

## CHAPTER 53: STORM WATER MANAGEMENT

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## GENERAL PROVISIONS

### **§ 53.01 AUTHORITY.**

The town is authorized to adopt this chapter pursuant to state law, including, but not limited to: Art. 14, § 5, of the Constitution of the state; G.S. § 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; G.S. Ch. 160A, §§ 174 and 185.

(Ord. passed 1-15-2008)

### **§ 53.02 FINDINGS.**

(A) It is hereby determined that:

(1) Development and redevelopment alter the hydrologic response of local watersheds and increases storm water runoff rates and volumes, flooding, soil erosion, stream channel erosion, non-point and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

(2) These changes in storm water runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology which are harmful to public health and safety as well as to the natural environment; and

(3) These effects can be managed and minimized by applying proper design and well-planned controls to manage storm water runoff from development sites.

(B) Further, the Federal Water Pollution Control Act of 1972 (“Clean Water Act”) and federal Phase II

storm water rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt the minimum storm water controls such as those included in this chapter.

(C) Therefore, the town establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of storm water runoff and discharge.

(Ord. passed 1-15-2008)

### **§ 53.03 PURPOSE.**

(A) The purpose of this chapter is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development storm water runoff and non-point and point source pollution associated with new development and redevelopment as well as illicit discharges into municipal storm water systems. It has been determined that proper management of construction-related and post-development storm water runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety and general welfare, and protect water and aquatic resources.

(B) This chapter seeks to meet its general purpose through the following specific objectives and means:

(1) Establishing decision-making processes for development that protect the integrity of watersheds and preserve the health of water resources;

(2) Requiring that new development and redevelopment maintain the pre-development hydrologic response in the post-development state as nearly as practicable for the applicable design storm in order to reduce flooding, stream bank erosion, non-point and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;

(3) Establishing minimum post-development storm water management standards and design criteria for the regulation and control of storm water runoff quantity and quality;

(4) Establishing design and review criteria for the construction, function, and use of structural storm water best management practices (BMPs) that may be used to meet the minimum post-development storm water management standards;

(5) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for storm water and the preservation of greenspace and other conservation areas to the maximum extent practicable;

(6) Establishing provisions for the long-term responsibility for and maintenance of structural and non-structural storm water BMPs to ensure that they continue to function as designed, are maintained appropriately and pose no threat to public safety;

(7) Establishing administrative procedures for the submission, review, approval and disapproval of storm water management plans, for the inspection of approved projects and for the assurance of long-term maintenance;

(8) Controlling illicit discharges into the municipal separate storm water system; and

(9) Controlling erosion and sedimentation from construction activities.

(Ord. passed 1-15-2008)

### **§ 53.04 APPLICABILITY AND JURISDICTION.**

(A) Beginning with and subsequent to its effective date, this chapter shall be applicable to all development and redevelopment, including, but not limited to, site plan applications, subdivision applications and grading applications, unless exempt pursuant to division (B) below.

(B) (1) Development that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale is exempt from the provisions of this chapter.

(2) Redevelopment that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale is exempt from the provisions of this chapter.

(3) Development and redevelopment that disturb less than one acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.

(4) Activities that are exempt from permit requirements of § 404 of the Federal Clean Water Act, being 33 USC 1344 et seq., as specified in 40 C.F.R. part 302, (primarily, ongoing farming and forestry activities) are exempt from the provisions of this chapter.

(C) No development or redevelopment shall occur except in compliance with the provisions of this chapter or unless exempted. No development for which a permit is required pursuant to this chapter shall

occur except in compliance with the provisions, conditions and limitations of the permit.

(D) The provisions of this chapter shall be applicable to all land within the corporate limits of the town and within the extraterritorial jurisdiction (ETJ), as established on the map entitled “Official Zoning Map, Town of Laurel Park”. The map will be kept by the Storm Water Administrator and shall be updated to take into account changes in the land area covered by this chapter and the geographic location of all structural BMPs permitted under this chapter. In the event of a dispute, the applicability of this chapter to a particular area of land or BMP shall be determined by reference to state statutes, the North Carolina Administrative Code and local zoning and jurisdictional boundary ordinances.

(Ord. passed 1-15-2008)

### **§ 53.05 INTERPRETATION.**

(A) *Meaning and intent.* All provisions, terms, phrases and expressions contained in this chapter shall be construed according to the general and specific purposes set forth in § 53.04 of this chapter. If a different or more specific meaning is given for a term defined elsewhere in the town’s code of ordinances, the meaning and application of the term in this chapter shall control for purposes of application of this chapter.

(B) *Text controls in event of conflict.* In the event of a conflict or inconsistency between the text of this chapter and any heading, caption, figure, illustration, table or map, the text shall control.

(C) *Authority for interpretation.*

(1) The Storm Water Administrator has authority to determine the interpretation of this chapter.

(2) Any person may request an interpretation by submitting a written request to the Storm Water Administrator who shall respond in writing within 30 days.

(3) The Storm Water Administrator shall keep on file a record of all written interpretations of this chapter.

(D) *References to statutes, regulations and documents.* Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the Design Manual) or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

(E) *Computation of time.*

(1) The time in which an act is to be done shall be computed by excluding the first day and including the last day.

(2) If a deadline or required date of action falls on a Saturday, Sunday or holiday observed by the town, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the town.

(3) References to days are calendar days unless otherwise stated.

(F) *Delegation of authority.* Any act authorized by this chapter to be carried out by the Storm Water Administrator of the town may be carried out by his or her designee.

(G) *Usage.*

(1) *Mandatory and discretionary terms.* The words “shall”, “must” and “will” are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words “may” and “should” are permissive in nature.

(2) *Conjunctions.* Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: the word “and” indicates that all connected items, conditions, provisions or events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.

(3) *Tense, plurals and gender.* Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

(H) *Measurement and computation.* Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

(Ord. passed 1-15-2008)

### **§ 53.06 DESIGN MANUAL.**

(A) *Reference to Design Manual.*

(1) The Storm Water Administrator shall use the policy, criteria and information, including technical specifications and standards, in the Design Manual as the basis for decisions about storm water permits and about the design, implementation and performance of structural and non-structural storm water BMPs.

(2) The Design Manual includes a list of acceptable storm water treatment practices, including the specific design criteria for each storm water practice. Storm water treatment practices that are designed, constructed and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.

(B) *Relationship of Design Manual to other laws and regulations.* If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Design Manual.

(C) *Changes to standards and specifications.* If the standards, specifications, guidelines, policies, criteria or other information in the Design Manual are amended subsequent to the submittal of an application for approval pursuant to this chapter, but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this chapter with regard to the application.

(Ord. passed 1-15-2008)

### **§ 53.07 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS.**

(A) *Conflict of laws.* This chapter is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this chapter are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety and welfare, shall control.

(B) *Private agreements.*

(1) This chapter is not intended to revoke or repeal any easement, covenant or other private agreement. However, where the regulations of this chapter are more restrictive or impose higher standards or requirements than such easement, covenant or other private agreement, then the requirements of this chapter shall govern. Nothing in this chapter shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this chapter.

(2) In no case shall the town be obligated to enforce the provisions of any easements, covenants or agreements between private parties.

(Ord. passed 1-15-2008)

### **§ 53.08 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS.**

(A) *Effective date.* This chapter took effect on 1-15-2008.

(B) *Final approvals, complete applications.* All development and redevelopment projects for which complete and full applications were submitted and approved by the town prior to the effective date of this chapter shall be exempt from complying with all provisions of this chapter dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including, but not limited to, illicit discharge provisions.

(C) *Violations continue.* Any violation of provisions existing on the effective date of this chapter shall continue to be a violation under this chapter and be subject to penalties and enforcement under this chapter unless the use, development, construction or other activity complies with the provisions of this chapter.

(Ord. passed 1-15-2008)

### **§ 53.09 DEFINITIONS.**

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

**BUILT-UPON AREA (BUA).** The portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots and paths; and recreation facilities such as tennis courts. **BUILT-UPON AREA** does not include a wooden slatted deck, the water area of a swimming pool or pervious or partially pervious paving materials to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

**DEPARTMENT.** The North Carolina Department of Environmental Quality.

**DESIGN MANUAL.** The storm water design manual approved for use in Phase II jurisdictions by the Department for the proper implementation of the requirements of the Federal Phase II storm water program. All references herein to the **DESIGN MANUAL** are to the latest published edition or revision.

**DEVELOPMENT.** Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration or precipitation into the soil, other than rebuilding activity that does not qualify as redevelopment.

**DIVISION.** The Division of Water Quality in the Department.

**HIGH-DENSITY PROJECT.** Any project that exceeds the low density threshold for dwelling units per acre and built-upon area.

**LARGER COMMON PLAN OF DEVELOPMENT OR SALE.** Anywhere multiple separate and distinct construction or land disturbing activities will occur under one plan. A “plan” is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request or computer design) or physical demarcation (including, but not limited to, boundary signs, lot stakes or surveyor markings) indicating that construction activities may occur on a specific plot.

**LOW-DENSITY PROJECT.** A project that has no more than two dwelling units per acre or 24% built-upon area (BUA) for all residential and non-residential development.

**ONE-YEAR, 24-HOUR STORM.** The surface runoff resulting from a 24-hour rainfall of intensity expected to be equaled or exceeded, on average, once in 12 months with duration of 24 hours.

**OWNER.** The legal or beneficial owner of land, including, but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, long-term or commercial lessee or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. **OWNER** shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an **OWNER**, unless the secured lender is included within the meaning of **OWNER** under another description in this definition, such as management entity.

**REDEVELOPMENT.** Any rebuilding activity other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater storm water control than the previous development.

**STRUCTURAL BMP.** A physical device designed to trap, settle out or filter pollutants from storm water runoff; to alter or reduce storm water runoff velocity, amount, timing or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals.

**STRUCTURAL BMP** includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales and other methods installed or created on real property. **STRUCTURAL BMP** is synonymous with **STRUCTURAL PRACTICE, STORM WATER CONTROL FACILITY, STORM WATER CONTROL PRACTICE, STORM WATER TREATMENT PRACTICE, STORM WATER MANAGEMENT PRACTICE, STORM WATER CONTROL MEASURES, STRUCTURAL STORM WATER TREATMENT SYSTEM** and similar terms used in this chapter.

**SUBSTANTIAL PROGRESS.** For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than 30 days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. **SUBSTANTIAL PROGRESS** for purposes of determining whether an approved plan is null and void is not necessarily the same as “substantial expenditures” used for determining vested rights pursuant to applicable law.

(Ord. passed 1-15-2008)

## **§ 53.10 ENFORCEMENT AND VIOLATIONS.**

### **(A) General.**

(1) *Authority to enforce.* The provisions of this chapter shall be enforced by the Storm Water Administrator, his or her designee, or any authorized agent of the town. Whenever this section refers to the Storm Water Administrator, it includes his or her designee as well as any authorized agent of the town.

(2) *Violation unlawful.* Any failure to comply with an applicable requirement, prohibition, standard or limitation imposed by this chapter, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this chapter, is unlawful and shall constitute a violation of this chapter.

(3) *Each day a separate offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.

### **(4) Responsible persons/entities.**

(a) Any person who erects, constructs, reconstructs, alters (whether actively or passively) or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice or condition in violation of

this chapter shall be subject to the remedies, penalties and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency or any other person who participates in, assists, directs, creates, causes or maintains a condition that results in or constitutes a violation of this chapter, or fails to take appropriate action, so that a violation of this chapter results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

(b) For the purposes of this chapter, responsible person(s) shall include, but not be limited to:

1. *Person maintaining condition resulting in or constituting violation.* An architect, engineer, builder, contractor, developer, agency or any other person who participates in, assists, directs, creates, causes or maintains a condition that constitutes a violation of this chapter, or fails to take appropriate action, so that a violation of this chapter results or persists; and

2. *Person who has responsibility for land or use of land.* The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for storm water controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

(B) *Procedures.*

(1) *Initiation/complaint.* Whenever a violation of this chapter occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Storm Water Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Storm Water Administrator.

(2) *Inspection.* The Storm Water Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure or premises to ensure compliance with this chapter.

(3) *Notice of violation and order to correct.*

(a) When the Storm Water Administrator finds that any building, structure or land is in violation of this chapter, the Storm Water Administrator shall notify, in writing, the property owner or other person violating this chapter. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual and the time within which they must be paid or be subject to collection as a debt.

(b) The notice of violation and correction order may be delivered personally by the Storm Water Administrator, by the town's Police Department for violations within the town and/or the Henderson County Sheriff's Department for violations within the town's ETJ, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure, being G.S. § 1A-1, Rule 4.

(c) If a violation is not corrected within a reasonable period of time, as provided in the notification, the Storm Water Administrator may take appropriate action under this chapter to correct and abate the violation and to ensure compliance with this chapter.

(4) *Extension of time.*

(a) A person who received a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Storm Water Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Storm Water Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 45 days. The Storm Water Administrator may grant 15-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this chapter. The Storm Water Administrator may grant an extension only by written notice of extension.

(b) The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(5) *Enforcement after time to correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the Storm Water Administrator, the Storm Water Administrator shall determine

if the violation is corrected. If the violation is not corrected, the Storm Water Administrator may act to impose one or more of the remedies and penalties authorized by this chapter.

(6) *Emergency enforcement.*

(a) If delay in correcting a violation would seriously threaten the effective enforcement of this chapter or pose an immediate danger to the public health, safety or welfare, then the Storm Water Administrator may order the immediate cessation of a violation.

(b) Any person so ordered shall cease any violation immediately.

(c) The Storm Water Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this subchapter.

(Ord. passed 1-15-2008)

**§ 53.11 ILLICIT DISCHARGES AND CONNECTIONS.**

(A) *Illicit discharges.* No person shall cause or allow the discharge, emission, disposal, pouring or pumping directly to any storm water conveyance, the waters of the state or upon the land in a manner and amount that the substance is likely to reach a storm water conveyance or the waters of the state, any liquid, solid, gas or other substance, other than storm water; provided that, non-storm water discharges associated with the following activities are allowed; and, provided that, they do not significantly impact water quality:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined at 40 C.F.R. § 32.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources;
- (8) Foundation drains;
- (9) Air conditioning condensation;
- (10) Irrigation water;
- (11) Springs;
- (12) Water from crawl space pumps;
- (13) Footing drains;
- (14) Lawn watering;
- (15) Individual residential car washing;
- (16) Flows from riparian habitats and wetlands;
- (17) De-chlorinated swimming pool discharges;
- (18) Street wash water; and

(19) Other non-storm water discharges for which a valid NPDES discharge permit has been approved and issued by the state; and, provided that, any such discharges to the municipal separate storm sewer system shall be authorized by the town. Prohibited substances include, but are not limited to: oil; anti-freeze; chemicals; animal waste; paints; garbage; and litter.

(B) *Illicit connections.*

(1) Connections to a storm water conveyance or storm water conveyance system that allow the discharge of non-storm water, other than the exclusions described in division (A) above, are unlawful. Prohibited connections include, but are not limited to: floor drains; waste water from washing machines or sanitary sewers; wash water from commercial vehicle washing or steam cleaning; and waste water from septic systems.

(2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this chapter. However, the hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife or habitat must be removed immediately.

(3) Where it is determined that said connection:

(a) May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife or habitat; or

(b) Was made in violation of any applicable regulation or ordinance, other than this section.

(4) The Storm Water Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Storm Water Administrator shall take into consideration:

(a) The quantity and complexity of the work;

(b) The consequences of delay;

(c) The potential harm to the environment, to the public health and to public and private property; and

(d) The cost of remedying the damage.

(C) *Spills.*

(1) Spills or leaks of polluting substances released, discharged to or having the potential to be released or discharged to the storm water conveyance system, shall be contained, controlled, collected and disposed of properly. All affected areas shall be restored to their preexisting condition.

(2) Persons in control of the polluting substances immediately prior to their release or discharge, and/or persons owning the property on which the substances were released or discharged, shall immediately notify the town of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by state or other law.

(D) *Nuisance.* Illicit discharges and illicit connections which exist within the town are hereby found, deemed and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed and declared to be public nuisances. Such public nuisances shall be abated in accordance set forth in §§ 53.11 and 53.99 of this chapter.

(Ord. passed 1-15-2008) Penalty, see § 53.99

## **ADMINISTRATION**

### **§ 53.25 REVIEW AND DECISION-MAKING ENTITIES.**

(A) *Designation.* A Storm Water Administrator shall be designated by the town to administer and enforce this chapter.

(B) *Powers and duties.* In addition to the powers and duties that may be conferred by other provisions of the town's code of ordinances and other laws, the Storm Water Administrator shall have the following powers and duties under this chapter:

(1) To review and approve, approve with conditions or disapprove applications for approval of plans pursuant to this chapter;

(2) To make determinations and render interpretations of this chapter;

(3) To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Town Council on applications for development or redevelopment approvals;

(4) To enforce the provisions of this chapter in accordance with its enforcement provisions;

(5) To maintain records, maps and official materials as related to the adoption, amendment, enforcement or administration of this chapter;

(6) To provide expertise and technical assistance to the Town Council and the Town Planning Board, upon request;

(7) To designate appropriate other person(s) who shall carry out the powers and duties of the Storm Water Administrator; and

(8) To take any other action necessary to administer the provisions of this chapter.

(Ord. passed 1-15-2008)

### **§ 53.26 REVIEW PROCEDURES.**

(A) *Permit required; must apply for permit.* A storm water permit is required for all development and redevelopment unless exempt pursuant to this chapter. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

(B) *Effect of permit.*

(1) A storm water permit shall govern the design, installation and construction of storm water management and control practices on the site, including structural BMPs and elements of site design for storm water management other than structural BMPs.

(2) The permit is intended to provide a mechanism for the review, approval and inspection of the



approach to be used for the management and control of storm water for the development or redevelopment site consistent with the requirements of this chapter, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project, rather, compliance after project construction is assured by the maintenance provisions of this chapter.

(C) *Authority to file applications.* All applications required pursuant to this code shall be submitted to the Storm Water Administrator by the land owner or the land owner's duly authorized agent.

(D) *Establishment of application requirements, schedule and fees.*

(1) *Application contents and form.* The Storm Water Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the storm water permit application shall describe in detail how post-development storm water runoff will be controlled and managed, the design of all storm water facilities and practices and how the proposed project will meet the requirements of this chapter.

(2) *Submission schedule.* The Storm Water Administrator shall establish a submission schedule for applications, which shall be reviewed and approved by the Town Council. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.

(3) *Permit review fees.* The Town Council shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

(4) *Administrative manual.* For applications required under this code, the Storm Water Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this chapter and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.

(E) *Submittal of complete application.*

(1) Applications shall be submitted to the Storm Water Administrator pursuant to the application submittal schedule in the form established by the Storm Water Administrator, along with the appropriate fee established pursuant to this section.

(2) An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this chapter, along with the appropriate fee. If the Storm Water Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

(F) *Review.*

(1) Within 45 working days after a complete application is submitted, the Storm Water Administrator shall review the application and determine whether the application complies with the standards of this chapter.

(a) *Approval.* If the Storm Water Administrator finds that the application complies with the standards of this chapter, the Storm Water Administrator shall approve the application. The Storm Water Administrator may impose conditions of approval as needed to ensure compliance with this chapter. The conditions shall be included as part of the approval.

(b) *Failure to comply.* If the Storm Water Administrator finds that the application fails to comply with the standards of this chapter, the Storm Water Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

(c) *Revision and subsequent review.* A complete revised application shall be reviewed by the Storm Water Administrator within 30 working days after its re-submittal and shall be approved, approved with conditions or disapproved.

(2) If a revised application is not re-submitted within 30 calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee.

(3) One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by an additional permit review fee, as established pursuant to this chapter.

(Ord. passed 1-15-2008)

**§ 53.27 APPLICATIONS FOR APPROVAL.**

**(A) *Concept plan and consultation meeting.***

(1) Before a storm water management permit application is deemed complete, the Storm Water Administrator or developer may request a consultation on a concept plan for the post-construction storm water management system to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction storm water management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to storm water management designs before formal site design engineering is commenced. Local watershed plans and other relevant resource protection plans may be consulted in the discussion of the concept plan.

(2) To accomplish this goal the following information should be included in the concept plan, which should be submitted in advance of the meeting:

(a) *Existing conditions/proposed site plans.* Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (when available); boundaries of existing predominant soils from soil surveys (when available); boundaries of existing vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces;

(b) *Natural resources inventory.* A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks and the like). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development; and

(c) *Storm water management system concept plan.* A written or graphic concept plan of the proposed post-development storm water management system including: preliminary selection and location of proposed structural storm water controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

**(B) *Storm water management permit application.***

(1) The storm water management permit application shall detail how post-development storm water runoff will be controlled and managed and how the proposed project will meet the requirements of this chapter, including §§ 53.40 through 53.44 of this chapter. All such plans shall be prepared by a qualified registered state professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all storm water management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual and that the designs and plans ensure compliance with this chapter.

(2) The submittal shall include all of the information required in the submittal checklist established by the Storm Water Administrator. Incomplete submittals shall be treated pursuant to § 53.26(D) of this chapter.

**(C) *As-built plans and final approval.***

(1) Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved storm water management plans and designs, and shall submit actual “as-built” plans for all storm water management facilities or practices after final construction is completed.

(2) The plans shall show the final design specifications for all storm water management facilities and practices and the field location, size, depth and planted vegetation of all measures, controls and devices, as installed. The designer of the storm water management measures and plans shall certify, under seal, that the as-built storm water measures, controls and devices are in compliance with the approved storm water management plans and designs and with the requirements of this chapter. A final inspection and approval by

the Storm Water Administrator shall occur before the release of any performance securities.

(D) *Other permits.* No storm water compliance certificate shall be issued by the town without final as-built plans and a final inspection and approval by the Storm Water Administrator, except where multiple units are served by the storm water practice or facilities, in which case the town may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

(Ord. passed 1-15-2008)

### **§ 53.28 APPROVALS.**

(A) *Effect of approval.*

(1) Approval authorizes the applicant to go forward with only the specific plans and activity authorized in the permit.

(2) The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state and federal authorities.

(B) *Time limit/expiration.*

(1) (a) An approved plan shall become null and void if the applicant has failed to make substantial progress on the site within one year after the date of approval.

(b) The Storm Water Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

(2) In granting an extension, the Storm Water Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

(Ord. passed 1-15-2008)

### **§ 53.29 APPEALS.**

Any aggrieved person affected by any decision, order, requirement or determination relating to the interpretation or application of this chapter and made by the Storm Water Administrator may file an appeal to the town's Board of Adjustment within 30 days.

(Ord. passed 1-15-2008)

## **STANDARDS**

### **§ 53.40 GENERAL STANDARDS.**

All development and redevelopment to which this chapter applies shall comply with the standards of this subchapter.

(Ord. passed 1-15-2008)

### **§ 53.41 DEVELOPMENT STANDARDS FOR PROJECTS.**

(A) Low-density projects shall comply with each of the following standards.

(1) *Transporting storm water runoff.* Storm water runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

(2) *Built-upon area.* All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233(3)(a) or similar site-specific determination made using Division-approved methodology.

(3) *Restriction on property.* The approval of the storm water permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(B) High-density projects shall implement storm water control measures that comply with each of the following standards.

(1) *Storm water volume.* The measures shall control and treat the difference in storm water runoff volume leaving the project site between the pre- and post-development conditions for, at a minimum, the one-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours.

(2) *Total suspended solids.* All structural storm water treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85% average annual removal for total suspended solids (TSS).

(3) *Design Manual.* General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the design manual.

(4) *Built-upon area.* All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233(3)(a) or similar site-specific determination made using Division-approved methodology.

(5) *Restriction on property.* The approval of the storm water permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(Ord. passed 1-15-2008)

### **§ 53.42 STANDARDS FOR STORM WATER CONTROL MEASURES.**

(A) *Evaluation according to contents of Design Manual.* All storm water control measures and storm water treatment practices (also referred to as best management practices or BMPs) required under this chapter shall be evaluated by the Storm Water Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each storm water practice, in the Design Manual. The Storm Water Administrator shall determine whether they will be adequate to meet the requirements of this chapter.

(B) *Determination of adequacy; presumptions and alternatives.* Storm water treatment practices that are designed, constructed and maintained in accordance with the criteria and specifications in the Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this chapter. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this chapter. The Storm Water Administrator may require the applicant to provide such documentation, calculations and examples as necessary for the Storm Water Administrator to determine whether such an affirmative showing is made.

(C) *Additional standards for special situations; trout waters.* In addition to the standards for storm water handling set out in the design manual, development and redevelopment that drains in whole or part to class trout waters shall be designed and implemented using the best storm water practices that do not result in a sustained increase in the receiving water temperature, while still meeting the other requirements of this chapter.

(Ord. passed 1-15-2008)

### **§ 53.43 DEDICATION OF BMPS, FACILITIES AND IMPROVEMENTS.**

The town may accept dedication of any existing or future storm water management facility for maintenance; provided, such facility meets all the requirements of this chapter and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

(Ord. passed 1-15-2008)

### **§ 53.44 VARIANCES.**

(A) *Petitioner.* Any person may petition the town for a variance granting permission to use the person's land in a manner otherwise prohibited by this chapter. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of this chapter;
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size or topography of the property;
- (3) The hardships did not result from actions taken by the petitioner; and
- (4) The requested variance is consistent with the spirit, purpose and intent of this chapter; will secure

public safety and welfare; and will preserve substantial justices.

(B) *Conditions.* The town may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(Ord. passed 1-15-2008)

## **MAINTENANCE**

### **§ 53.55 GENERAL STANDARDS FOR MAINTENANCE.**

(A) *Function of BMPs as intended.* The owner of each structural BMP installed pursuant to this chapter shall maintain and operate it so as to preserve and continue its function in controlling storm water quality and quantity at the degree or amount of function for which the structural BMP was designed.

(B) *Annual maintenance inspection and report.*

(1) The person responsible for maintenance of any structural BMP installed pursuant to this chapter shall submit to the Storm Water Administrator an inspection report from a qualified registered state professional engineer, surveyor or landscape architect performing services only in their area of competence. The inspection report shall contain all of the following:

- (a) The name and address of the land owner;
- (b) The recorded book and page number of the lot of each structural BMP;
- (c) A statement that an inspection was made of all structural BMPs;
- (d) The date the inspection was made;
- (e) A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this chapter; and
- (f) The original signature and seal of the engineer, surveyor or landscape architect.

(2) All inspection reports shall be on forms supplied by the Storm Water Administrator. An original inspection report shall be provided to the Storm Water Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

(Ord. passed 1-15-2008)

### **§ 53.56 OPERATION AND MAINTENANCE AGREEMENT.**

(A) *In general.*

(1) Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this chapter, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this chapter, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site and lots or parcels served by the structural BMP. Until the transference of all property, sites or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

(2) The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions and schedule of maintenance for the structural BMP. In addition, it shall grant to the town a right of entry in the event that the Storm Water Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the town to assume responsibility for the structural BMP.

(3) The operation and maintenance agreement must be approved by the Storm Water Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county's Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Storm Water Administrator within 14 days following its recordation.

(B) *Special requirement for homeowners and other associations.* For all structural BMPs required pursuant to this chapter and that are to be or are owned and maintained by a homeowners' association, property owners' association or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

(1) Acknowledgment that the association shall continuously operate and maintain the storm water control and management facilities;

(2) Establishment of an escrow account, which must be spent solely for sediment removal, structural, biological or vegetative replacement, major repair or reconstruction of the structural BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the town, in its sole discretion, may remedy the situation and in such instances the town shall be fully reimbursed from the

escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair and reconstruction of the structural BMPs; provided that, the town shall first consent to the expenditure;

(3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to 15% of the initial construction cost of the structural BMPs. Two-thirds of the total amount of sinking fund budget shall be deposited into the escrow account within the first five years and the full amount shall be deposited within ten years following initial construction of the structural BMPs. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget;

(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the town depending on the design and materials of the storm water control and management facility;

(5) Granting to the town a right of entry to inspect, monitor, maintain, repair and reconstruct structural BMPs;

(6) Allowing the town to recover from the association any and all costs the town expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the town all of its expended costs, after 45 days' written notice, shall constitute a breach of the agreement. The town shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both, in case of a deficiency. Interest, collection costs and attorney fees shall be added to the recovery;

(7) A statement that this agreement shall not obligate the town to maintain or repair any structural BMPs and the town shall not be liable to any person for the condition or operation of structural BMPs;

(8) A statement that this agreement shall not in any way diminish, limit or restrict the right of the town to enforce any of its ordinances as authorized by law; and

(9) A provision indemnifying and holding harmless the town for any costs and injuries arising from or related to the structural BMP, unless the town has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

(Ord. passed 1-15-2008)

### **§ 53.57 INSPECTION PROGRAM.**

(A) Inspections and inspection programs by the town may be conducted or established on any reasonable basis, including, but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, ground water and material or water in BMPs; and evaluating the condition of BMPs.

(B) If the owner or occupant of any property refuses to permit such inspection, the Storm Water Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. § 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Storm Water Administrator while carrying out his or her official duties.

(Ord. passed 1-15-2008) Penalty, see § 53.99

### **§ 53.58 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE.**

(A) *May be required.* The town may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are:

- (1) Installed by the permit holder as required by the approved storm water management plan; and/or
- (2) Maintained by the owner as required by the operation and maintenance agreement.

(B) *Amount.*

(1) *Installation.* The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%.

(2) *Maintenance.* The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of

borrowing minus a reasonable estimate of long term inflation.

(C) *Uses of performance security.*

(1) *Forfeiture provisions.* The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this chapter, approvals issued pursuant to this chapter, or an operation and maintenance agreement established pursuant to this chapter.

(2) *Default.* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structural BMP in accordance with the applicable permit of operation and maintenance agreement, the Storm Water Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the town shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

(3) *Costs in excess of performance security.* If the town takes action upon such failure by the applicant or owner, the town may collect from the applicant or owner for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.

(4) *Refund.* Within 60 days of the final approval, the installation performance security shall be refunded to the applicant or terminated, with the exception of any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

(Ord. passed 1-15-2008)

**§ 53.59 NOTICE TO OWNERS.**

(A) *Deed recordation and indications on plat.* The applicable operations and maintenance agreement, conservation easement or dedication and acceptance into public maintenance, whichever is applicable, pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the county's Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement or dedication and acceptance into public maintenance, whichever is applicable, shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

(B) *Signage.* Where appropriate in the determination of the Storm Water Administrator to assure compliance with this chapter, structural BMPs shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

(Ord. passed 1-15-2008)

**§ 53.60 NUISANCE.**

The owner of each storm water BMP shall maintain it so as not to create or result in a nuisance condition, whether structural or non-structural BMP.

(Ord. passed 1-15-2008)

**§ 53.99 PENALTY.**

The remedies and penalties provided for violations of this chapter, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(A) *Remedies.*

(1) *Withholding of certificate of occupancy.* The Storm Water Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the storm water practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(2) *Disapproval of subsequent permits and development approvals.* As long as a violation of this chapter continues and remains uncorrected, the Storm Water Administrator or other authorized agent may withhold, and the Town Council may disapprove, any request for permit or development approval or authorization provided for by this chapter or the zoning and/or subdivision regulations, as appropriate for the land on which the violation occurs.

(3) *Injunction, abatements.* The Storm Water Administrator, with the written authorization of the Town Council, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this chapter. Any person violating this chapter shall be subject to the full range of equitable remedies provided in state statutes or at common law.

(4) *Correction as public health nuisance.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. § 160A-193, the Storm Water Administrator, with the written authorization of the Town Council, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(B) *Civil penalties.* Violation of this chapter may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Storm Water Administrator. Civil penalties may be assessed up to the full amount of penalty to which the town is subject for violations of its Phase II storm water permit.

(C) *Criminal penalties.* Violation of this chapter may be enforced as a misdemeanor subject to the maximum fine permissible under state law.

(Ord. passed 1-15-2008)