormwater Management Plan including any BMP(s) that will discharge to their jurisdiction.

7. Compliance Requirements. Any person subject to this ordinance who owns, operates leases or has control over stormwater management facilities shall be required to comply with the following:

- A. Inspection.** That person or 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 and maintenance requirements of the approved Post-Construction Stormwater Management Plan.
- B. Maintenance.** If the Stormwater Management Facilities require maintenance to function as intended by the approved Post-Construction Stormwater Management Plan, that person shall take necessary action(s) to address the deficiency or deficiencies.
- C. Annual Reporting and Fee.** That person or qualified third-party inspector hired by that person, shall, on or by July 1 of each year, provide a completed and signed certification to the Stormwater Manager (identical to that attached as Appendix A), certifying that the person has inspected the Stormwater Management Facilities. This certification shall demonstrate that the Stormwater Management Facilities are adequately maintained and functioning as intended by the approved Post-Construction Stormwater Management Plan.
The person or qualified third-party inspector shall provide a record of any required maintenance or deficiency and any corrective action(s) taken for compliance with this

Ordinance. In addition, any person required to file an annual certification under this Section shall include a payment with the annual certification in the amount \$150.00 to pay the administrative and technical costs of reviewing the annual certification. This fee shall be placed in the General Fund to help offset program costs.

8. **Right of Entry.** In order to determine compliance with this ordinance and with the Post-Construction Stormwater Management Plan, the CEO may enter upon property at a reasonable hour with the consent of the owner, occupant or agent to inspect the Stormwater Management Facilities. Refusal to grant reasonable access may require the Town to gain access by Administrative Warrant.

9. **Annual Report.** Beginning July 1, 2014 and each year thereafter, the Stormwater Manager shall include the following in their Annual Report to the Maine Department of Environmental Protection;
 - A. The cumulative number of sites that have Stormwater Management Facilities discharging into their MS4;
 - B. A summary of the number of sites that have Stormwater Management Facilities discharging into their MS4 that were reported to the Municipality per §6.C in the reporting year;
 - C. The number of sites with documented functioning Stormwater Management Facilities per §7.C; and
 - D. The number of sites that required routine maintenance or remedial action to ensure that Stormwater Management Facilities are functioning as intended.

10. **Inspections.** The Town shall annually inspect a percentage of Stormwater Management Facilities located in the direct watershed of a lake most at risk from new development in the Urbanized Area or in watersheds of an urban impaired stream in the Urbanized Area. If the owner or operator of a Stormwater Management Facility hires a Qualified Third-Party Inspector, the permittee will not be subject to Town inspections per this Section. If the owner or operator of a Stormwater Management Facility does a “self” inspection, the Municipality is required to conduct the following:

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

11. **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 the approved Post-Construction Stormwater Management Plan. Whenever the CEO believes that a person has violated this

Ordinance or the Post-Construction Stormwater Management Plan, the CEO may enforce this Ordinance in accordance with 30-A M.S.R.A §4452.

A. Notice of Violation and Order for Corrective Action: Whenever the CEO believes that a person has violated this Ordinance or an approved Post-Construction Stormwater Management Plan, the CEO may order compliance with this Ordinance by written Notice of Violation and Order for Corrective Action. This shall indicate the nature of the violation and order actions necessary to correct the violation, 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 and Redevelopment, the repair of Stormwater Management Facilities and/or the restoration of any affected property; and/or
3. The payment of fines, the Town's remediation costs, the Town's reasonable administrative costs, and attorneys' fees and costs.

Any Notice of Violation and Order for Corrective Action must be consistent with the legal requirements of the Freeport v. Greenlaw (1992) case. Such Notice/Order must: be appropriately titled; be official in tenor but written in plain English as to be understandable to the average citizen; cite the specific code section allegedly violated; specify actions required to fix the violation, with specific and reasonable deadlines; explain the consequences of failure to comply (next steps, loss of rights to other permitting, monetary penalties, etc.); and provide notice of the recipient's appeal rights (right to appeal, deadlines, process, and consequences of failure to appeal).

B. Penalties, Fines, and 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 Town's attorney fees and costs, all in accordance with 30-A M.S.R.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 Town of York for violation of Federal and State environmental laws and regulations caused by or related to that person's violation of this Ordinance or the Post-Construction Stormwater Management Plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this Section.

When a violation of a Town ordinance or regulation is identified and the Code Enforcement Officer has issued a written notice of violation, the following shall apply:

1. For a lot with a single principle tenant or unit, such as but not limited to a single house or a single business, no permits or approvals shall be issued for that lot until the violation is resolved; or

2. For a lot with multiple tenants or units, such as but not limited to apartment buildings or malls, one of the following two options shall apply:
 - a. If the violation relates solely to a single tenant or unit, no permits or approvals shall be issued for that tenant or unit until the violation is resolved (the tenant and units which were not cited shall not be adversely affected); or
 - b. If the violation relates to the site in general, no permits or approvals shall be issued for any tenant, unit or that lot until the violation is resolved.

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

- D. **Appeal:** Any action or inaction of the CEO relative to this Ordinance or an approved post-construction stormwater management plan may be appealed to the York Board of Appeals. This shall be treated as an administrative appeal and shall be processed pursuant to the provisions of York Zoning Ordinance §18.8. The appeal must be received by the Town within 30 days of the action being appealed. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt. The Board of Appeals may affirm, reverse, modify or remand the decision of the CEO. 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 and Order for Corrective Action, 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 CEO's decision, then the CEO may recommend to the Board of Selectmen (BOS) pursue legal action. The BOS may direct the Town's attorney to file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedures. The BOS may initiate this action without a recommendation from the CEO, and may act sooner, provided the BOS finds that the circumstances pose an immediate and unacceptable threat to the public health, safety and welfare.

12. **Administration and Enforcement.** The Stormwater Manager shall administer the provisions of this Ordinance. CEOs shall enforce the provisions of this Ordinance.

13. **Saving Clause.** In the event any provision of this Ordinance is found by a court of competent jurisdiction to be invalid, this finding shall not affect the remainder of this Ordinance.



TOWN OF YORK, MAINE

Appendix A

Annual Stormwater Management Facilities Certificate

I, _____, certify the following:
Print or Type

1. This Annual Stormwater Management Facilities Certification is for the following property:

_____ Print or Type name of subdivision, condominium or other development
located at _____ (“the Property”);
Print or Type Address

2. The owner, operator, tenant, lessee, homeowners association or other party having control of the Property is:

Print or Type name(s)

3. I am the owner, operator, tenant, lessee, homeowners’ association president, or 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, 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 inspection of 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:

Town of York, Maine

7. On _____, 20____, The following routine maintenance was performed or the following corrective action(s) was taken to address deficiencies in the Stormwater Management Facilities described in 6 above:

8. As of the date of this certification, the Stormwater Management Facilities are functioning as intended and described in the approved Post-Construction Stormwater Management Plan for the Property.

Dated: _____, 20____ By: _____
Signature

Print Name

STATE OF MAINE

_____, ss. _____, 20____

Personally appeared the above-named _____,

the _____ of _____,

to acknowledge 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 York,
CEO at the following address:**

TOWN OF YORK – Code Enforcement
186 York Street
York, ME 03909