

## Chapter 275

### STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL

<b>ARTICLE I</b> <b>Stormwater Management</b>	<b>§ 275-17.</b>	<b>Discharge prohibitions; exceptions.</b>
§ 275-1. <b>Findings of fact.</b>	<b>§ 275-18.</b>	<b>Unauthorized connections prohibited.</b>
§ 275-2. <b>Definitions.</b>	<b>§ 275-19.</b>	<b>Failing individual sewage treatment systems prohibited.</b>
§ 275-3. <b>Purpose; objectives.</b>	<b>§ 275-20.</b>	<b>Activities contaminating stormwater.</b>
§ 275-4. <b>Applicability; Stormwater Management Officer.</b>	<b>§ 275-21.</b>	<b>Prevention, control and reduction of stormwater pollutants.</b>
§ 275-5. <b>Exemptions.</b>	<b>§ 275-22.</b>	<b>Suspension of access to MS4.</b>
§ 275-6. <b>Stormwater pollution prevention plans.</b>	<b>§ 275-23.</b>	<b>Industrial or construction activity discharges.</b>
§ 275-7. <b>Performance and design criteria.</b>	<b>§ 275-24.</b>	<b>Connection permits.</b>
§ 275-8. <b>Maintenance, inspection and repair of stormwater facilities.</b>	<b>§ 275-25.</b>	<b>Access to facilities; monitoring of discharges.</b>
§ 275-9. <b>Construction inspections.</b>	<b>§ 275-26.</b>	<b>Notification of spills.</b>
§ 275-10. <b>Performance guarantee; maintenance guarantee; recordkeeping.</b>	<b>§ 275-27.</b>	<b>Enforcement; penalties for offenses.</b>
§ 275-11. <b>Enforcement; penalties for offenses.</b>	<b>§ 275-28.</b>	<b>Appeal of notice of violation.</b>
§ 275-12. <b>Fees for services.</b>	<b>§ 275-29.</b>	<b>Corrective measures after appeal.</b>
<b>ARTICLE II</b> <b>Illicit Discharges and Connections to Storm Sewers</b>	<b>§ 275-30.</b>	<b>Injunctive relief.</b>
§ 275-13. <b>Purpose; objectives.</b>	<b>§ 275-31.</b>	<b>Alternative remedies.</b>
§ 275-14. <b>Definitions.</b>	<b>§ 275-32.</b>	<b>Violations deemed public nuisance.</b>
§ 275-15. <b>Applicability.</b>	<b>§ 275-33.</b>	<b>Remedies not exclusive.</b>
§ 275-16. <b>Responsibility for administration.</b>	<b>§ 275-34.</b>	<b>Multiple jurisdiction.</b>

**[HISTORY: Adopted by the Town Board of the Town of Riverhead as indicated in article histories. Amendments noted where applicable.]**

#### GENERAL REFERENCES

Coastal erosion hazard areas — See Ch. 219.

Flood damage prevention — See Ch. 233.

Wetlands — See Ch. 295.

Zoning and land development — See Ch. 301.

**ARTICLE I**  
**Stormwater Management**  
**[Adopted 12-18-2007 by L.L. No. 44-2007 (Ch. 110 of the 1976 Code)]**

**§ 275-1. Findings of fact.**

It has been determined that:

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

**§ 275-2. Definitions.**

The terms used in this article or in documents prepared or reviewed under this article shall have the meanings as set forth in this section:

**AGRICULTURAL ACTIVITY** — The activity of an active farm, including grazing and watering livestock, the raising, shearing, feeding and management of animals, irrigating crops, harvesting crops, using land for growing agricultural products, including but not limited to fruits, vegetables, eggs, dairy products, meat and meat products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.**[Amended 12-16-2008 by L.L. No. 49-2008]**

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

**BUILDING** — Any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

**CLEARING** — Any activity that removes the vegetative surface cover.

**DEDICATION** — The deliberate appropriation of property by its owner for general public use.

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

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

**DEVELOPER** — A person who undertakes land development activities.

**EPA** — Environmental Protection Agency.

**EROSION** — The removal of soil particles by the action of water, wind, ice or other geological agents.

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

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

**IMPERVIOUS COVER** — Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

**INFILTRATION** — The process of percolating stormwater into the subsoil.

**LAND DEVELOPMENT/REDEVELOPMENT ACTIVITY** — Construction activity, including clearing, grading, excavating, soil disturbance or placement of fill, that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development or redevelopment activities may take place at different times on different schedules.

**LANDOWNER** — The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

**LICENSED/CERTIFIED PROFESSIONAL** — A person currently licensed to practice engineering in New York State (PE) or a Certified Professional in Erosion and Sediment Control (CPESC), or a Certified Professional in Stormwater Quality (CPSWQ).

**MAINTENANCE AGREEMENT** — A legally recorded document that acts as a property deed restriction and which provides for long-term maintenance of stormwater management practices.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)** — A conveyance or system of conveyances and retention and infiltration facilities (including roads with drainage systems, curbs and gutters on municipal streets, manholes, catch basins, ditches, man-made channels, or storm drains, stormwater basins, drainage reserve areas, dry wells or any other component of a stormwater system) that is:

- A. Owned or operated by the Town or another municipal entity;
- B. Designed or used for collecting and/or conveying and/or storing and/or infiltrating and/or managing stormwater;
- C. Which is not a combined sewer; and
- D. Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

**NONPOINT SOURCE POLLUTION** — Pollution from any source other than from any discernible,

confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

**NYSDEC** — New York State Department of Environmental Conservation.

**PHASING** — Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

**PLANNING BOARD** — The Planning Board of the Town of Riverhead.

**POLLUTANT OF CONCERN** — Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

**PROJECT** — Land development or redevelopment activity.

**RECHARGE** — The replenishment of underground water reserves.

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

**SILVICULTURAL ACTIVITY** — The activity related to the establishment, growth, composition and quality of forest vegetation.

**SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01** — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

**SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORM SEWER SYSTEMS GP-02-02** — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA and/or NYSDEC established water quality standards and/or to specify stormwater control standards.

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

**STOP-WORK ORDER** — An order issued which requires that all construction activity on a site be stopped.

**STORMWATER** — Rainwater; or surface runoff and/or subsurface drainage due to rain, snow, or other precipitation or a combination thereof.

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

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

**STORMWATER MANAGEMENT OFFICER (SMO)** — The Town Engineer of the Town of Riverhead (or the person serving in the capacity of the Town Engineer) or designee or his/her authorized deputies, agents or representatives, including employees of other Town departments as appropriate. The SMO is designated by the Town to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices. **[Amended 12-16-2008 by L.L. No. 49-2008]**

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

STORMWATER POLLUTION PREVENTION PLAN (SWPPP) — SWPPPs formalize the design of stormwater management measures for each site. The SWPPP has two parts: an erosion and sediment control plan and a post-construction stormwater control plan. The erosion and sediment control plan, required for all regulated construction activities, lays out the nature, placement and capacity of runoff control measures to be used during construction. Where permanent measures are necessary to manage stormwater runoff after construction is completed, a post-construction stormwater control plan is also required, setting forth engineering details, construction schedules and responsibility for ongoing operation and maintenance of permanent stormwater management measures.

STORMWATER RUNOFF — Flow on the surface of the ground resulting from precipitation.

STREAM CHANNEL — A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water (see also "watercourse," "waterway").

SURFACE WATERS OF THE STATE OF NEW YORK — Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition, are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

TOWN — The Town of Riverhead.

TOWN ENGINEER — The Town Engineer of the Town of Riverhead, or his/her authorized deputies, agents, or representatives.

WATERCOURSE — A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water (see also "stream channel," "waterway").

WATERWAY — A channel that directs surface runoff to a watercourse or to the public storm drain (see also "stream channel," "watercourse").

WETLAND — An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation."

### **§ 275-3. Purpose; objectives.**

The purpose of this article is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within the Town and to address the findings of fact in § 275-1 hereof. This article seeks to meet those purposes by achieving the following objectives:

- A. Meet the requirements of minimum measures 4 and 5 of New York State's SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s), Permit No. GP-02-02, or as amended or revised;
- B. Require land development and redevelopment activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01, or as amended or revised;
- C. Minimize increases in stormwater runoff from land development and redevelopment activities in

order to reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels, watercourses, and waterways;

- D. Minimize increases in nonpoint source pollution caused by stormwater runoff from land development and redevelopment activities which would otherwise degrade local water quality;
- E. Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development and redevelopment to the maximum extent practicable; and
- F. Utilize stormwater management practices to achieve the objectives outlined above, and ensure that these practices are properly maintained and eliminate threats to public safety.

#### **§ 275-4. Applicability; Stormwater Management Officer.**

- A. This article shall be applicable to all land development and redevelopment activities as defined in § 275-2 of this article.
- B. The Town shall designate a Stormwater Management Officer (SMO) who shall accept and review all stormwater pollution prevention plans (SWPPPs) and forward such plans to the Town Board or the Town Planning Board, as applicable. The Stormwater Management Officer may:
  - (1) Review the SWPPP;
  - (2) Upon approval by the Town Board of the Town of Riverhead, engage the services of a licensed/certified professional to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board; or
  - (3) Accept the certification of a licensed professional that the plans conform to the requirements of this article and all other relevant and applicable requirements.
- C. Notwithstanding the mechanism of review chosen, the SMO shall have the authority under this article to inspect the progress of land development and redevelopment activities subject to the provisions of this article with regard to conformance with the approved SWPPP. Should the project be found to be in noncompliance with the approved SWPPP, the SMO shall have the authority to halt construction activities until corrective measures are taken to bring the project into compliance.
- D. All land development or redevelopment activities subject to review and approval by the Planning Board of the Town of Riverhead under subdivision, site plan and/or special permit regulations shall be reviewed subject to the standards contained in this article.
- E. All land development activities not subject to review as stated in Subsection C of this section shall be required to submit a SWPPP to the SMO, who shall review the SWPPP and grant approval if it complies with the requirements of this article.

#### **§ 275-5. Exemptions.**

The following activities are exempt from review under this article:

- A. Agricultural activity as defined in this article.
- B. Silvicultural activity, except that landing areas and log haul roads are subject to this article.
- C. Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.

- D. Repairs to any stormwater management practice or facility receiving the written approval of the Stormwater Management Officer.
- E. Any part of a subdivision if a plat for the subdivision has been approved by the Town on or before the effective date of this article.
- F. Land development or redevelopment activities for which a building permit has been approved on or before the effective date of this article.
- G. Cemetery graves.
- H. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- I. Emergency activity immediately necessary to protect life, property or natural resources.
- J. Activities of an individual engaging in home gardening by growing flowers, vegetables and other plants primarily for use by that person and his or her family.
- K. Landscaping and horticultural activities in connection with an existing structure.

**§ 275-6. Stormwater pollution prevention plans.**

- A. Stormwater pollution prevention plan requirement. No application for approval of a land development or redevelopment activity shall receive final approval until the Stormwater Management Officer (SMO) has received, reviewed, and accepted a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this article. **[Amended 11-18-2014 by L.L. No. 22-2014]**
- B. Contents of stormwater pollution prevention plans.
  - (1) All SWPPPs shall provide, at a minimum, the following:
    - (a) Background information about the scope of the project, including location, type and size of project;
    - (b) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show:
      - [1] The total site area;
      - [2] All improvements;
      - [3] Areas of disturbance;
      - [4] Areas that will not be disturbed;
      - [5] Existing vegetation;
      - [6] On-site and adjacent off-site surface water(s);
      - [7] Wetlands and drainage patterns that could be affected by the construction activity;
      - [8] Existing and final slopes;
      - [9] Locations of off-site material, waste, borrow or equipment storage areas and location(s) of the stormwater discharge(s);

[10] The site map should be at a scale no smaller than one inch equals 100 feet;

- (c) Description(s) of the United States Department of Agriculture National Resources Conservation Service soil type(s) present at the site, and a plan showing the boundaries between soil types on the site, if applicable. These boundaries may be included on the site plan, if clearly labeled;
- (d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five acres shall be disturbed at any one time unless said disturbance phasing is shown and described on an approved SWPPP;
- (e) Descriptions, physical locations, and construction details of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
- (f) Description of construction and waste materials expected to be stored on site with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response. Proposed locations and approximate quantities of stockpiles of these materials shall also be delineated on the SWPPP;
- (g) Descriptions, physical locations, and construction details of the temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project, from initial land clearing and grubbing to project closeout;
- (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
- (i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
- (j) Descriptions, locations, and details of temporary practices that will be converted to permanent control measures;
- (k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
- (l) Maintenance schedule to ensure continuous and effective operation of all temporary and permanent erosion and sediment control practices;
- (m) Name(s) of the receiving water(s) and location/proximity to the project site;
- (n) Delineation of SWPPP implementation responsibilities for each part of the site;
- (o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
- (p) Any existing data that describes the stormwater runoff at the site.

(2) Land development or redevelopment activities as defined in § 275-2 of this article and meeting Condition A, B or C below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth in Subsection B(3) below as applicable:

- (a) Condition A: stormwater runoff from land development or redevelopment activities discharging a pollutant of concern to either an impaired water identified on the Department's most current 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
- (b) Condition B: stormwater runoff from land development or redevelopment activities disturbing five or more acres.
- (c) Condition C: stormwater runoff from land development or redevelopment activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.

(3) SWPPP requirements for Conditions A, B and C:

- (a) All information in Subsection B(1) of this section;
- (b) Description of each post-construction stormwater management practice;
- (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice;
- (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
- (e) Comparison of post-development stormwater runoff conditions with predevelopment conditions;
- (f) Dimensions, material specifications and installation details for each post-construction stormwater management practice;
- (g) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice;
- (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;
- (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 275-9 of this article; and
- (j) For Condition A, the SWPPP shall be prepared by a registered landscape architect (RLA), certified professional in stormwater quality (CPSWQ), certified professional in erosion and sediment control (CPESC), or a professional engineer (PE) and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meets the requirements in this article and all other applicable and relevant requirements.

C. Other environmental permits. The applicant shall ensure that all other applicable environmental permits have been or will be acquired for the land development or redevelopment activity prior to approval of the final SWPPP.

D. Contractor certification.

- (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development or redevelopment activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the stormwater pollution prevention plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."
- (2) The certification must include the name and title of the person providing the signature; address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
- (3) The certification statement(s) shall become part of the SWPPP for the land development activity.

E. A copy of the SWPPP shall be retained at the site of the land development or redevelopment activity during construction from the date of initiation of construction activities to the date of final stabilization.

#### **§ 275-7. Performance and design criteria.**

All land development or redevelopment activities shall be subject to the following performance and design criteria:

- A. Technical standards. For the purpose of this article, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this article:
  - (1) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the "Design Manual");
  - (2) New York State Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2005, most current version or its successor, hereafter referred to as the "Erosion Control Manual").
- B. Equivalence to technical standards. Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in Subsection A of this section, and the SWPPP shall be prepared by a licensed professional.
- C. Water quality standards. Any land development or redevelopment activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

#### **§ 275-8. Maintenance, inspection and repair of stormwater facilities.**

A. Maintenance and inspection during construction.

- (1) The applicant or developer of the land development or redevelopment activity or his or her representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this article. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
- (2) For land development or redevelopment activities as defined in § 275-2 of this article and meeting Condition A, B or C in § 275-6B(2) of this article, the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site logbook. The site shall be subject to random inspections by the SMO or his/her representative, in order to ensure that the requirements of the approved SWPPP and/or this article are being satisfied.
- (3) The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and report/document any and all malfunctions of erosion and sediment control and pollution prevention practices.

B. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Town to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this article. The easement shall be recorded by the grantor in the office of the Suffolk County Clerk after approval by the Counsel for the Town.

C. Maintenance after construction. The owner or operator of permanent stormwater management practices installed in accordance with this article shall ensure they are operated and maintained to achieve the goals of this article. Proper operation and maintenance also includes, as a minimum, the following:

- (1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this article.
- (2) Written procedures for operation and maintenance and training new maintenance personnel.
- (3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 275-7C of this article.

D. Maintenance agreements. The Town shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the Suffolk County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Schedule B of this article entitled "Sample Stormwater Control Facility Maintenance Agreement."<sup>1</sup>

**§ 275-9. Construction inspections.**

---

1. Editor's Note: Schedule B is included as an attachment to this chapter.

A. Erosion and sediment control inspection.

- (1) The Town's SMO may require such inspections as deemed necessary to determine compliance with this article and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this article and the SWPPP as approved. To obtain inspections, the applicant shall notify the SMO at least 48 hours before any of the following actions are taken on any planned phase of the project:
  - (a) Installation of sediment and erosion control measures prior to commencement of construction activities;
  - (b) Completion of site clearing;
  - (c) Completion of rough grading;
  - (d) Completion of final grading;
  - (e) Close of the construction season;
  - (f) Completion of final landscaping;
  - (g) Successful establishment of landscaping in public areas.
- (2) If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the SMO.

B. Stormwater management practice inspections. The SMO is responsible for conducting inspections of stormwater management practices (SMPs). Inspections may be performed by Town staff or the Town's SMO may designate a certified/licensed professional to act as the inspector. The designated inspector is required to submit copies of the weekly/storm event inspection reports to the SMO.

C. Inspection of stormwater facilities after project completion. Inspection programs shall be established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher-than-typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher-than-usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the NYSDEC SPDES General Permit 02-02; 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, groundwater, and material or water in stormwater facilities; and evaluating the condition of stormwater facilities and stormwater management practices.

D. Submission of reports. The SMO may require monitoring and reporting from entities subject to this article as is necessary to determine compliance with this article. All applicants are required to submit as-built plans for any stormwater management practices located on site after final construction is completed. The plans must show the final construction layout for all stormwater management facilities. The plans must also clearly display any alterations made to the original approved construction details, sections, and/or plan layout. The as-built plans must be certified by a professional engineer.

E. Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the MS4, the landowner shall grant to the Town the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in Subsection C.

**§ 275-10. Performance guarantee; maintenance guarantee; recordkeeping.**

A. Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town in its approval of the stormwater pollution prevention plan, the Town may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town as the beneficiary. The security shall be in an amount to be determined by the Town based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facilities have been found to be acceptable to the Town. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

B. Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities, both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

C. Recordkeeping. The Town may require entities subject to this article to maintain records demonstrating compliance with this article.

**§ 275-11. Enforcement; penalties for offenses.**

A. Notice of violation. When the Town determines that a land development or redevelopment activity is not being carried out in accordance with the requirements of this article, it may issue a written notice of violation to the landowner. The notice of violation shall contain:

- (1) The name and address of the landowner, developer or applicant;
- (2) The address, when available, or a description of the building, structure or land upon which the violation is occurring;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to bring the land development or redevelopment activity into compliance with this article and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom

the notice of violation is directed;

(6) A statement that the determination of violation may be appealed to the Town by filing a written notice of appeal within 15 days of service of notice of violation.

B. Stop-work orders. The SMO may issue a stop-work order for violations of this article. Persons receiving a stop-work order shall be required to halt all land development or redevelopment activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the SMO confirms that the land development or redevelopment activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this article.

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

D. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$1,000 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$1,000 nor more than \$2,500 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$2,500 nor more than \$5,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each day's continued violation shall constitute a separate additional violation. To the extent that § 268 of the New York State Town Law limits the fine schedule for a violation of any local law, ordinance or regulation to a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both, § 268 of the New York State Town Law is superseded, nunc pro tunc, for the protection and enhancement of the Town's physical and visual environment and for the protection, order, conduct, safety, health and well-being of persons or property therein, pursuant to the Town's powers under § 10, Subdivision 1(ii)a(3)(11) and (12), of the Municipal Home Rule Law, as well as Article 9, § 2(b)(3), and Article 9, § 3(c)(10), of the New York State Constitution.

**[Amended 12-16-2008 by L.L. No. 50-2008]**

E. Appeal of notice of violation. Any person receiving a notice of violation may appeal within 15 calendar days of its issuance. The SMO shall hear the appeal within 30 days after the filing of the appeal and, within five days of making his/her decision, issue a decision by certified mail to the discharger. The SMO may conduct the hearing and take evidence or may designate any officer or employee of the Town to do so.

F. Corrective measures after appeal.

(1) If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within five business days of the decision of the SMO,

then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.

- (2) If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the property owner.

G. Injunctive relief. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. If a person has violated or continues to violate the provisions of this article, the SMO may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

H. Withholding of certificate of occupancy. If any building or land development or redevelopment activity is installed or conducted in violation of this article, the SMO may prevent the occupancy of said building or land.

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

**§ 275-12. Fees for services. [Amended 12-30-2008 by L.L. No. 53-2008; 11-7-2012 by L.L. No. 31-2012]**

The Town shall require any person or entity undertaking land development or redevelopment activities regulated by this article to pay reasonable costs at prevailing rates for review of stormwater pollution prevention plans (SWPPPs) and inspections, or stormwater management practice (SMPs) performed by the Town or performed by a third party at the direction of the Town.

A. The following fees shall be required in connection with the submission of a stormwater pollution prevention plan (SWPPP):

- (1) Stormwater pollution prevention plan (SWPPP) review/inspection fees: **[Amended 10-6-2020 by L.L. No. 5-2020]**
  - (a) Initial deposit: \$6,000.
  - (b) Erosion and sediment control plan (ESCP): \$3,500.
- (2) Review and inspection fees:
  - (a) SWPPP review fees: maximum of \$175 per hour upon initial review, and all subsequent reviews, if necessary, as performed by Town's retained consultant.
  - (b) SWPPP site inspection fees: \$130 per hour upon inspection by Town's retained consultant. **[Amended 12-20-2022 by L.L. No. 25-2022]**
  - (c) The fees referenced in Subsection A(2) shall become nonrefundable upon SWPPP review and/or SWPPP site inspection(s).

- (3) All fees delineated in Subsection A(1) and (2) above shall be deposited in the Town of Riverhead's escrow account entitled "Engineering Department: Stormwater Pollution Prevention Plan Review and Inspection," as addressed in Subsection B below.
- (4) In the event subsequent SWPPP review and/or subsequent site inspection is required, the Town shall defray the cost of such expense from replenishment of the escrow account as addressed in Subsection B below.
- (5) All fees and deposits delineated in Subsection A(1) and (2) above shall be solely used to defray the cost and expense of SWPPP review, site inspection and related activities.
- (6) The Town shall provide an accounting of costs and expenses incurred by the Town and/or Town consultants on an annual basis. The Town shall also provide a final accounting at such time that the Town deems the project complete.

B. Escrow accounts.

- (1) An escrow account entitled "Engineering Department: Stormwater Pollution Prevention Plan Review and Inspection" shall be established within the Department of Finance regarding the applications addressed in Subsection A(1) and (2) above. The applicant(s) shall fund said escrow account.
- (2) Withdrawals from said escrow account may be made from time to time to reimburse the Town for the cost of its Town personnel, including but not limited to legal consultation, review and consideration, and/or consultant's professional review and inspection services actually incurred at prevailing rates of pay for such Town personnel or consultant's services. Whenever the balance in such escrow account is reduced to 1/4 of its initial amount, the Town shall so notify the applicant; thereafter, the applicant shall deposit additional funds into such account so as to restore its balance to 1/2 of the initial deposit. If such account is not replenished for such additional deposit, the reviewing and/or inspecting party may suspend the review of the application or inspection of the construction until such time that the above-stated conditions are met.
- (3) After all pertinent review and inspection fees with respect to the particular application for which the account was established have been paid, the Town shall refund to the applicant the balance of any funds then remaining on deposit in the escrow account, without interest, as established by this section.

## ARTICLE II

**Illicit Discharges and Connections to Storm Sewers**  
[Adopted 12-18-2007 by L.L. No. 45-2007 (Ch. 109, Art. I, of the 1976 Code)]**§ 275-13. Purpose; objectives.**

The purpose of this article is to provide for the health, safety and general welfare of the residents of the Town of Riverhead through the regulation of connections to the Town's municipal separate storm sewer system (MS4) and the regulation of nonstormwater discharges to the MS4 to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the New York State Department of Environmental Conservation's (NYSDEC) State Pollutant Discharge Elimination System (SPDES) General Permit (GP-02-02) for Municipal Separate Storm Sewer Systems. The objectives of this article are:

- A. To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02, or as amended or revised;
- B. To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process or discharge nonstormwater wastes;
- C. To prohibit unauthorized and illicit connections, activities and discharges to the MS4;
- D. To establish legal authority to implement all inspection, surveillance and monitoring procedures necessary to ensure compliance with this article; and
- E. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the MS4.

**§ 275-14. Definitions.**

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

**BEST MANAGEMENT PRACTICES (BMPs)** — Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

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

**CODE** — Code of the Town of Riverhead, New York.

**CONNECTION PERMIT** — An authorization for connection as well as a discharge permitted under § 275-24 of this article, as well as a discharge authorized under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the NYSDEC. This permit is subject to special terms and conditions by the SMO. The permit will expire on or before the expiration of the NYSDEC SPDES permit, waiver or order or upon change of ownership or use of the property.

**CONSTRUCTION ACTIVITY** — Activities requiring authorization under a NYSDEC SPDES Permit

for Stormwater Discharges From Construction Activity, GP-02-01, as amended or revised, or activities covered by erosion and sediment control or pollution prevention plan laws, ordinances or regulations of the Town. These activities include construction projects resulting in land disturbance equal to or greater than the area stipulated in statutes or regulations of the state, county or the Town, whichever is most restrictive. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

**COUNTY** — The County of Suffolk.

**GENERAL PERMIT** — An authorization for the connection as well as the discharge of stormwater or authorized nonstormwater (per § 275-17A of this article) from properties occupied by private dwellings.

**HAZARDOUS MATERIALS** — Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

**ILLICIT ACTIVITY** — Any action or condition, active or passive, that results in nonstormwater discharges entering the Town's MS4.

**ILLICIT CONNECTION** — Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including, but not limited to:

- A. Any conveyances which allow any nonstormwater discharge, including treated or untreated sewage, process wastewater and wash water, to enter the MS4, and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by an authorized enforcement agency;
- B. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps or equivalent records and approved by an authorized enforcement agency;
- C. Any building or structure floor drain or trench drain; and
- D. Any unauthorized connection as defined elsewhere in this section.

**ILLICIT DISCHARGE** — Any discharge through an unauthorized connection, and any direct or indirect nonstormwater discharge to the MS4, except as exempted in § 275-17 of this article.

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

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

**LICENSED/CERTIFIED PROFESSIONAL** — New York State licensed professional engineer or licensed architect.

**MS4** — Municipal separate storm sewer system owned by the Town or another municipal entity.

**MUNICIPALITY** — A county, town, village or other unit of government.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM** — A conveyance or system of conveyances and retention and infiltration facilities (including roads with drainage systems, curbs and gutters on municipal streets, manholes, catch basins, ditches, man-made channels, or storm drains, stormwater basins, drainage reserve areas, dry wells or any other component of a stormwater system) that is:

- A. Owned or operated by the Town or another municipal entity;
- B. Designed or used for collecting and/or conveying and/or storing and/or infiltrating and/or managing stormwater; and
- C. Which is not a combined sewer; and
- D. Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

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

**NYSDEC** — The New York State Department of Environmental Conservation.

**OFFICE OF THE TOWN ENGINEER** — Office of the Town Engineer of the Town of Riverhead.

**PERSON** — Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

**POLLUTANT** — Anything which causes or contributes to pollution. Pollutants may include, but are not limited to, dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, hazardous materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, agricultural waste and ballast discharged into water, which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards. Also, paints, varnishes, and solvents; oil and other automotive fluids; hazardous or nonhazardous liquid and solid wastes; yard wastes, including branches, grass clippings and leaves; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations so that same may cause or contribute to pollution; and discharges of soaps, detergents, or floatables; pesticides, herbicides, and fertilizers; sewage, fecal coliforms and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building, structure or site improvements; cement, gravel, sand, silt, mud, other soils and noxious or offensive matter of any kind.

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

**SPECIAL CONDITIONS** —

- A. Discharge compliance with water quality standards: the condition that applies where an MS4 has been notified that the discharge of stormwater authorized under their MS4 SPDES permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition, the MS4 must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.
- B. Federal Clean Water Act § 303(d)-listed waters: the condition in an MS4 SPDES permit that applies where the MS4 discharges to a NYSDEC 303(d)-listed water. Under this condition, the MS4's stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d)-listed water.
- C. Total maximum daily load (TMDL) strategy: the condition in an MS4 SPDES permit where a TMDL, including requirements for control of stormwater discharges, has been approved by EPA for a water body or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the MS4 was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

D. The condition in an MS4 permit that applies if a TMDL is approved in the future by EPA for any water body or watershed into which an MS4 discharges: under this condition, the MS4 must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the MS4 must, within six months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

**SPECIAL PERMIT** — An authorization for the connection as well as the discharge of stormwater or authorized nonstormwater (per § 275-17 of this article) from all properties occupied by other than private dwellings.

**STATE** — The State of New York.

**STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT** — A permit issued by the NYSDEC that authorizes the discharge of pollutants to waters of the state.

**STORMWATER** — Rainwater; or surface runoff and/or subsurface drainage due to rain, snow, or other precipitation or a combination thereof.

**STORMWATER MANAGEMENT OFFICER (SMO)** — The Town Engineer of the Town of Riverhead (or the person serving in the capacity of the Town Engineer) or his/her authorized deputies, agents or representatives, including employees of other Town departments, as appropriate.

**STORMWATER POLLUTION PREVENTION PLAN (SWPPP)** — SWPPPs formalize the design of stormwater management measures for each site. The SWPPP has two parts: an erosion and sediment control plan and a post-construction stormwater control plan. The erosion and sediment control plan, required for all regulated construction activities, lays out the nature, placement and capacity of runoff control measures to be used during construction. Where permanent measures are necessary to manage stormwater runoff after construction is completed, a post-construction stormwater control plan is also required, setting forth engineering details, construction schedules and responsibility for ongoing operation and maintenance of permanent stormwater management measures.

**303(d) LIST** — A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the NYSDEC as required by § 303(d) of the Clean Water Act. 303(d)-listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next two years.

**TMDL** — Total maximum daily load.

**TOTAL MAXIMUM DAILY LOAD** — The maximum amount of a pollutant allowed to be released into a water body so as not to impair uses of the water, allocated among the sources of that pollutant.

**TOWN** — The Town of Riverhead.

**TOWN ENGINEER** — The Town Engineer of the Town of Riverhead, or his/her authorized deputies, agents, or representatives.

**UNAUTHORIZED CONNECTION** — A permanent or temporary unapproved direct or indirect conveyance to the Town's MS4. Any connection, pipe, hose, swale, or other conveyance underground or above ground that is not documented on plans, maps, or equivalent records approved by the Town Engineer or other jurisdictionally appropriate agency, or that is not approved by a permit issued by the Town Engineer or other jurisdictionally appropriate agency, is considered unauthorized, regardless of whether the discharge is otherwise allowed by this article.

**UNCONTAMINATED** — Free of pollutants or containing pollutants within acceptable limits as defined by the governing regulatory code. (See definition of "pollutant.")

**WASTEWATER** — Water that is not stormwater, and that is adversely affected in quality by anthropogenic influence. This includes but is not limited to discharges resulting from residential, commercial, industrial, and agricultural water usage.

### **§ 275-15. Applicability.**

This article shall apply to discharged connections to the Town's MS4. This includes activities that result in discharge, seepage or deposition into the Town's MS4, and all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency and allowed by a discharge or connection permit or other document approved by the jurisdictionally appropriate agency. This article shall also apply to discharges and connections entering via another MS4 that is tributary to the Town's MS4.

### **§ 275-16. Responsibility for administration.**

The Town Engineer of the Town of Riverhead, or duly authorized deputies, agents or representatives, is designated as the Stormwater Management Officer (SMO). The Town Engineer, duly authorized deputies, agents or representatives or employees of other Riverhead Town departments, as appropriate, shall administer, implement, and enforce the provisions of this article.

### **§ 275-17. Discharge prohibitions; exceptions.**

A. Prohibition of illicit discharges. No person shall discharge or cause to be discharged into the Town's MS4 any materials other than stormwater except as provided in Subsection A(1). The commencement, conduct or continuance of any illicit (illegal) discharge to the MS4 is prohibited except as described as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this article, unless they are subsequently determined to be substantial contributors of pollutants: waterline flushing or other potable water sources, uncontaminated landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains, uncontaminated crawl space or basement sump pump discharges, air-conditioning condensate, uncontaminated irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from firefighting activities, and any other water source not containing pollutants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants.
- (2) Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws, codes and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this article.
- (3) Dye testing in compliance with applicable state and local laws or codes is an allowable discharge, but requires a written notification to the SMO prior to the time of the test.

B. The prohibition shall not apply to any discharge permitted under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the NYSDEC, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws, codes and regulations, and provided that written approval has been granted for any discharge to the MS4 by the SMO.

**§ 275-18. Unauthorized connections prohibited.**

A. Connections to the Town's MS4 without a permit are prohibited.

- (1) Any connection to the Town's MS4 is considered to be an unauthorized connection unless it has been approved by a permit issued by the SMO or documented on a plan or map that has been approved by the SMO. This constraint applies to all connections, permanent or temporary, regardless of whether the discharge is otherwise permitted by this article.
- (2) The construction, use, maintenance or continued existence of unauthorized connections to the Town's MS4 is prohibited.
- (3) This prohibition expressly includes, without limitation, connections made in the past, regardless of whether the connection was permissible under law, code or practices applicable or prevailing at the time of connection.
- (4) A person is considered to be in violation if a connection is made from his/her property to the Town's MS4 that is not authorized, or allows such a connection to continue.
- (5) The connection of interior floor, trench, or roof drains to the MS4 at the entrances to buildings or other structures is prohibited.

B. Remedy unauthorized connections. Where the SMO has identified an unauthorized connection as defined in Subsection A(2) of this section, the SMO may require that a proper permit be obtained or that the connection be removed at the property owner's expense.

**§ 275-19. Failing individual sewage treatment systems prohibited.**

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

- A. The backup of sewage into a structure.
- B. Discharges of treated or untreated sewage onto the ground surface.
- C. A connection or connections to the Town's MS4.
- D. Liquid level in the septic tank above the outlet invert.
- E. Structural failure of any components of the individual sewage treatment system that could lead to any of the other failure conditions as noted in this section.
- F. Contamination of off-site groundwater.

**§ 275-20. Activities contaminating stormwater.**

A. Activities that are subject to the requirements of this article are those types of activities that:

- (1) Cause or contribute to a violation of the Town's MS4 SPDES permit.
- (2) Cause or contribute to the Town being subject to the special conditions as defined in § 275-14 of this article.
- (3) Cause or contribute to the Town's MS4 receiving pollutants as defined in § 275-14 of this article.
- (4) Cause or contribute to the Town's MS4 receiving discharges from an undocumented or unauthorized connection (whether permanent or temporary).

B. Such activities include failing individual sewage treatment systems as defined in § 275-19 of this article, improper management of pet waste or any other activity that causes or contributes to violations of the Town's MS4 SPDES permit authorization.

C. Upon notification to a person that he or she is engaging or has engaged in activities that cause or contribute to violations of the Town's MS4 SPDES permit authorization or cause or contribute to pollutants being discharged to the Town's MS4, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the Town's MS4 SPDES permit authorization or causes or contributes to pollutants to be discharged or deposited into the Town's MS4.

#### **§ 275-21. Prevention, control and reduction of stormwater pollutants.**

- A. Best management practices. Where the SMO has identified illicit discharges as defined in § 275-14 of this article or activities contaminating stormwater as defined in § 275-20 of this article, the SMO may require implementation of best management practices (BMPs) to control those illicit discharges and activities.
  - (1) The owner or operator of a commercial or industrial establishment shall provide, at his or her own expense, reasonable protection from accidental discharge of prohibited materials, pollutants or other wastes into the MS4 through the use of structural and nonstructural BMPs.
  - (2) Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge as defined in § 275-14 of this article or an activity contaminating stormwater as defined in § 275-20 of this article, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.
  - (3) Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section.
- B. Individual sewage treatment systems; response to special conditions requiring no increase of pollutants or requiring a reduction of pollutants. Where individual sewage treatment systems are contributing to the Town's MS4 being subject to the special conditions as defined in § 275-14 of this article, the owner or operator of such individual sewage treatment systems shall be required to:
  - (1) Maintain and operate individual sewage treatment systems as follows:
    - (a) Have the septic tank professionally inspected annually to determine scum and sludge accumulation. A copy of the inspection report(s) shall be submitted to the SMO for review and determination of appropriate maintenance or remediation actions to be performed.

These actions include, at a minimum:

- [1] Septic tanks must be pumped out whenever the bottom of the scum layer is within three inches of the bottom of the outlet baffle or sanitary tee or the top of the sludge is within 10 inches of the bottom of the outlet baffle or sanitary tee;
- (b) Avoid the use of septic tank additives;
- (c) Avoid the disposal of excessive quantities of detergents, kitchen wastes, laundry wastes and household chemicals into the septic system; and
- (d) Avoid the disposal of cigarette butts, disposable diapers, sanitary napkins, trash and other such items into the septic system.

(2) Repair or replace individual sewage treatment systems as follows:

- (a) In accordance with 10 NYCRR, Appendix 75-A, to the maximum extent practicable.
- (b) A design professional licensed and qualified to practice in New York State shall prepare design plans for any type of absorption field that involves:
  - [1] Relocating or extending an absorption area to a location not previously approved for such.
  - [2] Installation of a new subsurface treatment system at the same location.
  - [3] Use of alternate system or innovative system design or technology.
- (c) A written certificate of compliance shall be submitted by the design professional to the SMO at the completion of construction of the repair or replacement system.

#### **§ 275-22. Suspension of access to MS4.**

- A. The SMO may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4. The SMO shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize hazardous conditions which may adversely affect the health, safety, welfare, and property of residents of the Town.
- B. Suspension due to the detection of illicit discharge or unauthorized connection. Any person discharging to the Town's MS4 in violation of this article may have his or her MS4 access terminated if such termination would abate or reduce an illicit discharge or result in the remedy of an unauthorized connection. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence, or that the discharger has obtained proper permission for the connection. Access may be denied if the SMO determines in writing that the illicit discharge has not ceased or is likely to recur or the unauthorized connection has not been sufficiently remedied. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the SMO.

**§ 275-23. Industrial or construction activity discharges.**

Any person subject to an industrial or construction activity SPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the SMO prior to the allowing of discharges to the MS4.

**§ 275-24. Connection permits.**

- A. General. Any connection to the Town's MS4 requires a permit issued by the SMO. Applications for permits shall be made on forms provided by the SMO. Permit applications shall be supplemented by any plans, specifications, analyses, calculations or other information considered pertinent by the SMO. The Town considers connection to its MS4 as a last resort to solve flooding problems. Before approving a connection, the Town will require that applicants use on-site best management practices to detain and remediate stormwater and other authorized nonstormwater discharges to the maximum extent practicable. The SMO will assess the adequacy of the applicant's on-site stormwater management practices.
- B. Permit types.
  - (1) General permit. An authorization for the connection as well as the discharge of stormwater or authorized nonstormwater discharge (per § 275-17A of this article) from properties occupied by private dwellings.
  - (2) Connection permit. An authorization for connection as well as discharge authorized under § 275-24 of this article, as well as for a discharge permitted under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the NYSDEC. This permit is subject to special terms and conditions by the Town Engineer. The permit will expire on or before the expiration of the NYSDEC SPDES permit, waiver or order or upon change of ownership or use of the property.
  - (3) Special permit. An authorization for the connection as well as the discharge of stormwater or authorized nonstormwater discharge (per § 275-17A of this article) from all properties occupied by other than private dwellings.
- C. Permit fees. The following fee schedule:
  - (1) General permit:
    - (a) Application and filing fee: \$25.
    - (b) Inspection fee: none.
  - (2) Connection permit:
    - (a) Application and filing fee: \$250.
    - (b) Inspection fee: \$500.
  - (3) Special permit:
    - (a) Application and filing fee: \$250.
    - (b) Inspection fee: \$500.
- D. Inspection. All connections to the Town's MS4 shall be subject to the approval and inspection by the

SMO and/or other appropriate agency as deemed necessary by the SMO. The applicant must notify the SMO at least 48 hours prior to commencing work and at least 48 hours prior to final restoration so that the inspection can be scheduled.

- E. Indemnification. The property owner shall indemnify and save the Town harmless from any loss, damage or expense, claims or suits arising out of and in conjunction with the installation and connection to the Town's MS4. In addition, the Town makes no guarantee that its MS4 will not become surcharged or otherwise overburdened and that water from the MS4 will not back up through the connection onto the owner's property. By making a connection, the applicant/owner assumes all of the risk and liability that may arise from it.
- F. Permit transfers. General permits may be transferred with the sale of a residential property, provided the use does not change. The new property owner shall comply with the terms and conditions of the transferred permit. Special permits are not transferable without approval of the SMO.
- G. Work within public roads. Any connection made within or involving work within a public road will also comply and be subject to any and all applicable codes and regulations pertaining to permits for work on and within public streets and roads. A permit under this article does not relieve the applicant from the permits under the foregoing codes and regulations.
- H. Other permits required. A connection permit issued pursuant to this article does not relieve the applicant from any and all other permits, permissions, or compliance with rules and regulations that may be required by federal, state, county, Town, and village government agencies or other public or private parties. This permit does not supersede any of the above.
- I. Permit rules and regulations. The SMO may promulgate rules and regulations for the permitting process within the constraints of this article.

#### **§ 275-25. Access to facilities; monitoring of discharges.**

- A. Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this article, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition that constitutes a violation of this article.
- B. Access to facilities.
  - (1) The SMO shall be permitted to enter and inspect facilities, public and private, subject to regulation under this article as often as may be necessary to determine compliance with this article. If a discharger has security measures in force that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.
  - (2) Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this article.
  - (3) The Town shall have the right to set up on any facility subject to this article such devices as are necessary in the opinion of the Town Engineer to conduct monitoring and/or sampling of the facility's stormwater or nonstormwater discharge.
  - (4) The Town Engineer has the right to require the facilities subject to this article to install monitoring equipment as is reasonably necessary to determine compliance with this article. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and

proper operating condition by the discharger at its own expense. All devices used to measure stormwater and nonstormwater flow and quality shall be calibrated to ensure their accuracy.

- (5) Unreasonable delays in allowing the Town access to a facility subject to this article are a violation of this article. A person who is the operator of a facility subject to this article commits an offense if the person denies the Town reasonable access to the facility for the purpose of conducting any activity authorized or required by this article.
- (6) If the SMO has been refused access to any part of the premises from which there exists a nonpermitted stormwater or nonstormwater discharge to the MS4, and he/she is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

#### **§ 275-26. Notification of spills.**

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into the MS4, said person shall take all necessary steps to ensure the recovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the SMO in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the SMO within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained by the owner for at least three years.

#### **§ 275-27. Enforcement; penalties for offenses.**

##### **A. Notice of violation.**

- (1) When the SMO finds that a person has violated a prohibition or failed to meet a requirement of this article or a permit issued pursuant to this article, he/she may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation, any or all of the actions listed below:
  - (a) The elimination of illicit or unauthorized connections or discharges;
  - (b) That violating discharges, practices, operations, activities, or connections shall cease and desist;
  - (c) The abatement or remediation of stormwater pollution or contamination hazards and the restoration and/or remediation of any affected property;
  - (d) The performance of monitoring, analyses, and reporting by a qualified professional;
  - (e) Payment of a fine; and
  - (f) The implementation of source control or treatment BMPs.

(2) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor, and the expense thereof shall be charged to the violator.

B. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$1,000 or imprisonment for a period not to exceed two months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$1,000 nor more than \$2,500 or imprisonment for a period not to exceed two months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$2,500 nor more than \$5,000 or imprisonment for a period not to exceed two months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article shall be deemed misdemeanors, and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each day's continued violation shall constitute a separate additional violation. To the extent that § 268 of the New York State Town Law limits the fine schedule for a violation of any local law, ordinance or regulation to a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both, § 268 of the New York State Town Law is superseded, nunc pro tunc, for the protection and enhancement of the Town's physical and visual environment and for the protection, order, conduct, safety, health and well-being of persons or property therein, pursuant to the Town's powers under § 10, Subdivision 1(ii)a(3)(11) and (12), of the Municipal Home Rule Law, as well as Article 9, § 2(b)(3), and Article 9, § 3(c)(10), of the New York State Constitution.

**[Amended 12-16-2008 by L.L. No. 48-2008]**

#### **§ 275-28. Appeal of notice of violation.**

Any person receiving a notice of violation may appeal within 15 calendar days of its issuance. The SMO shall hear the appeal within 30 days after the filing of the appeal and, within five days of making his/her decision, issue a decision by certified mail to the discharger. The SMO may conduct the hearing and take evidence or may designate any officer or employee of the Town to do so.

#### **§ 275-29. Corrective measures after appeal.**

A. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within five business days of the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.

B. If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the property owner.

**§ 275-30. Injunctive relief.**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. If a person has violated or continues to violate the provisions of this article, the SMO may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**§ 275-31. Alternative remedies.**

- A. Where a person has violated a provision of this article, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Town Attorney and concurrence of the SMO, where:
  - (1) The violation was unintentional.
  - (2) The violator has no history of previous violations of this article.
  - (3) Environmental damage was minimal.
  - (4) The violator acted quickly to remedy violation.
  - (5) The violator cooperated in investigation and resolution.
- B. Alternative remedies may consist of one or more of the following:
  - (1) Attendance at compliance workshops.
  - (2) Storm drain stenciling or storm drain marking.
  - (3) River, stream or creek cleanup activities.
  - (4) Other public service which is consistent with the objectives of the Town's stormwater management program.

**§ 275-32. Violations deemed public nuisance.**

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, and welfare and is declared and deemed a nuisance and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

**§ 275-33. Remedies not exclusive.**

The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law, and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

**§ 275-34. Multiple jurisdiction.**

In the event that a discharge or connection constitutes a violation that is the responsibility of multiple MS4s, the violator may be subject to enforcement pursuant to any/all of the responsible MS4s' illicit discharge code or other relevant rules and regulations.